UE-210183

NW Energy Coalition

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December 6th, 2021

Amanda Maxwell
Executive Director and Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503

Re: NW Energy Coalition's response to Notice of Opportunity to Comment on Docket UE-210183, Relating to Electric markets double counting of non-power attributes and Compliance with the Clean Energy Transformation Act

Ms. Maxwell,

The NW Energy Coalition ("NWEC") appreciates the opportunity to offer comments on the proposed draft rules under the Clean Energy Transformation Act (CETA). NWEC is an alliance of more than 100 organizations united around energy efficiency, renewable energy, fish and wildlife preservation and restoration in the Columbia basin, low-income and consumer protections, and informed public involvement in building a clean and affordable energy future.

NWEC staff were closely involved in the writing and passage of CETA and have participated in all related rulemaking proceedings under the statute. Since CETA's passage in 2019, NWEC has participated in market discussions with Commission staff and others, was a member of the Carbon and Electricity Markets Workgroup, and actively participated in all related workshops. Additionally, in October, 2020, NWEC with Climate Solutions submitted suggested language for the "use" rule based on a financial accounting approach, rather than a renewable energy credit (REC) approach.

a. Statutory context for prohibiting double counting

Our comments are largely focused on the proposed rules prohibition on double counting nonpower attributes, and storage accounting. The clear language of CETA requires utilities "*demonstrate its compliance with this standard by **using** a combination of non-emitting electric generation and **electricity** from renewable resources*". Both the 2030 and 2045 standards mean what they say: utilities must **use electricity** from clean sources to supply their customers. Significantly, CETA directs this "use" requirement to "electricity from renewable resources." RCW 19.405.050(1); RCW 19.405.040(1)(a) (emphasis added). A requirement that utilities "use renewable resources" might create some ambiguity— but the requirement that they use "*electricity* from renewable resources" does not.

Further, CETA retires the RECs associated with the renewable power claimed for compliance with the statute be retired 19.405.040(1)(c) "*Electricity from renewable resources used to meet the standard under (a) of this subsection must be verified by the retirement of renewable energy*

credits. Renewable energy credits must be tracked and retired in the tracking system selected by the department.

In this, CETA is unlike the Energy Independence Act (EIA) which is based on a renewable portfolio standard (RPS); the EIA requires utilities to meet a percentage of annual load targets with *either* renewable energy or Renewable Energy Credits (RECs). Because utilities can comply with RECs alone under the EIA, the EIA does not require that electricity from renewable resources actually be used to serve a utility's customers, nor that utilities do more than show the RECs that have been retired for compliance. Unbundled RECs must be from a certain vintage of electricity production can be acquired and retired to comply with the EIA. The CETA requirement to "***use***…electricity from renewable resources" and that "sales of electricity" be greenhouse gas free have no analog in the EIA. CETA, unlike the EIA, demands *clean electricity* for compliance, not just acquisition of clean resources or RECs. CETA does allow the retirement of unbundled RECs only for the compliance periods from 2030 to 2045 for a limited amount of load.

The CETA path to 100% clean electricity is phased in. As an interim step, by 2030, utilities must ensure their "sales of electricity" to Washington customers are greenhouse-gas neutral RCW 19.405.040(1). This interim 2030 standard allows utilities more flexibility than the ultimate 2045 standard by allowing utilities to rely on "alternative compliance options" for up to twenty percent of their load (RCW 19.405.040(1)(b)). CETA explicitly defines only four alternative compliance options as satisfying the 2030 standard for up to 20% of a utility's compliance obligation (RCW 19.405.040(1)(b)). Only the documentation of those four Alternative Compliance options would allow a utility to rely on fossil resources for up to 20% of their load without incurring a penalty for "fail[ing] to meet" that standard, RCW 19.405.090(1)(a).

b. Requiring certain business practices of generators is inadequate to prevent double counting of unbundled RECs.

One of the four compliance options allowed under 19.405.040(1)(b) is the retirement of unbundled RECs "*provided that there is **no double counting** of any nonpower attributes associated with renewable energy credits within Washington or programs in other jurisdictions"* RCW 19.405.040(1)(b)(ii) further limits eligible unbundled RECs to those that come from eligible renewable resources as defined in RCW 19.285.030 and any other REC from electricity generated within the compliance period.

The requirement to retire RECs to avoid double counting of either the non-energy attributes or the electricity is necessary and appropriate to ensure the integrity of the CETA standards. A REC is a tradable certificate of proof of one megawatt-hour of a renewable resource….and includes all of the *nonpower attributes* associated with that one megawatt-hour of electricity …" RCW 19.405.030(31), but it is not synonymous with the electricity itself. Unless a certificate is intentionally retired in some energy credit tracking system, it could be traded multiple times or the electricity, contrary to CETA, could be accounted for in one program and the associated REC counted towards another program. To avert that possibility, CETA requires that once electricity is claimed for compliance, the associated REC must be

retired in the tracking system selected by the department, RCW 19.405.040(c). This requirement does not verify the consumption of the electricity, it verifies that the RECs associated with electricity used for compliance cannot be used in multiple programs or "counted" more than once.

Due to the way that REC tracking and accounting is administered, the only entity that can confirm that the appropriate vintage of unbundled RECs are retired in the tracking system specified by the department is the utility. While it is expected that utilities' CETA compliance obligations would have an impact on market participants and shape business practices in the broader market; ultimately, the obligation to comply with CETA is placed on the Washington utilities. Therefore, we are concerned that the proposed rules at WAC 194-40-XXX/WAC 480-100-XXX (-XXX) shifts the responsibility for confirming the vintage and retirement of RECs from the utility to third party, "registered generators", which do not have a compliance obligation under CETA and are not regulated by the UTC or Commerce.

We appreciate that it may be attractive to utilities that need to acquire unbundled RECs to acquire those RECs from "registered generators" on a list maintained by Commerce, but we do not think this alone is adequate to ensure the correct vintage of unbundled RECs are acquired or that those RECs have not been used in another program. All a generator must do to become a "registered generator" is certify annually to Commerce that the generator owners/managers intend to comply with the business practices in -XXX. However, the utility's obligation to prevent double-counting under the law remains.

Since the Washington agencies lack regulatory authority over registered generators, we are concerned that this portion of the proposed rule is fundamentally unenforceable. We are unaware of any authority either the Commission or Commerce has to audit the practices of a non-utility generator, located within or outside of Washington. Non-compliance with the business practices would be nearly impossible to confirm, and rely on good faith efforts by entities that do not have a compliance obligation under the law. Ultimately, this could allow RECs to be double counted and therefore delay the transformation of the Washington electric system.

Other questions are raised by proposed rule: Will some entity that has purchased bundled power in the market, then sells it with all attributes still attached, also have to comply with business practices demanded of original generators?

c. Accounting for electricity from storage resources

WAC 194-40-YYY/WAC 480-100-YYY is problematic given that this proposed storage rule is part of a proposed "use" rule that is premised on procurement and not consumption. If the proposed "use" rule required that electricity be *used* to serve retail load, then the proposed storage rules at -YYY would make sense, as each utility would have to acquire enough unbundled RECs to meet whatever portion of the 20% of retail load was needed.

But, as written, this exemption from any requirement to compensate for storage losses creates a loophole that weakens the CETA standards. The exemption for losses resulting from charging,

holding and discharging storage resources could amount to a sizeable percentage of the energy stored that would be unrecognized and treated as if the loss did not exist. A generator that supplies energy to a storage unit would be able claim all the RECs associated with the power generated, but not account for the fact that some of that power is lost in storage. The party that eventually withdraws the power can claim all the electricity or RECs created at generation, but in reality, they will be claiming/relying on "phantom power" that no longer exists. This creates a bonus for the generator that is undeserved. A third party that acquires then stores the electricity and associated RECs also enjoys the same REC bonus. This problem could be avoided by using a consumption-based financial accounting approach, as discussed in our previous comments in this docket.

The proposed rule also makes the arbitrary decision that losses from storage on the utility side of a retail meter won't be considered electric load, but storage on the customer side of the meter and any losses from that will be considered part of the load. The proposed rule does not distinguish between storage on the customer side that might be stand alone and charged from the grid (and therefore part of retail load) and storage that is combined with distributed solar and wind that might only be charged by the individual distributed energy system and not the grid.

d. A "retained REC" is an unbundled REC, and does not warrant special treatment.

Neither "retained RECs" or "primary compliance" are concepts intended by or included in CETA. WAC 194-40-ZZZ/WAC 480-100-ZZZ functions only in a fictional construct where procurement, rather than consumption, is the operative definition of "use", which would be a definition that does not comply with CETA.

Instead, the fact that the legislature explicitly addressed the use of RECs and limited their use to the 20% alternative compliance options allowed in the 2030 standard cuts against any interpretation that significantly expands their use. The legislature already addressed when and how RECs may substitute for clean electricity, and the proposed rule allowing for the use of "retained RECs" impermissibly converts the legislature's chosen 20% alternative compliance framework into a 100% alternative compliance framework. The legislature already created enumerated exceptions to CETA's requirement that utilities rely on clean electricity through an explicit alternative compliance framework, and the UTC and Commerce lack authority to broaden this framework in a way that undercuts the statute's primary goal: to rapidly and completely decarbonize Washington's electricity supply.

The agencies' proposed "use" rule creates a new category of REC, defining "retained RECs" as RECs that are "owned or controlled by a utility where the associated electricity is sold in a wholesale sale as unspecified electricity." (Proposed WAC 480-100-605). Fundamentally, however, both a "retained REC" and an unbundled REC are simply RECs that have been separated from their associated electricity, and *neither can meet a utility's statutory obligation to use* ***electricity*** *from clean resources.* This is true irrespective of any differences of ownership between a "retained REC" and an unbundled REC. Even if CETA does not compel the UTC to include "retained RECs" in the definition of "unbundled" RECs because a "retained REC" has not been "sold," that still does not allow utilities to rely on "retained RECs" to meet standards that demand the use of clean electricity. Defining "retained RECs" separately from "unbundled

RECs" does not allow utilities to substitute "retained RECs" as electricity. Doing so would be inconsistent with the statute.

The proposed rule recreates the RPS approach of the EIA, which was deliberately not adopted in the legislation. Yet this proposed rule allows unbundled RECs of any sort to count towards CETA compliance and subverts the clear intention of the law by undermining the penalty provision. The penalty is imposed for using fossil fueled electricity to serve customers, but counting the "retained REC" as renewable energy even though the electricity that created it was sold as unspecified power allows and encourages the use of fossil fueled electricity to serve customers, while the "retained REC" would allow utilities to account for that electricity as "clean."

Proposed -ZZZ raises the same and additional questions regarding accountability and verification of business practices as raised in -XXX. Namely, proposed -ZZZ relies on generators that comply with certain business standards, but does not require those generators to register with Commerce as does proposed section -XXX(2)(d). If following the proposal's logic, subsection XXX(2)(d) and (3) should apply to -ZZZ as well.

There is an additional question regarding -ZZZ(2) as that subsection states a "retained REC" that is sold becomes an unbundled REC – exactly which entity is responsible for reporting that change of status – the generator? The utility that originally generated or acquired the "retained REC" but now wishes to sell it? The market dealer who acquired the bundled product? How will that be tracked or audited? This is another vague requirement that could result in double counting.

QUESTIONS FOR CONSIDERATION

The Joint Agencies seek comments on the draft rules, specifically whether they are clear, feasible to implement, and consistent with CETA. In addition, the Joint Agencies seek responses to the following questions:

1. ***Requirements for obtaining unbundled RECs****: The draft rule would require that utilities obtain unbundled RECs only from renewable generating facilities that comply with certain business practices in all transactions, regardless of whether the transaction involves a Washington utility.*

- *a. Is it feasible to require renewable generation facilities to register and certify with the state of Washington that all of their transactions comply with the draft rules' business practices?*
    - i. Yes. However, this alone is inadequate to prevent double-counting. How will this be monitored or audited? It is not clear what recourse there is if a provider outside of the state refuses to certify that all transactions comply with certain "business practices" required by Washington.

b. *Should the Joint Agencies consider alternatives to requiring that renewable generation facilities adhere to specific business practices in order to prevent double counting?*
    i. The Joint Agencies should require the utilities to report which RECs were retired for the **electricity that is used to serve retail load** and claimed for compliance. This proposed rule misses the intent of CETA and puts the onus on the generator to prove RECs are retired for compliance, without a reliable method for the utilities, agencies, or stakeholders to confirm. We doubt the State has the authority to compel third party entities to show their books to the state.
    ii. Further, there is no chain of ownership required by the rule. If a utility purchases a bundled product from a generator, uses the electricity to serve customers, but then sells the REC, it must be recategorized as an "unbundled" REC. There is no requirement for who, when or how that change is reported.

c. *Should the Joint Agencies consider an alternative in which the business practices identified in subsection (2)(a) through (c) are required only for transactions that result in the transfer of an unbundled REC to a Washington utility?*
    i. This would be very difficult to track and audit and is an invitation to game the system.

d. *Is a transaction-based approach feasible? If feasible, is it necessary to ensure no double counting of non-energy attributes?*
    i. It is not clear what is meant by transaction-based approach. We remain interested in a financial accounting approach in which RECs play a diminished role, and CETA can be better integrated with developing market mechanisms

e. *Would a transaction-based approach be more or less effective and enforceable than the draft rules in preventing double counting?*
    i. See above

2. Business practices for transactions involving electricity delivered or claimed under greenhouse gas cap programs:

a) *Sec. -XXX(2)(c) applies to transactions involving GHG cap programs outside Washington. Is it reasonable to distinguish between GHG cap programs outside Washington and Washington's own GHG cap program, the Climate Commitment*

Act (CCA)? Is it relevant in making this decision that the electricity and the unbundled REC are used in the same jurisdiction?

b) *Sec. -XXX(2)(c) uses the term "GHG cap program," and the workshop discussion focused primarily on California's cap and trade program. How should the term "GHG cap program" be defined? Should the rule identify specific programs? If so, please provide an alternative term and definition.*

1. Why would the draft rule limit double-counting to only certain programs? An appropriate rule would disallow any double counting of RECs associated with the "use" compliance standard.

3. ***Identification of RECs associated with specified source electricity sales****: Sec. - XXX(2)(a) requires the inclusion of RECs in sales of specified source electricity and requires that the RECs be from the same generating facility and have the same month/year vintage. Is this matching of RECs with electricity reasonable or is a more precise matching of RECs with electricity necessary and feasible for compliance?*

i. It is feasible to match RECs with specified source electricity sales, but ultimately, it is electricity that is purchased and used for compliance that matters. Sales are only relevant to CETA to the extent that the electricity cannot be "used" if it is sold.

4. ***Double counting safeguards for retained RECs****: The statutory prohibition on double counting applies to unbundled RECs retired for alternative compliance obligations. The draft rules on "use" allow retained RECs to be used in addition to electricity from renewable generation resources for primary compliance.[3] Should the business practices preventing double counting be applied to retained RECs?[4] If so, does draft section -ZZZ do this effectively?*

i. "Retained RECs" should not be allowed the same status as electricity use for the minimum 80% standard in 2030. As an unbundled REC, retained RECs should be simply defined as such and then could be allowed for use in complying with the 20% of the 2030 standard. The draft rules on "use" need to be revised to conform to CETA's consumption, not procurement, standard.

ii. Since no part of the CETA rule should allow for double-counting of RECs, any safeguards intended to prevent double-counting of RECs should be applied to all RECs.

Respectfully,

/s/
Joni Bosh
NW Energy Coalition