NW Energy Coalition

climate solutions
accelerating the transition to our clean energy future

UE-210183

February 9, 2022

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

Re: NW Energy Coalition's and Climate Solutions' Comments Relating to Electricity Markets and Compliance with the Clean Energy Transformation Act, Docket UE-210183

Dear Ms. Maxwell:

The NW Energy Coalition ("NWEC" or "Coalition") and Climate Solutions appreciate the opportunity to comment on the second draft of the proposed "use" and "double counting" rules submitted to this docket on January 19, 2022.

The Coalition 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.

Climate Solutions is a clean energy nonprofit organization working to accelerate clean energy solutions to the climate crisis. The Northwest has emerged as a hub of climate action, and Climate Solutions is at the center of the movement as a catalyst, advocate, and campaign hub.

Background

NWEC and Climate Solutions staff were closely involved in the writing and passage of the Clean Energy Transformation Act (CETA) and have participated in all related rulemaking proceedings under the statute. Since CETA's passage in 2019, NWEC and Climate Solutions have participated in market discussions with Commission staff and others, were both members of the Carbon and Electricity Markets Workgroup, and actively participated in all related workshops. On October 2020, NWEC and Climate Solutions jointly submitted suggested language for the "use" rule based on a financial accounting approach. Further, our organizations commented on the previous versions of this rule on November 12, 2021, submitted two legal memos on "use of electricity", and presented jointly at a rulemaking workshop on August 12, 2021. Our comments here should be considered with our previous comments and legal analysis.

We were disappointed in the first draft rule, as it departed from Commission staff's preliminary interpretation of "use" and adopted an interpretation that would have allowed utilities to rely indefinitely on fossil fueled electricity, which is contrary to the legislative intent and the language of CETA. While the second draft proposed rule ("rule") includes some modifications, the general approach remains the same. Rather than implement a "use" standard and accounting requirements to demonstrate "use," the approach taken by the proposed rule attempts instead to

adopt requirements for planning, procurement, and reporting by which the Commission, stakeholders, and utilities can reasonably assume that electricity was "used" to serve a utility's load, in compliance with the standard.

We appreciate the work of Commission staff, who have proactively engaged stakeholders and led multiple workshops on this rule, all while trying to balance a heavy workload with limited resources. However, while the rule is an improvement over the prior version, it still falls short of meeting its purpose for the 2030 standard. The rule's attempt to define "use" as something other than its plain meaning could distort utility efforts to meet the clean energy standards, have unintended consequences, could allow for more noncompliant generation than the statute allows for, and could lead to suboptimal outcomes for customers. We remain troubled by this approach and do not believe it meets the legal requirements of CETA. Our comments offer some suggestions to enhance the rule to better align WAC 480-100-650(1) with the statute.

Summary of Comments

We appreciate that the rule implements RCW 19.405.050(1) by prohibiting reliance on "retained Non-power Attributes" (NPAs) when reporting or assessing compliance [WAC 480-100-650(2)] and that all retail electric service obligations are incorporated into a utility's requirement to supply retail electric customers with 100% clean energy. CETA is absolutely clear that only electricity from renewable and non-emitting generation sources can be supplied to meet retail loads starting January 1, 2045 and claimed for compliance. The rule also clarifies that electricity from storage can only be claimed for compliance if the storage sourced the electricity from renewable or non-emitting generation resources [WAC 480-100-650(2)(b)], which is an improvement.[1] We also appreciate the clarification that non-emitting generation claimed for compliance with RCW 19.405.040(1)(f) must also be documented.

However, we continue to believe the rule is fundamentally flawed in its attempt to provide additional flexibility that is not provided in the statute as a means to integrate CETA with market rules that do not yet exist, are limited in scope, or are under development. We don't ignore the challenges of integrating CETA and other state clean energy standards with markets, but the impacts of those challenges remain speculative. And, it is clear that markets can be designed to accommodate and facilitate compliance with a variety of state clean energy policies, including CETA.

We are also frustrated that while RCW 19.405.040 and RCW 19.405.050 mirror each other in structure and intent in the statute, the rule treats them as if they are unrelated. The 2030 standard is not simply an aspirational benchmark, but a strong standard with flexibility built into the law. CETA recognizes that some utilities will, for various reasons, need more time and investment to reach 100 percent renewable and non-emitting electricity, and provides flexible compliance options and customer protection mechanisms to utilities to work within, while balancing practical considerations with the urgency of the climate crisis. Achieving CETA's 2030 standard is necessary for Washington state to meet its greenhouse gas limit of 45% below 1990 levels by 2030 [RCW 70A.45.020]. Washington is not alone in moving aggressively toward 100 percent

[1] However, we note that this clarity is somewhat blurred in the following section WAC 480-100-650(3)(d), by leaving a reference to RCW 19.405.050(1) which references compliance with RECs or NPAs. We urge the Commission to revisit this subsection to make sure that the two provisions do not conflict.

clean electricity - the Biden Administration has committed to transition to a 100 percent clean electricity system by 2035 as part of the United States' Nationally Determined Contribution under the Paris Agreement.[2]

Non-Power Attributes Used for Primary Compliance

Specifically, the rule's allowance of attributes that have been separated from their electricity to count toward compliance with the requirement to "use" electricity to serve retail load in 2030 is simply not legally allowed in the statute. If this rule is adopted, it is possible for a utility to comply with the requirements of the rule, yet not be in compliance with the statutory requirements of RCW 19.405.040. The term "retained non-power attribute" is not authorized by statute, and has the same inherent flaws as "retained RECs" did in the First Draft Proposed Rule. While the rule attempts to mitigate the impact of this by defining "retained NPAs" to only those "NPAs" from electricity sold wholesale as "unspecified", this limitation does not rectify the fundamental misinterpretation of the plain meaning of "use". We refer the Commission to our previous comments on this point, and will not repeat them in detail here.

WAC 480-100-650(1)(c) would allow an unlimited amount of "retained NPAs" to be applied and claimed as compliant with RCW 19.405.040(1). This simply weakens the statutory standard, which already provides for significant flexibility through the following measures:

- CETA already allows *twenty percent* of retail sales to be from fossil fueled generation from 2030 to 2045 as long as that portion of electricity used to serve retail load is compensated for with alternative compliance options. This 80/20 percent split was not determined arbitrarily, and a number of studies and assessments have since concluded that achieving 80 percent clean electricity by 2030 is reasonable and achievable.[3] The first round of utility CEIPs do not indicate otherwise.
- The law also provides additional flexibility in the form of a four-year compliance period, which allows for consideration of variable generation and load due to weather and water conditions. The further flexibility provided by the rule to allow them to use retained NPAs for primary compliance credit is not only not allowed under the statute, but it is not needed given the significant flexibility already provided by the statute.
- The law includes a "rate impact cap," which allows utilities to comply with the standard if the average annual incremental cost of meeting the standards or the interim targets equals a two percent increase of the investor-owned utility's weather-adjusted sales revenue to customers for electric operations above the previous year. [RCW 19.405.060(3)(a)]

[2]https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/United%20States%20of%20America%20First/United%20States%20NDC%20April%2021%202021%20Final.pdf

[3] A meta-analysis of 11 studies conducted by Energy Innovation affirms that achieving 80 percent clean electricity by 2030 is feasible, affordable, critical to meeting national climate goals, and deeply beneficial to the economy and public health—all without compromising power system reliability. Energy Innovation. Studies Agree 80 Percent Clean Electricity by 2030 Would Save Lives and Create Jobs at Minimal Cost. (October 2021) https://energyinnovation.org/wp-content/uploads/2021/09/Studies-Agree-80-Percent-Clean-Electricity-by-2030-Would-Save-Lives-and-Create-Jobs-at-Minimal-Cost.pdf

- The law includes a reliability safety valve, which allows the Commission to waive the penalty for noncompliance with the statute if, "after taking all reasonable measures, the investor-owned utility's compliance with this chapter is likely to result in conflicts with or compromises to its obligation to comply with the mandatory and enforceable reliability standards of the North American electric reliability corporation, violate prudent utility practice for assuring resource adequacy, or compromise the power quality or integrity of its system." [RCW 19.405.090(3)(a)(i)]

The record of this rulemaking lacks any evidence of the need for the rule to provide additional flexibility that is not permitted by statute, or the expected impact of WAC 480-100-650(1)(c). In the absence of any data supporting this approach, we are concerned that the impact of allowing "retained NPAs" to be used for "primary compliance" with RCW 19.405.040 could be significant, and potentially undermine the intent and purpose of RCW 19.450.040. As a practical matter, we are concerned that a utility could apply unlimited NPAs to its 2030 obligation, resulting in the service of customer load with a mix that is less than 80 percent clean – potentially much less than 80 percent. We simply don't understand the reasoning behind this approach, given that risk and the statutory requirements of the law.

Failure to consider all energy needed to serve retail electric load

The rule also fails to require that a utility serve retail electric load with a minimum of 80 percent renewable and nonemitting resources (thereby allowing a utility to exceed the maximum allowance of 20 percent noncompliant resources used to serve load) by not considering all the energy that a utility relies on to serve retail electric load.

CETA's plain language requires that all electricity used to serve retail electric load be greenhouse gas neutral by 2030 and be sourced from 100 percent renewable and nonemitting resources by 2045. By allowing utilities to satisfy up to 20 percent of a compliance obligation under the greenhouse gas neutral standard with alternative compliance options, the intent is for utilities to use no more than 20 percent electricity from noncompliant resources in 2030 to serve their retail electric load. In implementing the 2045 standard, the rule correctly requires that a utility supply "all of its *retail electric service obligations* with renewable and nonemitting resources." The rule acknowledges that the actual amount of energy used to serve retail electric load exceeds the retail electric load itself, largely due to line losses and other losses associated with delivering energy.

However, for the 2030 greenhouse gas neutral standard, the rule simply requires that a utility serve "80% of its *retail electric load obligation*…with renewable or nonemitting electricity." The language lacks clarity, but the usage of two distinct terms indicates that a utility's requirement is to simply procure renewable and nonemitting electricity in an amount equal to retail electric load in the greenhouse gas neutral standard – not actually supply 80% of retail electric sales with renewable or nonemitting resources. Because line losses and other losses associated with delivering electricity require a utility to procure more electricity than its retail electric load to actually supply energy to its retail electric load, the rule falls short of the statutory requirement that all retail sales of electricity are greenhouse gas neutral and that a utility use a minimum of 80% nonemitting and renewable electricity to serve retail electric load.

Line losses should be included in the 2030 compliance standard because the legislature directed CETA's requirements to "sales of electricity" and intended to transform the state's "electricity supply." Both of these terms must include line losses. Specifically, in the 2030 standard, the legislature directed that "all retail sales of electricity to Washington retail electric customers be greenhouse gas neutral" by 2030. [RCW 19.405.040(1)]. This requirement parallels the language in the 2045 standard, which directs that clean energy "supply one hundred percent of all sales of electricity to Washington retail electric customers" by 2045. [RCW 19.405.050(1).] "Retail sales of electricity" must account for line losses because the energy needed to deliver electricity to customers is included in rates, and therefore is included in the sale. Moreover, the parallel language on "retail sales of electricity" should be interpreted the same way in the 2030 and 2045 standards, and the Commission has already recognized in the proposed rules that the 2045 standard must include line losses. The legislature's statement of purpose supports this conclusion: it is the "policy of the state" to "transition the state's electricity supply to one hundred percent carbon-neutral by 2030, and one hundred percent carbon-free by 2045." RCW 19.405.010(2). The state's "electricity supply" must include all generation that supplies Washington, and that must include line losses because you can't supply electricity to retail electric load without incorporating them.

In a simple example, if a utility has a 100 megawatt hour load and line losses are assumed to be 5%, then a utility must plan for and procure at least 105 megawatt hours of energy to actually serve its retail electric load after accounting for line losses. The draft rule incorrectly requires that a utility procure 80 MWhs of clean energy, which only amounts to 76 percent of the actual energy a utility would rely on to serve its retail electric load. Not requiring that a utility procure a minimum of 80% of the energy needed to serve retail electric load creates a significant loophole for utilities to continue relying on noncompliant resources to make up for losses associated with the energy procured. Compliance with both the greenhouse gas neutral standard and the 100 percent renewable and nonemitting standard should be determined based on all the energy that must be generated in order to serve a utility's retail electric load, and must account for any losses that occur between the generation source and the energy supplied.

The legislature was clear that a utility must rely on a minimum of 80 percent renewable and nonemitting energy to serve retail electric load in 2030, and the remaining 20 percent of compliance could be met with alternative compliance mechanisms. As discussed, the draft rule requirements ignore the portion of energy that fills in the gaps left due to line losses. It is clear that the legislature assumed the 80 percent of retail electric load requirement, paired with the 20 percent of retail electric load requirement, would equal 100 percent of the energy that a utility would rely on to serve retail electric load. Not incorporating associated losses into a utility's clean energy obligation in the 2030 standard ignores how utilities plan and procure resources, as well as the legislative intent of CETA.

Finally, we highlight again that a utility is subject to a penalty if it "fails to meet" the 2030 clean energy standards, which applies "for each megawatt-hour of electric generation used to meet load that is not electricity from a renewable resource or nonemitting generation." [RCW 19.405.040(7)] This language is very clear that if a utility uses electricity that is not renewable or nonemitting to meet load, it must pay a penalty due to noncompliance with the law. The draft rule does, in fact, allow utilities to continue serving their load with emitting resources above and

beyond the maximum 20 percent allowance. Should a utility continue to rely on more than 20 percent noncompliant energy in 2030 to serve its retail electric load, per statute, a penalty should be applied to each megawatt-hour of noncompliance energy above and beyond that requirement.

Exception for Short-Term Contracts

Further, this draft's treatment of contracts of less than two years in duration creates another potentially large loophole which is not supported by the statute. WAC 480-100-650(1)(b) allows utilities to use NPAs from contracts less than two years for primary compliance with RCW 19.405.040. In order to use the NPAs, the rule requires that the power be sold as "unspecified." Practically speaking, this means utilities can acquire short term (up to two-year) contracts for resources which are not anticipated to actually serve Washington customers with electricity, but are intended to be marketed as unspecified power, and keep the NPAs to retire for CETA primary compliance.

While it is our opinion that such resources would not be used and useful in Washington, we are troubled that the rule could provide an argument that such resources are used and useful if their NPAs are used for compliance with CETA. This could result in unintended consequences - like Washington customers paying for the build-out of substantial clean energy generation, without actually benefitting from its use. This concern is exacerbated by the possibility that Washington customers would be paying for expensive short-term contracts for clean power, and the power would instead be marketed off-system at a lower value as "unspecified" power. Since we have no information about the extent to which utilities currently rely on contracts with terms of two years or less, we are unable to ascertain what the impact could be. Since the draft lacks specific reporting on those contracts, the Commission and stakeholders would not be able to assess the potential impact prior to utilities claiming this exception in their compliance reports.

Planning as a Basis for Compliance

The rule relies heavily on the planning process to demonstrate compliance with CETA, rather than actually implementing a standard based on using electricity to comply. First, it's not clear what planning would be covered by the rule. For example, integrated resource plans (IRPs) must be constructed without considering the impact of NPAs, but that requirement does not cover the Clean Energy Action Plans (CEAPs) nor CEIPs. If this approach is adopted, the requirement to conduct planning, evaluations and acquisitions/investments should be similarly applied to WAC 480-100-620(7) Resource evaluations; to 480-100-620(8) Resource Adequacy; to 480-100-620(12) CEAP content; to 480-100-625(4)(iv) Portfolio analysis and Preferred Portfolio; at 480-100-640(2) Interim Targets and (3) Specific targets as well as other points.

Since CETA requires the Commission to approve, reject, or approve CEIPs with conditions, we recommend that the Commission formalize and exercise more oversight over the planning process in the future. We believe the purpose of the CEIP is to provide certainty, accountability, and transparency to the implementation of CETA. Unlike the IRP, the CEIP is not merely the "utility's plan," but should be a collaborative work product, supported by the participation of customers, and approved by the Commission. However, the informal nature of the CEIP process in this first round does not give us confidence that the plans will yield the information that the Commission will need if it intends to use the CEIP as a basis for determining compliance. The

IRP process is also not sufficient to allow the plans to serve this purpose. Currently, there is a significant imbalance in the information and tools available in the planning process.

More oversight is needed in order for the Commission to be confident that robust review and public participation has been adequately conducted, especially if the plan is used as a basis for determining compliance with the law. The Commission should open formal dockets earlier in the process, develop a procedural schedule, dedicate more technical and staff resources, and allow for discovery and collaboration among the parties while public engagement with the advisory groups continues. We would welcome a discussion about how to improve the planning process outside of this rulemaking process.

Data Reporting

Given the approach to rely on planning to determine compliance, we appreciate that the rule requires much more data to be reported with the annual clean energy progress report. We believe this information is important for the Commission to have under its general purview to regulate the rates and services of electrical companies. In order to better assess utility progress toward complying with CETA, we recommend that the rule require utilities to report, beginning January 1, 2026:

1. retail and wholesale sales in other states [WAC 480-100-650(6)(a)(i)];
2. all electricity production from renewable and non-emitting generation owned, contracted or controlled by the utility by generator, by amount used to serve retail customers as a bundled product and by sales to other entities [WAC 480-100-650(6)(a)(v)];
3. the documentation of not just "unspecified" sales, purchases and exchanges, but for all electricity by resource type, including unspecified, [WAC 480-100-650(6)(b)(i)]; and
4. Adding a new subsection at WAC 480-100-650(6)(b)(v), each existing or new purchase contract of two years or less in duration with documentation of the generating source of the electricity, the amount contracted for bundled with NPAs and without; the amount, if any, of electricity from each contract that was subsequently sold as unspecified and the amount of NPAs "retained"; the amount NPAs for each contract claimed for compliance; and the percentage of total retail load these contracts represent by year.

Given the important public nature of the planning process, utilities have often been reluctant to share information that they deem competitive or proprietary in nature. This presents challenges if the planning process is meant to be the means by which compliance with CETA is determined. For example, the Commission should review WAC 480-100-620(14) Data Disclosures, and make the data used in planning available to the public and stakeholders as well as staff. In the same vein, WAC 480-100-625(5) should also be expanded from information available to advisory committees to also require that all data supporting the two year updated reports be made available online.

Maintain Strong Protections Against Double Counting

In general, we support the direction of the rule to ensure that all nonpower attributes associated with renewable or nonemitting energy are not double counted. We appreciate the overall clarity of the requirements, and that the overall intent to avoid double counting is clear. It is critical to the integrity of the law to ensure that the zero-emissions attribute of clean energy is included in

the nonpower attributes, and that rules ensure that the zero-emissions attribute of generation is not separated out from the nonpower attribute. While we do not go into detail here, please see our previous comments recommending that final rule prevent against double counting in a wider array of programs beyond greenhouse gas programs.

Recommendations:

1. **Amend WAC 480-100-650(1) to mirror the language in WAC 480-100-650(2)**, much the same way the statute does, to ensure that utilities serve retail electric load with a minimum of 80% renewable and nonemitting resources, and incorporates associated line losses in the greenhouse gas neutral standard. We recommend the following language change:

> *480-100-650(1)* ***Greenhouse gas neutrality resource portfolio performance standards and compliance.*** *A utility must demonstrate BY THE START OF THE FIRST COMPLIANCE PERIOD how its resource acquisition, resource retirement, and continued investment in and operation of existing resources SUPPLIES ~~serve~~ a minimum of 80 percent of its retail electric ~~load~~ SERVICE obligation, or other MORE STRINGENT minimum percentage established by the Commission, with renewable or non-emitting electricity in each compliance period beginning January 1, 2030. Using electricity for compliance under RCW 19.405.040(1) means that a utility:*
>
> *(a) May not RELY ON OR account for the ability to apply retained OR OTHER NPAs toward ~~primary~~ compliance WITH 19.405.040(1)(a) ~~under subsection WAC 480-100-650 (1)(c)~~ when planning its preferred resource portfolio under WAC 480-100- 640 and WAC 480-100-620 and must have models, scenarios, projections, and other information and analysis within the utility's IRP, CEAP and CEIP that are consistent with this requirement.*
>
> *(b) May not RELY ON OR account for the ability to apply retained OR OTHER NPAs toward ~~primary~~ compliance WITH 19.405.040(1)(a) ~~under subsection WAC 480-100-650(1)(c)~~ or with its interim or other targets in making decisions to acquire or invest in resources. ~~With a contract term or useful life greater than two years.~~*
>
> *© ~~May report retained NPAs toward primary compliance with interim or other targets under WAC 480-100-650 or WAC 480-100-665, but only if the utility has complied with subsections WAC 480-100- 650(1)(a), WAC 480-100-650(1)(b), and if applicable WAC 480-100- 650(2) during the period under review.~~ RETAINED OR OTHER NPAs MAY ONLY BE RELIED UPON FOR COMPLIANCE UNDER 19.405.040(1)(b).*

2. Clarify that NPAs cannot be used to meet the standard in RCW 19.405.050(1). We would also suggest clarifying WAC 480-100-650(2) by not allowing *any* NPA, retained or otherwise, to substitute in any way for electricity in planning for the any post 2045 portfolio, when acquiring resources or taking other specific actions to meet interim targets or compliance obligations under 19.405.050(1).

3. Require utilities to plan for the impacts of climate change. It stands to reason that utilities cannot plan an electricity system for a future impacted by climate change if their forecasts are based on the weather patterns of the past. We have advocated at every stage of CETA rulemaking and in the CEIP process that utilities should be incorporating the impacts of climate change into their load forecasting and resource planning. Utilities are required to develop a long-term plan to integrate demand- and supply-side resources at the "lowest reasonable cost," which includes the "cost of risks associated with environmental effects including emissions of carbon dioxide."[4] We continue to advocate that this is inclusive of climate impacts that could affect load forecasts and system operations. Since the Draft rule was released, the NW Power and Conservation Council also released the Draft 2021 NW Power Plan, which includes a climate-adjusted planning baseline for the Northwest. The Council will adopt the Final Plan soon. The Commission has had several opportunities to consider how utilities should incorporate the impacts of climate change into their resource decisions. This rule only requires utilities to include one scenario that addresses climate impacts in their IRP (WAC 480-100-620(10)(b). We urge the Commission to ensure that the science-based forecasts of climate change are incorporated into all utility planning scenarios and procurement decisions going forward, and that utilities review the NW Power and Conservation Council's climate-adjusted baseline and update their models accordingly.

4. Emphasize the role of customer-side resources in implementation. With so much of the focus of this rule being on "using" electricity from supply-side resources, we urge the Commission not to lose sight of the important role that customer-side resources (energy efficiency, demand response, flexible load, customer-owned generation, etc.) will play in meeting the CETA standards. By their very nature, increasing customer-side resources will reduce the amount of electricity that utilities need to purchase and acquire to comply with the standards, and are a critical part of a lowest reasonable cost resource portfolio. In meeting the CETA standards, utilities must pursue all cost-effective, reliable, and feasible conservation and efficiency resources and demand response, prior to making new investments in supply-side resources. In making new investments, an electric utility must first consider acquisition of existing renewable resources; and rely on renewable resources and energy storage. [RCW 19.405.040(6)(a)] We encourage the Commission, in its order adopting a final rule, to emphasize the importance of this language, which clearly provides a preference for customer-side resources to reduce load prior to purchasing or acquiring new supply-side resources.

Questions

We now turn to the questions posed in the Notice of Opportunity to file Written Comments dated January 19th.

[4] RCW 19.280.020(11): "Lowest reasonable cost" means the lowest cost mix of generating resources and conservation and efficiency resources determined through a detailed and consistent analysis of a wide range of commercially available resources. At a minimum, this analysis must consider resource cost, market-volatility risks, demand-side resource uncertainties, resource dispatchability, resource effect on system operation, the risks imposed on the utility and its ratepayers, public policies regarding resource preference adopted by Washington state or the federal government, and the cost of risks associated with environmental effects including emissions of carbon dioxide.

Q1. Draft WAC 480-100-650(2). The first sentence states that 100 percent of the electricity needed to supply retail electric service obligations must be generated by renewable and non-emitting resources. The second sentence explicitly establishes a requirement to secure transmission service rights for the electricity generated by the renewable and non-emitting resources. Is it sufficient for the first sentence to include an implicit requirement for feasible transmission service or is the second sentence also necessary to clearly state the requirement?

The second sentence is necessary to demonstrate that procured electricity is deliverable to Washington. We have long urged the utilities to incorporate transmission and distribution considerations in resource planning. Requiring a utility to demonstrate that it has secured transmission for renewable or non-emitting electricity used to serve retail loads starting in 2045 is reasonable, and arguably necessary in order for a utility to demonstrate that a generating resource is used and useful to Washington customers. However, it also stands to reason that this requirement should apply to WAC 480-100-650(1) in addition to WAC 480-100-650(2), since transmission service rights for renewable and nonemitting resources will need to be addressed well before 2045 to ensure no sudden grid stresses or sudden cost impacts due to unaccounted-for transmission needs.

Q2. Draft WAC 480-100-650(1)(b). The prohibition on the reliance on retained nonpower attributes when making decisions on long-term acquisitions is applied to contracts longer than two years, as utility contracts of two years or less are generally used for hedging a utility's resource portfolio. Is this the correct contract length or should the cutoff be longer or shorter, and why?

Without any information on the length of current utility contracts, what proportion of them are short-term vs. long-term, and the intended purpose of the contracts, this is a difficult question for our organizations to answer. We do not understand the need, purpose, or legality of this exception, and we are concerned that the impacts have not been examined. As written, we are concerned that this could be a significant loophole, as it allows both the electricity and the associate NPA from these contracts to be considered in resource acquisition to meet compliance. So, presumably, a utility could use the NPAs from a short-term contract, even if the power was not needed to "hedge a utility's resource portfolio". Resources used for hedging do not appear to us to be relevant to either WAC 480-100-650(1) or (2), if they aren't used to serve load. We recommend that this exception be stricken from the rule, since there is no need or purpose to allow NPAs from short-term contracts to be used for primary compliance. If the Commission elects to retain this exception for hedging or market transactions to meet unexpected and unplanned short-term needs, we recommend that it adopt the definition of short-term contract already defined in RCW 19.405.030 for electricity from coal-fired generation (one month). We further recommend that additional reporting and disclosure requirements for short-term contracts be adopted so that the Commission, utilities, stakeholders, and the public, can better assess the impact of this provision and mitigate for any unintended consequences.

Q3. Are the demonstrations required in WAC 480-100-XXX(3) reasonable and sufficient to prevent double counting considering the Commission's ongoing authority to prevent double counting?

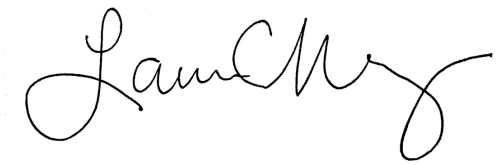
As far as relying on RECs as an alternative compliance option, this language addresses some of the concerns we raised regarding the first draft. It might be helpful to explicitly state that any REC used as alternative compliance options must not only meet the requirements of XXX-3, but also retire the RECs in WREGIS. We continue to have concerns with how either Commerce or the Commission will monitor the compliance of third-party entities, especially those from out of state.

Q4. Are the requirements under WAC 480-100-ZZZ sufficient, clear, and understandable?

On balance, we think the rule is too complicated, and sufficiently open to interpretation that it fails to provide the clarity that it seeks to establish. The rule weaves a complex web of compliance checkpoints while losing sight of the big picture – utilities have to serve customers with a minimum of 80 percent clean power (plus alternative compliance options) by 2030, and 100 percent clean power by 2045. The introduction of the concept of "retained NPAs" adds to the complexity while providing dubious benefit, and without statutory justification under RCW 19.405.040(1).

Thank you for the opportunity to comment.

Sincerely,



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