

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

Relating to Electricity Markets and Compliance
with the Clean Energy Transformation Act

DOCKET UE-210183

COMMENTS OF PUBLIC COUNSEL

February 9, 2022

I. INTRODUCTION

1. Pursuant to the Washington Utilities and Transportation Commission’s (“Commission” or “UTC”) Notice of Opportunity to File Written Comments on Draft Rules (“Notice”) dated January 19, 2022, the Public Counsel Unit of the Washington Attorney General’s Office (“Public Counsel”) files these comments related to the Commission’s second draft rules distributed with the Notice. Public Counsel appreciates the opportunity to provide comments on the Commission’s second draft rules on interpretation of “use” of electricity under RCW 19.405.040(1)(a) and RCW 19.405.050(1), on the Commission’s second draft rules to address the prohibition of double counting of nonpower attributes under RCW 19.405.040, and on the treatment of energy storage for compliance with RCW 19.405.030 through RCW 19.405.050.
2. Public Counsel first provides general comments on the draft rules, and then addresses the specific questions posed in the Notice.

II. GENERAL COMMENTS

3. Public Counsel appreciates the changes that have been made in the current draft rules in response to comments from stakeholders, including Public Counsel. In particular, the reporting requirements under draft WAC 480-100-650 are clearer and provide a more logical connection to the planning requirements under WAC 480-100-640. Further, the specific compliance requirement under draft WAC 480-100-650(1) regarding planning is more explicit and workable, and clarifies the difference between the planning and acquisition requirement and the operational requirement. The addition of subpart (2), relating to compliance with the RCW 19.405.050 100 percent renewable standard, also helps to clarify the difference between compliance with this standard and the RCW 19.405.040 greenhouse gas neutrality standard.

4. Despite the numerous improvements to the draft rules, however, Public Counsel continues to find the approach to preventing double counting under 480-100-XXX(3) to be unworkable, unduly burdensome and costly, and unnecessary. As detailed in response to Question 3 below, any attempt to implement this rule would add significantly to the cost of implementing the Clean Energy Transition Act (CETA). In addition, it would produce no incremental benefit relative to simply allowing WREGIS-certified¹ Renewable Energy Credits (RECs) to be used for alternative compliance on a megawatt for megawatt basis.

5. Public Counsel has raised this objection numerous times during this rulemaking.² No stakeholder has refuted our concern, and no stakeholder has demonstrated how “REC-shuffling” could be avoided or incremental benefits could be realized through the proposed restrictions. Public Counsel urges the Commission to address this issue and not promulgate a rule that will impose unnecessary and unproductive costs on Washington ratepayers with no commensurate benefit.

III. RESPONSES TO NOTICE QUESTIONS

Question 1. 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 nonemitting resources. The second sentence explicitly establishes a requirement to secure transmission service rights for the electricity generated by the renewable and nonemitting 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?

6. The first sentence of draft WAC 480-100-650(2) requires each electric utility to “demonstrate that it is supplying all of its retail electric service obligations with renewable and

¹ WREGIS is the Western Renewable Energy Generation Information System, which issues and tracks RECs for renewable-source electric generation.

² Comments of Public Counsel at 10–11 (filed Dec. 6, 2021); Oral Comments by Dr. Ezra Hausman, on behalf of Public Counsel, at the Joint Workshops for Double Counting and Storage held Dec. 14, 2021.

nonemitting resources.” It is reasonable for the rules to further clarify that as part of this demonstration, such utility must show “that it has secured transmission rights or assets to provide feasible transmission for renewable or nonemitting resources to serve its retail electric service obligations.” As phrased in the draft rule, these appear to be two separate requirements. However, the second should merely be a clarification of the first. That is, if the utility cannot show that it has secured any required transmission rights or assets to deliver the electricity to its customers, then it has failed in the initial demonstration. Public Counsel supports this clarification and suggests that the second sentence be re-worded as follows:

To meet this requirement, theA utility must also demonstrate that it has secured transmission rights or assets to provide feasible transmission for renewable or nonemitting resources to serve its retail electric service obligations.

Question 2. 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?

7. At this time Public Counsel has no objection to delineating between contracts of more than two years vs. two years or less for this purpose. We look forward to reviewing the comments of utilities and other stakeholders as to how they believe this is consistent with current hedging strategies and approaches.

Question 3. 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?

8. Public Counsel appreciates that Commission Staff has moved away from the previously proposed “business practices” approach from the November 2021, draft rule, which Public

Counsel and numerous other parties considered unworkable. In the current draft, the utility appropriately bears the burden to demonstrate the qualification of each individual REC used for compliance.

9. However, Public Counsel believes that the revised draft rule remains ambiguous, unduly burdensome, and ineffective. Under the WREGIS system, RECs are only identified by their source and month of production, so it is impossible to identify any particular MWh of electricity as being “associated with” any particular REC that is purchased through WREGIS. This leaves two options for implementation of the rule. Either the utility would have to demonstrate that, during the month the REC was produced, at least as many megawatt hours of energy were sold by the same facility consistent with the requirements of WAC 480-100-XXX(2)(a) and (b). Or, the utility would have to demonstrate that *all* of electricity sales during the month met these requirements.
10. The first option would ensure that an amount of energy, corresponding to the number of RECs sold to a Washington utility, was sold following the strict double-counting rules proposed by the Commission. However, this would also impose additional costs on Washington ratepayers with very little corresponding benefit. Public Counsel questions whether the benefit is worth the additional ratepayer cost.
11. The second option, under which the Commission requires a showing that *all* of the electricity produced by the subject resource in any month in which Washington utilities used one or more of its unbundled RECs for alternative compliance, would essentially be a reprise of the “business practices” rule proposal on a month-to-month basis.

12. Public Counsel remains concerned that both options present the same “all cost and no benefit” concern previously expressed in our comments³ – to wit, that sellers would demand premium prices for such RECs, in part reflecting the additional administrative burden and restrictions on energy sales, but no additional renewable or nonemitting generation would result relative to accepting any WREGIS-qualified REC dated during the compliance period as an alternative compliance mechanism.

13. Finally, as noted in previous comments, Public Counsel does not believe that the absence of emissions from an energy source is the same thing as any quantifiable non-energy attribute such as “avoided emissions”.⁴ Therefore, consistent with the implementation in California and the Regional Greenhouse Gas Initiative region in the Northeastern US, along with what we expect in Washington under the combined CETA/Climate Commitment Act (CCA) regime, Public Counsel does not believe that fictional emissions should have to be “attributed” to a renewable energy source under a cap and trade system if RECs produced by that source are to qualify for alternative compliance under CETA.

14. For the reasons set forth above, Public Counsel recommends that WAC 480-100-XXX(2) and (3) be replaced by the requirement that all RECs used for alternative compliance under CETA be qualified under WREGIS and have a vintage consistent with the compliance period in which they are used.

³ Comments of Public Counsel at 10–11.

⁴ *Id.* at 4–5.

Question 4. Are the requirements under WAC 480-100-ZZZ sufficient, clear, and understandable?

15. The requirements are clear. However, Public Counsel recommends the following edit to subpart (b) to clarify that all indicated restrictions must be part of contractual arrangements between the subject utility and any purchaser of electricity associated with retained nonpower attributes:

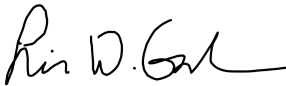
(b) A utility must identify and report separately any contract under which the utility sold or transferred electricity without the associated REC or nonpower attribute. The contract must include terms stating the utility is not transferring any of the nonpower attributes, the buyer will not represent in any form that the electricity has any nonpower attributes associated with it, and that the buyer must include such provision in any subsequent sale of the electricity.

IV. CONCLUSION

16. Public Counsel appreciates the opportunity to provide these comments and looks forward to reviewing comments from other stakeholders. If you have any questions about these comments, please contact Stephanie Chase at Stephanie.Chase@ATG.WA.GOV or Lisa Gafken at Lisa.Gafken@ATG.WA.GOV.

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/s/ 

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