

**Small Business Economic Impact Statement (SBEIS)**  
**Proposed Adoption of Rules Further Implementing CETA**  
**Docket UE-210183**  
**March 21, 2022**

**I. Introduction:**

On May 3, 2021, the Washington Utilities and Transportation Commission (Commission) filed with the Code Reviser a Preproposal Statement of Inquiry (CR-101) to promulgate new rules to further implement certain sections of the Clean Energy Transformation Act (CETA), Engrossed Second Substitute Senate Bill 5116, codified in chapter 19.405 RCW. The Commission filed the CR-101 in Docket UE-210183.

CETA requires investor-owned electric utilities (1) to eliminate coal-fired generation from their portfolios by the end of 2025; (2) to ensure that all retail sales of electricity to their retail customers will be greenhouse gas neutral by the end of 2030; and (3) to source all of their power from renewable and non-emitting resources by the end of 2045. Furthermore, CETA requires that the utilities ensure that all customers are benefiting from the transition to clean energy through the equitable distribution of energy and nonenergy benefits and reductions of burdens to vulnerable and highly impacted communities. The Commission previously adopted rules implementing most of these requirements.<sup>1</sup>

RCW 19.405.130(3) requires that the Department of Commerce (Commerce) and the Commission adopt rules by June 30, 2022, defining the requirements for complying with RCW 19.405.030 through 19.405.050 with electric market purchases from carbon and electricity markets outside of the state, and to address the prohibition of double counting of nonpower attributes under RCW 19.405.040. This rulemaking also addresses two related issues that arose during the development the CETA implementation rules in Docket UE-191023 – the interpretation of the requirement to “use” electricity for compliance with RCW 19.405.040(1)(a), and the treatment of energy storage for compliance with RCW 19.405.030 through RCW 19.405.050.

The Commission is ready to publish proposed rules. When issuing a notice of proposed rules, agencies must provide a copy of the small business economic impact statement (SBEIS) prepared in accordance with the Regulatory Fairness Act, codified in chapter 19.85 RCW, or explain why an SBEIS was not prepared. The Commission has evaluated the effect of the rules on small businesses and determined that the rule will only implement state law without imposing

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<sup>1</sup> *In re Rulemaking Related to Clean Energy Implementation Plans, CETA Compliance, and Integrated Resource Planning*, Dockets UE-190698 & UE-191023.

additional requirements to the affected industries and that small businesses will not incur more than minor costs resulting from the statutory requirements codified in the proposed rules.

## **II. SBEIS Requirements:**

The Regulatory Fairness Act provides that an agency must conduct an SBEIS “if the proposed rule will impose more than minor costs on businesses in an industry.”<sup>2</sup> An SBEIS is intended to assist agencies in evaluating any disproportionate impacts of the rulemaking on small businesses. A business is categorized as “small” under the Regulatory Fairness Act if the business employs 50 or fewer employees. Under RCW 19.85.040(1), agencies must determine whether there is a disproportionate impact on small businesses in the industry, and under RCW 19.85.030(2), consider means to minimize the costs imposed on small businesses.

## **III. SBEIS Evaluation Procedure:**

On February 23, 2022, the Commission mailed a notice to all stakeholders interested in the Commission’s rulemaking, providing a copy of the draft proposed rules and an opportunity to respond to an SBEIS Questionnaire. The notice requested that companies that would be affected by the draft rules provide information about the rules’ possible cost impacts, with specific information for each rule that the companies identified as causing an impact. The Commission received no responses to the SBEIS Questionnaire.

Pursuant to the Regulatory Fairness Act, the Commission is required to conduct an SBEIS before adopting a rule that will impose more than minor costs on small businesses. In analyzing the draft proposed rule, the enacting statute, and the current rule, the Commission has determined that the draft proposed rules merely implement state law and adopt reporting requirements that apply only to investor-owned utilities. The Commission finds based on the information available to it, that the proposed rules will not impose more than minor costs on small businesses.

## **IV. Results of the Analysis:**

In evaluating the proposed rules and the costs of complying with them, the Commission conducted an analysis of the statute and the rules proposed to implement it.

The proposed rules interpret and implement the term “use” in RCW 19.405.040(1)(a) and RCW 19.405.050(1). The proposed rules also address the legislature’s prohibition of double counting of nonpower attributes under RCW 19.405.040, as well as the treatment of energy storage for compliance with RCW 19.405.030 through RCW 19.405.050.

RCW 19.405.040(1)(a) provides, in part, that an electric utility must “demonstrate its compliance with this standard using a combination of nonemitting electric generation and electricity from

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<sup>2</sup> RCW 19.85.030.

renewable resources, or alternative compliance options” and “use electricity from renewable resources and nonemitting electric generation in an amount equal to one hundred percent of the utility’s retail electric loads over each multiyear compliance period.”

The proposed rules interpreting the meaning of “use” are integrated into existing language in WAC 480-100-600 through -665. Broadly, the proposed rules include the following changes:

- WAC 480-100-605 Definitions: changes to the definitions to clarify distinctions between retained nonpower attributes from renewable energy, or renewable energy credits (RECs), and those from nonemitting resources.
- WAC 480-100-650 Content of integrated resource plan: adding a requirement to plan for the compliance requirements under WAC 480-100-650(2).
- WAC 480-100-650(1) Reporting and compliance for meeting the greenhouse gas neutral standard: expansion of details on planning and acquisition requirements under RCW 19.405.040(1)(a), how utilities may demonstrate compliance, and restrictions on the use of retained RECs in planning and acquisitions.
- WAC 480-100-650(2) 100 Percent renewable and nonemitting resource portfolio performance standards and compliance: addition of a new subsection detailing requirements that ensure compliance under RCW 19.405.050(1).
- WAC 480-100-650(5) Annual clean energy progress reports: revisions and additions to reporting requirements.
- Removal of the specific time period for reviewing rules on compliance with RCW 19.405.040(1).

The proposed rules add rules on double counting, and the second draft rules shifted the focus of the regulatory requirements to utilities providing retail electric service in the state of Washington that are subject to CETA. The rules add provisions to require investor-owned utilities to include contract or other transaction terms in the sale of electricity to prevent double counting.

All of these rules codify reporting and other requirements in CETA. Investor-owned utilities will incur costs to comply with these requirements, but the Commission does not propose any rules that would cause companies to incur any costs that are more than minor that the legislature has not required in the statute.

Even if the proposed rules could be construed to impose more than minor compliance costs, small businesses will not incur any of those costs. The proposed rules establish requirements for investor-owned utilities, none of which are small businesses as defined in the statute. The Regulatory Fairness Act does not apply to the costs these large businesses incur to comply with those requirements.

**V. Proposed Rule that May Create Costs:**

The Commission's analysis shows that the proposed rules have the effect of merely implementing CETA. The statute requires investor-owned utilities to undertake certain activities and functions, and requires the Commission to determine the utilities' compliance with the statutory requirements. The proposed rules implement those requirements. No interested persons have identified any costs to small businesses that will result from complying with the statutory requirements codified in the proposed rules. Any compliance costs are the result of implementing legislative direction, and would not be born by small businesses as defined in the Regulatory Fairness Act.

**VI. Summary of Findings:**

The Commission finds that the proposed rules implement CETA as enacted by the legislature, and any costs that result from complying with the statutory requirements codified in the proposed rules would be the result of legislative, not Commission, direction. The Commission further finds that small businesses will not incur any more than minor costs to comply with the proposed rules.

**VII. Summary of Mitigation:**

No mitigation is necessary. The legislature, not the Commission, has adopted requirements that may require large businesses to incur more than minor compliance costs, none of which must be addressed through the Regulatory Fairness Act.

**VIII. Conclusion**

Chapter 19.85 RCW requires that an agency prepare an SBEIS to assess whether proposed rules would impose more than minor costs on small businesses.

The Commission has analyzed all information collected throughout the rulemaking process and concludes the proposed rules do no more than implement CETA and do not impose more than minor costs on small businesses that the legislature did not require.