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

April 22, 2022

I. INTRODUCTION

1. The Public Counsel Unit of the Washington Attorney General's Office ("Public Counsel") files these comments pursuant to the Washington Utilities and Transportation Commission's ("Commission" or "UTC") Notice of Opportunity to File Written Comments on Draft Rules ("Notice") dated March 23, 2022. Public Counsel appreciates the opportunity to provide comments on the Commission's proposed rules and on the importance of considering the role of hydropower in Washington's energy mix as it pertains to the proposed rules.

2. Public Counsel first provides general comments on the draft rule, and then addresses the specific question posed in the Notice.

II. GENERAL COMMENTS REGARDING DRAFT RULES

3. Public Counsel appreciates the changes that have been made in the current draft rules in response to comments from stakeholders, including from Public Counsel. However, we still find that there are two significant aspects of the rule that are likely to be unduly costly to ratepayers, potentially unworkable, and that have yet to be rectified or justified.

4. These two aspects are: (1) the rules governing the disposition of energy "associated with" unbundled Renewable Energy Credits (RECs); and (2) the divergence between the rules for resource planning verses rules for real-time operation of the electric system.

A. Concerns Regarding the Rules Governing the Disposition of Energy "Associated With" Unbundled RECs

5. The rules surrounding the disposition of electricity associated with unbundled RECs may be found in WAC 480-100-650(6)(c), of which subparts (i)(A) and (i)(B) set specific standards for the market treatment of such energy. This rule is based on a flawed model of unbundled

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RECs; by definition, there is no electricity "associated with" an unbundled REC. Once a REC is sold through an exchange such as WREGIS, it is divorced from the energy that was produced at the same time as the REC. In fact, that electricity cannot be identified, nor can the time of production be specified as RECs are only identified by the month and year in which they are produced.

6. Washington electricity utilities could potentially implement the proposed rule by choosing not to purchase unbundled RECs for secondary compliance through WREGIS. Instead, utilities could choose to transact bilaterally with renewable energy producers who would agree to the proposed limitations on the sale of their electricity – and to pass these limitations on contractually to all future buyers, who might include traders, other utilities, or end users. This would add significant administrative burden and cost to both parties in each transaction – a cost that would ultimately be borne by Washington ratepayers.

7. In theory, another way the rule could potentially be implemented would be to revert to the "business rule" concept that several stakeholders, including Public Counsel, noted would be unworkable, unenforceable, and unduly costly to ratepayers. The business rule concept would require an additional field in the WREGIS REC database indicating whether a particular REC is qualified as alternative compliance under CETA,[1] which would indicate whether the producer of the REC had complied with all of the rules for qualification set forth by the Commission. However, this "business rule" concept was previously proposed and correctly abandoned in this proceeding.

[1] See Appendix B-1 of the WREGIS Operating Rules for a list of existing fields. Western Energy Coordinating Council, *WREGIS Operating Rules* (dated Jan. 4, 2021) https://www.wecc.org/Administrative/WREGIS%20Operating%20Rules%202021-Final.pdf.

8. In either of the above cases, additional costs would be incurred by Washington ratepayers without any accompanying environmental benefit. There would be no additional renewable energy produced by any source because of the restrictions, but only additional administrative burden and cost for Washington ratepayers. These costs derive unavoidably from the flawed notion that electricity "associated with" unbundled RECs can be identified and tracked.

9. Public Counsel does not believe that this was the Legislature's intention when it included the prohibition on double-counting in CETA. In fact, RCW 19.405.040(1)(b)(ii) explicitly prohibits "double counting of any nonpower attributes associated with *renewable energy credits* within Washington or programs in other jurisdictions" (emphasis added) and, wisely in Public Counsel's opinion, does not attempt to address the disposition of any energy that has been disassociated from those RECs.

10. Further, the proposed interpretation of the double-counting prohibition is inconsistent with the wording of CETA. Where RCW 19.405.040(1)(b)(ii) prohibits "double counting of any nonpower attributes associated with renewable energy credits *within Washington or programs in other jurisdictions*" (emphasis added), the proposed rule only prohibits assignment of a zero-emissions rate to the renewable energy for "any governmental program *outside of Washington* that caps or limits greenhouse gas emissions..."[2] The proposed rule would require ascribing nonexisting emissions to the renewable energy only if the electricity is sold outside of Washington. This inconsistent interpretation is unsupported by the law.

[2] Proposed WAC 480-100-650 (6)(c)(iv) (emphasis added).

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11. Page 40 of the WREGIS Operating Rule[3] states, "A Certificate created and tracked within WREGIS will represent all the Renewable and Environmental Attributes from a MWh of renewable generation." This definition has been accepted by every jurisdiction that accepts unbundled RECs for all compliance purposes, and as noted above, RCW 19.405.040(1)(b)(ii) itself only addresses those attributes that are associated with the REC. The absence of an attribute, such as carbon emissions, is not the same thing as the existence of an attribute. In contrast, the proposed rule would force market participants to invent an attribute that does not exist, specifically carbon emissions, and ascribe it to certain generation sources so that these "emissions" can be falsely "counted" under a cap-and-trade program — even though the production of the REC does not in any way contribute to carbon emissions.

B. Concerns Regarding the Divergence between the Rules for Resource Planning versus Rules for Real-time Operation of the Electric System

12. With respect to resource and compliance planning, Public Counsel is concerned that the rules as proposed would interfere with least-cost utility resource planning to the detriment of ratepayers.

13. The proposed rules would establish divergent rules and assumptions for planning and real-time operations. Under the rules for planning, retained non-power attributes (NPAs) could not be considered in planning compliance with CETA.[4] However, the rules governing real-time operations would require consideration of NPAs.[5] Such a divergence would mean that each

[3] Western Energy Coordinating Council, *WREGIS Operating Rules* at 40 (dated Jan. 4, 2021), https://www.wecc.org/Administrative/WREGIS%20Operating%20Rules%202021-Final.pdf.
[4] Proposed WAC 480-100-650(1)(a) and (b).
[5] Proposed WAC 480-100-650(1)(c).

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utility would be forced to model a set of rules that is not representative of how it will actually operate the system, even where the utility knows it has or will have retained NPAs.

14. Such a misrepresentation would usually be inconsistent with good utility practice, imprudent, and unacceptable to the Commission. It is impossible to establish least-cost resource plans, consistent with all physical and policy constraints, if those constraints are not accurately represented in the modeling underlying utility resource planning studies.

15. There is no provision in CETA, of which Public Counsel is aware, that requires or permits a divergence between planning and operating assumptions. Nor is there any provision that alleviates a Washington utility of its responsibility to engage in accurate and prudent least-cost planning for resource acquisition and compliance purposes.

16. If the Commission allows retained NPAs as part of primary compliance under RCW 19.405.040(1)(a), which Public Counsel believes is consistent with the law, it should also allow the assumption of retained NPA usage for primary compliance as part of accurate and prudent resource and compliance planning. Doing otherwise will lead to suboptimal resource planning and acquisition decisions to the detriment of Washington ratepayers.

III. RESPONSE TO NOTICE QUESTION

Question 1. *Washington state utilities with hydroelectricity generation will, to the extent the hydroelectric generation resource has the pondage or coordinated dispatch with other hydroelectric generation facilities, purchase off system power during lower load or lower price time periods to meet their load obligations and in turn use the reserved water in hydroelectric generation facilities to facilitate peak hour or peak price off system power sales, including, at times, electricity from their own hydroelectric generation facilities. The Commission requests commenters explain the frequency, magnitude, economic significance, and contribution to reliability of this market driven dispatch to the utility and Washington state's load service.*

17. Public Counsel appreciates Staff's highlighting the important issue of hydropower operations in the context of CETA compliance. From an operational perspective, it is prudent utility practice to optimize hydropower operations as described in the question to maximize ratepayer value by reserving the operation of energy-limited resources for higher-priced hours. This operational mode is well-understood and is incorporated into many, if not all, electric system dispatch models used for resource planning purposes.

18. If forced to do so by the Commission's rules, utilities could alter their representations of hydropower operations in their planning models so that hourly retail load could more easily be met without the use of retained NPAs. Public Counsel has concerns about this approach. Altering how hydropower operations are represented in utility planning models would invariably lead to a different model of hydropower operations. This would, result in a higher projected revenue requirement because it would diverge from the economic optimum. Ratepayers would ultimately bear the burden of the higher revenue requirement. In addition, if utilities are required to perform their planning under a set of rules for hydropower operations that diverges from the rules for real-time operations, the quality and value of their planning studies will be compromised. Public Counsel believes that the foregoing is an excellent example of why it is crucial to perform resource acquisition and compliance planning by replicating the rules that will apply during real-time operations. Washington ratepayers will be harmed by any requirement that utilities do otherwise.

19. Public Counsel looks forward to reviewing the responses from Washington's electric utilities, which should show in greater detail how changing the objective of hydropower

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optimization in modeling studies would affect the outcome of planning studies relative to real-time operations.

IV. CONCLUSION

20. 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.

DATED this 22nd day of April, 2022.

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/s/ _____

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