

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of)
) DOCKET UE-210183
WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,) COMMENTS OF THE ALLIANCE OF
) WESTERN ENERGY CONSUMERS
Rulemaking Relating to Electricity Markets)
and Compliance with the Clean Energy)
Transformation Act.)
_____)

I. INTRODUCTION

1. Pursuant to the Washington Utilities and Transportation Commission’s (“Commission”) March 23, 2022 Notice of Opportunity to File Written Comments on Draft Rules in the above-referenced docket, the Alliance of Western Energy Consumers (“AWEC”) files these comments on the Commission’s draft of rules governing the “use” of electricity for compliance with the Clean Energy Transformation Act (“CETA”). While AWEC appreciates the work the Commission has put into this long-running rulemaking, AWEC continues to recommend that the Commission revise certain language to reflect CETA’s statutory requirements and avoid unintended results.

II. COMMENTS

A. The final rules should allow for reliance on retained non-power attributes (“NPAs”) for primary compliance in both planning and operations.

2. AWEC’s most significant concern with the draft rules is their continued mismatch between planning and operational compliance requirements. As with the prior iteration, the draft rules allow utilities to use “retained NPAs” for primary compliance when demonstrating

compliance with CETA’s 80% mandate in actual operations, but prohibit utilities from assuming they can use these retained NPAs when making resource planning decisions in their Integrated Resource Plans (“IRPs”) and Clean Energy Implementation Plans (“CEIPs”). As AWEC stated in prior comments, this mismatch is likely to arbitrarily and unnecessarily increase costs for customers by requiring utilities to plan for a more rigid standard that will not exist in actual operations.

3. In response, Staff argues that:

The requirement that IOUs plan and acquire resources as if Retained NPAs will not be allowed toward primary compliance is no more or less than traditional utility regulation principles now applied to the requirements of CETA. Staff concludes that the rules do not in itself [*sic*] pre-determine that over building must occur. The physics of electricity have [*sic*] always required load service match generation of electricity with the time of demand and have feasible transmission to allow that generated electricity to serve load at the location of the load. The use of renewable energy as the source of the energy of the generator does not change, *or increase* those physical requirements.¹

The gist of Staff’s argument appears to be that utilities have an 80% clean energy requirement to plan for, regardless of whether they assume the use of retained NPAs or not. As an initial matter, if Staff is correct that the draft rules’ planning restrictions with respect to retained NPAs will not fundamentally change how the utilities perform resource planning or the resources they select, then there is no reason to prohibit the assumed use of retained NPAs in IRPs and CEIPs. The result will be the same if utilities *can* assume use of retained NPAs, and this structure will have the added benefit of consistency between planning and compliance. Certainly, there is no statutory requirement or basis for the draft rules’ planning requirements. As the Joint Utilities

¹ Summary of February 9, 2022 Comments on Second Proposed Use, and Double Counting and Storage Rules at 10 (emphasis in original).

previously argued, CETA requires only retrospective compliance with the 2030 standard on a four-year basis.

4. But regardless, Staff is not correct. To meet the planning requirements in the draft rules, the utilities will need to artificially constrain their models to reduce unspecified market sales, which will in turn increase resource requirements to ensure that 80% of energy used to meet load is tagged to a specified carbon-free or renewable resource. In effect, the utilities will need to build redundant generation to achieve the planning target.
5. IRPs are designed to meet expected annual energy and capacity needs of utilities. Under the current paradigm, where utilities are allowed to assume the use of retained RECs, legacy emitting resources such as CCCTs are allowed to meet load in periods where renewable generation is underproducing. Without retained RECs, IRP models will require renewable generation to meet compliance targets on a smaller window, perhaps even hourly.² A renewable generation system capable of meeting hourly compliance during periods of low renewable output will have renewable generation that greatly exceeds load during periods of average or high renewable output. Accomplishing this will cause utilities to develop resource plans that produce vastly more energy and capacity than required based on load.
6. The redundant generation necessary will cause at least two important adverse outcomes: inefficient wholesale power markets and limited progress towards compliance due to binding constraints on cost caps. Power markets will be inefficient because excess generation will lead to a substantial increase in supply on the wholesale market. Low prices associated with

² The draft rules' language that a "utility may not rely on retained NPAs *in any way* in its CEIP [or IRP]" suggests that hourly compliance for planning purposes is required. WAC 480-100-640(1), 480-100-620(11) (emphasis added).

excess generation will lead to increased energy consumption. From an economic perspective, the increased consumption will not be efficient because it will lead to energy uses where the benefit is below the actual cost. The low price will be an artifact of the draft rules rather than actual production costs (or even CETA itself), with the balance of the cost borne by ratepayers. From an environmental perspective, the increased consumption is problematic both because it is contrary to CETA's requirement to prioritize energy efficiency and because it will likely be paired with an increase in emitting generation during periods of low renewable output, meaning that the draft rules could actually *increase* carbon emissions.

7. Redundant generation will also greatly increase the cost of compliance. The current CEIPs show that, for some utilities, even under a retained REC paradigm the incremental cost of compliance in the first planning window is close to or at the 2 percent cost limit. Introducing the need for an over-build of renewable generation will cause this constraint to become binding. If the constraint becomes binding, utilities will fall far short of the CETA compliance targets, at least from a planning perspective.
8. Furthermore, the draft rules are unclear with respect to the period during which a utility must assume for planning purposes that it cannot rely on retained NPAs for primary compliance. Is this assumption to be made on an hourly basis, a monthly basis, an annual basis, the four-year compliance period, or some other period? If it is on an hourly basis, then the draft rules effectively require the utilities to plan their resource acquisitions today assuming the 2045 clean energy requirements are in place. For the very reasons described above, the Legislature deliberately provided the utilities with over two decades to plan for and achieve the 100%

carbon-free requirement – a glide path the Commission will largely eliminate if it adopts the draft rules.

9. Finally, the draft rules create uncertainty over the prudence of utility investments.

While utilities will undoubtedly argue that any investment they make is prudent if done in compliance with the rules, if that investment is either not needed to provide safe and reliable service to customers, or is otherwise not used and useful for purposes of actual CETA compliance, then it is not clear that customers should be required to pay for excess resources. This will create contentious and messy litigation over cost recovery that is entirely avoidable.

10. The unnecessary and unclear nature of the draft rules' planning requirements will create significant controversy over IRPs, CEIPs, and cost recovery, will harm customers to achieve no legal requirement, and are not in the public interest.

B. The Commission should remove or modify the language in WAC 480-100-650(2).

11. AWEC agrees with the Joint Utilities that the Commission should eliminate WAC 480-100-650(2) from the draft rules, which address the utilities' 100% clean energy compliance requirements in 2045, as these requirements are better addressed closer in time to the compliance obligation.

12. If, however, this section of the rules remains, AWEC recommends two changes. First, this rule defines the utilities' compliance obligations in the context of their "retail electric service obligations." This term is undefined in either CETA or the draft rules and is unnecessarily confusing. In response to the Joint Utilities' comments on this phrase, Staff argues

that the “meaning of the phrase is clear on its face,”³ but AWEC does not see it that way. A utility’s “retail electric service obligations” are broader than the mere purchase and sale of electricity to its customers. The utility must also ensure the reliability of its system by, for instance, installing new substations and repairing facilities after storm damage. By requiring that a utility “suppl[y] all its retail electric service obligations with renewable and nonemitting resources,” this could be interpreted to apply, for instance, to the utility’s Scope 3 emissions related to its total electric service obligations, which clearly exceeds CETA’s scope.

13. There is also simply no reason to create this potential source of confusion. It is easy to mirror the statutory language by requiring that “nonemitting electric generation and electricity from renewable resources supply one hundred percent of all sales of electricity”⁴ AWEC sees no potential benefit from using language that differs from what is in the statute.

14. Finally, while likely implied, the first sentence of WAC 480-100-650 does not make clear that this rule’s requirements apply only from 2045 and beyond. AWEC recommends that the first sentence in this rule be modified to read: “Beginning on January 1, 2045, a utility must demonstrate that nonemitting electric generation and electricity from renewable resources supply 100% of all sales of electricity to the utility’s Washington retail electric customers.”

III. CONCLUSION

15. For the foregoing reasons, the Commission should allow the utilities to assume the use of retained NPAs in their IRPs and CEIPs, and should either remove or modify the language in WAC 480-100-650(2) as provided above.

³ Summary of February 9, 2022 Comments on Second Proposed Use, and Double Counting and Storage Rules at 16.

⁴ RCW 19.405.050(1).

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Respectfully submitted,

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