

DATE: June 29, 2022

TIME: 9:10 AM

WSR 22-14-055

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Amending Rules in
Chapter 480-100 WAC

DOCKET UE-210183

Relating to

GENERAL ORDER R-604

Markets Purchases and Double Counting
Issues Addressed Under the Clean Energy
Transformation Act

ORDER AMENDING AND
ADOPTING CERTAIN RULES
PERMANENTLY

SYNOPSIS

The Washington Utilities and Transportation Commission (Commission) adopts rules further implementing Chapter 19.405 Revised Code of Washington (RCW), the Clean Energy Transformation Act (CETA). CETA mandates that all retail sales of electricity be greenhouse gas neutral by January 1, 2030, and that the electricity supplied to retail customers in Washington comes from 100 percent renewable and nonemitting (R&N) resources by 2045. To that end, 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 centralized markets, and to address the prohibition of double counting of nonpower attributes under RCW 19.405.140. This rulemaking has also investigated the interpretation of compliance with RCW 19.405.040(1)(a) relating to the definition of “use” and the development of rules for the treatment of energy storage for compliance with RCW 19.405.030 — RCW 19.405.050.

The Commission’s goals in this rulemaking are to implement sections of this legislation, incorporate changes to existing rules, ensure appropriate coordination with rules promulgated by Commerce, and engage with interested persons to address and resolve ambiguity where necessary. The rules adopted here today however, only address CETA’s prohibition of double counting, electric purchases from centralized markets, and storage, and make several ministerial changes to existing rules. At this time, the Commission declines to implement the proposed interpretation of compliance with RCW 19.405.040(1)(a) defining “use”. Further rulemaking and deliberation is needed to

ensure implementation of those rules will provide consistency and reliability across Washington's energy market and among electric utilities.

1 **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and
Transportation Commission (Commission) takes this action under Notice WSR # 22-07-
100, filed with the Code Reviser on March 22, 2022. The Commission has authority to
take this action pursuant to RCW 80.01.040, RCW 80.04.160, RCW 19.285.080, and
RCW 19.405.100.

2 **STATEMENT OF COMPLIANCE:** This proceeding complies with the Administrative
Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the
State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory
Fairness Act (chapter 19.85 RCW).

3 **DATE OF ADOPTION:** The Commission adopts these rules on the date this Order is
entered.

4 **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:**
RCW 34.05.325(6) requires the Commission to prepare and publish a concise
explanatory statement about adopted rules. The statement must identify the
Commission's reasons for adopting the rules, describe the differences between the
version of the proposed rules published in the register and the rules adopted (other than
editing changes), summarize the comments received regarding the proposed rule changes,
and state the Commission's responses to the comments reflecting the Commission's
consideration of them.

5 To avoid unnecessary duplication in the record of this docket, the Commission designates
the discussion in this Order, including appendices, as its concise explanatory statement.
Given most comments in response to the CR-102 are related to the proposed rules related
to "use", we are not attaching Commission Staff's (Staff's) comment matrix. Instead, we
note and address the comments related to the rules that are being adopted below. This
Order provides a complete but concise explanation of the agency's actions and its reasons
for taking those actions.

6 **REFERENCE TO AFFECTED RULES:** This Order amends the following sections of
the Washington Administrative Code:

Amend WAC 480-100-605 Definitions.

Amend WAC 480-100-610 Clean energy transformation standards.

- Amend WAC 480-100-625 Integrated resource plan development and timing.**
- Amend WAC 480-100-630 Integrated resource planning advisory groups.**
- Amend WAC 480-100-640 Content of a clean energy implementation plan.**
- Amend WAC 480-100-650 Reporting and compliance.**
- Amend WAC 480-100-655 Public participation in a clean energy implementation plan (CEIP).**
- Amend WAC 480-100-660 Incremental cost of compliance.**
- Amend WAC 480-100-665 Enforcement.**

7 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:**

The Commission filed with the Code Reviser a Preproposal Statement of Inquiry (CR-101) on May 3, 2021, at WSR # 21-10-088, and filed the CR-101 in Docket UE-210183. The statement advised interested persons that the Commission was initiating a rulemaking to address changes to Chapter 480-100 WAC to implement Chapter 19.405 RCW with a focus on RCW 19.405.050, 040, 050, 130, and other portions of Chapter 19.405 RCW that may affect or be affected by these subsections as enacted in the Laws of 2019, Chapter 288, passed as Engrossed Second Substitute Senate Bill 5116 (E2SSB 5116), portions of which are now codified in CETA Chapter 19.405 RCW. The rulemaking is intended to define the requirements for meeting the obligations under RCW 19.405.030 – 050 with markets purchases from the bilateral markets, the Energy Imbalance Market (EIM), and other centralized markets, and to address the prohibition on double counting of nonpower attributes under RCW 19.405.040 that could occur under other programs. Specifically, the rulemaking interprets and implements the treatment of energy storage for compliance with RCW 19.405.030 through RCW 19.405.050, and other portions of RCW 19.405 that may affect or be affected by these portions of CETA.

8 On May 3, 2021, the Commission issued a Notice of Opportunity to File Written Comments, informing persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the Commission’s list of persons requesting such information pursuant to RCW 34.05.320(3), and by sending notice to all registered electric companies. The Commission received no comments in response to this notice.

9 On May 17, 2021, the Commission issued a Notice of Opportunity to File Written Comments on Issues Related to Double Counting, Market Purchases of Electricity, and the Interpretation of Compliance with RCW 19.405.040(1)(a). Pursuant to this notice, the Commission received comments from June 2 through June 15, 2021. The Commission issued a Notice of Opportunity to File Written Comments on Draft Rules on October 12

and November 10, 2021, a Notice of Revised Draft Rules on November 16, 2021, and a Final Notice of Opportunity to File Written Comments on Draft rules on January 19, 2022.

- 10 **WORKSHOPS.** The Commission, jointly with the Washington Department of Commerce (Commerce), held workshops on June 22, August 21, September 27, and December 6 and 14, 2021. Pursuant to RCW 19.405.130(3), the Commission and Commerce's December 14, 2021, workshop included market operator and market participants to consider options that support the objectives of Chapter 19.405 RCW regarding purchases from the western EIM or other centralized markets.
- 11 **SMALL BUSINESS ECONOMIC IMPACT ANALYSIS:** On February 23, 2022, the Commission issued a Small Business Economic Impact Statement (SBEIS) Questionnaire to all interested persons. The Commission received no responses to this questionnaire. Thus, the Commission received no evidence in this proceeding that any small business will incur more than minor costs to comply with the proposed rules.
- 12 The Commission nevertheless conducted a small business economic impact analysis. The Commission evaluated the effect of the proposed rules on small businesses and filed an SBEIS in this docket on March 21, 2022. The proposed rules add provisions on double counting, and storage to meet the regulatory requirements for utilities providing retail electric service in the state of Washington that are subject to CETA. The rules also add provisions to require investor-owned utilities to include contract or other transaction terms in the sale of electricity to prevent double counting.
- 13 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 affected industries or small businesses to incur more than minor costs resulting from the statutory requirements codified in the proposed rules.
- 14 The Commission after full review and analysis finds that the proposed rules will only impose minor costs on electric utility companies and concludes that the proposed rules will not have a disproportionate impact on small businesses. A copy of the Commission's statement is attached to this order as Appendix B.
- 15 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a Notice of Proposed Rulemaking (CR-102) on March 22, 2022, at WSR # 22-07-100. On March 23, 2022, the Commission issued a Notice of Opportunity to File Written Comments on Proposed Rules and Notice of Proposed Rule Virtual Adoption Hearing, finding good

cause to conduct the rulemaking hearing virtually due to social distancing requirements related to the COVID-19 pandemic. The Commission scheduled this matter for oral comment and adoption at 9:30 a.m. on May 6, 2022,¹ and provided interested persons the opportunity to submit written comments to the Commission by April 22, 2022. The CR-102 proposed amendments to Chapter 480-100 WAC to define the requirements for meeting the obligations of market purchases from the western EIM and other centralized markets, address the prohibition on double counting of nonpower attributes (NPAs) under RCW 19.405.040 that could occur under other programs, and interpret and implement the treatment of energy storage for compliance with RCW 19.405.030 through RCW 19.405.050, and other portions of Chapter 19.405 RCW that may affect or be affected by these portions of CETA.

- 16 **WRITTEN COMMENTS:** On April 22, 2022, the Commission received written comments on the CR-102 from several interested companies and private parties. Staff summarized, prepared, and filed responses to these written comments on May 2, 2022.²
- 17 **RULEMAKING HEARING:** The Commission considered the proposed rules for adoption at a rulemaking hearing on Friday, May 6, 2022, before Chair David W. Danner and Commissioner Ann E. Rendahl. The Commission heard oral comments from Staff representative Steven Johnson. Representatives from Puget Sound Energy (PSE), Avista Corporation d/b/a Avista Utilities (Avista), PacifiCorp d/b/a Pacific Power & Light Co. (PacifiCorp), Public Counsel Unit of the Washington State Attorney General’s Office (Public Counsel), Alliance of Western Energy Consumers (AWEC), Northwest & Intermountain Power Producers (NIPPC), Renewable Northwest, NW Energy Coalition (NVEC), Climate Solutions, and James Adcock also provided comments. These oral comments reiterated or emphasized portions of the comments these interested persons previously provided in writing.
- 18 **SUGGESTIONS FOR CHANGES:** Comments from interested persons suggested changes to the proposed rules. Most comments the Commission received focused on the proposed rules governing “use.” Given the concerns raised in the comments, the Commission is not prepared to proceed with adopting the proposed “use” rules at this

¹ The Commission conducted this rulemaking hearing virtually, with telephonic or online participation, to conform to social distancing requirements related to the COVID-19 pandemic.

² Most of the comments were related to the proposed rules regarding “use” and are not being adopted at this time. The comments on the rules adopted in this Order are summarized and responded to within the Order.

time. The Commission adopts in this Order only proposed rules relating to double counting and treatment of storage resources.

- 19 The following is a summary of proposed changes to the rules adopted by this Order and the reasons for rejecting or accepting suggested changes. The Commission adopts as its own the reasons Staff proposed in its May 2, 2022, summary for rejecting or accepting interested persons' suggested changes to the rules as proposed in the CR-102 at WSR # 22-07-100, subject to any modifications we make to the proposed rules and the rationale for those modifications explained in this Order. Several of the interested persons' comments with suggested changes warrant further discussion. The following responds to these comments.
- 20 On April 22, 2022, Public Counsel filed comments in response to the CR-102, and made several observations regarding the proposed rules governing the disposition of energy "associated with" unbundled Renewable Energy Credits (RECs).
- 21 Public Counsel argues that the proposed rules on the disposition of electricity associated with unbundled RECs in WAC 480-100-650(6)(c) —now WAC 480-100-650(4)(c)), and specifically subparts (i)(A) and (i)(B) — are flawed because by definition there is no electricity "associated with" an unbundled REC. Public Counsel asserts that the electricity from which an unbundled REC comes cannot be identified because RECs in the Western Renewable Energy Generation Information System (WREGIS) are only identified by the month and year in which they are produced.
- 22 The proposed rules at WAC 480-100-650(4)(c)(i)(A) require the purchaser of electricity stripped of its RECs to agree via terms in the sales contract not to represent the attributes of the electricity in any future sale and to require the same in any contract reselling the electricity. Public Counsel asserts that this provision in the proposed rules will unnecessarily and unproductively drive up the cost of using unbundled RECs for utilities.
- 23 Additionally, Public Counsel states that the proposed rules when applied to sales of renewable energy without RECs into an out-of-state GHG program, "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."
- 24 By statute, RECs are created with the generation of renewable electricity. If the unbundled REC is counted for compliance by a utility and the electricity that produced

that REC is also claimed as renewable electricity, the NPAs of the electricity are being counted twice. Public Counsel's statements regarding the limitations in WREGIS's current tracking system do not alter the requirements of utilities to comply with CETA. State representatives and the utilities and entities generating renewable energy should work with WREGIS to ensure the system can address the requirements of CETA prior to 2030.

- 25 Public Counsel is incorrect to assert that the proposed rules require ascribing emissions to the renewable energy from which unbundled RECs have been sold. If an out-of-state GHG emission program relies on the renewable designation of electricity in determining whether to assess an emission fee or allowance charge, it is relying on the NPAs of the electricity. Public Counsel is incorrect that the NPAs do not include the zero-emission nature of renewable energy.³ Nonpower attributes in a REC include all NPAs associated with the MWh or electricity, whether the energy is sold in or out of state.⁴
- 26 On April 22, 2022, the Joint Investor-Owned Utilities (IOUs) additionally filed comments. Among other comments, the Joint IOUs stated that contracting requirements could interfere with the utilities' ability to interact in regional markets and result in significantly reduced market participation and/or drive higher prices for premium products to serve Washington customers. Specifically, contracting constraints related to coal power are too proscriptive, go beyond the statutory language of CETA, and are not needed. Accordingly, they suggest eliminating WAC 480-100-650 (4)(b)(v).

³ RCW 19.405.020(29)(a) "Nonpower attributes" means all environmentally related characteristics, exclusive of energy, capacity reliability, and other electrical power service attributes, that are associated with the generation of electricity, including but not limited to the facility's fuel type, geographic location, vintage, qualification as a renewable resource, and *avoided emissions of pollutants to the air, soil, or water, and avoided emissions of carbon dioxide and other greenhouse gases.* (Emphasis added)

(b) "Nonpower attributes" does not include any aspects, claims, characteristics, and benefits associated with the on-site capture and destruction of methane or other greenhouse gases at a facility through a digester system, landfill gas collection system, or other mechanism, which may be separately marketable as greenhouse gas emission reduction credits, offsets, or similar tradable commodities. However, these separate avoided emissions may not result in or otherwise have the effect of attributing greenhouse gas emissions to the electricity.

⁴ RCW 19.405.020(31) "Renewable energy credit" means a tradable certificate of proof of one megawatt-hour of a renewable resource. The certificate includes *all of the nonpower attributes associated with that one megawatt-hour of electricity* and the certificate is verified by a renewable energy credit tracking system selected by the department. (Emphasis added)

- 27 The Joint IOUs additionally claim that extensive reporting requirements could burden utilities and the Commission with the creation of data systems, compilation, and, for the Commission, receipt and review of voluminous data. Hourly data for some of the elements in the proposed rules simply cannot be provided at this time (*e.g.*, none of the Joint IOUs have advanced metering infrastructure (AMI) installed for 100 percent of their retail customer load).
- 28 We disagree that because unspecified power is often “system power,” an IOU selling the power will not know to whom they are selling the unspecified power. Where the utility has a contract for the sale of system power, it must know the entity to whom it sells power in order to collect payments for the power sold. Therefore, it should not be overly burdensome to provide the reporting requirements proposed in WAC 480-100-650 (4)(b)(v).
- 29 As for the IOU claim that buyers in the market of unspecified power would not accept a term requiring them to agree that the power was unspecified, the only buyer with a need or motivation not to agree to such a term would be the buyer who intended to resell the power with the false statement that such power was something other than unspecified power. That is exactly the result the proposed rules are intended to address.
- 30 Additionally, with the advent of allowance costs under the Climate Commitment Act for unspecified power and emitting power, we are skeptical that unspecified power will transact in 2030 at the same levels as it does today. Certainly, if it does, and the problems the Joint IOUs predict either occur or are not remedied, the Commission can revisit the proposed rules.
- 31 Furthermore, we disagree with the Joint IOUs that CETA limits the requirement to eliminate coal power in the manner described in their comments. First, the Commission has already considered and rejected similar arguments related to the elimination of coal-fired resources in the previous rulemaking concerning integrated resource plans and clean energy implementation plans.⁵ Second, the Joint IOUs’ conclusion that not buying coal power will result in paying a price premium for spot market power is speculative, and not supported by evidence or analysis. By the end of 2025, the only coal-fired generation in the Northwest will be in Montana and, at most, will be generated at Colstrip Units 3 and 4. To reach the 2030 CETA requirements, Washington utilities will likely commit most

⁵ See Dockets UE-191023 & UE-190698, General Order R-601 at 28-33, ¶¶ 73 - 87 (Dec 28, 2020).

of the transmission they own from Montana to Washington to wind resources. This is likely to also be true for Oregon load-serving IOUs that own Colstrip transmission.

32 On April 22, 2022, Renewable Northwest filed comments in this Docket, noting that the reporting of total renewable generation and bundled sales will allow interested persons to determine how much utilities are relying on retained RECs for compliance. We agree. Such reported data will allow the Commission and interested persons to make just such a calculation.

33 On April 22, 2022, the Western Power Trading Forum (WPTF) submitted comments addressing double counting and coal exclusion. WPTF believes the proposed rules are susceptible to the following three interpretations and asks for confirmation of these interpretations:

1. Allow electricity sourced from a renewable resource located in California to be used for compliance with both CETA's 2030 Greenhouse Gas Neutral Standard and the 2045 100% Clean Standard as long as the electricity and the associated RECs have been sold to a Washington utility.

2. California cap and trade program accounts for the direct emissions of that resource, which, under that program, does not render the associated RECs ineligible for CETA compliance, provided the RECs and energy have been contracted to a Washington utility.

3. If the resource is dispatched via the Energy Imbalance Market (EIM) or future organized market, the dispatch of that resource based on its energy bids by the market operator would NOT be considered a transfer of ownership nor a transaction that would render the associated RECs ineligible for CETA compliance.

34 WPTF requests the Commission address how a Washington utility purchasing system sales from a utility that operates coal-fired generating plants can demonstrate its purchase is coal free.

35 The Commission appreciates WPTF sharing its interpretations. Under the rules adopted in this order, our response is as follows: 1) Yes, renewable resources sourced from California may be used for compliance provided that the sale to Washington is designated as an export from California so that the renewable energy sale is not considered under California's GHG cap and trade program. 2) Yes, as long as the RECs and energy are

exported as a bundled product. 3) Because we are not adopting rules related to primary compliance at this time, we defer discussion of this question to a later time.

36 Investor-owned utilities can use many different means and constructs in private contracts to meet the demonstration requirement specified in the proposed rule. We do not agree that the proposed rules should prescribe methods or terms that limit flexibility in complying with CETA.

37 **DISCUSSION:** The Commission provides the following guidance in addition to the responses to the comments on the proposed rules above.

38 CETA mandates, among other things, that the electricity supplied to retail customers in Washington comes from 100 percent renewable and R&N resources by 2045,⁶ and that “all retail sales of electricity to Washington retail electric customers be greenhouse gas neutral by January 1, 2030”.⁷ CETA provides that:

(a) For the four-year compliance period beginning January 1, 2030, and for each multiyear compliance period thereafter through December 31, 2044, an electric utility must demonstrate its compliance with this standard using a combination of nonemitting electric generation and electricity from renewable resources, or alternative compliance options, as provided in this section. To achieve compliance with this standard, an electric utility must: (i) Pursue all cost-effective, reliable, and feasible conservation and efficiency resources to reduce or manage retail electric load, using the methodology established in RCW [19.285.040](#), if applicable; and (ii) *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. An electric utility must achieve compliance with this standard for the following compliance periods: January 1, 2030, through December 31, 2033; January 1, 2034, through December 31, 2037; January 1, 2038, through December 31, 2041; and January 1, 2042, through December 31, 2044.⁸

The 2030 greenhouse gas neutrality standard is an important milestone in the transition to clean energy, and the Commission has devoted a great deal of time and effort to considering the different interpretations of the term “use electricity” put forward by

⁶ RCW 19.405.050(1).

⁷ RCW 19.405.040(1).

⁸ RCW 19.405.040(1)(a).

interested persons, both in this docket and in our previous rulemaking.⁹ Due to the uncertainty arising from these competing interpretations, as well as the passage of the Climate Commitment Act, we will defer our interpretation of the ambiguous aspect of the greenhouse gas neutrality standard in RCW 19.405.040(1) to the next iteration of the rulemaking in this Docket. However, we still expect that the electric utilities we regulate are engaged in planning and acquiring resources to achieve CETA's final goal: supplying 100 percent R&N electricity in providing electric service for retail customers equitably, cost effectively, and reliably.

39 *Prohibition on double counting.* CETA requires the Commission to define the “requirements, including appropriate specification, verification, and reporting requirements, for the following: (a) Retail electric load met with market purchases and the western energy imbalance market or other centralized market administered by a market operator for the purposes of RCW 19.405.030 through 19.405.050; and (b) to address the prohibition on double counting of nonpower attributes under RCW 19.405.040(1) that could occur under other programs.”¹⁰ RCW 19.405 does not define double counting, but the statutory requirement in RCW 19.405.040(1)(b)(ii) allows use of unbundled RECs for alternative compliance only, provided that there is no double counting of any NPAs associated with renewable energy credits within Washington or programs in other jurisdictions, as follows:

(A) Unbundled renewable energy credits produced from eligible renewable resources, as defined under RCW 19.285.030, which may be used by the electric utility for compliance with RCW 19.285.040 and this section as provided under RCW 19.285.040(2)(e); and

(B) Unbundled renewable energy credits, other than those included in (b)(ii)(A) of this subsection, that represent electricity generated within the compliance period¹¹

⁹ See *In re Adopting Rules Relating to Clean Energy Implementation Plans and Compliance with the Clean Energy Transformation Act*, Dockets UE-191023 & UE-190698 (Consolidated), General Order R-601, p. 29, ¶ 75 (CETA Rulemaking Order) (Dec. 28, 2020).

¹⁰ RCW 19.405.130(3).

¹¹ For reference, RCW 19.285.040(2)(e) states “A qualifying utility may use renewable energy credits to meet the requirements of this section, subject to the limitations of this subsection.” The subsection goes on to establish restrictions on using RECs for compliance based on the type of renewable electricity and the year in which the electricity was generated.

- 40 The statute also prohibits double counting for any NPAs submitted for compliance under RCW 19.405.040(1)(c) and (f). Although the term “double counting” is not explicitly used in these subsections, the prohibition becomes apparent when subsections (1)(c) and (1)(f) are read together with the statutory definitions of “renewable energy credit” and “nonpower attribute” in RCW 19.405.020. Because RECs are defined as including *all* nonpower attributes associated with renewable electricity, any REC that is double counted would no longer meet the statutory definition. The requirement in RCW 19.405.040(1)(c) that all renewable electricity used for compliance with subsection (a) “must be verified by the retirement of renewable energy credits” means that no double counting can occur for that REC to be counted toward primary compliance. The same holds true for nonpower attributes from nonemitting resources under RCW 19.405.040(1)(f). The statutory definition of a NPA includes “all environmentally related characteristics” of the electricity, therefore any double counted NPA would not meet the statutory definition, rendering it ineligible for primary compliance under RCW 19.405.040(1)(f). In summary, the prohibition on double counting under RCW 19.405.040 includes all nonpower attributes, not just unbundled RECs submitted for alternative compliance as some interested persons have suggested.¹²
- 41 Double counting can occur in a variety of ways. The first and most obvious is that an NPA is used for two different compliance requirements, or the same NPA is reported by two different entities. Another way double counting can occur is if the NPA is separated from the R&N electricity but that electricity, although not sold with the REC, is still described as having renewable nonpower attributes. As mentioned above, because of the statute’s definition of RECs and NPAs, assigning any environmental attribute to electricity unbundled from its REC (or NPA) is double counting of that electricity’s NPA.
- 42 Through this rulemaking the Commission ultimately addresses double counting by incorporating it into WAC 480-100-650(4), entitled “data and contract reporting.” This subsection further specifies certain reporting requirements for annual clean energy progress reports under WAC 480-100-650(3), which are ultimately incorporated into the four-year clean energy compliance report required by WAC 480-100-650(1).
- 43 One of the criticisms interested persons have raised about proposed WAC 480-100-650(4) is that the contracting requirements are either overly burdensome or will have a chilling effect on bilateral transactions.¹³ In light of the Commission’s duty to prevent

¹² Joint Utilities Comment at 7 (Dec. 6, 2021).

¹³ See *e.g.*, Joint Utility comments at 5-6 (April 22, 2022).

double counting, we do not find these contracting requirements to be unduly burdensome or believe they will have a chilling effect. A purchaser of unspecified electricity, for example, would only object to the contract term described in WAC 480-100-650(4)(c)(i)(A) if they intended to ascribe environmental attributes to the electricity, resulting in double counting. While we acknowledge that this rule will require utilities to make changes to their standard contract language, the requirement should not dissuade market participants that are not seeking to engage in double counting from continuing to make transactions. The Commission acknowledges, however, that preventing double counting that occurs due to the actions of market participants located in other states would be difficult, if not impossible, given the limits of our jurisdiction and authority. These rules are intended to prevent as much double counting as possible within the scope of the Commission's authority, but we acknowledge that preventing certain types of double counting will require interstate cooperation and coordination, market reforms, or both.

44 Finally, WAC 480-100-650(4)(d) addresses storage¹⁴ and its impact on reporting and compliance under these rules. In short, the rules state that storage does not affect the ability to report R&N electricity for compliance. However, consistent with the statutory definition of retail electric load¹⁵ and language in RCW 19.405.040(1)(a)(ii), the subsection specifies that, “any electrical consumption or loss resulting ... is not considered retail electric load as defined in RCW 19.405.020(36).”¹⁶ Our rules related to storage have not garnered much attention or controversy in the last few drafts, although we did solicit comments on the subject early in this rulemaking.¹⁷ The U.S. Energy Storage Association submitted comments during the CR-101 phase of this Docket recommending that these rules encourage acquisition of storage resources.¹⁸ We take no further position on this issue, but note that determining how to properly value potential storage resources in a utility's portfolio should be left to other proceedings, such as each utility's integrated resource plans, clean energy implementation plans, and general rate case filings.

¹⁴ Here, as in the rules, “storage” does not refer to storage resources on the customer side of the meter.

¹⁵ RCW 19.405.020(36). Retail electric load is in part defined as: “the amount of megawatt-hours of electricity delivered in a given calendar year...”

¹⁶ WAC 480-100-650(4)(d)(ii).

¹⁷ See Revised Notice of Opportunity to Provide Written Comment (June 7, 2021).

¹⁸ See generally, U.S. Storage Association Comments (June 2, 2021).

- 45 *Application of the rules to electricity from BPA.* Consistent with RCW 19.405.040(1)(g) and RCW 19.405.050(6), the proposed rules were intended to enforce CETA’s requirements without preventing IOUs from purchasing or exchanging power with the Bonneville Power Administration (BPA). The Commission received generally favorable comments from BPA during the CR-101 phase of this docket. The Commission has incorporated BPA’s suggested language edits into WAC 480-100-650(4)(c)(iii). The Commission did not receive further written comments from BPA on the CR-102 draft rules, and believes these rules adequately meet the BPA-related objectives of the statute. The Commission also notes that the rules set a January 1, 2029, end date for the BPA exemption under WAC 480-100-650(3)(f), indicating that these rules will likely need to be revisited before that time.
- 46 *Finalization of “Use” rules.* In addition to the reasons discussed above, a changing market environment, new laws,¹⁹ and new technology adopted by the IOUs making information more readily available and easier to collect support our determination that “use” rules require further consideration. We also share the concerns of several commenters that the differences between the proposed rules related to “use” and the rules Commerce has adopted on the same subject could create confusion, creating unwarranted expense for utilities and ultimately ratepayers. Therefore, we decline to adopt the proposed rules related to “use” and will conduct further proceedings in this Docket to consider those rules.
- 47 **COMMISSION ACTION:** After considering all the information regarding this proposal, the Commission finds and concludes that it should amend the rules as proposed in the CR-102 at WSR # 22-07-100 excluding the revisions related to “use”. The following proposed rules will *not* be adopted:

480-100-605 Definitions: "Primary compliance"; "Retained nonpower attribute" or "retained NPA";

"Primary compliance" "means the portion of the compliance obligation under RCW 19.405.040(1) that cannot be met through

¹⁹ The implementation of the Climate Commitment Act (CCA) will directly impact the application of the proposed “use” rules. The Commission is working to coordinate with the Department of Ecology to ensure effective and efficient implementation of both CCA and CETA. The Commission has noted that the application of these laws creates the potential for conflicting obligations for electric utilities. If these conflicts cannot be resolved through coordination between state agencies, they may require a legislative solution.

the alternative compliance options outlined in RCW 19.405.040 (1)(b)”

"Retained nonpower attribute" or "retained NPA" “means the nonpower attributes of renewable electricity (represented by RECs) or the nonpower attributes of nonemitting electricity, from electricity owned or controlled by a utility where the associated electricity was sold by that utility in a wholesale sale without its associated nonpower attributes (NPA)”

480-100-620(3)(b)(i)

After “including the”, deleted “ten-year” and inserted “10-year”

480-100-620(11)(h)

After “projected resource needs”, inserted “The utility may not include retained NPAs for primary compliance in its long-range integrated resource plan solution, consistent with WAC 480-100-650 (1)(a). The utility may not include retained NPAs in any way in its long-range integrated resource plan solution, consistent with WAC 480-100-650(2)”

480-100-620(11)(c)

Inserted “Meet the requirements of WAC 480-100-650 (1)(a) and (2);”

480-100-620(11)(d)-(k)

After the insertion of the new 620(11)(c), the lettering of remaining subsections went from “c-j” to “c-k”

480-100-620(12)

After “develop a” deleted “ten-year” and inserted “10-year”

| | |
|---|---|
| 480-100-620(12)(b) | After “the utility’s” deleted “ten-year” and inserted “10-year” |
| 480-100-620(12)(c)(ii) | After “the CEAP’s” deleted ten-year” and inserted “10-year” |
| 480-100-620(12)(c)(iii) | After “described in” deleted “(WAC 480-100-620(11)(g).)” and inserted “subsection (11)(h) of this section;” |
| 480-100-640(1) | After “action plan.” inserted “The utility may not rely on retained NPAs toward primary compliance in its CEIP, consistent with WAC 480-100-650 (1)(a). The utility may not rely on retained NPAs in any way in its CEIP, consistent with WAC 480-100-650(2).” |
| 480-100-640(6)(b)(ii) | Inserted “(g)” after “620(11)” and delete “, (h),” before “and (12)(c).” |
| 480-100-650(1) Reporting and Compliance | Inserted “Greenhouse gas neutrality resource portfolio performance standards and compliance. A utility must demonstrate how its resource acquisition, resource retirement, and continued investment in and operation of existing resources serve a minimum of 80 percent of its retail electric load, or other minimum percentage established by the commission, with renewable or nonemitting 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 account for the ability to apply retained NPAs toward primary compliance under (c) of this subsection when developing its long-range integrated resource plan solution under WAC 480-100-620 and its CEIP under WAC 480-100-640 and must have models, scenarios, projections, and other information and analysis within the utility's IRP and CEIP that are consistent with this requirement.

(b) May not account for the ability to apply retained NPAs toward primary compliance under (c) of this subsection 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.

(c) May report retained NPAs toward primary compliance with interim or other targets under this section or WAC 480-100-665, but only if the utility has complied with (a) and (b) of this subsection and subsection (6) of this section, and if applicable subsection (2) of this section during the period under review.

(2) One hundred percent renewable and nonemitting resource portfolio performance standards and compliance. A utility must demonstrate that it is supplying all its retail electric service obligations with renewable and nonemitting resources. To meet this

requirement, the utility must 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. A utility may not rely on retained NPAs for planning, acquisition, reporting or in any other way under RCW 19.405.050(1). A utility's demonstration of compliance with RCW 19.405.050(1) must include at a minimum an analysis of its retail electric service obligations on an hourly basis.

(3)”

| | |
|---|---|
| 480-100-650(2) Clean energy compliance report review process. | Substituted “2” for “4” |
| 480-100-650(3) Annual clean energy progress reports. | Substituted “(3)” for “(5)” |
| 480-100-650(4) Data and contract reporting. | Substituted “(4)” for “(6)” |
| 480-100-650(4)(b)(iv) | Inserted “Total monthly purchases and sales of unbundled RECs and other nonpower attributes. Based on the statutory definition of unbundled REC under RCW 19.405.020(38), a REC that meets the definition of a retained NPA under WAC 480-100-605 that is subsequently sold becomes an unbundled REC. Any unbundled REC reported for compliance must meet the requirements under (c) of this subsection.” |

And inserted “(v)” before “Beginning January 1, 2026”

480-100-650(4)(d)(iii)

Inserted “For reporting and compliance with subsections (1)(a), (b), and (2) of this section,”

89 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the Commission determines that it should amend WAC 480-100-605, WAC 480-100-610, WAC 480-100-625, WAC 480-100-630, WAC 480-100-640, WAC 480-100-650, WAC 480-100-655, WAC 480-100-660, and WAC 480-100-665 to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(3) on July 1, 2022, as required by RCW 19.405.130.

ORDER

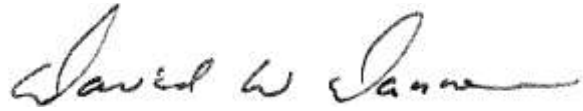
THE COMMISSION ORDERS:

- 90 (1) The Commission amends WAC 480-100-605, WAC 480-100-610, WAC 480-100-625, WAC 480-100-630, WAC 480-100-640, WAC 480-100-650, WAC 480-100-655, WAC 480-100-660, and WAC 480-100-665 to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect on July 1, 2022, as required by RCW 19.405.130 and pursuant to RCW 34.05.380(2).
- 91 (2) This Order and the rules set forth in Appendix A, after being recorded in the register of the Washington Utilities and Transportation Commission, shall be

forwarded to the Code Reviser for filing pursuant to Chapter 80.01 RCW and Chapter 34.05 RCW and Chapter 1-21 WAC.

DATED at Lacey, Washington, and effective June 29, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



DAVID W. DANNER, Chairman



ANN E. RENDAHL, Commissioner

Note: The following is added at Code Reviser request for statistical purposes:

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 10, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 10, repealed 0.

Appendix A
Amended Rules

Appendix B

Small Business Economic Impact Statement