

**NW Energy Coalition**

November 27, 2023

Kathy Hunter
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Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

Re: Comments of Renewable Northwest, the NW Energy Coalition, and Climate Solutions regarding issues related to electricity markets and compliance with the Clean Energy Transformation Act “use” rules, Docket UE-210183

I. INTRODUCTION

Renewable Northwest (“RNW”), the NW Energy Coalition (“NWEC”), and Climate Solutions thank the Washington Utilities and Transportation Commission (“the Commission”) for this opportunity to comment in response to the October 25, 2023, Notice of Opportunity to File Written Comments on Draft Rules. Our organizations have been actively involved in the discourse around the interpretation of “use” in RCW 19.405.040(1) of the Clean Energy Transformation Act (“CETA”), both at the Commission and at the Department of Commerce (“the Department” or “Commerce”) since 2019, and we note that the Commission has proposed rules that mirror those adopted by Commerce in June 2022. We understand the Commission’s interest in adopting rules that have already been adopted by Commerce. However, we are concerned that the Draft Rules, as proposed, are not appropriate for investor-owned utilities (“IOUs” or “utilities”), given the Commission’s different and more robust regulatory role and the greater impact of CETA on IOUs compared to consumer-owned utilities subject to Commerce’s rule.

In the time since the Commission proposed its previous iteration of draft “use” rules, Washington’s IOUs have submitted their first clean energy implementation plans (“CEIPs”), as well as one round of biennial updates; there has been a considerable amount of discussion around wholesale electricity market expansion in the contexts of the Southwest Power Pool’s Markets+ and the California Independent System Operator’s extended day-ahead market; and the Department of Ecology has been busy with the implementation of the Climate Commitment Act. So with the state and regional energy landscapes quickly evolving, and with the 2030 greenhouse gas neutrality mandate approaching, we acknowledge the pressing need for an official interpretation by the Commission on what it means to “use” electricity in respect to CETA compliance.

However, the draft rules proposed by the Commission on October 25, 2023, are a considerable pivot from the previous iteration of draft rules proposed on March 23, 2022 (as shorthand, “2022 Draft Rules”).¹ RNW supported the Commission’s approach outlined in the 2022 Draft Rules, offering just a few minor recommendations in comments submitted in April 2022 and reiterated at the May 6 Adoption Hearing.² NWECA and Climate Solutions also supported elements of the 2022 Draft Rules, though remained concerned that the rule provided flexibility not provided in the statute—specifically, the provision that allowed retained nonpower attributes (“NPAs”) to be used for primary compliance to meet the 2030 standard.³

At that time, RNW also submitted comments in response to Commerce’s proposed final “use” language, stating, “Though the Department’s Draft Rules look more simplified and concentrated than the Commission’s, lacking some of the Commission’s resource planning guidance and all of the data reporting requirements, we recognize that *the Department operates within a regulatory environment that is unique from that of the Commission*” (emphasis added).

Many stakeholders have been engaged in this topic via workshops and written comments, and the Commission’s previously proposed “use” interpretation was supported by Commission Staff through the May 6, 2022, Adoption Hearing. Steve Johnson, the then Senior Policy Advisor leading the rulemaking on electricity markets and compliance with CETA since its inception with the filing of the CR-101 on May 3, 2021, urged the approval of the draft rules without modification, stating, “The rules are balanced to achieve the requirements of CETA while considering utility operations, reliability, and markets.”⁴ Moreover, in response to the joint IOUs’

¹ UE-210183 Draft Rules (OTS-3653.3), UE-210183 (Mar. 23, 2022), available at <https://apiproxy.utc.wa.gov/cases/GetDocument?docID=728&year=2021&docketNumber=210183>.

² April 22, 2022, Comments of Renewable Northwest on Markets & CETA Compliance Rulemaking (UE-210183), available at <https://apiproxy.utc.wa.gov/cases/GetDocument?docID=755&year=2021&docketNumber=210183>.

³ Feb. 9, 2022, Comments of NW Energy Coalition and Climate Solutions on Markets & CETA Compliance Rulemaking (UE-210183), available at <https://apiproxy.utc.wa.gov/cases/GetDocument?docID=687&year=2021&docketNumber=210183>.

⁴ Oral comments made by Steve Johnson of Commission Staff at the May 6, 2022, Adoption Hearing in UE-210183, available at <https://wutc.app.box.com/v/OpenMeetings/file/957406715490>.

comment that “[s]ignificant differences between Commerce’s and the UTC’s proposed draft rules are problematic and could result in higher CETA compliance costs for IOU customers versus COU customers.” Commission Staff responded in defense of its approach: “Staff strongly disagrees. The Joint IOUs, after nearly two years of opportunity, do not support this claim with any substantive arguments or citation to language and explanation of how that language has divergent meaning with regard to the implementation of the statute.”⁵

All of this considered, and before getting into the bulk of our comments, we encourage the Commission to hold a stakeholder meeting to discuss the reasoning behind its shift in approach in regulating how utilities must “use” electricity to comply with CETA’s clean energy standards, as there has not been adequate dialogue around the suitability of Commerce’s approach to “use” being applied to the Commission’s regulation of the IOUs. We would also find it helpful to hear from the Commission how certain aspects of these rules would apply practically, especially those aspects which conflict with the Commission’s previous draft rules.

With the necessary stakeholding, we are optimistic that the Commission can close out this phase of CETA implementation in a way that upholds the integrity of CETA’s clean energy standards while also supporting competition across the state’s electric utilities and participation in regional markets. These comments focus on two key elements of the latest proposed rules which differ from the previous draft rules: compliance planning and “use” as it relates to RCW 19.405.050(1). We are hopeful that the Commission will continue the dialogue around the issue of “use” so all stakeholders can understand the change of approach and how Commission rules can best support the intent of CETA.

II. COMMENTS

As discussed above, RNW, NWECA, and Climate Solutions have been invested in the evolution of the Commission’s interpretation of “use” as it appears in RCW 19.405.040(1). Because the latest proposed rules are fundamentally different from the previous iteration, it is difficult to reconcile this new approach with the record of outstanding issues identified by stakeholders and Commission staff in this docket. These issues include but are not limited to (1) the appropriateness of including retained nonpower attributes in utilities’ compliance planning, and (2) the use of renewable energy credits (“RECs”) toward utilities’ compliance with RCW 19.405.050(1). The following comments largely defend the Commission’s previous approach for its bolstered protection against resource shuffling and emissions leakage.

⁵ UE-210183 Summary of Comments on 2nd Use and Double Counting and Storage Draft Rules, *available at* <https://apiproxy.utc.wa.gov/cases/GetDocument?docID=732&year=2021&docketNumber=210183>.

1. The Commission’s previous draft rules restricted the use of retained nonpower attributes in compliance planning.

Across the many workshops and comment opportunities in dockets UE-191023 (the Clean Energy Implementation Plan rulemaking), UE-190760 (the Markets Working Group mandated by RCW 19.405.130(1)), and UE-210183, stakeholders have discussed the potential for a utility to engage in resource shuffling. The methodical, intentional work done by Commission Staff to interpret “use” in such a way that limits this phenomenon resulted in a clear compliance framework outlined in the 2022 Draft Rules. The Commission’s previously proposed language guiding a utility’s showing of compliance with RCW 19.405.040(1) is as follows:

WAC 480-100-650 Reporting and compliance. (1) 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.⁶

The above language prohibits a utility from planning to use retained NPAs toward primary compliance, except for within the two-year contract term exemption. Our understanding of the *intent* of this proposal, wherein a utility has firm restrictions on using retained NPAs in compliance planning, was to (1) require that a utility plan to meet at least 80% of its load with renewable and nonemitting resources, (2) support market optimization and thus strong market participation by the utilities through the “two-year decision horizon for acquisitions that can

⁶ UE-210183 Draft Rules (OTS-3653.3), UE-210183 (Mar. 23, 2022), *available at* <https://apiproxy.utc.wa.gov/cases/GetDocument?docID=728&year=2021&docketNumber=210183>.

consider retained NPAs in economic decision making,”⁷ and (3) allow a utility to use retained NPAs toward primary compliance at the end of a compliance period if necessary. For clarity, RNW, NWECC, and Climate Solutions did not support the two-year contract term exemption in the 2022 Draft Rule, as it provided flexibility that was not provided in the statute.

There has been pushback from the utilities and others regarding potential inefficiencies resulting from this approach. For example, the Alliance of Western Energy Consumers (“AWEC”) suggested that the Commission was “effectively requiring over-compliance with the 2030 standard, accelerating the Legislature’s chosen timeline at greater cost to customers.”⁸ But Commission Staff pushed back: “Staff finds AWEC’s support for its claim to be inaccurate in light of the overall statutory scheme. 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 pre-determine that over building must occur. The physics of electricity have 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.”⁹

Given this background, we are having trouble understanding why the Commission has leaned into the approach taken by Commerce, an approach which places no restrictions on a utility’s ability to plan for retained NPAs or retained RECs in compliance planning. If a utility can plan in its CEIP to retain RECs from a period of high clean generation (e.g., hydro generation during spring runoff) and apply those RECs toward primary compliance during periods when conditions for clean generation are more difficult, then that utility has less incentive to transition to a generation profile which is truly capable of serving 80% of load with renewable and nonemitting resources.

We recognize that Commerce and, now, the Commission have included language that encourages good-effort modeling by the utilities to support the transition to a resource mix that serves 80% of load with clean resources:

(4) The electricity associated with the REC must be from a generating facility or contract that is part of *a resource portfolio reasonably expected to be capable of serving at least 80 percent of the utility's retail electric load over each compliance period*. Each utility

⁷ UE-210183 Summary of Comments on 2nd Use and Double Counting and Storage Draft Rules, *available at* <https://apiproxy.utc.wa.gov/cases/GetDocument?docID=732&year=2021&docketNumber=210183>.

⁸ Commission Staff’s Summary of February 9, 2022, Comments on Second Proposed Use, and Double Counting and Storage Rules, posted in docket UE-210183 on Mar. 23, 2022, paraphrased AWEC’s comments regarding the cost of the proposed compliance framework. AWEC’s original Feb. 9 comments are available at <https://apiproxy.utc.wa.gov/cases/GetDocument?docID=690&year=2021&docketNumber=210183>.

⁹ UE-210183 Summary of Comments on 2nd Use and Double Counting and Storage Draft Rules, *available at* <https://apiproxy.utc.wa.gov/cases/GetDocument?docID=732&year=2021&docketNumber=210183>.

required under RCW 19.280.040(1) and WAC 480-100-620 to prepare an integrated resource plan must demonstrate compliance with this requirement by, at a minimum, showing through an hourly analysis that the expected renewable or nonemitting output of the resource portfolio could be generated and delivered to serve at least 80 percent of expected retail electric load. This demonstration must use inputs and assumptions consistent with the utility's integrated resource plan and may be updated with changes in its resource portfolio.¹⁰ (emphasis added)

However, the language in the above emphasized phrase is subjective, as what is “reasonably expected to be capable of serving at least 80 percent” of load may be interpreted differently based on a variety of factors informing what is “reasonable” and “capable.” Additionally—and perhaps a typographical error—the first sentence in the above language does not actually specify that the 80 percent be served with *renewable or nonemitting electricity*. We support the stronger language in the Commission’s previous draft rules, included above from the 2022 Draft Rules (draft WAC 480-100-650(1)), in conjunction with restrictions around usage of retained RECs in compliance planning.

Not to belabor the point, but we must include Commission Staff’s response to NIPPC’s request in their February 9, 2022, comments, which is more or less a direct ask that the Commission follow Commerce’s approach. Commission Staff responded to NIPPC’s comments in the Summary of February 9, 2022, Comments on Second Proposed Use, and Double Counting and Storage Rules, as follows: “The requirement to plan utility service with 80 percent renewable and nonemitting electricity is a necessary component of the rules for achieving CETA. *If utility actions are based on a plan and that plan is not carrying out CETA then the actions of the utility will fail CETA, despite the best post-planning regulatory interventions.* The least cost requirements of CETA planning and acquisition are constrained by the 2030 and 2045 statutory standards” (emphasis added).¹¹

2. The latest proposed rules introduce more flexibility in the compliance requirements for RCW 19.405.050(1), the 100% clean standard.

Over the course of this rulemaking, the Commission has deemed it necessary to define the “use” of electricity as it relates to compliance with RCW 19.405.050(1), the mandate that a utility must serve load with 100% clean electricity by 2045. This will aid utilities’ evaluation of resources relevant to that time period, especially considering the long lead-times of certain clean resources

¹⁰ Draft WAC 480-100-670(4).

¹¹ Commission Staff’s Summary of February 9, 2022, Comments on Second Proposed Use, and Double Counting and Storage Rules, posted in docket UE-210183 on Mar. 23, 2022, paraphrased NIPPC’s comments regarding retained NPAs: “Reconsider prohibition on use of Retained NPAs for planning purposes because could achieve CETA compliance and reliability in a least-cost manner. Instead, achieve transparency by requiring IOUs to provide IRP sensitivity analyses or similar.” NIPPC’s Feb. 9, 2022, comments are available at <https://apiproxy.utc.wa.gov/cases/GetDocument?docID=712&year=2021&docketNumber=210183>.

that will be key to achieving a 100% clean energy future. RNW, NWECA, and Climate Solutions supported the Commission's 2022 Draft Rules in this regard, which took a straightforward approach to compliance and prohibited a utility from using retained NPAs or retained RECs in any sense:

(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.¹²

The approach taken by Commerce and recently proposed by the Commission introduces the concept of a "clean electricity market," which RNW and NWECA supported in April 2022 comments to Commerce regarding its "use" rules which were later adopted. However, we maintain that the Commission operates within a different regulatory environment than Commerce, and we support stronger guardrails around the introduction of RECs as compliance tools for the 2045 standard. Commerce's regulatory authority is limited to adopting rules concerning reporting, whereas the Commission's public interest authority is much broader and more comprehensive. While we do like the simplicity of the Commission's previous draft rules addressing the 2045 standard, we also see value in injecting the concept of a "clean electricity market" into state regulation. Therefore, we recommend the following changes to draft WAC 480-100-675:

Use of renewable energy credits to comply with the 100 percent renewable or nonemitting standard. (1) 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.

~~(1)(2)~~ Except as provided in subsection ~~(2)(3)~~ of this section, a utility may not use a REC to comply with the requirements of RCW 19.405.050(1) unless:

(a) The utility acquired the REC and the electricity associated with the REC in a single transaction through ownership or control of the generating facility or through a contract for purchase or exchange; and

¹² Draft WAC 480-100-650(2), UE-210183 Draft Rules (OTS-3653.3), UE-210183 (Mar. 23, 2022), available at <https://apiproxy.utc.wa.gov/cases/GetDocument?docID=728&year=2021&docketNumber=210183>.

(b) The utility did not use the associated electricity for any purpose other than supplying electricity to its Washington retail electric customers.

~~(2)~~(3) A utility may use any REC to comply with the requirements of RCW 19.405.050(1) if:

~~(a) The utility acquired the REC through participation in a clean electricity market;~~

~~(a)~~(b) The REC is associated with electricity acquired through participation in a clean electricity market; or

~~(b)~~(e) The utility obtained all electricity supplied to its retail customers from clean electricity markets.

(3) For purposes of this section, "clean electricity market" means an organized wholesale electricity market that provides for the physical delivery of renewable and nonemitting electricity.

These changes will help support the intent of RCW 19.405.050(1), which is to require utilities to meet 100% of load with renewable and nonemitting resources while also creating room for future market scenarios that support Washington's clean energy policy. We recommend striking the language defining the more open-ended, market-sourced REC in draft WAC 480-100-675(2)(a), because it is redundant to and less specific than the following provision, draft WAC 480-100-675(2)(b). We would appreciate discussing this particular feature of the draft rules with the Commission, because it is unclear if and how a utility may retain market-acquired RECs to compensate for any emitting generation still in a utility's mix.

III. CONCLUSION

Renewable Northwest, NWECC, and Climate Solutions again thank the Commission for its responsiveness on the issue of “use” and compliance with RCW 19.405.040(1) and -.050(1). We hope the Commission will consider our request to hold a stakeholder workshop or meeting to address questions and concerns from those who have long been engaged in this process. We look forward to continued participation on this issue.

Sincerely,

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