UE-210183

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Jeff Killip, Executive Director and Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, Washington 98503

Re: Puget Sound Energy's Comments Relating to Electricity Markets and Compliance with the Clean Energy Transformation Act "Use" Rules; Docket UE-210183

Dear Director Killip,

Puget Sound Energy (PSE) respectfully submits these comments in response to the Washington Utilities and Transportation Commission's (Commission) January 25 Notice of Opportunity to Provide Comments (Notice). As set forth below and in prior comments, the Commission should adopt the draft rules proposed in the Commission's October 2023 notice in this docket. Adoption of those rules will help ensure the Clean Energy Transformation Act (CETA) is implemented uniformly for all electric utilities in the State, as envisioned by the Legislature.

Comments

The questions in the Notice focus almost exclusively on the concept of retained nonpower attributes. It is not clear why, as this concept stems from earlier phases of this rulemaking docket in 2021 and 2022 during which markedly different draft rules regarding "use" were under consideration. Those draft rules were ultimately not adopted, and PSE does not support returning to any version of rules that utilize the concept of retained nonpower attributes. The Commission issued proposed draft "use" rules in October 2023 that would harmonize the Commission's rules with those of the Department of Commerce (Commerce). These draft rules signaled a clear departure from the previous draft rules under consideration in 2021 and 2022 and eliminated the need for the Commission to create the impractical and artificial retained nonpower attribute concept in rule.

As stated previously, PSE continues to support adoption of the October 2023 proposed draft rules. These rules would provide electric utilities with the flexibility envisioned by the Legislature, and included in CETA, to address renewable energy variability and align with current and future market systems and structures. Synchronization with the rules adopted by Commerce will also create needed uniformity and consistency for all of the State's electric utilities and avoid unnecessary confusion, unintended market consequences, and potential competitive disadvantages that could result if two groups of electric utilities subject to the same

statutory standard were governed by substantively different administrative rules with different compliance pathways.

PSE responds to the Notice's questions below. However, any discussion of the concept of retained nonpower attributes (the focus of these questions) should not be interpreted as detracting from PSE's overarching support for the October 2023 proposed draft rules, which render this concept unnecessary.

Responses to Questions

1. **Should retained nonpower attributes be allowed to be used toward the 80 percent compliance option?**

PSE does not recommend using the concept of retained nonpower attributes in CETA rules at all. Consistent with statute, PSE continues to support the fundamental concept that electric utilities may use "electricity from renewable resources used to meet" CETA requirements, as demonstrated through the retirement of renewable energy credits (REC) that are tracked and retired in the tracking system selected by Commerce. This is true for what has been termed "primary compliance."[1]

To meet the needs of customers, PSE and other electric utilities make system sales, in which they make unspecified sales from a general pool of resources, with no unit or generation type attribution possible. The concept of retained nonpower attribute does not fit well within this operational framework, as it will not be possible to say with certainty that a REC, for example, from a PSE wind facility is a retained nonpower attribute because PSE has no way to determine that the specific megawatt-hour from the wind project was or was not sold as unspecified system power during an applicable hour.

PSE's position on this issue has not changed. Under the October 2023 proposed draft rules proposed by the Commission (as with the rules Commerce's adopted) RECs are used to demonstrate compliance, as required by CETA. This use of RECs and the associated concept of bundled or unbundled RECs is consistent with other regulatory frameworks in Washington and across the country. The new concept of retained nonpower attributes is not consistent with other regulatory frameworks in Washington or other areas of the country, nor is it consistent with current energy markets in the region.

Furthermore, if the Commission moves forward with utilizing the concept of retained nonpower attributes and does not allow them to be used toward the 80 percent compliance obligation, the Commission would be treating retained nonpower attributes in the same manner as unbundled RECs for purposes of compliance. This would be inconsistent with the CETA statute. The statute has a clear definition and allowed use for unbundled RECs, but the definition

[1] Previous draft rules defined "primary compliance" to differentiate the portion of the greenhouse gas neural standard that may not be met using unbundled RECs or other alternative compliance options.

of unbundled REC does not include the concept of "retained nonpower attributes" or its conceptual framework.

2. **If retained nonpower attributes are not allowed to be used towards the 80 percent compliance obligation, how would this change affect a utility's planning processes, costs, and operations? What impact would this restriction have on customers?**

In the absence of other context for how the concept of retained nonpower attributes are to be identified, this question is difficult to answer. In fact, PSE does not know how it would identify retained nonpower attributes for purposes of compliance accounting. Any accounting would have to be based on estimates, since PSE currently has no way to account for specific sources when system power is sold in wholesale transactions. If PSE determined that entering into market transactions increased compliance risk to an unacceptable level, reduced or eliminated market participation would likely result in significantly higher costs to PSE customers.

Furthermore, as pointed out in previous comments,[2] any approach that precludes utilities from engaging in system sales will likely create unintended market consequences, competitive disadvantages, and inequitable costs of compliance for customers of investor-owned utilities, particularly when considered relative to Commerce's "use" rules. Commerce has adopted rules that permit these activities. As a result, in a scenario where the Commission does not adopt the October 2023 proposed draft rules, customers of the investor-owned utilities could end up being inequitably burdened by higher costs than those of the consumer-owned utilities without any rational justification.

PSE also suggests staff review recent analysis by Energy and Environmental Economics (E3) that finds that requiring utilities to match clean generation to hydrogen electrolysis load on an hourly basis increased emissions relative to an annual accounting approach in twenty-five of the forty scenarios studied.[3] While this study was done for the purposes of determining the incremental emissions and production cost benefits of hourly versus annual accounting of clean electricity used for electrolytic hydrogen production, its findings have universal implications for the efficacy of hourly accounting in other compliance regimes. The study finds, among other things that:

1) An hourly matching requirement does not ensure lower GHG emissions relative to an annual matching requirement, and in many cases is less effective at eliminating carbon emissions than annual matching;

[2] *See* Comments of Puget Sound Energy, Docket UE-210183 at p. 2 (Nov. 27, 2023); Joint Utility Comments, Docket UE-210183 at p. 3 (Feb. 9, 2022); Joint Utility Comments, Docket UE-210183 at p. 2(Nov. 12, 2021) (stating "If there are substantive differences in the rules, it could create unintended market consequences, competitive advantages, and inequitable costs of compliance for utility customers.").

[3] *See* Analysis of Hourly and Annual GHG Emissions From Hydrogen Production (acore.org)

2) An hourly matching requirement results in significantly higher costs […] than an annual matching requirement […] across a wide range of renewable energy and wholesale electricity market assumptions.

That same analysis points out that in the few scenarios in which emissions do increase under an annual matching approach, modest changes in the renewable generation mix or total quantity can entirely eliminate those incremental emissions.

3. If retained nonpower attributes are not allowed to be used in planning for compliance towards the 80 percent compliance obligation, but are allowed to be used for compliance, how would this affect a utility's planning processes, costs, and operations? What impact would this restriction have on customers?

This could result in a situation where a utility planning process indicates that a utility need for resources is significantly higher than the actual need will be in practice. As a general rule, utility planning processes should endeavor to model actual circumstances that result from state laws and policy and other system conditions as closely as possible. If utilities are instructed to model situations that deviate from actual operational realities, accurate lowest reasonable cost planning will suffer. Because the required incremental cost calculations for CETA rely on these planning processes, this will also impact the accuracy of utilities' incremental cost calculations.

4. How would a restriction on retained nonpower attributes interact with utility requirements under the Climate Commitment Act?

The Climate Commitment Act (CCA) is not intended to have a direct impact on utilities' CETA compliance obligations. Although these two programs should be compatible and work together to transform utilities' portfolios and reduce emissions from operations, they have different and distinct measures of performance. Because CETA is a procurement program that regulates utilities over a multi-year compliance period, and the CCA is an emission-based program that regulates generators and imports, also over a multi-year compliance period, the metric for CETA compliance, including with respect to the concept of retained nonpower attributes, does not directly impact CCA compliance requirements.

However, the two laws do have operational and planning impacts for utilities and inevitable interactions. A retained nonpower attribute approach from a CETA perspective may create misalignment with utility operations intended to reduce emissions and mitigate costs of the CCA for customers through the utility's use of no-cost allowances. If the Commission is considering reverting to a retained nonpower attribute accounting approach, much more discussion and consideration would be needed in addition to consultation with the utilities on the interactions between these laws.

5. If a utility engages in a day-ahead market, such as SPP's Markets+ or CAISO's Extended Day-Ahead Market, how would a restriction on retained nonpower attributes affect market participation?

A restriction on retained non-power attributes over a more granular period than the statutorily provided multiyear compliance period would inhibit a utility's participation in an organized day-ahead market, as well as its participation in an imbalance market. A centrally dispatched market creates a many-to-many relationship between supply resources and loads. Energy and demand are both pooled and allocated in some manner by the market clearing engine. At any given interval, a load-serving entity may be both an importer and an exporter. It is not possible to know which resources served energy transfers from a CETA-responsible utility to another entity in an organized market. Therefore it would require the market operator, in consultation with the utilities, to devise a methodology to estimate which resources were being used. Such a methodology would be an imprecise tool and may conflict with—and make more costly—utility system operations to comply with CETA and the CCA. Furthermore, a restriction on the use of retained nonpower attributes within a compliance period could lead to a utility being forced to make resources unavailable to the market to avoid penalties, even during periods when those resources are needed, if that utility was expected to have sales that exceeded its allowance for alternative compliance. Additionally, resources for which customers have paid may be devalued if they are unable to participate in the market fully.

The October 2023 proposed draft rules (and the rules adopted by Commerce already) would ensure the electric utility has acquired renewable and nonemitting generation, on a planning basis, sufficient to meet CETA's 2030 standard while allowing those resources to participate fully in a centrally optimized short-term market. Consistent with this approach, PSE supports the November 27, 2023 comments of Avista proposing an amendment to allow the buyer of specified source electricity in an organized market to count that electricity toward primary compliance with the GHG neutral standard.

The example Avista provides is selling the output from its Noxon #4 as a specified clean energy sale in the organized market to PSE (identified after the transaction), neither Avista nor Puget Sound Energy may use the generation to qualify toward CETA compliance. Avista cannot use the energy due to 480-100-670(5)(a) where it sells the resource as specified source, and PSE cannot use the energy as it purchased the energy without the REC. Currently, RECs are not transferred in the organized market and typically buyers and sellers are not identified prior to, or during, the transaction. While it is possible for PSE to buy the associated RECs from Avista at a later time, the specified energy and REC would be prohibited from being used for CETA compliance per 480-100-670(2). Avista suggests the following modifications to proposed WAC 480-100-670(2), which would resolve this issue:

> *(2) The utility must acquire 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 <u>unless the energy is purchased as a specified carbon free resource in an organized market</u>.*

PSE also supports the amendment proposed by NIPPC in its November 27, 2023 comments to the Commission's October proposed rules for the 100 percent clean standard. This clarification supports utility participation in centrally dispatched markets while maintaining the prohibition on the utility using or retaining a REC for CETA compliance for which the utility has contracted to sell the associated electricity.

> *(1) Except as provided in subsection (2) 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 (b) The utility did not ~~use the associated electricity for any purpose other than supplying electricity to~~ contract to sell the associated electricity to anyone other than its Washington retail electric customers.*

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Please contact Brett Rendina at (360) 294-9558 or Brett.Rendina@pse.com for additional information about this filing. If you have any other questions, please contact me at (425) 462-3051.

Sincerely,

/s/ Wendy Gerlitz

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cc: Tad O'Neill, Public Counsel