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***Via Electronic Filing***

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

Re: In the Matter of WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION,  
Rulemaking Relating to Electricity Markets and Compliance with the  
Clean Energy Transformation Act.  
**Docket UE-210183**

Dear Executive Director Killip:

Please find enclosed the Comments of the Alliance of Western Energy Consumers  
in the above-referenced docket.

Thank you for your assistance. If you have any questions, please do not hesitate  
to contact me.

Sincerely,

/s/ Anna Congdon  
Anna Congdon

Enclosure

**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. )  
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**I. INTRODUCTION**

*1* Pursuant to the Washington Utilities and Transportation Commission’s (“Commission”) Notice of Virtual Workshop and Opportunity to Provide Comments (“Notice”), the Alliance of Western Energy Consumers (“AWEC”) files these Comments. AWEC limits its comments to Questions 1 through 3 of the Commission’s Notice.

**II. COMMENTS**

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

*2* Yes, the Commission should allow retained nonpower attributes to be used toward the Clean Energy Transformation Act’s (“CETA”) 80 percent compliance option. AWEC generally supports the current version of the draft rules, but notes that they do not use the term “retained nonpower attributes.” AWEC supports this – the term “retained nonpower attributes” is not necessary to clarify the utilities’ compliance obligation under the current rules or CETA itself, which does not use this term. However, if the Commission believes it is necessary to specify

how nonpower attributes are used for compliance, then AWEC recommends that the term be defined. A previous version of the draft rules defined “retained nonpower attributes” as “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.”<sup>1</sup> Although AWEC does not necessarily support this definition in full, AWEC relies on it here for context regarding the nature of “retained nonpower attributes.”

3           There are two reasons why the Commission should allow retained nonpower attributes to be used toward the 80% compliance option – the first is practical and the second is legal. As the utilities have previously noted in this docket, a retained nonpower attribute exists when a utility makes an unspecified market sale.<sup>2</sup> This sale is made without any attribution to a specific generating plant and, therefore, it is impossible to know whether the energy associated with the sale comes from renewable, nonemitting, or fossil-fueled resources.<sup>3</sup> This means that, if such nonpower attributes were treated as unbundled RECs under CETA, it would be impossible for a utility to determine which RECs were bundled and which were unbundled, making compliance similarly impractical. Ultimately, it is clear that the utility owned the electricity associated with the nonpower attribute and it is also clear that the utility retains ownership of the nonpower attribute (as unspecified sales are not accompanied by RECs).

4           AWEC is unaware of any RPS or other clean energy program that treats these nonpower attributes as anything other than bundled RECs. Given that, if the Legislature had intended these

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<sup>1</sup>       OTS-3653.3 at 4

<sup>2</sup>       Comments of Puget Sound Energy, Avista, and Pacific Power at 6 (Nov. 12, 2021).

<sup>3</sup>       *Id.*

nonpower attributes to be treated differently than they are treated in other programs (including Washington’s own RPS) and in other jurisdictions, it would be reasonable to expect that it would have made that distinction explicit. Instead, the Legislature made clear that utilities must “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” and that 20% of this obligation may come from an alternative compliance option, including using unbundled RECs.<sup>4</sup> The law further requires that “[e]lectricity from renewable resources used to meet the standard under (a) of this subsection [i.e., the 80% compliance requirement] must be verified by the retirement of renewable energy credits.”<sup>5</sup>

5           The Legislature defined “unbundled renewable energy credit” as “a renewable energy credit that is sold, delivered, or purchased separately from electricity.” Here, the retained nonpower attributes at issue are not sold separately from electricity, they are not delivered separately from electricity, and they are not purchased separately from electricity. Accordingly, if they are not unbundled RECs, then the only other option under CETA is that they are eligible to evidence compliance with the 80% requirement.

**B.     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?**

6           AWEC defers to the utilities on how a prohibition on the use of retained nonpower attributes for primary CETA compliance would affect their planning and operations. However, given that such a restriction would necessarily limit the nonpower attributes available for the 80

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<sup>4</sup>     RCW 19.405.040(1)(a)-(b).

<sup>5</sup>     RCW 19.405.040(1)(c).

percent compliance obligation, the consequence is very likely to be increased costs for customers. To achieve the 80 percent compliance requirement, utilities could only rely on nonpower attributes that were demonstrably uninvolved in the utility's market sales that occur dozens of times per day to balance the system. The effect of this would likely be to require the utilities to purchase or construct substantially more nonemitting electricity than would be required if retained nonpower attributes are eligible for the 80 percent compliance obligation. Delivering these resources to customers is also likely to require significant investments in new transmission, which is also costly and takes years to permit and construct.

7 Not only would customers experience increased costs with respect to ballooning utility rate bases, they would also be subject to unpredictable market consequences. There is a limited pool of resources capable of contributing toward CETA's clean energy requirements and many of them are intermittent resources. If utilities are overbuilding their systems (in terms of energy needs) to achieve the 80% compliance obligation, this may result in even more dramatic market swings than have occurred recently. When wind and solar are generating, market prices will be low or even negative; when they are not, prices could skyrocket, particularly during extreme weather events like the recent cold snap and ice storm. Storage may alleviate some of this effect, but storage is still expensive and it does not alone generate nonpower attributes. As is now clear, recent market effects are driving up power costs for customers significantly. If those effects are exacerbated by severely limiting the nonpower attributes eligible for primary CETA compliance, there is little reason to believe this trend will not continue.

**C. 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?**

8 Again, AWEC defers to the utilities with respect to how the proposed circumstance would impact their planning and operations. However, as AWEC understands this question, this would be the worst and least defensible of all possible scenarios. As proposed, the utilities would be able to use retained nonpower attributes for their 80 percent compliance obligation, but would not be able to plan their resource needs accordingly. This means customers would see the same cost impacts discussed above, but those cost impacts would be incurred without any corresponding compliance obligation. This simply makes no sense. In all things, the utilities should plan for their expected obligations, not for a scenario that everyone knows is not reality. If a utility took such an action in the absence of a Commission requirement, it would be a clear case of imprudence. Further, if the utilities are legally allowed to use retained nonpower attributes for their 80 percent compliance obligation (as AWEC maintains they are), there is no legally defensible argument to prevent them from planning with this circumstance in mind.

9 The Commission has considered this option previously in this rulemaking, and AWEC’s position has not changed.<sup>6</sup> Staff pushed back on AWEC’s arguments, concluding that “the rules do not in itself [*sic*] pre-determine that over building must occur. The physics of electricity have always required load service to match generation ....”<sup>7</sup> Staff concluded that new resources would displace existing resources to ensure a balanced system.<sup>8</sup>

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<sup>6</sup> Second Draft Rules on “Use” (Jan. 19, 2022); AWEC Comments (Feb. 9, 2022).

<sup>7</sup> Summary of February 9, 2022 Comments on Second Proposed Use, and Double Counting and Storage Rules at 10 (Mar. 23, 2022).

<sup>8</sup> *Id.*

It is, of course, true that utilities will always balance their loads and resources; this argument misses the point. If utilities are acquiring resources they do not need for CETA compliance (which will occur by definition if they cannot plan to use retained nonpower attributes but can actually use them for compliance purposes), then utilities will balance their systems by making off-system sales. It is the price the utilities receive for those sales that would determine the net cost of these resource to customers (in addition to the capital cost or PPA price of the resources, which are likely to increase as competition for available resources also increases). And because each Washington IOU would be in the same circumstance, and other regional utilities are also planning to meet similar clean energy requirements,<sup>9</sup> there will be a lot of excess energy and not a lot of buyers. The price utilities are likely to receive for these sales, therefore, is low, which will manifest as higher costs to customers.

Dated this 16th day of February, 2024.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Sommer J. Moser

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<sup>9</sup> See, e.g., Oregon House Bill 2021 (establishing, among other things, a requirement that Oregon investor-owned utilities reduce emissions to 80% below a baseline level by 2030).