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NW Energy Coalition

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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 January 25, 2024, Notice of Opportunity to Provide Comments ("the Notice") in advance of the Virtual Workshop on February 22. In comments filed on November 27, 2023, our joint organizations recommended that the Commission host a workshop on the issue of "use" due to the curious pivot in the agency's approach to the draft rules from its previous iteration filed on March 23, 2022. We appreciate that our recommendation has been accepted, and we look forward to the upcoming discussion.

Before addressing the questions posed in the Notice, we first call attention to the imbalance of recent feedback on this issue. In response to the latest set of proposed draft rules, the Commission received supportive feedback from each of the investor-owned utilities ("IOUs") and one set of critical feedback—ours—from three separate organizations. However, the issue of what it means to "use" electricity has been deliberated since 2020, when the implementation of

the Clean Energy Transformation Act ("CETA") began in docket UE-191023. In this docket the Commission issued a Notice on November 5, 2020, asking:

> *Do the [proposed] rules…allow a utility to produce renewable electricity in excess of the amount required to serve its load and use the RECs from that excess renewable electricity, sold off system, to cover periods of load in which more than 20 percent of its load is served by GHG emitting resources as a means of complying with RCW 19.405.040(1)(b)(ii)? For example, can a utility comply with the 80 percent requirement through buying 1000 MWh of hydroelectricity in excess of its load service needs in every hour of the day during the spring runoff and resell that power while retaining the nonpower attributes for compliance?*[1]

This is the same issue being deliberated today. To the question above, the Commission received feedback from the Sierra Club, the Energy Project, the Washington Environmental Council, Front and Centered, Center for Resource Solutions, and many others.

In 2021, the Commission proposed draft rules on "use" in the current docket, UE-210183. At that time, hundreds of ratepayers filed comments urging the Commission to uphold the clear intent of CETA and, specifically, to "eliminate the use of 'retained Renewable Energy Credits' and other provisions that would allow utilities to simply offset the continued use of fossil fuel-generated electricity…."[2]

In January 2022, the Commission issued another set of draft rules. King County commented that an approach allowing retained nonpower attributes to count toward primary compliance "could allow for offsets that prolong the transition to clean energy beyond the 20 percent alternate compliance methodology authorized in the statute. [W]e must move as fast as possible to reduce emissions from our electricity sources, in order to avoid the worst impacts of climate change that threaten the health and well being of King County and Washington State residents."[3] Rules were again proposed in March of 2022, followed by more stakeholder engagement.

Given this context, the low stakeholder engagement seen after the filing of draft "use" rules in October 2023 is not representative of the meaningful stakeholder concern for the proposed path to interpret "use" as it relates to CETA's 2030 standard. We presume the recent low engagement is largely due to the inactivity of this docket and perhaps an assumption that the Commission would resume the docket in a manner similar to how it was left.

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[1] UE-191023 Notice of Opportunity to File Written Comments (Nov. 5, 2020), *available at* https://apiproxy.utc.wa.gov/cases/GetDocument?docID=407&year=2019&docketNumber=191023.
[2] *See, e.g.*, Nov. 8, 2021, Comments of Desiree Nagyfy on Docket UE-210183, *available at* 210183-Desiree Nagyfy-Comment.pdf.
[3] Feb. 9, 2022, Comments of King County, Docket UE-210183.

In these comments we respond to the questions posed in the Notice. We maintain that the Commission's previous approach to "use," reflected in the last iteration of draft rules issued on March 23, 2022, would best support the intent of CETA, and that the approach proposed on October 25, 2023, would significantly dilute that intent.

II. COMMENTS

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

We first note that this question refers to RCW 19.405.040(1) as the "80 percent compliance *option*" (emphasis added), and we assume the intent is for this to say the "80 percent compliance *obligation*," as it is described in question 2.

A retained nonpower attribute ("NPA") is a concept that the UTC introduced in this rulemaking, for the purpose of providing a reasonable level of flexibility in utility operations and to proactively plan for a future extended day-ahead market ("EDAM") scenario in the region. The Commission deliberated on this issue at great length and proposed draft rules on March 23, 2022, outlining the following: (1) a utility must plan to meet at least 80% of its load with renewable and nonemitting resources; (2) to support market optimization and thus strong market participation by the utilities, there is a "two-year decision horizon for acquisitions that can consider retained NPAs in economic decision making,"[4,5] and (3) a utility may use retained NPAs toward primary compliance at the end of a compliance period if necessary.[6]

<u>The prohibition of *planning* to use retained NPAs for primary compliance is key to enable the necessary shift in utility resource planning to achieve 80% renewable and nonemitting generation by 2030.</u>

As noted in our joint comments submitted November 27, 2023, Commission Staff have agreed. In response to NIPPC's February 9, 2022, feedback that the Commission should mirror the Department of Commerce's approach to rules interpreting "use" of electricity as it relates to compliance with CETA's clean energy standards,[7] Staff responded, "The requirement to plan

[4] 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.
[5] RNW, NWEC, and Climate Solutions did not support the two-year contract term exemption in the draft rules proposed in 2022, as it provided flexibility that was not provided in the statute. At that time, RNW recommended limiting the contract term exemption length to one month, just as is done in the statutory definition of coal-fired resource.
[6] Draft WAC 480-100-650. 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.
[7] The Department of Commerce's rules implementing CETA were adopted in June 2022 and apply to consumer-owned utilities. Commerce's regulatory authority is limited to adopting rules concerning reporting. Despite the Commission's public interest authority being much broader and more comprehensive in the regulation of

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."[8]

Exploring this statement further, we see that Commission Staff have agreed that 1) utility planning that considers retained NPAs for primary compliance is not statutorily supported, and 2) in a post-CETA planning environment, "least-cost" means the lowest cost of achieving the statutory standards—this is relevant to question 2, below. While we appreciate that Staff's most recent proposed rules arguably address planning that considers retained NPAs for primary compliance, we do not believe these rules are as clear or as strong as the rules the Commission had previously considered in 2022.

In summary, retained NPAs should not be used toward primary compliance because this would undermine the efforts of Washington stakeholders and legislators to pass binding clean energy legislation. The 2030 greenhouse gas neutral standard was designed with flexibility in mind, giving utilities the flexibility to serve 20% of their load with electricity generation that does not meet the definition of renewable or nonemitting energy. We may consider the benefit of a very limited contract term exemption to enable portfolio hedging, but we do not support retained NPAs as a primary compliance tool beyond what is reflected in the Commission's previous iteration of draft "use" rules:

> ***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*

investor-owned utilities, there has been an ongoing, circular discussion about the risks of the Commission interpreting "use" differently than Commerce. Our joint comments submitted Nov. 27, 2023, explore this in further detail, *available here* 210183- RNW-NWEC-CS Comnts-11-27-2023.pdf.

[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 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.

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.[9]

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 an effort to frame this discussion accurately, we again call notice to the language used in the question, specifically the word "restriction". There is a substantial history of discussions on what it means to "use" electricity for compliance with CETA's standards, and because there has been considerable time since the height of those discussions, there is risk of losing context as the Commission reconsiders this issue. Framing it as a "restriction" on utilities' ability to use retained NPAs toward primary compliance implies that the Commission supported this use of retained NPAs in the past. As outlined in our November 27 joint comments, that is not the case.

CETA was *intended* to affect a utility's planning processes and operations. The legislation addresses CETA's cost impacts via the incremental cost of compliance threshold, which considers a utility in compliance with the standards if it has demonstrated a two percent increase in weather-adjusted sales revenue above the previous year.[10] Questions 2–5 of this Notice are framed such that investor-owned utilities will likely try to reiterate how the Commission's previously proposed approach to "use" would be too costly, confusing, unnecessary, and incompatible with markets. We hope the Commission will, as before, deliberate on the issue of "use" by considering the intent of the statute and the full history of this docket. The Notice's questions do not address the resource shuffling that will result if retained renewable energy credits ("RECs") can be used in planning for primary compliance. They do not address the environmental health costs[11] that will continue to affect customers if CETA's mandates are

[9] 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.
[10] RCW 19.405.060(3)(a).
[11] The Washington State Department of Health maintains the Environmental Health Disparities Map, an interactive mapping tool that tracks pollution measures and reveals the uneven impact across communities, *available at*

measured by a shuffling of RECs rather than by the decarbonization of the resource portfolios meeting load.

In response to the question posed, we address each component:

A. Impact on planning processes

We may already have evidence that this change in approach to retained NPAs will result in deflated utility glide paths toward the 2030 standard. PacifiCorp's 2021 Clean Energy Implementation Plan ("CEIP") projected an interim target of 60% renewable and nonemitting resources by 2025, but the company's 2023 Biennial CEIP Update reduced the interim target to 33% by 2025. The Update was filed in October of 2023, and we understand there are likely multiple factors impacting PacifiCorp's planning that may have led to a reduced interim target. However, it is not unreasonable to question whether the Commission's more lenient approach to "use," allowing use of retained NPAs as a primary planning and compliance tool, may have informed PacifiCorp's rationale that acquiring less renewable and nonemitting resources in this compliance period will not pose a risk of noncompliance in 2030. It would be interesting to see how the interim target may again change if the Commission reverted back to prohibiting retained NPAs in planning.

Further, some parties claim that having a different planning standard than the compliance standard (i.e. utilities cannot plan to use retained NPAs for primary compliance but at the end of the compliance period may use retained NPAs for primary compliance) would cause confusion. If, by confusion, one means a sense of inconvenience, then maybe that would be true. But if the intent of this particular compliance instrument (retained NPAs) is to allow for: 1) operational flexibility and portfolio hedging within the contract term exemption; and 2) correcting for unanticipated circumstances affecting utility performance toward meeting the compliance standard, then we do not understand the confusion.

B. Impact on costs

We anticipate that investor-owned utilities will again claim that "[s]ignificant differences between Commerce's and the UTC's proposed draft rules…could result in higher CETA compliance costs for IOU customers versus COU customers."[12] Commission Staff has already responded to this concern: "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

https://doh.wa.gov/data-and-statistical-reports/washington-tracking-network-wtn/washington-environmental-health-disparities-map.

[12] Feb. 9, 2022, Comments of Joint Utilities, Docket UE-210183.

the statute."[13] Given the history of this docket, we hope that if this concern is again raised, utilities can this time explicitly outline their concern with supporting analysis or data.

Anticipating another stated concern that the Commission's previous approach to "use" created a risk of overbuilding renewable and nonemitting resources, we again point back to Commission Staff's thoughts on this matter: "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."[14]

C. Impact on operations

Utilities would not be able to retain RECs or NPAs associated with excess renewable and nonemitting generation and apply them toward primary compliance during periods when the utility relies on emitting resources to meet load (i.e., resource shuffling). If resource shuffling is considered a compliant strategy, we anticipate that utilities will only mildly change the way they conduct resource planning. From a procurement perspective, utilities will naturally move toward cleaner generation profiles on an increasing basis due to the cost competitiveness of renewable resources. But because legislators went to the effort of passing binding clean energy legislation, we feel that a natural, slow decarbonization trajectory was not the objective of CETA and is not to the benefit of ratepayers.

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 question describes the effect of the Commission's March 2022 draft rules, which would prohibit utility planning that considers retained NPAs, except for within a two-year contract term exemption to allow for portfolio hedging, and allow a utility to consider retained NPAs at the end of the compliance period, if necessary. We support this framework with further limiting the planning incentive to only those short-term "spot market" purchases made to hedge portfolios.

[13] 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.
[14] 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.

A. Impact on planning processes and operations

A utility would build its portfolio modeling tool to select a diverse suite of renewable and nonemitting resources that results in a generation profile that meets or exceeds 80% of its load requirements for each compliance period. Short-term contracts within the Commission's chosen term length could be incorporated into resource planning for expected hedging purchases, and the associated retained RECs or NPAs could be logged for primary compliance purposes. Any excess renewable or nonemitting generation could be sold with or without the associated NPAs, each option having unique benefits: selling the bundled product may earn the utility a premium on the environmental attributes, and selling the unbundled product while retaining the RECs or NPAs would allow the utility to hedge against unknowns that may thwart CETA compliance. A utility could set a risk buffer and retain enough RECs or NPAs in each compliance period to satisfy that buffer. Beyond that, a utility could sell its bundled product, potentially even in a day-ahead market construct, earning a premium on the environmental attributes.

B. Impact on costs

As noted by Commission Staff, "The least cost requirements of CETA planning and acquisition are constrained by the 2030 and 2045 statutory standards."[15] Decarbonizing Washington's electricity sector on ambitious timelines will cost more than business as usual. As stated earlier, we think a strategy that supports retained NPAs in compliance planning is not far-off from business as usual, considering the levelized cost of energy ("LCOE") for renewable energy technologies is in many cases far lower than that of fossil-based resources.[16] Also noted above, CETA considers cost impacts by offering the incremental cost of compliance threshold as a form of alternative compliance.

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

CETA was intended to be the primary policy driver in transforming the electricity sector to 100% clean energy. The Climate Commitment Act ("CCA") acknowledges this by providing electric utilities with no-cost allowances to cover their emissions and protect customers from an undue cost burden. In order to achieve the intent of the Legislature to fully eliminate fossil fuels from the electricity serving Washington customers by 2045, without additional regulation, the two laws should align on how clean energy and electricity emissions are covered.

[15] Commission Staff's Summary of February 9, 2022, Comments on Second Proposed Use, and Double Counting and Storage Rules, docket UE-210183 (Mar. 23, 2022).
[16] *See, e.g.*, Lazard's Levelized Cost of Energy Analysis – Version 16.0 (Apr. 2023), *available at* https://www.lazard.com/media/2ozoovyg/lazards-lcoeplus-april-2023.pdf.

The reporting aspect of the two regulations will be impacted by the chosen CETA compliance framework: if a utility can use retained NPAs toward primary compliance with CETA's standards, a utility will be projecting an optimistic picture of decarbonization in the CETA context while showing a much bleaker picture in the context of the CCA. The CCA considers actual measures of greenhouse gas emissions from electricity generation and does not allow for regulated entities to offset those emissions by retaining NPAs.

Through a retained NPA, the proposed rule would allow a utility to procure clean energy generation, sell that same clean energy generation in an unspecified transaction, and maintain ownership of the NPA for primary compliance. This explicitly allows utilities to continue dispatching emitting generation during times when renewable and nonemitting generation are not producing energy and pair that generation with attributes from the electricity that has been sold to another entity. Rules that would allow for the continued use of retained NPAs, therefore, would not create an enforceable requirement to actually transition a utility's system fully away from using fossil fuels to serve load, but rather allow a utility to acquire the lowest-cost clean energy generation, sell the electricity to another entity, and fill in any gaps in generation with fossil fuel resources.

If the Commission moves forward with allowing a utility to continue serving load with fossil fuel electricity in an amount greater than 20% in 2030 (and any fossil fuel electricity in 2045) by "greening" the electricity through retained NPAs, CETA will fall short of ensuring that electric generation used to serve Washington utilities' load is clean. There will be a mismatch between emissions from the actual generation used to serve Washington customers and the clean energy used to serve load that is reported under CETA.

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?**

We reiterate the Commission's question posed in 2020:

> *Do the [proposed] rules…allow a utility to produce renewable electricity in excess of the amount required to serve its load and use the RECs from that excess renewable electricity, sold off system, to cover periods of load in which more than 20 percent of its load is served by GHG emitting resources as a means of complying with RCW 19.405.040(1)(b)(ii)? For example, can a utility comply with the 80 percent requirement through buying 1000 MWh of hydroelectricity in excess of its load service needs in every*

hour of the day during the spring runoff and resell that power while retaining the nonpower attributes for compliance?[17]

The scenario outlined above is precisely what a utility could do if retained NPAs were eligible for primary compliance in an unrestricted sense. The utility could sell its excess renewable electricity to the market and use the associated RECs to cover periods of load in which more than 20 percent of its load is served by emitting resources. This may be good for market participation, but we are confident that the utility can achieve the same level of market participation even with serious guardrails on the use of retained NPAs for primary compliance.

Moreover, RNW and NWEC have been active in discussions at SPP and CAISO regarding their day-ahead market designs, and based on those discussions we believe SPP Markets+ and CAISO EDAM will likely qualify as "clean electricity markets," per the language the Commission proposed in the October 2023 draft rules regarding compliance with RCW 19.405.050(1). As discussed earlier in these comments, a stricter stance on retained NPAs still allows utilities to sell both bundled and unbundled RECs to the market, and with the launch of a day-ahead market, there will be even more flexibility as dispatch to Washington will have unique requirements that consider state policy.

[17] UE-191023 Notice of Opportunity to File Written Comments (Nov. 5, 2020), *available at* https://apiproxy.utc.wa.gov/cases/GetDocument?docID=407&year=2019&docketNumber=191023.

III. CONCLUSION

Renewable Northwest, NWEC, 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 look forward to the upcoming workshop where we hope to further address our remaining questions and concerns regarding the latest proposed rules.

Sincerely,

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