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

RE: Docket UE-210183 Relating to Electricity Markets and Compliance with the Clean Energy Transformation Act

Dear Mr. Killip:

The Washington Utilities and Transportation Commission (Commission) issued a Notice of Virtual Workshop and Opportunity to Provide Comments (Notice) on January 25, 2024.

The Public Generating Pool (PGP) is a trade association representing nine consumer-owned utilities that own and operate their own generating resources in Washington and Oregon. PGP appreciates the multiple opportunities we have had to provide comments to the Commission in various dockets addressing the Clean Energy Transformation Act (CETA).[1] PGP looks forward to continued, collaborative discussions with the Commission, the Department of Commerce (Commerce), and other stakeholders on CETA implementation.

General Comments

PGP strongly urges the Commission to adopt rules on "use" in CETA that are comparable to those adopted by the Washington Department of Commerce (Commerce). Commerce's rules strike an important balance between addressing concerns around the use of "retained nonpower attributes" for

[1] PGP has filed comments, for example, in this Docket UE 210183 (April 22, 2022, comments pertaining to hydroelectric generation; November 12, 2021, comments on "retained nonpower attributes"; and June 14, 2021, comments submitted jointly with Puget Sound Energy, Pacific Power, Avista, and the Washington Public Utility Districts Association, on double counting) as well as in Docket UE-191023 (June 29, 2020, comments addressing "use" and related issues; July 31, 2020, comments submitted jointly with PSE, Pacific Power, and Avista addressing "use" and including a legal memorandum) and Dockets UE-191023/UE-190698 (December 3, 2020, comments addressing issues of compliance and "use"). PGP incorporates those comments herein by reference.

compliance with CETA's 80 percent net zero standard and allowing utilities to continue participating in wholesale electricity markets in a way that maintains reliability and affordability while advancing the goals of Washington's clean energy transformation.

CETA requires electric utilities to: (1) Eliminate coal-fired resources from their allocations of electricity by December 31, 2025; (2) ensure that all retail sales of electricity to Washington retail electric customers are greenhouse gas (GHG) neutral by January 1, 2030; and (3) supply 100 percent of all sales of electricity to Washington retail electric customers with nonemitting and renewable generation by January 1, 2045. The Commission and Commerce were required to adopt rules by June 30, 2022, defining requirements, including appropriate specification, verification, and reporting requirements, for retail electric load met with bilateral market purchases and from centralized electricity markets and to address CETA's prohibition on double counting of nonpower attributes.[2] Commerce and the Commission both adopted rules from their respective rulemakings, and Commerce additionally adopted rules providing an interpretation of compliance with RCW 19.405.040(1)(a), the 2030 GHG Neutral Standard.

On October 25, 2023, the Commission issued draft rules regarding the interpretation of "use" under CETA that mirror Commerce's rules relating to RCW 19.405.040(1)(a), adopted WAC 194-40-410. The WAC allows a consumer-owned utility to use a renewable energy credit (REC) other than an unbundled REC[3] to comply with RCW 19.405.040(1)(a) or to demonstrate performance compared to an interim target, but only if the following conditions are met:

- 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.
- The electricity associated with the REC must be:
  - From a generating facility located within the utility's service area or balancing authority area; or
  - Acquired by the utility at one of the following points of delivery:
    - The transmission or distribution system of an electric utility (as defined in RCW 19.405.020);
    - The transmission system of the Bonneville Power Administration;
    - The transmission system of any entity that is a participant in an organized electricity market located in the Western Interconnection in which the electric utility is a participant; or
    - Another point of delivery designated by the utility for the purpose of subsequent delivery to the utility.
- 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

[2] RCW 19.405.130

[3] CETA's statutory text establishes two categories of RECs: Those that fall within the definition of "unbundled REC," which is one that is "sold, delivered, or purchased separately from electricity," and those that do not. Those RECs that are permitted under WAC 194-40-410 are ones that are not "sold, delivered, or purchased separately from electricity" before they are retired, and are thus not considered "unbundled" RECs.

utility's retail electric load over each compliance period. Each utility required 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.

- A REC is ineligible to be used for compliance or to demonstrate performance compared to an interim target if the utility sells or otherwise transfers ownership of the electricity associated with the REC in a transaction that (a) contractually specifies the source of the electricity by fuel source or as renewable, or (b) transfers the nonpower attributes of the electricity.

As noted in our comments submitted to Commerce dated April 27, 2022,[4] PGP supports Commerce's approach to the use of electricity and RECs to comply with the 2030 GHG Neutral Standard adopted in WAC 194-40-410. PGP strongly encourages the Commission to adopt rules for the investor-owned utilities that are substantively similar to those adopted by Commerce for consumer-owned utilities, though we recognize that tailoring those rules to reflect the different regulatory frameworks established by the Legislature may be necessary and appropriate.

Responses to Questions

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

Yes, though as previously communicated to the Commission in our comments in this Docket dated November 12, 2021, we continue to believe that establishing "retained nonpower attribute" as a unique defined term in rules is unnecessary, given CETA's existing distinction between "unbundled RECs" and all other RECs. This question is also settled in the context of consumer-owned utilities: Commerce's WAC 194-40-410 allows for the use of RECs other than unbundled RECs if certain conditions are met.

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?

Restricting the "use" of "retained nonpower attributes" for the 80 percent compliance obligation under CETA would have profound impacts on a utility's costs, operations, and planning processes.

One of the key advantages of allowing "retained nonpower attributes" to apply to the 80 percent compliance obligation are the broad market benefits created when renewable or non-emitting energy is able to be provided to those who need it, when they need it, while the generator of that clean energy is able to retain its compliance benefit. The utility that incorporated

[4] https://deptofcommerce.app.box.com/s/fz1xlzcz20uaele200pvtoryavs6ci88/file/950935188794

renewables and clean energy in its long-term planning portfolio is able not only to serve its own load with clean energy, but also provide any additional capacity to others in the market without compromising its compliance obligation. This increases efficiency, reduces friction, and lowers the overall cost of clean energy in the region.

Conversely, if "retained nonpower attributes" are not eligible for the 80 percent compliance obligation, the benefits and incentives associated with clean energy generation vanish. Instead, utilities would be incentivized to "hoard" their clean energy for fear that they would be found out of compliance with the standard by selling it into the market. It would also restrict utilities from choosing resources with varying output profiles or with any geographic diversity; resource choices would be narrowed considerably, driving down competition and driving up costs. These increased compliance costs would then increase the likelihood that a utility would meet or exceed the two percent incremental cost cap under RCW 19.405.060.[5]

This also has a chilling effect on regional wholesale electric markets, which would become significantly less liquid and less efficient, increasing costs for the region. Taken together, all of these outcomes ultimately cause customers to pay more for clean energy while deriving no additional benefit.

Not allowing "retained nonpower attributes" to be used towards the 80 percent compliance obligation for investor-owned utilities would also be incongruent with the rules adopted by Commerce for the consumer-owned utilities, and therefore would be contrary to the aim stated by the Commission in its October 25, 2023, Notice of Opportunity to File Written Comments on Draft Rules. This divergence would establish two different markets for CETA-compliant products in the state, creating the potential for inequities and inefficiencies. PGP strongly believes that the rules adopted by Commerce struck an appropriate balance between encouraging utilities to plan toward meeting the 80 percent goal on a more granular basis while also enabling continued participation in wholesale electricity markets.

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?

[5] RCW 19.405.060(3) states that an investor-owned utility must be considered in compliance with the 2030 GHG Neutral Standard established in RCW 19.405.040(1) and the 2045 100% Clean Energy Standard established in RCW 19.405.050(1) if, over a four-year compliance period, the average annual incremental cost of meeting the standards or interim targets equals a two percent increase of the utility's weather-adjusted sales revenue to customers for electric operations above the previous year, as reported by the utility in its most recent Commission basis report. All costs included in the determination of cost impact must be directly attributable to actions necessary to comply with the requirements of RCW 19.405.040 and 19.405.050. A similar incremental cost cap is also provided for consumer-owed utilities.

Disallowing “retained nonpower attributes” from planning for compliance would change the fundamental structure for how utilities establish their resource portfolios. Under current Commerce rules in WAC 194-40-410(4), consumer-owned utilities are allowed to use a REC other than an unbundled REC if the associated electricity is 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, as demonstrated through an hourly analysis that the expected renewable or non-emitting output of the resource portfolio could be generated and delivered to serve at least 80 percent of expected retail electric load.

This standard is aimed at ensuring that utilities are building resource portfolios that are capable of serving their own load, and not simply aimed at satisfying a compliance obligation. If IOUs are restricted from considering “retained nonpower attributes” on a planning basis, they will be pushed toward resource portfolios that are increasingly more expensive while simultaneously not providing any additional environmental benefit. These portfolios would also not be able to plan on deriving benefits from the efficiencies of participating in a regional market. All of these effects result in increased costs to customers without a commensurate environmental benefit.

Further, this determination would result in discontinuity with WAC 194-40-410(4), again creating a dichotomy between consumer-owned utilities and investor-owned utilities.

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

The compliance instruments for CETA and the Climate Commitment Act (CCA) programs are separate and distinct. Neither renewable electricity nor RECs are eligible instruments to act as an “offset” or any other form of compliance instrument under the CCA. For the purposes of GHG reporting under the CCA, RECs do not need to be retired for a utility to claim renewable or non-emitting electricity as a “specified source.” While prohibiting the use of “retained power attributes” for CETA compliance may potentially reduce a utility’s overall compliance burden under the CCA by forcing the utility to demonstrate that the power associated with a REC was scheduled to retail load, any hypothetical CCA compliance benefits would be grossly outweighed by increased CETA compliance costs. Such an increase in costs would run contrary to the principles of least-cost planning that are foundational to the regulation of vertically integrated utilities in Washington and, as noted in a previous response, increases the likelihood that a utility would meet or exceed CETA’s incremental cost cap.

As noted in previous responses, restrictions on the use of “retained nonpower attributes” for CETA compliance likely create a disincentive for utilities to offer energy into wholesale electricity markets, including regionally centralized real-time and day-ahead markets. Separately, the CCA creates a compliance obligation and cost associated with market purchases unless those purchases are from a renewable or non-emitting specified source. Generally, as load and weather variations increase over time, utilities may have the need to rely on shorter-term market imports (likely to be unspecified) even as their overall resource portfolios are transitioning away from fossil fuels. The CCA therefore creates a potential disincentive for entities in Washington to participate in centralized wholesale electricity markets if doing so creates exposure under the CCA that cannot reasonably be avoided through utility action. A restriction on the ability to use "retained nonpower attributes" for CETA compliance would layer on additional incentives to avoid market participation to those already in place under the CCA.

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?

In the context of day-ahead markets, a restriction on "retained nonpower attributes" would be expected to negatively affect investor-owned utilities' market participation by incentivizing self-scheduling of CETA-compliant resources rather than bidding them into the market. This behavior would reduce market efficiency, increase the overall costs of electric sector decarbonization, and undermine market regionalization efforts.

Conclusion

PGP appreciates the opportunity to respond to the questions posed by the Commission as it reopens the present Docket to adopt "use" rules for investor-owned utilities. We look forward to participating in future discussions about the implementation of CETA.

Sincerely,

/s/ Mary Wiencke

Mary Wiencke
Executive Director
Public Generating Pool