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 April 9, 2024, Notice of Opportunity to File Written Comments on Draft Rules ("the Notice") regarding the "use" of electricity for compliance with the Clean Energy Transformation Act ("CETA"). In comments filed on November 28, 2023, and February 16, 2024, our organizations jointly outlined our concerns with the October 25, 2023, draft rules and proposed solutions. The three organizations also attended the February 22 workshop and reiterated to the Commissioners that the 2023 draft rules, if adopted, would dilute the intent of CETA by creating compliance loopholes that would permit utility resource shuffling and delay decarbonization.

We are encouraged to see that the Commission's April 9 draft rules on "use" address these loopholes through a straightforward compliance framework that reintroduces guardrails around utility use of nonpower attributes ("NPAs") for primary compliance and requires good faith utility portfolio modeling that achieves 80% renewable and nonemitting energy by 2030 and one-hundred percent by 2045.

In these comments, we touch on each of the three issues addressed in the draft rules: compliance with the 2030 greenhouse gas neutrality standard, portfolio planning requirements, and compliance with the 2045 one-hundred percent clean standard. Generally we support the Commission's proposed compliance framework which establishes temporal standards and load-based planning and compliance limitations. We also appreciate the Commission's recognition that emerging market constructs may create new opportunities for CETA compliance planning and reporting, and we conclude with a discussion offering our thoughts on how compliance may be best considered in an expanded market future.

II. COMMENTS

The following comments provide support for the Commission's latest approach to this issue, and we have provided a few minor language suggestions in the attached redlines.[1]

WAC 480-100-6XX Use of NPAs other than unbundled RECs to comply with the greenhouse gas neutral standard

The draft rule regarding compliance with the greenhouse gas neutral standard allows a utility to use NPAs toward its primary compliance demonstration within temporal limitations. By limiting the viability of NPAs to the month in which they were generated, these rules not only align with the existing tracking processes at the Western Renewable Energy Generation Information System ("WREGIS") but also limit this compliance tool to its originally-intended purpose—to provide utilities with operational flexibility considering the forthcoming launch of day-ahead markets in the region. We acknowledge that this versatility may be necessary, though as we have noted in the past this is speculative. But we support the Commission's proposed monthly compliance approach, wherein an NPA may only be used for compliance within the month it was generated, because it will 1) protect against uncontrolled resource shuffling across the full four-year compliance period, 2) encourage diligence and improved accuracy in utilities' planning for the resources they need, and 3) help the Commission and stakeholders understand a utility's *actual* progress toward achieving a portfolio that is 80% renewable and nonemitting.

[1] See Attachment A.

In practice, a utility could still generate renewable and nonemitting generation beyond its load requirements, but the draft rules' framework would only allow that utility to submit for primary compliance as many NPAs as would be required to serve its monthly load with renewable and nonemitting generation. There may still be resource shuffling within any given month, with NPAs associated with CETA-compliant generation masking the emitting resources serving a utility's load. But the monthly "expiration" of NPAs in terms of primary compliance viability protects against chronic long-term resource shuffling that would ultimately delay the achievement of state policy.

The monthly load limitation and NPA eligibility requirements outlined in the draft rules are within the Commission's regulatory authority to create, and they support the statute's intent. The monthly NPA eligibility requirement actually fits well with the existing data and contract reporting requirements – outlined in WAC 480-100-650(4) – which require "[t]otal monthly megawatt-hours of sales, purchases, and exchanges by counter party of electricity sales in which the electricity was sold by that utility in a wholesale market sale without its associated nonpower attributes,"[2] and total monthly megawatt-hours of transactions of bundled renewable or nonemitting electricity, to be reported to the Commission in the form of clean energy compliance reports every four years. We understand that the Commission's intent is not to reduce the four-year compliance period to a monthly compliance period but rather to set temporal limitations around aspects of compliance so as to protect against long-term, intentional resource shuffling.

Given the extensive history of this issue, we would like to address some of the concerns we anticipate will be raised by the investor-owned utilities ("IOUs"). We focus on three of the consistent concerns flagged in IOU comments over the years: rate impacts, market liquidity, and system sales.

We anticipate the utilities will again comment that limiting the viability of NPAs for primary compliance will increase customer rates. CETA plainly addresses this concern, stating:

> The transition to one hundred percent clean energy…*must happen faster than our current policies can deliver*. Absent significant and swift reductions in greenhouse gas emissions, climate change poses immediate significant threats to our economy, health, safety, and national security. The prices of clean energy technologies continue to fall, and are, in many cases, competitive or even cheaper than conventional energy sources.[3]

[2] WAC 480-100-650(4)(i).
[3] RCW 19.405.010(3) (emphasis added).

The Legislature goes further, proposing creative solutions to mitigate rate impacts, including granting Commission authority to conduct rate making that considers "performance and incentive-based regulation, multiyear rate plans, and other flexible regulatory mechanisms where appropriate to achieve fair, just, reasonable, and sufficient rates…."[4] As further stated in CETA, "[i]t is the intent of the Legislature to demonstrate progress towards making energy assistance funds available to low-income households"[5] such that the state can achieve a goal of meeting "ninety percent of the current energy assistance need by 2050."[6]

These tools and goals are either already implemented or in the process of implementation, and of course the utilities understand well that there is also an alternative compliance pathway that considers rate impacts.[7] In summary, the statutory language indicates that renewable and nonemitting resources are cost competitive, but even so, the transition to 100% clean must happen faster than pure economics would deliver. This will be more expensive than the status quo, and we support the above-mentioned methods for addressing impacts to customer rates.[8]

Utilities also warned in February comments that any limitation on the use of NPAs for primary compliance would reduce market liquidity. PacifiCorp noted that "if the Commission restricted how retained nonpower attributes could be used to comply with CETA…utilities would likely withhold CETA-compliant resources from participating in organized markets to the extent those resources would be needed to demonstrate compliance with CETA."[9] Puget Sound Energy ("PSE") also flagged this concern, noting "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…if that utility was expected to have sales that exceeded its allowance for alternative compliance."[10] The way these utilities characterize the risks of reduced market liquidity in the context of CETA compliance indicates a misalignment with the statute. CETA-compliant resources are by definition needed to demonstrate compliance with CETA, and to take issue with the inability to direct these resources elsewhere (while serving

[4] RCW 19.405.010(5).
[5] RCW 19.405.120(1)
[6] RCW 19.405.120(4)(a)(iii)
[7] RCW 19.405.060(3)(a) states, "An investor-owned utility must be considered to be in compliance with the standards under RCW 19.405.040(1) and 19.405.050(1) if, over the four-year compliance period, the average annual incremental cost of meeting the standards or the interim targets established under subsection (1) of this section equals a two percent increase of the investor-owned utility's weather-adjusted sales revenue to customers for electric operations above the previous year, as reported by the investor-owned utility in its most recent commission basis report."
[8] Additionally, utilities are required to address rate impacts to low-income customers. The Commission reiterated the importance of this requirement during PacifiCorp's 2023 general rate case, in which the Commission noted "...PacifiCorp has the responsibility to meet its clean energy targets while balancing customer affordability," and set a path for the company to address its shortcomings in this area. PacifiCorp's work will build on the recent efforts undertaken by Avista, Puget Sound Energy, Cascade Natural Gas, and Northwest Natural Gas in restructuring their bill assistance programs.
[9] Comments of PacifiCorp in UE-210183, Feb. 16, 2024, at 4.
[10] Comments of Puget Sound Energy in UE-210183, Feb. 16, 2024, at 5.

Washington customers with non-compliant resources) seems to miss the point. And to address PSE's comment, arguing that sales exceeding the allowance for alternative compliance should be eligible for primary compliance equates both forms of compliance—alternative and primary—thereby reducing all compliance to unbundled REC accounting.

The utilities have again pressed that the concept of retained NPAs, and presumably NPAs in general, does not align with the common utility practice of making system sales (i.e., a utility makes unspecified sales from a general pool of resources without tracking unit or generation type). PSE states that "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."[11] But the joint IOUs seemed more optimistic ahead of the May 2022 Adoption Hearing for the last iteration of these rules, proposing that "the Commission and the utilities could develop an accounting method wherein a certain number of RECs and non-power attributes are deemed retained NPAs based on the quantity of unspecified wholesale sales a utility has made in a given time period, such as a month or a year."[12] This not only indicates a willingness by utilities to resolve compliance concerns regarding system sales, but also reveals that the monthly NPA eligibility limitation outlined in the 2024 draft rules should be a digestible concept to the utilities.[13,14]

We must also consider the ways the 2024 draft rules resolve various concerns flagged by the utilities, including 1) disincluding the concept of retained NPAs and rather considering all NPAs that are not unbundled NPAs as indistinguishable from one another,[15] and 2) allowing CETA-compliant market transactions to count toward primary compliance even if the associated NPA is acquired at a later date.[16]

We appreciate that these utility concerns were addressed thoughtfully. The 2024 draft rules consider all NPAs (that are not unbundled) to represent one compliance tool, eliminating terms such as "retained" or "bundled" altogether. Yet, by setting a monthly NPA tracking requirement for compliance, the draft rules hold the utilities accountable for conducting integrated resource planning that produces portfolios supporting their loads with CETA-compliant generation. Moreover, while the 2024 draft rules allow delayed matching of NPAs with the associated

[11] Comments of Puget Sound Energy in UE-210183 (Feb. 16, 2024), at 2.
[12] Comments of Joint IOUs in UE-210183 (Feb. 9, 2022), at 3. *Available at* 210183-Joint-Utility-CLtr-Comments-(02-09-2022).pdf.
[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] Avista claims to already plan compliance considering a monthly load limitation. See Avista's Feb. 16, 2024, comments in UE-210183 at 2.
[15] Per their Feb. 16, 2024, comments in this docket, Puget Sound Energy "does not support returning to any version of rules that utilize the concept of retained nonpower attributes" (pg. 1). *Available at* UE-210183-PSE-Comments-(02-16-24) (1).pdf.
[16] Avista flagged this concern in their Feb. 16, 2024, comments (pg. 3). *Available at* 210183-AVA-Cmt-2-16-24.pdf.

market-acquired generation, the rules also set contractual requirements that protect against the double counting of these NPAs. We have, however, included redlines in Exhibit A that address the electricity component of double counting potential, as we see it especially relevant for transactions made within jurisdictions with decarbonization policies that do not use attribute-based accounting.[17]

WAC 480-100-6XX Portfolio planning requirements to comply with the greenhouse gas neutral standard

The 2024 draft rule on portfolio planning for compliance with RCW 19.405.040(1) requires a utility to demonstrate how its resource acquisition, retirement, and operation strategies will achieve a portfolio that serves retail electric customers with 80% renewable and nonemitting resources by 2030. Importantly, that demonstration begins with utility preparation of an integrated resource plan ("IRP") – a long-term planning document that outlines the utility's strategy for meeting future electricity demand considering a variety of factors including costs, reliability, and state policy.

We support subsection (2) of this draft rule, which requires a utility to conduct "an hourly analysis of the expected renewable or nonemitting output of the preferred resource portfolio, and how this is intended to meet its primary compliance obligation under RCW 19.405.404(1)(a)."[18] We are surprised to see utility pushback on this language, considering Washington IRP requirements, as outlined in WAC 480-100-620, already require resource modeling to be informed by hourly data. Per WAC 480-100-620(11), a utility's portfolio analysis and preferred portfolio must be able to:

> (b) Serve utility load, based on hourly data, with the output of the utility's owned resources, market purchases, and power purchase agreements, net of any off-system sales of such resource….[19]

Further, WAC 480-100-650(4) on data and contract reporting requirements for clean energy compliance reports which must be submitted to the Commission by July 1, 2026, and at least

[17] The Oregon Public Utility Commission in Order 24-002 found that Oregon's 100% clean electricity law, HB 2021, reflects "legislative direction that the presence or absence of RECs should not be considered in determining emissions for HB 2021 compliance." Order 24-002 at 11. Although the Oregon Commission went on to explain its view that HB 2021 reporting without attribute-based accounting does not "undermine the integrity of RECs associated with the reported electricity," *id.* at 15, the Center for Resource Solutions's Green-E program has updated its Renewable Energy Standard for Canada and the United States to note that "the emissions attributes of renewable energy used for HB 2021 compliance will likely be claimed for Oregon customers and there may be disaggregation of the REC or double counting of the emissions attribute if the RECs associated with generation reported to DEQ are sold to voluntary renewable energy customers or used for other programs in other states." *See* Appendix A.10, *available at* https://www.green-e.org/docs/energy/Green-e%20Standard%20US.pdf.

[18] Draft WAC 480-100-XXX(2) regarding Portfolio planning requirements to comply with the greenhouse gas neutral standard.

[19] WAC 480-100-620(11)(b).

every four years thereafter, requires utilities to provide an analysis and supporting data in an hourly format for:

> (i) Total Washington retail sales.
> (ii) Retail sales for customers participating in a voluntary renewable energy purchase program in alignment with RCW 19.405.020 (36)(b).
> (iii) Total electricity production for all renewable and nonemitting generation owned, contracted, or controlled by the utility.
> (iv) Generation from qualifying facilities as described in RCW 19.405.020 (36)(a).
> (v) All electricity sold or transferred for all bundled sales of electricity from renewable and nonemitting sources. For the purposes of this subsection, bundled electricity is electricity that is sold with all its nonpower attributes in the same transaction.
> (vi) All electricity sales in which the electricity was sold by that utility in a wholesale market sale without its associated nonpower attributes.[20]

We have seen utility resistance to the hourly metric throughout the history of this docket, and Commission Staff has consistently prioritized this requirement, both in data reporting and portfolio planning requirements. In Staff's response to stakeholder feedback on the CR-102 language implementing markets rules, Staff responded to the Alliance of Western Energy Consumers' ("AWEC") concerns regarding the time interval requirement for planning: "Staff observes that utilities have for more than 40 years consistently used hourly analysis to present their demonstration of prudence, *i.e.*, its lower reasonable cost approach to providing continuous and instantaneous supply of power to maintain electric service."[21]

Because utilities' IRPs must be based on hourly analyses, and because the clean energy compliance report requirements require hourly data reporting, we feel it would be the most natural progression for the CETA compliance planning requirements to be based on hourly analyses. And in fitting with the load limitation on compliance with RCW 19.405.040(1), we support that these hourly analyses should be limited to utility monthly load requirements.

WAC 480-100-6XX Use of NPAs to comply with the 100 percent renewable or nonemitting standard.

The draft rule defining compliance with RCW 19.405.050(1) again sets a monthly load-based cap on the amount of renewable or nonemitting energy a utility can report in a compliance demonstration. We support this approach, as CETA mandates the decarbonization of generation serving Washington retail electric customers, so generation beyond load need not be a

[20] WAC 480-100-650(4).
[21] UE-210183 Summary Comments on CR-102 Market Rules (Apr. 22, 2022). *Available at* UE-210183 Summary Comments on CR-102 Market Rules.pdf.

compliance consideration. But the key element differentiating the 2045 standard from the 2030 standard is that the energy a utility claims for compliance must not be used "for any purpose other than supplying electricity to [the utility's] Washington retail electric customers."[22] A hard stop on resource shuffling in 2045 is essential to upholding the plain language of RCW 19.405.050(1) requiring that "all sales of electricity to Washington retail electric customers" be supplied by renewable and nonemitting generation.[23]

We also appreciate the thoughtful proposal for compliance tracking that accommodates utility participation in an organized market – both in the current bilateral context and in a future "clean electricity market" scenario. For bilateral transactions, we are confident that the draft rules provide adequate flexibility for utilities to obtain electricity and the associated NPAs, in a single transaction or with the appropriate matching of NPA eligibility, such that CETA compliance considerations will not hinder strong market participation.

With respect to future market constructs, we anticipate that NPAs as a compliance tool may lose relevance, or at least that there may be more readily available and effective means of tracking utility compliance. Ongoing discussions at the Southwest Power Pool ("SPP") regarding the future Markets+ day-ahead offering, and discussions at the California Independent System Operator ("CAISO") regarding the forthcoming extended day-ahead market ("EDAM") do not consider any form of NPAs besides the underlying resource characteristics that permit a resource to be deemed deliverable to a carbon-pricing zone. Currently, the tracking and reporting requirements under consideration in these markets discussions are emissions-focused—average entity greenhouse gas ("GHG") emissions, residual market mix emissions rate, regional average mix emissions rate, etc. Some type of monthly report should reveal entity production megawatts and emissions (with a distinction for those allocated to a particular zone), megawatt imports from and exports to the market footprint, and other emissions data. A lot can be gleaned from this type of report, including the emissions intensity of a utility's market imports and exports. And while there will always be some level of leakage that market operators should work to minimize, the efficiencies of a strong regional market overwhelmingly compensate for the risk of leakage.

Assuming SPP Markets+ and/or CAISO EDAM, once live, meet the Commission's proposed definition for "clean electricity market"—"an organized wholesale electricity market that provides for the physical delivery of renewable and nonemitting electricity"[24]—the monthly reports documenting utility market participation will likely be the best representation of the utility's compliance with the 100% clean electricity mandate. Perhaps there will be enough transparency into the types of resources being dispatched to serve a utility's load from the market

[22] Draft WAC 480-100-6XX(3)(b), regarding the Use of NPAs to comply with the 100 percent renewable or nonemitting standard.
[23] RCW 19.405.050(1).
[24] Draft WAC 480-100-6XX(6), regarding the Use of NPAs to comply with the 100 percent renewable or nonemitting standard.

mix, in which case the compliance determination could be fairly straightforward. But if the emissions rate data released by the market operator(s) turns out to be the most illustrative of a utility's market-acquired electricity, then perhaps the Washington Department of Ecology can aid in setting an emissions threshold which qualifies as meeting the CETA standard.

Clearly, there is quite a bit of guessing at this point when it comes to future market scenarios. Washington has announced plans to link its cap-and-invest program with the programs in California and Quebec. There will be many more discussions about how Washington state policy must be considered in that transition, and for that reason we recommend a rule reopener upon finalization of the program linkage, which is projected to occur sometime in 2025:[25]

> (x) The [commission] shall commence a review of these rules no later than September 1, 2030, and, if determined to be necessary, recommend revisions to achieve the policy objectives set forth in chapter 19.405 RCW.

[25] Cap-and-invest linkage, State of Washington Dept. of Ecology. *Available at* https://ecology.wa.gov/air-climate/climate-commitment-act/cap-and-invest/linkage.

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 appreciate the Commission's consideration of our recent feedback, and we look forward to continued engagement.

Sincerely,

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APPENDIX A

WAC 480-100-6XX Use of NPAs other than unbundled RECs to comply with the greenhouse gas neutral standard.

(1) A utility may use an NPA other than an unbundled NPA to comply with the requirements of RCW 19.405.040 (1)(a) or to demonstrate performance compared to an interim target established under RCW 19.405.060(1) only if the utility complies with the requirements of this section. The requirements of this section apply to all renewable energy credits and nonpower attributes of nonemitting resources that are retired to meet primary compliance that cannot be met through the alternative compliance options under RCW 19.405.040(1)(b).
(2) WREGIS registration. If WREGIS registers RECs for a resource that falls under the definition of nonemitting electric generation in RCW 19.405.020, a utility must verify, track, and retire those RECs in the same manner as RECs from renewable resources.
(3) The amount of renewable or nonemitting energy that a utility ~~retires for~~ counts towards primary compliance in each month may not exceed the retail load served within the utility's Washington service territory within the same month.
(4) NPAs submitted for primary compliance shall be attributed to the month and year in which the NPA was generated.
(5) Unless the NPA complies with subsection (6) of this section, the utility must acquire the NPA and the electricity associated with the NPA in a single transaction through ownership or control of the generating facility or through a contract for purchase or exchange.
(6) An NPA that is associated with electricity purchased as a specified renewable or nonemitting resource in an organized market but acquired in a separate transaction than the associated electricity is eligible to count towards primary compliance if:
(a) the NPA is generated during the same month during which the utility purchased the associated electricity; and
(b) the NPA was generated by the generator or balancing authority that the utility claims to be purchasing from. If no specific selling party is associated with the purchase, an NPA that was generated by a vendor supplying specified renewable or non-emitting electricity the utility purchases during that month is eligible.
(7) The electricity associated with the NPA must comply with WAC 480-100-650 (1)(d).
(8) A utility may retire an NPA for primary compliance only if the utility demonstrates that there is no double counting of that NPA or the associated clean electricity within Washington or programs in other jurisdictions. At a minimum, this requires that any contract in which the utility sells electricity in a wholesale market sale without its associated NPA must include terms stating the seller is not transferring any of the NPAs and the buyer may not represent in any form that that the electricity has any NPAs associated with it and that the buyer must include such provision in any sale of the electricity in an subsequent sale it makes.

WAC 480-100-6XX Portfolio planning requirements to comply with the greenhouse gas neutral standard.

(1) When submitting any plan required by statute to the commission, a utility must demonstrate how its resource acquisition, resource retirement, and continued investment in and operation of existing resources meet its primary compliance obligation under RCW 19.405.040(1)(a), or other minimum percentage or retail electric load established by the commission through an approved interim target, with renewable or nonemitting electricity in each compliance period beginning January 1, 2030.
(2) Each utility required under RCW 19.280.040(1) and WAC 480-100-620 to prepare an integrated resource plan or an integrated system plan under [1589] must demonstrate compliance with the requirement in subsection (1) of this section through, at a minimum, an hourly analysis of the expected renewable or nonemitting output of the preferred resource portfolio, and how this is intended to meet its primary compliance obligation under RCW 19.405.040(1)(a).~~.~~
(3) In the hourly analysis under subsection (2), the amount of renewable or nonemitting energy that a utility designates for primary compliance in each hour may not exceed the load served by that utility within the same hour.

WAC 480-100-6XX Use of NPAs~~?~~ to comply with the 100 percent renewable or nonemitting standard.

(1) The amount of renewable or nonemitting energy that a utility counts towards compliance with 19.405.050(1) in each month may not exceed the retail load served by that utility within the same month.
(2) WREGIS registration. If WREGIS registers and tracks~~[?]~~ RECs for a resource that meets the definition of nonemitting electric generation in RCW 19.405.020, a utility must verify, track, and retire those RECs in the same manner as RECs generated/created/tracked? from renewable resources.
(3) Except as provided in subsection (4) or (5) of this section, a utility may not retire an NPA to comply with the requirements of RCW 19.405.050(1) unless:
(a) The utility acquired the NPA and the electricity associated with the NPA 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 its Washington retail electric customers.
(4) An NPA that is associated with electricity purchased as specified renewable or nonemitting energy in an organized market but is acquired in a separate transaction than the associated electricity is eligible if:
(a) the NPA is generated during the same month during which the utility purchased the associated electricity; and

(b) the NPA was generated by the generator or balancing authority that the utility claims to be purchasing from. If no specific selling party is associated with the purchase, an NPA that was generated by a vendor supplying specified renewable or nonemitting energy the utility purchases from during that month is eligible.
(5) A utility may use any NPA to comply with the requirements of RCW 19.405.050(1) if:
(a) The utility acquired the NPA through participation in a clean electricity market;
(b) The NPA is associated with electricity acquired through participation in a clean electricity market; or
(c) The utility obtained all electricity supplied to its retail customers from clean electricity markets.
(6) 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.