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May 10, 2024

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/ Nannette Moller
Nannette Moller

Enclosure

BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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 COMMENTS OF THE ALLIANCE OF WESTERN ENERGY CONSUMERS

I. INTRODUCTION

1 Pursuant to the Washington Utilities and Transportation Commission's ("Commission") Notice of Opportunity to Provide Written Comments on Draft Rules ("Notice"), the Alliance of Western Energy Consumers ("AWEC") files these Comments. AWEC has significant concerns with the latest version of the Commission's draft rules governing the "use" of electricity for compliance with the Clean Energy Transformation Act ("CETA") because the draft rules violate CETA's express provisions, which is likely to result in increased costs for customers. The Commission should revert back to its previous draft rules, which mirrored those promulgated by the Department of Commerce.

2 The draft rules specify that the "amount of renewable or nonemitting energy that a utility retires for primary compliance in each month may not exceed the retail load served within the utility's Washington service territory within the same month."[1] They also specify that non-

[1] Draft WAC 480-100-6XX(3)

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power attributes ("NPA") "submitted for primary compliance shall be attributed to the month and year in which the NPA was generated."[2] Such requirements are directly contrary to RCW 19.405.040(1)(a), which establishes four-year compliance periods, and make clear that a utility's compliance with the greenhouse gas neutrality standard applies over this "multiyear compliance period." As the Washington Supreme Court has "often held in the past, the power of an administrative agency to promulgate rules does not include the power to legislate …. Administrative rules may not amend or change enactments of the legislature."[3] By requiring monthly matching of NPAs with electricity delivered to load, the draft rules effectively nullify CETA's multi-year compliance periods in favor of monthly compliance periods.

3 Furthermore, the practical consequence of the draft rules' monthly matching requirement is likely to be significantly higher costs for customers. A four-year compliance period smooths out variations across years – especially low and high hydro years – and allows utilities to "borrow" from good years to pay for bad years. As is abundantly clear at this point, utilities must first and foremost ensure reliability. If there is insufficient renewable and non-emitting generation, utilities will rely primarily on natural gas to ensure the lights stay on. Four-year compliance periods mitigate the cost impact of low hydro years because utilities will be able to plan their compliance to meet an average peak over a multi-year period. By contrast, requiring utilities to match NPAs on a monthly basis will magnify discrepancies, not just between years but between months. Intra-year differences between the output of renewable and non-emitting generation are even greater than inter-year differences. In shoulder months, utilities are likely to

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2 *Id.* 480-100-6XX(4).

3 *Fahn v. Cowlitz Cty*. 93 Wash.2d 368, 383 (1980).

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have surplus non-emitting generation while they are likely to be short on such generation in summer and winter months. The result will be that utilities will need to plan their systems to ensure sufficient renewable and non-emitting generation for peak months. This will in turn ensure even larger surpluses of non-emitting generation in shoulder months, for which customers will receive no compensation with respect to CETA compliance, and likely very little monetary compensation in the market given the abundance of low-cost generation at that time.

4 Customers are already seeing the impacts of higher costs to comply with CETA, the Climate Commitment Act ("CCA"), and other requirements.[4] While climate change is an urgent and critical concern, the State's role in combatting it is necessarily limited and pushing solutions too quickly is likely to result a backlash with a worse outcome than a reasoned and measured approach. This is already evident through the pending referendum to repeal the CCA. There is simply no reason to require a more restrictive compliance framework than the four-year periods CETA mandates. It is unlawful, it will not further CETA's objectives, and it will be unnecessarily costly for customers. The Commission should finalize the previous version of the draft rules it issued for public comment, which mirror the Department of Commerce's rules already in effect.

[4] For example, in addition to the substantial rate increases from PSE, Avista's and PacifiCorp's rate cases filed in 2022 or later to recover increased costs generally, both CETA and the CCA have driven additional costs. PSE's natural gas customers have seen three rate increases related to CCA compliance totaling more than $80 million for net compliance costs beginning January 1, 2023 (see Dockets UG-23470, UG-230756 and UG-230968); a major driver in PSE's general rate case is CETA compliance, in which PSE is seeking an overall 6.74% and 8.48% increase in electric rates for 2025 and 2026, respectively while seeking policy changes resulting in additional financial support from customers to PSE above and beyond typical rate recovery that it justifies as necessary to meet CETA and CCA requirements (Dockets UE-240004/UG-240005); PSE has previously sought cost recovery for a total of $158.5 million related to CCA impacts on net power costs, but to date these costs have not been recovered by customers (Dockets UE-220066/UG-220067 and UE-230805). Avista's natural gas customers have seen a $10.3 million, or 3.41%, increase in rates related to CCA compliance (Docket UG-231044) and Avista is requesting $41.6 million in incremental CETA costs in its currently pending general rate case as well as four full-time equivalent employee positions needed for CCA compliance (Dockets UE-240006/UG-240007).

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Dated this 10th day of May 2024.

Respectfully submitted,

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