UE-210183

Puget Sound Energy
P.O. Box 97034
Bellevue, WA 98009-9734
pse.com

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

Re: Docket UE-210183 – Comments of Puget Sound Energy on Draft Rules Interpreting "Use" under RCW 19.405.040(1)(a)

Dear Director Killip,

Puget Sound Energy (PSE) submits the following comments in accordance with the Washington Utilities and Transportation Commission's (Commission) Notice of Opportunity to File Written Comments on Draft Rules (Notice) issued in this docket on April 9, 2024. The Notice and the draft rules attached thereto relate to the Commission's ongoing rulemaking proceeding to adopt rules interpreting "use" as set forth in the Clean Energy Transformation Act (CETA).

As set forth below, key aspects of the compliance and planning requirements in the draft rules conflict with CETA's statutory provisions and will result in unnecessary costs for customers of investor-owned utilities. The draft rules relating to markets also jeopardize utility participation in organized electricity markets and thus warrant further refinement.

To assist the Commission in its continued examination of these issues, PSE identifies below areas of agreement, discussion of suggested rule changes, and includes as Attachment A to these comments proposed redline changes to the draft rules. It is worth noting that the redline changes provided utilize content from the Department of Commerce rules in WAC 194-40 to provide for consistency across agencies in CETA implementation where appropriate. This consistency in determining compliance is important because investor-owned utilities must provide CETA compliance reports to both the Department of Commerce (WAC 194-40-040) and the Commission.[1] PSE looks forward to further collaboration with the Commission prior to rule adoption.

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[1] *See* RCW 19.405.100(4). This requirement stems from the general authority granted to the Department of Commerce under CETA to establish reporting requirements for electric utilities (investor owned and consumer owned) to demonstrate compliance.

Comments

I. Areas of Agreement

PSE identified two broad areas of agreement with the assumed intent of the draft rules. First, utilities must use renewable and nonemitting energy for CETA compliance only when the utility owns and retains the associated nonpower attributes. There should be no double counting of the nonpower attributes associated with any given unit of electricity used for CETA compliance. PSE is working diligently, alongside other Washington utilities, to ensure that current emerging market frameworks are set up in a manner that enables compliance with CETA and upholds this principle while ensuring sufficient documentation and attribution.

Second, utilities must make reasonable progress toward the 2030 and 2045 CETA targets. This seems obvious, but reasonable progress must be considered in the context of today's challenges. Utilities are facing considerable headwinds, such as faster than anticipated electric load growth, multiple years of lower than average hydropower generation, and lack of clean options to meet rapidly growing capacity needs. Furthermore, the pace of the clean energy transition must ensure equitable and affordable access to clean energy for all customers. A strong, but flexible foundation in the Commission's CETA use rules will help support a manageable transition. Rules that are complex, contain areas of uncertainty or undue risk, or discourage or inhibit utility participation in organized markets will only serve to create increased challenges to achieving the 2030 and 2045 targets while maintaining reliability and affordability.

Included in Attachment A are PSE's proposed changes to the draft rules, which ensure that the above principles are met in a manner that works with existing legal frameworks and current and emerging electricity market systems.

II. The proposal to limit clean energy eligible for compliance with RCW 19.405.040(1) to a utility's monthly retail load is not supported by law and will unnecessarily increase costs for customers

The draft rules include a proposed monthly compliance requirement for investor-owned utilities that conflicts with relevant statutory provisions and, if adopted, will result in substantial unnecessary costs and lost value for customers of investor-owned utilities.[2] As discussed below, the Commission should instead adopt rules that maintain the integrity of the multiyear compliance period the Legislature explicitly enumerated in statute.

CETA mandates that electric utilities take action to achieve the 2030 goal of a carbon neutral electricity system as follows:

> To achieve compliance with this standard, an electric utility must: . . . (ii) *use* electricity from renewable resources and nonemitting electric generation in an

[2] The draft rules currently require that "(3) 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."

> amount equal to one hundred percent of the utility's retail electric loads *over each multiyear compliance period*.[3]

CETA imposes a similar requirement starting in 2045.[4] Through December 31, 2044, CETA permits electric utilities to demonstrate compliance through the exercise of alternative compliance options for up to 20 percent of their compliance obligation.[5]

A key component of calculating a utility's compliance obligations for all aspects of CETA thus requires calculating a utility's "retail electric load." CETA defines this term as "the amount of megawatt-hours [MWh] of electricity delivered *in a given calendar year* by an electric utility to its Washington retail electric customers . . ."[6]

The combined effect of these key statutory provisions is to require electric utilities to use electricity from renewable or nonemitting resources in an amount equal to the sum of the megawatt-hours delivered annually, subject to any exercise of alternative compliance options, as demonstrated over an entire multiyear compliance period (i.e., four years). This flexibility is central to the CETA compliance framework that the Legislature explicitly considered and adopted.[7] However, the draft rules eliminate this critical statutory flexibility.

Of particular concern is the proposal in the draft rules to cap CETA-eligible energy generated in any month at the utility's retail load, rendering any energy generated in excess of a utility's monthly retail load not eligible for what has been termed "primary" compliance (i.e., RCW 19.405.040(1)(a)). This proposal directly conflicts with the statutory compliance framework described above, which centers around an annual—not monthly—MWh amount for "retail electric load," and a clear multiyear compliance framework that accounts for resource and weather variability over the compliance period.

In integrated planning processes, utilities currently plan for average conditions. However, actual conditions in any given year can vary considerably. If CETA compliance with RCW 19.405.040(1) and RCW 19.405.050(1) is determined based on a monthly matching of load to resources, as is proposed in the draft rules, utilities will have to plan to the worst-case scenario in every future to ensure CETA compliance. The figure below illustrates the potential impacts of the monthly achievement of clean energy capped at monthly demand, as proposed in the draft rules.

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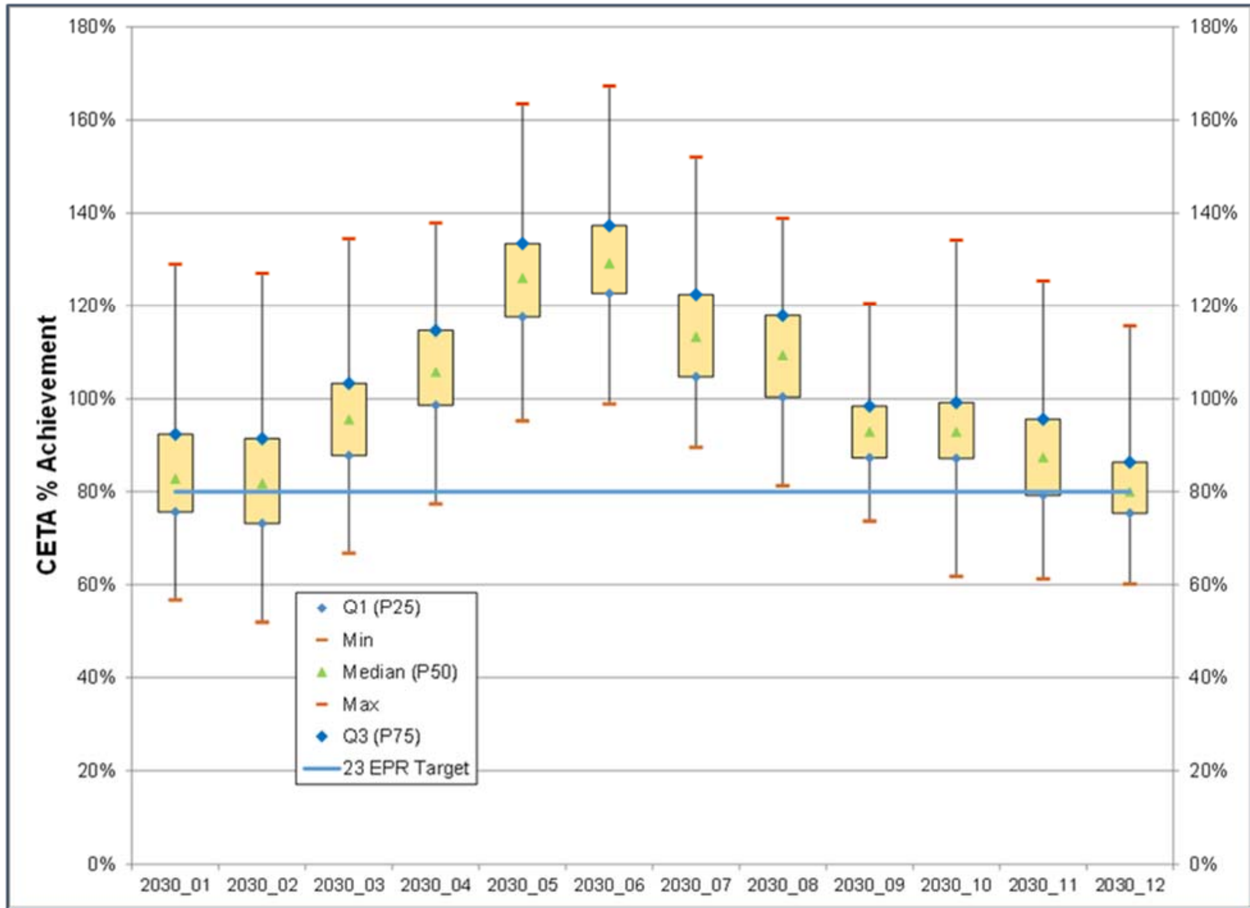
[3] *See* RCW 19.405.04(1)(a) (emphasis added).

[4] *See* RCW 19.405.050(1) ("By January 1, 2045, and each year thereafter, each electric utility must demonstrate its compliance with this standard using a combination of nonemitting electric generation and electricity from renewable resources.").

[5] *See* RCW 19.405.040(1)(b).

[6] *See* RCW 19.405.020(36) (emphasis added). The definition of "retail electric load" also includes reductions not relevant here.

[7] *See* Second Engrossed Substitute Senate Bill 5116 of 2019, Sec. 1(7) ("[i]t is the intent of the legislature to provide flexible tools to address the variability of hydropower for compliance under this act.").



Each box and whisker plot in the figure above represents the 310 draws of stochastics data from PSE's 2023 Electric Progress Report Preferred Portfolio. In conducting this analysis, PSE assumed that new resources included in the Electric Progress Report's Preferred Portfolio are indeed added to the system. This figure illustrates that approximately 50 percent of the data points for CETA achievement are above the 80 percent target for most months except for January, February, November, and December. The interquartile ranges (i.e., the box lengths) are more dispersed in January, February, July, and August and less dispersed in September and October, meaning that in a significant number of possible futures, PSE's preferred portfolio will not result in CETA compliance if the monthly standard contemplated is imposed. As the figure shows, minimum CETA achievement—as calculated pursuant to the draft rules—is only above the 80 percent target for May, June, July, and August.

PSE conducted analysis to determine the additional resources and associated costs that would be needed to ensure compliance with the monthly compliance standard proposed in the draft rules. This analysis determined that in order to meet the 80 percent clean energy CETA target in 2030 under the draft rule proposal, PSE would need to acquire approximately 1,800 MW of additional wind generation (incremental to the 2023 Electric Progress Report Preferred Portfolio), leading to an estimated incremental cost in 2030 of more than $300 million above the Electric Progress Report Preferred Portfolio cost. This is an increase of approximately 20 percent

for just one year (2030) and these annual costs would continue to increase for each year beyond 2030 in order to progress towards the 2045 CETA targets. These cost estimates do not include potential impacts on market transactions and pricing, discussed below, that could further increase costs of complying with the draft rules.

Due to cost, feasibility, and inconsistency with the statutory compliance framework of multiyear compliance periods, PSE strongly recommends removing this monthly requirement in the rules. The redline changes proposed in Attachment A reflect this recommendation.

III. The draft rules do not support PSE's participation in organized markets for the benefit of customers

The draft rules also raise concerns relating to utility participation in organized markets. Most importantly, limiting a utility's ability to count clean energy generation in a given month to that utility's load disincentivizes utilities from making their clean resources available to the market when they are needed.

Organized markets dispatch resources on a least-cost basis across a broad footprint. This allows greater penetrations of intermittent renewable generation to be placed into the market in some intervals, while dispatchable, and potentially emitting generation is reduced, therefore minimizing emissions. If excess monthly renewable and nonemitting generation cannot be used for compliance with CETA, a utility is discouraged from making that excess intermittent renewable generation available to the market or may choose to self-schedule the output of the resource. This outcome results in reduced market benefits for Washington utility customers and the broader region.

Additionally, the draft rules fail to accommodate the market structures in place today and those currently being contemplated in emerging markets. Stakeholders in CAISO's Extended Day-Ahead Market Greenhouse Gas (GHG) Coordination Working Group and the Southwest Power Pool's Markets+ GHG Task Force are both working toward developing accounting and attribution frameworks that allow utilities to claim clean resources, in which their customers have invested on a long-term basis, that are dispatched in the market. These frameworks ensure that customers get the full value of their investment, while allowing the underlying economic dispatch to occur in a least-cost manner. PSE suggests that the Commission consider language that recognizes customer investments in clean resources and is consistent with this accounting framework:

> *"A utility may use renewable and nonemitting electric generation for compliance with 19.405.040(1) or 19.405.050(1) if it is acquired in an organized electricity market and that organized electricity market provides for the association of RECs or nonpower attributes with the attribution of specified renewable or nonemitting electric generation claimed by the utility."*

With respect to the transfer of attributes, organized markets do not contemplate the transfer of RECs or nonpower attributes to entities that receive specified source attribution of electricity in an organized wholesale market. Additional issues with the current draft rules are

that not all CETA eligible renewable generation available in the marketplace is currently generating RECs (e.g., certain hydropower) and unlike a REC, a nonpower attribute is not a demonstrable instrument separate from its megawatt-hour production.

The draft rules refer to nonpower attributes being eligible for compliance if they are acquired in a "separate transaction" for electricity purchased in an organized market. But this proposed requirement raises more questions than answers. What does such a transaction look like in practical terms? The word "transaction" implies that financial consideration is offered for the environmental attributes, which should not be the case if the electricity was purchased as a specified source, conveying its resource attributes in an organized market in which the resource is identified and the seller is receiving a GHG shadow price payment for its emissions characteristics. The financial compliance value of a GHG allowance is not the same as a REC, in fact, it is significantly more. Nonetheless, there is a recognition by the market that a specified resource is receiving compensation for its environmental characteristics.

PSE recommends that the Commission's rules recognize the work that is being done in the organized market designs with respect to clean energy accounting frameworks that allow utilities to claim their owned and forward contracted resources as well as clean surplus they may allocate in the market. The rules should consider the potential for organized markets to provide for the association of RECs or nonpower attributes with specified source attributions. Such a framework does not preclude a "separate transaction" or separate arrangement between sellers and buyers in an organized market, but also does not prescribe financial consideration to accompany that arrangement.

With respect to double counting, there continues to be a significant lack of alignment among states and jurisdictions on how clean energy is accounted for with respect to use, instruments and temporal characteristics. Furthermore, there is inconsistency on what constitutes double counting, or even whether double counting is contemplated at all in some jurisdictions. These questions may be unanswerable by any single state or jurisdiction—particularly with respect to purchases, or imports from entities outside Washington's jurisdiction due to its implications for how other states can use their resources—and may only be resolved through regional agency collaboration.

PSE does see an opportunity for the Commission to build robust protections against double counting in both the bilateral and organized market with respect to wholesale sales by a Washington entity with a modification to its proposed rules:

> *"This requires that any ~~contract in which the utility sells electricity in a~~ wholesale market sale by the utility made without its associated RECs or nonpower attributes ~~NPA~~ must include terms stating it is a sale of unspecified electricity and that the seller is not transferring any of the RECs or nonpower attributes."*

This change clarifies that all wholesale sales by Washington utilities under the jurisdiction of the Commission's rules—those with a contract as well as those in an organized market—may not

represent conveyance of RECs or nonpower attributes for purposes of CETA compliance when selling electricity for which the utility retains the REC or nonpower attributes.

IV. The proposal to require utilities to plan for CETA-compliant portfolios in every hour is not feasible with current modeling software and would result in unrealistic planning scenarios that discount technologies like battery storage

The Commission should also revise the proposed portfolio planning requirements in the draft rules. In this area, the draft rules state that utilities must "at a minimum, [include in their plans] 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)." The draft rules then specify that "in the hourly analysis ... 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."

PSE agrees that utilities should be planning to achieve CETA's requirements in 2030 and 2045, and that the utility planning processes should include an "hourly analysis" to inform portfolio development. However, the rules should provide utilities with a reasonable degree of flexibility as to the specifics of how this analysis is performed, particularly in light of existing modeling software constraints and capabilities. In their current form, the draft rules include proposed requirements that would result in technically burdensome and resource-intensive hourly modeling requirements that are not feasible with existing modeling software capabilities.

More significantly, the results of the hourly modeling requirement envisioned in the draft rules—even if feasible—would treat any renewable or nonemitting energy generated in excess of hourly loads as not eligible for CETA compliance for planning purposes. Such a result is undesirable. In reality, energy can be stored across hours using existing and emerging battery storage technologies, especially during or near peak periods when energy is typically most expensive. An hourly modeling constraint significantly devalues storage resources in integrated planning model results.

Additionally, requiring utilities to plan in a manner that is inconsistent with the actual CETA compliance obligation will result in an identification of substantial CETA resource needs during specific, limited hours. The resulting plan would then direct the utility to acquire additional resources that are not needed for CETA compliance. If adopted, this requirement would ultimately result in further separation between planning and operations. In the case of PSE, this would result in a disconnect between an approved utility plan and utility needs for operation and compliance. This leaves a lack of clarity for interested parties and the utility regarding which requirements should be driving utility procurement activities.

At this time, PSE recommends instead that the Commission require at least one scenario in each utility integrated planning process that looks at a monthly CETA constraint under adverse risk conditions. This will enable utilities, interested parties and the Commission to evaluate the resource and system trade-offs involved in this monthly approach for consideration

in the planning process and for future iterations of these rules. The attached redline recommendations offer a suggestion for this approach.

* * * *

Thank you for the opportunity to submit these comments. PSE looks forward to continuing collaborative discussions with the Commission and other interested parties to refine the draft rules.

Please contact Brett Rendina, Regulatory Affairs Initiatives Manager, at (360) 294-9558 or Brett.Rendina@pse.com for additional information about this filing. If you have any other questions, please contact me at (425) 462-3051.

Sincerely,

/s/ Wendy Gerlitz

Wendy Gerlitz
Director, Regulatory Policy
Puget Sound Energy
PO Box 97034, BEL10W
Bellevue, WA 98009-9734
425-462-3051
Wendy.Gerlitz@pse.com

cc: Tad O'Neill, Public Counsel

Attachment: Attachment A: PSE Redline Draft Rules (version 031924)