

May 10, 2024

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

Re: Relating to Electricity Markets and Compliance with the Clean Energy Transformation Act "Use"
Rules, Docket UE-210183

Dear Mr. Killip,

The Western Power Trading Forum¹ (WPTF) appreciates the opportunity to provide input to the Washington Utilities and Transportation Commission (the Commission) on the draft "use" rules under RCW 19.405.040(1)(a) of the Clean Energy Transformation Act (CETA).

Based on our review, WPTF is not clear on whether the draft rules eliminate and replace the temporal flexibility provided by CETA's four-year compliance period with a monthly period, or whether the language simply needs to be clarified. By establishing multi-year compliance periods prior to 2045, the Washington Legislature clearly intended to provide utilities temporal flexibility to manage variability in the supply of renewable and non-emitting generation in meeting the CETA targets over a four-year period. However, the language in paragraph 4 of the draft rules appears to limit the quantity of renewable and non-emitting electricity generation that can be used toward compliance with the primary obligation to the utility's retail load in any given month. If this is the case, then the staff proposal would effectively reduce the temporal flexibility of the CETA for the pre-2045 period from four years to one month! This approach would be fundamentally incompatible with the statutory intent of the CETA² and therefore beyond the authority of the Commission to adopt. Additionally, such an approach would create different compliance requirements for investor-owned utilities and consumer-owned utilities, which is also not supported by the statute. For this reason, WPTF is optimistic that our interpretation of paragraph 4 is incorrect and that the language is simply unclear.

A second issue of concern pertains to the provisions around double-counting of non-power attributes. WPTF supports a prohibition on double counting of electricity and NPAs for primary compliance. However, as drafted the rules suggest that electricity and NPAs from a non-emitting resource located within California or Washington cannot be used for compliance because those resources are subject to the cap-and-trade programs of those states. Our proposed edits to this language clarify that there is no double-counting when the resource is subject to the cap-and-trade program and the electricity and NPAs are used for CETA compliance.

¹ WPTF is a diverse organization of over 90 members comprising power marketers, generators, investment banks, public utilities and energy service providers, whose common interest is the development of competitive electricity markets in the West.

² The Senate's legislative history report for SB5116 explicitly notes the intention to move from a 1 year compliance period for the GHG neutral standard to a multi-year period. See page 11 at <https://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bill%20Reports/Senate/5116-S2.E%20SBR%20HA%2019.pdf?q=20200225110742>.

WPTF supports the inclusion of language to address the use of electricity and NPAs by resources located within organized markets. However, as drafted, these provisions do not accurately reflect how organized markets operate. Additionally, we note that both organized market operators (CAISO and SPP) are developing an electricity and GHG accounting framework for load-serving entities that participate in their respective markets. Although those discussions are ongoing, we anticipate that these market accounting frameworks would facilitate attribution of renewable and non-emitting electricity to Washington utilities consistent with CETA rules and help to ensure that there is no double counting of electricity or NPAs.

Our proposed edits below address these concerns, as well as other more minor issues that would benefit from clarification.

WPTF Proposed Edits of Draft Rules

The following definitions apply throughout WAC 480-100-670, -675, and -680:

~~(1) "Primary compliance" means the portion of the greenhouse gas neutrality standard contained in RCW 19.405.040(1)(a) that cannot be met through the alternative compliance options under RCW 19.405.040(1)(b).~~

Commented [CB1]: Given that the text below makes a distinction between the GHG Neutral standard and the 100% standard, this definition does not add additional clarity.

~~(2)~~ (1) "NPA" means nonpower attributes as defined in RCW 19.405.020(29).

(2) "REC" means renewable energy credit as defined in RCW 19.405.020(31).

~~(3)~~ "Vintage" means the year in which electricity associated with RECs or NPAs is generated.

Commented [CB2]: This language is intended to be consistent with WAC 194-37-040

~~(4)~~ (3) "WREGIS" means the Western Renewable Energy Generation Information System.

~~(5)~~ (4) "Unbundled NPA" means an unbundled renewable energy credit

~~as defined in RCW 19.405.020(38) or the NPA of electricity generated from a nonemitting electric generation resource that is sold, delivered, or purchased separately from electricity.~~

Commented [CB3]: As there are no certificates associated with NPAs, the concept of an unbundled NPA is meaningless.

NEW SECTION

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

(1) A utility may use ~~an~~ RECs, other than an unbundled RECs, or NPAs ~~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).~~

Commented [CB4]: The rule language would be clearer if both the terms RECs and NPAs are used throughout. This is because while a REC encompasses NPAs, in other cases, NPAs are not associated with RECs.

(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.

Commented [CB5]: This sentence is redundant of the first sentence and unnecessary.

(3) Each electric utility must retire any RECs associated with renewable or nonemitting electricity used for compliance. If no RECs have been created for the electricity, the utility must use the nonpower attributes exclusively for compliance.

Commented [CB6]: This language tracks WAC 194-37-120

(4) The vintage of RECs or NPAs used for compliance must be a year within the same four-year compliance period. 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.

(5) NPAs submitted for primary compliance shall be attributed to the month and year in which the NPA was generated.

Commented [CB7]: Address through vintage definition. Vintages should be the same for RECs and NPAs.

(6) Unless ~~the NPA complies with~~ subsection (7) of this section applies, the utility must acquire the RECs or NPAs and the associated 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.

(7) ~~An RECs or NPAs that is~~ associated with electricity ~~purchased as a~~ generated by a specified renewable or nonemitting resource dispatched in an organized market ~~but acquired in a separate transaction than the associated electricity~~ is eligible to count towards a utility's ~~primary compliance~~ if:

Commented [CB8]: Within an organized market, utilities purchase energy from the market operator - not from individual resources. Similarly, resource operators sell energy to the market operator. There must be a separate bilateral contract to match generation from specific resources to a utility.

(a) ~~the RECs or NPAs is~~ are generated by the resource or system during the same month during which the utility purchased the associated equivalent amount of electricity from the organized market, and the quantity of RECs and NPAs acquired does not exceed that quantity of 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.~~ The electricity is attributed to the utility by the tracking system of the organized market and may not be attributed to any other entity.

(c) the utility separately acquires the RECs or NPAs associated with the renewable or nonemitting electricity from the resource or system.

(8) The electricity associated with the RECs or NPAs must comply with WAC 480- 100-650 (1) (d) .

(9) A utility may retire ~~a~~ RECs or use NPAs for ~~primary~~ compliance only if the utility demonstrates that there is no double counting of ~~that~~ the RECs or NPAs within Washington or programs in other

Commented [CB9]: Our language addition to (b) above ensures matching of the RECS/NPAs to resource or system, so this system is unnecessary. Further, BA is not the appropriate term here, because BAs do no operate resources.

Commented [CB10]: See comment above. The seller is the market operator, not a resource operator. The selling party would be identified through the separate specified contract.

jurisdictions. The fact that a renewable or non-emitting resource is subject to the Washington Climate Commitment Act or the cap and trade program in another jurisdiction as an in-state resource does not constitute double-counting. 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.

NEW SECTION

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.

NEW SECTION

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

~~(1) Each electric utility must retire any RECs associated with the electricity. If no RECs have been created for the electricity, the utility must use the nonpower attributes exclusively for compliance. The amount of renewable or nonemitting energy that a utility counts towards compliance with 19.405.050(1) in each month may not~~

Commented [CB11]: This language tracks WAC 194-37-120

~~exceed the load served by that utility within the same month.~~

~~(1)~~ (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:~~

Commented [CB12]: As stated above, NPAs are not retired.

(a) The utility must ~~acquire~~ the RECs or NPAs and the associated 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~~ RECs or NPAs ~~that is~~ associated with electricity ~~purchased as specified~~ generated by a renewable or nonemitting energy resource dispatched in an organized market ~~but is acquired in a separate transaction than the associated electricity~~ is eligible if:

(a) the RECS or NPAs ~~is~~ are generated during the same month

during which the utility purchased the ~~associated equivalent amount~~
~~of electricity from the organized market and the quantity of RECs~~
~~and NPAs acquired does not exceed that quantity of electricity; and~~

~~(b) The electricity is attributed to the utility by the tracking
system of the organized market and is not attributed to any other
entity. The utility 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.~~

~~(c) the utility separately acquires the RECs or NPAs associated with
the renewable or nonemitting electricity from the resource or
system.~~

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(5) A utility may use ~~any RECs or NPAs~~ to comply with the requirements of RCW 19.405.050(1) if:

(a) ~~The utility acquired the RECs or NPAs through participation in a clean electricity market;~~

(b) The ~~RECs or NPAs is~~ are 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.

Commented [CB13]: It is not clear how the concept of a clean energy market differs from an organized market that is able to attribute renewable and non-emitting electricity based on ownership and contracts. If no substitutive difference is intended, staff should merge paragraphs 4 and 5.

(6) For purposes of this section, "clean electricity market" means an organized wholesale electricity market that provides for the ~~physical~~ ~~delivery~~ ~~attribution~~ of renewable and nonemitting electricity.

Commented [CB14]: Organized markets do not provide physical delivery from a resource to load. However, these markets can attribute electricity on the basis of ownership and contracts.