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

Re: Joint Comments of Avista, PacifiCorp, Puget Sound Energy, Alliance of Western Energy Consumers, Northwest & Intermountain Power Producers Coalition, and Western Power Trading Forum – Docket UE-210183

On May 30, 2024, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Opportunity to File Written Analysis and Comments on the Effects of Draft Rules (Notice). The Notice relates to draft rules that would implement sections of the Clean Energy Transformation Act (CETA), and provide the Commission’s interpretation of “use” under RCW 19.405.040(1)(a). In these comments, Avista, PacifiCorp, and Puget Sound Energy (Joint Utilities), the Western Power Trading Forum, the Northwest & Intermountain Power Producers Coalition, and the Alliance for Western Energy Consumers (collectively, Joint Commenters) urge the Commission to revisit the interpretation of “use” that would effectively require a monthly compliance framework.

Although the Notice claims not to be requiring a monthly compliance framework, the Notice’s stated intentions indicate otherwise. The Notice proposes to cap the amount of CETA-eligible generation that can be claimed monthly. This effectively prohibits utilities from using all CETA-eligible generation within each statutory compliance period as the Legislature intended.¹

Respectfully, the Joint Commenters believe this requirement conflicts with CETA’s plain language. For example, CETA’s greenhouse gas neutrality standard requires that utilities must demonstrate compliance for “the four-year compliance period,” and for “each multiyear compliance period thereafter.”² Utilities may “use” CETA-compliant electricity “over each multiyear compliance period.”³ The statute does not mention days, months, or individual years when detailing how utilities must comply with CETA’s greenhouse gas standard. Similarly, CETA’s 100 percent renewable standard states that utilities must demonstrate compliance for “each year,” and is silent regarding a short or more limited compliance period.⁴

¹ E.g., *See Superior Asphalt & Concrete Co. v. Dept. of Labor & Indus.*, 84 Wn. App. 401, 405, 929 P.2d 1120 (1996) (“[a]n administrative agency may not adopt a regulation that effectively modifies or amends a statute”).

² RCW 19.405.040(1)(a).

³ *Id.*

⁴ RCW 19.405.050(1).

If the Legislature had intended for utilities to comply with the greenhouse gas standard in anything other than four-year, multi-year compliance periods, or to comply with the 100 percent renewable standard with anything other than single-year periods, it would have done so, or otherwise delegated the issue to the Commission for further resolution. Yet it did not. Because the Legislature included a temporal period for each standard, the Joint Commenters believe that the Commission lacks the authority to adopt anything other than a four-year, multi-year compliance requirement for CETA’s greenhouse gas standard, or anything other than an annual compliance requirement for CETA’s 100 percent renewable standard.

Because Staff’s proposed rule would depart from these temporal periods, it conflicts with CETA, and the Commission lacks the power to adopt it.

Similar arguments around legislative intent underscore this point: if the law is intended, even if in part, to “provide flexible tools to address the variability of hydropower for compliance” with CETA,⁵ why would the Commission seek to adopt a monthly compliance requirement? This necessarily limits hydropower’s ability to help contribute to CETA compliance, because a monthly compliance framework frustrates the ability for hydropower to deliver more benefits to Washington customers over a four-year period when there is more rain or snowfall in any given year compared to others. In the quest for more granular monthly compliance periods, the draft regulations would have the unintended consequence of limiting the added benefits that Washington’s robust hydroelectric resources can provide for its retail customers.

This monthly compliance requirement also departs from the regulations adopted by the Department of Commerce, which do not include a similar monthly compliance period.⁶ Yet CETA requires the Commission and Department to “coordinate” when developing rules to “streamline” implementation of the law. The Joint Commenters believe this provides further support to reject the monthly compliance framework. Otherwise, investor- and consumer-owned utilities would be under conflicting compliance mechanisms (monthly vs. multiyear periods), which would frustrate the coordinated and streamlined implementation of CETA.⁷

These are not new concerns.⁸ The Joint Commenters believe the above-mentioned concerns provide adequate support to decline to adopt a monthly compliance mechanism, and

⁵ RCW 19.405.010(7).

⁶ WAC 194-40-410 (Use of renewable energy credits other than unbundled RECs to comply with the greenhouse gas neutral standard) and 194-40-415 (Use of renewable energy credits to comply with the 100 percent renewable or nonemitting standard).

⁷ In previous comments throughout this proceeding, the Joint Utilities recommended that the Commission realign this rulemaking process with the rules adopted by the Department of Commerce. *See, e.g.*, Docket UE-210183, Joint Utility Comments (Nov. 12, 2021); Joint Utility Comments (Feb. 9, 2022). Alignment is necessary because the core CETA compliance requirements, including resolution of the “use” issue, are identical in statute for investor-owned and consumer-owned utilities. *See* RCW 19.405.040(1) (applying to “electric utilities”). Unfortunately, there remain significant differences between the draft rules proposed by the Commission and the final rules adopted by Commerce that, if adopted, will create an unlawful and inconsistent statewide approach to interpreting and implementing CETA.

⁸ *E.g.*, Docket UE-210183, Joint Utility Comments at 1 (April 22, 2022) (raising same concerns).

look forward to continued collaboration with the Commission and stakeholders to ensure that the Commission's implementation of CETA continues to give full force and effect to the law.

The Joint Commenters appreciate the opportunity to provide comments in response to the Commission's Notice.

Sincerely,

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