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

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

Dear Mr. Killip:

The Washington Utilities and Transportation Commission (Commission) issued a Notice of Opportunity to File Written Analysis and Comments on Effects of Draft Rules (Notice) on May 30, 2024.

The Public Generating Pool (PGP) is a trade association representing nine consumer-owned utilities that own and operate their own generating resources in Washington and Oregon. PGP appreciates the multiple opportunities we have had to provide comments to the Commission in various dockets addressing the Clean Energy Transformation Act (CETA).[1] PGP looks forward to continued collaborative discussions with the Commission, the Department of Commerce (Commerce), and other stakeholders on CETA implementation.

General Comments

As consumer-owned utilities, PGP's members are not subject to the Commission's jurisdiction. However, PGP continues to encourage the Commission to adopt rules relating to the interpretation of "use" under CETA that are aligned with those adopted by Commerce for consumer-owned

[1] PGP has filed comments, for example, in this Docket UE 210183 (April 22, 2022, comments pertaining to hydroelectric generation; November 12, 2021, comments on "retained nonpower attributes"; and June 14, 2021, comments submitted jointly with Puget Sound Energy, Pacific Power, Avista, and the Washington Public Utility Districts Association, on double counting) as well as in Docket UE-191023 (June 29, 2020, comments addressing "use" and related issues; August 4, 2020, comments submitted jointly with PSE, Pacific Power, and Avista addressing "use" and including a legal memorandum) and Dockets UE-191023/UE-190698 (December 3, 2020, comments addressing issues of compliance and "use"). PGP incorporates those comments herein by reference.

utilities on June 17, 2022, so as to limit the possibility of friction that could arise in renewable energy credit (REC) and bilateral and centralized electricity markets as a result of having two different regulatory interpretations on "use" in the state. In particular, PGP once again encourages the Commission to follow Commerce's lead in adopting an approach for demonstrating "use" that preserves the integrity of CETA's statutory multiyear compliance periods. To that end, PGP includes with these comments a legal memorandum written by K&L Gates and Perkins Coie dated July 31, 2020, that was co-commissioned by PGP and originally submitted jointly with Avista, PacifiCorp, and Puget Sound Energy on August 4, 2020, in Docket UE-191023, included as Appendix A.

CETA's Multiyear Compliance Framework Was Intended to Address Hydroelectric Variability

In reviewing the legislative history of Engrossed Second Substitute Senate Bill 5116 (Chapter 288, Laws of 2019)[2], the bill which established CETA, it is clear to PGP that the Washington Legislature intended for CETA's multiyear compliance to serve as a mechanism for addressing hydroelectric variability in meeting the 2030 Greenhouse Gas (GHG) Neutral Standard. Multiyear compliance periods were introduced after the bill was passed by the Washington State Senate to the Washington State House of Representatives' Environment and Energy Committee, where legislators heard public testimony provided by PGP and others on the need for a means to "bank" RECs associated with hydroelectric production over time in order to smooth out utilities' compliance obligations across seasonal and year-to-year hydro variability.[3] In response to that testimony, the House Environment and Energy Committee adopted a striking amendment to the underlying bill that amended the 2030 GHG Neutral Standard "to require an electric utility to demonstrate its compliance with the standard beginning January 1, 2030, and at a minimum interval of every four years thereafter through December 31, 2044."[4] This multiyear compliance framework was further refined and clarified when the bill was referred to the House Finance Committee, which adopted an alternative striking amendment to the underlying Senate bill that amended the 2030 GHG Neutral Standard "to implement multiyear compliance periods, rather than an annual compliance requirement"[5] and established the following specific compliance periods now reflected in RCW 19.405.040(1)(a):

- January 1, 2030, through December 31, 2033;
- January 1, 2034, through December 31, 2037;
- January 1, 2038, through December 31, 2041; and

[2] SB 5116 (2019) Bill Summary. https://app.leg.wa.gov/billsummary?BillNumber=5116&Year=2019&Initiative=false.
[3] TVW Archive, House Environment & Energy Committee March 5, 2019, public hearing on E2SSB 5116. https://tvw.org/video/house-environment-energy-committee-2019031054/?eventID=2019031054.
[4] E2SSB 5116 House Committee Amendment by Committee on Environment & Energy, H2417.3 Effect Statement, pg. 56. https://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Amendments/House/5116-S2.E%20AMH%20ENVI%20H2417.3.pdf.
[5] E2SSB 5116 House Committee Amendment by Committee on Finance, H2714.2 Effect Statement, pg. 60. https://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Amendments/House/5116-S2.E%20AMH%20FIN%20H2714.2.pdf.

- January 1, 2042, through December 31, 2044.

The Legislature's Intent is Reflected by the Codified Version of CETA

The legislature's intent with respect to CETA's multiyear compliance framework for the 2030 GHG Neutral Standard is reflected in the plain language of the statute as codified in Chapter 19.405 RCW:

- In its findings or intent statement, the Legislature declares that the state must "provide safeguards to ensure the achievement of this policy does not impair the reliability of the electricity system or impose unreasonable costs on utility customers"[6] and that "it is the intent of the legislature to provide **flexible tools** to address the **variability of hydropower** for compliance under chapter 288, Laws of 2019."[7]
- RCW 19.405.040(1)(a) provides that "for the **four-year compliance period** beginning January 1, 2030, and for **each multiyear compliance period thereafter** through December 31, 2044, an electric utility must…use electricity from renewable resources and nonemitting generation **in an amount equal to one hundred percent of the utility's retail electric loads over each multiyear compliance period**. An electric utility must achieve compliance with this standard for the following compliance periods: January 1, 2030, through December 31, 2033; January 1, 2034, through December 31, 2037; January 1, 2038, through December 31, 2041; and January 1, 2042, through December 31, 2044."[8]

The statute as enacted by the Legislature does not establish any reporting or compliance demonstration requirements for units of time more granular than the expressly delineated multiyear compliance periods, be it days, months, or individual years within each compliance period.

The Draft Rules Are Inconsistent with the Intent and Plain Language of CETA

In its currently proposed draft rules relating to "use" for investor-owned utilities, the Commission describes requirements for procured energy that may be counted towards primary compliance with CETA in each month. In its May 30th Notice, the Commission clarifies that if this provision moves forward, it must reflect a reporting requirement rather than a minimum monthly compliance standard. The Commission goes on to describe its proposed "monthly use cap," to be implemented as follows:

- The monthly use cap does not establish a monthly minimum for CETA compliance in any period aside from the four-year compliance periods mandated in statute.
- For every four-year compliance period, the energy claimed for primary compliance with CETA is compiled monthly. The energy claimed each month is summed to determine the primary compliance total for the compliance period.

[6] RCW 19.405.010(2)
[7] RCW 19.405.010(7)
[8] RCW 19.405.040(1)(a)

- The claimed energy for each month is, in MWh, the lesser of:
    - CETA-eligible generation within that month; or
    - The sum of load served by the utility before line losses and the amount of battery charging that occurred within that month.

While the Commission asserts that this "monthly use cap" does not represent a monthly minimum for CETA compliance, the practical effect of the "use cap" would be to limit the amount of energy an investor-owned utility can claim for primary compliance in each month within a given compliance period, thereby neutralizing the primary benefit of the multiyear compliance period in the first place: the flexibility to "use" variable renewable and nonemitting electric generation, particularly hydropower, "in an amount equal to one hundred percent of the utility's retail electric loads *over each multiyear compliance period*." This approach runs counter to the clear intent and plain language of CETA and unnecessarily diverges from the approach to "use" adopted by Commerce for consumer-owned utilities.

Conclusion.

PGP exhorts the Commission to adopt rules relating to the interpretation of "use" that are aligned with those adopted by Commerce so as to adhere to the intent of the Legislature, expressed in RCW 19.405.100(1), "that the [C]ommission and the [D]epartment coordinate in developing rules related to process, timelines, and documentation" necessary for the implementation of CETA. In so doing, the Commission would be limiting the possibility of friction that could arise in REC and bilateral and centralized electricity markets as a result of having two different regulatory interpretations on "use" in the state.

PGP appreciates the opportunity to comment. We look forward to participating in future discussions about the implementation of CETA.

Sincerely,

/s/ Mary Wiencke

Mary Wiencke
Executive Director
Public Generating Pool

APPENDIX A: LEGAL INTERPRETATION TO SUPPORT MULTIYEAR COMPLIANCE FRAMEWORK