**To:** Glenn Blackmon, Brad Cebulko, staff members of Commerce/UTC
**From:** Climate Solutions, Renewable Northwest, Sierra Club, Washington Environmental Council Vashon Climate Action Group
**Re:** Response to discussion questions posed on March 27th, 2020
**Date:** April 6th, 2020

Dear Mr. Blackmon, Mr. Cebulko, and other staff members of Commerce and UTC,

Thank you for taking the time to discuss the incremental cost of compliance provision in more detail with a range of climate and clean energy organizations on March 27th, 2020. During the discussion, a number of questions arose regarding the incremental cost of compliance implementation. Climate Solutions, Renewable Northwest, Sierra Club, and the Washington Environmental Council provide the following informal responses to those questions to inform the continued development of the incremental cost of compliance draft rule language. Please note that these responses are based on RCW 19.405.040(3), but the analysis substantively applies to RCW 19.405.060(4) for consumer-owned utilities as well. Thank you again, and please do not hesitate to reach out with additional questions.

1. ***Utilities must begin making investments prior to 2030 in pursuit of achieving the interim targets and standards if relying on the incremental cost of compliance mechanism in 2030 or beyond.***

While stakeholders often refer to the two clean energy resource standards under the Clean Energy Transformation Act ("CETA"), in addition to a coal prohibition, there are actually three: (1) the greenhouse gas neutral standard defined in RCW 19.405.040(1); (2) the carbon-free standard defined in RCW 19.405.050(1); and (3) the interim targets and specific targets identified in the Clean Energy Implementation Plans defined in RCW 19.405.060(1).

RCW 19.405.060(3)(a) is clearly written to provide an option for containing the cost in achieving all three of these resource standards, providing that "a utility must be considered in compliance with the standards under RCW 19.405.040(1) and RCW 19.405.050(1) if...the average incremental cost of meeting the standards or the interim targets established under subsection (1) equals a two percent increase..." Rather than limiting the incremental cost of compliance option to meeting the standards specified in RCW 19.405.040(1) and RCW 19.405.050(1), the statutory language provides that a utility may rely on this compliance mechanism for meeting standards *or the interim targets* established in a utility's four-year Clean Energy Implementation Plan ("CEIP") during the years prior to 2030 and between 2030 and 2045.

In defining the goals of the CEIP's interim targets, the statute establishes that they must be designed to "meet the standard in RCW 19.405.040," and specific actions must be identified in the four-year Clean Energy Implementation Plan period that "demonstrate progress toward meeting the standards under RCW 19.405.040(1) and 19.405.050(1)." After identifying interim targets and specific actions that put a utility on a pathway to compliance with the standards in RCW 19.405.040(1) and RCW 19.405.050(1), a utility must be held accountable for achieving compliance with the established interim targets. By specifically referencing the interim targets in RCW 19.405.060(3), the statutory language allows for a utility to rely

on the incremental cost of compliance mechanism for compliance with the interim targets, should the utility not achieve the interim targets that it has identified in its CEIP. Because interim targets must provide a pathway for utility compliance with the clean energy standards identified in RCW 19.405.040(1) and RCW 19.405.050(1), it is clear that the utility must begin pursuing and investing in resources to meet the interim targets in the first four-year CEIP compliance period. The compliance periods specified in RCW 19.405.040(1)(a) contain a combination of three- and four-year compliance periods, the statutory language specifying an incremental cost over "the four-year compliance period" likely refers to four-year compliance periods identified in the Clean Energy Implementation Plan.

To summarize, the statutory language requires that a utility's CEIP identify interim targets to achieve the standards in RCW 19.405.040(1) and RCW 19.405.050(1), and take specific actions that demonstrate progress towards meeting these standards. A utility must being planning for and investing in resources to achieve the interim targets and clean energy standards. A utility should not be permitted to rely on the incremental cost of compliance mechanism in 2030 if it has not achieved the interim targets for renewable energy and nonemitting resources, unless it has relied on the incremental cost of compliance mechanism in lieu of achieving the interim targets prior to 2030. Allowing a utility to do so would be in conflict with the statute.

2. ***Only the costs of meeting the standards and interim targets must be included in the average annual incremental cost, and any CETA requirement that does not fall under RCW 19.405.040(1) and 19.405.050(1) should be included in a utility's baseline costs.***

The language of RCW 19.405.060(3)(a) is focused not on the cost of compliance with CETA in general, but rather on the "cost of meeting the standards or the interim targets established under subsection (1) of this section." To understand what should be factored into the incremental cost, one must determine what the "standards" and "interim targets established under subsection (1)" actually are. The only "standards" referenced in subsection (1) are "the standards established under RCW 19.405.040(1) and 19.405.050(1)," which include RCW 19.405.040(1)(a)(i)and (1)(a)(ii), as well as RCW 19.405.040(1)(a)(iii) and 19.405.050(1)(iii). The only "interim targets" referenced in subsection (1) are "proposed interim targets for meeting the standard under RCW 19.405.040(1) during the years prior to 2030 and between 2030 and 2045" and "the interim targets proposed under (a)(i) of this subsection."

Because the "standards or the interim targets established under subsection (1)" are the standards and targets of RCW 19.405.040(1) and 19.405.050(1), the most straightforward read of RCW 19.405.060(3)(a) is that only the costs of meeting those specific standards and interim targets must be included in the average annual incremental cost. In other words, any CETA requirement that does *not* fall under RCW 19.405.040(1) and 19.405.050(1) is *not* part of the incremental cost calculation and must be included in a utility's baseline. Costs that do not fall under RCW 19.405.040(1) and 19.405.050(1) include, but are not limited to: costs associated with achieving an equitable distribution of benefits, costs associated with achieving broader public interest benefits, costs associated with resource procurement driven by the social cost of carbon, and costs associated with eliminating coal-fired resources. To reiterate, because those costs are not included in RCW 19.405.040(1) or RCW 19.405.050(1), they cannot be counted in a utility's incremental "cost of meeting the standards or the interim targets established

under subsection (1) of this section" as described in RCW 19.405.060(3)(a). Instead, those costs must be included in a utility's baseline.

The next sentence of RCW 19.405.060(3)(a) provides that "all costs included in the determination of cost impact must be directly attributable to actions necessary to comply with the requirements of RCW 19.405.040 and 19.405.050." This language is not limited to RCW 19.405.040(1) or 19.405.050(1), but the sentence does not expand the focus of what may be included in the incremental cost calculation. By the sentence's construction, it is limiting or exclusive in nature -- in order to include an expenditure in the incremental cost, it "must be directly attributable to actions necessary to comply with the requirements of RCW 19.405.040 and 19.405.050." In other words, an expense may not be included in the incremental cost if it is attributable to any decision-driver other than a RCW 19.405.040 or RCW 19.405.050 requirement.

If the sentence order were reversed -- "costs directly attributable to actions necessary to comply with the requirements of RCW 19.405.040 and 19.405.050 must be included in the determination of cost impact" -- then the sentence would be inclusive rather than exclusive, and language would increase the scope of costs to be included in the incremental cost calculation. But as it is written, the sentence means that the *only* costs that may be included in the incremental cost calculation are those "directly attributable to" and "necessary" for RCW 19.405.040 and 19.405.050 compliance. And by the language of the preceding sentence, the incremental cost calculation itself is still limited to those costs associated with achieving "the standards or the interim targets established under subsection (1)" -- or, more specifically, the standards and targets of RCW 19.405.040(1) and 19.405.050(1). This reading also squares with some basic principles of statutory construction: parts of the same statute should be read together, one part of a statute should not render another superfluous (as the broad reference to 19.405.040 and 19.405.050 would render the more specific reference to "the standards or the interim targets established under subsection (1) of this section"), specific language supersedes general language, and so on.

In sum, all of "the standards or the interim targets established under subsection (1)" are the standards and targets of RCW 19.405.040(1) and 19.405.050(1). The most straightforward read of RCW 19.405.060(3)(a) is that only the costs of meeting the standards and interim targets must be included in "the average annual incremental cost." Any CETA requirement that does *not* fall under the interim targets in RCW 19.405.060(1) or RCW 19.405.040(1) and 19.405.050(1) should *not* be part of the incremental cost calculation and must be included in a utility's baseline. Costs that do not fall under RCW 19.405.040(1) and 19.405.050(1) must be included in a utility's baseline.

3. ***Funds spent on alternative compliance options may not be part of the incremental cost of compliance calculation unless a utility has exhausted all renewable resource and nonemitting electric generation options.***

For a utility to include an expenditure in the incremental cost calculation, the expenditure must be "directly attributable to actions necessary to comply with the requirements of RCW 19.405.040 and RCW 19.405.050." In other words, a utility would not be able to achieve the standard or identified interim targets without undertaking that action. Therefore, unless a utility has exhausted all options for renewable energy and nonemitting electric generation, and there is no resource option available, alternative

compliance options identified in RCW 19.405.040(1)(b) should not be included in the incremental cost calculation. These alternative compliance options include energy transformation projects and the alternative compliance payment. RCW 19.405.040(1)(b) explicitly states that "an electric utility *may* satisfy up to twenty percent of its compliance obligation" with alternative compliance option, but these compliance options are optional and by no means required. The use of the word "alternative" presumes that the intended mechanism for utility to comply is through achieving the renewable resource and nonemitting electric generation standards. Therefore, the alternative compliance options provided for utilities cannot be construed as "necessary to comply".

These options are alternative compliance options, and if they were removed as an option for compliance, the utility would still maintain an ability to comply with the clean energy standards, unless the utility has exhausted all renewable energy and nonemitting electric generation options. On the contrary, if renewable and non-emitting resources were removed as a compliance mechanism, regulated entities would no longer have the ability to achieve full compliance with the clean energy standards. For these reasons, we believe there is only a role for the alternative compliance payment or investments in energy transformation projects to be part of the incremental cost of compliance if, and only if, a utility has exhausted all other renewable resource and nonemitting electric generation options in pursuit of the requirement in RCW 19.405.040(1)(a). Because this possibility does not fit cleanly into the statutory language, as explained above, it would likely have to be provided by rule.

The statutory language further states that a utility must have "maximized investments in renewable resources and nonemitting electric generation prior to using alternative compliance options." This language aligns with the interpretation discussed above, indicating that utilities must exhaust all options for renewable resource and nonemitting electric generation prior to relying on alternative compliance options when relying on the incremental cost of compliance mechanism. By requiring that a utility "maximize investments," the language clearly requires utilities to prioritize and exhaust all options for renewable resources and nonemitting electric generation first.

To summarize, alternative compliance options are allowed for compliance under RCW 19.405.040, but only renewable resources and nonemitting electric generation are necessary to comply with RCW 19.405.040 and RCW 19.405.050. Utilities must completely maximize these investments, and exhaust these resource options before using alternative compliance options when utilizing the incremental cost of compliance mechanism.

Thank you again for the opportunity to discuss this issue further, and we look forward to continued engagement as this process moves forward.

Sincerely,

*Climate Solutions*
*Renewable Northwest*
*Sierra Club*
*Washington Environmental Council*
*Vashon Climate Action Group*