BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Rulemaking for the Energy Independence Act, WAC 480-109, Considering Revisions To Comply with the Clean Energy Transformation Act.	DOCKET UE-190652 SECOND COMMENTS OF THE ENERGY PROJECT REGARDING PROPOSED RULES (CR 102)

I. INTRODUCTION

1 The Energy Project (TEP) files this second set of comments in response to the Commission's Notice of Opportunity To File Written Comments On Proposed Rules, served on March 27, 2020, and the related CR-102 Notice of Proposed Rulemaking (WSR 20-08-081). The Energy Project filed Initial Comments in this docket on November 4, 2019 (Initial Comments).

2 The Energy Project has focused its review on issues relating to low-income conservation and low-income customers generally. The Energy Project appreciates the Commission's efforts to constructively address the integration of the Clean Energy Transformation Act (CETA) with the existing Energy Independence Act (EIA) rules and generally supports the final proposed rules. These comments identify an alternative approach on a few issues which TEP believes would improve the final rule.

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II. SECOND COMMENTS OF THE ENERGY PROJECT

A. Definitions --- WAC 480-109-060

1. "Energy assistance" And "Energy burden" --- WAC 480-109-060(13), (15)

3 The definitions for "energy assistance" and "energy burden" appropriately mirror the statutory definitions in CETA, RCW 19.405.020(15) and (17).

4 These are key definitions for CETA Section 12[1] generally, and as such the terms have other broader applications beyond the EIA context. Consistency between the definitions in the EIA rules and the definitions of these key terms adopted elsewhere will be important. The Energy Project understands that the Commission is coordinating closely with the Department of Commerce on these issues and expects to issue further guidance. Ultimately, the definitions established here should be designed to further the broad statutory goals of CETA.

2. "Energy assistance need"--- WAC 480-109-060(14)

5 The Energy Project supports the use in the proposed rule of a six percent energy burden. There is ample support in the record for using this metric.[2] In the Initial Comments, TEP recommended that the Commission consider allowing some flexibility for utilities to use a lower percentage of energy burden. The Energy Project notes that the Staff has indicated that utility programs could target any level of energy burden subject to Commission approval, as the definition of "energy assistance need" does not interact with programmatic design.[3] To clarify this intent in the rule language itself, TEP believes that including language stating the level is

[1] RCW 19.405.120.
[2] *See, e.g.*, Initial Comments, ¶¶ 6-8.
[3] Docket UE-190652, Staff Summary of Comments (Q.2), p. 6 (March 30, 2020).

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"no greater than" six percent would remove doubt that the rule allows utilities to adopt more aggressive standards for their programs if they desire.

3. "Low-income" --- WAC 480-109-060(22)

6 The Energy Project continues to recommend use of 200 percent of Federal Poverty Level (FPL) in the proposed rule's definition of low-income in conjunction with 80 percent of Area Median Income (AMI), with the greater of the two establishing the income eligibility cap. The Energy Project strongly encourages the Commission to reconsider the current proposed rule for several reasons.

7 The CETA definition of "low-income" itself contemplates that the UTC and Commerce are free to establish a combined metric for both FPL and AMI as part of the definition. Indeed, the rule language is most reasonably interpreted as *requiring* the agencies to use both metrics, stating that "the definition may not exceed the higher of eighty percent of area median household income or two hundred percent of the federal poverty level, adjusted for household size."[4] The language "may not exceed the higher of" only makes sense if both metrics are being employed in combination in a specific geographic location. Moreover, an exclusive reliance on FPL as the sole metric is problematic in terms of accuracy. The FPL metric has long been viewed as "one of the most challenged indicators," an outdated and unreliable way to measure actual poverty levels. This issue is discussed in more detail in the Initial Comments.[5]

8 As with the FPL metric, TEP has supported setting the AMI metric at the highest allowed level, that is, at 80 percent of AMI. Research reflected in a report by the American Council for

[4] RCW 19.405.020(25).
[5] Initial Comments, ¶¶ 13-14.

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An Energy Efficient Economy (ACEEE) found that the "overwhelming majority of single-family and multifamily low-income households (those with income at or below 80 percent of Area Median Income), minority households, low-income households residing multifamily building, and renting households experienced higher energy burdens than the average household in the same city."[6] Use of the 80 percent of AMI metric will therefore help prioritize high burden households consistent with CETA. The Energy Project is not aware of any support for establishing a lower AMI level. Use of AMI allows recognition of income disparities and high cost of living areas, so using a lower percentage such as 60 percent could effectively nullify that benefit.

9 The Energy Project does not have a significant concern about the administrative burden of using both metrics. Overlapping eligibility criteria are already in use for low-income weatherization.[7] Implementation is simple and does not create additional administrative burden, while allowing for greater flexibility in meeting customer needs.

10 The AMI and the FPL metrics would work together to ensure the most appropriate income level is used for determining eligibility for the specific low-income services being offered. In areas with a high cost of living, 80 percent of AMI may exceed 200 percent of FPL. In those instances, the AMI metric provides a very useful tool in addressing low-income and vulnerable populations in high-income/high expense areas such as King County. Using only the

[6] Drehobl, A., and L. Ross (2016), *Lifting the High Energy Burden in America's Largest Cities: How energy Efficiency Can Improve Low-income and Underserved Communities*, Washington D.C., ACEEE and energy Efficiency for All, p. 3.

[7] http://www.commerce.wa.gov/wp-content/uploads/2019/03/DRAFT-2019-WA-Eligibility-Guidelines-unprotectedversion.pdf

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FPL metric, low-income residents of King County are evaluated in the same manner as those in a less expensive area such as Aberdeen. Using both metrics together will promote a more equitable distribution of benefits across the state. The Energy Project, therefore, recommends that the rule add 80 percent AMI to the definition and the language "whichever is greater" following the specific metrics.

11 Giving utilities more flexibility to tailor programs to specific low-income households is critical to providing the most effective and efficient services. For example, to keep customers connected to essential services, arrearage management programs offered to households at the higher end of the eligibility spectrum can be as useful as offering percentage-of-income payment plans for very low-income households. Additionally, renewable energy projects that specifically benefit low-income households would likely benefit from the flexibility created by including an AMI metric, making it possible for projects to be able to serve the low-income households in the communities where the projects are sited.

B. Portfolio Development --- WAC 480-109-100(1)(a)(ii)

12 The Energy Project supports adoption of the proposed rule language for portfolio development. The stated purpose of WAC 480-109-100(1)(a) is to establish the process for a utility to meet its "obligation to pursue all available conservation," including through the development of a "conservation portfolio" as more fully described in Subsection (1)(a)(ii).

13 The new language added in the proposed rule requires a utility "conservation portfolio" to include "*all conservation programs and mechanisms* identified pursuant to RCW 19.405.120, which pertain to energy assistance and progress toward meeting energy assistance need."

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(emphasis added). The first clause of the new sentence is clear that it is "conservation programs and mechanisms" that must be included.

14 The reference in the second clause to "energy assistance" and "energy assistance need" does not change that meaning. "Energy assistance" is defined in WAC 480-109-060(13) to include "weatherization, conservation, and energy efficiency." Given the context and purpose of the EIA, the existing rule, and the phrasing of the new language to specify "conservation programs and mechanisms" The Energy Project does not understand the proposed rule to require inclusion in the utility conservation portfolio of other types of energy assistance which do not involve conservation, such as grant- or discount-based bill assistance**.**

C. Low-income Conservation --- WAC 480-109-100(10)

1. "Must fully fund" --- WAC 480-109-100(10)(a)

15 As indicated in our Initial Comments, TEP supports the amendment of the rules to require funding of the specified low-income conservation measures, a change from the prior discretionary language. Clarifying that funding of these measures is required is consistent with CETA's goal of expanding energy assistance to more customers over time, and with the fact that energy efficiency is defined as a form of energy assistance under the Act.

2. "Utility specific avoided costs" --- WAC 480-109-100(10)(a)

16 The Energy Project supports the inclusion of the new language in this subsection regarding "utility specific avoided costs." The Energy Project interprets the new language as effectively broadening the types of measures which would be cost-effective and therefore require funding under the rule. In other words, in addition to any measures determined to be cost-effective consistent with the Weatherization Manual, utilities would be also required to fund any

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measures that are cost-effective "using utility-specific avoided costs." This amendment is consistent with the utility's obligation to pursue all cost-effective conservation under the EIA and to expand energy assistance under CETA.

17 Although the apparent intent of the language is to require funding of any measure that is cost effective under either method, the language may need to be clarified. As written, it could potentially be read inadvertently to create an option, rather than to broaden the basis for funding projects. To avoid any confusion about the interpretation of the rule, The Energy Project recommends the following amendment to the language:

> "A utility must fully fund low-income conservation measures that are determined by the implementing agency to be cost-effective consistent with the *Weatherization Manual* maintained by the department and measures that are cost-effective using utility-specific avoided costs."

3. "Must fully fund" "repairs, administrative costs, and health and safety improvements" ---- WAC 480-109-100(10)(a)

18 The Energy Project previously supported the amendment changing "may" to "must," requiring the funding of repair, administrative, and health and safety costs. However, the proposed rule now includes language that would limit funding of these costs to situations where "alternate funding sources are unavailable." The Energy Project understands that this was intended to address utility company concerns about the scope of funding obligations. This language is problematic. Agencies operating weatherization programs deal with multiple sources of funds with different restrictions and requirements. The very broad and vague wording creates the possibility of disputes about what types of funding are meant, and what "unavailable" means.

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It is not clear which party would decide about funding availability. Under current conditions, these types of costs are generally addressed in a satisfactory manner through tariffs and contracts. After consideration, TEP believes it would be preferable to return to the original wording of the provision ("may" fully fund), rather than to make funding putatively mandatory but with an exception that would be difficult to apply.

4. Inclusion of RCW 19.405.120 programs --- WAC 480-109-100 (10)(b)

19 As with the portfolio development rule, TEP supports this proposed amendment. As CETA places new emphasis on requirements for the provision of low-income programs, it is appropriate to ensure that EIA conservation plans incorporate these CETA-related efforts in furtherance of the statutory goals to "demonstrate progress" in providing energy assistance.[8] However, the rule should be interpreted as applying to "low income conservation programs and mechanisms" under Section 12, not to other types of energy assistance not related to conservation or energy efficiency.

5. Cost effectiveness --- WAC 480-109-100(10)(c)

20 As in the Initial Comments, TEP supports the change in the first sentence of the subsection from "may" to "must" to require exclusion of low-income programs from portfolio-level cost-effectiveness calculations. As a practical matter, many utilities have already been presenting their portfolio results excluding low-income calculations. The current rules already contemplate that low-income conservation need not be included in portfolio-cost effectiveness and low-income programs already have some flexibility for cost-effectiveness purposes. The Energy Project supports this change as a way to encourage the provision of additional low-

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income measures and programs without the limiting effect that could arise from inclusion in the conservation portfolio analysis.

21 The Energy Project also supports the second sentence added to the subsection in the proposed rule, stating that: "A utility must account for the costs and benefits, including non-energy impacts, which accrue over the life of each conservation measure." This retains and relocates language from the previous draft rules which TEP supported, and for clarification adds specific reference to non-energy impacts. This is a useful addition to the rule that can provide a way for utilities to take a broader view of the cost-benefit analysis for low-income measures. The specific consideration of non-energy benefits is an important component of this approach. This in turn could allow for the identification of additional low-income measures to be pursued. The Energy Project also supports the modification of the rule language from "must consider" to "must account for" costs and benefits. This language provides stronger direction to utilities to document and explain their examination of these items.

III. CONCLUSION

22 The Energy Project commends the Commission's effective and thorough consideration in this docket of the impact of CETA on the existing EIA rules. The process has allowed for consideration of a broad range of views and proposals. As an overall matter, TEP is strongly supportive of the approach to low-income issues taken in the final proposal. Regarding the definition of "low-income," TEP respectfully requests that the Commission consider including an 80 percent AMI metric as well as 200 percent of FPL. The Energy Project has also proposed modifications to the proposed rule language on certain points to improve the beneficial impact of

[8] RCW 19.405.120(1) and (2).

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the final rules on low-income customers. The Energy Project thanks the Commission Staff for its work on this rulemaking and plans to attend the rule adoption hearing.

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