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December 3, 2020

Mr. Mark Johnson
State of Washington Utilities and Transportation Commission
621 Woodland Square Loop S.E.
Lacey, Washington 98503

RE: DOCKET UE-190698 AND DOCKET UE-191023. COMMENTS OF CENTER FOR RESOURCE SOLUTIONS (CRS) IN RESPONSE TO THE NOVEMBER 5, 2020 NOTICE OF OPPORTUNITY TO FILE WRITTEN COMMENTS ("NOVEMBER 5 NOTICE") RELATING TO CLEAN ENERGY IMPLEMENTATION PLANS (CEIPs) AND COMPLIANCE WITH THE CLEAN ENERGY TRANSFORMATION ACT (CETA)

Dear Mr. Johnson:

CRS appreciates this opportunity to submit comments in response to the November 5 Notice. We provide comments on the proposed rule language in Attachment A (joint recommendations from the Public Generating Pool, Puget Sound Energy, Pacific Power, and Avista Corporation) and Attachment B (joint recommendations from Climate Solutions and Northwest Energy Coalition). We also respond to the Commission's specific consultation questions included in the November 5 Notice.

BACKGROUND ON CRS AND GREEN-E®

CRS is a 501(c)(3) nonprofit organization that creates policy and market solutions to advance sustainable energy. CRS provides technical guidance to policymakers and regulators at different levels on renewable energy policy design, accounting, tracking and verification, market interactions, and consumer protection. CRS also administers the Green-e® programs. For over 20 years, Green-e® has been the leading independent certification for voluntary renewable electricity products in North America. In 2019, Green-e® certified retail sales of over 69 million megawatt-hours (MWh), serving over 1.6 million retail purchasers of Green-e® certified renewable energy, including over 113,000 businesses.¹

¹ See the 2020 (2019 Data) Green-e® Verification Report here for more information: <https://resource-solutions.org/q2020/>.

COMMENTS ON BOTH ATTACHMENTS

1. Neither Attachment A nor B directly addresses or includes requirements that prevent leakage or resource shuffling. Reporting requirements in Attachment B could be used to assess the level of leakage in a limited way. However, additional reporting requirements may be needed for a more comprehensive assessment, and additional rules would be necessary to prevent leakage.

The November 5 Notice specifically requests “comments that focus on whether the proposed language adequately addresses leakage or resource shuffling.” Neither Attachment A nor B does. Where utilities are required to source additional renewable and nonemitting generation to serve existing load, the emitting energy currently being used is going to go somewhere else unless those generators are turned off. There will be “leakage” if the utilities have existing commitments to emitting generation that gets sent elsewhere due to CETA. The Commission can require reporting or planning to assess the level of this “leakage,” and, for example, require utilities to describe plans for any excess supply. Subsection 2.c of Appendix B includes data collection and reporting requirements that may be used for this, at least in part, but they may not cover every potential leakage pathway. The Commission would then need to create requirements to prevent leakage, e.g. discontinue use of the source of excess generation where it is controlled by the utility. Alternatively or in addition, the Commission could create policy mechanisms to mitigate the emissions effect of leakage or resource shuffling.

2. Subsection 4 of WAC 194-40-410 in the August 14, 2020, Second Discussion Draft Rules (“Second Discussion Draft Rules”) explicitly links CETA compliance and Fuel Mix Disclosure, whereas proposed rule language in Attachments A and B does not. We support including language aligning bundled “use” in CETA with “declared” resources in Fuel Mix Disclosure.

We support the following from Subsection 4 of WAC 194-40-410 in the Second Discussion Draft Rules: “The electricity associated with the REC must be included as a declared resource of the utility in its source and disposition report submitted in compliance with RCW 19.29A.140.” This is consistent with RCW 19.405.070(1) and RCW 19.405.100(4). The terms “bundled” and “unbundled,” while not used in chapter 19.29A RCW, may be understood in the context of the Fuel Mix Disclosure program. Utilities must report use of “declared” resources, which include “a stated quantity of electricity tied directly to a specified generation facility or set of facilities,”² if they were “the direct or indirect owner of the generating facility or acquired the electricity in a transaction, supported by an auditable contract trail, in which the buyer and seller specified the source or set of sources of the electricity.”³ For renewable resources, the renewable energy certificates (RECs) must be included: “A retail supplier may not report a declared resource as a renewable resource if there exists a renewable energy certificate

² RCW 19.29A.010(6).

³ RCW 19.29A.140(2)(a).

or other instrument representing the nonpower attributes of the electricity and the retail supplier does not own the renewable energy certificate or instrument.”⁴ It is appropriate that these also be considered bundled in the context of CETA.

Subsection 4 of WAC 194-40-410 in the Second Discussion Draft Rules also effectively requires annual REC retirement for CETA, consistent with draft rules at WAC 194-40-060. There do not appear to be specific or different REC retirement requirements for declared resources in Chapter 19.29A RCW. Banking or holding attributes or RECs for CETA compliance beyond one year after submitting the report for Fuel Mix Disclosure would mean that they cannot be used that year to report use of a renewable resource under Fuel Mix Disclosure, per RCW 19.29A.150(3).

While it is not necessary that electricity generated by a renewable resource occur at the same time as consumption, and the Commission can consider allowing energy and attributes from the same facility to be acquired at different times through different transactions to meet RCW 19.405.040(1)(a)(ii), if the RECs associated with purchased generation are held and subsequently retired (i.e. “used”) in a different year, procurement of the RECs and power would each be reported differently under Fuel Mix Disclosure. As a result, “use” of renewable energy by the utility would be reported differently under Fuel Mix Disclosure and CETA. Though the sum of renewable energy delivered to customers over the multiyear CETA compliance timeframe would be equal in both programs, the supplier would report null power in Fuel Mix Disclosure until the RECs are retired.⁵ The state may therefore consider procurement and retirement of RECs and power from the same facility within the same year is a reasonable threshold for bundled “use.”

COMMENTS ON PROPOSED RULE LANGUAGE IN ATTACHMENT A

3. Subsection 2.b. of Attachment A, regarding demonstrating use of nonemitting resources for which RECs are not issued, does not require demonstration of any contractual specification of acquisition and retirement of nonpower attributes. To prevent double counting, it should require demonstration that the attributes have been contractually retired on the utility’s behalf or cannot be otherwise transacted.

For reference, see language in the California Energy Commission’s (CEC’s) final rule on Power Source Disclosure: “Procurements from nuclear or large hydroelectric generating units cannot be classified as specified purchases if the associated environmental attributes have been claimed by, or traded to, a separate party.”⁶

⁴ RCW 19.29A.140(2)(c).

⁵ RCW 19.29A.150.

⁶ 20 CCR § 1393.A.7.

4. While Subsection 4 of Attachment A allows for energy to be resold provided the generation source is not contractually specified and the attributes are retained by the utility in the transaction, Attachment A does not require that replacement power is also unspecified or cleaner. The Commission may consider additional rule language in Attachment A to that effect.

Requiring that replacement power be unspecified or cleaner than resold energy would prevent utilities from replacing the unspecified power they sell with specified, dirtier power (e.g. coal power) to be paired with the nonpower renewable attributes under RCW 19.405.040(1)(a)(ii). For example, the Commission may consider the following or similar additional rule in Attachment A: “If a utility claiming a renewable resource or nonemitting generation as provided in subsection (1) sells or transfers ownership of the electricity, it may not use the nonpower attributes associated with that specified-source sale of electricity for compliance with RCW 19.405.040(1)(a)(ii) if replacement electricity is procured in a transaction that contractually specifies a generation source with an emissions factor that is greater than the regional grid average.”

5. Subsection 4 of Attachment A does not prevent double counting under RCW 19.405.040(1)(a)(ii) or RCW 19.405.040(1)(b)(ii) where the power is delivered to California and reported as an import under its Mandatory Reporting Regulation (MRR). We recommend that additional rule language be included in Attachment A to prevent this double counting.

Subsection 4 does not prevent power that is sold and imported to California from being assigned the emissions of the renewable generator (e.g. zero emissions) and counted as delivered to serve load in California by the California Air Resources Board (CARB), while the associated nonpower attributes are used for compliance with RCW 19.405.040(1)(a)(ii). California’s accounting policy for the emissions associated with imported electricity under the MRR assigns the emissions factor of the renewable resource to the imported power regardless of whether the transaction contractually specifies the generation source and even in the case that the power is explicitly sold as unspecified power.⁷

To prevent double counting of this generation, the associated nonpower attributes should not be used for CETA compliance in Washington. Otherwise, the Commission can work with CARB to develop requirements that would prevent double counting. See further explanation in an August 22, 2019 letter from CRS to the California Independent Emissions Market Advisory Committee (IEMAC).⁸

We recommend adding a requirement to this section that: “a utility using electricity as provided in subsection (1) may not use the nonpower attributes of electricity that is imported to California for compliance with the GHG Neutral Standard.”

⁷ See Sec. 94511(a)(4) of the MRR.

⁸ <https://resource-solutions.org/wp-content/uploads/2019/12/CRS-Letter-to-IEMAC-8-22-2019.pdf>.

Renewable energy may also be double counted where RECs associated with the power delivered to California and reported as an import under the MRR are used for CETA compliance under RCW 19.405.040(1)(b)(ii). This should be addressed in other rules on “Unbundled RECs used as an alternative compliance option under the GHG Neutral Standard.”

6. Subsection 2.c of Attachment A does not identify the specific documentation required to demonstrate “acquisition of electricity” per (i) or (ii)(1-4). We recommend that the Commission require the same non-REC-related documentation (e.g. for the procurement of the power component of the bundled transaction) that other jurisdictions (and in particular, California) require.

COMMENTS ON PROPOSED RULE LANGUAGE IN ATTACHMENT B

7. Subsections 1.b, 2.b.ii, and 3.b of Attachment B do not allow power to be resold. In general, we support allowing for compliance with RCW 19.405.040(1)(a)(ii) where the energy from owned generation or bundled procurements is later sold as unspecified (except where it is delivered to serve load in California)⁹.

The power from a renewable generator may be sold wholesale with unspecified or “null” attributes (except where the power that is sold is imported to California) and, in this case, the renewable energy is procured bundled from a single generator and the attributes are retained for a credible renewable energy use claim for Washington. In this case, the sold power is replaced with other power. But the physical electrons are indistinguishable and interchangeable, and as long as the power that is sold is not renewable and the replacement power is unspecified or cleaner,¹⁰ there is no double counting or net difference in emissions. The utility is exporting unspecified power and importing unspecified power.

8. In Subsection 2.a of Attachment B, NERC e-TAGs do not demonstrate the delivery of renewable resource and non-emitting generation to customers. We recommend that this proposed language be revised.

A NERC e-TAG is an electronic record of a transaction of energy that is scheduled for transmission across one or more balancing authority area boundaries. It does not represent the delivery of renewable attributes or renewable energy resources to customers. To the extent that Subsection 2.a is intended to require demonstration that all imported electricity used for compliance with RCW 19.405.040(1)(a) was transacted to a balancing authority in which Washington electric load is located using a NERC e-TAG, it should be reworded.

⁹ See comment no. 5 above.

¹⁰ See comment no. 4 above.

9. Subsection 2.b.ii of Attachment B requires the acquisition of power and RECs in “a single transaction.” This requirement is not necessary, and the Commission may consider alternative language that provides more flexibility.

Energy and attributes from the same facility but acquired at different times (e.g. within the same year) and through different transactions may also represent bundled procurement and use consistent with RCW 19.405.040(1)(a)(ii). This may provide additional flexibility to utilities. As an alternative, the state may consider replacing “in a single transaction” with “from a single generating facility located in the same grid region as the customer.”

10. Subsection 3.b of Attachment B requires that for resources for which RECs are not issued, attributes “were not separated from the power used by the utility.” We agree that this is an important provision, but it is ill-phrased and may be confusing. We recommend requiring demonstration that the attributes have been contractually retired on the utility’s behalf or cannot be otherwise transacted.¹¹
11. By not permitting the power to be resold, Subsection 3 of Attachment B does effectively protect against double counting with California’s MRR under RCW 19.405.040(1)(a)(ii). That power may still be double counted where RECs associated with that power are used for CETA compliance per RCW 19.405.040(1)(b)(ii), which should be addressed in other rules on “Unbundled RECs used as an alternative compliance option under the GHG Neutral Standard.”
12. Attachment B does not include draft rule language equivalent to Subsection 2.c of Attachment A, requiring proof that power from the generator that created the REC is delivered to the customer’s grid region. We recommend that such language be added to Attachment B.

It is possible that this is intended to be achieved by Subsection 2.a, but in that case, that language should be revised to be more specific. Alternatively, under 2.b.ii, bundled electricity could be purchased from an unowned facility that does not deliver to the customer’s grid region. This is an important component in order to demonstrate a utility’s use of bundled renewable energy for Washington customers. For example, part of the state of Montana is located in Midwest Reliability Organization (MRO). The renewable generator should be located in the Western Electricity Coordinating Council (WECC) portion of that state.

13. Attachment B does not identify the specific documentation required to demonstrate “acquisition of electricity.” We recommend that the Commission require the same non-REC-

¹¹ See comment no. 3 above.

related documentation (e.g. for the procurement of the power component of the bundled transaction) that other jurisdictions (and in particular, California) require.

RESPONSES TO CONSULTATION QUESTIONS INCLUDED IN THE NOVEMBER 5 NOTICE

1. *Do the rules provided in Attachment A or B allow CETA to be enforced as an offset program?*
 - a. *If no, which portion of the rule language prevents CETA compliance from functioning as an offset program?*
 - b. *If yes, which portion of the rule language permits CETA compliance to function as an offset program?*

We are confused by use of the term “offset program” in this question. This term does not appear to be used in reference to the program in CETA. It is unclear both what an offset program is in this context and what the benefits of such a program would be. We request more information from the Commission on this term.

2. *Do the rules in Attachment A or B allow a utility to produce renewable electricity in excess of the amount required to serve its load and use the RECs from that excess renewable electricity, sold off system, to cover periods of load in which more than 20 percent of its load is served by GHG emitting resources as a means of complying with RCW 19.405.040(1)(b)(ii)?¹² For example, can a utility comply with the 80 percent requirement through buying 1000 MWh of hydroelectricity in excess of its load service needs in every hour of the day during the spring runoff and resell that power while retaining the nonpower attributes for compliance?*

Neither Attachment A nor Attachment B directly addresses compliance with RCW 19.405.040(1)(b)(ii). New rules, perhaps in another section on “Unbundled RECs used as an alternative compliance option under the GHG Neutral Standard,” should be added.

In Attachment A, draft rule language in Subsection 4 does not allow attributes associated with electricity that is sold or transferred in a transaction that contractually specifies the generation source to be used for compliance with RCW 19.405.040(1)(a)(ii). It therefore implicitly allows for attributes associated with electricity that is sold without contractually specifying the generation source to be used for compliance with RCW 19.405.040(1)(a)(ii). Again, it does not speak to RCW 19.405.040(1)(b)(ii), but it does not prevent a utility from alternatively using the RECs/attributes as “unbundled” RECs for compliance under this section.

¹² RCW 19.405.040(1)(b)(ii) allows electric utilities to satisfy up to 20 percent of their compliance obligation under RCW 19.405.040(1)(a) with an alternative compliance option, which may include using unbundled RECs provided that there is no double counting of any non-power attributes associated with RECs in Washington or programs in other jurisdictions. This includes unbundled RECs produced from eligible renewable resources, as defined under RCW 19.285.030, which may be used by the electric utility for compliance with RCW 19.285.040 as provided under RCW 19.285.040(2)(e), and other unbundled RECs that represent electricity generated within the compliance period.

In Attachment B, Subsection 1.b does not allow reported electricity acquired or generated for demonstrating compliance with RCW 19.405.040(1)(a)(ii) to be resold over the multiyear compliance period. Subsections 2.b.ii and 3.b limit “owned electricity” used for compliance with RCW 19.405.040(1)(a)(ii) to that which was not transferred to another entity, either via sale or other transaction, and require demonstration that the nonpower attributes associated with electricity were not separated from the power, respectively. If, therefore, only excess electricity that is not used for compliance with RCW 19.405.040(1)(a)(ii) is resold, then Attachment B does not prevent the associated attributes separated from this excess power to be used for compliance under section RCW 19.405.040(1)(b)(ii). For example, Attachment B does not appear to allow a utility to acquire 1000 MWh with the RECs, use 800 MWh for compliance with RCW 19.405.040(1)(a)(ii), sell 1000 MWh without the RECs, and use 200 MWh for RCW 19.405.040(1)(b)(ii). But, the utility could potentially acquire 1000 MWh with the RECs, use 800 MWh for RCW 19.405.040(1)(a)(ii), sell 200 MWh without the RECs, and use the 200 MWh of RECs for RCW 19.405.040(1)(b)(ii).

5. *Could the Energy Imbalance Market (EIM) provide a prorated share of the attributes of the resources that provided energy in a market interval to the loads that received energy in that market interval?*
 - a. *If EIM loads were to receive the attributes of the generators providing energy in the market, should constraints in the dynamic transfer capacity be incorporated into the calculation of the distribution of those attributes to load? Is it possible to reflect those constraints in the distribution of attributes to locational loads?*
 - b. *If EIM loads could receive the attributes of the generators providing energy in the market, is there a means of allocating those attributes by a bid price mechanism?*

First, there is no mechanism to deliver generation attributes to EIM purchasers in Washington through the EIM. The EIM may be able to tell Washington utilities what the generating resource mix (or renewable percentage) was at the time when the utility was taking delivery. But this does not equate to delivery of the attributes of those resources. Neither does it necessarily represent a contract for electricity from those resources (e.g. a resource- or mix-specific contract).

Second, because of the real-time nature of the EIM, using EIM for compliance with RCW 19.405.040(1)(a) would mean matching the timing of the purchase with the time of RECs from EIM resources. It would require the creation of “hourly RECs.”

Third, draft rule language in Subsection 2.b.ii of Attachment B would require utilities to procure these hourly RECs with the energy in “a single transaction.” This is not possible in the EIM.

Subsection 2.a of Attachment A would require that utilities acquire RECs “generated by resources for which the utility also is able to show acquisition of the renewable resource electricity or nonemitting electric generation through ownership, control, or contract.” RECs from EIM resources time stamped to match the time of the purchase would not necessarily meet this requirement. While Attachment A does not prevent a utility from separately acquiring RECs and power through different or multiple transactions (which must be the case for EIM since RECs are not included in EIM purchases), it appears to require that utilities demonstrate ownership of both the RECs and power from the same facilities for compliance with RCW 19.405.040(1)(a). Even if the EIM can identify the resources generating at the time of a utility’s purchase, that may not represent a contract for electricity from those specific plants sufficient to satisfy the draft rules in Attachment A.

Fourth, this would create a different “carbon zone” in EIM, as has been described by the California Independent System Operator (CAISO). We do not believe that Washington can use the same EIM allocation or “deeming” method that is currently used for California, the GHG adder, (see below) and consequently, there would need to be a mechanism to ensure that the same EIM generation is not delivered to both California and Washington (i.e. double counted).

Importantly, if a mechanism for resource-specific allocation of EIM generation to Washington load can be created, this would affect RECs. The RECs associated with this renewable generation must also be required and not be sold to a different entity in order to avoid double counting. Any new means of allocating attributes of EIM generators to Washington utilities should involve RECs in order to avoid double counting. The current bid price mechanism used to allocate or “deem” EIM resources serving the California GHG compliance area does not involve RECs, which has created a double counting concern that we and others have articulated.

With respect to question 5.b, a bid price mechanism may not be the appropriate mechanism for resource-specific allocation to Washington in the EIM since, unlike California, CETA does not create a carbon price. CETA is not a regulation on generators and importers, and it does not impose a GHG compliance cost on imports. Participating generators would not use a GHG bid adder to incorporate compliance costs into bids for serving Washington. This is in contrast to California’s cap-and-trade (or carbon pricing) program, which is both enforced on generators (as opposed to LSEs) and includes imports. In the EIM, California’s carbon price allocates resources to California as generators choose to import by using the carbon price (or GHG adder). Also, whereas California is only looking at imports, Washington is looking at everything that participates in the EIM.

6. *Energy serving load in a day-ahead market (DAM) is unspecified. If the DAM bid awards were mostly surplus hydro, would the loads receiving energy from the DAM only receive unspecified energy under the rules in Attachments A and B? Does this mean that a utility that was a net*

buyer from the DAM at a time of excess hydroelectric generation would only receive unspecified power?

Without a mechanism to deliver generation attributes to DAM purchasers or some other resource-specific delivery mechanism in DAM, DAM purchases should be accounted for as unspecified power and assigned a default rate for unspecified power. Without functionality that would enable a Washington utility to procure both energy and a REC from the same facility in the DAM, and “in a single transaction” in the case of Attachment B, neither Attachment A nor B appears to allow DAM purchases to be used for compliance with RCW 19.405.040(l)(a), for the same reasons as EIM purchases could not be used. See response to question 5 above.

8. *Please explain how double counting is prevented under the suggested rules in Attachment A and B?*

Retirement of RECs in the Western Renewable Energy Generation Information System (WREGIS) for CETA is required in both Attachment A and B.

Subsection 4 of Attachment A does not allow attributes associated with electricity that is sold or transferred in a transaction that contractually specifies the generation source to be used for compliance with RCW 19.405.040(l)(a)(ii). Ostensibly, this prevents electricity used for compliance with RCW 19.405.040(l)(a)(ii) from later being sold to a different party and identified as renewable such that it could be counted a second time or in a different program. Subsection 4 does not, however, protect against double counting under RCW 19.405.040(l)(a)(ii) or (l)(b)(ii) where the power is resold and delivered to California and reported as an import under the MRR. See our comment no. 5 above.

Subsection 2.b. of Attachment A, on demonstrating use of nonemitting resources for which RECs are not issued, does not require demonstration of any contractual specification of acquisition and retirement of nonpower attributes. To avoid double counting, it should require demonstration that the attributes have contractually retired on the utility's behalf or cannot be otherwise transacted.

By not permitting the power to be resold at all, Subsection 3 of Attachment B effectively requires that RECs and power remain bundled through to the end-use consumer in order to be used for compliance with RCW 19.405.040(l)(a)(ii). Furthermore, Subsection 2.b.ii requires that RECs and power be acquired in “a single transaction.” Neither the RECs nor power could be counted by a different party or under a different program after the utility's acquisition. Subsection 3 also effectively protects against double counting with California's MRR under RCW 19.405.040(l)(a)(ii), since power could not be delivered to California and reported as an import under the MRR. Renewable energy delivered to California may still be double counted where RECs associated with that power are used for CETA compliance per RCW 19.405.040(l)(b)(ii). But Attachments A and B only include draft rules for compliance with RCW

19.405.040(1)(a). Separate rules are needed for compliance with RCW 19.405.040(1)(b)(ii) to prevent double counting.

Please let me know if we can provide any further information or answer any other questions.

Sincerely,

_____/s/____

Todd Jones

Director, Policy