**WSR 22-07-104**
**PROPOSED RULES**
**DEPARTMENT OF COMMERCE**
[Filed March 23, 2022, 8:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-14-050.

Title of Rule and Other Identifying Information: Chapter 194-40 WAC, Clean Energy Transformation Act (CETA).

Hearing Location(s): On April 27, 2022, at 1:00 p.m., Zoom meeting. This hearing will be virtual only. Please check CETA rule making web page for meeting information https://www.commerce.wa.gov/growing-the-economy/energy/ceta-rulemaking/.

Date of Intended Adoption: May 6, 2022.

Submit Written Comments to: Glenn Blackmon, P.O. Box 42525, Olympia, WA 98504, email ceta@commerce.wa.gov.

Assistance for Persons with Disabilities: Contact Steven Hershkowitz, phone 360-688-4006, email ceta@commerce.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule ensures the proper implementation and enforcement of CETA and addresses wholesale market transactions and the prohibition on double counting, as provided for under RCW 19.405.100 and 19.405.130. The proposed rules: Provide clarification of the requirement in RCW 19.405.040 that a utility use renewable or nonemitting electricity sources in an amount equal to 100 percent of the utility's retail electric load; provide clarification of the requirement in RCW 19.405.050 that a utility supply 100 percent of all sales of electricity to Washington retail electric customers using electricity from renewable or nonemitting sources, establish specification, verification, and reporting requirements for (i) wholesale market purchases and (ii) the prohibition of double counting of nonpower attributes under RCW 19.405.040; and provide clarification on the treatment of storage resources under the requirement in chapter 19.405 RCW.

Reasons Supporting Proposal: The rules are proposed to comply with the requirements of RCW 19.405.130 and to ensure proper implementation of the state's landmark 100 percent clean electricity law. CETA puts Washington on a path to eliminate coal-fired electric generation after 2025, achieve a greenhouse gas-neutral electricity supply by 2030, and achieve 100 percent renewable and nonemitting generation by 2045.

Statutory Authority for Adoption: RCW 19.405.100, 19.405.130.

Statute Being Implemented: Chapter 19.405 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of commerce, governmental.

Name of Agency Personnel Responsible for Drafting: Glenn Blackmon, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525, 360-688-6000; Implementation: Department of Commerce, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525, 360-407-6000; and Enforcement: Attorney General, 1125 Washington Street S.E., P.O. Box 40100, Olympia, WA 98504-0100, 360-725-6200.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The department of commerce is not a listed agency in RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated.

**SUMMARY OF COST CALCULATIONS:**

**SECTION 1:**

Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.

**1.1 The Clean Energy Transformation Act:** CETA is a comprehensive 100 percent clean electricity law with specific standards and requirements established by the legislature. The legislature authorized or required commerce to adopt rules to ensure the proper implementation of CETA as it applies to consumer-owned utilities (RCW 19.405.100).

The legislature also directed commerce and the utilities and transportation commission to define requirements, including appropriate specification, verification, and reporting requirements, for retail electric load met with market purchases and the western energy imbalance market or other centralized markets administered by a market operator for the purposes of RCW 19.405.030 through 19.405.050; and to address the prohibition on double counting of nonpower attributes under RCW 19.405.040(1) that could occur under other programs.

**1.2 Regulatory Fairness Act:** The Regulatory Fairness Act (RFA), chapter 19.85 RCW, requires that an agency prepare a small business economic impact statement for a proposed rule if the proposed rule will impose more-than-minor costs on businesses in an industry.

If the proposed rule exceeds the minor cost threshold for businesses in an industry, the agency must conduct a small economic business impact statement (SBEIS), and may then determine if the rule would have a disproportionate compliance cost burden on small business[es], and if legal and feasible, reduce this disproportionate impact.

The following definitions are used in the RFA:

- "Small business" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has 50 or fewer employees.
- "Minor Cost" means a cost per business that is less than 0.3 percent of annual revenue or income, or $100, whichever is greater, or 1 percent annual payroll.

The proposed rules apply to electric utilities that provide service to retail customers in Washington. Commerce has determined, for the purposes of this analysis, the industry is Electric Power Distribution (NAICS 21122). For this industry, the minor cost threshold is $356,170 per year, as calculated using the Minor Cost Threshold Calculator (updated October 2021) of the governor's office of regulatory innovation and assistance.

**1.3 Likely Impact of the Proposed Rules:** Commerce published a Request for Cost Information seeking information from electric utilities to assist in its estimation of costs for this purpose. Included in the request was an initial analysis, prepared by commerce, to identify if there were any specific rule provisions that impose requirements beyond the CETA statute that may result in costs to regulated businesses. If a business believes the initial analysis incorrectly concludes

that a rule does not impose any costs beyond what the statue requires, it was requested to provide cost information on that rule provision. Commerce received three responses to its request.

The Washington Public Utility District Association (WPUDA) did not provide any cost information, but made three requests. Citing RCW 19.85.030 (2)(f), WPUDA asked commerce [to] modify the language of WAC 194-40-210(4) to remove the exclusion from compliance eligibility of generating resources or power supply contracts that are not included in the portfolio analyzed by a utilities integrated resource plan. Commerce has removed this provision from WAC 194-40-210.

WPUDA similarly requested commerce eliminate WAC 194-40-415 because "the draft rules require an approach to compliance that currently does not exist."[1] As stated in the policy memo accompanying the draft rules, a clean electricity market does not exist. However, the proposed rule does not require a utility to participate in a clean energy market for compliance. It merely states that it is a compliance option. Commerce therefore made no changes to the draft rule.

1 https://deptofcommerce.app.box.com/file/929881419846

Finally, WPUDA requested that commerce assess the entirety of costs of the proposed rules to utilities of various sizes as specified by statute (chapter 19.85 RCW). As required under chapter 19.85 RCW, commerce assessed whether the proposed rules would exceed the minor cost threshold of $356,170 per year for regulated businesses. Commerce could not identify any provisions that impose requirements beyond those of the statute that may result in costs to regulated businesses, and requested regulated businesses to submit cost information if a regulated business thought otherwise.

Ferry County PUD No. 1 was one of two public utility districts to submit cost information. Ferry County Public Utility District No. 1 claimed it would hire one full-time employee as a result of the proposed rules.[2] The employee would make $75,000 per year. This expense falls below the minor cost threshold of $356,170 per year for the electric power distribution industry, as calculated using the Minor Cost Threshold Calculated [Calculator] (updated October 2021) of the governor's office of regulatory innovation and assistance.

2 https://deptofcommerce.app.box.com/file/929922208992

Grays Harbor County PUD No. 1 found no additional costs related to commerce's proposed rules, but estimated its costs to comply with the statute to be $419,898.40 per year.[3] Costs to comply with the statute do not count toward the minor cost threshold; only additional costs resulting from the agency's proposed rules count toward the minor cost threshold.

3 https://deptofcommerce.app.box.com/file/931026102551

Commerce has determined that the proposed rules do not impose more-than-minor costs on businesses in the industry and that a small business economic impact statement is not required.

March 23, 2022
Dave Pringle
Policy Advisor and Rules Coordinator

**OTS-3672.2**

NEW SECTION

**WAC 194-40-370 Accounting for electricity from storage resources.** (1) The eligibility of renewable or nonemitting electricity to demonstrate compliance with CETA is not affected by the use of storage resources.

(2) Except for storage resources located on the customer side of a retail meter, any electrical consumption or loss resulting from the charging, holding, and discharging of storage resources is not considered retail electric load as defined in RCW 19.405.020(36).

(3) Any consumption or loss resulting from the charging, holding, and discharging of storage resources located on the customer side of a retail meter is considered retail electric load for the purpose of compliance with CETA.

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NEW SECTION

**WAC 194-40-410 Use of renewable energy credits other than unbundled RECs to comply with the greenhouse gas neutral standard.** (1) A utility may use a REC other than an unbundled REC to comply with the requirements of RCW 19.405.040 (1)(a) or to demonstrate performance compared to an interim target established under RCW 19.405.060(1) only if the utility complies with the requirements of this section.

(2) The utility must acquire the REC and the electricity associated with the REC in a single transaction through ownership or control of the generating facility or through a contract for purchase or exchange.

(3) The electricity associated with the REC must be:

(a) From a generating facility located within the utility's service area or balancing authority area; or

(b) Acquired by the utility at one of the following points of delivery:

(i) The transmission or distribution system of an electric utility (as defined in RCW 19.405.020);

(ii) The transmission system of the Bonneville Power Administration;

(iii) The transmission system of any entity that is a participant in an organized electricity market located in the Western Interconnection in which the electric utility is a participant; or

(iv) Another point of delivery designated by the utility for the purpose of subsequent delivery to the utility.

(4) The electricity associated with the REC must be from a generating facility or contract that is part of a resource portfolio reasonably expected to be capable of serving at least 80 percent of the utility's retail electric load over each compliance period. Each utility required under RCW 19.280.030(1) to prepare an integrated resource plan must demonstrate compliance with this requirement by, at a minimum, showing through an hourly analysis that the expected renewable or nonemitting output of the resource portfolio could be generated and delivered to serve at least 80 percent of expected retail electric load. This demonstration must use inputs and assumptions consistent with the utility's integrated resource plan and may be updated with changes in its resource portfolio.

(5) A REC is not eligible under this section if the utility sells or otherwise transfers ownership of the electricity associated with the REC in a transaction that (a) contractually specifies the source of the electricity by fuel source or as renewable or (b) transfers the nonpower attributes of the electricity.

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NEW SECTION

**WAC 194-40-415 Use of renewable energy credits to comply with the 100 percent renewable or nonemitting standard.** (1) Except as provided in subsection (2) of this section, a utility may not use a REC to comply with the requirements of RCW 19.405.050(1) unless:

(a) The utility acquired the REC and the electricity associated with the REC in a single transaction through ownership or control of the generating facility or through a contract for purchase or exchange; and

(b) The utility did not use the associated electricity for any purpose other than supplying electricity to its Washington retail electric customers.

(2) A utility may use any REC to comply with the requirements of RCW 19.405.050(1) if:

(a) The utility acquired the REC through participation in a clean electricity market;

(b) The REC is associated with electricity acquired through participation in a clean electricity market; and

(c) The utility obtained all electricity supplied to its retail customers from clean electricity markets.

(3) For purposes of this section, "clean electricity market" means an organized wholesale electricity market that provides for the physical delivery of electricity and excludes electricity from fossil fuel and unspecified sources.

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NEW SECTION

**WAC 194-40-420 Safeguards to prevent double counting of unbundled RECs.** (1) A utility may use an unbundled REC as an alternative compliance option, as provided in RCW 19.405.040 (1)(b), only if the utility demonstrates that there is no double counting of any nonpower attribute associated with that REC by complying with the requirements of this section.

(2) Except as provided in subsection (4) of this section, a utility may use an unbundled REC for alternative compliance only if the utility demonstrates:

(a) The associated electricity was sold, delivered, or transferred without specifying fuel sources or nonpower attributes and under a contract expressly stating the fuel source or nonpower attributes are not included; and

(b) The associated electricity was not delivered, reported, or claimed as a zero-emission specified source or assigned the emissions rate of the renewable generating facility under a GHG program.

(3) A utility's demonstration under this section may be met by documentation that the entity providing the unbundled REC:

(a) Provides contract, confirmation, or other transaction terms that comply with the requirements of subsection (2) of this section;

(b) Was a party to or otherwise has knowledge of the transaction in which the associated electricity was sold or transferred and attests to complying with the requirements of subsection (2) of this section; or

(c) Obtained the unbundled REC from an entity that attests that it and all previous owners of the REC transferred the REC using transaction terms complying with the requirements of (a) or (b) of this subsection.

(4) To claim and retire an unbundled REC for alternative compliance where the Washington-eligible RECs were created by renewable electricity marketed by BPA, a utility must demonstrate the REC was not associated with electricity from a system sale from BPA directly into a state with a GHG program and to an entity regulated by the state GHG program. The RECs are calculated based on the same vintage year as the year in which the electricity was imported to the state with the GHG program.

(5) For the purposes of this section, "GHG program" includes any governmental program outside of Washington that caps or limits greenhouse gas emissions or requires the purchase, surrender, or retirement of greenhouse gas allowances, if the scope of the greenhouse gas program includes electricity imported from outside the governmental jurisdiction and does not require the retirement of RECs for such imported electricity.

(6) This section sets only the minimum requirements necessary to demonstrate that no double counting has occurred. The auditor may request that the utility produce other evidence or recommend specific actions for the utility to consider to demonstrate that there is no double counting of nonpower attributes.

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