



STATE OF WASHINGTON  
DEPARTMENT OF COMMERCE  
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August 25, 2020

George Caan  
Executive Director  
Washington Public Utility Districts Association  
212 Union Ave SE, Suite 201  
Olympia, WA 98501

RE: WPUDA's requests for a substantial legislative rule analysis

Dear George,

I want to thank you, Nicolas Garcia, the other association staff and, especially, your members for WPUDA's constructive engagement in developing the administrative rules to implement the Clean Energy Transformation Act. WPUDA has been a consistent and positive presence in the rulemaking workshops and in the written comment process. The purpose of this letter is to respond to WPUDA's requests that our agency produce the studies and analysis required for adoption of a "significant legislative rule" under RCW 34.05.328.

As your letters acknowledge, the requirements of the "significant legislative rule" statute do not apply to rules adopted under CETA or any other rules developed by the Department of Commerce. Under RCW 34.05.328, the agency could voluntarily subject the CETA rules to the statutory process. Alternatively, the Joint Administrative Rules Review Committee could make the rules subject to the law after the Committee receives the notice of proposed rulemaking.

The Legislature first enacted RCW 34.05.328 as part of the Regulatory Reform Act of 1995. In laying out the intent of the law, the Legislature stated that "substantial policy decisions affecting the public [should] be made by those directly accountable to the public, namely the Legislature." The Legislature declared that the "adoption of administrative rules by agencies helps assure that these [legislative] policies are clearly understood, fairly applied, and uniformly enforced." SHB1010 (1995). At the same time, the Legislature also anticipated that it would, in some cases, delegate certain authority to agencies to implement policies through "significant legislative rules." In these cases, the Legislature established detailed requirements intended to ensure that those agencies did not adopt unnecessarily stringent or expensive rules.

Consistent with this legislative intent, there is good reason not to treat every rule as a "significant legislative rule" and not to apply this designation to the CETA rules. In most cases, including CETA, the Legislature itself makes the significant legislative decisions, and the agency's responsibility is to ensure that the statutory requirements are fairly and properly implemented and enforced. The Legislature itself weighed the benefits and costs of transforming our state's electricity system to protect the environment, provide for greater equity, and eventually eliminate the use of fossil fuels to generate electricity. The Legislature laid

out the policy in detail in the law. The Legislature did not direct Commerce to decide the merits of clean energy transformation; legislators did so themselves as elected officials directly accountable to the public.

While we will not treat the CETA rules as a “significant legislative rule” under RCW 34.05.328, we are taking other, related steps. We are conducting an inquiry into compliance costs under the Regulatory Fairness Act, RCW 19.85. This law requires that the agency identify the impact of administrative rules on small businesses with the intent of reducing disproportionate impact, if a proposed rule will impose more than minor costs on businesses in an industry. We encourage the participation of WPUDA members in this inquiry.

In addition to the Regulatory Fairness Act inquiry, our agency is also working closely with small utilities subject to CETA to address concerns that specifically affect them and their customers, whether those concerns are due to the utility’s business relationship with the Bonneville Power Administration, their lack of scale economies, or other reasons. The draft CETA rules published on August 14, include several provisions addressing these concerns. It is worth noting that the language is not limited to the subset of small utilities that meet the statutory definition of a “small business.”

I hope that this information is helpful in explaining our decision concerning your request. I look forward to our continued work together on behalf of the people of Washington.

Sincerely,



Glenn Blackmon, Ph.D.  
Manager, Energy Policy Office