# PROPOSED RULE MAKING

# CR-102 (December 2017)
## (Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: March 23, 2022
TIME: 8:39 AM

WSR 22-07-104

**Agency:** Washington State Department of Commerce

☒ **Original Notice**
☐ **Supplemental Notice to WSR _____**
☐ **Continuance of WSR _____**

☒ **Preproposal Statement of Inquiry was filed as WSR** 19-14-050 **; or**
☐ **Expedited Rule Making--Proposed notice was filed as WSR _____; or**
☐ **Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**
☐ **Proposal is exempt under RCW _____.**

**Title of rule and other identifying information:** (describe subject) Ch. 194-40 WAC — Clean Energy Transformation Act

**Hearing location(s):**

| **Date:** | **Time:** | **Location:** (be specific) | **Comment:** |
|---|---|---|---|
| April 27, 2022 | 1:00 pm | Zoom meeting | This hearing will be virtual only. Please check the Clean Energy Transformation Act (CETA) Rulemaking webpage for meeting information: https://www.commerce.wa.gov/growing-the-economy/energy/ceta-rulemaking/ |

**Date of intended adoption:** 05/06/2022 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**
Name: Glenn Blackmon
Address: P.O. Box 42525, Olympia, WA 98504
Email: ceta@commerce.wa.gov
Fax:
Other:
By (date) _____

**Assistance for persons with disabilities:**
Contact Steven Hershkowitz
Phone: 360-688-4006
Fax:
TTY:
Email: ceta@commerce.wa.gov
Other:
By (date) _____

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The proposed rule ensures the proper implementation and enforcement of Clean Energy Transformation Act (CETA) and addresses wholesale market transactions and the prohibition on double counting, as provided for under RCW 19.405.100 and RCW 19.405.130. The proposed rules: Provide clarification of the requirement in RCW 19.405.040 that a utility use renewable or non-emitting electricity sources in an amount equal to 100% of the utility's retail electric load, provide clarification of the requirement in RCW 19.405.050 that a utility supply 100% of all sales of electricity to Washington retail electric customers using electricity from renewable or non-emitting 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% 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% renewable and non-emitting generation by 2045.

**Statutory authority for adoption:** RCW 19.405.100; RCW 19.405.130

**Statute being implemented:** Chapter 19.405 RCW

**Is rule necessary because of a:**

| | |
|---|---|
| Federal Law? | ☐ Yes ☒ No |
| Federal Court Decision? | ☐ Yes ☒ No |
| State Court Decision? | ☐ Yes ☒ No |

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** None.

**Name of proponent:** (person or organization) Department of Commerce

☐ Private
☐ Public
☒ Governmental

**Name of agency personnel responsible for:**

| | Name | Office Location | Phone |
|---|---|---|---|
| Drafting: | Glenn Blackmon | 1011 Plum Street SE<br>P.O. Box 42525<br>Olympia, WA 98504-2525 | 360-688-6000 |
| Implementation: | Department of Commerce | 1011 Plum Street SE<br>P.O. Box 42525<br>Olympia, WA 98504-2525 | 360-407-6000 |
| Enforcement: | Attorney General | 1125 Washington Street SE<br>PO Box 40100<br>Olympia, WA 98504-0100 | 360-725-6200 |

**Is a school district fiscal impact statement required under RCW 28A.305.135?** ☐ Yes ☒ No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

**Is a cost-benefit analysis required under RCW 34.05.328?**

☐ Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

☒ No: Please explain: The Dept. of Commerce is not a listed agency in RCW 34.05.328.

**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

☐ This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.
Citation and description:

☐ This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

☐ This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

☐ This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

| | | | |
|---|---|---|---|
| ☐ | RCW 34.05.310 (4)(b)<br>(Internal government operations) | ☐ | RCW 34.05.310 (4)(e)<br>(Dictated by statute) |
| ☐ | RCW 34.05.310 (4)(c)<br>(Incorporation by reference) | ☐ | RCW 34.05.310 (4)(f)<br>(Set or adjust fees) |
| ☐ | RCW 34.05.310 (4)(d)<br>(Correct or clarify language) | ☐ | RCW 34.05.310 (4)(g)<br>((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

☐ This rule proposal, or portions of the proposal, is exempt under RCW _____.
Explanation of exemptions, if necessary:

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

☒ No Briefly summarize 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

The Clean Energy Transformation Act is a comprehensive 100% 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 the Clean Energy Transformation Act (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 non-power 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, 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 fifty or fewer employees.

- "Minor Cost" means a cost per business that is less than 0.3% of annual revenue or income, or $100, whichever is greater, or 1% 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 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.

Finally, WPUDA requested that Commerce assess the entirety of costs of the proposed rules to utilities of various sizes as specified by statute (RCW 19.85). As required under RCW 19.85, 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 fulltime 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 (updated October 2021) of the Governor's Office of Regulatory Innovation and Assistance.

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 towards the minor cost threshold.

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.

☐ Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

[1] https://deptofcommerce.app.box.com/file/929881419846
[2] https://deptofcommerce.app.box.com/file/929922208992
[3] https://deptofcommerce.app.box.com/file/931026102551

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

| **Date:** 3/23/2022 | **Signature:** |
|---|---|
| **Name:** Dave Pringle | |
| **Title:** Policy Advisor and Rules Coordinator | |

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.

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.

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.

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.

**Comparison of Proposed Rules to 1/19/2022 Draft Rules**

**3/23/2022**

**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.

**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 ~~on an hourly basis~~ 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 ~~in its integrated resource plans~~ by, at a minimum, showing through an hourly analysis that the expected renewable or non-emitting 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.

**194-40-415 Use of renewable energy credits to comply with the 100 percent renewable or non-emitting 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~~or~~ unspecified sources.

**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 subsections ~~(3)~~(a) or ~~(3)~~(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.

**Clean Energy Transformation Act Rulemaking**
**Comment Summary and Response**
**Draft Rules 194-40-370, 194-40-410, 194-40-415, 194-40-420**
**March 23, 2022**

| **WAC 194-40-370 Accounting for electricity from storage resources.** | | |
|---|---|---|
| Center for Resource Solutions | Draft rules in Section WAC 194-40-YYY / WAC 480-100-YYY do not help a utility or the state determine whether electricity from an energy storage facility has sourced energy for its production (discharge) from electricity from renewable or nonemitting generation resources. Please provide guidance on compliance with this section. | Under the proposed rules the eligibility of electricity will be demonstrated through compliance with the relevant statutes and rules, including WAC 194-40-410 and WAC 194-40-415, and is not affected by the use of storage resources. |
| NRU, WRECA, WPUDA, PNGC Power | Approve the rules as-is. | Thank you for your comment. |
| NW Energy Coalition and Climate Solutions | Happy that the rule clarifies that electricity from storage can only be claimed for compliance if the storage sourced the electricity from renewable resources or non-emitting generation. | The proposed rule does not have the stated effect. The eligibility of electricity and RECs is determined by the characteristics of the generating facility and is not affected by the use of storage resources. |

**Abbreviations:**

NRU: Northwest Requirements Utilities

WRECA: Washington Rural Electric Cooperative Association

WPUDA: Washington Public Utility District Association

| WAC 194-40-410 Use of renewable energy credits other than unbundled RECs to comply with the greenhouse gas neutral standard | | |
|---|---|---|
| Public Generating Pool | This subsection:<br>1. Appears to exclude resources not identified in the utility's resource plan or IRP<br>2. Commits utilities to resources they may otherwise not need and prevents them from accessing other CETA-compliant resources<br>3. Imposes an hourly planning and acquisition requirement not supported by statutory language and does not recognize variability of hydro and other renewable resources<br>4. Goes beyond statute by placing a prospective requirement on utility planning<br>5. Creates a potential conflict with RCW 19.280.020(9)<br>6. May expose utilities to sanctions if they deviate from their plans<br>7. Conflicts with affordability and flexible-hydro provisions in CETA | The proposed rule provides a balanced interpretation of the requirement to use electricity in an amount equal to 100% of retail load. It does not conflict with affordability, least-cost acquisition, or planning requirements, because those requirements all assume the utility complies with the requirements of CETA. A forward-looking, procurement-based demonstration of compliance allows utilities to account for the variability of hydro resources, as well as other sources of load and resource uncertainty, in demonstrating that at least 80% of load can be met using renewable or non-emitting resources. The hourly demonstration is consistent with the resource adequacy objectives of CETA, since excess generation in one hour is not readily available to meet load in another hour. |
| Public Generating Pool | Strike everything and adopt the following:<br><br>(4)(a) Except as provided in (b) of this subsection, the electricity associated with the REC must be: (i) Consistent with the utility's Clean Energy Implementation Plan for the compliance period, developed in accordance with WAC 194-40-200; and (ii) part of a planned resource portfolio reasonably expected to be capable of serving at least 80 percent of the utility's retail electric load, consistent with the utility's Clean Energy Action Plan developed under RCW 19.280.030(1) or other ten-year plan developed under RCW 19.280.030(5). | The proposed rule addresses this concern in part by providing utilities with flexibility to demonstrate the capability of a resource portfolio outside of its integrated resource plan. |

| WAC 194-40-410 Use of renewable energy credits other than unbundled RECs to comply with the greenhouse gas neutral standard | | |
|---|---|---|
| | (b) If the electricity associated with the REC is from a generating facility, contract, or market purchase that is not identified in the utility's Clean Energy Implementation Plan for the compliance period, the utility must document the use of the electricity in its interim performance report submitted under WAC 194-40-040(1) or its compliance report submitted under WAC 194-40-040(2), developed consistent with WAC 194-40-040(4). | |
| Snohomish PUD | (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 may demonstrate compliance with this requirement in its Clean Energy Implementation Plan either by establishing planned acquisitions for the compliance period through its renewable energy targets consistent with a utility's Integrated Resource Plan, through eligible short-term acquisitions made during the compliance period, or by any other reasonable method. | The proposed rule addresses this concern in part by providing utilities with flexibility to demonstrate the capability of a resource portfolio outside of its integrated resource plan. |
| PNGC, WRECA, WPUDA, NRU | The level of specificity in subsection 4 is not realistic. It is not clear that the provision is necessary for utilities to achieve compliance. We recommend consideration that utilities utilizing BPA products are required to bring their BPA resources to load. | The proposed rule is revised to allow smaller utilities (those not required to prepare an integrated resource plan) to demonstrate compliance without an hourly analysis. Utilities that use BPA as their exclusive supplier will likely rely on resource portfolio analysis developed by BPA. |
| Center for Resource Solutions | Consider alternative language defining "use" as acquisition of both energy and attributes "from a single facility," rather than in a "single transaction." Explain the difference between Commerce and UTC draft rules to the extent that the reference to "single transaction" is not present in the UTC's draft rules at WAC 480-100-650(3)(d). | The proposed rule requires acquisition in a single transaction. This is consistent with the UTC's approach as reflected in its definition of retained nonpower attributes. |

| **WAC 194-40-410 Use of renewable energy credits other than unbundled RECs to comply with the greenhouse gas neutral standard** | | |
|---|---|---|
| Center for Resource Solutions | Adopt UTC's draft language around NPA, particularly: "contracts must include terms stating the utility is not transferring any of the nonpower attributes, the buyer will not represent in any form that the electricity has any nonpower attributes associated with it, and the buyer must include such provision in any subsequent sale of the electricity." | Proposed WAC 194-40-410(5) is consistent with the UTC's proposed requirements concerning contract terms when electricity is transferred without attributes. |
| Western Power Trading Forum | Modify language to allow for RECs associated with resources under short term contracts to be used for compliance. | The proposed rule has been revised to provide additional flexibility in using resources not identified in a utility's integrated resource plan. The proposed rules does not prohibit using renewable or non-emitting resources acquired under short-term contracts, provided those resources otherwise comply. |
| NW Energy Coalition and Climate Solutions | We are frustrated that the rules on the 2030 and 2045 standards do not mirror one another. The 2030 standard is not simply an aspirational benchmark, but a strong standard with flexibility built into the law. | The rules interpreting the 2030 and 2045 standards reflect the differences in the statutes establishing those standards. RCW 19.405.040 requires that utilities use clean electricity in an amount equal to 100% of load. This is a different requirement than the one in RCW 19.405.050, which requires that clean electricity supply 100% of retail sales. |
| NW Energy Coalition and Climate Solutions | A stringent interpretation of the 2030 standard is needed to meet our GHG emissions limits by 2030. If 2030 rule is adopted, utilities could be out of compliance with RCW -040. The record of this rulemaking lacks any evidence of the need to provide additional flexibility that is not permitted by statute. | The proposed rule (194-40-410) is consistent RCW 19.405.040. It clarifies the means by which a utility demonstrates that it uses renewable resources or non-emitting generation in an amount equal to 100% of load and is not less stringent or more flexible than the statute itself. |
| NW Energy Coalition and Climate Solutions | The rule also fails to require that a utility serve retail load with a minimum of 80 percent renewable and nonemitting resources by not considering all the energy that a utility relies on to serve retail electric load… "Retail sales of electricity" must account for line losses because the energy needed to deliver electricity to | The standard in RCW 19.405.040 requires a comparison of retail load, which is measured at the point of delivery, and renewable or non-emitting generation, |

| WAC 194-40-410 Use of renewable energy credits other than unbundled RECs to comply with the greenhouse gas neutral standard | | |
|---|---|---|
| | customers is included in rates, and therefore is included in the sale. It is clear that the legislature assumed the 80 percent of retail electric load requirement, paired with the 20 percent of retail electric load requirement would equal 100 percent of the energy that a utility would rely on to serve retail electric load. Not incorporating associated losses ignores how utility's plan and procure resources, as well as the legislative intent of CETA. | which is measured at the point of generation. Utility operations and planning procedures would reasonably account for the energy lost during transmission, distribution, and storage, but the statute does not require that a utility use eligible resources in an amount equal to 100% of retail load plus losses. |
| NW Energy Coalition and Climate Solutions | Any noncompliant energy used above the 20 percent allowance would incur a penalty for each MWh over the allowance. | The compliance and penalty statute (RCW 19.405.090) applies if a utility fails to comply with the GHG Neutral standard and is not itself a compliance standard. |
| King County | Eliminate retained NPAs or other substitutes for clean electricity supplies. | The proposed rule reasonably interprets the standard in RCW 19.405.040, which requires the retirement of RECs associated with renewable electricity used by the utility. |

| WAC 194-40-415 Use of renewable energy credits to comply with the 100 percent renewable or nonemitting standard. | | |
|---|---|---|
| Public Generating Pool | Wait to develop this rule until regional market discussions advance and a more comprehensive stakeholder process can be conducted. | The proposed rule improves consistency with the rules proposed by the UTC for investor-owned utilities and provides guidance for the industry in regional market discussions. |
| NRU, WRECA, WPUDA, PNGC Power | This rule is premature. | The proposed rule provides greater clarity for utilities and stakeholders in their long-range planning and resource acquisition. |
| Bonneville Power Administration | This language seemingly prevents consumer-owned utilities from purchasing power from BPA and also participating in a "clean energy market" since the only way to use RECs acquired from such a market is if the utility is purchasing <u>all</u> power from this market. This would be in violation of the NW Power Act. | The proposed rule does not have the stated effect, since subsection (2) is an optional compliance approach. Commerce looks forward to working with BPA and its utility customers as they develop a product that enables utilities to comply with the 2045 standard. |
| Snohomish PUD | Do not adopt a 2045 process until a thorough stakeholder process has been conducted. | The proposed rule provides greater clarity for utilities and stakeholders in their long-range planning and resource acquisition. |
| Center for Resource Solutions | Consider alternative language requiring acquisition of both energy and attributes "from a single facility," rather than in a "single transaction." | The requirement to acquire the REC and associated electricity in a single transaction is more consistent with the statutory requirements of the 2045 standard. |
| Center for Resource Solutions | Please explain Commerce's rationale for subsection (2)(c) requiring that all of an entity's energy must be sourced from the market in order for that entity to use any clean energy from that market. | The proposed rule does not have the stated effect. A utility could use electricity from a clean energy market for a portion of its load, if it met the requirements of subsection (1). Subsection (2) provides an alternative compliance method in which the utility acquires all of its electricity through one or more markets that exclude electricity from fossil fuel and unspecified sources. The all-in element is necessary to |

| WAC 194-40-415 Use of renewable energy credits to comply with the 100 percent renewable or nonemitting standard. | | |
|---|---|---|
| | | ensure the integrity of this market approach. |

| WAC 194-40-420 Safeguards to prevent double counting of unbundled RECs. | | |
|---|---|---|
| NRU, WRECA, WPUDA, PNGC Power | The definition of GHG program could be strengthened by recognizing that if Washington links with another program, the entirety becomes a WA program. | The effect of a linkage agreement on the risk of double-counting is speculative at this time. Stakeholders may wish to raise this issue after a linkage arrangement is announced. |
| NRU, WRECA, WPUDA, PNGC Power | It is unclear whether the draft rules adequately account for situations in which there are multiple owners associated with the REC. | No change in rule language proposed. The proposed rule applies equally to all RECs, regardless of the number of times ownership of the REC is transferred. |
| Bonneville Power Administration | Include language that allows a utility to demonstrate a REC may be used for compliance when the underlying electricity was sold as unspecified power into a state with a GHG program.<br><br>(2) Except as provided in subsection (4), a utility may use an unbundled REC for alternative compliance only if the utility demonstrates:<br><br>a. The associated electricity was sold, delivered, or transferred as an unspecified source of electricity where the power was not a specified source at the time of entry into the transaction.; or<br><br>b. The utility demonstrates: | Limiting the prohibition on double-counting to claims made "at the time of entry into the transaction" would provide insufficient protection against the same clean energy being counted under two different government programs. |
| Center for Resource Solutions | (2)(b): "The associated electricity was not delivered, reported, or claimed as imported or delivered to serve load and ~~a zero emission specified source or~~ assigned the emissions rate of the renewable generating facility under a GHG program outside of Washington or programs linked with Washington." | The effect of a linkage agreement on the risk of double-counting is speculative at this time. Stakeholders may wish to raise this issue after a linkage arrangement is announced. |
| Center for Resource Solutions | Additional clarification related to subsection (2)(b) may be required to address an "unspecified" or "zonal" approach to GHG optimization and attribution currently being considered for the California Independent System Operator's (CalISO's) extended day-ahead market (EDAM) design. | Thank you for your comment. We will continue to monitor the developments in other jurisdictions. |

| **WAC 194-40-420 Safeguards to prevent double counting of unbundled RECs.** | | |
|---|---|---|
| Center for Resource Solutions | It is unclear which, if any, of the documentation options in subsection (3) could be used in a situation in which the unbundled REC is associated with electricity sold into a wholesale electricity market where there is no contract or transaction record specifying that the source is unspecified. | The entity providing the unbundled REC must provide one of the three forms of documentation, one of which is a legal attestation. |
| Center for Resource Solutions | Subsection (4): "directly into a state with a GHG program other than Washington or states with programs linked with Washington." | The effect of a linkage agreement on the risk of double-counting is speculative at this time. Stakeholders may wish to raise this issue after a linkage arrangement is announced. |
| Center for Resource Solutions | Subsection (5): "any governmental program outside of Washington or linked states," and, "from outside the governmental jurisdiction or linked GHG compliance area." | The effect of a linkage agreement on the risk of double-counting is speculative at this time. Stakeholders may wish to raise this issue after a linkage arrangement is announced. |
| Center for Resource Solutions | Minor modifications to the definition of GHG program in subsection (5) may be needed in order to cover all GHG programs that may affect unbundled RECs used in Washington. This definition should include any GHG program outside of Washington that claims delivery of the emissions associated with electricity to serve load in the state without the RECs, including but not limited to GHG cap and other programs that include imported electricity. | Stakeholders may wish to raise this issue in future as additional jurisdictions develop emissions limitation programs that include imported electricity. |
| Western Power Trading Forum | The associated electricity was not ~~delivered, reported, or claimed~~ sold or ownership otherwise transferred in a transaction that contractually specifies the source of the electricity as a zero-emission specified source ~~or assigned the emissions rate of the renewable generating facility~~ under a GHG program. | Not accepted. Assigning a specific emissions rate to electricity from a renewable generating facility would result in double-counting of the emissions attribute of the REC. |
| Renewable Northwest | For the purposes of this section, "GHG program" includes any governmental program outside of Washington, excluding those linked with 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. | The effect of a linkage agreement on the risk of double-counting is speculative at this time. Stakeholders may wish to raise this issue after a linkage arrangement is announced. |

| WAC 194-40-420 Safeguards to prevent double counting of unbundled RECs. | | |
|---|---|---|
| Renewable Northwest | We recommend that this rule be revisited in five years to consider potential market developments, such as the ongoing discussions via the California Independent System Operator ("CAISO") extended day-ahead market ("EDAM") initiative | Commerce will monitor development of electricity and carbon markets and looks forward to suggestions from stakeholders concerning rule updates as appropriate. |
| Northwest Energy Coalition and Climate Solutions | Consider stating that any REC used as alternative compliance options must not only meet the requirements in XXX-3, but also retire the RECs in WREGIS | WAC 194-40-400 requires that all RECs used to comply with CETA be retired in the WREGIS tracking system. |