



# RULE-MAKING ORDER PERMANENT RULE ONLY

## CR-103P (December 2017) (Implements RCW 34.05.360)

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STATE OF WASHINGTON  
FILED

DATE: June 17, 2022

TIME: 1:53 PM

WSR 22-13-128

**Agency:** Department of Commerce

**Effective date of rule:**

**Permanent Rules**

31 days after filing.

Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

Yes  No If Yes, explain:

**Purpose:** The rules ensure the proper implementation and enforcement of Clean Energy Transformation Act (CETA) and address wholesale market transactions and the prohibition on double counting, as provided for under RCW 19.405.100 and RCW 19.405.130. The 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.

**Citation of rules affected by this order:**

New: 4

Repealed:

Amended:

Suspended:

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

**Other authority:**

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 22-07-104 on March 23, 2022 (date).

Describe any changes other than editing from proposed to adopted version: There were no changes to the proposed rule.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Web site:

Other:

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	<u>4</u>	Amended	___	Repealed	___

**The number of sections adopted at the request of a nongovernmental entity:**

New	___	Amended	___	Repealed	___
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**The number of sections adopted on the agency's own initiative:**

New	___	Amended	___	Repealed	___
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	___	Amended	___	Repealed	___
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**The number of sections adopted using:**

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

<b>Date Adopted:</b> 6/17/2022
<b>Name:</b> Dave Pringle
<b>Title:</b> Legislative and Rules Coordinator

**Signature:**



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.

Rule Section	Commenter	Comment	Agency Response
194-40-370	NRU, WPUA, WRECA, PNGC	We support WAC 194-40-370 as drafted.	Thank you for your comment.
194-40-410	NRU, WPUA, WRECA, PNGC	We generally support the approach outlined in WAC 194-40-410, although have continued concerns with subsection (4).	The proposed rule allows 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.
194-40-410	Renewable Northwest	We recommend Commerce adopt the Commission’s definition of retained NPA, as its definition does not introduce the ambiguous requirement to acquire the REC and its associated electricity in a “single transaction”	These proposed rules are consistent with the UTC’s approach as reflected in its definition of retained non-power attributes.
194-40-410	Renewable Northwest	We are concerned that Commerce’s use of “single transaction” may be intended for a broader use than the Commission’s use of “same transaction,” thereby confusing CETA’s compliance framework.	There is no substantive difference in the terms “single transaction” and “same transaction.”
194-40-410	Renewable Northwest	Align with the Commission in prohibiting a utility from considering “REC(s) other than... unbundled REC[s]” in compliance planning that occurs in the utility’s integrated resource plan (‘IRP’).	The proposed rule is consistent with the Commission’s and requires utilities that are required to prepare integrated resource plans to plan to meet 80% of their load with clean electricity based on an hourly analysis.
194-40-410	Renewable Northwest	<u>(x) The department shall commence a review of these rules no later than September 1, 2027, and, if determined to be necessary, recommend revisions to achieve the policy objectives set forth in chapter 19.405 RCW.</u>	Commerce has the authority to reopen and reconsider rules based on changes in markets,

Abbreviations:

NRU: Northwest Requirements Utilities

WRECA: Washington Rural Electric Cooperative Association

WPUA: Washington Public Utility District Association

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			technologies, and policy considerations.
194-40-410	Renewable Northwest	We appreciate the Department’s direction in Draft WAC 194-40-415.	Thank you for your comment.
194-40-410	Public Generating Pool	PGP also appreciates the incremental changes made to subsection (4) of proposed WAC 194-40-410 relative to the January 19 <sup>th</sup> draft rules.	Thank you for your comment.
194-40-410	Public Generating Pool	PGP continues to have concerns that requiring a prospective hourly analysis is not consistent with CETA’s retrospective multi-year compliance framework. However, compared to the previous draft rule, PGP interprets this version as appropriately providing flexibility to a consumer-owned utility with respect to updating its hourly analysis as load, resource, and other relevant inputs evolve over time. Further, PGP anticipates that a consumer-owned utility could identify use of a potential standardized “clean” product in its resource portfolio.	Thank you for your comment. 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. It preserves the multi-year compliance framework since both the hourly analysis and the 80% standard are applied over the entire multi-year compliance period. For example, a resource portfolio could meet the requirements of this rule even if, during a single adverse water

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			year, it did not result in at least 80% of load being met using renewable or non-emitting resources.
194-40-410	Public Generating Pool	PGP also appreciates the incremental changes made to subsection (4) of proposed WAC 194-40-410 relative to the January 19 <sup>th</sup> draft rules.	Thank you for your comment.
194-40-410	NW Energy Coalition	This section of law requires utilities’ actual electricity operations to be carbon neutral, with 80% of those MWh met with clean and nonemitting resources.	The proposed rule (194-40-410) is consistent with 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.
194-40-415	Public Generating Pool	Articulation of a “use” standard for 2045 is premature. It is a mistake to incorporate it at this point given the strong likelihood that such a standard will change in the near to medium-term future.	Commerce is aware of no pending change in the standard enacted in RCW 19.405.050. It is reasonable to assume that the Legislature enacted this standard more than 25 years in advance of its effectiveness in order to provide the industry with adequate time to develop the technologies, power systems, and market structures required to supply 100% of all sales of electricity to Washington retail electric customers from renewable or non-emitting sources. The proposed rule does

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			not impose any requirements in addition to those imposed by the underlying statute.
194-40-415	Public Generating Pool	The two pathways for “use” proposed by Commerce are both unrealistic and are likely prohibitive for Washington utilities to continue participating in regional wholesale energy markets.	The rule does not impose any requirements in addition to those imposed by the underlying statute. Adoption of WAC 194-40-415 at this time provides utilities with clarification of the requirements of RCW 19.405.050 and an optional pathway to comply by participating in a clean electricity market that does not exist today. A utility may use electricity from a clean electricity 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 ensure the integrity of this optional market approach.
194-40-415	NW Energy Coalition	We appreciate the notion of a clean electricity market, as Commerce proposes in WAC 194-40-415.	Thank you for your comment.
194-40-420(2)	Public Generating Pool	(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:	Limiting the prohibition on double counting to claims made “at the time of entry into the

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		<p>(a)(i) The associated electricity was sold, <del>delivered,</del> or transferred <b>under a contract or an electricity service schedule that does not include the non-power attributes; or</b></p> <p>(ii) <b>The contract or confirmation for the purchase of the unbundled REC contains proof of exclusive ownership of all environmental attributes associated with the REC; and</b> <del>without specifying fuel sources or nonpower attributes and under a contract expressly stating the fuel source or nonpower attributes are not included; and</del></p> <p>(b) The associated electricity was <b>sold or otherwise transferred in a transaction that contractually specifies the source of the electricity</b> <del>not delivered, reported, or claimed</del> as a zero-emission specified source or assigned the emissions rate of the renewable generating facility under a <b>non-linked</b> GHG program.</p> <p>(3) A utility's demonstration under this section may be met by documentation that the entity providing the unbundled REC:</p> <p>(a) Provides contract, confirmation, or other transaction terms, <b>or a subset thereof</b>, that comply with the requirements of subsection (2) of this section; <b>or</b></p> <p>(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; <del>or</del></p> <p><del>(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.</del></p> <p>(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 <b>non-linked</b> 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 <b>non-linked</b> GHG program.</p>	<p>transaction” would provide insufficient protection against the same clean energy being counted under two different government programs.</p> <p>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.</p>

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		<p>(5) For the purposes of this section, "non-linked GHG program" includes any governmental program outside of Washington with which the state has not entered into a linkage agreement 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.</p>	

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