

## **The Race to a Clean Electricity Future in Washington State Begins With WUTC and Commerce Rules**

In May of 2019, the [Clean Energy Transformation Act](#) (CETA) became law in Washington state and set bold decarbonization and renewable energy mandates for electric utilities. Under CETA, electric utilities in Washington must eliminate coal-fired electricity by 2026, use a carbon-neutral supply of electricity by 2030, and source 100% of their electricity from renewable or non-carbon-emitting sources by 2045.[1] But, much of the implementation was left to state agencies for guidance.

CETA required certain interim steps, including issuance of implementing regulations by January 1, 2021. In late December 2020, the Washington State Utilities and Transportation Commission (Commission) and the Washington Department of Commerce adopted rules packages to implement parts of CETA.

The Commission passed its rules covering:

- Clean Energy Implementation Plans and Integrated Resource Plans ([UE-191023](#))
- Energy Independence Act compliance ([UE-190652](#))
- Purchase of Resources ([UE-190837](#))

The [Department of Commerce](#) similarly passed similar rules implementing CETA.

The new rules offer guidance regarding utility planning for and acquisition of new energy resources to meet CETA's clean energy goals. As details of CETA's requirements begin to come into focus, utilities should begin planning how to meet CETA's resource needs and reporting requirements.

### **Clean Energy Implementation Plans and Integrated Resource Plans**

CETA requires electric utilities to transition away from fossil fuels towards carbon neutral and eventually carbon-free energy. The new and updated rules provide guidance for that transition, including the consideration of equity in the shift towards clean energy, reporting mechanisms, and enforcement mechanisms. Clean Energy Implementation Plans and Integrated Resource Plans are how utilities will plan for and demonstrate compliance with the interim energy targets and other specific provisions in CETA. The new rules prescribed rules for preparing Clean Energy Implementation Plans, updated requirements for Integrated Resource Plans, outlined the process utilities will use to demonstrate and report compliance, and provide enforcement mechanisms available to the Commission and Department of Commerce. But some areas will still require future guidance, such as guidance from the Commission to investor-owned utilities for calculating the social cost of greenhouse gas emissions.

### **Clean Energy Implementation Plan and Integrated Resource Plan Updates**

In the Clean Energy Implementation Plan, electric utilities must propose interim targets and specific targets for energy efficiency, demand response, and renewable energy to meet CETA requirements.[2] The first Clean Energy Implementation Plan must be filed with the Commission by October 1, 2021, and with the Department of Commerce by January 1, 2022, and every four years thereafter.[3] Utilities must also continue to develop Integrated Resource Plans which outline how a utility will meet its resource needs with the lowest reasonable cost mix of conservation, generation, energy resources, and delivery systems. The Integrated Resource Plan must include a wide array of components, including assessments of commercially available generating and nonconventional resources, methods for integrating renewable resources (including battery and pump storage), availability of transmission capacity, impact of potential changes to existing resources to meet clean energy standards, and a clean energy action plan for how utilities will meet clean energy goals at the lowest reasonable cost.[4] As utilities work toward purchasing resources that meet CETA's emission requirements, developing detailed but feasible integrated Clean Energy Implementation Plans and Integrated Resource Plans will be essential to compliance.

## **Reporting and Compliance**

Beginning in 2026 and every four years thereafter, each utility must provide a clean energy compliance report demonstrating whether the utility met its interim and specific targets, specific actions the utility took towards meeting clean energy transformation standards at the lowest reasonable cost, plus other reporting requirements like updates on the equity advisory group or customer engagement measures.[5] In years where an investor-owned utility does not file a clean energy compliance report, it must annually file a clean energy progress report, which includes clean energy metrics for utilities like: (1) conservation achievement in megawatts, (2) renewable resource capacity in megawatts, (3) non-emitting resource capacity, (4) greenhouse gas content calculations, and emissions, and (5) renewable energy credits used.[6] Each utility must also submit to the Department of Commerce by July 1, 2021, and each year thereafter, a fuel mix source and disposition report for the previous calendar year,[7] and each consumer-owned utility must submit a greenhouse content calculation for the previous calendar year.[8]

## **Enforcement**

An electric utility that fails to eliminate coal-fired resources from its allocation of electricity by December 31, 2025, or that fails to achieve greenhouse gas neutral retail sales by January 1, 2030, must pay an administrative penalty to the state of Washington for each megawatt-hour of noncompliant generation equal to \$100 times:

- 5 for coal-fired resources
- 84 for gas-fired peaking power plants
- 60 for gas-fired combined-cycle power plants[9]

Starting in 2027, this penalty must be adjusted on a biennial basis according to the rate of change of the inflation indicator, gross domestic product implicit price deflator.[10]

The rules provide that the Commission may take enforcement action if a utility fails to comply with RCW 19.405 or the Commission's rules implementing those requirements.[11] An enforcement action can be brought by complaint or assessment of a penalty by the Commission. Penalties may be up to \$100 dollars per megawatt hour that is not from a renewable resource or non-emitting electric generation, or in the form of nonmonetary remedies like specific performance. But, a utility may seek relief if after taking all reasonable measures, compliance is likely to compromise its obligation to comply with reliability standards, violate prudent resource adequacy standards, or compromise the integrity of the electric grid.[12]

The attorney general may bring a civil action against a consumer-owned utility for failure to comply with CETA.[13] The statute allows the governing body of a consumer-owned utility to authorize a temporary exemption from the requirement under RCW 19.405.040(1) that all of its retail electric sales be greenhouse gas neutral by January 1, 2030, subject to a concurring finding by a Department of Commerce auditor.[14]

### **Incremental Cost Cap**

If a utility's incremental cost of compliance with the greenhouse gas neutrality and clean energy implementation exceeds a specific threshold, then a utility is deemed to be in compliance with CETA. The incremental cost provisions (WAC 480-100-660 and WAC 194-40-230) provide a formula to determine the threshold amount by which utilities can spend, which amounts to about a 2% increase over the utility's average weather-adjusted sales revenue in a given period. Some members of the Commission believe investor-owned utilities will be able to achieve their interim targets without reliance on the alternative incremental cost pathway for compliance through CETA's lowest reasonable cost standard.[15]

### **Future Guidance for Investor-owned Utilities: Social Cost of Greenhouse Gas**

Investor-owned utilities can expect further determinations by the Commission, including the calculation and rules surrounding the social cost of greenhouse gas emissions, which is only defined as the "inflation adjusted cost of greenhouse gas emissions resulting from the generation of electricity" which will be updated and published on the Commission's website.[16] Currently, a utility must provide a description in its Clean Energy Implementation Plan of how the social cost of greenhouse gas emissions are modelled and incorporated. Further guidance on this issue will be important as investor-owned utilities are also required to incorporate the social cost of greenhouse gas emissions as a cost adder in their Integrated Resource Plan portfolio analysis and clean energy action plans.[17]

### **Energy Independence Act Rulemaking**

The [Energy Independence Act](#), a precursor to CETA, required utilities to increase electricity from renewable resources. The new rules generally aligned definitions in (480-109-060) and aligned various energy efficiency and renewable energy portfolio standards with CETA. Primarily, utilities can use CETA compliance as an alternative compliance mechanism for the Energy Independence Act. Starting in 2030 utilities can comply with the Energy Independence Act by using electricity equaling 100% of the average annual retail load from renewable resources, RECs, and non-emitting electric generation as defined in CETA.[18] But, the calculation for the average annual retail electric load will follow the Energy Independence Act two-year average rather than the CETA four-year average.[19] Other updates focused on including reporting requirements that included analysis of the impacts on low-income customers.

### **Purchase of Electric Generating Resources**

The Commission amended and adopted rules for investor-owned utilities relating to the purchase of electric generating resources including requirements for Requests for Proposals. The rules also outline the process for engaging an independent evaluator, particularly if the utility is considering repowering existing generating resources or if it intends to retain a procurement option for the resources.[20] Other requirements in the Requests for Proposal process include providing evaluation rubrics, timelines, and specification of operational attributes.[21] Furthermore, utilities are required to identify assets with the intent for the bidder to be able to

design a resource bid with those assets in mind. While only a first step in the process, these new rules and regulatory compliance mechanisms offer utilities an important roadmap to comply with CETA and achieve greenhouse-gas-emission-free electricity.

## Endnotes

1. RCW 19.405.040; RCW 19.405.050.
2. WAC 480-100-640; WAC 194-40-200
3. WAC 480-100-640; WAC 194-40-050.
4. WAC 480-100-620
5. WAC 480-100-650; WAC 194-40-040(1), (2) and (4).
6. WAC 480-100-650(3).
7. WAC 194-40-060(1).
8. WAC 194-40-060(2).
9. RCW 19.405.090(1)(a).
10. RCW 19.405.090(1)(b).
11. WAC 480-100-665.
12. RCW 19.405.090(3); WAC 480-100-665(4)
13. RCW 19.405.090(5)(e).
14. RCW 19.405.0905(5)(a)-(d).
15. *Dockets UE-191023 and UE-190698* (consolidated), General Order 601 at ¶105 (December 28, 2020).
16. WAC 480-100-605.
17. *Dockets UE-191023 and UE-190698* (consolidated), General Order 601 at ¶37 (December 28, 2020).
18. WAC 480-109-200(10).
19. WAC 480-109-210(2).
20. WAC 480-107-023.
21. WAC 480-107-025.

© 2021 Perkins Coie LLP

## Authors



### [Pamela J. Anderson](#)

Partner

[PJAnderson@perkinscoie.com](mailto:PJAnderson@perkinscoie.com) [425.635.1417](tel:425.635.1417)



## **Byron C. Starkey**

Associate

[ByronStarkey@perkinscoie.com](mailto:ByronStarkey@perkinscoie.com) [425.635.1458](tel:425.635.1458)

### **Explore more in**

[Climate Law](#) [Environment, Energy & Resources](#) [Corporate Law](#) [Energy Infrastructure & Clean Technology](#)

### **Related insights**

Update

#### **Securities Enforcement Forum DC 2024: Priorities in the Election's Wake**

Update

#### **The New Administration's Impact on Retailers**