

Stakeholder Meeting Summary
Clean Energy Transformation Rule, Chapter 173-444 WAC
February 12, 2020

Participants

In person

Avista
Benton REA
BPA
Chelan County PUD
Clark PUD
Cowlitz PUD
Ecology

Grant PUD
Powerex
Puget Sound Energy
Renewable H2, Klick PUD, Douglas PUD
Seattle City Light
WA Commerce
WA UTC
WEC
WPUDA
WRECA

Bruce Howard
Troy Berglund
Alisa Kaseweter
Shaun Seaman
Matt Babbitts
Steve Taylor
Jason Alberich, Emily Bruns, Neil Caudill,
Debebe Dererie, Bill Drumheller, Martha Hankins,
Tina Maurer, Margaret Plummer, Colleen Stinson,
Sam Wilson
Cliff Sears
Michael Corrigan
Ben Farrow, Kara Durbin
Dave Warren
Annette Pearson
Michael Breish
Jim Woodward
Eleanor Bastian
Nicolas Garcia
Kent Lopez

Webinar

Association of Washington Cities
Avista
BEF
BPA
Chelan PUD
Climate Soutions
DVC
Ecology

Northwest Energy Coalition
Pacific Corp
Puget Sound Energy
Seattle City Light
Snohomish PUD
Tacoma Power
WA UTC

Maggie Douglas
Jennifer Smith, Darrell Soyars
Evan Ramsey
Kathryn Patton
Melissa Lyons
Kelly Hall
Tyler Peeple
Elena Guilfoil, Linda Kildahl, Katya Kniazeva,
Andy Wineke
Joni Bosh
Jacob Goodspeed, Jessica Ralston
Keith Faretra, Brandon Gimper
Mendy Droke
Ian Hunter, Clack Mclsaac, John Petosa
Lisa Rennie, Chris Weber
Amy Andrews

Questions and responses

Issue: Early Action – The first compliance period for CETA does not start until 2030. However, if there are investments made to reduce greenhouse gas emission now, how would you value the impact of such early investments in terms of credits?

- **Response:** These questions will be addressed when we talk about the rule.

Issue: What statute requires Ecology to do regulatory analyses?¹ Which part does the regulatory analyses refer to – the energy transformation projects (ETPs) or GHG content calculation, or is it broader?

- **Response:** Ecology's economists analyze costs and benefits to regulated parties from changes to the rule language. As Ecology develops regulatory directions for the rule, our economists will create a scope for the economic analyses. Our economic research and analysis will be limited to the regulatory responsibilities given to Ecology by the legislature and will not include aspects of other agency's rulemaking responsibilities.

Issue: Does Ecology look at the economic analyses as a decision support tool or as a confirmation tool?

- **Response:** The regulatory analyses use the decision information that are made in the rule language development and consider stakeholders concerns. In this regard, the analyses confirm if the choices are consistent with law. We also use the analyses to help shape the rule, in which case it supports the decisions made in the rule. Thus, it serves both purposes.

Issue: What costs are you considering as this is voluntary action?

- **Response:** Since the rule is not developed yet, we have not done the cost-benefit analysis. For existing rules, we analyze the impact of the change in the rule against the baseline performance. For new rules, we analyze the cost of compliance against the benefits of the requirements. The requirement is for an optional compliance mechanism; we are exploring how we will analyze its impact.

Issue: The language in the statute requires Ecology to develop criteria and conversion factors to estimate the equivalent megawatt-hours of electricity benefits from energy transformation projects. It does not require Ecology to evaluate or approve the projects. However Sections VII and VIII of Ecology's draft rule outline state that Ecology is evaluating the project. Is Ecology planning to go beyond the authorized role in the statute to become a utility regulator?

- **Response:** The authority for ultimate approval of projects is not with Ecology. It is with UTC for investor-owned utilities (IOUs) and the governing boards for consumer-owned utilities (COUs). Ecology's clear role is in setting the criteria for identification of potentially eligible energy transformation projects (ETPs), and setting the protocol and processes for evaluating the potentially eligible energy transformation projects. It appears there is a grey area for project evaluation before the final approval of the project financial investments.

¹ The Administration Procedure Act (Chapter 43.05 RCW) and Regulatory Fairness Act (Chapter 19.85 RCW) require the regulatory analyses. The specific sections that require regulatory analyses are:

- RCW 34.05.328 – cost-benefit analysis and least burdensome alternative analysis
- RCW 19.85.030 and 040 – small business economic impact statement

Issue: Ecology intends to do some evaluation leaving the final approval for the utilities regulating agencies. What if there is disagreement between Ecology and utility regulating agencies? If you plan to do it as an optional service, that will be great public service.

- The intent of the proposed Ecology project evaluation is to demonstrate that projects are meeting the criteria in the protocol, not to approve the project investment.

Issue: The law requires that Ecology determine the length of time for permanent GHG reduction, based on the standard in other jurisdictions. Did you start setting the standard?

- **Response:** We will be establishing general requirements for permanence in this rulemaking. At a minimum, we will be creating a definition for “permanent” as a term. However, more specific requirements will likely be in the protocols.

Issue: This rule is setting the process for identification of potentially eligible projects. Does this mean the initial list in the law may not end up in the Ecology list?

- **Response:** The law establishes criteria for energy transformation projects. The law also lists potentially eligible energy transformation project as “may include, but not limited to.” Consistent with the law, the draft rule outline considers the following three sources for the development of a comprehensive list of potentially eligible energy transformation projects:
 - Initial list in the law
 - Additional project types that Ecology or other agencies may propose
 - Additional project types that stakeholders may propose

Issue: Utilities will be starting their long-term planning in 2021. However, this process-oriented rule is planned for adoption by the end of 2020. Is there a way to start with a hybrid procedure to shorten the identification of the potentially eligible project types?

- **Response.** We recognize stakeholders’ request for a shorter time to identify potentially eligible project types. We also have an obligation to meet statutory requirements for rulemaking. With this approach, we can meet the timeline and the intent of the law.

Issue: The draft rule outline set, as one of the criteria for identifying potentially eligible projects, that the project “must not generate electricity for delivery, sale, or other provision of electricity as a good or service.” However, if we think of storage battery as a project or an electric vehicle, could this criteria disqualify such projects?

- **Response:** The law defines energy transformation projects not to include electricity generation as a good or service. The language in the draft rule outline attempts to capture the nuance of the law. In the case of a fuel cell vehicle, for example, clearly electricity is being generated, but it is not ultimately sold or provided to a customer. We welcome additional suggestions if you think the existing language is not nuanced enough.

Issue: After this rule is finalized, are you expecting projects to come to Ecology? Is Ecology’s evaluation going to happen before utilities invest in the project?

- **Response:** According to the draft rule outline, projects need to have protocols they must meet. Since Ecology is required to develop the protocol for such projects, utilities need to work with Ecology in developing new protocols and identifying appropriate protocols for their projects, if there are already-developed protocols.

Issue: In the additionality test in the draft rule outline, how does one demonstrate “if an investment has already been made, not reasonably assumed to occur absent additional funding in the near future?” It would be good to have further explanation about how to demonstrate this.

- **Response:** This is what is called “financial additionality.” There are ways to demonstrate compliance to this financial additionality. One of the key reasons that a protocol is necessary is to be able to include detailed methods to establish additionality.

Issue: If a utility has an offset program, would that be transferable to ETPs?

- **Response:** This is a complicated question because ETPs are different than carbon offsets. Some of the reasons include:
 - Offsets are measured in terms of emission reductions, but ETP benefits are measured in terms of megawatt-hours of electricity. The law requires Ecology to establish the conversion factors to convert emission reduction values to electric energy values, but you are offsetting energy, not emissions.
 - There are also other criteria for ETPs that result from CETA requirements in law that the offset project/program may not meet.

Issue: The draft rule outline is consistent with the law. Ecology should not re-interpret the law.

- **Response:** That was our intent. Thank you for the comment.

Issue: The draft rule outline sets monitoring requirements to be in the protocol. Who is going to monitor the projects?

- **Response:** Ecology will not be the agency monitoring the projects’ benefits. The regulating body for the utility will monitor the projects’ benefits.

Issue: Does Ecology have a post-project role?

- **Response:** According to the draft outline, Ecology does not have a regulatory role after projects are approved as an ETP.

Issue: This rule is process intensive and bureaucratic that may cause project delays. Is there an easier and low risk method to comply with CETA requirements? Is it possible to include the protocols in the rule for some projects, based on the experience of California Air Resources Board?

- **Response:** The law requires Ecology to establish requirements for energy transformation projects (ETP). Ecology considers establishing the processes in the rule as the faster way to meet the statutory deadline, and serve the potential project developers, utilities, and the public in a fair and transparent manner. Ecology considered the option of including the list of potentially eligible projects. In other venues, like carbon markets, the practice of protocol development generally takes longer, though some protocols are easy to do. That depends on the state of knowledge on the project types. We did not choose this option because it would take longer and we would not be able to adopt the rule as required to meet the statutory deadline.

The protocol development is upfront work for project evaluation. We think having project protocols before proposing projects reduces risk, by providing certainty and facilitating decision-making. Also, having the criteria for identifying potentially eligible project types allows consistent and transparent decision-making, and reduces the risk of project delay. This is true especially for new project types that stakeholders may identify at a later stage.

Issue: In the case of energy conservation projects through the Regional Technical Forum (RTF), when protocols are revised, only new projects are affected. Is that how it will be in this rule? Otherwise, it will cause project risk.

- **Response:** Yes, like the RTF, our intent is that the protocol you walk in the door with is the one you use, even if that protocol is modified in the future. You do not have to go back and redo the project, or worry about the project after it has been compared to the protocol in existence when you go through the process.

Issue: Is there any chance to include what California Air Resource Board (CARB) did in this rule and update the rule later?

- **Response:** There may be quantification methodologies for some of the potential projects already developed. However, ETP has criteria that are different than the criteria in offset programs in other jurisdictions. Some projects may not even have quantification methodologies yet. We think the first step is to lay out the process in the rule, then identify the potentially eligible project types, and then we will start developing protocols.

Issue: The process is not clear from the draft rule outline. We request Ecology clarify the process in the next version. Ecology may take one example from the list of the ETPs to clarify the requirements.

- **Response:** We will explore the use of an example or other ways to clarify.

Issue: Is protocol development subject to Administrative Procedures Act requirements, such as filing of CR-101, CR-102 and CR-103?

- **Response:** The plan is to develop the protocols outside of rulemaking, thus it will not require filing CR forms. However, there will be public processes that allow the public to comment. Another benefit of developing the protocols this way is to provide more flexibility compared to the rulemaking process.

Issue: Who pays for protocol development?

- **Response:** That question has not been resolved.

Issue: Sections VII and VIII of the draft rule outline is going to discourage utilities from meeting the intent of CETA, including creating jobs. It has multiple public comment processes which may delay projects.

- **Response:** The project evaluation process needs opportunity for public comment. However, the extent of public comment is a key topic for this rulemaking discussion.

Issue: Would you consider including criteria for some project types in the rule, if utilities brought literature?

- **Response:** The rulemaking process allows equal opportunity for everyone to comment. We think the fastest way to meet the statutory deadline for rulemaking is to establish the processes in the rule and implement the processes outside of rulemaking. We value your input as we develop protocols for the project types you are interested in.