BEFORE THE WASHINGTON UTILITIES AND

TRANSPORTATION COMMISSION

In the matter of the PUGET SOUND ENERGY Petition For an Order Authorizing Puget Sound Energy's Accounting Treatment for the costs and return for Clean Energy Action Plan compliant Power Purchase Agreements pursuant to RCW 80.28.410	DOCKET NO. UE-230810 NORTHWEST & INTERMOUNTAIN POWER PRODUCERS COALITION COMMENTS

I. INTRODUCTION

The Northwest & Intermountain Power Producers Coalition ("NIPPC") hereby respectfully submits these comments on Puget Sound Energy's ("PSE's") petition for an order authorizing deferred accounting treatment of power purchase agreement ("PPA") costs and return ("PSE Petition"). Assuming that the Washington Utilities and Transportation Commission (the "Commission" or "WUTC") finds that deferred accounting is appropriate,[1] NIPPC offers these comments in support of PSE's request for the return allowed under RCW 80.28.410 for three demand response power purchase agreements ("PPAs"). NIPPC views PSE's implementation of RCW 80.28.410 to be reasonable in this circumstance. NIPPC urges the

[1] NIPPC believes that deferred accounting treatment is generally appropriate for demand response PPAs, but understands that the Commission Staff has some specific concerns with the timing and manner of PSE's filing. NIPPC takes no position on whether PSE's request for deferred accounting treatment complies with the Commission's general requirements for filing deferrals. NIPPC is also not taking a position on PSE's request to issue a notice for future deferral applications.

Commission to provide generic guidance on implementing RCW 80.28.410, either in this docket or in a generic docket such as U-210590.

II. COMMENTS

A. RCW 80.28.410 Encourages the WUTC to Allow a Rate of Return on PPAs

In 2019, the Washington legislature passed the Clean Energy Transformation Act ("CETA") that explicitly authorized the Commission to allow utilities to earn a rate of return on power purchase agreements. Specifically, CETA states:

> (1) An electrical company may account for and defer for later consideration by the commission costs incurred in connection with major projects in the electrical company's clean energy action plan pursuant to RCW 19.280.030(1)(l), or selected in the electrical company's solicitation of bids for delivering electric capacity, energy, capacity and energy, or conservation. . . . Creation of such a deferral account does not by itself determine the actual costs of the resource or power purchase agreement, whether recovery of any or all of these costs is appropriate, or other issues to be decided by the commission in a general rate case or other proceeding.
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> (2) The costs that an electrical company may account for and defer for later consideration by the commission pursuant to subsection (1) of this section include all operating and maintenance costs, depreciation, taxes, cost of capital associated with the applicable resource or the execution of a power purchase agreement. Such costs of capital include:
> . . .
> (b) *For the duration of a power purchase agreement, a rate of return of no less than the authorized cost of debt and no greater than the authorized rate of return of the electrical company, which would be multiplied by the operating expense incurred by the electrical company under the power purchase agreement*.[2]

[2] 2019 Wash. Sess. Laws ch. 288 § 21 (codified at RCW 80.28.410) (emphasis added).

In plain language, Section 21 envisions the following sequence of events: 1) a utility issues a request for proposal and a power purchase agreement resource wins the request for proposal or a utility purchases power pursuant to the utility's Clean Energy Action Plan, including purchases from a qualifying facility under the Public Utility Regulatory Policies Act; 2) the utility executes the power purchase agreement and agrees to pay the power purchase agreement prices to the Seller for delivered energy and/or capacity; 3) a utility defers power purchase agreement costs, including a return to the utility, for later inclusion in rates; and 4) at some point, in a utility's general rate case "or other proceeding," the Commission decides if the utility may recover some or all of the deferred costs from ratepayers. The Commission may decide that the power purchase agreement return is not in the public interest and disallow it. The Commission has not established any standards regarding what types of power purchase agreements are eligible, what the standards will be for allowing a rate of return, or what that return might be.

NIPPC understands the purpose of Section 21 to be to reduce the utility ownership bias. NIPPC has commented extensively on this utility ownership bias, including in the Commission's rulemaking to update its utility procurement rules and PSE's 2021 All-Source Request for Proposals ("PSE's 2021 RFP").[3] The result of the utility ownership bias is that many resources that would otherwise be in the interests of utility customers specifically or society generally do

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[3] *In re Amending, Adopting, and Repealing WAC 480-107, Relating to Purchases of Electricity,* Docket No. UE-190837, NIPPC Comments at 1-4, Attach. A-D (Mar. 13, 2020) (discussing the utility ownership bias and incorporating NIPPC's comments from the Commission's earlier related rulemaking, specifically Docket No. UE-161024); *In re PSE's 2021 Request for Proposals*, Docket No. UE-210220, NIPPC Comments at 2-5 (May 17, 2021).

not now provide the utility with earnings or other financial incentives, and the resources are therefore not always procured. This perverse result may be mitigated by the sort of policy intervention that the Washington state legislature enacted in CETA's encouragement of a rate of return on power purchase agreements. Absent policy intervention, it can be difficult for non-utility resources to overcome the utility's bias in favor of its own resources.

The utility ownership bias can be difficult to quantify, but it exists. One way to address the problem would be to include specific penalties or cost adders to bids that contemplate utility ownership. In other words, to reduce the incentive, impose a cost adder for utility ownership options. This is a reasonable approach because utility owned generation is often more expensive and has greater risks than power purchase agreements.

The legislature decided to take a different approach, and instead addressed this bias by providing an incentive for power purchase agreements. This serves to remove the ownership incentive and make the utility more indifferent toward entering into a power purchase agreement. If the utility has the possibility of earning some form of return by entering into a power purchase agreement, then the utility is more likely to choose the actual least cost and least risk generation resource.

B. The WUTC Needs to Establish a Policy to Resolve the Lack of Clarity on When a Return Is Reasonable Under RCW 80.28.410 that Is a Major Impediment to the Utilities Using this Important Provision of CETA

To date the Commission has not addressed the appropriate implementation of RCW 80.28.410 in any rulemaking docket, but it has come up in dockets such as PSE's 2021 RFP.[4] It is likely this issue will keep being raised in utility request for proposals or rate cases when a utility seeks to earn a rate of return on power purchase agreements. Thus, the Commission will need to address this issue and establish rules or standards regarding what types of power purchase agreements are eligible, what the standards will be for allowing a rate of return, or what that return might be.

Dealing with individual applications on a reactive basis is not ideal. NIPPC would strongly prefer that the Commission take this issue up on a proactive basis and issue generic guidance. Notwithstanding NIPPC's strong conceptual support, NIPPC believes that the Commission needs to implement the concept carefully to ensure that value is delivered to customers, and to not unnecessarily reward the utility for what it would otherwise do or, as PSE proposed in its 2021 RFP, to actually penalize PPA bids.[5] Fundamentally, "getting the details

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[4] *See* Docket No. UE-210220, NIPPC Comments at 2-5 (May 17, 2021); *see* Docket No. UE-210220, Order No. 01 at 4-6, ¶¶ 17, 22 (June 14, 2021) (denying PSE's provision in its draft request for proposal to include a cost adder for a rate of return on power purchase agreements during the bid evaluation process). In that docket, the Commission stated "[t]he Commission has not established norms and expectations regarding possible rates of return on PPAs and finds that the inclusion of these possible costs in the RFP bid evaluation is overly presumptive of future Commission decisions." Docket No. UE-210220, Order No. 01 at 4-6, ¶¶ 17, 22.

[5] NIPPC previously opposed a proposal in PSE's 2021 RFP to implement RCW 80.28.410 as part of RFP scoring, and the Commission rejected the proposal. Docket No. UE-210220, NIPPC Comments at 2-5 (May 17, 2021); *see* Docket No. UE-210220, Order

right" is critical to any performance-based ratemaking concept to ensure customer benefit and incent the utility to take action consistent with the legislatively or administratively determined public policy. In the end, some proposals may not be reasonable, and the Commission should take every reasonable opportunity to let the utilities and interested stakeholders know in advance what factors the Commission would consider in evaluating an application for a rate of return.

The Commission should also consider that not providing guidance will significantly limit the use of this important statutory provision that can be used to help meet Washington's aggressive carbon reduction requirements. Regulated utilities are often conservative in nature, and hesitant to embrace performance-based ratemaking given the risks and limited available time, which may be better used on more traditional approaches to obtaining shareholder value and returns. In this regard, NIPPC applauds PSE for filing its Petition as an initial first step in its efforts to obtain Commission guidance on the return on PPA provisions of CETA.

Regardless of the Commission's decision on PSE's specific application here, NIPPC urges the Commission to use this opportunity to either: 1) provide generic guidance on how the Commission believes RCW 80.28.410 should be implemented, or 2) explain the Commission's intent to address RCW 80.28.410 in a different docket, such as U-210590, an existing docket regarding alternatives to traditional cost of service rate making. NIPPC has already filed two

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No. 01 at 4-6, ¶¶ 17, 22 (denying PSE's provision in its draft request for proposal to include a cost adder for a rate of return on power purchase agreements during the bid evaluation process). In that circumstance, the return would have acted as an additional cost on PPA bids for scoring purposes, making them look less financially competitive. It would have penalized PPA bids rather than flattening the playing field, as NIPPC believes RCW 80.28.410 was intended to do.

sets of comments in U-210590 asking the Commission to take up this issue,[6] but the Commission has not formally agreed with NIPPC or put this item on that docket's work plan.[7] Thus, it remains unclear to NIPPC if and when the Commission will provide direction on how to appropriately implement CETA's language in RCW 80.28.410.

C. PSE's Implementation of RCW 80.28.410 Appears Reasonable Here

PSE is requesting to account for and defer for later consideration costs associated with three five-year demand response PPAs.[8] Assuming that the Commission finds that deferred accounting is appropriate, NIPPC views PSE's request to allow a return on the deferred costs is a reasonable implementation of RCW 80.28.410. NIPPC takes no position on whether PSE's request for deferred accounting treatment complies with the Commission's general requirements for filing deferrals, nor on PSE's request to issue a notice for future deferral applications.

PSE has executed the three short-term demand response PPAs that should provide customers with capacity and conservation attribute benefits. Unlike PSE's 2021 RFP in which PSE implemented CETA's return on PPA provision to penalize PPAs in the RFP scoring, allowing PSE to defer costs for a potential return does not harm the counterparties. On the contrary, rewarding PSE for finding and entering these PPAs may encourage PSE to find similar

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6 *Proceeding to Develop a Policy Statement Addressing Alternatives to Traditional Cost of Service Rate Making*, Docket No. U-210590, NIPPC Comments at 2-9 (Nov. 29, 2021); Docket No. U-210590, NIPPC Comments (Apr. 27, 2022).

7 *See generally* Docket No. U-210590; *see, e.g.,* Docket No. U-210590, Work Plan (Jan. 27, 2022) (not clearly incorporating NIPPC's November 2021 recommendations). NIPPC previously raised this concern informally with Commission Staff and understands the issue will likely be addressed in a later phase of U-210590, but it would be helpful for the Commission to affirm that intent, and the likely schedule, for all interested parties.

8 PSE Petition at 2 (Sept. 29, 2023).

offerings in the future. NIPPC has not reviewed the specific PPAs at issue and is not commenting on their competitiveness; however, these are the type of projects that a utility might not otherwise contract with, and which generally should be allowed a return. The point is more high level than that for NIPPC, which is that PSE appears to be proposing to implement CETA in a way consistent with the legislature's intent. The Commission should encourage such behavior.

III. CONCLUSION

NIPPC appreciates this opportunity to comment and looks forward to the Commission providing guidance on the appropriate implementation of RCW 80.28.410.

Dated this 1st day of March 2024.

Respectfully submitted,

Sanger Law, PC

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