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November 29, 2021

Via Electronic Filing

Amanda Maxwell
Executive Director and Secretary
Washington Utilities & Transportation Commission
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Attn: Filing Center

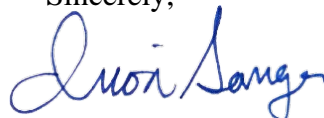
Re: Proceeding to Develop a Policy Statement Addressing Alternatives to Traditional Cost of Service Rate Making
Docket No. U-210590

Dear Ms. Maxwell:

Enclosed for filing in the above-captioned docket, please find the Comments of Northwest & Intermountain Power Producers Coalition.

Thank you for your assistance. Please do not hesitate to contact me with any questions.

Sincerely,



Irion A. Sanger

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**BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

In the matter of the

Proceeding to Develop a Policy Statement
Addressing Alternatives to Traditional
Cost of Service Rate Making.

DOCKET NO. U-210590

Northwest & Intermountain Power
Producers Coalition Comments

I. INTRODUCTION

The Northwest & Intermountain Power Producers Coalition (“NIPPC”)¹ appreciates this opportunity to submit comments to the Washington Utilities and Transportation Commission (“WUTC” or the “Commission”) on the Commission’s Draft Work Plan. Overall, NIPPC appreciates the Commission’s commitment to fulfilling the legislature’s goal to “develop a policy statement addressing alternatives to traditional cost of service rate making, including performance measures or goals, targets, performance incentives, and penalty mechanisms.”² This is an important step to ensuring Washington progresses with fair and competitive power markets. On October 20, 2021, the Commission filed a Second Notice of Opportunity to File Written Comments (“Second Notice”) seeking input on its Draft Work Plan, answers to specific questions, and general

¹ NIPPC is a trade association whose members and associate members include independent power producers (“IPPs”) active in the Pacific Northwest and Western energy markets. The purpose of NIPPC is to represent the interests of its members in developing rules and policies that help achieve a competitive electric power supply market in the Pacific Northwest. NIPPC is committed to fair and open-access transmission service, cost effective power sales, consumer choice in their energy supply, and fair, competitive power markets in the Northwest and adjacent markets.

² 2021 Wash. Sess. Laws ch. 188 § 1.

feedback from stakeholders.³ NIPPC submits these comments in response to the Second Notice and generally supports the Draft Work Plan, but recommends the Commission also address a utility’s ability to earn a rate of return on power purchase agreements in this docket.⁴

II. COMMENTS

A. The Second Notice Provides an Opportunity for Broad Stakeholder Input

The Second Notice seeks public comment on the Commission’s Draft Work Plan as well as answers to specific questions. The Commission is seeking stakeholder responses to the following questions:

1. Do you have any thoughts, concerns, or suggestions on the proposed scope or timing of Phase 1?
2. What are the most important issues for the Commission to address in Phase 1?
3. Do you have any thoughts, concerns, or suggestions on the overall Work Plan, including on the proposed scope or timing of Phases 1 through 4?
4. Are there additional topics the Commission should consider addressing, or any additional phases the commission should consider including in this Work Plan?
5. Do you have any other comments you would like to offer on the proposed Work Plan or on the development of policy under RCW 80.28.425 more generally?⁵

Questions 4 and 5 provide for general stakeholder input on the Draft Work Plan as well as topics stakeholders believe should be addressed in Phases 1 through 4.

The purpose of this docket is to “develop a policy statement addressing alternatives to traditional cost of service rate making, including performance-based

³ Second Notice at 2 (Oct. 20, 2021).

⁴ RCW 80.28.410.

⁵ Second Notice at 2.

measures or goals, targets, performance incentives, and penalty mechanisms.”⁶ The legislature also directed to Commission to consider a wide variety of factors including, but not limited to,

lowest reasonable cost planning, affordability, increases in energy burden, *cost of service*, customer satisfaction and engagement, service reliability, *clean energy or renewable procurement*, conservation acquisition, demand side management expansion, rate stability, *timely execution of competitive procurement practices*, attainment of state energy and emissions reduction policies, *rapid integration of renewable energy resources*, and fair compensation of utility employees.⁷

This list includes a broad set of factors the Commission is supposed to consider when implementing a policy statement addressing alternatives to traditional cost of service rate making. As shown below, addressing a utility’s ability to earn a rate of return on a power purchase agreement is an additional topic the Commission should consider (question 4) that relates to cost of service, clean energy or renewable procurements, timely execution of competitive procurement practices, and rapid integration of renewable energy resources. Thus, the Commission should add this topic to its Draft Work Plan.

B. Washington’s Clean Energy Transformation Act Authorizes the Commission to Allow a Utility to Earn a Rate of Return on Power Purchase Agreements, But There Have Been No Rules Promulgating this Authorization

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

⁶ Second Notice at 1.

⁷ Second Notice at 1-2 (emphasis added).

(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)(I), 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.

(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.*⁸

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; 4) a utility defers power purchase agreement costs, including a return to the utility, for later inclusion in rates; and 5) at some point, in a utility's general rate case "or

⁸ 2019 Wash. Sess. Laws ch. 288 § 21 (codified at RCW 80.28.410) (emphasis added).

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, most recently in the Commission’s rulemaking to update its utility procurement rules.⁹ 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 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

⁹ *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).

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 makes the same profit, or at least has the possibility of making a profit, by entering into a power purchase agreement, then the utility is more likely to choose the actual least cost and least risk generation resource.

C. The Commission Should Address Rate of Return on a Power Purchase Agreement Because It Relates to Alternatives to Traditional Cost of Service Rate Making as Outlined the Second Notice

To date the Commission has not addressed this issue in any rulemaking docket, but it has come up in dockets such as Puget Sound Energy's 2021 Request for Proposals.¹⁰ 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 for standards

¹⁰ See *in re Puget Sound Energy's 2021 Request for Proposal*, 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 (Denying Puget Sound Energy'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. 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.")

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.

The purpose of this rule making docket is to develop a policy statement addressing alternatives to traditional cost of service rate making.¹¹ The ability to earn a rate of return on a power purchase agreement has not been very common before CETA authorized the Commission to allow utilities to earn the rate of return. The Commission should utilize this proceeding to provide guidance, a framework and rules regarding how and when utilities will be allowed to earn a return on a power purchase agreement, and how the potential for a return is accounted for in the competitive procurement process.

Traditionally, the Commission has set rates pursuant to the basic formula $R = O + B(r)$, where “R” stands for the revenue requirement, “O” stands for operating expenses, “B” stands for rate base, and “r” stands for the rate of return the utility can earn on the rate base.¹² Utilities could generally recover costs incurred without any utility investment (such as costs under a power purchase agreement), as long as the power purchase agreement costs were service-related and prudently incurred.¹³ However, a utility would not earn a return on such costs in the ordinary course of events. This is

¹¹ Second Notice at 1.

¹² *People’s Org. for Wash. Energy Resources v. WUTC*, 104 Wn.2d 798, 809-10, 711 P.2d 319 (1985).

¹³ There are limited exceptions to this general concept. *See, e.g., PacifiCorp v. WUTC*, 194 Wash.App. 571, 589-595, 376 P.3d 389 (Wash. App. 2016) (affirming WUTC decision not to change cost allocation methodology regarding costs of out-of-state contracts under the Public Utility Regulatory Policies Act (“PURPA”), effectively denying recovery from Washington ratepayers, where WUTC found costs resulted from different state policies and thus should continue to be allocated to the originating states).

because the utility is not making an investment when it incurs costs under most power purchase agreements. A power purchase agreement could be structured differently such that a utility is making an investment as part of the power purchase agreement.¹⁴

Because earning a rate of return on a power purchase agreement has not been the norm and the legislature specifically authorized the Commission to allow it, this is an alternative to traditional cost of service rate making that should be discussed in this docket.

Further, the legislature instructed the Commission to consider a wide variety of factors such as cost of service, renewable energy procurement, timely execution of competitive procurement practices, and rapid integration of renewable energy resources.¹⁵ All of these factors relate to the issue of a utility being allowed to earn a rate of return on a power purchase agreement. This issue has the potential to increase the amount of renewable resources procured because it will help eliminate utility ownership bias. Further, the ability to earn a rate of return on a power purchase agreement could affect the execution of competitive procurement practices. This also directly relates to cost of service because a utility could earn a rate of return on a power purchase agreement. Thus, the ability to earn a rate of return on a power purchase agreement

¹⁴ See *WUTC v. Puget Sound Energy* where the WUTC approved a settlement stipulation that allowed a return on at least some costs under a power purchase agreement between Puget Sound Energy and Chelan Public Utility District. *WUTC v. Puget Sound Energy*, Docket Nos. UE-170033 and UG-170034 (*consolidated*), Order No. 08 at i (Dec. 5, 2017); Docket Nos. UE-170033 and UG-170034 (*consolidated*), Multiparty Settlement Stipulation and Agreement, Exhibit G at 2 (Sept. 15, 2017).

¹⁵ Second Notice at 1-2.

directly relates to alternatives to traditional cost of service rate making, addresses the factors the legislature instructed the Commission to consider, and relates to additional topics the Commission should consider in this docket asked by question 4. The Commission should add this topic to the Draft Work Plan.

III. CONCLUSION

For the foregoing reasons, NIPPC respectfully requests that the Commission add the topic of CETA authorization of the Commission to allow a utility to earn a rate of return on power purchase agreements to the Draft Work Plan for this docket.

Dated this 29th day of November 2021.

Respectfully submitted,

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