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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 Return on PPAs Comments

I. INTRODUCTION

The Northwest & Intermountain Power Producers Coalition ("NIPPC") appreciates the opportunity to provide these comments pursuant to the Washington Utilities and Transportation Commission's ("UTC" or the "Commission") July 3, 2025 Notice of Virtual Technical Workshop and Opportunity to Comment ("Notice"). Throughout this proceeding, NIPPC has recommended that the Commission address and provide broad policy guidance on the performance incentive set forth in the Clean Energy Transformation Act ("CETA") through which a utility may earn a return on a power purchase agreement ("PPA"). NIPPC most recently requested that the Commission take up this issue as part of the current phase of this docket, as discussed in NIPPC's Phase Two Comments submitted June 6, 2025 and a June 17, 2025 Commission workshop.

NIPPC appreciates the Commission's thoughtful attention to this request both through Commissioner questions and comments at the June 17 workshop and through additional questions set forth in the Notice. In framing the questions on which the Commission now seeks comment, the Notice provides as follows:

> CETA authorizes the Commission to allow utilities to earn a rate of return on prudent costs incurred under PPAs. As part of the comments submitted ahead of the workshop on June 17, 2025, some parties recommended the Commission issue guidance for utilities seeking a return on PPAs, and

> design a PIM encouraging utilities to acquire cost-effective, carbon-free resources through PPAs in this docket. During the workshop, the Commission expressed concern that the issue may not squarely fit into this guidance docket and requested additional comment on the appropriate proceeding to address these issues.
>
> The Commission requests additional comments regarding the appropriate proceeding and performance structure to address the rate of return on PPAs.[1]

With this framing in mind, NIPPC offers the following comments in response to the Commission's questions as set forth in the Notice. NIPPC appreciates the Commission's consideration of these comments. NIPPC's June 6, 2025 comments provided background regarding CETA's performance incentive and its limited implementation, and these comments do not repeat that foundational information.

II. COMMENTS

These comments are structured as responses to each of the Commission's questions regarding returns on PPAs. In each case, the Commission's question is reproduced as a section heading, following which NIPPC provides a short answer then a more detailed explanation supporting that short answer. The questions reproduced below use the Commission's numbering for convenience.

12. What is the appropriate proceeding for addressing the return on PPAs? Please provide your rationale.

NIPPC continues to maintain that this docket – and specifically Phase Two of this docket – is the best proceeding for establishing guidance for returns on PPAs.

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[1] Notice at 6.

The most basic reason that this docket is the best venue for addressing returns on PPAs is that the guidance NIPPC is requesting fits squarely into the Commission's announced focus for Phase Two of this proceeding. On May 5, 2025, the Commission released a previous Notice of Workshop and Opportunity to Comment along with a supporting Appendix.[2] The Appendix explained the Commission's phased approach to the remainder of this docket, indicating that Phase Two will focus on establishing guidance for performance incentive mechanisms, or "PIMs".[3]

As NIPPC discussed in its June 6 comments in this docket, in passing CETA, the Legislature established the return-on-PPA construct as a performance incentive mechanism of the sort under consideration in Phase Two.[4] Section 1(5) of CETA states that the legislature:

> [R]ecognizes and finds that the [UTC's] statutory grant of authority for rate making includes consideration and implementation of performance and incentive-based regulation, multiyear rate plans, and other flexible regulatory mechanisms where appropriate to achieve fair, just, reasonable, and sufficient rates and its public interest objectives.[5]

Section 21 of CETA explicitly authorizes the UTC to allow a utility to earn a rate of return on the operating expenses a utility incurs under a PPA.[6] The mechanism announced in Section 21 operationalizes the legislative finding set forth in Section 1 and points to a specific performance incentive to help meet CETA's broader policy goals.

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2 Appendix A, Updated Work Plan (May 5, 2025).
3 Appendix A, Updated Work Plan at 2.
4 NIPPC Comments at 4.
5 2019 Wash. Sess. Laws ch. 288 § 1(5) (codified at RCW 19.405.010(5)).
6 2019 Wash. Sess. Laws ch. 288 § 21 (codified at RCW 80.28.410).

Returning to this proceeding, a return on a PPA is among the more straightforward PIMs that the Commission could provide guidance for in Phase Two of this docket. The Commission has already identified and sought comments on the key questions that will require answers: Under what circumstances should a return be applied? How should the amount of the return be determined? Once the Commission has considered stakeholder comments and adopted guidance on these topics, utilities may propose specific returns on a case-by-case basis to be reviewed against the Commission's guidance without the need to establish specific metrics or targets.

In fact, as NIPPC noted in its June 6 comments, because procurement typically occurs as the result of a regulated Request for Proposals ("RFP") process, establishing specific targets could infringe on competition unnecessarily.[7] As NIPPC summarized in those comments: "[S]imply establishing guidance for proposing a reasonable rate of return for utility investments in PPAs could support the fair selection of the most cost-effective resources to serve customers (as discussed further below) while also fitting into the Commission's broader efforts to establish specific incentives for other desirable utility behavior."

One other consideration counsels in favor of establishing guidance on PPA returns in Phase Two of this docket. While the rationale discussed above is substantive in nature – the topic of returns on PPAs fits what the Commission has set out to do here – this additional rationale is procedural. NIPPC has consistently stressed the need to timely establish guidance to provide utilities with enough confidence in the return-on-PPA

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[7] NIPPC Comments at 5; *see generally* WAC 480-107.

mechanism to overcome what Puget Sound Energy witness Matt Steuerwalt has described as “a financial disincentive”, specifically “the incentive to build or buy resources rather than enter into PPAs.”[8]

The Legislature passed CETA in 2019, but absent guidance from the Commission, utilities have been hesitant to rely on the ability to earn a return on a PPA. The provision was intended to be an important, complementary tool to CETA’s implementation. However, six years have passed, and Washington is halfway to meeting CETA’s requirement that Washington utilities must be greenhouse gas neutral by 2030. Without quick action, this provision will not play any meaningful role in meeting this 2030 requirement, and, unless the Commission provides greater guidance, it may not play any meaningful role in the utilities’ 2045 requirement to generate 100% of their power from renewable or zero carbon resources.

NIPPC appreciates Chair Rybarik’s acknowledgment of the need for action in remarks at the Commission’s June 17 workshop. Discussing “this PPA return issue,” Chair Rybarik discussed the Commission’s goal “to get that certainty and clarity” and concluded that “getting that issue addressed sooner rather than later will be good for all.”[9] NIPPC strongly agrees. The best way to accomplish that goal is to address the

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8 *Washington Utilities and Transportation Commission v. Puget Sound Energy/In re Puget Sound Energy Request For an Accounting Order Authorizing Deferred Accounting Treatment of Purchased Power agreement Expenses Pursuant to RCW 80.28.410*, Docket Nos. UE-240004, UG-240005, and UE-230810 (consolidated), Exh. MS-4T, Prefiled Rebuttal Testimony (Nonconfidential) of Matt Steuerwalt at 8 (Sept. 18, 2024).

9 June 17, 2025 Workshop Recording at 58:08.

question in this docket using responses to the questions posed in this Notice as a launch point.

13. CETA allows for a range of authorized returns. What factors or situations support specific rates of return (i.e. weighted cost of debt up to the full weighted cost of capital)?

In authorizing a return on PPAs, CETA establishes a range "of no less than the authorized cost of debt and no greater than the authorized rate of return of the electrical company[.]"[10] NIPPC recommends that Commission guidance on this question ensure that the rate of return is sufficient both to incentivize alignment with CETA's clean-energy policy goals and to achieve the broader policy goal of "mak[ing] companies indifferent to acquiring or building a new resource versus entering into a PPA for the clean resource."[11]

At a minimum, NIPPC recommends that the Commission identify specific circumstances and/or types of PPAs that will earn a rate of return, and that the factors or situations be clearly identified so there is no ambiguity regarding whether the utility will earn a return, and very little ambiguity regarding what return will be earned. NIPPC believes that the largest impediment to using this mechanism is the uncertainty about whether and how much of a return will be earned. This means that the most important outcome of any guidance is not the specific criteria the Commission adopts, but providing certainty and clarity to the utilities so that they understand the financial rewards associated with taking a specific action. For example, the Commission should establish

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10 2019 Wash. Sess. Laws ch. 288 § 21(2)(b) (codified at RCW 80.28.410(2)(b)).

11 Docket Nos. UE-240004, UG-240005, and UE-230810 (consolidated), Exh. MS-4T, Prefiled Rebuttal Testimony (Nonconfidential) of Matt Steuerwalt at 7.

the factors or situations that support specific rates of return in a policy statement or administrative rule, and then not re-litigate those issues in a subsequent rate proceeding.

In its first grant of a return on PPAs, the Commission established the cost of debt as the approved rate of return based on the record in that case, which involved demand response PPAs for which Puget Sound Energy sought cost recovery.[12] The Commission's rationale for using the cost of debt as the rate of return was that the record lacked specific support for a higher rate:

> PSE did not present a case warranting allowance of the authorized rate of return, specifically why the PPAs in question merit the highest rate of return, and as such, we agree with Staff that the lower end of the spectrum, the cost of debt, is appropriate here.[13]

A review of approaches used in other jurisdictions supports the conclusion that a higher return for Washington utilities is appropriate to ensure that PPAs can compete with utility-owned resources and customers will benefit from the selection of lowest reasonable cost resources during this period of significant procurement to meet a variety of customer needs.

Specifically, it is instructive to compare the approaches of Massachusetts and Rhode Island, fully restructured jurisdictions where regulated utilities are prohibited by law from owning generation assets, against that of Michigan, a partially restructured

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12 Docket Nos. UE-240004, UG-240005, and UE-230810 (consolidated), Order Nos. 09/07 at P. 200 (Jan. 15, 2025).

13 Docket Nos. UE-240004, UG-240005, and UE-230810 (consolidated), Order Nos. 09/07 at P. 200.

jurisdiction where regulated utilities may still own and earn a rate of return on generation assets.[14]

Massachusetts and Rhode Island both authorize rates of return on PPAs for resources consistent with those states' clean-energy policies.[15] In each case the rates are set in the range of 1-2.75%. These lower rates of returns are appropriate because the fully restructured utilities in those states have no incentive to seek owned resources over third-party PPAs. Rather, the return is best understood as a pure incentive to pursue state policy goals. Indeed, the two cited Rhode Island statutes are each titled "Financial remuneration and incentives," phrasing that is also reflected in their operating language.[16]

In contrast, when Michigan legislators passed Enrolled Senate Bill No. 502 in 2023, they recognized that their partially vertically integrated utilities needed a stronger incentive to overcome the existing incentive structure that favored owned resources.[17] Accordingly, they provided the following incentive mechanism for utilities to enter into clean-energy PPAs:

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14 Massachusetts General Laws, Ch. 164, §§ 1A through 1H; R.I. Gen. Laws § 39-1-27; Mich. Comp. Laws § 460.10w(1); *Energy Michigan v. Michigan Pub. Serv. Comm'n*, No. 2:20-cv-12521, Slip Op. at 7-8 (Jan. 16, 2025) (describing Michigan's "hybrid system").

15 *See*, *e.g.*, Mass. St. 2008, c. 169, § 83D(d), as amended by 2016, c. 188 (mandating "an annual remuneration for the contracting distribution company up to 2.75 per cent of the annual payments under the contract"); R.I. Gen. Laws § 39-26.1-4 (authorizing "financial remuneration and incentives ... in the form of annual compensation, equal to two and three quarters percent (2.75%)" for contracts through the year 2022 and 1% through 2026); R.I. Gen. Laws § 39-31-11 (authorizing "financial remuneration and incentives … in the form of annual compensation up to one percent (1.0%)" for contracts through 2026).

16 R.I. Gen. Laws § 39-26.1-4; R.I. Gen. Laws § 39-31-11.

17 Codified at Mich. Comp. Laws § 460.6t(15).

> If an electric provider whose rates are regulated by the commission enters into a purchase power agreement for renewable energy resources or a third-party contract for energy storage systems or clean energy systems with an entity that is not affiliated with that utility, the commission shall authorize a financial incentive for that utility calculated as the product of contract payments in that year multiplied by the electric provider's pretax weighted average cost of permanent capital comprised of long-term debt obligations and equity of the electric provider's total capital structure as determined by the commission's final order in the electric provider's most recent general rate case.[18]

This weighted average likely falls in the middle of the range established by CETA and exceeds the pure cost of debt that the UTC approved for Puget Sound Energy.

Thus, looking to other states' examples, a general principle emerges that a smaller incentive is appropriate simply to incentivize pure policy outcomes and a larger incentive is warranted where PPAs must compete with utility-owned resources. In each state discussed above, the amount of the return was set by policymakers. Here, the UTC has additional discretion under CETA to ensure that the rate of return on a PPA is sufficient both to incentivize the procurement of resources sufficient to meet CETA's clean-energy and climate policy goals and to remove the utility disincentive to procure PPAs. Setting a default return amount at least the weighted average cost of capital, like Michigan does, would be a reasonable starting point, though higher returns may be warranted in some circumstances.

Some circumstances that could support higher returns include when a resource contributes to meeting other policy goals, such as CETA's goals for equity and co-benefits, or when a resource provides unique system benefits, for example by introducing

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[18] Mich. Comp. Laws § 460.6t(15).

a new, complementary resource technology to a utility's resource portfolio or deferring transmission investments. NIPPC looks forward to working with other stakeholders to develop appropriate factors supporting a higher return.

14. While the Commission will analyze each request for a return on PPAs under the prudency standard, what additional standards or principles should inform this analysis?

NIPPC is open to different standards or principles to inform the Commission's decision as to whether a return on PPAs is appropriate, provided any such standards are objective and may therefore be applied predictably.

One possibility would be for an Independent Evaluator to develop a scorecard against which the Request for Proposals ("RFP") leading to the selection of a PPA could be evaluated. Such a scorecard could include factors supporting healthy RFPs, such as bidders' ability to self-score.

Another would be to weigh the PPA against a market index to assess its competitiveness overall. Each of these ideas would have drawbacks, however. For example, comparison against an index could obscure limitations (such as transmission unavailability) that affect the competitiveness of a Washington utility's solicitation process relative to the broader market.

A third option is to simply apply a return on PPAs for clean resources as a default, and to change the amount of the return based on additional criteria as discussed above. In this case, the additional standards or principles applied by the Commission would be those consistent with the criteria for earning a higher return as discussed above in NIPPC's response to Question 14.

Ultimately, what is most important is that any criteria established to assess a return are objective, and reduce or eliminate litigation in a rate case over whether a return will be allowed and the specific amount of return. NIPPC looks forward to reviewing suggestions from other stakeholders.

15. What data, evidence, or policy arguments should be provided for the Commission to evaluate a request for and authorize a rate of return on PPAs?

If the Commission establishes objective criteria as contemplated in Question 14 above, those criteria will provide clear direction as to what types of data, evidence, or policy arguments should be provided to the Commission to support a return on a PPA. Thus, once the Commission establishes the specific criteria, then that will necessarily determine what data, evidence, or policy arguments would be used to evaluate a request. Again, the information should be close to a "check the box" type of analysis with clear guidance so, if certain data or evidence is provided, then a return will be allowed.

16. If a PIM is established related to earning a return on a PPA, what types of utility performance outcomes should be tied to such a PIM?

The outcome NIPPC seeks is for utilities to reliably select lowest reasonable cost resources regardless of ownership by increasing competition in the acquisition of wholesale generation resources. By itself and all else equal, this should lower costs and risks.[19] However, determining the exact amount of benefit or the specific outcome is difficult to measure or assess. The Commission has a competitive solicitation process

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[19] *See Policy Brief: The Role of Competition in the Pacific Northwest Clean Energy Transition* available at https://nippc.org/wp-content/uploads/2022/07/NIPPC-Brief-Competition-in-NW-Clean-Energy-Transition-July-2022.pdf.

designed to identify lowest reasonable cost resources to meet utilities' needs.[20] Successful implementation of competitive solicitations will drive resource outcomes. What is needed is a more even incentive structure to feed into the competitive solicitation process. NIPPC recommends that the Commission's guidance focus on this incentive structure – the input to the competitive solicitation process – rather than any measurable outcomes.

Practical considerations also support a focus on inputs rather than outcomes. Regulators tend to recognize procurements for generation resources as being "lumpy", which is to say that there are more likely to be occasional large investments in these resources than a steady stream of small investments. This approach means that sample sizes of procured resources are not likely to be large, and it will be difficult to assess whether the availability of PPA returns is driving particular outcomes. Sometimes third-party PPAs will be lowest reasonable cost resources, and sometimes utility-owned resources might be. Accordingly, NIPPC recommends that the Commission's guidance focus on establishing a level playing field rather than driving specific results.

Having said that, if utilities procure entirely or primarily owned resources following the adoption of Commission guidance on PPA returns, that outcome would likely mean that the criteria or rates established in that guidance are insufficient to drive a change in utility incentives and behavior. In that case, the guidance should likely be revisited.

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20 *See* WAC 480-107.

17. How does authorizing a return on PPAs balance encouraging utility performance outcomes while protecting customers from undue costs or risks?

Selecting the lowest reasonable cost resource to meet utility needs and serve customers is the best way to protect customers from undue costs or risks. Baked into the current regulatory structure is the "incentive to build or buy resources rather than enter into PPAs."[21] This incentive structure is misaligned with the Commission's mandate to ensure just and reasonable rates, because the lowest reasonable cost resource will not always be an owned resource.[22] Evening the incentive structure will remove utility incentives to preference owned resources and help ensure the performance outcome of selecting lowest reasonable cost resources regardless of ownership, ultimately resulting in just and reasonable rates for customers.

18. Are there existing models or practices adopted in other states that the Commission should consider when considering the appropriate rate of return? If so, please provide examples and any lessons learned.

Please see NIPPC's response to Question 13 above, discussing different approaches employed by Massachusetts, Michigan, and Rhode Island, and specifically how these different approaches are designed to 1) create incentives that align with policy goals and 2) align with existing incentive structures.

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21 Docket Nos. UE-240004, UG-240005, and UE-230810 (consolidated), Exh. MS-4T, Prefiled Rebuttal Testimony (Nonconfidential) of Matt Steuerwalt at 8.

22 RCW 80.28.010 and 80.28.020.

III. CONCLUSION

For the foregoing reasons, NIPPC respectfully recommends that the Commission establish guidance to implement CETA's return-on-PPA incentive mechanism in Phase Two of this docket, consistent with the broader principles set forth above.

Dated this 8th day of August 2025.

Respectfully submitted,

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