UE-210183

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November 12, 2021

**Via Electronic Filing**

Mark L. Johnson
Executive Director
Washington Utilities & Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503

Attn: Filing Center

Re: Rulemaking to consider adoption of Markets and Compliance Requirements for the Clean Energy Transformation Act.
Docket No. UE-210183

Dear Mr. Johnson:

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

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

Sincerely,

Joni Sliger

Enclosure
cc. Master Service List via email

**BEFORE THE WASHINGTON UTILITIES AND**

**TRANSPORTATION COMMISSION**

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| In the Matter of Rulemaking to consider adoption of Markets and Compliance Requirements for the Clean Energy Transformation Act | DOCKET NO. UE-210183<br><br>NORTHWEST & INTERMOUNTAIN POWER PRODUCERS COALITION COMMENTS ON DRAFT RULES |

## I. INTRODUCTION AND SUMMARY

The Northwest & Intermountain Power Producers Coalition ("NIPPC") provides these Comments pursuant to the Washington Utilities and Transportation Commission's (the "UTC's" or the "Commission's") Notice of Opportunity to File Written Comments on Draft Rules issued October 12, 2021 (the "Notice" and the "Draft Rules"). The Draft Rules provide an interpretation of the term "use" in the Clean Energy Transformation Act ("CETA").[1] Aside from two discrete items concerning timelines and penalties that need clarification, NIPPC finds the Draft Rules on "use" to be clear, feasible to implement, and consistent with CETA's text and policy goals.

Interpreting "use" has been a contentious issue, with different stakeholder groups putting forth opposing legal interpretations. The Draft Rules are generally consistent with the procurement-based interpretation advocated for by the Public Generating Pool, Puget Sound Energy, Pacific Power, and Avista Corporation (the "Joint Utilities"). By contrast, the Northwest Energy Coalition and Climate Solutions ("NWEC and Climate Solutions") advocated for a consumption-based interpretation.

[1] Notice at 3; *see* E.2d S.S.B. 5116, ch. 288, 66th Leg. (Wash. 2019) (codified at RCW 19.405); *see also* RCW 19.405.040(1)(a) & 050(1).

As noted in prior comments, NIPPC's view after reviewing both sides' legal arguments is that ultimately CETA's plain language leaves the Commission sufficient room to exercise its discretion in making an interpretation.[2] In this context, the UTC's task is to adopt a legal interpretation that best effectuates the legislative intent of the statute, which is for Washington State and particularly Washington's electric utilities to decarbonize strategically and cost-effectively. The Draft Rules facilitate a procurement-based framework that can leverage the cost savings and decarbonization benefits of existing and emerging competitive regional market mechanisms.[3] In NIPPC's view, these Draft Rules satisfactorily effectuate the legislative intent by setting forth a pragmatic approach to achieving CETA's climate goals.

NIPPC would have opposed Draft Rules that adopted a stringent consumption-based framework, because such an approach would be administratively burdensome (if not impossible, depending on the stringency), incompatible with today's power markets, and therefore likely to drive a parochial overbuilding of clean generation sources. Overbuilding would likely lead to adverse sector-wide outcomes, including higher costs to ratepayers, greater curtailment of renewables, and lower wholesale prices. For these reasons, NIPPC views a consumption-based framework as contrary to the public interest.

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2 *In Re Clean Energy Implementation Plans and Compliance with CETA, and Amending, Adopting, and Repealing WAC 480-100-238, Relating to Integrated Resource Planning,* Docket Nos. UE-191023 and UE-190698 (consolidated), NIPPC Comments on the Interpretation of "Use" in RCW 19.405.040(1)(a) at 1-3 (Aug. 10, 2020) and NIPPC Comments on "Use" at 3 (Dec. 3, 2020) (both appended hereto as Attachment A).

3 *See generally, e.g.,* Renewable Energy Buyer Alliance, Organized Wholesale Market Design Principles at 1-2, available at https://rebuyers.org/programs/market-policy-innovations/organized-markets/ (explaining the cost savings associated with wholesale markets).

NIPPC holds this view even in light of the possibility that some NIPPC members could conceivably benefit from an approach that results in overbuilding. NIPPC's members are not electric utilities regulated under CETA but instead include independent power producers whose business and livelihood comes from developing generation facilities. Nonetheless, NIPPC's position, as a nonprofit trade association whose purpose is to promote competitive electric power markets across the Northwest and adjacent regions, is that the public interest is best served by both fostering and relying on competitive, regional solutions to decarbonize. The Draft Rules do so and thereby uphold the public interest.

In these Comments, NIPPC also addresses the concerns put forward as justifications for a consumption-based framework—that is, concerns that a procurement-based framework might not achieve CETA's goals. Ultimately these concerns are about what might happen and whether the UTC will be able to remedy issues that arise if the procurement-based approach, in practice, fails to deliver the desired results. In NIPPC's view, these concerns overlook the UTC's broad regulatory authority, including its authority to review utility procurements and assess whether resources will best meet customer needs. The complementary effect of the UTC's traditional (and ongoing) regulation combined with the Draft Rules demonstrates that the UTC will have sufficient oversight and involvement to drive progress towards CETA's goals.

Finally, there are at least two items in the Draft Rules that need clarification: 1) a commitment to review and potentially a revision of the rules starting in September 2024; and 2) hourly data reporting requirements. As drafted, both items are unnecessary to achieve the UTC's proffered interpretation of CETA and instead may cause confusion

and even delay progress towards CETA's goals. The Commission should explain the purpose and expected value of these items so that these can be better weighed against the potential risks.

In summary, NIPPC finds the Draft Rules to adopt one reasonable interpretation of CETA. There may be other valid interpretations of CETA, but the essential point is that the Draft Rules are not *in*consistent with CETA.

Further, NIPPC views the Draft Rules as adopting the better of the two interpretations set forth by stakeholders. The approach is clear and feasible, and it is compatible with existing market structures. The Commission may revisit its rules if markets evolve, but the Commission's rules do not presume to know how markets will evolve.

Further, to the extent that the Commission has any lingering concerns about potential missed opportunities for the most effective way to implement CETA, the Commission's existing regulatory authority is sufficient to address those potential problems if they arise. Overall, NIPPC is optimistic that the UTC's proposed approach will facilitate progress towards CETA's goals to decarbonize Washington's electricity supply in a strategic and cost-effective manner.

## II. DISCUSSION

### A. The Draft Rules Adopt the More Pragmatic Stakeholder Proposal

The UTC issued its Draft Rules after receiving significant comment and input concerning two potential options for implementing CETA. The Joint Utilities provided a legal interpretation and proposed rules for a procurement-based approach, while NWEC and Climate Solutions provided a contrary legal interpretation and different proposed

rules for a consumption-based approach. Before addressing the legal arguments in the next section, NIPPC here summarizes its understanding of how the two proposed approaches would have functioned and why the UTC's decision to implement a procurement-based approach is the more pragmatic approach. This understanding is primarily based on the draft rules provided by each group as well as the presentations each group provided at the Joint Workshop on August 12, 2021.[4]

**1. The Proposed Consumption-Based Approach**

NWEC and Climate Solutions advocated for a consumption-based approach to CETA. Under this approach, a utility would only be compliant when: 1) electricity from CETA-compliant sources actually coincides with customer load, and 2) the utility demonstrates that electricity was delivered to customers. NWEC and Climate Solutions' proposed rules would prohibit utilities from counting as CETA-compliant any electricity unneeded by that utility's customers and instead sold to other users.[5] Further, a utility would need to demonstrate compliance by providing detailed transaction-specific information that the claimed electricity reached customers, either through the use of NERC e-Tags or through some other approach.[6]

As a preliminary matter, NIPPC reiterates a point raised in its earlier comments regarding the physical flows of electricity. Electricity cannot be tracked, like other goods

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4 Notice of Opportunity to File Written Comments on Issues Related To Double Counting, Market Purchases of Electricity and the Interpretation of Compliance with RCW 19.405.040(1)(a), Attachment A and B (June 14, 2021) [hereinafter Joint Utilities' Proposed Rules and NWEC and Climate Solutions' Proposed Rules].

5 NWEC and Climate Solutions' Proposed Rules at Section 1(b) and 2(b).

6 NWEC and Climate Solutions' Proposed Rules at Section 2.

sold in a market. Once electricity enters a grid, it is indistinguishable and untraceable. Thus, any attempt to track electricity is necessarily a rough proxy. Assuming for the sake of argument that a proxy is needed, the question is whether a proposed proxy is appropriate.

NERC e-Tags do not currently provide the proposed information.[7] Until markets possibly evolve to capture the proposed information, NWEC and Climate Solutions offered an 'interim' accounting proposal.[8] The primary purpose of this proposal, as NIPPC understands it, is to develop assumptions about the emissions characteristics of electricity that a utility buys or sells as "unspecified" energy.[9]

NIPPC has at least two concerns with this proposal. First, NIPPC notes that it remains concerned by the notion of attempting to use market functions that do not currently exist and may never exist. NIPPC's understanding is that NWEC and Climate Solutions expect markets either *will* evolve to provide this information (which is unclear) or that Washington agencies should actively try to drive regional market developments so as to achieve such evolution (which is impractical, if not improbable).[10] NIPPC does not oppose revisiting the Draft Rules as markets evolve and may offer new and promising opportunities to drive decarbonization. However, a framework that assumes markets will change to make accommodations for Washington utilities is more likely to prevent Washington utilities from participating in regional markets than it is to drive changes that

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7 Market-Based CETA Accounting Framework & Compliance Scenarios, Presentation at 5 (Aug. 12, 2021) [hereinafter NWEC and Climate Solutions' Presentation].

8 NWEC and Climate Solutions' Presentation at 7.

9 *See* NWEC and Climate Solutions' Presentation at 7.

10 NWEC and Climate Solutions' Presentation at 3.

force burdensome requirements on all other market participants. In effect, Washington utilities would most likely lose out on the benefits of regional markets.

Second, even if the assumptions under the interim proposal were reasonable (which is unclear), the amount of data involved to assess the information is significant. Transaction-specific data covering a multiyear compliance period would be voluminous. This would entail administrative costs for both the utilities to report and for UTC to review and verify the data. These costs could ultimately discourage utilities from partaking in any unspecified purchases or sales, discouraging market activity overall.

**2. The Proposed Procurement-Based Approach**

The Joint Utilities proposed a procurement-based approach that depends upon renewable energy certificates ("RECs"), documentation of contractual delivery terms, and proof that sales were only "unspecified" (i.e., not marketed as renewable or emissions-free) to verify "use" occurred with no double-counting.[11] RECs are already tracked and used for compliance with Washington's Energy Independence Act ("EIA"), so this approach builds upon existing administrative structures.[12] One new component would be documentation about the location of generating resources and the contracted-for delivery points. Contractual terms are proxies of electricity flows, but the information is readily available in the contracts themselves. The Joint Utilities' proposal limits the eligible geographic area to generation within the utility's service area or balancing

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11 This description focuses on the Joint Utilities' initial proposal. They later proposed a compromise option not discussed here. Multi-Year Compliance with Annual Surplus Accounting, Presentation (Aug. 12, 2021).

12 *See, e.g.,* WAC 194-37-120.

authority area, or to purchases occurring on certain local and regional systems.[13] In contrast to the NWEC and Climate Solutions' proposal, the Joint Utilities would allow a utility that obtains renewable electricity to sell excess electricity as "unspecified" and retain the REC for CETA compliance.[14] This avoids double counting.

**3. The Draft Rules Appropriately Adopt a Procurement-Based Approach**

The Draft Rules adopt a procurement-based approach that is more similar to the Joint Utilities' proposal and, in NIPPC's view, is an appropriate and feasible choice. The Draft Rules require that utilities have "acquired" (or procured) "renewable and nonemitting resources to meet its retail electric load."[15] A utility may do so through ownership or contractual arrangements.[16] The Draft Rules do not require utilities to demonstrate that electricity from these resources ultimately reached load, but only that the electricity was reasonably capable of meeting load. That is, facilities must be located within the Joint Utilities' proposed geographic area (i.e., the utility's service area or balancing authority area, or to purchases occurring on certain local and regional systems).[17] Finally, the Draft Rules do not prohibit utilities from selling off excess energy and using associated RECs for compliance. Instead, the Draft Rules elucidate this action is specific to "retained RECs," which the Draft Rules define as "the nonpower attributes of renewable and nonemitting electricity owned or controlled by a utility where the associated electricity is sold in a wholesale sale as unspecified electricity."[18]

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13 *See* Joint Utilities' Proposed Rules at Section 2(b).
14 Joint Utilities' Proposed Rules at Section 4.
15 Draft Rules at WAC 480-100-650(1).
16 Draft Rules at WAC 480-100-650(2)(d).
17 Draft Rules at WAC 480-100-650(2)(d).
18 Draft Rules at WAC 480-100-605, -650(2)(e).

Stated differently, the Draft Rules appear well-designed to encourage utilities to acquire CETA-compliant resources without penalizing them for minute-to-minute, hour-to-hour, or day-to-day discrepancies between generation and consumption profiles. The Draft Rules leverage existing and accessible datasets without assuming new tracking mechanisms will evolve. Further, the Draft Rules allow utilities (and ratepayers) to maximize the benefits of renewable resources once procured, even if some electricity generated is unneeded to meet customer demands. All in all, NIPPC finds the Draft Rules to reflect a reasonable choice between the two proposals, as a practical and legal matter.

The Notice inquired whether the definitions of "primary compliance" and "retained RECs" were clear and feasible.[19] NIPPC finds the definitions to be clear. NIPPC looks forward to reviewing other stakeholders' comments on the practicalities of reporting and tracking RECs and reserves the right to respond to these other questions at a later time.

### B. The Draft Rules Are Consistent with CETA, and Concerns That the Draft Rules Will Not Achieve CETA's Ultimate Goals are Premature and Can Be Addressed by the UTC's Traditional Regulatory Authority

NIPPC views the Draft Rules as consistent with CETA, or at minimum not inconsistent with CETA. As noted in prior comments, NIPPC's view after reviewing stakeholder arguments is that CETA indeed leaves room for interpretation.[20] NWEC and

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19 Notice at 3-4.

20 Docket Nos. UE-191023 and UE-190698 (consolidated), NIPPC Comments on the Interpretation of "Use" in RCW 19.405.040(1)(a) at 2.

Climate Solutions have argued that CETA mandates a strict delivery standard.[21]

Nevertheless, there is ample evidence in the statute that the legislature intended utilities to comply, and for compliance to be verified, over time scales longer than the simultaneous consumption of electricity. This is most clear for purposes of the 2030 carbon neutrality goal, and NIPPC focuses discussion on this goal for practical purposes: there are roughly nine years before utilities must demonstrate compliance with the carbon neutrality goal, which is not an abundance of time in terms of long-term utility planning. NIPPC understands there are concerns about how Washington will meet its 2045 carbon free goal, but NIPPC views the Draft Rules as sufficient, particularly in conjunction with traditional utility planning, to drive progress towards both goals. Below, NIPPC explains the statutory support for the Draft Rules approach, specifically in regard to the 2030 carbon neutrality goal. NIPPC also explains its view of how the Draft Rules, combined with the UTC's traditional regulatory oversight, are reasonably designed to achieve CETA's 2045 carbon free goal.

### 1. The Draft Rules Promote a Reasonable Approach to Achieving and Demonstrating Carbon Neutrality

The Draft Rules promote a reasonable approach for utilities to achieve and demonstrate compliance with CETA's 2030 goal of a carbon neutral electricity system.[22] The Joint Utilities provided a formal legal memorandum in support of this

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21 Docket Nos. UE-191023 and UE-190698 (consolidated), Comments of NWEC and Climate Solutions, Attachment A at 1 (August 11, 2020) [hereinafter NWEC and Climate Solutions Memorandum].

22 RCW 19.405.040(1).

interpretation.[23] NIPPC does not repeat all of the points made in that memorandum but instead highlights two significant areas of CETA that NIPPC considers particularly persuasive in support of a procurement-based approach and, by extension, the approach in the Draft Rules.

**a. CETA's Language on How Utilities May "Achieve Compliance" Supports a Procurement-Based Approach**

CETA mandates that electric utilities take action to achieve this goal as follows:

> To achieve compliance with this standard, an electric utility must: (i) [p]ursue all cost-effective, reliable, and feasible conservation and efficiency resources to reduce or manage retail electric load…; and (ii) *use* electricity from renewable resources and nonemitting electric generation in an amount equal to one hundred percent of the utility's retail electric loads over each multiyear compliance period.[24]

This language provides two points of support for a procurement-based approach. First, CETA references "retail electric loads over each multiyear compliance periods."[25] The statute defines "retail electric load" as "the amount of megawatt-hours of electricity delivered in a given calendar year by an electric utility to its Washington retail electric customers," with some reductions not relevant here.[26] In effect, this provision requires "using" an amount "equal to one hundred percent of the utility's [amounts of megawatt-hours of electricity delivered in a given compliance period by an electric utility to its Washington retail electric customers]." If CETA mandated a consumption-based approach, then, firstly, the statute would simply require "using" electricity to serve

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23 Docket Nos. UE-191023 and UE-190698 (consolidated), Joint Recommendations of the Utility Group, Appendix B at 1 (August 4, 2020).
24 RCW 19.405.040(1)(a) (emphasis added).
25 RCW 19.405.040(1)(a).
26 RCW 19.405.020(36).

customers rather than specifying "using" electricity in an amount equal to retail loads measured over multiple calendar years. Secondly, such a mandate would fail to give any meaningful effect to the flexibility provided by having a *multiyear* compliance period.[27] However, interpreting CETA as authorizing a procurement-based approach gives effect to the complete statutory text that utilities must "use" an amount that is equal to the sum total of the megawatt-hours delivered during the entire multiyear compliance period for a utility's customers generally.

**b. CETA's Language on How Utilities May "Verify" Compliance Supports a Procurement-Based Approach**

CETA goes on to state that "[e]lectricity from renewable resources … must be verified by the retirement of [RECs]", while "[n]onemitting electric generation … must be verified by documentation that the electric utility owns the nonpower attributes of the electricity generated by the nonemitting electric generation resource."[28] As context, renewable resources are defined by reference to the motive force (e.g., water, wind), and nonemitting electric generation provides, in essence, a catch-all for electricity from any other emissions-free facility (e.g., battery energy storage).[29] Thus, at least some nonemitting electric generation does not generate RECs, so alternative forms of

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27 *See* Docket Nos. UE-191023 and UE-190698 (consolidated), Joint Recommendations of the Utility Group, Appendix B at 9-11 (August 4, 2020) (discussing the legislative intent and history behind multiyear compliance periods) [hereinafter Joint Utilities' Memorandum].

28 RCW 19.405.040(1)(c), (f).

29 *See* RCW 19.405.020(28) ("'Nonemitting electric generation' means electricity from a generating facility or a resource that provides electric energy, capacity, or ancillary services to an electric utility and that does not emit greenhouse gases as a by-product of energy generation. 'Nonemitting electric generation' does not include renewable resources."), (34).

documentation are necessary. Finally, CETA defines a REC as "a tradable certificate of proof of one megawatt-hour of a renewable resource."[30]

Also relevant here is CETA's text regarding the use of unbundled RECs as an alternative compliance option. CETA recognizes two scenarios in which unbundled RECs may be eligible for alternative compliance purposes. First, the unbundled RECs may be ones the utility could use to comply with Washington's EIA.[31] Second, CETA allows the use of non-EIA eligible unbundled RECs so long as they "represent electricity generated within the compliance period."[32]

As additional context, NIPPC notes that CETA diverges from the EIA in two significant ways here. First, not all "renewable resources" under CETA qualify as "eligible renewable resources" under the EIA, so CETA allows the use of more types of unbundled RECs that the EIA does.[33] Second, EIA-eligible RECs must be created in the same year, or potentially in the year before or after, the EIA's annual compliance period.[34] By contrast, CETA authorizes the use of unbundled RECs so long as they represent electricity generated within a four-year compliance period.[35] Thus, for purposes of alternative compliance, CETA allows the use of more types of unbundled

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30 RCW 19.405.020(31).

31 RCW 19.405.040(1)(b)(ii)(A); *see also* RCW 19.405.110 (affirming that CETA does not change the EIA and that actions to comply with the EIA "also qualify for compliance" under CETA, "insofar as those activities meet the requirements of" CETA). Note that unbundled RECs associated with a separate item, "investments in energy transformation projects," are not eligible. RCW 19.405.040(2)(e).

32 RCW 19.405.040(1)(b)(ii)(B).

33 *Compare* RCW 19.405.020(34)*, with* RCW 19.285.030(12).

34 RCW 19.285.040(2)(e).

35 RCW 19.405.040(1)(b)(ii)(B).

RECs, and CETA provides more flexibility about when the unbundled RECs must be created and retired.

The allowance for unbundled RECs associated with electricity generated at any time within a four-year compliance period, for purposes of alternative compliance, is mirrored in part by CETA's authorization, for primary compliance, of electricity from nonemitting electric generation so long as it is generated during the four-year compliance period.[36]

Having RECs as the basis for both verification for primary compliance and as an option for alternative compliance supports a procurement-based approach rather than a consumption-based approach. RECs do not demonstrate that electricity was delivered to customers, nor that generation coincided with demand. On the contrary, RECs reflect aggregate operational data, at least of one megawatt-hour's worth of generation or more. This is particularly true where the statute indicates that eligible non-emitting electric generation or unbundled RECs may be generated at any time during the multiyear compliance period.

If CETA required a consumption-based approach, demonstrating the retirement of eligible RECs would not be sufficient to verify compliance. On the other hand, demonstrating the retirement of eligible RECs is sufficient to verify compliance under a procurement-based approach.

[36] RCW 19.405.040(1)(f).

In summary, CETA outlines how utilities may achieve compliance with the 2030 carbon neutrality standard and also how compliance may be verified. Both provisions support a procurement-based approach such as the one adopted in the Draft Rules.

### 2. The Draft Rules, Combined with the UTC's Traditional Regulatory Oversight and Powers, Provides a Reasonable Approach to Achieving a Carbon Free Electricity System by 2045

NIPPC is sympathetic to stakeholder concerns that it is not clear how Washington's utilities will achieve CETA's 2045 goal of a carbon free electricity supply.[37] This is a great challenge for utilities and independent power producers, and it will likely require ongoing monitoring and course corrections over the coming decades.[38] However, NIPPC does not think these concerns present valid objections to the procurement-based approach or the Draft Rules.

NWEC and Climate Solutions argue that Washington's utilities will, in effect, never achieve the 2045 goal if a procurement-based approach is pursued.[39] The legal memorandum they offered states that:

> [U]nder the Utilities' interpretation, nothing would prevent a utility from relying on fossil fuel-fired power generation to supply some or all of their customers' electricity, so long as they retain a sufficient quantity of RECs from resources that may never serve Washington. This is entirely inconsistent with the legislature's stated intent to transform Washington's energy supply to one hundred percent clean.[40]

This statement is overbroad and ignores the UTC's substantial authority to oversee utility procurement decisions. For instance, it assumes that the UTC would ignore utility

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37 RCW 19.405.050(1).
38 *E.g.,* RCW 19.405.050(2).
39 NWEC and Climate Solutions Memorandum at 2.
40 NWEC and Climate Solutions Memorandum at 4.

decisions to procure power from "resources that may never serve Washington." NIPPC views this as an unlikely occurrence.

The UTC has authority to disallow certain utility costs, including exactly the costs implicated by NWEC and Climate Solutions' statement. Among other tasks, the WUTC must set utility rates that are "just, reasonable, [and] sufficient."[41] This includes disallowing costs from inclusion in a utility's rates when necessary. For instance, the UTC may disallow costs that are unrelated to providing utility service.[42] Similarly, the UTC may disallow a service-related cost if it was not prudently incurred.[43] Third, the UTC may disallow a return on investments (but may allow a straight cost recovery) that were not "used and useful for service."[44] These are examples of the UTC's broad authority over utility procurement decisions.

Further, the UTC has already signaled it intends to evaluate utility decisions on the basis of how well resources will ultimately match customer needs. The Notice states that:

> Draft WAC 480-100-650(1): The Commission intends for this language to describe a planning and acquisition standard that requires utilities to acquire resources that are well-suited to directly meet projected retail electric load without precluding the use of those resources for balancing, exchanges, or other purposes.[45]

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41 RCW 80.28.020; *see* RCW 80.01.040(3); RCW 80.28.010(1) (requiring rates to be "just, fair, reasonable and sufficient").

42 *Jewell v. WUTC,* 585 P.2d 1167, 90 Wn.2d 775, 780-781 (1978) (reversing WUTC decision to allow recovery, when costs were for telephone utility's voluntary charitable contributions).

43 *People's Org. for Wash. Energy Resources v. UTC*, 711 P.2d 319, 104 Wn.2d 798, 810 (1985).

44 RCW 80.04.250(2).

45 Notice at 3.

For reference, Draft WAC 480-100-650(1) states that "[u]sing electricity for compliance under RCW 19.405.040(1) and RCW 19.405.050(1) means that a utility has acquired renewable and nonemitting resources to meet its retail electric load …"[46] NIPPC reads this Draft Rule and Notice as a clear indication that the UTC is not going to interpret CETA to mandate instantaneous delivery and proof of delivery, but the UTC will expect, as it has *always* expected, that utilities procure resources based on what is needed to *meet customer needs*.

In response to the questions in the Notice, NIPPC views the intent above to be clear.[47] However, this is such a foundational point that NIPPC would encourage the UTC to acknowledge its intent to exercise ongoing regulatory authority over utility decisions in the rulemaking order, if not in the rules themselves.

### C. The UTC Should Clarify Two Extraneous Items in the Draft Rules

There are two items in the Draft Rules that appear unnecessary and instead potentially harmful to the UTC's implementation of CETA. NIPPC recommends that the UTC amend these items or clarify their purpose so that the potential value of including them can be better weighed against the potential risks of creating confusion about other sections of the Draft Rules.

#### 1. The UTC Should Clarify its Self-Imposed Deadline for Review

The Draft Rules indicate that "[t]he commission will commence a review of this rule no later than September 1, 2024, and revise the rule if necessary."[48] The purpose of

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46 Draft Rules at WAC 480-100-650(1).
47 *See* Notice at 3.
48 Draft Rules at WAC 480-100-650(6).

this language is unclear. As a general matter, the UTC is free to open a rulemaking and revise its rules at any time. Thus, it is not necessary for the UTC to set itself a deadline to act. In addition, the proposed deadline (roughly three years from now) appears far too soon to produce a robust review. NIPPC acknowledges that it may be appropriate for the Commission to revisit its rules as some point in the future. NIPPC is optimistic that the Draft Rules will drive progress towards CETA's goals, but the Commission may find that future compliance reports and planning indicate a need for a change in approach. However, realistically, the Commission may not have the necessary information to make such a finding in 2024.

In addition to being unnecessary, this language could be harmful. NIPPC is concerned that the promise to revisit the rules will undermine confidence that the contentious interpretation of "use" has been resolved. This will hamper market activity and could ultimately delay progress towards CETA's goals.

If the UTC nevertheless wishes to set a deadline for a review, NIPPC recommends adopting a later date for review and providing a narrower scope for review (i.e., what issues will not be subject to review).

### 2. The UTC Should Clarify the Purpose of Hourly Data Reporting in the Rules

The second item that needs clarification is the text concerning hourly data reporting.[49] The Commission's interpretation of use avoids the pitfalls of a consumption-based framework, yet this section appears to impose at least the administrative burdens of a consumption-based framework on utilities merely for informational purposes. Without

[49] Draft Rules at WAC 480-100-650(5).

further explanation, the Draft Rules on hourly data may muddy the waters concerning what is needed to comply with the Commission's procurement-based "use" framework.

The Notice provides a limited explanation, but it raises more questions than it answers. It reads:

> The draft rules include robust requirements for hourly energy management data and information on a utility's wholesale transaction activities, as the penalties described in CETA are established based on "each megawatt-hour of electric generation used to meet load that is not electricity from a renewable resource or nonemitting electric generation," necessitating a high level of granularity in reporting. With these increased reporting requirements, the Commission aims to increase visibility into a utility's operations and to augment the data available to review a utility's performance in complying with the requirements of RCW 19.405.040 and .050 outlined in these draft rules.[50]

This text suggests that the hourly data are intended for informational purposes ("to increase visibility") but also may be used to judge utility compliance ("to review a utility's performance"). Considering utility performance will be judged under the UTC's procurement-based method, this potential use of the data appears more likely to confuse the issues than resolve them.

Note, for instance, that CETA only imposes penalties on utilities that "fail[] to meet the standards" for carbon neutrality or carbon free supply.[51] If a utility complies, consistent with the procurement-based approach in the Draft Rules, then it should not be subject to any penalty. Nonetheless, the UTC appears to be requesting information that will entail an administrative burden to produce and that should be unnecessary for

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50 Notice at 4 (internal citations omitted).

51 RCW 19.405.090(1).

compliance purposes. There appears to be room for improvement here, but it is hard to make recommendations without understanding the UTC's intent.

If the Commission intends the reporting to have any practical impact (such as, perhaps, in a rate case), then the Commission should plainly say so. If the Commission intends the reporting purely as an informational exercise in order to monitor at a more granular level regional load and generation behavior, then the Commission should plainly say so. Further, the Commission should provide this explanation directly in the rules so utilities have a clear understanding of what they need to provide (if anything beyond the existing rule requirements) and why.

NIPPC is not certain it understands the UTC's goal with the hourly data text and therefore is not addressing the questions posed in the Notice at this time.[52] NIPPC reserves the right to provide additional comments after the UTC clarifies the intention behind this section of the Draft Rules.

## III. CONCLUSION

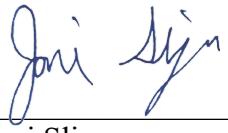
NIPPC appreciates the opportunity to comment and looks forward to seeing the UTC implement its Draft Rules and drive progress towards CETA's goals.

Dated this 12th day of November 2021.

[52] Notice at 4 (asking, in brief, whether the proposed text is likely to achieve the UTC's goal or needs revision).

Respectfully submitted,

Sanger Law, PC



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Of Attorneys for Northwest &
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**Attachment A**

***Clean Energy Implementation Plans and Compliance with CETA, and Amending, Adopting, and Repealing WAC 480-100-238, Relating to Integrated Resource Planning,*** **Docket Nos. UE-191023 and UE-190698 (consolidated)**

**NIPPC's Comments on the Interpretation of "Use" in RCW 19.405.040(1)(a) from Aug. 10, 2020**

**and**

**NIPPC's Comments on "Use" from Dec. 3, 2020**

August 10, 2020

Chair David Danner, Utilities and Transportation Commission
Commissioner Ann Rendahl, Utilities and Transportation Commission
Commissioner Jay Balasbas, Utilities and Transportation Commission
Director Lisa Brown, Department of Commerce

**Northwest & Intermountain Power Producers Coalition's Comments on the Interpretation of "Use" in RCW 19.405.040(1)(a) (Docket UE-191023)**

Dear Commissioners and Director Brown:

The Northwest & Intermountain Power Producers Coalition (NIPPC)[1] thanks the Utilities and Transportation Commission (Commission) and the Department of Commerce (Commerce) for the ongoing opportunity to provide input on the agencies' consideration of how to implement the Clean Energy Transformation Act (CETA).

In implementing CETA, Washington can demonstrate an effective way to decarbonize that harnesses existing and emerging competitive market mechanisms. Implementation of CETA should take advantage of the primary function of markets: efficiently allocating available resources among participants in a wide geographic footprint. Harnessing this function will allow renewable resources to serve more load without being curtailed, provide load-serving entities with greater access to renewable resources based on their customers' needs, and allow all market participants to manage both variability in supply and load and the risks of such variability.

In light of the discussion at a recent public workshop hosted by the agencies on July 27, NIPPC provides comments here on the agencies' respective interpretations of RCW 19.405.040(1)(a), focusing especially on the Commission's pending interpretation in docket UE-191023.

NIPPC is encouraged by the agencies' evident interest in converging on a common interpretation of this provision of CETA. Like other commenters,[2] NIPPC believes that the Commerce discussion draft rules released on April 28, 2020, are an appropriate

[1] NIPPC is a trade association representing competitive power participants in the Pacific Northwest. NIPPC members include owners, operators, and developers of independent power generation and storage, power marketers, and affiliated companies. Collectively, NIPPC represents over 4,500 megawatts of operating generation and an equal amount permitted or under development.
[2] See Joint Utility Letter and Legal Memo (July 31, 2020).

starting point for establishing a procurement-based framework for implementing CETA's greenhouse gas neutral standard rather than a delivery-based framework. A common approach by both agencies that aligns the mechanics of the competitive power markets with the statutory requirements of RCW 19.405.040 is critical to achieving the objectives of CETA at the lowest cost and least risk. The markets, in turn, are likely to reward this alignment by relaying a clear investment signal from Washington to renewable energy developers, operators, marketers, and investors.

As a starting point, NIPPC urges the Commission to provide a more detailed legal analysis of the Commission staff's preliminary interpretation of the meaning of "use" in RCW 19.405.040(1)(a)(ii). The Commission should provide this more detailed analysis before proposing an implementation rule for this provision, assuming the Commission is considering adopting the same statutory interpretation with respect to delivery to load that was discussed at the July 27 workshop. Stakeholders would greatly benefit from being able to consider and respond to a more detailed view than the cursory interpretation included in the notice of opportunity to file written comments on June 12, 2020,[3] and the subsequent oral discussion at the workshop on July 27.

With respect to the specific interpretation of this provision, NIPPC first offers a broad perspective on the general challenge of selecting a compliance framework for clean electricity mandates. Returning to one of the questions posed previously by Commission staff in this proceeding,[4] NIPPC agrees notionally with a premise that the "source and amount of all power injected into the bulk electric system is known and documented" but notes that this documentation by itself is of limited value once the identified power flows on the grid. While it is possible to identify aggregated flows and available transmission pathways, once power is "injected" onto the grid, it is practically impossible to trace and identify its ultimate "ejection" (i.e., delivery) to load. The physics of networked electric power flows preclude this identification.

Therefore, attempts to identify power delivered to load are necessarily administrative fictions that approximate, for accounting purposes, the actual behavior of power flows on the grid. NIPPC does not believe that CETA requires the Commission and Commerce to adopt the approximation represented by a delivery-based approach. A delivery-based approach would add enormous complexity to implementing CETA, impinge on Washington's ability to leverage regional markets, and make compliance with CETA more expensive, all without decarbonizing any faster.

In its interpretation of the word "use" in RCW 19.405.040(1)(a)(ii), the Commission should instead use its administrative discretion to establish a procurement-based program that simply considers procured electricity from a renewable resource to be "used" once its affiliated renewable energy credit (REC) is retired. Retiring RECs is already required in subsection (c) of the same paragraph. This approach is commonly used across the nation for compliance with renewable energy programs. It would harness the best combined features of organized markets and renewable energy

[3] Notice of Opportunity to File Written Comments in Docket UE-191023 (June 12, 2020), p. 1-2.
[4] Id., "Question for Consideration" No. 1, p. 2.

tracking systems, and it would allow the Commission to meet its statutory obligation by matching the amount of acquired (owned or contracted) electric power against the amount of retail electric load during the multi-year compliance periods. Meeting this obligation will ensure that the necessary supply of renewable energy will be developed and deployed to serve Washington customers.

Consistent with this approach, a Washington load-serving entity should not be able to simultaneously sell specified power into California and claim the same power for compliance under RCW 19.405.040(1)(a)(ii). Conversely, this approach would not preclude a load-serving entity from selling unspecified power while simultaneously retiring the associated REC for compliance with CETA. NIPPC believes that these respective scenarios related to double counting deserve further discussion by the agencies.

In addition to supporting a procurement-based approach, with respect to resources used to comply with CETA that are located outside of a load-serving entity's service area, NIPPC supports establishing a requirement to use specified points of delivery along a clear perimeter of the regional transmission network. This approach could take advantage of the footprint of existing and emerging organized market footprints while giving the Commission and Commerce the ability to ensure that procured electricity may, in fact, be used by retail customers in Washington. The agencies should hold further discussions to select an appropriate perimeter and eligible points of delivery, while acknowledging the ongoing regional dialogue to design market rules that treat all participants fairly.

Finally, NIPPC emphasizes the value of continued discussions within the Carbon and Electricity Markets Stakeholder Workgroup. Feedback from this workgroup and stakeholders engaged with it could provide further input to the Commission and Commerce as you consider how to implement this important provision at the core of CETA.

Thank you for your attention and for your careful consideration of these regulatory matters.

Sincerely,

Spencer Gray
*Executive Director*
Northwest & Intermountain
Power Producers Coalition

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December 3, 2020

Via E-filing

Mr. Mark L. Johnson
Executive Director
Washington Utilities & Transportation Commission
621 Woodland Square Loop SE
P. O. Box 47250
Lacey, WA 98503

Attn: Filing Center

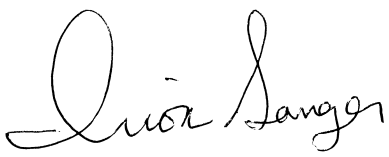
RE: In the Matters of Amending, Adopting, and Repealing WAC 480-100-238, Relating to Integrated Resource Planning, And Clean Energy Implementation Plans and Compliance with the Clean Energy Transformation Act Rulemaking Dockets No. UE-190698 and UE-191023

Dear Mr. Johnson:

Please find the Comments and Attachment of the Northwest and Intermountain Power Producers Coalition in the above-referenced docket.

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

Sincerely,



Irion A. Sanger

**BEFORE THE WASHINGTON UTILITIES AND**

**TRANSPORTATION COMMISSION**

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| In the matters of the<br><br>Clean Energy Implementation Plans and Compliance with the Clean Energy Transformation Act, and<br><br>Amending, Adopting, and Repealing WAC 480-100-238, Relating to Integrated Resource Planning | DOCKETS NO. UE-191023 AND UE-190698<br>(*Consolidated*)<br><br>NORTHWEST & INTERMOUNTAIN POWER PRODUCERS COALITION COMMENTS ON "USE" |

## I. INTRODUCTION

The Northwest & Intermountain Power Producers Coalition ("NIPPC") provides these comments in response to the Washington Utilities and Transportation Commission's (the "Commission's" or "WUTC's") Notice of Opportunity to File Written Comments regarding the term "use" in the Clean Energy Transformation Act ("CETA") and two differing interpretations, offered by the Public Generating Pool, Puget Sound Energy, Pacific Power and Avista Corporation ("Group A") and by Climate Solutions and Northwest Energy Coalition ("Group B"). NIPPC wholeheartedly supports the Commission's goal of "uphold[ing] CETA's statutory requirements while allowing for the efficient operation of energy markets."[1] To that end, NIPPC offers its perspective on how Group A's interpretation is better suited for Washington's power markets.

[1] Notice of Opportunity to File Written Comments at 3 (Nov. 5, 2020) [hereinafter Notice].

## II. COMMENTS

### A. General Comments

NIPPC reiterates its previously stated view that Washington should decarbonize by harnessing the potential of existing and emerging competitive market mechanisms.[2] Properly designed and regulated markets efficiently allocate available resources among participants in a wide geographic footprint. Organized markets offer a fundamental advantage to states committed to decarbonizing the electric grid using intermittent resources. They provide renewable projects better access to more customers, load-serving entities a more diverse supply of renewable and non-emitting resources, and all market participants an effective way to manage market variability and its associated risks.

NIPPC notes at the outset that its members are not the regulated entities ("electric utilities") under CETA. Indeed, some independent power producers might narrowly benefit from the more administratively burdensome regulation proposed by Group B that could result in a parochial overbuilding of renewable generation.[3] Nonetheless, NIPPC's view is that the public interest is best served by both fostering and relying on competitive, regional solutions to decarbonize. NIPPC's position is that the Commission needs to interpret "use" in CETA in order to implement the law, that a procurement-based compliance regime is a permissible interpretation under the statute, and that such an interpretation is the best policy for the Commission to adopt.

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2 Docket No. UE-191023, NIPPC Comments on the Interpretation of "Use" in RCW 19.405.040(1)(a) at 1 (Aug. 10, 2020) [hereinafter August Comments].

3 It is perhaps equally likely that overbuilding, rather than underbuilding, generation would lead to adverse sector-wide outcomes, including greater curtailment of renewables and lower wholesale prices.

## B. Interpretation of "Use"

NIPPC is not offering a thorough legal interpretation of "use" in these comments. NIPPC limits its extended remarks here to the single threshold question of whether or not the meaning of "use" is plain in the statute. NIPPC appreciates the two extensive legal analyses; ultimately, the two analyses appear fundamentally to demonstrate that CETA is ambiguous. Within this context, NIPPC recommends that the Commission evaluate the various options for effectuating the legislative intent and select the path best suited for delivering value to customers. NIPPC believes that Group A's proposal is the better option and is more consistent with the goals of transitioning Washington's electricity supply to one hundred percent carbon-neutral by 2030 and one hundred percent carbon-free by 2045, without imposing unreasonable costs on utility customers.

In its previous comments, NIPPC noted that "attempts to identify power delivered to load are necessarily administrative fictions that approximate, for accounting purposes, the actual behavior of power flows on the grid. NIPPC does not believe that CETA requires the Commission and [the Department of] Commerce to adopt the approximation represented by a delivery-based approach."[4] The rest of this section expands on this view.

In light of the legal interpretation submitted by Group B on this matter, NIPPC emphatically reminds the Commission of an elementary point that is in danger of being lost in this proceeding: electricity is not like most other goods or services. Confusion on this matter threatens to complicate and undermine the effective implementation of CETA.

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[4] August Comments at 2.

For purposes of illustrating how electricity is different, imagine a law that required 80 percent of all toothpaste sold in Washington between 2030 and 2045 to be the color green—any shade of green. Retail toothpaste sellers could buy such paste from wholesale marketers and, perhaps, directly from manufacturers. Such purchases would thereby shrink the market for all non-green toothpaste. Perhaps some sellers would themselves make a green paste.

There aren't too many uses of toothpaste. Retail sales could fairly represent the use of toothpaste, and verification would be straightforward. Toothpaste is generally housed in a tube with a lot number stamped on it, and such tubes are purchased in discrete quantities by discrete customers. To comply with such a law, sellers would demonstrate that a combination of various shades of green comprised 80 percent of their toothpaste sales.

Such a demonstration could be made regardless of how the paste traveled to retail outlets in Washington for distribution. When toothpaste crosses state lines, it generally stays in its respective tubes rather than intermingling with other pastes en route to their respective destinations. Similarly, when toothpaste travels from store to sink, it generally stays in its tube until used. There is little risk of some other kind of paste squirting by surprise onto one's brush.

NIPPC draws out this example because this proceeding should not lose sight of the following point: With a single exception, electricity is not like toothpaste. The single exception is an electric circuit energized by a single generating source. A simple circuit is like toothpaste and most other goods or services whose "use" can be traced with relative precision from supplier to user. And this exception proves the rule. While it is

true that behind-the-meter distributed generation and some "islandable" micro-grids in Washington resemble this kind of simple circuit, the "macro" electric grid that serves millions of consumers in Washington does not. It is different in kind.

Once two electric generating sources are energized on a single circuit, let alone thousands of separate generators and storage devices across multiple states and provinces serving millions of loads, tracing the discrete "use" by discrete customers of any discrete resource becomes impossible. Unlike toothpaste, any tracing from the "use" of the electricity supply to an electrical load can only be done by proxy. The physics of networked power flows precludes anything but a proxy accounting framework.

For this reason, NIPPC disagrees with the threshold interpretation supplied by Group B:

> While "use" is not defined in CETA, its common definition leaves little room for doubt. Merriam-Webster's online dictionary defines "use" as "to put into action or service," or "to expend or consume by putting to use." Utilities "use" electricity by supplying it to their customers. […] CETA's plain language and stated legislative purpose permit only one interpretation: utilities must use electricity from renewable resources and non-emitting generation to supply Washington retail electric customers.[5]

This interpretation conflates electricity with commodities whose use is traceable to the end-user. In fact, the only absolute way to comply with this interpretation on a statewide basis would be to disconnect Washington load-serving entities from the transmission network that interconnects Washington with other states and provinces in the Western

[5] Docket No. UE-191023, Comments of NW Energy Coalition, Climate Solutions, Sierra Club, and the Washington Council at attach. p. 3, 5 (August 10, 2020) (Memorandum from Earthjustice on a Legal interpretation of the Clean Energy Transformation Act).

Interconnection.[6] The Washington Legislature neither required such a radical disconnection nor clarified this matter by choosing the word "use." The Legislature merely put the Commission in the position of needing to select a reasonable way to assess how the relatively unique phenomenon of electricity is transacted.

This is the only conclusion that the Commission need draw from the example above: the Commission should exercise its expertise to adopt a workable proxy for tracking electricity and compliance with CETA. On this threshold matter, the language of the statute is not plain as to one proxy or another. NIPPC believes that the Commission does not merely have the authority to interpret this language in various ways; it must adopt an interpretation, implicitly or explicitly, before it can successfully implement CETA. An administrative approximation about what constitutes the "use" of electricity is required for any entity to demonstrate compliance with CETA.

**C. Differences Between the Proposals**

The primary distinction between Group A's proposal and Group B's proposal appears to be the usability of bundled Renewable Energy Credits ("RECs"). Among other things that do not appear disputed, Group A suggests compliance can be supported by "WREGIS retirement report of [RECs] generated by resources for which the utility also is able to show acquisition of the renewable resource electricity," while Group B proposes the use of "a tracking mechanism, like NERC e-tags, that documents delivery of renewable resource and non-emitting generation to customers."[7] In practical terms,

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6 In fact, utilities in Texas took this unusual step in the 1970s in order to maintain a solely state-jurisdictional power market.

7 Notice, Attachment A at 1; Notice, Attachment B at 1.

Group A proposes the use of an existing Washington and regional administrative structure (RECs) that provides an imperfect but workable approximation of power use, whereas Group B proposes the creation of a new administrative apparatus that, in theory, would more closely approximate power delivery to load. This apparatus will unnecessarily increase costs and risk the ultimate achievement of the Legislature's goals.

NIPPC is not aware of any evidence that the Legislature envisioned the creation of a brand-new administrative apparatus to trace power flows on a granular time basis or a specific transformation of the existing wholesale electricity markets. Even Group B does not argue that CETA clearly requires such a massive undertaking, but they rely upon an argument that CETA necessarily implies such a result. NIPPC believes that, if the Legislature intended to radically alter the existing regulatory and market structures, then it would have done so with more explicit and clear language. The Legislature only wanted to transform the electricity sector to eliminate the use of fossil fuels.

For instance, California has pursued a path with some parallels to what Group B proposes by implementing both a Renewable Portfolio Standard and a cap-and-trade program separately. Washington could pursue a similarly explicit path, should the Legislature so choose. But at present, instead of committing itself to a far more complicated compliance regime under CETA than the statute requires, the Commission should take advantage of existing administrative processes under a procurement-based approach (also known as an attribute-based approach), as Group A's proposal suggests.

## D. General Comments in Response to Leakage, Resource Shuffling, and Market Structure Topics

NIPPC does not assume that the possibilities of "leakage" and "resource shuffling" could materially undermine the achievement of CETA's objectives. These regional market outcomes are most commonly discussed in the context of how organized power markets subject to greenhouse gas emissions caps interact with neighboring bilateral markets not subject to such caps. Rather than taking at face value that these are significant problems for which CETA requires a solution, NIPPC urges the Commission either to prepare or to procure a thorough analysis of regional power flows and market economics to define and evaluate the likelihood of these outcomes.

NIPPC notes an apt observation contained in the final review draft of the collaborative "WIRED GHG Accounting Working Group Report" from November 2020:

> By design, organized markets employ a centralized dispatch that increases efficiency by reducing the friction and inefficiencies created by bilateral transactions. An accounting framework that introduces the need for bilateral tracking of sources and loads between all participating states or entities is likely to erode the efficiencies associated with a centralized dispatch of resources. If entities are required to make all or a substantial portion of their energy purchases on a resource-specific basis, they may not be able to participate in an organized market that does not accommodate specified-resource transactions.[8]

The same WIRED Working Group offered the following recommendation that NIPPC strongly recommends to the Commission:

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[8] Final Review Draft WIRED GHG Accounting Working Group Report at 9 (Nov. 2020), https://cnee.colostate.edu/wp-content/uploads/2020/11/final-review-draft-WIRED-GHG-accounting-work-group.pdf. The WIRED Initiative is a collaborative effort of the Center for the New Energy Economy (CNEE), the Western Electric Industry Leaders (WEIL) Group, and many of the western governors' energy policy advisors.

> Attribute-based systems are recommended for compliance with RPS and [clean energy standard] programs and renewable and non-emitting fuel type accounting; states should seek to meet individual preferences and goals through establishing resource and program eligibility criteria without attempting to precisely match accounting to underlying energy transactions or load service.[9]

**E. Comments in Response to Specific Commission Questions**

***1. Do the rules provided in Attachment A or B allow CETA to be enforced as an offset program?***

***a) If no, which portion of the rule language prevents CETA compliance from functioning as an offset program?***

***b) If yes, which portion of the rule language permits CETA compliance to function as an offset program?***

In NIPPC's view, this question is different from the definition of "use" under CETA. That said, neither set of rules concerning renewable and non-emitting resources appear designed or allow CETA to be enforced as an offset program. An offset program is a program wherein strict compliance in one area is avoided by exceeding obligations elsewhere, thus offsetting or balancing out the total emissions. For example, a carbon offset program may call for a reduction in emissions of carbon dioxide or other greenhouse gases in one area to compensate for higher emissions elsewhere.

CETA and the rules in both Attachment A and B initially require carbon neutrality but allow for utilities to meet 20% of their obligation through alternative compliance measures, including unbundled RECs. Unbundled RECs are not an offset but a tangible demonstration that renewable energy was, in fact, generated. Neither set of rules address the alternative compliance measures, and NIPPC does not believe either set

[9] *Id.*

of rules presents any other implication of an offset program. The distinguishing feature between the rule sets is how compliance itself is measured and tracked.

2. ***Do the rules in Attachment A or B allow a utility to produce renewable electricity in excess of the amount required to serve its load and use the RECs from that excess renewable electricity, sold off system, to cover periods of load in which more than 20 percent of its load is served by GHG emitting resources as a means of complying with RCW 19.405.040(1)(b)(ii)? For example, can a utility comply with the 80 percent requirement through buying 1000 MWh of hydroelectricity in excess of its load service needs in every hour of the day during the spring runoff and resell that power while retaining the nonpower attributes for compliance?***

The compliance scenario described here matches NIPPC's understanding of an acceptable option for compliance with the 80 percent requirement, so long as the utility meets its multiyear compliance requirements overall. With respect to the proposed rules, Option B appears to explicitly prohibit this, while Option A would allow it. Both options would prohibit a Washington load-serving entity from simultaneously selling specified power into California and claiming the same *power* for compliance with the 80 percent standard. Only Option A would allow a load-serving entity to sell unspecified power while simultaneously retiring the associated REC for compliance with CETA. NIPPC supports the Commission working with California regulators and other states to create information-sharing agreements to avoid double-counting under the latter option for compliance with the 80 percent requirement.

3. ***Attachment A states in (2)(C)(ii)(4) that the delivery of resources used for compliance may occur at "another point of delivery designated by an electric utility for the purpose of subsequent delivery to the utility [emphasis added]."***
    a) ***Does the term "purpose of subsequent delivery" mean that the electricity must be delivered to the utility, or only that it was intended to be delivered?***
    b) ***What constitutes "delivery to the utility"?***

NIPPC acknowledges the cited language places substantial power in the utility's hands concerning delivery. This flexibility is generally appropriate given the physical challenge outlined above with respect to ensuring delivery to load and the benefit of relying on renewable resources across a wide geographic area. This flexibility will become increasingly important as regional organized markets expand and centralized dispatch of energy becomes more common. NIPPC reiterates its earlier recommendation to couple bundled REC retirements with a requirement to use specified points of delivery along a clear perimeter of the regional transmission network.[10]

In addition, in light of the evolution of storage technologies, NIPPC believes the rule language appropriately recognizes that power could be delivered to an as-yet-unspecified point (such as a charging electric truck fleet) for a non-organized market purchase (i.e., battery discharge) that will occur at a future time. With this view in mind, NIPPC recommends not losing the forest for the trees. To facilitate the growth and adoption of innovative storage technologies, the rules should allow appropriate space for flexibility.

[10] August Comments at 3.

4. ***How will the suggested rules in Attachment A and B affect long-term portfolio planning and acquisition?***
    a) ***CETA requires that all of a utility's load be served by renewables or nonemitting resources by 2045. Do the rules in Attachment A or B support this objective? Do they allow compliance with the 2030 goal in a manner that diverges from the 2045 goal?***
    b) ***Do the suggested rules in Attachment A or B support a long-term resource portfolio plan that matches the production of renewable electricity with the utility's load and has sufficient transmission service between the point of injection of its planned source of renewable electricity and the utility's load to enable the renewable electricity to serve that load?***

NIPPC primarily responds to this question to acknowledge the understandable concern among some parties that CETA not let utilities "off the hook" by virtue of secondary effects of their participation in bilateral regional markets and the Western Energy Imbalance Market. CETA will help transform the region's electric power system by leading to utility divestment from legacy fossil generation across the region and investment in new renewable generation. With no operating cost for fuel, the new renewable generation developed as a result of CETA will generally displace any fossil generation competing to be dispatched in the same time period. This is a profound market signal that can be easily facilitated by relying on the compliance practice commonly used under state renewable energy programs of retiring affiliated RECs, as envisioned by Attachment A. Portfolio planning and acquisition are already well suited to accommodate this approach.

NIPPC also notes that Option B is more likely to lead to overbuilding and more expensive compliance. This could upset the current integrated resource planning process, which focuses on the least cost and least risk approach to utility procurement, and it could increase the likelihood of there being insufficient transmission to wheel power to load.

5. ***Could the Energy Imbalance Market (EIM) provide a prorated share of the attributes of the resources that provided energy in a market interval to the loads that received energy in that market interval?***
    a) ***If EIM loads were to receive the attributes of the generators providing energy in the market, should constraints in the dynamic transfer capacity be incorporated into the calculation of the distribution of those attributes to load? Is it possible to reflect those constraints in the distribution of attributes to locational loads?***
    b) ***If EIM loads could receive the attributes of the generators providing energy in the market, is there a means of allocating those attributes by a bid price mechanism?***

In general, NIPPC does not view these proposals as valid ways to take advantage of the EIM for purposes of CETA compliance. EIM dispatch is not designed to meet any particular loads, load-serving entities do not control the amount of energy dispatched by the EIM, and RECs do not correspond to the granular within-hour timeframe of energy dispatched in the EIM.

6. ***Energy serving load in a day-ahead market (DAM) is unspecified. If the DAM bid awards were mostly surplus hydro, would the loads receiving energy from the DAM only receive unspecified energy under the rules in Attachments A and B? Does this mean that a utility that was a net buyer from the DAM at a time of excess hydroelectric generation would only receive unspecified power?***

NIPPC is not sure if the net buyer in the scenario in this question was a seller of hydro generation into the DAM or not. Under Attachment A, in the event the net buyer was also a seller, it would be able to retire the RECs for the hydro generation it sold into the DAM, thereby achieving a level of compliance with CETA equal to the amount of RECs retired—assuming the generation was not "deemed delivered" to California, a DAM function that NIPPC anticipates may develop. If the net buyer simply purchased unspecified power from DAM without bidding in any renewable or non-emitting resources, then there would not be bundled RECs to purchase and retire, given the

centralized economic dispatch of resources in a DAM. Under this scenario, the buyer could not rely on receipt of the unspecified power for any compliance with CETA. This scenario may deserve further discussion by the Commission and stakeholders, given the other values associated with fostering a DAM in the Northwest.

7. ***Rules in Attachment B, part (2)(b), state that a utility must make a demonstration that the electricity used for compliance was generated by the utility or acquired by the utility with the nonpower attributes and not resold.***
    a) ***How would a utility make such a demonstration?***
    b) ***How would power generated and purchased by the utility be identified as sold, which documents would be used, and what process would be followed to reconcile purchases and sales?***
    c) ***How would Commission staff conduct audits under this proposal?***

NIPPC recommends the adoption of the rules in Attachment A and therefore does not address Question 7.

8. ***Please explain how double counting is prevented under the suggested rules in Attachment A and B?***

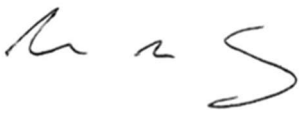
The suggested rules in Attachment A addresses double counting by ensuring that the same generation is not used for analogous compliance in two jurisdictions, including as specified power dispatched into California.

## III. CONCLUSION

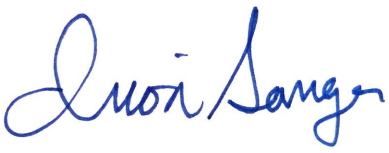
NIPPC appreciates the opportunity to submit comments and looks forward to further engagement on this issue.

Dated this 3rd day of December 2020.

Respectfully submitted,



Spencer Gray
Executive Director
NIPPC



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