UE-210183

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December 6, 2021

Via Electronic Filing

Amanda Maxwell
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 Ms. Maxwell:

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,

Irion A. Sanger

Enclosure

BEFORE THE WASHINGTON UTILITIES AND

TRANSPORTATION COMMISSION

In the matter of the Rulemaking to consider adoption of Markets and Compliance Requirements for the Clean Energy Transformation Act	DOCKET NO. UE-210183 NORTHWEST & INTERMOUNTAIN POWER PRODUCERS COALITION'S COMMENTS ON ADDITIONAL DRAFT RULES

I. INTRODUCTION

The Northwest & Intermountain Power Producers Coalition ("NIPPC") provides these Comments pursuant to the Washington Utilities and Transportation Commission ("WUTC" or the "Commission") and the Washington Department of Commerce's ("Commerce's") (collectively the "Joint Agencies") Notice of Opportunity to File Written Comments on Draft Rules issued on November 10, 2021 (the "Notice" and the "Draft Rules"). The Draft Rules aim to address the prohibition of double counting nonpower attributes and the treatment of energy storage for compliance with the Clean Energy Transformation Act ("CETA"). In NIPPC's view, these Draft Rules generally align with the Commission's other proposed CETA rules, which appropriately effectuate the legislative intent to achieve CETA's climate goals.[1]

However, NIPPC has concerns the business practices requirements are overbroad and will likely harm Washington utilities' ability to utilize competitive markets to cost-effectively comply with CETA. Thus, NIPPC recommends the Joint Agencies revise the Draft Rules to provide more flexibility. The Joint Agencies should not require renewable

[1] NIPPC Comments on Draft Rules at 1-21 (Nov. 12, 2021) (discussing the proposed interpretation of "use").

energy facilities to attest that *all* REC transactions related to the sale or transfer of electricity from the facility, including transactions not with Washington utilities, satisfy requirements in the Draft Rules. Requiring all transactions to comply with the business practices could overstep the Joint Agencies' jurisdictional bounds, discourage competitive markets, and increase CETA compliance costs.

II. COMMENTS

The Joint Agencies issued Draft Rules to implement certain provisions of CETA.[2] Among other things, the Draft Rules address CETA's prohibition on double counting.[3] Under CETA, electric utilities must meet 100 percent of their retail electric load with renewable or non-emitting electric generation by December 31, 2044.[4] However, through December 31, 2044 an electric utility may use alternative compliance options to satisfy up to 20 percent of its obligations.[5] One option is to use unbundled renewable energy credits ("RECs") as long as there is no double counting of any nonpower attributes associated with the RECs.[6] NIPPC views this statutory requirement as a reasonable mandate to further CETA's goals of cost-effective decarbonization.

To implement CETA's prohibition on double counting, the Draft Rules "would require that utilities obtain unbundled RECs only from renewable generating facilities that comply with certain business practices in all transactions, regardless of whether the

2 WUTC Notice at 1 (Nov. 10, 2021).
3 WUTC Notice at 2.
4 RCW 19.405.040(1)(a).
5 RCW 19.405.040(1)(b).
6 RCW 19.405.040(1)(b)(ii).

transaction involves a Washington utility."[7] In addition, the Draft Rules would require a facility to comply with the same specified business practices in all transactions, when one or more transaction would provide a utility a Retained REC for Primary Compliance.[8] Specifically, the mandatory business practices are:

> (a) Any sale or transfer of electricity from the renewable generating facility, other than a sale or transfer described in subsection (c), that specifies the source of the electricity by generating facility, fuel source, or emissions attribute must include the sale or transfer of the associated REC in the same transaction. The included RECs must be from the same generating facility and have the month and year vintage of the electricity.
> (b) Any sale or transfer of electricity from the renewable generating facility made without the associated REC must identify in the contract or transaction records that the electricity source is unspecified and is sold without any representation or warranty of the fuel source or other nonpower attributes of the electricity.
> (c) Any REC associated with electricity delivered, reported, or claimed as a zero-emission specified source under a GHG cap program outside Washington must be:
>
> > (i) transferred with the electricity, if the REC is required for verification by the GHG cap program, or (ii) retired by the renewable generating facility, if the REC is not required for verification by the GHG cap program. The retirement must indicate "other" as the purpose, and the REC may not be used to comply with CETA.[9]

NIPPC has significant concerns with prohibiting purchases from renewable generation facilities unless they register and certify that *all* their transactions comply with

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7 WUTC Notice at 3; *see also* Draft Rule WAC 194-40-XXX / WAC 480-100-XXX.

8 Draft Rule WAC 194-40-ZZZ / WAC 480-100-ZZZ. The terms Retained REC and Primary Compliance are defined in other proposed rules. *See* Draft Rules at 2 n1.

9 Commerce Notice at 5 (Nov. 8, 2021).

the business practices. The Joint Agencies should consider alternatives to this requirement such as whether the business practices only apply to the specific transaction or whether a transaction-based approach should replace the business practices method, including suggested revisions to the proposed language that may address this concern.

NIPPC proposes the following specific changes to the mandatory business practices (with new language in redline):

> (a) Any sale or transfer of electricity from the renewable generating facility to a Washington utility for use to comply with CETA, other than a sale or transfer described in subsection (c), that specifies the source of the electricity by generating facility, fuel source, or emissions attribute must include the sale or transfer of the associated REC in the same transaction. The included RECs must be from the same generating facility and have the month and year vintage of the electricity.
> (b) Any sale or transfer of electricity from the renewable generating facility to a Washington utility for use to comply with CETA made without the associated REC must identify in the contract or transaction records that the electricity source is unspecified and is sold without any representation or warranty of the fuel source or other nonpower attributes of the electricity.
> (c) Any REC associated with electricity delivered, reported, or claimed as a zero-emission specified source under a GHG cap program outside Washington must be:
>
> > (i) transferred with the electricity, if the REC is required for verification by the GHG cap program, or
> > (ii) retired by the renewable generating facility, if the REC is not required for verification by the GHG cap program. The retirement must indicate "other" as the purpose, and the REC may not be used to comply with CETA.

Requiring all of a renewable generation facility's transactions to comply with the Draft Rule's business practices is overbroad and overreaching. Transactions from a renewable generation facility that are not used by a Washington utility to comply with

CETA should not be subject to heightened restrictions. For example, if a facility outside of Washington is selling RECs into the market, then a Washington utility should be able to buy some RECs from that facility without knowing what happens to all the other RECs associated with the facility. The Washington utility's compliance with CETA should not be jeopardized because of an unrelated transaction that has nothing to do with actual compliance with the law. As long as the nonpower attributes of the RECs the utility purchases are not double counted, then the facility's other transactions should not affect compliance with CETA.

NIPPC is also concerned that the Joint Agencies may be exceeding their jurisdictional authority. By prohibiting Washington utilities from transacting with third-parties located outside of Washington, unless those third-parties agree to follow Washington agencies' business practices, the Joint Agencies are regulating by proxy entities outside of Washington, imposing the state's jurisdiction into wholesale markets regulated by the Federal Energy Regulatory Commission, and/or imposing a burden on commerce outside of Washington's borders. None is appropriate.

In addition, subjecting all transactions to the business practices even if the transaction is not with a Washington utility could have damaging impacts on competitive markets, ultimately the flexibility that utilities have to satisfy CETA's requirements, and increase the costs of compliance with CETA. For example, if an independent power producer owns a 200 megawatt ("MW") solar facility in central Oregon and contracts with a Washington utility for 100 MW of that generation facility, then the other 100 MW of the generation facility should not be subject to the business practices, especially if the other 100 MW is sold in a different state with different laws that Washington. How the

independent power producer contracts the other 100 MW of the generation facility would have no effect on CETA compliance as long as the 100 MW to the Washington utility is not double counted. This example would hold true for any type of renewable facility.

The Joint Agencies should revise the Draft Rules to ensure all transactions are not subject to the business practices especially if the transaction does not involve a Washington utility or the Joint Agencies should develop a different approach to the prohibition on double counting such as a transaction-based approach.

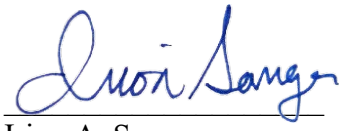
III. CONCLUSION

NIPPC appreciates the opportunity to comment and looks forward to seeing alternatives to the Draft Rules that address NIPPC's concerns regarding double counting.

Dated this 6th day of December 2021.

Respectfully submitted,

Sanger Law, PC



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