

**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
SECOND DRAFT RULES

I. INTRODUCTION

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 January 19, 2022 (the “Notice” and the “Second Draft Rules”).

NIPPC continues to believe, as expressed in comments filed on November 12, 2021, that the Commission’s adoption of a procurement-based framework for interpreting the word “use” in the Clean Energy Transformation Act (“CETA”) is both lawful and pragmatic.¹

NIPPC appreciates the Commission’s hard work in revising its Draft Rules on “Use,”

Double Counting, and Storage Accounting (generally, the “First Draft Rules”) in

response to stakeholder feedback. However, NIPPC is concerned that some of the

changes raise significant questions or potential unintended consequences that

stakeholders and the Commission might not be able to adequately resolve before the

Commission’s statutory deadline for adopting rules.² NIPPC recommends reducing the

¹ NIPPC Comments on Draft Rules at 1-21; *see generally* 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).

² RCW 19.405.130(3).

extent of proposed rules so that the most pressing questions for CETA compliance can be adequately discussed. Language concerning future issues may be unneeded. NIPPC recommends adopting more limited rules, with the understanding that the Commission may revisit its rules if issues arise.

II. COMMENTS

A. NIPPC Maintains Its Prior Comments Regarding “Use”

NIPPC continues to strongly support the Commission’s adoption of a procurement-based framework for interpreting “use.”³ NIPPC is not reiterating its prior comments on the Commission’s lawful and pragmatic interpretation, as NIPPC’s position has not changed.

B. NIPPC Appreciates Commission Staff’s Responsive Edits

In prior comments, NIPPC raised concerns with three items in the First Draft Rules, two items on “use” and the overarching framework for Double-Counting. Regarding “use,” NIPPC strongly supported the Draft Rules but sought clarification regarding: 1) proposed rule language imposing a deadline for revisiting the rules; and 2) proposed rule language requiring hourly data reporting that is unnecessary under a procurement-based framework.⁴ NIPPC appreciates and supports the removal of language imposing a deadline for revisiting the rules.⁵

³ See generally NIPPC Comments on Draft Rules at 1-21.

⁴ NIPPC Comments on Draft Rules at 17-20; NIPPC Comments on Additional Draft Rules at 1-6.

⁵ Compare First Draft Rules at WAC 480-100-650(6), with Second Draft Rules at WAC 480-100-650.

NIPPC appreciates that there were some changes to the hourly reporting requirements.⁶ NIPPC continues to view the data and contract reporting obligations as exceeding what is required. NIPPC is concerned that the reporting will be burdensome on utilities as well as on Commission Staff. However, NIPPC recognizes and appreciates that Commission Staff made some beneficial changes, such as removing reference to “points of delivery.”⁷ Such language could have caused confusion regarding CETA compliance under a procurement-based versus consumption-based framework, and NIPPC supports its removal.

Finally, NIPPC generally supports the significant changes reflected in the Second Draft Rules on Double-Counting. The First Draft Rules adopted a problematic facility-wide approach, while the Second Draft Rules appropriately focus narrowly on transactions of individual Renewable Energy Credits (“RECs”).⁸ As discussed below, there is still room for improvement. However, the revisions significantly reduce NIPPC’s concerns with the First Draft Rules on Double-Counting.

C. NIPPC is Concerned by the Extent of New Changes and Potential for Unanswered Questions and Unintended Consequences

The Second Draft Rules contain extensive changes that, while potentially beneficial, appear more likely to muddy the waters and potentially result in unintended consequences. NIPPC stresses that its concern is due in part to the impending statutory

⁶ Compare First Draft Rules at WAC 480-100-650(5), with Second Draft Rules at WAC 480-100-650(6).

⁷ Compare First Draft Rules at WAC 480-100-650(5)(a), with Second Draft Rules at WAC 480-100-650(6).

⁸ Compare First Draft Rules at WAC 480-100-XXX, with Second Draft Rules at WAC 480-100-XXX.

deadline of June 30, 2022, by which the Commission must adopt rules. NIPPC appreciates the extensive and lively stakeholder engagement in this docket to date, but NIPPC is concerned that there may be inadequate time and space for stakeholders and the Commission to fully engage and address new issues. NIPPC provides three examples to illustrate its concerns.

First, the Second Draft Rules include a new prohibition on utilities from using Retained Nonpower Attributes (“NPAs”) during integrated resource planning (“IRP”).⁹ Retained NPAs acknowledge a utility’s acquisition of CETA-eligible electricity even though the generation may not perfectly align with a utility’s load. This acknowledgment is appropriate, and the relevant rule text was clear and feasible.¹⁰

However, by adopting a prohibition on use of Retained NPAs for planning purposes, the Second Draft Rules might be forcing utilities to plan for worst-case scenarios rather than planning to achieve CETA compliance and reliability in a least-cost manner, considering all of a utility’s options for system management. NIPPC understands that there may be value to transparency as to a utility’s expected reliance on Retained NPAs. The Commission could more deftly achieve transparency by requiring utilities to provide IRP sensitivity analyses or similar. NIPPC urges the Commission to reconsider this prohibition.

Second, the Second Draft Rules include significant new language differentiating from planning and complying with CETA’s 2030 and 2045 mandates.¹¹ NIPPC

⁹ Second Draft Rules at WAC 480-100-650(1)(a).

¹⁰ NIPPC Comments on Draft Rules at 8.

¹¹ Second Draft Rules at WAC 480-100-650(2).

generally agrees that clarity on the future mandate could be valuable as utilities plan their systems. However, the new language may be too extensive to think through and vet prior to the Commission's statutory rule adoption deadline.¹² This deadline is not itself a problem, as the Commission need not adopt such specificity in its rules at this time. NIPPC is not certain that any guidance beyond CETA's plain language on the 2045 standard is needed at this time. Further, as NIPPC noted previously, NIPPC views the First Draft Rules as sufficient, particularly in conjunction with traditional utility planning, to drive progress towards both goals.¹³

Rather than adopt rushed rules on the 2045 standard, NIPPC urges patience. The Commission will remain free to revise its rules or issue clarifying orders that guide utilities between now and 2045.

Finally, the extent of significant changes will likely reduce time available to resolve more modest issues. The Second Draft Rules include new language on Double-Counting that would likely benefit from discussion and modest revisions. As written, the Second Draft Rules prohibit utilities from buying unbundled RECs unless the electricity was sold subject to explicit contract terms. As a general matter, NIPPC believes rule requirements like this should only apply prospectively. While contracting practices may change, it is not clear whether the market for unbundled RECs will incorporate this mandate in short order. More significantly, the Second Draft Rules require those

¹² For a more specific example, NIPPC notes that the Commission itself asked whether some of the new 2045 language is necessary. Notice at 3. Such a question could be answered much more easily after experience under the Draft Rules for the 2030 mandate.

¹³ NIPPC Comments on Draft Rules at 10.

mandatory contract terms to apply in *all* transactions for a given REC. As an alternative, NIPPC would urge the Commission to consider a more basic good-faith attestation from the *current* seller that that seller has the necessary property rights to sell an unbundled REC in full compliance with CETA's prohibition on double-counting. Again, these are relatively modest issues, but NIPPC hopes the Commission will reconsider the extent of changes so as to ensure adequate attention can be focused on these near-term implementation questions.

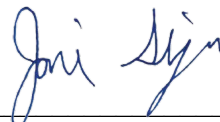
III. CONCLUSION

NIPPC appreciates the opportunity to comment and looks forward to continued engagement in this matter.

Dated this 9th day of February 2022.

Respectfully submitted,

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