

**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
FINAL 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 March 23, 2022 (the “Notice” and the “Final Draft Rules”). While NIPPC remains strongly supportive of the Commission’s adoption of a procurement-based framework for interpreting “use,” NIPPC continues to have concerns about the Final Draft Rules, as noted in NIPPC’s most recent comments.¹ NIPPC maintains those concerns and is not repeating them all here.²

NIPPC focuses these comments on responding to Commission Staff and clarifying its concern about the prohibition on planning on Retained Nonpower Attributes (“Retained NPAs”).³ As noted below, NIPPC expects the prohibition to increase compliance costs. NIPPC also notes the rules’ inconsistency with the Department of

¹ See generally NIPPC Comments on Second Draft Rules (Feb. 9, 2022).

² NIPPC Comments on Second Draft Rules at 1-6 (expressing concerns with, for instance, the late addition of significant amounts of text regarding the 2045 standard and potentially onerous reporting requirements).

³ The Final Draft Rules define this term in WAC 480-100-605.

Commerce’s (the “DOC’s”) proposed rules. NIPPC respectfully recommends that the Commission eliminate the prohibition on planning on Retained NPAs in the Final Draft Rules.

II. COMMENTS

A. NIPPC Remains Strongly Supportive of the Procurement-Based Approach

NIPPC continues to strongly support the Commission’s adoption of a procurement-based framework for interpreting “use.”⁴ NIPPC is not reiterating its prior comments on the Commission’s lawful and pragmatic interpretation, as NIPPC’s position has not changed.

B. NIPPC Opposes the Prohibition on Planning on Retained NPAs and Recommends Requiring Sensitivity Analyses as an Alternative Option

NIPPC continues to have concerns with the Final Draft Rules’ prohibition on utilities including Retained NPAs in their integrated resource plans (“IRP”).⁵ This prohibition emerged only in the most recent version of the draft rules, and NIPPC expressed concerns in its last set of comments.⁶ UTC Staff responded to NIPPC that:

The requirement to plan utility service with 80 percent renewable and nonemitting electricity is a necessary component of the rules for achieving CETA. If utility actions are based on a plan and that plan is not carrying out CETA then the actions of the utility will fail CETA, despite the best post-planning regulatory interventions. The least cost

⁴ See generally NIPPC Comments on Draft Rules at 1-21 (Nov. 12, 2021).

⁵ Final Draft Rules at WAC 480-100-620(11) (“The utility may not include retained NPAs for primary compliance in its long-range integrated resource plan solution, consistent with WAC 480-100-650 (1)(a). The utility may not include retained NPAs in any way in its long-range integrated resource plan solution, consistent with WAC 480-100-650(2).”).

⁶ See NIPPC Comments on Second Draft Rules at 4.

requirements of CETA planning and acquisition are constrained by the 2030 and 2045 statutory standards.⁷

NIPPC agrees that utilities should plan to comply with the Clean Energy Transformation Act (“CETA”), but this misunderstands NIPPC’s concern. NIPPC provides these additional comments to clarify the issue.

1. The Prohibition Eliminates a Potentially Least-Cost Compliance Pathway

The ability to use Retained NPAs is an important component of achieving compliance under at least CETA’s 2030 standard.⁸ Utilities must plan to achieve compliance with CETA and other mandates as part of their IRP, as Staff recognizes.⁹ But if utilities cannot use one compliance pathway in their planning, then their planning will not provide useful information on the least-cost, least-risk way for utilities to achieve compliance. That is, Retained NPAs may (and likely will) provide a lower-cost option for compliance, but the IRPs would ignore this. Because utilities generally take procurement actions based on their IRPs, utilities will likely pursue higher-cost options for compliance than is necessary. The Commission’s rules should allow the utilities to comply with CETA in the least cost and least risk manner rather than require the utilities to comply with CETA in an unnecessarily expensive manner.

⁷ Summary of Comments on 2nd Use and Double Counting and Storage Draft Rules at 12 (Mar 23, 2022).

⁸ See NIPPC Comments on Draft Rules at 8-9 and 13-14 (discussing how the proposed use of Retained NPAs is consistent with CETA’s 2030 standard). NIPPC has concerns with the late addition of rule language on the 2045 standard and has not, and is not, taking a position at this time on the use of Retained NPAs under CETA’s 2045 standard. See NIPPC Comments on Second Draft Rules at 5.

⁹ Summary of Comments on 2nd Use and Double Counting and Storage Draft Rules at 12.

Consider the following hypothetical: A utility has contracts for 300 megawatts (“MW”) of renewable resources, and its modeling shows with 50% certainty over the next 20 years that the generation will reliably coincide with customer load at least 80% of the time. Retained NPAs allow the utility to treat these 300 MW as valuable and helpful in complying with CETA, because the utility can report the Retained NPAs towards compliance even if the generation does *not* ultimately coincide with customer load 100% of the time.

However, under the Final Draft Rules, the utility could not rely upon Retained NPAs in its IRP and would be required to assume that it will operate in a manner inconsistent with its expected operations. This means that the utility must plan on a world where its 300 MW of renewable contracts are less valuable than they really are. Worse, the utility’s plan would almost certainly identify a substantial resource need and direct the utility to acquire supplemental resources. The utility will incur costs for supplemental resources, which the utility will be unable to avoid years later even if its 300 MW of generation actually coincides with customer load.

NIPPC agrees with the Alliance of Western Energy Consumers (“AWEC”) that the rules’ prohibition on planning on Retained NPAs requires “utilities to deliberately over-comply with CETA’s requirements,”¹⁰ as demonstrated in the above hypothetical.

¹⁰ See Comments of the Alliance of Western Energy Consumers at 2 (critiquing the prohibition on planning on Retained NPAs for “exacerbate[ing] the cost impact to customers” from CETA) (Feb. 9, 2022).

2. The Prohibition is Inconsistent with the Department of Commerce's Proposed Rules

In addition, NIPPC notes that the UTC's Final Draft Rules appear to be more restrictive and harmful in this regard than the draft rules issued by the DOC. NIPPC is not specifically recommending that the UTC adopt the DOC's rule language and raises the alternative language for comparison purposes and to highlight the burdensome nature of the UTC's prohibition. NIPPC would not oppose the UTC adopting the DOC's rule language.

DOC's rules require that utility portfolios overall be "reasonably expected" to serve customer load. The rules state:

The electricity associated with the REC must be from a generating facility or contract that is part of a resource portfolio reasonably expected to be capable of serving at least 80 percent of the utility's retail electric load over each compliance period. Each utility required under RCW 19.280.030(1) to prepare an integrated resource plan must demonstrate compliance with this requirement by, at a minimum, showing through an hourly analysis that the expected renewable or nonemitting output of the resource portfolio could be generated and delivered to serve at least 80 percent of expected retail electric load. This demonstration must use inputs and assumptions consistent with the utility's integrated resource plan and may be updated with changes in its resource portfolio.¹¹

Thus, the DOC's rules focus on: 1) the overall portfolio; and 2) a utility's "reasonable expect[at]ions]" as to how that overall portfolio will perform. This approach is more practical than the outright ban in the UTC's Final Draft Rules.

¹¹ DOC Proposed Rules at WAC 194-40-410(4) (issued Mar. 23, 2022).

3. NIPPC Offers an Alternative Solution to Booster Transparency

As an alternative to an outright prohibition, NIPPC offers as an alternative that utilities include in their IRPs a sensitivity analysis or similar modeling that provides transparency as to the extent of a utility's planned reliance on Retained NPAs. That way, the UTC and stakeholders can keep apprised of whether a utility is making reasonable assumptions about how much generation will likely coincide with customer load. NIPPC views this alternative as a useful option for achieving the goals identified by Staff without the downfalls of the current prohibition approach.

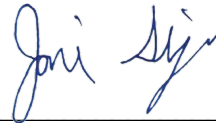
III. CONCLUSION

NIPPC appreciates the opportunity to comment and urges the Commission to consider the concerns flagged here and in NIPPC's last set of comments before adopting final rules. In particular, NIPPC recommends eliminating the prohibition on planning on Retained NPAs. As an alternative, NIPPC recommends requiring utilities to provide sensitivity analyses or similar modeling on the extent of a utility's planned reliance on Retained NPAs.

Dated this 22nd day of April 2022.

Respectfully submitted,

Sanger Law, PC

A handwritten signature in blue ink that reads "Joni Sliger". The signature is written in a cursive style with a horizontal line underneath it.

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