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 FOR 'USE' WORKSHOP

I. INTRODUCTION

The Northwest & Intermountain Power Producers Coalition ("NIPPC") provides these Comments pursuant to the Washington Utilities and Transportation Commission's (the "Commission's" or "UTC's") January 25, 2024 Notice of Virtual Workshop and Opportunity to Provide Comments ("Notice"). NIPPC continues to support the adoption of the draft rules circulated on October 25, 2023 (the "Draft Rules") with minor corrections noted in NIPPC's November 2023 comments. NIPPC also continues to support the Commission's decision to implement the Clean Energy Transformation Act ("CETA") as a procurement-based approach. To effectively and efficiently further that end, NIPPC would oppose rule language that denies the eligibility of, or imposes costly planning requirements for, retained nonpower attributes (retained "NPAs").

NIPPC understands the upcoming workshop will focus on the appropriate use of retained NPAs, and the Notice raised five questions regarding retained NPAs.[1] This agenda is surprising. The Draft Rules allow for use of retained NPAs (though not by that term), and no stakeholder comments from November 2023 outright opposed the Draft

[1] Notice at 3.

Rules. Some stakeholders requested an explanation for the change from one set of 2022 draft rules; others clearly supported the Draft Rules but indicated a few remaining items. NIPPC is concerned the workshop agenda might indicate the Commission is uncertain that the Draft Rules are lawful and appropriate. For that reason, NIPPC begins these draft comments with an explanation of why, in NIPPC's view, the Draft Rules are lawful and are in fact a *significant* improvement to the prior draft.

To be clear, NIPPC still supports the Draft Rules with the minor corrections noted in NIPPC's November 2023 comments. NIPPC looks forward to the Commission's adoption of rules resolving the interpretation of "use."

II. THE DRAFT RULES ARE LAWFUL AND CONSISTENT WITH THE COMMISSION'S CURRENT PROCUREMENT-BASED RULES

The Notice appears to revisit questions already asked and answered in this proceeding. NIPPC therefore provides this section to acknowledge the resolved questions and, beyond that, to explain NIPPC's continuing support for the Commission's previous decisions and current Draft Rules.

A. The Commission Already Adopted Relevant Rule Language

The Commission already adopted a procurement-based method when it adopted rules earlier in this proceeding. Those rules included language requiring utilities to:

> Demonstrate whether and how the utility met its statutory obligations under RCW 19.405.040(1) and 19.405.050(1) through the acquisition of the electricity and associated [renewable energy credits ("RECs")] or nonpower attributes" in clean energy compliance reports;[2] [and]
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> ….

[2] WAC 480-100-650(1).

> [F]ile its annual clean energy progress report based on an analysis that identifies and considers the source and characteristics of the electricity a utility claims to meet compliance obligations under WAC 480-100-610, including electricity that is produced, purchased, sold, or exchanged.[3]

NIPPC maintains its support for a procurement-based interpretation, which is necessary to understand in order to grasp the appropriate feature of retained NPAs.

The Notice appears to revisit this approach. It questions whether a "retained [REC]" is a type of unbundled REC that would be an alternative compliance option under CETA.[4] Ultimately, this question asks whether CETA requires utilities to transact in real-time or requires compliance over a longer timescale. In NIPPC's view, the statute clearly requires the use of a longer timescale.

To facilitate the recognition of a longer timescale than real-time utility operations, the Commission previously considered using a term "retained [REC]." NIPPC assumes the term "retained [REC]" in the Notice is still synonymous with the term "retained nonpower attribute." The Notice defines a retained NPA as

> any environmentally related characteristic of energy generation (most notably, a renewable energy credit), exclusive of electrical power service attributes, that is associated with electricity generated by a utility and is retained by that utility after the utility separately sells the associated electricity.[5]

This is meaningful different from an unbundled REC, which is purchased without any associated electricity; it is only a paper transaction. By contrast, a retained NPA must be acquired together with electricity; there is an actual flow of electrons. The utility may not

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3 WAC 480-100-650(1) and (4).
4 Notice at 3.
5 Notice at 3.

need those electrons, but the retained NPA acknowledges that the utility's initial purchase (or generation) was non-emitting and contributes to compliance with CETA.

As an aside, NIPPC notes the Notice's definition of retained NPA is unduly narrow in its focus on "electricity generated by a utility."[6] A retained NPA may arise from any generator, utility owned or not, so long as the associated electricity was in some way reserved to the utility.[7] A definition is not strictly necessary in the rules, but if the Commission is inclined to include one then this correction is critical.

B. A Procurement-Based Approach Is Consistent with CETA, and Should Be Viewed in Conjunction with the UTC's Traditional Regulatory Authority

Before the UTC adopted rules earlier in this rulemaking, NIPPC commented at length on how a procurement-based approach is consistent with CETA. NIPPC also noted that new rules for implementing CETA will not operate in a vacuum but will be supported by the Commission's traditional regulatory authority and existing powers. While the Commission has now adopted a procurement-based approach, NIPPC is providing some of its prior analysis again in the hopes that revisiting this material will assist Commission Staff in understanding how a procurement-based approach is consistent with CETA's guidance.

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6 Notice at 3.

7 *See* Notice of Opportunity to File Written Comments on Draft Rules, Second Draft Rules on "Use" - Redline at 10-11 (Jan. 19, 2022) (defining a retained NPA as "the nonpower attributes of renewable electricity (represented by RECs) or the nonpower attributes of nonemitting electricity, from *electricity owned or controlled by a utility* where the associated electricity was sold by that utility in a wholesale sale without its associated nonpower attributes (NPA)") (emphasis added); *see also* Notice of Opportunity to File Written Comments on Draft Rules and Notice of Proposed Rule Adoption Hearing, Draft Rule (OTS-3653.3) at 4 (Mar. 23, 2022); *see also* Notice of Opportunity to File Written Comments on Draft Rules, Draft Rules on "Use" 2021-10-12 - Redline at 10-12 (Oct. 12, 2021).

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

CETA mandates that electric utilities take action to achieve the 2030 goal of a carbon neutral electricity system[8] 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.[9]

This language provides two points of support for a procurement-based approach. First, CETA references "retail electric loads over each multiyear compliance periods."[10] 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.[11] 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 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

8 RCW 19.405.040(1).
9 RCW 19.405.040(1)(a) (emphasis added).
10 RCW 19.405.040(1)(a).
11 RCW 19.405.020(36).

meaningful effect to the flexibility provided by having a *multiyear* compliance period.[12] 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.

2. 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."[13] 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).[14] Thus, at least some nonemitting electric generation does not generate RECs, so alternative forms of documentation are necessary. Finally, CETA defines a REC as "a tradable certificate of proof of one megawatt-hour of a renewable resource."[15]

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12 *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).

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

14 *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).

15 RCW 19.405.020(31).

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 Energy Independence Act ("EIA").[16] Second, CETA allows the use of non-EIA eligible unbundled RECs so long as they "represent electricity generated within the compliance period."[17]

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.[18] 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.[19] By contrast, CETA authorizes the use of unbundled RECs so long as they represent electricity generated within a four-year compliance period.[20] Thus, for purposes of alternative compliance, CETA allows the use of more types of unbundled RECs, and CETA provides more flexibility about when the unbundled RECs must be created and retired.

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16 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).

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

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

19 RCW 19.285.040(2)(e).

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

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.[21]

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.

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 the Commission adopted in 2022 and is considering clarifying with the Draft Rules.

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

3. 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.[22] 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.[23] However, NIPPC does not think these concerns present valid objections to the procurement-based approach taken in the adopted rules or to the Draft Rules.

The UTC has authority to disallow certain utility costs. Among other tasks, the WUTC must set utility rates that are "just, reasonable, [and] sufficient."[24] 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.[25] Similarly, the UTC may disallow a service-related cost if it was not prudently incurred.[26] Third, the UTC may disallow a return on investments (but may allow a straight cost recovery) that were not "used and useful for service."[27] These are examples of the UTC's broad authority over utility procurement decisions.

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22 RCW 19.405.050(1).

23 *E.g.,* RCW 19.405.050(2).

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

25 *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).

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

27 RCW 80.04.250(2).

C. NIPPC Previously Opposed Stringent Planning Requirements as Inconsistent with CETA and Harmful to Utilities and Their Ratepayers

Before the 2022 rulemaking hearing, the Commission had circulated draft rules that proposed to allow the use of retained NPAs but prohibit utilities from planning on their availability (generally, the "2022 Draft Planning Rules").[28] This planning constraint was opposed by numerous stakeholders. At the 2022 rulemaking hearing, the Alliance for Western Energy Consumers ("AWEC") correctly recognized that this issue of excluding retained NPAs from planning was an unusual issue in that the consumer advocates, utilities and NIPPC were *all* unified in their opposition.[29] The Commission did not adopt the 2022 Draft Planning Rules. However, since the Notice appears to revisit this question, NIPPC is providing below the relevant excerpt of NIPPC's prior comments on this issue:

The ability to use retained NPAs is an important component of achieving compliance under at least CETA's 2030 standard.[30] Utilities must plan to achieve compliance with CETA and other mandates as part of their IRP, as Staff recognizes.[31] But if utilities cannot use one compliance pathway in their planning, then their planning

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28 Notice of Opportunity to File Written Comments on Draft Rules and Notice of Proposed Rule Adoption Hearing, Draft Rules (OTS-3653.3) at 7 (Proposed WAC 480-1006-620 (11)) (Mar 23, 2022).

29 Market Rulemaking – Adoption Hearing at 34:50-35:55 (May 6, 2022).

30 *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) (Nov. 12, 2021). 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 (Feb. 9, 2022).

31 Notice of Opportunity to File Written Comments on Draft Rules and Notice of Proposed Rule Adoption Hearing, Summary of Comments on 2nd Use and Double Counting and Storage Draft Rules at 12 (Mar. 23, 2023).

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.

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 2022 Draft Planning Rules (that, again, were *not* adopted), 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 AWEC that the rules' prohibition on planning on retained NPAs requires "utilities to deliberately over-comply with CETA's requirements,"[32] as demonstrated in the above hypothetical.

III. RESPONSES TO NOTICE QUESTIONS

Question #1: Should Retained Nonpower Attributes Be Allowed to Be Used Toward the 80 Percent Compliance Option?

Yes. Please see Section II above. NIPPC notes this question was previously asked and answered by stakeholders' November 2021 comments. NIPPC concluded yes, as did several other stakeholders, including for instance Public Counsel, the Public Generating Pool ("PGP"), the Western Power Trading Forum, and AWEC. For instance, NIPPC appreciates PGP's clear legal analysis of CETA on this point, which found it unnecessary to define "retained RECs" but concluded they were of course valid for the 80 percent compliance obligation because they do not fit CETA's statutory definition of "unbundled REC."[33] NIPPC also agrees with AWEC's analysis that "retail sales" under CETA include the cost of resources sold as unspecified electricity; AWEC summarized it appropriately that "if customers pay for it, then it counts."[34]

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32 *See* Comments of AWEC at 2 (critiquing the prohibition on planning on retained NPAs for "exacerbat[ing] the cost impact to customers" from CETA) (Feb. 9, 2022).

33 Comments of the Public Generating Pool at 2-3 (Nov. 12, 2021).

34 Comments of AWEC at 2 (Nov. 12, 2021).

Question #2: If Retained Nonpower Attributes are not Allowed to Be Used Towards the 80 Percent Compliance Obligation, How Would This Change Affect a Utility's Planning Processes, Costs, and Operations? What Impact Would This Restriction Have on Customers?

In considering prior rules that allowed the use of "retained RECs," NIPPC commented that the approach appears 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. Further, NIPPC noted this approach would allow utilities (and ratepayers) to maximize the benefits of renewable resources once procured, even if some electricity generated is unneeded to meet customer demands.

The reverse is true. Excluding this option would result in inefficiencies and, necessarily, higher costs for customers.

Question #3: If Retained Nonpower Attributes are not Allowed to Be Used in Planning for Compliance Towards the 80 Percent Compliance Obligation, but are Allowed to Be Used for Compliance, How Would This Affect a Utility's Planning Processes, Costs, and Operations? What Impact Would This Restriction Have on Customers?

Please see section II(C) above. NIPPC maintains that prohibiting utilities from being able to plan on the full range of options for compliance with CETA will result in inefficiencies and higher costs.

Question #4: How Would a Restriction on Retained NPAs Interact with Utility Requirements under the Climate Commitment Act?

NIPPC looks forward to reviewing others' comments on this issue and hearing more from the Commission as to its concerns. NIPPC acknowledges that the Commission's rule adoption order indicated the Commission was working with the

Department of Ecology to "ensure effective and efficient implementation" of both laws to avoid conflicting requirements.[35]

Question #5: If a Utility Engages in a Day-Ahead Market, Such as SPP's Markets+ or CAISO's Extended Day-Ahead Market ("EDAM"), How Would a Restriction on Retained NPAs Affect Market Participation?

NIPPC anticipates that a restriction on the use of retained NPAs would discourage utilities from participating in organized markets, including but not limited to day-ahead markets as well as real-time balancing markets. If the Commission interprets CETA to impose compliance obligations on any timescale less than CETA's four-year compliance period—such as by restricting the use of retained NPAs—then utilities will be wary of actions that would harm their compliance. Those actions could include dispatch orders from a market operator. Discouraging utilities from participating in markets is extremely undesirable.

One might argue that restricting the use of retained NPAs would simply mean that utilities need to transact both electricity and its NPAs in the same transaction when they have electricity that is not needed. However, this is not so simple. As Avista's November 2023 comments appropriately realized, neither the seller nor buyer of that clean electricity would be eligible for credit towards CETA compliance under the Draft Rules.[36] This is because RECs are bought and sold separately from electricity market transactions. NIPPC supports Avista's proposed rule change to recognize a utility's purchase of specified carbon-free electricity is CETA-compliant. However, that proposed rule change still would not make it possible for utilities to efficiently transact

35 General Order R-604 at 14 n.19 (June 29, 2022).
36 Comments of Avista Utilities at 1-2 (Nov. 27, 2023).

renewable energy and RECs together in centralized markets as they exist today. More importantly, as noted above for Question #1, CETA does not require such an impractical result contrary to existing market structures.

IV. CONCLUSION

NIPPC appreciates the opportunity to comment and looks forward to the Commission's adoption of rules resolving the interpretation of "use."

Dated this 16th day of February 2024.

Respectfully submitted,

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