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 DRAFT RULES

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") April 9, 2024 Notice of Opportunity to Provide Comments ("Notice") on draft rules issued April 9, 2024 (the "Draft Rules"). NIPPC continues to believe the Commission has broad discretion to interpret and implement the Clean Energy Transformation Act ("CETA"), including the long-disputed word "use",[1] to best effectuate the legislative intent, which is for Washington State and particularly Washington's electric utilities to decarbonize strategically and cost-effectively. While the newest Draft Rules contain improvements, some provisions of the Draft Rules are unclear in concerning ways, as NIPPC discusses in these Comments. NIPPC is unsure at this time whether the Draft Rules will ultimately effectuate the legislative intent. NIPPC looks forward to the Commission clarifying its intended interpretation of CETA and providing clear guidance to govern CETA's implementation.

[1] *See generally* NIPPC Comments on Draft Rules (Nov. 12, 2021); NIPPC Comments for 'Use' Workshop (Feb. 16, 2024).

II. COMMENTS

A. NIPPC Maintains the Commission Has Broad and Sufficient Discretion to Interpret CETA

While NIPPC has some concerns noted below, NIPPC emphasizes its continued support for the Commission's procurement-based approach taken in the rules to date. Interpreting "use" has been a contentious issue, with different stakeholder groups putting forth opposing legal interpretations. 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 a procurement-based approach that allows Washington State, and particularly Washington's electric utilities, to decarbonize strategically and cost-effectively. NIPPC looks forward to the Commission adopting such remaining rule language as is necessary to achieve CETA's goals.

B. Although Some Language is Unclear, NIPPC Supports the Draft Rules' Movement Toward Aligning with Expected Competitive Markets

As noted in prior comments, NIPPC wholeheartedly supports the Commission's goal of "uphold[ing] CETA's statutory requirements while allowing for the efficient operation of energy markets."[3] NIPPC appreciates that the Draft Rules include edits that

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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 3-6 (Dec. 3, 2020). Both of these comments can be found in this docket at NIPPC Comments on Draft Rules, Attachment A (Nov. 12, 2021).

[3] Docket Nos. UE-190698 and UE-191023, Notice of Opportunity to File Written Comments at 3 (Nov. 5, 2020).

endeavor to align with emerging market structures. In particular, for the greenhouse gas standard, the Draft Rules acknowledge nonpower attributes bundled with clean electricity may be procured through energy markets, and the Draft Rules no longer mandate such procurements occur through a "single transaction."[4]

NIPPC encourages the Commission to continue its efforts to refine this language. Some of the new language is unclear. For instance, in the Draft Rule entitled, "Use of NPAs to comply with the 100 percent renewable or nonemitting standard," the new subsection 4 appears in potential conflict with the also proposed subsection 5.[5] Both subsections address the eligibility of nonpower attributes associated with electricity from organized markets; it is not clear what distinction, if any, should exist between them. NIPPC is not opposed to having multiple subsections if they provide more clarity, but this Draft Rule needs further consideration and likely revisions to achieve that goal. That said, NIPPC emphasizes its support for the overall direction and effort to align the Draft Rules with the practicalities of market-based transactions.

C. NIPPC's Primary Concern Is What Appears to Be a Monthly Retirement Requirement

NIPPC's primary concern at this time is the unclear language in proposed subsection 3 of the rule titled "Use of NPAs other than unbundled RECs to comply with the greenhouse gas neutral standard," which states that: "The amount of renewable or nonemitting energy that a utility retires for primary compliance in each month may not

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[4] Draft Rule WAC 480-100-6XX Use of NPAs other than unbundled RECs to comply with the greenhouse gas neutral standard at Subsection 6.

[5] Draft Rule WAC 480-100-6XX Use of NPAs to comply with the 100 percent renewable or nonemitting standard at Subsections 4 and 5. Subsection 5 is largely copied from the Department of Commerce's rules. WAC 194-40-415(2).

exceed the retail load served within the utility's Washington service territory within the same month."[6] This is unclear, confusing, and appears contrary to CETA's mandates.

Utilities do not 'retire' energy, so NIPPC assumes this is a reference to nonpower attributes or Renewable Energy Credits. Even so, CETA does not require any reporting or "retire[ment]" action on a monthly basis. CETA declares that: "It is the policy of the state that all retail sales of electricity to Washington retail electric customers be greenhouse gas neutral by January 1, 2030."[7] For "each multiyear compliance period"[8] an electric utility must "demonstrate its compliance" and, in relevant part, "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]

CETA's discussion of "nonemitting energy" is illustrative. RCW 19.405.040(1)(f) states that "Nonemitting electric generation used to meet the standard

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6 Draft Rules WAC 480-100-6XX Use of NPAs other than unbundled RECs to comply with the greenhouse gas neutral standard at Subsection 3.

7 RCW 19.405.040(1).

8 In addition to CETA's clear statutory references to a "multiyear" compliance period, there is legislative history documenting the legislature's deliberate choice of a multiyear period rather than a shorter time frame. SB 5116, Engrossed Second Substitute Senate Bill Report at 11, available at https://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bill%20Reports/Senate/5116-S2.E%20SBR%20HA%2019.pdf?q=20240510095121 (describing the House's amendments, including one that "Amends the GHG neutral standard to implement multiyear compliance periods, rather than an annual compliance requirement, beginning January 1, 2030."). The Senate concurred in the House amendments, and CETA was enacted in its current form with *multi*year compliance periods from 2030-2045. *See SB 5116 - 2019-20 Bill History*, https://app.leg.wa.gov/billsummary?BillNumber=5116&Year=2019&Initiative=false.

9 RCW 19.405.040(1)(a).

under (a) of this subsection [the greenhouse gas neutral standard] must be generated during the compliance period and must be verified by documentation that the electric utility owns the nonpower attributes of the electricity generated by the nonemitting electric generation resource."[10] The "compliance period" is a multiyear period, starting with "January 1, 2030, through December 31, 2033."[11]

In summary, CETA requires utilities to act over four-year periods and demonstrate that their compliance occurred through, in relevant part, renewable and nonemitting electric generation that was "generated during the compliance period." It does not say generation "during a monthly period" or "during a period to be determined by the Commission." CETA mandates a four-year compliance period. If a utility's portfolio generates more clean energy in a given month than its monthly load requires, the excess is not waste, but remains valuable towards the other 47 months of the compliance period.

NIPPC fears that the Proposed Rules might be intended to de-value excess clean energy. This would likely 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 artificially lower wholesale prices that disincentivize merchant generation and impair any potential remuneration that utilities and others could hope to obtain from having excess clean energy to sell. Rather than hasten achievement of CETA's 100% clean target as perhaps was intended, a heightened 2030 standard is actually more likely to trigger CETA's cost off-ramp—even

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

[11] RCW 19.405.040(1)(a).

while at the same time clean resources bought and paid for by ratepayers are not given appropriate recognition. This outcome is not in the public interest.

NIPPC holds this view even in light of the possibility that some NIPPC members could conceivably benefit—individually and on a short-term basis—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 that do not unnecessarily overbuild new generation.

NIPPC urges the Commission to revisit this Draft Rule language and carefully correct it. It is not clear to NIPPC that the provision is even necessary given the rule language already adopted in WAC 480-10-650.[12] Certainly if a utility submits a report that claims to have retired a renewable energy credit for compliance that was for electricity generated outside the *four-year* compliance period, NIPPC would expect the Commission to take appropriate corrective action. But there is no need or cost justification to do so on a monthly basis.

[12] WAC 480-100-650(3)(f).

D. Some Newly Proposed Language Needs Clarification

NIPPC has a number of questions about newly proposed text in the Draft Rules. NIPPC is not proposing revisions at this time, but NIPPC hopes that the Commission could provide more clarity on the intent behind at least the following changes:

- Why was the language "The electricity associated with the REC must *be consistent with* WAC 480-100-650 (1)(d)" changed to "The electricity associated with the REC must *comply with* WAC 480-100-650 (1)(d)"?[13] WAC 480-100-650(1)(d) describes a reporting requirement and certain standards for electricity within that report.[14] Requiring compliance in this context is somewhat unclear.
- Why was the language on double-counting changed? The prior draft rules replicated the Department of Commerce's language, but the Draft Rules propose alternative language.[15] NIPPC is concerned that the new language appears overbroad and may not recognize utilities could be reporting the same electricity and nonpower attributes for purposes of multiple programs. For instance, CETA includes an explicit recognition that utility activities to comply with the Energy Independence Act "also qualify for compliance" under CETA.[16] Similarly, the

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[13] *Compare* Notice of Opportunity to File Written Comments on Draft Rules, Attachment OTS-5035.01 For Filing at proposed WAC 480-100-670(3) (Oct. 25, 2023)*, with* Draft Rule WAC 480-100-6XX Use of NPAs other than unbundled RECs to comply with the greenhouse gas neutral standard at Subsection 7 (emphasis added).

[14] WAC 480-100-650(1)(d).

[15] *Compare* Notice of Opportunity to File Written Comments on Draft Rules, Attachment OTS-5035.01 For Filing at proposed WAC 480-100-670(5) and WAC 194-40-410(5)*, with* Draft Rule WAC 480-100-6XX Use of NPAs other than unbundled RECs to comply with the greenhouse gas neutral standard at Subsection 8.

[16] RCW 19.405.110.

Climate Commitment Act was clearly drafted to align with and further the activities required by CETA at *reduced* cost to ratepayers, not to create a conflicting standard that requires additional activity and cost.[17]

- What plans are intended to be captured by the new language "When submitting any plan required by statute to the commission, a utility must demonstrate how its resource acquisition, resource retirement, and continued investment in and operation of existing resources meet its primary compliance obligation under RCW 19.405.040(1)(a)…"?[18] NIPPC is concerned this is overbroad. NIPPC is also not certain whether this subsection is necessary given the existing reporting and demonstration obligations provided in current WAC 480-100-650.[19]

NIPPC reserves the right to raise additional questions as they emerge.

E. NIPPC Recommends Revisions to Draft Rule WAC 480-100-675(1)(b)

NIPPC previously suggested the following revision:

> (b) The utility did not ~~use the associated electricity for any purpose other than supplying electricity to~~ *contract to sell the associated electricity to anyone other than* its Washington retail electric customers.[20]

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[17] The Washington Climate Commitment Act, SB 5126, 67th Wash. Leg., 2021 Reg. Sess., Section 14(1) (codified at RCW 70A.65.120) ("The legislature intends by this section to allow all consumer-owned electric utilities and investor-owned electric utilities subject to the requirements of chapter 19.405 RCW, the Washington clean energy transformation act, to be eligible for allowance allocation as provided in this section in order to mitigate the cost burden of the program on electricity customers.").

[18] Draft Rule WAC 480-100-6XX Portfolio planning requirements to comply with the greenhouse gas neutral standard at Subsection 1.

[19] *See generally* WAC 480-100-650.

[20] NIPPC Comments on Draft Rules at 4 (Nov. 27, 2023); *see* WAC 480-100-6XX Use of NPAs to comply with the 100 percent renewable or nonemitting standard at Subsection 3(b).

NIPPC remains concerned that this language could require an impossible showing that certain electrons went to certain loads.[21] Further, NIPPC is concerned that the word "use" here may only perpetuate the debate inherent in this rulemaking process. NIPPC believes the intent is to prohibit a utility from having sold the electricity to serve another load. NIPPC continues to urge the above revision to the Draft Rules.

F. NIPPC Continues to View the Hourly Reporting Obligations as Exceeding What is Required, But NIPPC Defers to the Utilities and Staff on How Burdensome These Obligations Will Be

The Draft Rules continue to require burdensome hourly reporting as part of the utilities' integrated resource plans, particularly the new language that states: "In the hourly analysis under subsection (2), the amount of renewable or nonemitting energy that a utility designates for primary compliance in each hour may not exceed the load served by that utility within the same hour."[22] As it has noted throughout this proceeding, NIPPC does not believe hourly data reporting is necessary under CETA nor appropriate. However, NIPPC continues to defer to the utilities and Commission Staff on whether the reporting for this heightened requirement is worthwhile in their opinion. Integrated resource plans serve myriad purposes. So long as the hourly reporting obligations do not negatively impact the utilities' market engagement (which is NIPPC's current understanding), NIPPC is not opposed to the adoption of this Draft Rule.

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21 This concern was also raised to Commerce. *See* Commerce CETA Rulemaking, Comments of Public Generating Pool at 3 (Apr. 27, 2022) (calling this restriction "unrealistic and … likely prohibitive for Washington utilities to continue participating in regional wholesale energy markets. It is not physically possible to identify which electrons from which generating resources are used to serve which load, making proposed subsection (1)(b) impractical to demonstrate.").

22 Draft Rule WAC 480-100-6XX Portfolio planning requirements to comply with the greenhouse gas neutral standard at Subsection 3.

III. CONCLUSION

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

Dated this 10th day of May 2024.

Respectfully submitted,

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