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January 17, 2019

Via E-filing

Mr. Mark Johnson
Executive Director
Washington Utilities & Transportation Commission
1300 S. Evergreen Pk. Dr. S.W.
P. O. Box 47250
Olympia, WA 98504-7250

Attn: Filing Center

RE: In the Matter of Notice of Inquiry into the Adequacy of the Current Regulatory Framework Employed by the Commission in Addressing Developing Industry Trends, New Technologies, and Public Policy Affecting the Utility Sector
Docket No. U-180907

Dear Mr. Johnson:

Please find the Comments of the Northwest and 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

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UTIL. AND TRANSP.
COMMISSION

**BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

U-180907

In the Matter of)	
)	NORTHWEST AND INTERMOUNTAIN
Notice of Inquiry into the Adequacy of the)	POWER PRODUCERS COALITION
Current Regulatory Framework Employed by)	COMMENTS
the Commission in Addressing Developing)	
Industry Trends, New Technologies, and)	
Public Policy Affecting the Utility Sector)	
_____)	

I. INTRODUCTION

1. The Northwest and Intermountain Power Producers Coalition (“NIPPC”) submits these comments regarding the Washington Utilities and Transportation Commission’s (the “Commission” or “WUTC”) inquiry into the adequacy of the current regulatory framework employed by the Commission in addressing developing industry trends, new technologies, and public policy affecting the utility sector. The Commission invited the utilities and stakeholders to provide written comments identifying problem statements, principles, and priorities for this inquiry. Specifically, the Commission has requested that interested stakeholders: 1) identify the problem statements and principles that are important to them or their constituency, including which problems are the most important to address during this process and which principles are most important to consider when developing potential solutions; and 2) provide comments on problem statements and principles raised by other stakeholders during and before the Commission’s December 10, 2018 workshop.

2. As a preliminary matter, NIPPC recommends that the Commission use this opportunity to look at the world as it can and should be, and not just as it is today. The Commission should outline a 21st century vision of the electricity system and utility regulation as it analyzes whether the over 100-year old utility business model and regulatory construct currently in place promotes or hinders the Commission's core responsibilities of ensuring customers are reliably served at rates that are fair, just, and reasonable, and that utilities have an opportunity to earn profits commensurate with businesses with similar risk profiles. The Commission has a matchless opportunity to re-shape Washington energy policy to better reflect the state's policy priorities, starting with decarbonizing the power sector at the least cost and least risk to consumers.
3. The fundamental problem with the current regulatory framework is that there is a misalignment of utility and customer interests, and we rely upon utilities to do more than they should do, or are naturally suited to do. The current regulatory compact creates an economic incentive for the utilities to invest in, build, and own physical distribution, transmission, and generation assets by providing a guaranteed rate of return on their capital expenditures, which drives profit for utility shareholders. In the first part of the 20th century, this incentive had a positive impact with the practical result of the utilities constructing the modern electrical system and electrifying the nation.

As the Commission noted, the world has changed dramatically over the last few decades, and the Commission is appropriately studying whether this approach continues to make sense. Specifically, the Commission should consider whether it is in ratepayers' interests for the utilities to make all of their end use consumers' power supply choices, and for the utilities to own and operate all of the new generation that sells power to Washington customers. Or, will ratepayers

be better off if customer choice and competition drive down costs, spur innovation, and allow Washington to more cost effectively and expeditiously meet its climate and environmental goals?

4. The guiding principle of regulatory innovation should address the question: what are regulated monopolies *uniquely suited to do*? Clearly, the IOUs play a central role in ensuring reliable, non-discriminatory access to electricity at fair, just, sufficient, and reasonable rates, which is facilitated by the utilities' investment in, operation, and maintenance of the distribution and transmission grid. The importance of this role, and the fact that a whole host of economic, technical, and policy factors make it uniquely suited to being a natural transmission and distribution monopoly. But the IOUs should be limited to this role.
5. The electricity generation sector, however, is no longer a natural monopoly. This reality is recognized in Federal law and most of the country. The IOUs' monopsony entitlement and obsession with owning generation assets, while consistent with the utility shareholders' economic interests, runs contrary to ratepayers' interests. The IOUs' exercise of their monopolistic prerogatives increases the cost of electricity, thwarts innovation, and impedes the state's energy policy goals of de-carbonization, diversification of resource ownership, and economic development.
6. NIPPC believes the Commission and the stakeholders identified the core regulatory principles, which include "net customer benefits, equity, alignment of customer and utility incentives, universal access, safety, reliability, affordability, customer choice, innovation, environmental protection, and alignment with state policies."¹ To achieve these goals, the monopoly utilities need to focus on what they do best and are uniquely suited to do: reliably

¹ *Notice of Inquiry into the Adequacy of the Current Regulatory Framework Employed by the Commission in Addressing Developing Industry Trends, New Technologies, and Public Policy Affecting the Utility Sector*, Docket No. U-180907, Notice of Opportunity to Submit Comments at 2 (Dec. 17, 2018).

keep the lights on. However, NIPPC believes that the regulatory model can be reshaped so that all stakeholders and interest groups benefit. For customers and society as a whole, there are win-win solutions. For example, large end-use consumers can be provided customer choice while increasing equity, universal access and affordability for the most disadvantaged in our communities.

II. COMMENTS

A. **The Market, Subject to Commission Oversight and a Utility Backstop, Should Meet the Utilities' Future Generation Requirements**

7. NIPPC's primary recommendation is to remove the incentive for the IOUs to build and own generation resources. The Commission can achieve this with or without legislative action, by directing the IOUs to rely upon the market to meet long-term power requirements. Such a policy would lower capital costs to ratepayers by tapping into robust competition amongst independent power producers ("IPPs") and the unprecedented innovation in renewable generation, storage, and distributed resources they bring to the power sector. Repositioning the utilities' role in resource acquisition will do more than protect ratepayer interests: it will rapidly and economically advance Washington's move to a decarbonized energy economy.
8. In a "market first" future, the Commission would continue to review and acknowledge the IOUs' least-cost and least-risk plans, allowing the IOUs to retain ownership of their existing generation assets. The Commission would then oversee competitive procurements where IPPs exclusively compete against one another to ensure that ratepayers obtain the best deal. Only in extraordinary circumstances could the IOUs petition the Commission to endorse their acquisition of utility-owned resources—either to maintain system reliability in exigent circumstances or secure a "deal" if a resource is well below market value.

B. Commercial and Industrial Customers Should Be Allowed the Freedom to Choose Their Power Supplier to Increase Renewable Acquisitions and Lower Power Costs for All Customers

9. The Commission’s inquiry should focus on how the benefits of direct access can be achieved either through administrative action or, where required, legislative initiative. NIPPC does not believe additional statutory changes are necessary to achieve this, and the Commission only needs to fully implement existing law; however, NIPPC would support legislative changes if the Commission concludes that current law is inadequate to allow commercial and industrial customers to exercise true retail choice.
10. Washington is a unique state regarding direct access. Electric utility monopolies in Washington are *de facto* rather than *de jure*. While the Washington constitution bars monopolies and the granting of privileges to any citizen that are not granted equally to all citizens,² the courts have allowed monopolies as well as the creation of new monopolies.³ In states with traditional vertically integrated utilities, Puget Sound Energy (“PSE”) has the most successful direct access program in the nation. The Commission recently allowed PSE to expand its direct access program to allow Microsoft Corporation to increase its renewable power purchases, lower its own costs, and provide significant benefits to all of PSE’s ratepayers.⁴
11. However, independently owned energy companies (electricity service suppliers) are also currently prevented from fully bringing their creativity and innovation into the entire Washington energy economy, which drives up costs and reduces service quality. The frequently cited analogy has real merit: few envisioned a world of smart phones prior to the forced divestiture of Ma Bell. Thankfully, Americans are generations removed from “choices” that were limited to a

² WASH. CONST. art I § 12; *id.* art XII § 22.

³ *E.g., Ventenbergs v. City of Seattle*, 178 P.3d 960, 163 Wash.2d 92 (Wash. 2008).

⁴ *WUTC v. PSE*, Docket No. UE-161123, Order No. 06 (July 13, 2017).

gray, black, or pink landline phone. It was innovation, freed from obsolete monopoly regulation, that opened a world of new possibilities. A restructured energy economy that unleashes competition will surely yield similar results. And the Commission, with PSE's direct access programs, have created a model in which *all* ratepayers and the environment benefit.

12. The Commission's inquiry should emphasize that direct access benefits all customers by allowing the state to retain existing industries, attract new businesses, and strengthen wholesale power markets, which, collectively, drives down power costs for all customers. It allows customers who have goals to secure carbon-free resources above and beyond the existing renewable portfolio standard, thereby advancing meaningful and lower cost de-carbonization. Now is the time to facilitate progress on this topic, which the Commission needs to pursue promptly.

C. A Northwest Regional Transmission Organization Should Be Created

13. The Northwest is in dire need of a regional transmission organization. The success of the Energy Imbalance Market suggests that the region is ready to take the next step towards a modern regulatory framework for transmission access. The Commission does not have a long history of promoting the creation of an independent regional transmission organization, but such an entity is necessary to optimize transmission service and investment, better integrate renewables, and lower costs to consumers.
14. A regional transmission organization would also help mitigate a problem that is not readily recognized—that utilities like PacifiCorp use the status quo to discriminate against IPPs in the competitive procurement process and prevent qualifying facilities from wheeling power to load. In the Northwest, there is often sufficient available transmission from a reliability and electrical engineering perspective, but an outdated contract path transmission reservation system

artificially constrains the operation of the transmission grid. The contract path system locks in existing patterns of generation dispatch, ensuring market access for the traditional generation resources, while blocking access of cheap, clean new generation. Having to move renewable energy generation from the sunny, windy, and hydroelectrically-rich parts of the region to loads often requires transmission rights across multiple providers. These “rate pancakes,” at best, increase the cost of new resources and, at worst, prevent many from ever being built. An independent regional transmission organization would mitigate many of these obstacles.

While Washington has limited ability to influence transmission decisions, due in part to the Bonneville Power Administration’s control of 75% of the region’s transmission and the Federal Energy Regulatory Commission overarching authority over transmission policy, it needs to amplify its voice. The Commission can prevent the utilities from deploying their transmission assets (whether on their own or on Bonneville’s grid) to restrict competition. The Commission can also exert pressure and provide incentives for utilities to create or join an independent regional transmission organization. The Commission’s inquiry should analyze why we need a regional transmission organization and recommend administrative and legislative changes that would lay the groundwork for truly open and optimized transmission access.

D. Equity and Justice

15. The traditional regulatory model brought electrification and non-discriminatory access to Washington, but not all voices have been involved in regulatory discussions and decision-making. Electric service has been a powerful tool to promote equity and prosperity for all consumers, whatever their economic or residency status. The present moment brings the prospect of genuine competition and innovation, which would benefit all ratepayers. Meanwhile, standing pat carries risks in harming the environment and reducing equity and social justice.

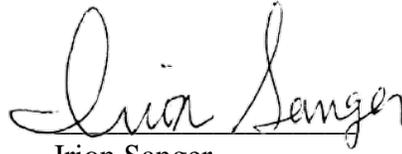
16. NIPPC recognizes regulatory and economic changes create risks and that some customer groups will likely benefit more than others. As such, special care must be taken to ensure that all customers benefit from industry changes, including economically disadvantaged and other underserved communities. And while NIPPC does not presume to know the best ways to address the equity and social justice issues inherent in the current energy paradigm, the transition to a less carbon intensive, more efficient, and highly innovative energy economy should benefit all in the form of lower electricity rates, increased jobs and economic development, and a more stable climate.
17. The Commission's goal must be for all customers to benefit from change, and to break out of the mindset that ensuring adequate protection for all customers means that we should be afraid of innovative regulation that can enhance and diversify the energy economy of the next century. All customers can and should benefit from innovation in regulation and development.

III. CONCLUSION

18. NIPPC appreciates the opportunity to submit written comments to help shape this important inquiry. The Commission should think big and be bold. The current regulatory model worked well for its time, but must now adapt to a new world so that the energy economy can quickly and economically achieve state and federal goals related to power supply, environmental and climate goals, equity, reliability, accessibility, and affordability. It is time to rely upon innovation and competition in the power sector. The Commission needs to seize this golden opportunity and lay out a vision for how to do its job better for the benefit of ratepayers and the environment.

Dated this 17th day of January 2019.

Respectfully submitted,

A handwritten signature in black ink that reads "Irion Sanger". The signature is written in a cursive style with a horizontal line underneath the name.

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