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December 3, 2020

Via E-filing

Mr. Mark L. Johnson
Executive Director
Washington Utilities & Transportation Commission
621 Woodland Square Loop SE
P. O. Box 47250
Lacey, WA 98503

Attn: Filing Center

RE: In the Matters of Amending, Adopting, and Repealing WAC 480-100-238,
Relating to Integrated Resource Planning, And Clean Energy Implementation
Plans and Compliance with the Clean Energy Transformation Act Rulemaking
Dockets No. UE-190698 and UE-191023

Dear Mr. Johnson:

Please find the Comments and Attachment 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,

A handwritten signature in black ink that reads "Irion Sanger". The signature is written in a cursive style with a large, looped initial "I".

Irion A. Sanger

**BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

In the matters of the

Clean Energy Implementation Plans and
Compliance with the Clean Energy
Transformation Act, and

Amending, Adopting, and Repealing
WAC 480-100-238, Relating to
Integrated Resource Planning

DOCKETS NO. UE-191023 AND UE-
190698
(*Consolidated*)

NORTHWEST & INTERMOUNTAIN
POWER PRODUCERS COALITION
COMMENTS ON “USE”

I. INTRODUCTION

The Northwest & Intermountain Power Producers Coalition (“NIPPC”) provides these comments in response to the Washington Utilities and Transportation Commission’s (the “Commission’s” or “WUTC’s”) Notice of Opportunity to File Written Comments regarding the term “use” in the Clean Energy Transformation Act (“CETA”) and two differing interpretations, offered by the Public Generating Pool, Puget Sound Energy, Pacific Power and Avista Corporation (“Group A”) and by Climate Solutions and Northwest Energy Coalition (“Group B”). NIPPC wholeheartedly supports the Commission’s goal of “uphold[ing] CETA’s statutory requirements while allowing for the efficient operation of energy markets.”¹ To that end, NIPPC offers its perspective on how Group A’s interpretation is better suited for Washington’s power markets.

¹ Notice of Opportunity to File Written Comments at 3 (Nov. 5, 2020) [hereinafter Notice].

II. COMMENTS

A. General Comments

NIPPC reiterates its previously stated view that Washington should decarbonize by harnessing the potential of existing and emerging competitive market mechanisms.² Properly designed and regulated markets efficiently allocate available resources among participants in a wide geographic footprint. Organized markets offer a fundamental advantage to states committed to decarbonizing the electric grid using intermittent resources. They provide renewable projects better access to more customers, load-serving entities a more diverse supply of renewable and non-emitting resources, and all market participants an effective way to manage market variability and its associated risks.

NIPPC notes at the outset that its members are not the regulated entities (“electric utilities”) under CETA. Indeed, some independent power producers might narrowly benefit from the more administratively burdensome regulation proposed by Group B that could result in a parochial overbuilding of renewable generation.³ Nonetheless, NIPPC’s view is that the public interest is best served by both fostering and relying on competitive, regional solutions to decarbonize. NIPPC’s position is that the Commission needs to interpret “use” in CETA in order to implement the law, that a procurement-based compliance regime is a permissible interpretation under the statute, and that such an interpretation is the best policy for the Commission to adopt.

² Docket No. UE-191023, NIPPC Comments on the Interpretation of “Use” in RCW 19.405.040(1)(a) at 1 (Aug. 10, 2020) [hereinafter August Comments].

³ It is perhaps equally likely that overbuilding, rather than underbuilding, generation would lead to adverse sector-wide outcomes, including greater curtailment of renewables and lower wholesale prices.

B. Interpretation of “Use”

NIPPC is not offering a thorough legal interpretation of “use” in these comments. NIPPC limits its extended remarks here to the single threshold question of whether or not the meaning of “use” is plain in the statute. NIPPC appreciates the two extensive legal analyses; ultimately, the two analyses appear fundamentally to demonstrate that CETA is ambiguous. Within this context, NIPPC recommends that the Commission evaluate the various options for effectuating the legislative intent and select the path best suited for delivering value to customers. NIPPC believes that Group A’s proposal is the better option and is more consistent with the goals of transitioning Washington’s electricity supply to one hundred percent carbon-neutral by 2030 and one hundred percent carbon-free by 2045, without imposing unreasonable costs on utility customers.

In its previous comments, NIPPC noted that “attempts to identify power delivered to load are necessarily administrative fictions that approximate, for accounting purposes, the actual behavior of power flows on the grid. NIPPC does not believe that CETA requires the Commission and [the Department of] Commerce to adopt the approximation represented by a delivery-based approach.”⁴ The rest of this section expands on this view.

In light of the legal interpretation submitted by Group B on this matter, NIPPC emphatically reminds the Commission of an elementary point that is in danger of being lost in this proceeding: electricity is not like most other goods or services. Confusion on this matter threatens to complicate and undermine the effective implementation of CETA.

⁴ August Comments at 2.

For purposes of illustrating how electricity is different, imagine a law that required 80 percent of all toothpaste sold in Washington between 2030 and 2045 to be the color green—any shade of green. Retail toothpaste sellers could buy such paste from wholesale marketers and, perhaps, directly from manufacturers. Such purchases would thereby shrink the market for all non-green toothpaste. Perhaps some sellers would themselves make a green paste.

There aren't too many uses of toothpaste. Retail sales could fairly represent the use of toothpaste, and verification would be straightforward. Toothpaste is generally housed in a tube with a lot number stamped on it, and such tubes are purchased in discrete quantities by discrete customers. To comply with such a law, sellers would demonstrate that a combination of various shades of green comprised 80 percent of their toothpaste sales.

Such a demonstration could be made regardless of how the paste traveled to retail outlets in Washington for distribution. When toothpaste crosses state lines, it generally stays in its respective tubes rather than intermingling with other pastes en route to their respective destinations. Similarly, when toothpaste travels from store to sink, it generally stays in its tube until used. There is little risk of some other kind of paste squirting by surprise onto one's brush.

NIPPC draws out this example because this proceeding should not lose sight of the following point: With a single exception, electricity is not like toothpaste. The single exception is an electric circuit energized by a single generating source. A simple circuit is like toothpaste and most other goods or services whose "use" can be traced with relative precision from supplier to user. And this exception proves the rule. While it is

true that behind-the-meter distributed generation and some “islandable” micro-grids in Washington resemble this kind of simple circuit, the “macro” electric grid that serves millions of consumers in Washington does not. It is different in kind.

Once two electric generating sources are energized on a single circuit, let alone thousands of separate generators and storage devices across multiple states and provinces serving millions of loads, tracing the discrete “use” by discrete customers of any discrete resource becomes impossible. Unlike toothpaste, any tracing from the “use” of the electricity supply to an electrical load can only be done by proxy. The physics of networked power flows precludes anything but a proxy accounting framework.

For this reason, NIPPC disagrees with the threshold interpretation supplied by Group B:

While “use” is not defined in CETA, its common definition leaves little room for doubt. Merriam-Webster’s online dictionary defines “use” as “to put into action or service,” or “to expend or consume by putting to use.” Utilities “use” electricity by supplying it to their customers. [...] CETA’s plain language and stated legislative purpose permit only one interpretation: utilities must use electricity from renewable resources and non-emitting generation to supply Washington retail electric customers.⁵

This interpretation conflates electricity with commodities whose use is traceable to the end-user. In fact, the only absolute way to comply with this interpretation on a statewide basis would be to disconnect Washington load-serving entities from the transmission network that interconnects Washington with other states and provinces in the Western

⁵ Docket No. UE-191023, Comments of NW Energy Coalition, Climate Solutions, Sierra Club, and the Washington Council at attach. p. 3, 5 (August 10, 2020) (Memorandum from Earthjustice on a Legal interpretation of the Clean Energy Transformation Act).

Interconnection.⁶ The Washington Legislature neither required such a radical disconnection nor clarified this matter by choosing the word “use.” The Legislature merely put the Commission in the position of needing to select a reasonable way to assess how the relatively unique phenomenon of electricity is transacted.

This is the only conclusion that the Commission need draw from the example above: the Commission should exercise its expertise to adopt a workable proxy for tracking electricity and compliance with CETA. On this threshold matter, the language of the statute is not plain as to one proxy or another. NIPPC believes that the Commission does not merely have the authority to interpret this language in various ways; it must adopt an interpretation, implicitly or explicitly, before it can successfully implement CETA. An administrative approximation about what constitutes the “use” of electricity is required for any entity to demonstrate compliance with CETA.

C. Differences Between the Proposals

The primary distinction between Group A’s proposal and Group B’s proposal appears to be the usability of bundled Renewable Energy Credits (“RECs”). Among other things that do not appear disputed, Group A suggests compliance can be supported by “WREGIS retirement report of [RECs] generated by resources for which the utility also is able to show acquisition of the renewable resource electricity,” while Group B proposes the use of “a tracking mechanism, like NERC e-tags, that documents delivery of renewable resource and non-emitting generation to customers.”⁷ In practical terms,

⁶ In fact, utilities in Texas took this unusual step in the 1970s in order to maintain a solely state-jurisdictional power market.

⁷ Notice, Attachment A at 1; Notice, Attachment B at 1.

Group A proposes the use of an existing Washington and regional administrative structure (RECs) that provides an imperfect but workable approximation of power use, whereas Group B proposes the creation of a new administrative apparatus that, in theory, would more closely approximate power delivery to load. This apparatus will unnecessarily increase costs and risk the ultimate achievement of the Legislature's goals.

NIPPC is not aware of any evidence that the Legislature envisioned the creation of a brand-new administrative apparatus to trace power flows on a granular time basis or a specific transformation of the existing wholesale electricity markets. Even Group B does not argue that CETA clearly requires such a massive undertaking, but they rely upon an argument that CETA necessarily implies such a result. NIPPC believes that, if the Legislature intended to radically alter the existing regulatory and market structures, then it would have done so with more explicit and clear language. The Legislature only wanted to transform the electricity sector to eliminate the use of fossil fuels.

For instance, California has pursued a path with some parallels to what Group B proposes by implementing both a Renewable Portfolio Standard and a cap-and-trade program separately. Washington could pursue a similarly explicit path, should the Legislature so choose. But at present, instead of committing itself to a far more complicated compliance regime under CETA than the statute requires, the Commission should take advantage of existing administrative processes under a procurement-based approach (also known as an attribute-based approach), as Group A's proposal suggests.

D. General Comments in Response to Leakage, Resource Shuffling, and Market Structure Topics

NIPPC does not assume that the possibilities of “leakage” and “resource shuffling” could materially undermine the achievement of CETA’s objectives. These regional market outcomes are most commonly discussed in the context of how organized power markets subject to greenhouse gas emissions caps interact with neighboring bilateral markets not subject to such caps. Rather than taking at face value that these are significant problems for which CETA requires a solution, NIPPC urges the Commission either to prepare or to procure a thorough analysis of regional power flows and market economics to define and evaluate the likelihood of these outcomes.

NIPPC notes an apt observation contained in the final review draft of the collaborative “WIRED GHG Accounting Working Group Report” from November 2020:

By design, organized markets employ a centralized dispatch that increases efficiency by reducing the friction and inefficiencies created by bilateral transactions. An accounting framework that introduces the need for bilateral tracking of sources and loads between all participating states or entities is likely to erode the efficiencies associated with a centralized dispatch of resources. If entities are required to make all or a substantial portion of their energy purchases on a resource-specific basis, they may not be able to participate in an organized market that does not accommodate specified-resource transactions.⁸

The same WIRED Working Group offered the following recommendation that NIPPC strongly recommends to the Commission:

⁸ Final Review Draft WIRED GHG Accounting Working Group Report at 9 (Nov. 2020), <https://cnee.colostate.edu/wp-content/uploads/2020/11/final-review-draft-WIRED-GHG-accounting-work-group.pdf>. The WIRED Initiative is a collaborative effort of the Center for the New Energy Economy (CNEE), the Western Electric Industry Leaders (WEIL) Group, and many of the western governors’ energy policy advisors.

Attribute-based systems are recommended for compliance with RPS and [clean energy standard] programs and renewable and non-emitting fuel type accounting; states should seek to meet individual preferences and goals through establishing resource and program eligibility criteria without attempting to precisely match accounting to underlying energy transactions or load service.⁹

E. Comments in Response to Specific Commission Questions

- 1. Do the rules provided in Attachment A or B allow CETA to be enforced as an offset program?**
 - a) If no, which portion of the rule language prevents CETA compliance from functioning as an offset program?**
 - b) If yes, which portion of the rule language permits CETA compliance to function as an offset program?**

In NIPPC’s view, this question is different from the definition of “use” under CETA. That said, neither set of rules concerning renewable and non-emitting resources appear designed or allow CETA to be enforced as an offset program. An offset program is a program wherein strict compliance in one area is avoided by exceeding obligations elsewhere, thus offsetting or balancing out the total emissions. For example, a carbon offset program may call for a reduction in emissions of carbon dioxide or other greenhouse gases in one area to compensate for higher emissions elsewhere.

CETA and the rules in both Attachment A and B initially require carbon neutrality but allow for utilities to meet 20% of their obligation through alternative compliance measures, including unbundled RECs. Unbundled RECs are not an offset but a tangible demonstration that renewable energy was, in fact, generated. Neither set of rules address the alternative compliance measures, and NIPPC does not believe either set

⁹ *Id.*

of rules presents any other implication of an offset program. The distinguishing feature between the rule sets is how compliance itself is measured and tracked.

- 2. Do the rules in Attachment A or B allow a utility to produce renewable electricity in excess of the amount required to serve its load and use the RECs from that excess renewable electricity, sold off system, to cover periods of load in which more than 20 percent of its load is served by GHG emitting resources as a means of complying with RCW 19.405.040(1)(b)(ii)? For example, can a utility comply with the 80 percent requirement through buying 1000 MWh of hydroelectricity in excess of its load service needs in every hour of the day during the spring runoff and resell that power while retaining the nonpower attributes for compliance?***

The compliance scenario described here matches NIPPC’s understanding of an acceptable option for compliance with the 80 percent requirement, so long as the utility meets its multiyear compliance requirements overall. With respect to the proposed rules, Option B appears to explicitly prohibit this, while Option A would allow it. Both options would prohibit a Washington load-serving entity from simultaneously selling specified power into California and claiming the same *power* for compliance with the 80 percent standard. Only Option A would allow a load-serving entity to sell unspecified power while simultaneously retiring the associated REC for compliance with CETA. NIPPC supports the Commission working with California regulators and other states to create information-sharing agreements to avoid double-counting under the latter option for compliance with the 80 percent requirement.

3. *Attachment A states in (2)(C)(ii)(4) that the delivery of resources used for compliance may occur at “another point of delivery designated by an electric utility for the purpose of subsequent delivery to the utility [emphasis added].”*
- a) *Does the term “purpose of subsequent delivery” mean that the electricity must be delivered to the utility, or only that it was intended to be delivered?*
 - b) *What constitutes “delivery to the utility”?*

NIPPC acknowledges the cited language places substantial power in the utility’s hands concerning delivery. This flexibility is generally appropriate given the physical challenge outlined above with respect to ensuring delivery to load and the benefit of relying on renewable resources across a wide geographic area. This flexibility will become increasingly important as regional organized markets expand and centralized dispatch of energy becomes more common. NIPPC reiterates its earlier recommendation to couple bundled REC retirements with a requirement to use specified points of delivery along a clear perimeter of the regional transmission network.¹⁰

In addition, in light of the evolution of storage technologies, NIPPC believes the rule language appropriately recognizes that power could be delivered to an as-yet-unspecified point (such as a charging electric truck fleet) for a non-organized market purchase (i.e., battery discharge) that will occur at a future time. With this view in mind, NIPPC recommends not losing the forest for the trees. To facilitate the growth and adoption of innovative storage technologies, the rules should allow appropriate space for flexibility.

¹⁰ August Comments at 3.

4. *How will the suggested rules in Attachment A and B affect long-term portfolio planning and acquisition?*
- a) *CETA requires that all of a utility's load be served by renewables or nonemitting resources by 2045. Do the rules in Attachment A or B support this objective? Do they allow compliance with the 2030 goal in a manner that diverges from the 2045 goal?*
 - b) *Do the suggested rules in Attachment A or B support a long-term resource portfolio plan that matches the production of renewable electricity with the utility's load and has sufficient transmission service between the point of injection of its planned source of renewable electricity and the utility's load to enable the renewable electricity to serve that load?*

NIPPC primarily responds to this question to acknowledge the understandable concern among some parties that CETA not let utilities “off the hook” by virtue of secondary effects of their participation in bilateral regional markets and the Western Energy Imbalance Market. CETA will help transform the region’s electric power system by leading to utility divestment from legacy fossil generation across the region and investment in new renewable generation. With no operating cost for fuel, the new renewable generation developed as a result of CETA will generally displace any fossil generation competing to be dispatched in the same time period. This is a profound market signal that can be easily facilitated by relying on the compliance practice commonly used under state renewable energy programs of retiring affiliated RECs, as envisioned by Attachment A. Portfolio planning and acquisition are already well suited to accommodate this approach.

NIPPC also notes that Option B is more likely to lead to overbuilding and more expensive compliance. This could upset the current integrated resource planning process, which focuses on the least cost and least risk approach to utility procurement, and it could increase the likelihood of there being insufficient transmission to wheel power to load.

5. *Could the Energy Imbalance Market (EIM) provide a prorated share of the attributes of the resources that provided energy in a market interval to the loads that received energy in that market interval?*
 - a) *If EIM loads were to receive the attributes of the generators providing energy in the market, should constraints in the dynamic transfer capacity be incorporated into the calculation of the distribution of those attributes to load? Is it possible to reflect those constraints in the distribution of attributes to locational loads?*
 - b) *If EIM loads could receive the attributes of the generators providing energy in the market, is there a means of allocating those attributes by a bid price mechanism?*

In general, NIPPC does not view these proposals as valid ways to take advantage of the EIM for purposes of CETA compliance. EIM dispatch is not designed to meet any particular loads, load-serving entities do not control the amount of energy dispatched by the EIM, and RECs do not correspond to the granular within-hour timeframe of energy dispatched in the EIM.

6. *Energy serving load in a day-ahead market (DAM) is unspecified. If the DAM bid awards were mostly surplus hydro, would the loads receiving energy from the DAM only receive unspecified energy under the rules in Attachments A and B? Does this mean that a utility that was a net buyer from the DAM at a time of excess hydroelectric generation would only receive unspecified power?*

NIPPC is not sure if the net buyer in the scenario in this question was a seller of hydro generation into the DAM or not. Under Attachment A, in the event the net buyer was also a seller, it would be able to retire the RECs for the hydro generation it sold into the DAM, thereby achieving a level of compliance with CETA equal to the amount of RECs retired—assuming the generation was not “deemed delivered” to California, a DAM function that NIPPC anticipates may develop. If the net buyer simply purchased unspecified power from DAM without bidding in any renewable or non-emitting resources, then there would not be bundled RECs to purchase and retire, given the

centralized economic dispatch of resources in a DAM. Under this scenario, the buyer could not rely on receipt of the unspecified power for any compliance with CETA. This scenario may deserve further discussion by the Commission and stakeholders, given the other values associated with fostering a DAM in the Northwest.

- 7. *Rules in Attachment B, part (2)(b), state that a utility must make a demonstration that the electricity used for compliance was generated by the utility or acquired by the utility with the nonpower attributes and not resold.***
 - a) How would a utility make such a demonstration?***
 - b) How would power generated and purchased by the utility be identified as sold, which documents would be used, and what process would be followed to reconcile purchases and sales?***
 - c) How would Commission staff conduct audits under this proposal?***

NIPPC recommends the adoption of the rules in Attachment A and therefore does not address Question 7.

- 8. *Please explain how double counting is prevented under the suggested rules in Attachment A and B?***

The suggested rules in Attachment A addresses double counting by ensuring that the same generation is not used for analogous compliance in two jurisdictions, including as specified power dispatched into California.

III. CONCLUSION

NIPPC appreciates the opportunity to submit comments and looks forward to further engagement on this issue.

Dated this 3rd day of December 2020.

Respectfully submitted,



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