

MEMORANDUM

February 25, 2009

TO: Jeff Goltz, Chairman
Patrick Oshie, Commissioner
Philip Jones, Commissioner

FROM: Steve Johnson, Project Lead, Rulemaking on Public Utility Regulatory Policies Act as Amended by the Energy Independence and Security Act of 2007 – Public Law 110-140, H.R. 6, Docket U-090222

SUBJECT: Rulemaking to consider adoption of Standard 18, part A.

RE: Adoption Hearing, February 25, 2008, at 1:30 PM

On March 18, 2009, the Commission filed a Preproposal Statement of Inquiry (CR-101) Notice with the Code Reviser. In Order 01 issued on September 14, 2009, the Commission closed all PURPA standards except standard 18(a). The proposed rules published on December 22, 2009 by the Commission cover Standard 18(a) and are the subject of the adoption hearing. Below Commission Staff (Staff) reviews and provides our recommendations on those proposed rules.

Background

On March 18, 2009, the Washington Utilities and Transportation Commission (Commission) filed with the Code Reviser a Preproposal Statement of Inquiry (CR-101) to examine whether new regulations are needed to govern six aspects of investor-owned electric and natural gas utility operations for which new federal standards are included in the Energy Independence and Security Act of 2007, Public Law 110-140 (EISA). EISA sets these new standards by amendment of the Public Utility Regulatory Policies Act (PURPA) Sections 111(d) and 303(b). The Commission is required to consider after notice and hearing whether it is appropriate to implement any of these standards. The Commission's determination must be made in writing based upon findings and evidence presented at hearing.

On April 24, 2009, seven stakeholders filed written comments in response to the CR-101 notice. The Commission conducted a workshop on May 21, 2009, to discuss these comments. Additional written comments were received from five stakeholders on June 1, 2009, in response to Staff questions concerning a smart grid integrated resource planning rule.¹

Staff issued a memo with recommendations on July 30, 2009 and the Commission held a hearing on August 15, 2009 to consider the PURPA standards. In Order 01 issued on September 14, 2009, the Commission closed the rulemaking on all PURPA standards except for standard 18(a). On September 17, 2009, Staff issued draft reporting rules for comment by October 16, 2009. Avista, PSE, PacifiCorp and Public Counsel provided comments and proposed additional or alternative language for inclusion in the rule. On December 22, 2009, the Commission issued CR-102 proposed rule and asked for comments by January 28, 2010. Avista and Puget Sound Energy submitted comments on the CR-102 rule. The Commission scheduled an adoption hearing on February 25, 2010.

Summary Recommendations

Staff recommends adoption of the proposed smart grid reporting rule. In summary, the proposed rule has a prospective component requiring the reporting actions on implementing and plans for implementing smart grid technology that the utility has considered. The proposed rule also requires reporting on the feasibility and customer acceptance of smart grid technology.

However, we do recommend adopting the rewording of 480-100-505(2)(a)(vi) as suggested by PSE. This in our view does not change the meaning of that section but makes the sentence clearer.

¹ The Staff asked for responses on the following questions: 1) Please provide statutory authority for the Commission's ability to consider a conservation priority criteria, e.g., 10 percent. 2) How are the utilities currently evaluating smart grid technology and opportunities internally? Is this evaluation coordinated with or otherwise a part of processes used to develop the Integrated Resource Plan? If so, how? If not, please elaborate? 3) Would a planning requirement, analogous to an IRP, for assessment of smart grid technology and opportunities, be practical? Why or why not? 4) For Avista and PacifiCorp, how is smart grid assessment or planning addressed in the other states you serve?

Current version:

(vi) The ability to deliver two-way communication of real time prices or other contract terms and to enable customer demand response programs.

PSE version (adoption recommended):

(vi) The ability to use two-way communication to enable different customer contracts or programs, such as real time prices or demand response programs.

Comments Received

Avista and PSE provided comments on the CR-102 proposed rules. Neither opposed adoption of the proposed rule on smart grid reporting. The comments on the CR-102 proposed rule are primarily centered on the definition of smart grid, the type and level of detail in the reporting requirement and the role the report should play in the regulatory process.

480-100-505(2)(a)

Comment. PSE assert that the proposed rule do not align with the federal definition of smart grid. PSE proposes (2)(a)(vi) include “new” customer contracts. PSE suggests (2)(a)(viii) include “power quality” and that it should not include a specific reference to “customer-owned power facilities.” Avista proposes that smart grid be defined as a “system of systems.”

Discussion and Recommendation. The rules as proposed are broad enough to provide for Avista’s concept of smart grid as a “system of systems.”

Staff recognizes that the Commission’s rules may not align perfectly with the federal definition. The definition of smart grid is a term evolving in the industry and may not yet have a consistent meaning by all users in all circumstances. It is not necessary and it may not be possible to have the definitions in the Commission’s rule align perfectly with the federal definition and other important users of the term. Staff recommends adopting the definition as written in the proposed rule.

Staff considers “improve reliability” as it is used in the proposed rule encompasses PSE’s suggest term “power quality” and therefore Staff considers the addition redundant.

PSE’s suggestion to leave out “from customer-owned power facilities” in (2)(a)(viii) creates an overly broad definition that is more narrowly addressed in (iv). Staff supports the rule’s intent to specifically require reporting on what smart grid functions

a utility is considering that might be used to help manage customer-owned power facilities.

Staff recommends adopting the rewording of 480-100-505(2)(a)(vi) as suggested by PSE. This in our view does not change the meaning of that section but makes the sentence clearer.

Current version:

(vi) The ability to deliver two-way communication of real time prices or other contract terms and to enable customer demand response programs.

PSE version (adoption recommended):

(vi) The ability to use two-way communication to enable different customer contracts or programs, such as real time prices or demand response programs.

480-100-505(2)(b)

Comments. PSE's suggests that some smart grid definitions may already be covered under the definition of conservation.

PSE proposes the addition of a cost-effectiveness test to the definition of smart grid project. PSE's proposed language also includes a statement that smart grid may not be cost-effective.

Avista proposes that a specific requirement to report on smart grid projects is not necessary.

Discussion and recommendation. "Smart grid functions" as the vernacular term has evolved in the industry (and is used in EISA to amend PURPA) may well overlap with definitions of other functions and actions in the utility industry. This may be unavoidable, but is of no consequence to the function of the proposed rule. Staff does not recommend altering the language proposed in the rule to attempt to avoid any possible overlap with the definition of what may also be considered conservation.

Staff does not support PSE's suggestion to add a cost-effectiveness test to the definition of smart grid project since the term "feasibility" encompasses cost-effectiveness.

It is inappropriate to include in a rule and, unnecessary and premature, to state as a general conclusion that smart grid projects may not be cost-effective. Staff does not recommend including such a statement in the rule.

Staff recommends the inclusion of a specific requirement for reporting on smart grid projects. Smart grid projects are important to the utility and to the region. Reporting on those projects is in the public interest.

480-100-505(2)(c)

Comment. PSE states that the definition in the proposed rule may not include enabling customer products and programs behind the meter or enabling distributed generation and suggests language that explicitly includes it.

Discussion and recommendation. Staff notes PSE’s second comments in this rulemaking suggested smart grid was not needed to enable customer-owned generation. Be that as it may, PSE’s suggested additional language is not necessary as “enabling customer products and program” is within the broad scope of definitions of the rule as written.² It is specifically included in 2(a)(vii) under “to manage new end-use services” and included in section 2(a)(viii) as improvements in grid operation related to customer-owned generation.

480-100-505(2)(d)

Comment. PSE states that it interprets the language to mean that the utility is only required to submit a report describing smart grid technologies that it has both implementation plans for and an evaluation of.

Discussion and recommendation. Part (2)(d) defines what must be in the report and does not limit the requirement of the reporting on a smart grid technology to the condition that both an evaluation *and* an implementation plan must be done by the utility before reporting is required under the rule. Following the parallel construction of the sentence: Smart grid technology report...means a report describing the utility’s evaluation of and [a report describing] any implementation plans. Staff does not support PSE’s interpretation of the rule.

480-100-505(3)

Comments. In light of the Smart Grid Investment Grants (SGIG) and Smart Grid Demonstration Grants (SGDG) projects, Avista suggests that it would be premature to have the first report due in 2010 and suggests the first report not be due until September 1, 2011 with subsequent reports due in 2014 and 2017 at which time the reporting rule would sunset.

² PSE comments, January 28, 2010, Docket U-090222.

Discussion and recommendation. The reporting rule as written has a prospective reporting requirement intended to provide the Commission and the public with a timely forward look at an apparently fast developing group of technologies. The value of a report in 2017 for a retrospective look at the application of smart grid technology has limited use for fulfilling the goal of a forward look at smart grid technology. The rule is written to require prospective reports on smart grid with the rule written to encompass the activities of all regulated utilities rather than timed for a specific utility. Staff believes this is best served by a September 1, 2010 reporting date. Staff recommends retaining the dates in the proposed rule.

480-100-505(4)(a)

Comment. PSE proposes that the inclusion of the term “commercially available” technology would help refine the focus of the report. PSE’s proposed language only requires reporting on smart grid technologies if the utility has both considered the technology for integration into its system and has completed a full evaluation of the technology. Avista recommends that a “smart grid road map” be within the scope of the meaning this section of the rule.

Discussion and recommendation. The reporting requirements are specifically written to include reporting on technologies the utility may be considering that are not yet fully commercially available. Avista’s descriptions of smart grid in its comments allude directly to proving-up technologies that are not yet commercially available.³ Staff recommends the rule should retain reporting on prospective technologies and not be limited to commercially available technologies.

Staff recommends rejecting PSE’s proposed language to require reporting only if the utility has *both* considered for integration into its system, and has completed a “full evaluation” of a smart grid technology.⁴ The term “full evaluation” does not appear in the Section 4(a) or in PSE’s proposed language. By a plain reading of the Commission’s draft rule language, Staff interprets the reporting rule broadly as requiring reporting on technologies that were either considered for integration into the utility’s system, or reporting on evaluation of smart grid technologies even when those evaluations were informal.

We interpret the proposed rule to provide enough scope to allow a utility to present its smart grid road map as a framework for the report.

³ Avista Comments, January 28, 2010, page 3, Docket U-090222.

⁴ PSE Comments, January 28, 2010, page 4, Docket U-090222.

480-100-505(4)(b)

Comments. PSE suggests the inclusion of “commercially available” to refine the focus of the report on mature technologies that will be able to deliver value and also to make the report more closely aligned to existing the integrated resource planning rule.

Discussion and recommendations. There is no need to align the report with the integrated resource planning rules (IRP) and PSE submitted comments in this docket opposing a planning requirement similar to the IRP rules for smart grid.⁵ Staff supports the report’s prospective nature described in response to comments on (4)(a). For the same reasons above in (4)(a) Staff recommends not including the limitation of “commercially available” technology.

Staff recognizes that regulatory mandates such as security requirements may increase the cost of smart grid for a utility. However, there is no compelling reason to include such a hypothetical conclusion in a reporting rule. The rule’s breadth includes reporting on cost drivers provided the utility considered them.

480-100-505(4)(c) and (4)(d)

Comment. PSE states that a utility’s timelines and plans should not proscribe its actions during that planning horizon or that the lack of plans should limit the utility’s actions during that planning horizon.

Discussion and recommendation. There is nothing in the rule that implies or states that the rule limits a utility’s actions in the future. Staff doesn’t recommend including PSE’s proposed language in the reporting rule. Indeed, Staff believes it is the Commission’s practice to expect a utility to continuously reevaluate any plans for any projects that it has not fully committed to and to consider new opportunities that may be better than projected plans. Staff does not believe the reporting requirements limit that Commission practice.

480-100-505(8)- Proposed by commenters

Comment. Avista and PSE propose similar language that provides express confidentiality protection (under RCW 42.56.420) to the information provided in the report.

⁵ PSE Comments , June 1, 2009, page 4, Docket U-090222.

Discussion and recommendation. Staff recommends against the restating of this reference in the rule since it would be redundant. The Commission’s rules (WAC 480-07-160(2)(a)) already address the treatment of confidential information, including information protected from inspection or copying under an exemption from disclosure under the Public Records Act, RCW 42.56. Companies can avail themselves of those procedures without specific reference to that statute and rule in these smart grid reporting rules.

480-100-505(9)- Proposed by commenters

Comment. Avista and PSE suggest rule language that a utility shall not be subjected to “any penalties” for failing to implement smart grid technologies that it said it would implement in previous reports.

Discussion and recommendation. Staff does not agree that it is in the public interest to limit prospectively Commission authority to levy penalties for that purpose. Staff does not find anything onerous or unique about the smart grid *reporting* rule that requires an unprecedented exemption from Commission review of future utility actions.

480-100-505(10)- Proposed by commenters

Comments. Avista proposes that the Commission formally “indicate” or determine that the utility has met compliance with the reporting requirements.

Discussion and recommendation. Staff does not recommend adopting an acknowledgement or formal indication of compliance because the filing under the rule is informational and primarily seeks information for a prospective look at new smart grid technologies. The only way to determine that the utility reported all the smart grid information they had and considered is to know what smart grid information they have- which is the purpose of the report. Time will tell if the utilities provided all the information they are required to report and the lack of reporting will inform any cost recovery request.