

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Adopting)	DOCKET U-090222
)	
WAC 480-100-505 Smart grid technology report)	GENERAL ORDER R-559
)	
Relating to the Review of PURPA Standards in The Energy Independence and Security Act of 2007.)	ORDER ADOPTING RULE PERMANENTLY
)	
.....)	

1 **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and Transportation Commission (Commission) takes this action under Notice WSR # 10-01-196, filed with the State of Washington Office of the Code Reviser (Code Reviser) on December 23, 2009. The Commission brings this proceeding pursuant to RCW 80.01.040 and RCW 80.04.160.

2 **STATEMENT OF COMPLIANCE:** This proceeding complies with the Administrative Procedure Act (RCW 34.05), the State Register Act (RCW 34.08), the State Environmental Policy Act of 1971 (RCW 43.21C), and the Regulatory Fairness Act (RCW 19.85).

3 **DATE OF ADOPTION:** The Commission adopts this rule on the date this Order is entered.

4 **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW 34.05.325(6) requires the Commission to prepare and publish a concise explanatory statement about an adopted rule. The statement must identify the Commission’s reasons for adopting the rule, describe any differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the Commission’s responses to the comments reflecting the Commission’s consideration of them.

<p>OFFICE OF THE CODE REVISER STATE OF WASHINGTON FILED</p> <p>DATE: March 24, 2010 TIME: 1:22 PM</p> <p>WSR 10-08-001</p>

5 To avoid unnecessary duplication in the record of this docket, the Commission designates the discussion in this Order, including appendices, as its concise explanatory statement, supplemented where not inconsistent with the staff memoranda dated February 25, 2010. Together, these documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

6 **REFERENCE TO AFFECTED RULES:** This Order adopts the following sections of the Washington Administrative Code:

Adopt WAC 480-100-505 Smart grid technology report.

7 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS**

THEREUNDER: The Commission filed a Preproposal Statement of Inquiry (CR-101) on March 18, 2009, at WSR # 09-07-096. The statement advised interested persons that the Commission was examining whether to adopt six new federal standards in the Energy Independence and Security Act of 2007, Public Law 110-140 (EISA).¹ These standards include: 1) integrated resource planning (electric) – Standard 16, 2) rate design to promote energy efficiency investment (electric) – Standard 17, 3) consideration of smart grid investments (electric) – Standard 18, 4) smart grid information (electric) – Standard 19, 5) energy efficiency (natural gas) – Standard 5, and 6) rate design to promote energy efficiency investment (natural gas) – Standard 6. The Commission ultimately decided to terminate the rulemaking and close the docket with regard to all of the above standards except Standard 18(A) – Consideration of Smart Grid Investments – In General.

8 The Commission also informed persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the Commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and on the Commission's lists of all registered electric and gas companies as well as attorneys representing these companies, persons that received notices in the Commission's previous rulemakings in Dockets UE-060649 and UE-061895, Washington State agencies with an interest in energy matters, and persons interested in electric and gas issues. The Commission posted the relevant rulemaking information on its Internet web site at

¹ The EISA amended Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. § 2621(d), and amended Section 303(b) of PURPA, 15 U.S.C. § 3203(b).

<http://www.utc.wa.gov/090222>. Together, the documents issued by the Commission along with the comments received by the participants provide a complete and concise explanation of the agency's actions and its reasons for taking those actions.

- 9 Pursuant to the notice, the Commission received written comments from the following companies, organizations, and interested persons: Mr. Parker Holden (a resident of Olympia, Washington), MicroPlanet, Avista Corporation (Avista), Cascade Natural Gas Corporation (Cascade), PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp), the Public Counsel Section of the Washington State Attorney General's Office (Public Counsel), and Puget Sound Energy, Inc. (PSE).
- 10 The Commission convened a stakeholder workshop on May 21, 2009, at the Commission's office in Olympia, Washington. At the workshop, the Commission posed several additional questions to stakeholders regarding electric utility Standard 16 for integrated resource planning and Standard 18 for smart grid investment.²
- 11 During the workshop, several stakeholders requested that the Commission allow an additional opportunity for comment to address questions raised during the workshop that could not be readily answered at that time.³ The Commission invited interested persons to comment on those subjects by June 1, 2009. By the June 1, 2009 deadline, Avista, PSE, PacifiCorp, Public Counsel, the NW Energy Coalition (NVEC) and The Energy Project filed written comments.
- 12 On August 13, 2009, the Commission convened a hearing to discuss further steps in this rulemaking including, but not limited to, termination of this rulemaking with regard to any of the new PURPA standards addressing electric and natural gas utility operations. At the hearing, the Commission's staff recommended that the Commission close the rulemaking for all standards except Standard 18(A) addressing smart grid technology.⁴ With respect to Standard 18A, the staff recommended that the Commission develop a rule requiring electric utilities to report to the Commission

²The questions posed to the stakeholders at the May 21, 2009, workshop are included in Appendix A of this order.

³These questions are included in Appendix A of this order.

⁴ Staff Recommendation Memorandum to Commissioners regarding PURPA Standards in the Energy Independence and Security Act of 2007, Docket U-090222, at 8 (July 30, 2009).

the details of their evaluation and implementation of smart grid technologies.⁵ Public Counsel and NWECA were in attendance at the hearing. The Energy Project participated via the Commission's conference bridge line.

- 13 The Commission issued Order 01 on September 14, 2009, terminating and closing the rulemaking with regard to electric utility Standards 16, 17, 18(B), 18(C), and 19 and natural gas Standards 5 and 6.⁶ At the same time, the Commission concluded that electric utility Standard 18(A) should receive further examination, and directed the staff to develop and circulate for comment a discussion draft rule that would require electric utilities to file reports describing actions they have undertaken to evaluate or implement smart grid technology.⁷
- 14 On September 17, 2009, the Commission invited interested persons to comment on the staff's discussion draft of a proposed rule relating to PURPA Standard 18(A) – Consideration of Smart Grid Investments – In General, by October 16, 2009. The Commission received written comments from Avista, PacifiCorp, PSE, and Public Counsel.
- 15 **NOTICE OF PROPOSED RULEMAKING:** After consideration of the comments received on the discussion draft rule, the Commission filed a notice of Proposed Rulemaking (CR-102) on December 23, 2009, at WSR # 10-01-196. The Commission scheduled this matter for oral comment and adoption under Notice WSR # 10-01-196 at 1:30 p.m., Thursday, February 25, 2010, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission by January 28, 2010.
- 16 **COMMENTERS (WRITTEN COMMENTS):** The Commission received written comments from Avista and PSE. Neither Avista nor PSE expressed opposition to the proposed rule. Each provided comments that are primarily centered on the definition of smart grid, the type and level of detail in the reporting requirement, and the role the

⁵ *Id.*

⁶ *In re Review of PURPA Standards in The Energy Independence and Security Act of 2007*, Docket U-090222, Order 01, ¶ 55.

⁷ *Id.* at ¶ 56.

report should play in the regulatory process. Summaries of written comments and Commission responses are contained in Appendix A, attached to, and made part of, this Order.

17 **RULEMAKING HEARING:** The Commission considered the proposed rule for adoption at a rulemaking hearing on Thursday, February 25, 2010, before Chairman Jeffrey D. Goltz, Commissioner Patrick J. Oshie, and Commissioner Philip B. Jones. The Commission heard oral comments from Lea Daeschel, representing Public Counsel. Ms. Daeschel stated that the proposed rule was the product of a collaborative process and that Public Counsel viewed the rule as a good result. No other interested person made oral comments.

18 **SUGGESTIONS FOR CHANGES THAT ARE REJECTED/ACCEPTED:** Written comments suggested changes to the proposed rule. The suggested changes and the Commission's reason for rejecting or accepting the suggested changes are included in Appendix A.

19 **COMMISSION DISCUSSION AND RESPONSE TO COMMENTS:** The Commission initiated this inquiry to determine whether adoption by rule of Standard 18(A), 16 U.S.C. § 2621(d)(18)(A), for consideration of smart grid investment would be in the public interest and would be appropriate to implement the objectives of the Public Utilities Regulatory Policy Act to encourage: conservation of energy supplied by electric utilities, optimal efficiency of electric utility facilities and resources, and equitable rates for electric customers. With that purpose in mind, we turn to the comments and recommendations received regarding the proposed rule.

20 **A. WAC 480-100-505(2)(a):** Both Avista and PSE provided comments regarding the Commission's proposed definition of the term "smart grid function." In its comments, PSE suggests that some smart grid functions may already be covered under the definition of conservation. Further, PSE asserts that the proposed rule does not align with the federal definition of smart grid. PSE proposes that Section (2)(a)(vi) include the modifier "new" before "customer contracts". PSE also suggests that Section (2)(a)(viii) include the phrase "power quality" and that the Section should not include a specific reference to "customer-owned power facilities."

- 21 With regard to Section 2(a)(vi), PSE offers an alternative phrasing. The proposed rule reads, “The ability to deliver two-way communication of real time prices or other contract terms and to enable customer demand response programs.” PSE recommends modifying the language to, “The ability to use two-way communication to enable different customer contracts or programs, such as real time prices or demand response programs.” Avista proposes that smart grid be defined as a “system of systems.”
- 22 ***Commission Discussion.*** We are not persuaded that it is necessary for our definition of “smart grid function” to mirror the federal definition. The definition of these functions is an evolving term within the industry and does not yet have a consistent meaning among users in all circumstances. Some definitions in the proposed regulation may overlap with definitions of other functions and actions in the utility industry. While perhaps unavoidable, the overlap is not consequential to the purpose of the rule to provide for reports on the status and potential of the emerging smart grid technologies. PSE has presented no compelling reason that our definition must align perfectly with the current definition chosen by the federal government. We are not persuaded that the language as proposed should be altered to avoid any possible overlap in definitions or to conform to any current federal definition.
- 23 Turning to PSE’s suggestion regarding “power quality,” we note that the proposed rule includes the phrase “improve reliability.” This concept is sufficiently broad to include consideration of power quality. Consequently, PSE’s suggested addition is not necessary.
- 24 PSE’s suggestion to remove the phrase “from customer-owned power facilities” in (2)(a)(viii) would result in a broad definition that is already addressed in subsection (a)(iv). The intent of the reporting requirement is to include information concerning smart grid functions that might be used to help integrate and manage customer-owned power facilities.
- 25 PSE’s recommended modification to Section 2(a)(vi) provides greater clarity without changing the meaning of the section. Therefore, we adopt this PSE recommendation. Finally, the reporting requirements as proposed are sufficiently enough to include Avista’s concept of smart grid as a “system of systems.”

26 **B. WAC 480-100-505(2)(b):** PSE proposes the addition of a cost-effectiveness test to the definition of smart grid project. PSE’s proposed language includes a statement that smart grid projects may not be cost-effective. Avista contends that a specific requirement to report on smart grid projects is not necessary.

27 *Commission Discussion.* PSE’s suggestion to add a cost-effectiveness test to the definition of smart grid project, while well-intentioned, is unnecessary. The proposed definition includes the phrase “a project designed to test the feasibility of smart grid technologies or customer acceptance of such.” This phrase encompasses cost-effectiveness. The objective of the reporting rule is to provide information gained from smart grid projects, so we can see no reason at this early stage for the rule to state as a general conclusion that smart grid projects may not be cost-effective.

28 We disagree with Avista’s contention that reporting on smart grid projects is unnecessary. The reports anticipated in the early years of smart grid technologies will give the Commission a better understanding of the importance of these technologies to the future of electrical service in the state of Washington.

29 **C. WAC 480-100-505(2)(c):** PSE notes that the list of “smart grid technologies” does not include enabling customer products and programs behind the electric meter or enabling distributed generation. PSE suggests language that refers back to Section 2(a).

30 *Commission Discussion.* We agree that smart grid technologies should properly include technologies that can enhance development of distributed generation and products and programs on the customers’ premises. 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.

31 **D. WAC 480-100-505(2)(d):** PSE asserts that it interprets the definition of “smart grid technology report” or “report” such that the utility is only required to submit a report describing technologies for which it possesses *both* implementation plans and an evaluation.

32 *Commission Discussion.* Subsection 2(d) does not limit the reporting requirement to smart grid technology for which the utilities have both an evaluation *and* an implementation plan. PSE’s interpretation is not correct. Electric utilities must report

on any smart grid technology that has been evaluated, whether accepted or rejected, is under current evaluation, or is the subject of an implementation plan.

- 33 **E. WAC 480-100-505(3):** Avista observes that the Smart Grid Investment Grant Program and the Smart Grid Demonstration Grant projects funded under the federal American Recovery and Reinvestment Act of 2009, Public Law 111-5, are still in the beginning stages. It contends that requiring the first smart grid report to be due in 2010 would be premature because the results of these federally supported programs will not yet be known. Avista recommends that 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.
- 34 ***Commission Discussion.*** The reporting rule as written is a prospective requirement intended to provide the Commission and the public with a timely forward look at a fast developing group of technologies. The proposed schedule allows for utilities to report both on projects they are undertaking and projects they have completed. We find that the public interest is best served by retaining the September 1, 2010, reporting date.
- 35 **F. WAC 480-100-505(4)(a):** PSE proposes that inclusion of the term “commercially available” would help refine the focus of the report. The language PSE proposes would require reporting on smart grid technologies only if the utility has both considered the technology for integration into its system and has completed a full evaluation of that technology. Avista recommends that a smart grid road map should be within the scope of the meaning of this section of the rule.
- 36 ***Commission Discussion.*** The term “full evaluation” does not appear in Section 4(a) of the proposed regulation. The intent of the reporting requirement is to include technologies the utility may be considering that are not yet fully commercially available. In fact, we intend the rule to be interpreted broadly and see it as requiring electric utilities to report both on technologies that are considered for integration into the utility’s system and to report on smart grid technologies the utility has considered even when its evaluations were brief.
- 37 We interpret the rule to provide sufficient latitude to allow a utility to use its smart grid road map as a frame work for the report, as Avista suggests.

- 38 **G. WAC 480-100-505(4)(b):** PSE suggests the inclusion of the phrase
“commercially available” to refine the focus of the report on mature technologies that
will be able to deliver value and to more closely align the report to existing integrated
resource planning rules.
- 39 ***Commission Discussion.*** We do not see the need to align the smart grid reporting
requirement to the integrated resource plan (IRP). Indeed, PSE submitted comments
opposing a smart grid planning requirement similar to the IRP rules. We decline to
adopt PSE’s suggested language and reiterate that our intent is for the reports to focus
broadly and prospectively on technologies and applications the utility has considered,
whether those technologies are mature or still in development.
- 40 **H. WAC 480-100-505(4)(c) and (d):** PSE asserts that a utility’s timeline and plans
should not preclude the utility from taking actions during the planning timeframe. In
addition, PSE remarks that the report of a utility’s plans and timeline should not bar
the utility from acting upon valuable smart grid opportunities that may emerge outside
of the details it has listed in the report.
- 41 ***Commission Discussion.*** The rule neither limits nor requires a utility’s future
actions. Indeed, it is our expectation that utilities will continually evaluate plans for
smart grid projects and to consider new opportunities that may prove more efficient
and more appropriate than plans previously included in a smart grid report. We
conclude that PSE’s recommended language is unnecessary.
- 42 **I. Confidentiality Protections:** Both PSE and Avista suggested language that
would expressly provide for the protection of commercially sensitive information as
well as information relating to the security of utility facilities.
- 43 ***Commission Discussion.*** The Commission’s regulations at WAC 480-07-160(2)(a)
already address the protection of confidential information. There is no need to
explicitly reference the regulation in this new rule.
- 44 **J. Potential Penalties:** PSE and Avista have suggested additional language that
would insulate utilities from being penalized for failing to implement smart grid
technologies that were included in plans contained in previous smart grid reports.

45 ***Commission Discussion.*** The purpose of the rule is to provide for reports that will inform the Commission and the public about how utilities have considered, are evaluating, and are planning to integrate smart grid technologies. A utility will, as always, bear the burden of showing that its actions and investments are prudent when those actions and investments are reviewed in a rate-making context. The information contained in smart grid reports required by the rule may be relevant in such reviews, but plans discussed in the reports neither limit nor require a utility's future actions. The added language suggested by PSE and Avista is unnecessary.

46 **K. Compliance Determination:** Avista proposed that the Commission make a formal determination that a utility's smart grid report complies with the reporting requirement.

47 ***Commission Discussion.*** Our discussion above makes clear that the purpose of the smart grid reports is to provide information. The reports neither limit nor require particular utility actions or investments. Similarly, in other sections, our rules require utility's to file information regarding such matters as annual operating costs (WAC 480-100-257) and reliability statistics and plans (WAC 480-100-398). The utilities are obligated to comply with these filing requirements, but there is no need, absent a complaint from commission staff or another party, for the Commission to determine formally whether each such filing complies with the relevant requirement. Avista's proposal might be appropriate if the smart grid reports were intended to determine definite utility actions, but that is not the case. We see no need for the rule to require formal determination of compliance.

48 **CHANGES FROM PROPOSAL:** The Commission adopts the proposal with the following changes from the text noticed at WSR # 10-01-196. WAC 480-100-505(2)(a)(iv) has been revised slightly with such revision not changing the original meaning of the section.

49 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the Commission determines that WAC 480-100-505 should be adopted to read as set forth in Appendix B, as a rule of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the Code Reviser.

ORDER

50 **THE COMMISSION ORDERS:**

51 The Commission adopts WAC 480-100-505 to read as set forth in Appendix B, as a rule of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of filing with the Code Reviser pursuant to RCW 34.05.380(2).

52 This Order and the rule set out below, after being recorded in the register of the Washington Utilities and Transportation Commission, shall be forwarded to the Code Reviser for filing pursuant to RCW 80.01 and RCW 34.05 and WAC 1-21.

DATED at Olympia, Washington, March 24, 2010.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION



JEFFREY D. GOLTZ, Chairman



PATRICK J. OSHIE, Commissioner



PHILIP B. JONES, Commissioner

Note: The following is added at Code Reviser request for statistical purposes:

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

APPENDIX A

Summary of Written Comments

APPENDIX B

WAC 480-100-505