

INVESTOR-OWNED UTILITIES' PROPOSED REVISIONS TO DRAFT RULES
(~~March 14~~May 18, 2007)

**ELECTRIC COMPANIES—ACQUISITION OF MINIMUM QUANTITIES OF
CONSERVATION AND RENEWABLE ENERGY
AS REQUIRED BY THE ENERGY INDEPENDENCE ACT**

WAC

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WAC 480-109-001 Purpose and scope. (1) The purpose of this chapter is to establish rules that electric utilities will use to comply with the requirements of the Energy Independence Act, Chapter 19.285.

WAC 480-109-002 Application of rules. (1) The rules in this chapter apply to any electric utility that is subject to the commission's jurisdiction under RCW 80.04.010 and chapter 80.28 RCW.

(2) Any affected person may ask the commission to review the interpretation of these rules by a utility by making an informal complaint under WAC 480-07-910, Informal complaints, or by filing a formal complaint under WAC 480-07-370, Pleading -- General.

(3) No exception from the provisions of any rule in this chapter is permitted without prior written authorization by the commission. Such exceptions may be granted only if consistent with the public interest, the purposes underlying regulation, and

applicable statutes. Any deviation from the provisions of any rule in this chapter without prior commission authorization will be subject to penalties as provided by law.

WAC 480-109-004 Additional requirements. (1) These rules do not relieve any utility from any of its duties and obligations under the laws of the state of Washington.

(2) The commission retains its authority to impose additional or different requirements on any utility in appropriate circumstances, consistent with the requirements of law.

WAC 480-109-006 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

WAC 480-109-007 Definitions. (1) "Annual retail revenue requirement" means the total revenue the commission authorizes a utility an opportunity to recover in Washington rates pursuant to a general rate proceeding or other general rate revision.

~~(2)~~ "Commission" means the Washington utilities and transportation commission.

~~(23)~~ "Conservation" means any reduction in electric power consumption resulting from increases in the efficiency of energy use, production, or distribution.

~~(3a)~~ "Achievable conservation" means cost-effective conservation resources or opportunities that can reasonably be acquired over each 10 year planning period, as specified in WAC 480-109-010, taking into account Conservation Council methodology on determining achievable conservation as well as technical and market considerations.

~~(b)~~ "Feasible conservation" has the same meaning as "achievable conservation" in ~~(2)(a)~~ above.

~~(c)~~ "Reliable conservation" means conservation resources or opportunities that can be reasonably depended upon to have the expected energy savings and costs projected in the ten year conservation potential required by RCW 19.285.040.

~~(4)~~ "Cost-effective" has the same meaning as defined in RCW 80.52.030.

~~(4)~~ "

~~(5)~~ "Conservation Council" means the Pacific Northwest electric power and conservation council.

~~(56)~~ "Customer" means a person or entity that purchases electricity for ultimate consumption and not for resale.

~~(67)~~ "Department" means the department of community, trade, and economic development or its successor.

(78) "Distributed generation" means an eligible renewable resource where the generation facility or any integrated cluster of such facilities has a generating capacity of not more than five megawatts.

(89) "Eligible renewable resource" means:

(a) Electricity from a generation facility powered by a renewable resource other than fresh water that commences operation after March 31, 1999, where: (i) The facility is located in the Pacific Northwest; or (ii) the electricity from the facility is delivered into Washington state on a real-time basis without shaping, storage, or integration services; or

(b) Incremental electricity produced as a result of efficiency improvements completed after March 31, 1999, to hydroelectric generation projects owned by a qualifying utility and located in the Pacific Northwest or to hydroelectric generation in irrigation pipes and canals located in the Pacific Northwest, where the additional generation in either case does not result in new water diversions or impoundments.

~~(9)~~
(c) Biodiesel fuel and biomass energy for the prorated share of non-old growth forest output.

~~(10)~~ "Integrated resource plan" or "IRP" means the filing made every two years by an electric utility in accordance with WAC 480-100-238, Integrated Resource Planning.

~~(11)~~ "Load" means the amount of kilowatt-hours of electricity delivered in the most recently completed year by a qualifying utility to its Washington retail customers.

~~(12)~~ "Nonpower attributes" means all environmentally related characteristics, exclusive of energy, capacity reliability, and other electrical power service attributes, that are associated with the generation of electricity from a renewable resource, including but not limited to the facility's fuel type, geographic location, vintage, qualification as an eligible renewable resource, and avoided emissions of pollutants to the air, soil, or water, and avoided emissions of carbon dioxide and other greenhouse gases.

~~(14)~~ "Pro Rata" means the calculation used to establish a minimum level for a conservation target based on a utility's projected ten year conservation potential.

~~(15)~~ "Pacific Northwest" has the same meaning as defined for the Bonneville power administration in section 3 of the Pacific Northwest electric power planning and conservation act (94 Stat. 2698; 16 U.S.C. Sec. 839a).

~~(16)~~ "Real Time Basis Without Shaping, Storage, or Integration Services" means that energy deliveries may not exceed the lesser of (a) the hourly scheduled delivery quantity, or (b) the actual generation of the facility integrated during the scheduled hour.

~~(17)~~ "Request for proposal" or "RFP" means the documents describing an electric utility's solicitation of bids for delivering electric capacity, energy, or capacity and energy, or conservation

~~(4518)~~ "Renewable energy credit" means a tradable certificate of proof of at least one megawatt-hour of an eligible renewable resource where the generation facility is not powered by fresh water, the certificate includes all of the nonpower attributes associated with that one megawatt-hour of electricity, and the certificate is verified by a renewable energy credit tracking system selected by the department. The term shall also include tradable certificates for fractions of one megawatt-hour of eligible renewable resource if the certificates are verified by a renewable energy credit tracking system selected by the Commission.

~~(4619)~~ "Renewable resource" means: (a) ~~Water~~water; (b) wind; (c) solar energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or tidal power; (g) gas from sewage treatment facilities; (h) biodiesel fuel as defined in RCW 82.29A.135 that is not derived from crops raised on land cleared from old growth or first-growth forests where the clearing occurred after December 7, 2006; and (i) biomass energy based on animal waste or solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include (i) wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; (ii) black liquor byproduct from paper production; (iii) wood from old growth forests; or (iv) municipal solid waste.

~~(17) "Retail Revenue Requirement" means the normalized retail revenue supported by the general tariffs approved in a utility's most recent general rate case.~~

~~(4820)~~ "Utility" means an electrical company that is subject to the commission's jurisdiction under RCW 80.04.010 and chapter 80.28 RCW.

~~(4921)~~ "Year" means the twelve-month period commencing January 1st and ending December 31st.

WAC 480-109-010 Conservation Resources. (1) Beginning January 1, 2010, and every two years thereafter, each utility must project its cumulative ten year conservation potential.

(a) This projection need only consider conservation resources that are cost-effective, reliable and feasible.

(b) This projection ~~should~~ must be derived from and reasonably consistent with ~~the~~one of two sources:

(i) The utility's most recent IRP ~~the time of the projection and~~, including any information learned in its subsequent ~~RFP~~resource acquisition process, or the utility must document the reasons for any differences.

~~(e)~~ When developing this projection, utilities must use methodologies that are consistent with those used by the ~~council~~Conservation Council in its most recent regional

power plan. A utility may, with full documentation on the ~~rational~~rationale for any modification, alter the ~~council's~~Conservation Council's methodologies to better fit the attributes and characteristics of its service territory.

(ii) The utility's proportionate share, developed as a percentage of its retail sales, of the Conservation Council's current power plan targets for the state of Washington.

(c) A utility may use a stakeholder advisor group to review the methodologies and assumptions used to develop its projected ten year conservation potential.

(2) Beginning January 1, 2010, and every two years thereafter, each utility must establish a biennial conservation target.

(a) The biennial conservation target shall identify all achievable conservation opportunities.

(b) The biennial conservation target shall be no lower than a pro-rata share of the utility's ten year cumulative achievable conservation potential. Each utility must fully document how it pro-rated its ten year cumulative achievable conservation potential to determine the minimum level for its biennial conservation target.

(3) On or before October 1, 2009, and every two years thereafter, each utility must file with the commission a report identifying its ten year achievable conservation potential and its biennial conservation target. This report must discuss identify the source of the ten year projection, e.g. Integrated Resource Plan & Acquisition Process or Conservation Council Plan, and the determination of the utility's pro rata share of the ten year projection included in the two year target. If the utility is using its Integrated Resource Plan and related information in the assessment of its ten year conservation potential the filing must include the technologies, data collection, processes, procedures and assumptions the utility used to develop these figures. In addition, this report must describe and support any changes in assumptions or methodologies used in the utility's most recent ~~IRP~~Integrated Resource Plan or the ~~council's~~Conservation Council's power plan.

(4) Commission staff or other interested parties may file written comments regarding a utility's projected achievable conservation potential or its biennial conservation target within thirty days of the utility filing.

(a) If the utility's projected conservation potential is in line with its conservation assessment source, e.g., IRP forecast or Conservation Council Power Plan assessment, and the filed biennial target represents 19% or more of the 10 year conservation potential, the Commission may approve the filing as presented.

(b) After reviewing ~~any~~ written comments, the commission ~~will decide whether to~~ may hear oral comments regarding the utility's filing at a subsequent open meeting.

(~~b~~c) The commission, considering any written or oral comments, may determine that additional scrutiny is warranted of a utility's projected ten year conservation potential or biennial conservation target. If the commission determines that additional review is needed, the commission will establish an expedited adjudicative proceeding or other process to fully consider appropriate revisions and issue a decision determining the target before the year begins during which the target applies.

- (5) A utility shall be considered in compliance if it achieves energy savings in a range of 90% to 100% from the biennial target established.

WAC 480-109-020 Renewable Resources. (1) Each qualifying utility shall ~~meet~~ the following annual targets:

~~—— (a) At least three percent of its load must be served by renewable resources beginning January 1, 2012, and each year thereafter through December 31, 2015;~~

~~—— (b) At least nine percent of its load must be served by renewable resources beginning January 1, 2016, and each year thereafter through December 31, 2019; and~~

~~—— (c) At least fifteen percent of its load must be served by renewable resources beginning January 1, 2020, and each year thereafter.~~

~~—— (2) To comply with this requirement utilities may use eligible renewable resources, or acquire equivalent renewable energy credits, or a combination of both, to meet the two following annual targets:~~

~~—— (a) At least three percent of its load by January 1, 2012, and each year thereafter through December 31, 2015;~~

~~—— (b) At least nine percent of its load by January 1, 2016, and each year thereafter through December 31, 2019; and~~

~~—— (c) At least fifteen percent of its load by January 1, 2020, and each year thereafter.~~

~~—— (2) To comply with this requirement, utilities may rely on average expected output from intermittent or other eligible renewable resources, equivalent renewable energy credits, or a combination of the two.~~

~~—— (3) A utility, when first including an intermittent resource, shall deem whether it will rely on the actual output of the resource for calculating compliance in a given year, or the average expected output of the project. Where average expected output is deemed, the generation value for the first year shall be the expected annual average output of the project, which was estimated prior to project development and included in the prudency filing approved by the Commission. After the first year, but prior to the compilation of five complete years of actual operating history, the average expected output for each year will consist of the actual plant performance for the years available, weighted by the estimated average output for that period in the first five years where no history is available. In each year the utility chooses to rely on the average expected output, all output from the resource that is above the average expected output for that~~

year shall be ineligible to be sold in the market as a renewable resource, and all associated renewable energy credits shall be deemed immediately retired, and unavailable for exchange or sale.

(3) A renewable resource within the Pacific Northwest may receive integration, shaping, storage or other services from sources outside of the Pacific Northwest and remain eligible to count towards a utility's renewable resource target.

~~_____ (4) A biomass based resource may only consume a *de minimis* amount of wood from old growth forests to remain an eligible renewable resource.~~

_____ (4) In meeting the annual targets of this subsection, a qualifying utility shall calculate its annual load based on the average of the utility's load for the previous two years.

_____ (5) (a) Each utility shall develop an implementation plan for meeting the requirements of the renewable portfolio standard program. The plan will be filed with the Commission and revised and updated at least once every two years.

_____ (b) An implementation plan must at a minimum contain:

(i) Annual targets for acquisition and use of eligible renewable resources and renewable energy credits; and

(ii) The estimated cost of meeting the annual targets, including the cost of transmission, the cost of firming, shaping and integrating eligible renewable resources, and the cost of acquiring renewable energy certificates.

_____ (c) The Commission shall acknowledge the implementation plan no later than six months after the plan is filed with the Commission. The Commission may acknowledge the plan subject to conditions specified by the Commission.

_____ (d) The Commission shall adopt rules [placeholder for discussion: (i) establishing requirements for the content of implementation plans; (ii) establishing the procedure for acknowledgement of implementation plans under this section, including provisions for public comment; and (iii) providing for the integration of the implementation plan with the integrated resource planning guidelines established by the Commission.]

_____ (e) The implementation plan may include procedures that will be used by the electric company to determine whether the costs of constructing a facility that generates electricity from a renewable energy source, or the costs of acquiring renewable electricity or renewable energy certificates, are consistent with the standards of the Commission relating to least-cost, least-risk planning for acquisition of resources.

_____ (6) An electric company shall develop and file with the Commission an initial implementation plan no later than January 1, 2011.

WAC 480-109-030 Alternatives to the renewable resource requirement. (1)

Instead of meeting its annual renewable resource target ~~of~~in WAC 480-109-020, a utility may make one of three demonstrations.

(a) A utility may demonstrate that:

(i) Its weather-adjusted load for the previous three years did not increase.

(ii) All new or renewed ownership or purchases of electricity from non-renewable resources other than daily spot purchases were offset by equivalent renewable energy credits.

(iii) It invested at least one percent of its total annual retail revenue requirement that year on eligible renewable resources and/or renewable energy credits.

(b) A utility may invest at least four percent of its total annual retail revenue requirement on the incremental costs of eligible renewable resources and/or the cost of renewable energy credits. If a utility elects to invest more than four percent, the incremental cost above the cost of complying with this chapter will be recoverable pursuant to a prudence review. Eligible incremental costs shall be calculated at the time the utility commits to acquire the renewable resource. For purposes of meeting the incremental costs, a utility may include:

(i) the levelized incremental costs defined as the levelized difference between (a) the delivered portfolio cost with the eligible renewable resource and (b) the delivered portfolio cost with a reasonably available nonrenewable resource. The portfolio analysis used will be reasonably consistent with principles used in the utility's resource planning and acquisition analyses;

(ii) the cost of acquired renewable energy credits;

(iii) penalty payments as described in WAC 480-109-050(4)(a) when the utility demonstrates the cost of the penalty is less than the prevailing cost of renewable energy credits or eligible renewable resources, and

(iv) all other prudently incurred costs;

(c) A utility may demonstrate that events beyond its reasonable control that could not have been reasonably anticipated or ameliorated prevented it from meeting the renewable energy target. ~~Such events may include weather-related damage, mechanical failure, strikes, lockouts, or actions of a governmental authority that adversely affect the generation, transmission, or distribution of an eligible renewable resource owned by or under contract to a qualifying utility.~~

WAC 480-109-040 Annual reporting requirements. (1) On or before June 1, 2012, and annually thereafter, each utility must file a report with the Commission and the

Department regarding its progress in meeting its conservation and renewable resource targets during the preceding year.

(a) Utilities must include in this report conservation expenditures, the expected and actual gross electricity savings from conservation, i.e. that savings will be measured using actual program participation levels tracked by each utility, but that per unit savings will not be retroactively adjusted for the results of program evaluation studies or changes to regionally accepted deemed evaluation studies completed after the two-year target was set, the utility's annual load for the prior two years, the megawatt-hours needed to meet the annual renewable energy target, the amount of megawatt-hours of each type of eligible renewable resource acquired, the type and amount of renewable energy credits acquired, the total annual investment in the incremental cost of eligible renewable resources and renewable energy credits, and the ratio of this investment relative to the utility's total annual retail revenue requirement.

(b) This report must state if the utility is using one of the alternative compliance mechanisms provided in 480-109-030 WAC instead of meeting its renewable resource target. Utility's A Utility using an alternative compliance mechanism must include sufficient data, documentation and other information in its report to demonstrate that it qualifies to use that alternative mechanism.

(2) Commission staff or other interested parties may file written comments regarding a utility's report within thirty days of the utility filing.

(a) After reviewing any written comments, the commission will decide whether to hear oral comments regarding the utility's filing at a subsequent open meeting.

(b) The commission, considering any written or oral comments, may determine that additional scrutiny of the report is warranted. If the Commission determines that additional review is needed, the Commission will establish an expedited adjudicative proceeding or other process to fully consider appropriate revisions.

(3) Each utility shall submit its final report to the department.

(4) All current and historical reports required in subsection (1) of this section shall be available to a utility's customers.

WAC 480-109-050 Administrative penalties. (1) A utility shall pay an administrative penalty in the amount of fifty dollars for each megawatt-hour of shortfall in meeting its energy conservation target established in WAC 480-109-010, or its renewable energy target established in WAC 480-109-020, or one of the three alternatives to meeting the renewable target provided in WAC 480-109-030. The commission will adjust this penalty annually, beginning in 2007, to reflect changes in the

gross domestic product-implicit price deflator, as published by the bureau of economic analysis of the United States department of commerce or its successor.

(2) The commission will use each utility's annual report, filed in accordance with 480-109-040 WAC, as the basis for determining whether to assess administrative penalties.

(3) Payment of administrative penalties:

(a) Administrative penalties associated with failure to achieve a conservation target are due within 15 days of commission action on the utility's annual report.

(b) The commission will use the following process to collect administrative penalties associated with a utility's failure to achieve its renewable resource target:

(i) At the conclusion of the review of a utility's year 1 annual report, the commission will determine, whether that utility was short in meeting its renewable resource target.

(ii) Through December 31 of year 2, the utility may acquire additional renewable energy credits to reduce or eliminate that shortfall.

(iii) The utility, in its year 2 annual report, must document the amount of renewable energy credits it acquired, if any, to offset the utility's shortfall in meeting its renewable energy target identified in its year 1 annual report.

(iv) The commission will update the utility's shortfall in meeting its year 1 renewable resource target during the review of the utility's year 2 annual report.

(v) Administrative penalties associated with failure to achieve the year 1 renewable resource target are due within 15 days of the commission's final action on the utility's year 2 annual report.

(4) A utility may request to defer the cost of any administrative penalty assessed in subsection (1) for later recovery in electric rates. A utility seeking such recovery must provide a full accounting of the reasons for the utility's failure to either meet the energy conservation or renewable energy targets, or one of the provided compliance alternatives provided in WAC 480-109-030.

(a) A utility may recover penalty payments when the utility demonstrates the cost of the penalty is less than the prevailing cost of renewable energy credits or eligible renewable resources.

(b) When assessing a request for cost recovery, the Commission will consider the intent of the Energy Independence Act, other laws governing Commission actions, policies and precedents of the Commission, and the Commission's responsibility to act in the public interest.

(5) A utility that pays an administrative penalty under subsection (4), must notify its retail electric customers within three months of incurring a penalty stating the size of the penalty and the reason it was incurred.

(6) A utility may seek mitigation before the commission of the penalty for failure to meet its biennial conservation savings target, if the utility can demonstrate that a significant event occurred, beyond the utility's control (such as a local economic recession or major natural or manmade disaster) that significantly impacted customer participation in its conservation programs.

WAC 480-109-060 Cost Recovery. (1) A utility shall be permitted to recover all prudently incurred costs associated with compliance with the renewable portfolio standard, including the costs of purchasing energy from eligible renewable resources, owning eligible renewable resources, including but not limited to costs related to development, purchase of rights, land or equipment and capital construction, purchasing renewable energy credits, interconnection costs, costs associated with using physical or financial assets to integrate, firm or shape eligible renewable energy sources to meet retail electricity needs, and other costs associated with transmission and delivery of eligible renewable resources to retail electricity consumers.

(2) The Commission shall permit all prudently incurred costs, e.g., capital costs, power purchase costs, fixed costs, variable costs, and offsets to costs, e.g., production tax credits, to be passed through to customers at the same time.

(3) A utility may account for and defer for later consideration by the commission costs incurred in connection with acquisitions of eligible renewable resources to meet renewable energy standard, including operating and maintenance costs, depreciation, taxes, and cost of invested capital. The deferral begins with the date on which the power plant begins commercial operation or the effective date of the power purchase agreement and continues for a period not to exceed twenty-four months,; provided that if during such period the company files a general rate case or other proceeding for the recovery of such costs, deferral ends on the effective date of the final decision by the commission in such proceeding. Creation of such a deferral account does not by itself determine the actual costs of the eligible renewable resource, whether recovery of any or all of these costs is appropriate, or other issues to be decided by the commission in a general rate case or other proceeding for recovery of these costs.