

July 26, 2010

VIA ELECTRONIC FILING

Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250

Attention: David W. Danner
Executive Director and Secretary

**RE: UE-100865 Rulemaking to Implement Revisions to Greenhouse Gas
Emissions Performance Statute - Comments**

Dear Mr. Danner:

PacifiCorp, d.b.a. Pacific Power (PacifiCorp or Company) submits the following comments in accordance with the Washington Utilities and Transportation Commission's (Commission) Notice of Opportunity to File Written Comments (Notice) issued in Docket UE-100865 on June 25, 2010. The Notice includes proposed revisions to the Commission's greenhouse gas emissions performance standard rules contained in WAC 480-100-405, -415, -425 and -435 (Discussion Draft) to address revisions to RCW 80.80 regarding greenhouse gas emissions. Included with these comments as Attachment A is a redlined version of the proposed revisions indicating PacifiCorp's recommended changes.

As an initial matter, this rulemaking should consider the extent of the Commission's and the Washington Department of Ecology's (Department) extraterritorial authority to implement and enforce the emissions performance standard as it relates to power plants located outside the state.

WAC 480-100-405

The Discussion Draft includes changes to several definitions to conform to amendments to RCW 80.80.010, enacted with the passage of House Bill 2129 (HB 2129) in 2009. The Company notes two items for comment. First, the Discussion Draft adds a statement to WAC 480-100-405(2)(d), the definition of "long-term financial commitment," to exclude long-term financial commitments with the Bonneville Power Administration (BPA). The Company notes that HB 2129 amended RCW 80.80.040 to add a new subsection (2) to indicate that the chapter does not apply to long-term financial commitments with BPA.

To avoid potential confusion over the differences in the definition of "long-term financial commitment" contained in the statute versus the definition contained in the rules, the

Company encourages the Commission to consider moving the proposed revision from WAC 480-100-405(2)(d) to WAC 480-100-405(1).

Second, in proposed WAC 480-100-405(2)(g), the Discussion Draft proposes to expand the definition of power plant to include facilities located outside of the state. As the Commission is aware, the Company is a multi-state integrated utility serving customers in six Western states, including California, Idaho, Oregon, Utah, Washington and Wyoming. This definitional change raises a significant question as to the Commission's and/or the Department's ability to regulate facilities located outside the state. To help provide a level of regulatory certainty, the Company encourages the Commission to provide the opportunity for the parties to this proceeding to openly discuss how the Commission and Department interpret their extraterritorial authority to implement and enforce the state's emissions performance standards as it relates to facilities located outside the state.

WAC 480-100-415

The Draft Discussion includes WAC 480-100-415(3)(a)(iii) and (3)(b)(iii), which requires applicants to provide “[s]uch other information as is available concerning the exhaust emissions characteristics of the plant including total annual pounds of greenhouse gas from each power plant.” This requirement is vague and potentially unachievable. While it is reasonable to request the total annual pounds of greenhouse gas from each power plant, the Company is unable to determine how to provide “such other information as is available” describing exhaust emissions characteristics of the plant, as the Company may not be aware of all available information or whether such information must relate to the plant directly or indirectly. The Company encourages the Commission to consider in this rulemaking the appropriate scope for the type and source of information that may be supplied in response to these rule provisions.

WAC 480-100-425

At this time, the Company has no comments on the proposed revisions to this section but reserves the right to provide comments during the course of this proceeding if the need arises.

WAC 480-100-435

At this time, the Company has no comments on the proposed revisions to this section but reserves the right to provide comments during the course of this proceeding if the need arises.

PacifiCorp appreciates the opportunity provide comments. The Notice does not contain next steps for this proceeding. The Company suggests that it may be beneficial to allow for reply comments or other opportunities to discuss the issues. If you have any questions regarding these comments, please contact Cathie Allen, Regulatory Manager, (503) 813-5934.

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Sincerely,

A handwritten signature in black ink that reads "Andrea L. Kelly" followed by a stylized flourish.

Andrea L. Kelly

Vice President, Regulation

Attachment A

Docket UE-100865
Discussion Draft

Amend

WAC 480-100-405

Electrical company generation resource compliance with the greenhouse gases gas emissions performance standard. (1) No electrical company may enter into a long-term financial commitment after June 30, 2008, for the supply of baseload generation unless such generation complies with the greenhouse gases gas emissions performance. Electrical companies bear the burden to prove compliance with the greenhouse gases gas emissions performance standard under the requirements of WAC 480-100-415 or as part of a general rate case. For electrical companies that fail to carry their burden of proof, the commission may disallow recovery of some or all costs in rates, impose penalties, or take such other action as is consistent with law. Electrical companies seeking to prove compliance with the greenhouse gases gas emissions standard as part of a general rate case must submit all of the information specified in WAC 480-100-415. This definition chapter does not include apply to any long-term financial commitment with the Bonneville power administration.

(2) The following definitions apply for purposes of this section, WAC 480-100-415, 480-100-425, and 480-100-435:

(a) "Baseload electric generation" means electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least sixty percent.

(b) "Electricity from unspecified sources" means electricity that is to be delivered in Washington pursuant to a long-term financial commitment entered into by an electrical company and whose sources or origins of generation and expected average annual deliveries cannot be ascertained with reasonable certainty.

(c) "Greenhouse gases gas emissions performance standard" means the standard established in RCW 80.80.040, WAC 173-407-120 and 173-407-130, and the verification and measurement procedures contained in WAC 173-407-140, 173-407-230, and 173-407-300.

(d) "Long-term financial commitment" means either a new ownership interest in baseload electric generation or an upgrade to a baseload electric generation facility; or a new or renewed contract for baseload electric generation with a term of five or more years for provision of retail power or wholesale power to end-use customers in this state. ~~This definition does not include any long-term financial commitment with the Bonneville power administration.~~

(e) "New ownership interest" means a change in the ownership structure of a baseload power plant or a cogeneration facility or the electrical generation portion of a cogeneration facility affecting at least:

- (i) Five percent of the market value of the power plant or cogeneration facility; or
- (ii) Five percent of the electrical output of the power plant or cogeneration facility.

The above thresholds apply to each unit within a multiunit generation facility. A direct or indirect change in ownership of an electrical company does not constitute a new ownership interest in baseload electric generation.

(f) "Plant capacity factor" means the ratio of the electricity produced during a given time period, measured in kilowatt hours, to the electricity the unit could have produced if it had been operated at its rated capacity during that period, expressed in kilowatt hours.

(g) "Power plant" means a facility for the generation of electricity that is permitted as a single plant by ~~the energy facility site evaluation council or a local jurisdiction.~~ a jurisdiction inside or outside the state.

(h) "State" means the State of Washington.

(hi) "Upgrade" means any modification made for the primary purpose of increasing the electric generation capacity of a baseload electric generation facility or unit. Upgrade does not include:

(ii) Routine or necessary maintenance;

(iii) Installation of emission control equipment;

(~~iii~~iv) Installation, replacement, or modification of equipment that improves the heat rate of the facility; or

(iv) Installation, replacement, or modification of equipment for the primary purpose of maintaining reliable generation output capability that does not increase the heat input or fuel usage as specified in existing generation air quality permits as of July 22, 2007, but may result in incidental increases in generation capacity.

Amend

WAC 480-100-415

Electrical company applications for commission determination outside of a general rate case of electric generation resource compliance with greenhouse gas emissions performance standard. (1) An electrical company may apply for determination by the commission outside of a general rate case of whether an electric generation resource it proposes to acquire as a long-term financial commitment complies with the greenhouse ~~gases~~ gas emissions performance standard, including whether the resource is baseload electric generation, ~~whether the company has a need for the resource, and whether the proposed resource is appropriate to meet that need.~~ Such an application must include the following information: No such application may be made if the long-term financial commitment includes more than twelve percent of electricity from unspecified sources.

(2) If an electrical company submits an application under this section regarding ~~if a long-term financial commitment with that includes twelve percent or less of electricity from unspecified sources that~~ multiple power plants, each power plant will be considered individually in determining:

(a) Annualized plant capacity factor;

(b) Net emissions;

(c) Compliance with RCW 80.80.040(1) except as provided in RCW 80.80.040(3), 80.80.040(4), and 80.80.040(5).

(3) Any application under this section must include the following information:

~~(a) The electrical company's most recent integrated resource plan filed under WAC 480-100-238 and a description of how the proposed electric generation resource meets the resource need, resource investment strategies and other factors identified in the integrated resource plan.~~

~~(b) If the proposed electric generation resource is a specific power plant located in the state:~~

~~(i) The plant technology, design, fuel and fuel consumption;~~

~~(ii) Any site certificate or other permits necessary for operation of the power plant, including, for power plants located in Washington,~~

~~any determination made by the department of ecology or the energy facility site evaluation council regarding compliance with the greenhouse gases gas emissions performance standard;~~

~~(iii) Such other information as is available concerning the exhaust emissions characteristics of the including total annual pounds of greenhouse gas from each power plant.; and~~

~~(iv) The expected cost of the power generation to be acquired from the plant.~~

(b) If the proposed electric generation resource is a specific power plant located outside the state:

(i) The plant technology, design, fuel and fuel consumption;

(ii) Any site certificate or other permits necessary for operation of the power plant;

(iii) Such other information as is available concerning the exhaust emissions characteristics of the plant including total annual pounds of greenhouse gas from each power plant.

(iv) Documentation of emissions verifications and measurement procedures which show consistency with the state's emissions performance standard.

(c) If the proposed electric generation resource is a power purchase contract including contracts for delivery of electricity from unspecified sources:

(i) The proposed contract;

(ii) The technology, location, design, fuel and fuel consumption of any power plant, or plants, identified in the contract as the source of the contracted power deliveries, including such information as is knowable regarding the proportionate share each power source, or type of plant, will contribute to deliveries on an annual basis over the life of the contract;

(iii) Such other information as is available concerning the exhaust emissions characteristics of the plant(s) supporting contracted power deliveries; and including total annual pounds of greenhouse gas from each power plant.

~~(iv) The contract term and expected cost of the power to be acquired through the power purchase agreement.~~

(24) The commission will may consider the application pursuant to chapter 34.05 RCW (Part IV) following the procedures established in chapter 480-07 WAC, but the commission .-The schedule for a proceeding under this subsection will take into account both:

—(a) The needs of the parties to the proposed resource acquisition or power purchase agreement for timely decisions that allow transactions to be completed; and

~~—(b) The procedural rights to be provided to parties in chapter 34.05 RCW (Part IV), including intervention, discovery, briefing, and hearing.~~

~~—(3) The commission will not decide in any application proceeding under this section, issues involving the actual costs to construct and operate the selected resource, cost recovery, or other issues reserved by the commission for decision in a general rate case or other proceeding authorized by the commission for recovery of the resource or contract costs.~~

Amend

WAC 480-100-425

Electrical company applications for exemption from the greenhouse gas emissions performance standard.

(1) An electrical company may apply to the commission for a case-by-case exemption from the greenhouse ~~gases~~ gas emissions performance standard to address:

(a) Unanticipated electric system reliability needs; or

(b) Extraordinary cost impacts on utility ratepayers; or

~~(c) Catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances.~~

(2) An electrical company's application under subsection (1)(a) of this section must include:

(a) A description of the electric system reliability needs including an explanation of why these needs were not anticipated, and why they cannot be addressed with other baseload electric generation that complies with the greenhouse ~~gases~~ gas performance standard.

(b) The estimated duration of the exemption necessary to address the reliability need.

(c) A description of any long-term financial commitment the company proposes to enter into to address the reliability need including all of the information specified in WAC 480-100-415.

(3) An application under subsection (1)(b) of this section must include:

(a) Identification of the long-term financial commitment that will result in extraordinary costs to ratepayers.

(b) Criteria used by the applicant to judge cost as extraordinary.

(c) A description of the extraordinary cost including:

(i) Total system, jurisdictional and per-customer cost impact.

(ii) Company proposed alternatives, if any, to address the extraordinary costs.

(iii) The estimated duration of the exemption necessary to address the extraordinary cost impact.

~~(34) An electrical company's application under subsection (1)(~~bc~~) of this section must include:~~

~~(a) A description of the catastrophic event or threat of significant financial harm and an explanation of why the circumstances from which the event or harm arose were not foreseen including:~~

~~(i) An explanation of why the circumstances cannot be addressed with baseload generation that complies with the greenhouse ~~gases~~ gas performance standard;~~

(ii) What the anticipated negative financial impact would be to the company if such exemption were denied;

(b) The estimated duration of the exemption necessary to address the catastrophic event or threat of significant financial harm.

(c) A description of any long-term financial commitment the company proposes to enter into to address the catastrophic event or threat of significant financial harm including all of the information specified in WAC 480-100-415.

(45) An electrical company may propose recovery of costs associated with an application under this rule as part of a general rate case.

Amend

WAC 480-100-435

Electrical company deferral of costs associated with long-term financial commitments —

Notice and reporting. (1) An electrical company may account for and defer for later consideration by the commission costs incurred in connection with a long-term financial commitment for:

(a) baseload-Baseload electric generation, or

(b) An eligible renewable resource as defined in RCW 19.285.030 that the electrical company owns or has entered a power purchase agreement for with a term of five or more years.

(2) Deferred costs may includeing operating and maintenance costs, depreciation, taxes, and cost of invested capital.

(23) An electrical company deferring costs under subsection (1) of this section must:

(a) Notify the commission within ten business days of its intent to defer such costs; and

(b) File quarterly with the commission a report documenting the balances of costs deferred in a form specified by the commission.

(34) 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 long-term financial commitment, 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 authorized by the commission for recovery of these costs.