

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Rulemaking for the Energy Independence Act, WAC 480-109, Considering Revisions To Comply with the Clean Energy Transformation Act.

DOCKET UE-190652

THIRD COMMENTS OF THE ENERGY PROJECT REGARDING PROPOSED RULES (CR-102)

I. INTRODUCTION

1 The Energy Project (TEP) files this third set of comments in response to the Commission’s Notice of Opportunity To File Written Comments On Proposed Rules, served on June 5, 2020, the revised CR-102 Notice of Proposed Rulemaking (WSR 20-13-014), and the revised Proposed Rules served June 5, 2020. The Energy Project filed Initial Comments in this docket on November 4, 2019 (Initial Comments), in response to the CR-101 and Second Comments on May 1, 2020 (Second Comments), in response to the original CR-102 and initial Proposed Rules.

2 These comments identify one concern with the Proposed Rules issued on June 5, 2020, relating to new language appearing in the low-income conservation rule.

II. COMMENTS

A. Definition of Low-income – Proposed WAC 480-109-060(22).

3 The Energy Project supports the change in the most recent Proposed Rules to include 80 percent of Area Median Income (AMI) as a metric in the definition of low-income. This approach is consistent with the statutory language in RCW 19.405.020(25) and will help prioritize higher energy burden households. Using the AMI and Federal Poverty Level metrics

together will help promote more equitable distribution of benefits across different areas of the state.

B. Low-income Conservation – Proposed WAC 480-109-100(10)(a).

4 Low-income conservation in the context of the Energy Independence Act (EIA) is primarily addressed in the Commission’s rules in WAC 480-109-100(10). As indicated in our prior comments, TEP supports the amendment of WAC 480-109-100(10)(a) to state that a utility “must fully fund” the specified low-income conservation measures, a change from the prior discretionary language. Requiring funding of these measures is consistent with the Clean Energy Transformation Act’s (CETA’s) goal of expanding energy assistance to more customers over time, and with the fact that energy efficiency is defined as a form of energy assistance under the Act.

5 The Energy Project also supports the inclusion of the language in this subsection regarding “utility specific avoided costs.” The Energy Project interprets the language as effectively broadening the types of measures which would be cost-effective and therefore require funding under the rule consistent with the utility’s obligation to pursue all cost-effective conservation under the EIA and to expand energy assistance under CETA. The addition of the word “either” to the first sentence in the most recent amendment helpfully clarifies that measures must be funded if they are cost-effective based on *either* the Weatherization Manual or the utility-specific avoided cost method.

6 The addition of the new final sentence to subsection 10(a) may raise an issue, however.

The new sentence states:

“For purposes of this subsection, “fully fund” may include the agency leveraging other funding sources, in combination with utility funds, to fund low-income conservation projects.”

7 The Energy Project is concerned that this language could be interpreted to allow a utility to decline to fund a project that was otherwise cost-effective under the rule simply by asserting that, in its view, the agency could or should be leveraging other funds for a project. While it is not uncommon for agencies to use multiple funding sources for projects, this wording could introduce confusion about agency discretion and ability to manage projects. It is also unclear who would decide if other funds were or were not available to be leveraged. To TEP’s knowledge, this is not currently a problem with low-income projects, so it would be preferable not to introduce new issues of this type.

8 This language was originally proposed by Puget Sound Energy. The rationale provided by the Company for the new language was “to clarify that the requirement to fully fund conservation measures *still allows the utility or implementing agency to leverage other funding sources* to pay for the conservation project.”¹ If the purpose of the additional language is simply to establish that there is no prohibition against the use of other leveraged funds for low-income projects, TEP has less of a concern. To remove confusion, TEP recommends that the new second sentence of subsection (10)(a) be amended to read:

“For purposes of this subsection, “fully fund” ~~may include~~ does not prohibit the agency leveraging other funding sources, in combination with utility funds, to fund low-income conservation projects.”

¹ Comments of Puget Sound Energy in Response to Notice of Proposed Rulemaking (CR-102), May 1, 2020, at 3 (emphasis added).

9 If the Commission does not wish to modify the language in the Proposed Rule at this stage of the rulemaking, TEP respectfully requests that the adoption order include a statement clarifying that the intent of the language is to indicate that the agency is not prohibited from leveraging other funds, in combination with utility funds, to fund low-income conservation projects, and that the language is not intended to allow a utility to decline to fund a project on the basis that leveraged funds should be available.

III. CONCLUSION

10 The Energy Project commends the Commission’s effective and thorough consideration in this docket of the impact of CETA on the existing EIA rules and respectfully requests consideration of the issue raised in these comments.

11 Respectfully submitted, July 6, 2020.