

**BEFORE THE WASHINGTON UTILITIES  
AND TRANSPORTATION COMMISSION**

**DOCKET NO. UE-061895**

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**ATTACHMENT A  
to the Comments of the NW Energy Coalition,  
the Northwest Energy Efficiency Council  
and the Renewable Northwest Project**

**July 9, 2007**

**DRAFT**  
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**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, RCW 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 RCW 80.28.

(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 480-109-003 Exemptions from rules in chapter 480-109 WAC.** The commission may grant an exemption from the provisions of any rule in this chapter in the same manner and consistent with the standards and according to the procedures set forth in WAC 480-07-110 (Exemptions from and modifications to commission rules; conflicts involving rules).

**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) “Acquire” means to own or purchase or to contractually commit to own or purchase.

(2) “Annual retail revenue requirement” means the normalized retail revenue supported by the utility’s currently approved tariffs.<sup>1</sup>

(3) “Commission” means the Washington utilities and transportation commission.

(4) “Compliance Deficiency” means the amount (in megawatt-hours) by which a utility failed to achieve the annual renewable energy and conservation targets by the statutory deadline, not otherwise excused by Commission determination of the applicability of an alternative compliance mechanism.

(5) “Conservation” means any reduction in electric power consumption resulting from increases in the efficiency of energy use, production, or distribution.

(6) “Cost-effective” has the same meaning as defined in RCW 80.52.030.

(7) “Council” means the Pacific Northwest electric power and conservation council.

(8) “Customer” means a person or entity that purchases electricity for ultimate consumption and not for resale.

(9) “Department” means the department of community, trade, and economic development or its successor.

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<sup>1</sup> Our explanatory comments include a request for clarification on this definition if “normalized” is not referring to load and weather normalization.

(89) "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. An integrated cluster refers to co-located projects owned or controlled by the same developer that feed into the same substation. If several 5 MW or smaller projects are located in the same immediate area but are owned or controlled by different developers, each qualifies as a separate, independent distributed generation project.

(910) "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.

(4011) "High-efficiency cogeneration" means a cogeneration facility with a useful thermal output of no less than 33% of the total energy output, under normal operating conditions. Electrical output will be calculated as the kwh output of the facility over a period of time, converted to BTUs using the conversion factor of 3413 BTUs/kwh. Total energy output shall be calculating by summing all useful energy outputs of the cogeneration facility over the same period of time expressed in BTU units.

(4412) "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.

(4213) "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.

(14) "NPCC" means the Pacific Northwest electric power and conservation council.

(4315) "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.

~~(1416)~~ "Pro rata" means in equal proportion. ~~means the calculation used to establish a minimum level for a conservation target based on a utility's projected ten-year conservation potential.~~

~~(1517)~~ "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).

~~(1618)~~ "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

~~(1719)~~ "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.

~~(1820)~~ "Renewable resource" means: (a) 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.

(21) "Target" means a point estimate.

(22) "Underperformance Shortfall" means the amount (in megawatt-hours) by which the eligible renewable resources and/or renewable energy credits relied upon by a utility to comply with an annual renewable target failed to actually perform during the relevant time period. The relevant time period for eligible renewable resource performance will be the compliance year. The relevant time period for renewable energy credits will be the compliance year, one year before the compliance year, or one year subsequent to the compliance year.

(23) "Use" means to have available through ownership of a generating facilities or contract to purchase output from a generating facility.

~~(1924)~~ "Utility" means an electrical company that is subject to the commission's jurisdiction under RCW 80.04.010 and chapter 80.28 RCW.

~~(2025)~~ "Year" means the twelve-month period commencing January 1st and ending December 31st.

**WAC 480-109-010 Conservation Resources.** (1) Beginning January 1, 2010,<sup>2</sup> 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 must be derived from and reasonably consistent with the one of two sources:

(i) The utility's most recent IRP, including any information learned in its subsequent resource acquisition process, or the utility must document the reasons for any differences. When developing this projection, utilities must use methodologies that are consistent with those used by the Council in its most recent regional power plan. A utility may, with full documentation on the rationale for any modification, alter the Council's methodologies to better fit the attributes and characteristics of its service territory by substituting Commission policies and practices related to cost-effectiveness.

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

(2) By 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 conservation potential to determine the minimum level for its biennial conservation target.~~

(3) ~~On or before~~ By 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.

(a) Participation by the commission staff and the public in the development of the ten-year conservation potential and the two-year conservation target is essential. The report must outline the extent of public and commission staff participation in the development of these conservation metrics.

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<sup>2</sup> We have not suggested specific edits here for reorganizing this section, but reiterate the concerns raised in our explanatory document that this section is confusing because it refers to three separate dates related to determination of the 10-year and biennial conservation targets. We recommend utilizing the "by October 1, 2009" date and reorganizing this section so that subsections 1, 2, and 3 are condensed into a single subsection.

(b) This report must identify whether only the Council's plan or the Council's methodologies but with the commission's policy and practice substituted for assessing cost-effectiveness were the source of its ten-year conservation potential. The report must also clearly state how the utility pro-rated this ten-year projection to create its two-year conservation target.

(c) If the utility uses its integrated resource plan and related information to determine the cost-effectiveness of its ten-year conservation potential, the report must describe the technologies, data collection, processes, procedures and assumptions the utility used to develop these figures. This report must describe and support any changes in assumptions or methodologies related to cost-effectiveness from those used in the utility's most recent IRP or the Council's power plan.

(4) Commission staff and 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) 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 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 adjudicative proceeding or other process to fully consider appropriate revisions.

(c) If the Commission determines that additional scrutiny is not warranted, the Commission will approve the utility's projected ten year conservation potential and biennial conservation target within thirty days after the close of the comment period.

**WAC 480-109-020 Renewable Resources.** (1) Each utility shall use eligible renewable resources, or acquire equivalent renewable energy credits, or a combination of both, to meet the 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) A renewable energy credit may be used to comply with the annual renewable resource target if it was produced during that target year, the preceding year or the subsequent year.

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

(5) Biodiesel fuel and biomass energy qualify as eligible renewable resources for the prorated share of non-old growth forest output.

(6) Eligible renewable resources used in co-firing applications qualify towards meeting the renewable energy target for the prorated share of the eligible renewable resource. An independent, third-party expert such as a professional engineer must certify the percent of eligible renewables used in a co-firing process.

**WAC 480-109-030 Alternatives to the renewable resource requirement.** (1) Instead of meeting its annual renewable resource target in WAC 480-109-020, a utility may make one of three demonstrations.

(a) A utility may demonstrate all of the following that:

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

(ii) After December 7, 2006, A-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; and

(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.

(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 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) This report must include the conservation target for that year, the expected and actual gross<sup>3</sup> electricity savings from conservation, and all expenditures made to acquire conservation.

(i) ~~The report may include electricity savings from high efficiency cogeneration operating within the utility's service area during the preceding year~~ owned and used by a retail electric customer of the utility to meet its own needs. A utility may count savings towards the utility's biennium conservation target only during the first biennium of the high efficiency cogeneration facility's operations, in the same manner as other conservation savings are counted. The electricity savings reported for each high efficiency cogeneration facility shall be the difference between the fuel chargeable to power heat rate of the cogeneration facility compared to the heat rate on a new and clean basis of a best-commercially available technology combined-cycle natural gas-fired combustion turbine amount of energy consumption avoided by the sequential production of electricity and useful thermal energy from a common fuel source.

(b) This report must include the utility's annual load for the prior two years, the total number of megawatt-hours from eligible renewable resources and/or renewable resource energy credits the utility needed-s to meet its annual renewable energy target by January 1 of the reporting year, the amount (in megawatt-hours) and cost of each type of eligible renewable resource acquired-used, the amount (in megawatt hours) and cost of renewable energy credits acquired, the type and cost (per megawatt-hour) of substitute resources reasonably available to the utility that do not qualify as eligible renewable resources, the least cost conventional resource available to the utility, the incremental cost, if any, of eligible renewable resources and renewable energy credits, and the ratio of this investment relative to the utility's total annual retail revenue requirement.

(i) This report must state if the utility is ~~using-relying upon~~ one of the alternative compliance mechanisms provided in WAC 480-109-030-WAC instead of meeting its renewable resource target. 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. If the utility is relying on WAC 480-109-030(c) for partial compliance with its annual target, the utility must provide information to demonstrate compliance with the remainder of the annual target.

~~(e) The report must describe the steps the utility is taking to meet the renewable resource requirements for the current year. This description should indicate whether the utility plans to use or acquire its own renewable resources, plans to or has acquired contracted renewable resources, or plan to use one an alternative compliance mechanism.~~

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<sup>3</sup> We reiterate our request for the term "gross electricity savings" to be explained here.

(2) Except as provided in subsection (3) of this section, Commission staff and other interested parties may file written comments regarding the-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 adjudicative proceeding or other process to fully consider appropriate revisions.

(c) The Commission will determine based on the information in the utility's annual report and any additional commission process set forth in subparts (a) and (b) whether the utility complied with its conservation and renewable resource targets by January 1 of the compliance year. If the utility is not in compliance, the Commission will determine the amount in megawatt hours by which the utility was deficient in satisfying its annual conservation and renewable resource targets. The utility is subject to penalties for the total Compliance Deficiency under WAC 480-109-050.

(3) If the utility's report indicates that the utility is relying on an alternative compliance mechanism instead of meeting its annual target, the commission will establish an adjudicative proceeding to determine whether the utility qualifies for the alternative compliance mechanism. If the commission determines that the utility does not qualify for the alternative compliance mechanism upon which the utility relied, or if the utility is relying upon the alternative compliance mechanism specified in WAC 480-107-030(c) and does not satisfy the entire annual target, the commission must make the determination set forth in subsection 2(c) above in its decision.

~~(4) If a utility revises its report, it shall submit the revised final report to the department.~~

(4) Beginning in 2013, the utility must include in its report a statement and information demonstrating whether the eligible renewable resource generation used and renewable energy credits acquired by the utility upon which the utility relied to demonstrate compliance with annual targets in prior years were actually acquired, produced and/or generated. The utility may acquire renewable energy credits or use additional generation from eligible renewable resources in the compliance year and/or acquire renewable energy credits in the subsequent year to make up for any Underperformance Shortfall. The Commission will determine whether the utility remedied any Underperformance Shortfall in the annual proceeding conducted pursuant to subpart 2 or 3 above as applicable. The utility is subject to penalties for any

Underperformance Shortfall that is not remedied by the use of eligible renewable resources or acquisition of renewable energy credits pursuant to this subsection.

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

(56) Each utility must provide a summary of this report to its customers by bill insert or ~~other suitable method~~ any other approach approved by the commission. This summary must be provided within 90 days of final action by the commission on this report.

**WAC 480-109-050 Administrative penalties.** ~~(1) The commission will determine whether a utility fell short of its conservation and renewable resource targets based on that utility's annual report, filed in accordance with WAC 480-109-040, and any additional commission process conducted pursuant to WAC 480-109-040(2)(b).~~

(21) A utility shall pay an administrative penalty in the amount of fifty dollars for each megawatt-hour of ~~shortfall~~ Compliance Deficiency and for each Underperformance Shortfall not remedied under WAC 480-109-040(5), as determined by the commission pursuant to WAC 480-109-040(2) or (3). 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.

(32) Payment of administrative penalties:

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

(b) Administrative penalties associated with Underperformance Shortfalls which are not remedied are due within 15 days of commission action on the utility's annual report two years after the compliance year in which the underperformance occurred.

~~(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 fell 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.~~

(43) A utility that pays an administrative penalty under subsection (32), must notify its retail electric customers within three months of incurring a penalty stating the size of the penalty, the reason it was incurred and whether the utility expects to seek recovery of the penalty amounts in rates. Such notice shall be provided in a bill insert, a written publication mailed to all retail electricity customers, or any other approach approved by the commission.

(54) A utility may request an accounting order from the commission authorizing the deferral of the cost of any administrative penalty assessed per this section. A utility may seek to recover deferred administrative penalties in a general rate case or power cost only type rate proceeding pursuant to existing Commission practices and regulations. As part of such a request, the utility must demonstrate the prudence of its decisions and actions ~~when it failed to meet the renewable energy targets associated with its~~ Compliance Deficiency or Underperformance Shortfall or one of the compliance alternatives provided in WAC 480-109-030, ~~or the energy conservation targets~~. 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.