

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) "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.

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

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

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

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

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

(8) "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.

(9) "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.

(10) "Gross electricity savings" means electricity savings measured using actual program participation tracked by the utility, without any retroactive adjustment for the results of program evaluation studies or changes to regionally accepted deemed evaluation studies completed after the two-year target was set.

(11) "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.

(12) "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.

(13) "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) "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.

(15) "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.

(16) "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).

(17) "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.

(18) "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

(19) "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.

(20) "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) "Utility"

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

WAC 480-109-010 Conservation Resources. (1) By 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 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 Conservation 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.

(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) Beginning January 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 January 31, 2010, 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.

(b) This report must identify whether the Council's plan or the utility's IRP and acquisition process 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 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 used in the utility's most recent IRP or the Conservation 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) 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 ten-year conservation potential, the commission may approve the filing as presented.

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

(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 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 the year January 1 through December 31, 2012, and each year thereafter through December 31, 2015;

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

(c) At least fifteen percent of its load by the year January 1 through December 31, 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.

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 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 cost, 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 include but are not limited to 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 electricity savings from conservation, and all expenditures made to acquire conservation.

(i) The report may include electricity savings from any high efficiency cogeneration operating within the utility's service area during the preceding year. The electricity savings reported for each high efficiency cogeneration facility shall be the 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 renewable resources or renewable resource credits the utility needs to meet its annual renewable energy target, the amount (in megawatt-hours) and cost of each type of eligible renewable resource acquired, the amount and cost of renewable energy credits acquired, the type and cost (per megawatt-hour) of the least-cost conventional resource available to the utility, 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.

(i) 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. 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.

(c) 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.

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

(3) If a utility revises its report, it shall submit the revised 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.

(5) Each utility must notify its retail electric customers in published form within three months of incurring a penalty regarding the size of the penalty and the reason it was incurred.

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).

(a) To avoid administrative penalties, a utility must demonstrate compliance with the biennial conservation target established in WAC 480-109-010 beginning with the annual progress report to be filed on or before June 1, 2012.

(b) To avoid administrative penalties, a utility must demonstrate compliance with the 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 beginning with the annual progress report to be filed on or before June 1, 2014, in accordance with WAC 480-109-050(3)(b). A utility may elect to demonstrate compliance prior to this date.

(2) 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.

(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 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.

(4) A utility that pays an administrative penalty under subsection (3), 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.

(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.

(5) 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. 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 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 responsibility to act in the public interest.

(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, including but not limited to local economic recession or major natural or manmade disaster or other events 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) Utilities may defer all costs associated with compliance with RCW 19.285. Creation of a deferral account does not by itself determine whether these costs are prudent.