Avista Corp.
1411 East Mission P.O. Box 3727
Spokane, Washington 99220-0500
Telephone 509-489-0500
Toll Free 800-727-9170

Via: UTC Web Portal

November 4, 2019

Mark L. Johnson
Executive Director and Secretary
Washington Utilities & Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503

Re: Docket No. UE-190652 – Comments of Avista Utilities

Dear Mr. Johnson,

Avista Corporation, dba Avista Utilities (Avista 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-190652 on October 4, 2019 regarding the Commission's "Rulemaking for Energy Independence Act (EIA), WAC 480-109". Pursuant to the Notice, Avista provides comments to the questions posed in the Notice:

Low-income conservation:

1. Do stakeholders have concerns with the additions of the statutory definitions for "energy assistance" and "energy burden" in WAC 480-109-060?

   Avista Response: The definition of "energy assistance" proposed to be added to WAC 480-109-060 is the definition provided in Senate Bill SB 5116. However, the definitions drawn from the legislation is applicable only to Chapter 19.405 Clean Energy Transformation Act (CETA). Chapter 19.285 (EIA) does not include a definition of "low income", does not employ the term "low income," and does not confer any grant of authority to the implementing agencies (Commerce and the WUTC) to address issues relative to low income customers in the context of the EIA.

The proposed WAC amendment incorporates the term "low income" into the utility's biennial conservation plan requirements under 19.285.040, without direction under that statute to do so. In other words, there is no statutory directive or authorization for qualifying utilities to include low income requirements into their conservation planning requirements. SB 5116 created a new obligation for electric utilities to disclose to the Department of Commerce their energy assistance efforts and to submit biennially to the Department an evaluation of the effectiveness of their programs in reducing the energy burdens. This requirement under CETA is very different – and distinct from – what the proposed change to WAC 480-109-060 would effectuate.

The application of "low income" requirements to the EIA implementation does not pertain to an electric utility's obligations for compliance with the EIA as it pertains to its requirement for assessing and achieving all cost-effective conservation. The added requirement that a utility's conservation potential assessment must demonstrate progress toward meeting energy assistance need targets in CETA and prioritize energy assistance to low-income program has no basis in the utility's statutory requirements under the EIA and should not be incorporated in this WAC.

The CETA directs the Commission to determine the amount of a household energy burden that must be alleviated to determine the definition of "energy assistance need." However, for the reasons mentioned above, the term and definition of "low income" do not have any statutory relevance to the EIA.

2. Please propose the level of energy burden that should be included within the definition of "Energy assistance need." Please explain and provide justification for your proposal. Industry literature suggests an affordability benchmark as low as six percent of household income.[1]

   Avista Response: Separate WACs should be drafted for the CETA to establish an appropriate level of energy burden to be alleviated, to determine the energy burden need, and to define "low-income" within the parameters set out in SB 5116.

3. Please propose a definition of "low-income" based on area median household income or percentage of the federal poverty level. Please explain and provide justification for your proposal. The maximum allowed in Laws of 2019, Chapter 288, § 2(25), is the higher of 80 percent of area median household income or 200 percent of federal poverty level, adjusted for household size. Investor-owned utilities currently use 200 percent of the federal poverty level, adjusted for household size, for the low-income conservation programs.

[1] Drehobl, A., and L. Ross. 2016. Lifting the High Energy Burden in America's largest Cities: How Energy Efficiency Can Improve Low-Income and Underserved Communities. Washington, DC: American Council for an Energy-Efficient Economy (ACEEE) and Energy Efficiency for All. https://aceee.org/research-report/u1602.

Avista Response: Separate WACs should be drafted for the CETA to establish an appropriate level of energy burden to be alleviated, to determine the energy burden need, and to define "low-income" within the parameters set out in SB 5116.

4. Do stakeholders have concerns with the proposed changes to WAC 480-109-100(10) addressing funding and programs for low-income energy assistance as described in the Laws of 2019, Chapter 288, §§ 2(16) and 12? Is additional language necessary? If so, please propose alternative rule language.

Avista Response: These changes incorporate new requirements for utilities' compliance obligations related to achieving all-cost effective conservation, incorporating low-income energy assistance goals from the CETA into the EIA. There is no basis for this in SB 5116 and is not germane to this rulemaking (see #1 response).

Additionally, the proposed language in WAC 480-109-100(10) changes the word "may" to "must" in two different places. These changes require the utility to fully fund low-income cost-effective measures as "determined by the implementing agency." It also requires a utility to fully fund repairs, administrative costs and health and safety improvements associated with cost-effective low-income conservation measures. These mandatory provisions change – and go beyond – the statutory standards and the discretion of a utility established in RCW 19.285.040 to determine the utility's conservation potential. The EIA statute directs a qualifying utility to identify its cost-effective potential based on the Power Council's methodology or the utility's own "measures, values and assumptions." The proposed rule language departs from the cost-effective methodologies in the law, giving the "implementing agency" the authority to compel the utility to apply a different methodology other than what is dictated in the statute.

The EIA directs the utility to determine its conservation potential based on a cost-effective test, with limited discretion as to whether it should apply "utility specific conservation measures values and assumptions." The law gives the Commission limited authority to determine the validity of the utility's assessment:

"(e) The Commission may determine if a conservation program implemented by an investor-owned utility is cost-effective based on the Commission's policies and practice.

(f) The Commission may rely on its standard practice for review and approval of investor-owned utility conservation targets."

This authority is still bound by a strict "cost-effective" test and based on "standard practice." The proposed amendment to WAC 408-109-100 Section (10)(a) establishes an alternative methodology that has not been established as a governing "standard practice" and it usurps the utility's ability to set its conservation potential consistent with the explicit methodology applied in the law. The proposed amendment to WAC 480-109-100 goes beyond the Commission's statutory authority under the EIA.

5. The Laws of 2019, Chapter 288, § 12(2), requires utilities to plan for the provision of energy assistance aimed toward reducing household energy burdens. To the extent practicable, this energy assistance must prioritize low-income households with higher energy burdens. What considerations should the Commission consider in determining what is practicable in the context of low-income conservation?

   Avista Response: The provisions contained in the Laws of 2019, Chapter 288 (12)(2) are codified in a different section of the RCWs and are not drafted in a way that effectuates changes in utility obligations under the EIA. It's worth noting that CETA directs utilities to report on their efforts and demonstrate progress toward meeting higher thresholds of energy assistance need. The tools for utilities to achieve these thresholds are spelled out in the definition of "energy assistance" in CETA. In addition to conservation, other examples of energy assistance include monetary assistance and direct customer ownership in distributed energy resources. To require utilities to show progress toward meeting energy assistance goals specifically through its conservation efforts under the EIA ignores the utility's option to use other means other than conservation for reducing energy burdens.

Incremental hydropower method three

6. The Commission proposes to eliminate incremental hydropower method three and its associated five-year evaluation from its rules (*see* WAC 480-109-200(7)(d) and (e)). A recent analysis by Avista Utilities showed method three overestimated incremental generation. The Commission subsequently approved Avista's switch from method three to method one. Since no investor-owned utility currently uses method three, the Commission believes it reasonable to remove it from the rules. Additionally, while the proposed rules would allow the transfer of incremental hydropower renewable energy credits (RECs) per statute (*see* RCW 19.285.040(2)(e)(ii)(B)), this transferability would only apply to bundled RECs that cannot be calculated using method three because method three does not deal with real-time generation. Do stakeholders have concerns about deleting method three and its associated five-year evaluation?

   Avista Response: No, Avista does not foresee any problems with the removal of incremental hydropower method three and its associated five-year-evaluation since no investor owned utilities are actively using this methodology.

Greenhouse gas emissions reporting

7. Do stakeholders have concerns with the additions of the statutory definitions for "carbon dioxide equivalent" and "greenhouse gases"?

Avista Response: Avista does not have any concerns with the additions of the statutory definitions since the definitions are being linked to established definitions in RCW 70.235.010 and WAC 173-441-040.

8. Electric utilities currently report their carbon dioxide emissions through the energy emissions intensity reports required by WAC 480-109-300. The Laws of 2019, Chapter 288, § 7, requires reporting of "metric tons" of "carbon dioxide equivalent," which is further defined in the Laws of 2019, Chapter 288, § 2(22). Do stakeholders have concerns with the changes proposed in WAC 480-109-300? If so, please provide alternative rule language or justifications for retaining the existing language.

Avista Response: The change to reporting in metric tons is useful to harmonize the emissions units with other reporting and should eliminate the potential for errors when converting back and forth between the different units of measurement. Concerning the use of 0.437 metric tons or 963.4 pounds per MWh is problematic because it is a static number. CETA will help drive emissions per MWh down as more clean energy is added to the regional market, so a static and rather high number does not make sense. The last energy and emissions intensity report used the average of the last five years of the regional numbers determined by Commerce, which would provide for the reduction of emissions that is expected under CETA. This number is still higher than what a utility is most likely receiving for its actual market-based purchases since there are constraints to how far a utility can actually go to purchase power. For example, most utilities have limited or no ability to secure transmission to move coal power from states such as Nevada, Utah, and Wyoming into Washington, but unassigned generation from these resources increase the unassigned emissions calculations. This has been an ongoing problem with reporting from unassigned emissions. Given these ongoing issues, as well as the fact that CETA instructs the Department of Ecology to undertake rulemaking on unspecified market purchase, Avista believes the Commission should consider deferring these changes and possibly eliminating this report altogether. It would be preferential to consolidate and harmonize Greenhouse Gas reporting into a single regulatory framework, which may be best accomplished in Ecology's rulemaking. The Commission could consider progress reporting requirements more broadly in a future rulemaking, such as the IRP rulemaking.

9. The Laws of 2019, Chapter 288, §§ 2 and 7, define "greenhouse gas" and "carbon dioxide equivalent." However, the Laws of 2019, Chapter 288, § 7, does not provide a default emissions rate for greenhouse gas emissions other than carbon dioxide from unspecified electricity. How should the Commission's rules specify an emissions rate for greenhouse gas emissions other than carbon dioxide from unspecified electricity? What data source(s) and methodology should the Commission use to establish a default emissions rate from greenhouse gases other than carbon dioxide?

Avista Response: As the Commission's question acknowledges, the CETA does not provide a default emissions rate for greenhouse gas emissions "other than carbon dioxide from unspecified electricity" and it asks "should the Commission's rule specify an emissions rate

for greenhouse gas emissions other than carbon dioxide from unspecified electricity." The answer is no, for two reasons. First of all, CETA explicitly authorizes the Department of Ecology to establish an emissions rate for unspecified electricity. It does not confer any authority upon the Commission to do so as well. The field of establishing an emissions rate for unspecified electricity is clearly limited only to the Department of Ecology. Second, the law ties an emissions rate adopted by the Department Ecology to one "established for other markets in the western interconnection," which are based on carbon dioxide, and requires a default (not adopted) emissions rate predicated solely on carbon dioxide. Nowhere does the CETA even imply that there should be established emission rates for greenhouse gases other than carbon dioxide, either by the Department of Ecology or the Commission

10. The Laws of 2019, Chapter 285, § 15, requires natural gas companies to put a price-per- ton cost on greenhouse gas emissions, including "emissions occurring in the gathering, transmission, and distribution" processes. Should WAC 480-109-300 include language requiring electric companies to report on greenhouse gas emissions occurring during the gathering of fuel for electricity generators?

    Avista Response: The Commission is asking if language from House Bill 1257 (Laws of 2019 Chapter 285 (15)) related to including emissions associated with "gathering, transmissions and distribution processes." This language was included in the HB 1257 for the method of calculating "the cost of greenhouse gas emissions resulting from the use of natural gas." This language does not pertain to electric utilities nor does it pertain in any way to the EIA and therefore is not germane to this rulemaking.

Definitions and other changes

11. Do stakeholders have concerns with any of the proposed changes to chapter 480-109 WAC described in Attachment A?

    Avista Response: Changes proposed to WAC 480-109-200 Section (2) (a) state that a utility can meet the renewable energy targets using RECs "acquired by January 1st of the target year." Should that be Dec. 31st of the target year? And how does this work if you want to borrow a REC from the following year as is allowed for non-hydro RECs under the EIA.

12. Do stakeholders have suggestions to simplify or clarify the language? If so, please cite the specific rule and propose alternative rule language.

    Avista Response: None at this time, as workshops and discussions occur further, there may be a need for further clarifications.

Additional questions

13. Do stakeholders believe a workshop is necessary for this rulemaking?

    Avista Response: Yes, Avista believes a series of workshops to discuss potential changes and implementation strategies of the Clean Energy Transformation Act would be very helpful.

14. Are there other definitions from Laws of 2019, Chapter 288 that the Commission should include in chapter 480-109 WAC?

    Avista Response: At this point in time, Avista does not believe there are any other definitions that should be incorporated into chapter 480-109 WAC.

15. Should this rulemaking establish protocols for designating confidential information in utilities' annual RPS reports? If so, how should the language in chapter 480-109 WAC be revised to address such protocols?

    Avista Response: Avista has not had an issue with the designation of confidential information under WAC 480-109, but supports the inclusion of specific guidance on this issue where the Commission recognizes a need for clarification on the matter.

16. Should the Commission consider changes to WAC 480-109-200 addressing incremental cost calculation for eligible renewable resources? Specifically, what modifications to the language in chapter 480-109 WAC do you propose to address potential upgrades or renovations to existing eligible renewable resources?

    Avista Response: The methodology currently in place is consistent with the intent of the law. Unfortunately, the current methodology does not clearly communicate the actual cost of compliance to customers. Incremental hydro should be treated as a legacy cost of zero, similar to the treatment of legacy biomass projects, because these upgrades are typically done to replace aging infrastructure rather than for the development of additional energy and capacity, which is a welcome co-benefit but not the driving reason for these upgrades. The current methodology shows a financial benefit for qualifying hydro upgrades that were identified and chosen prior to the passage of the EIA.

17. The Laws of 2019, Chapter 288, § 10, requires the Commission and the Department of Commerce to adopt rules that "streamline" the implementation of this statute with chapter 19.285 RCW. Given that the Commission and the Department will be conducting several rulemakings resulting from enacted legislation in the next few years, should this streamlining be addressed in the current rulemaking or should streamlining take place closer to the point when both agency's finalize rulemakings implementing statutory changes? What sections of rules in WAC 480-109 should be subject to streamlining?

Avista Response: We appreciate the Commissions attention to the directive in the Clean Energy Transformation Act to streamline the implementation of the CETA with the EIA. We encourage the Commission and the Department of Commerce to identify opportunities in this rulemaking to simplify compliance and to avoid duplicative processes. The methodologies and reporting requirements for emissions intensity is an example of an area where utilities, regulators and agency personnel would benefit from consistency in the WAC, particularly for investor owned utilities that have reporting obligations to both the Commission and the Department. While we believe it to be beneficial to seek opportunities for streamlining at these earliest stages of implementation, we recognize that there will likely be additional improvements identified and likely needed as we gain experience with this new law.

18. The Laws of 2019, Chapter 288, § 6(a)(i), requires specific targets for energy efficiency, demand response, and renewable energy. Should planning and reporting requirements for energy efficiency integrate the planning and reporting requirements for demand response and other distributed energy resources? If so, how? Should any of this be addressed in chapter 480-109 WAC?

    Avista Response: The planning and reporting requirements for demand response and other distributed energy resources should eventually be integrated with energy efficiency, but this topic will probably require a few IRP cycles to determine the best method of integration.

19. Do stakeholders recommend any additional changes to chapter 480-109 WAC in this rulemaking? If so, please explain and provide justification for the change.

    Avista Response: As a general statement, the proposed amendments to the WACs implementing the EIA include revisions that are better suited to and discussed within the context of proposed administrative codes prepared to implement CETA. While incorporating concepts and requirements related to CETA within the WAC's applicable to the EIA may be convenient, they are not appropriate, as noted earlier in our comments.

Avista appreciates the opportunity to collaborate with Commission Staff and interested stakeholders and we look forward to participating in further discussions on these important topics. Please direct any questions regarding these comments to me at 509-495-2098 or Jennifer.smith@avistacorp.com.

Sincerely,

Manager, Regulatory Policy and Affairs
Avista Utilities