



ATTORNEY GENERAL OF WASHINGTON

Public Counsel

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September 30, 2020

SENT VIA WUTC WEB PORTAL

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

Re: *Rulemaking to Amend the Energy Independence Act (EIA) WAC 480-109*
Docket UE-190652, Comments of Public Counsel

Dear Mr. Johnson:

The Public Counsel Unit of the Washington State Attorney General's Office ("Public Counsel") respectfully submits the following comments pursuant to the Commission's September 1, 2020, Notice of Opportunity to File Written Comments on Proposed Rules ("Notice") for the above-entitled docket. Public Counsel appreciates the work and effort of the Washington Utilities and Transportation Commission ("Commission") in amending the Energy Independence Act (EIA) to reflect new legislation.

Public Counsel's Recommendation

Public Counsel recommends accepting Staff's recommendation to delete WAC 480-109-200(2)(a) in the draft rules.

After submitting comments in response to earlier proposed amendments in this rulemaking, Public Counsel participated in the Commission's July 28, 2020, adoption hearing. At the adoption hearing, the Commission addressed questions regarding interpretation of renewable portfolio standard provisions in WAC 480-109-200(2).¹

In response, the Commission issued its September 1, 2020, Notice in which it proposed deleting WAC 480-109-200(2)(a). The Commission explains in the Notice that:

This proposed deletion does not alter the requirement that electric utilities have adequate eligible renewable resources or equivalent renewable energy credits (RECs)

¹ TR. 7:24-18:1 (July 28, 2020).

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under contract to meet their annual targets by January 1 of the target year, as required by RCW 19.285.040(2). Rather, the proposed deletion clarifies existing practice that allows utilities to buy RECs after January 1 if they find they have additional need, or if cheaper options become available to use in place of those acquired by January 1. The Commission believes the proposed edit eliminates confusion and provides more clarity for all stakeholders.

The Commission makes a distinction between RECs “under contract to meet their annual targets by January 1 of the target year, as required by RCW 19.285.040(2)” versus RECs that utilities are able “to buy . . . after January 1 if they find they have additional need, or if cheaper options become available to use in place of those acquired by January 1.” This appears to be consistent with UTC Staff comments provided at the July 28, 2020, adoption hearing in which the UTC Staff explained its view that the current acquisition language in WAC 480-109-200(2)(a) “is not a requirement that you have purchased RECs” by January 1 of a target year, and that a later review would verify “the explicit resources that you used.”

Public Counsel recognizes that there is potential confusion between “acquisition” and “use” in the current language of WAC 480-109-200(2)(a) and (b), and that deletion of WAC 480-109-200(2)(a) may help resolve that confusion. Specifically, Public Counsel observes that current WAC 480-109-200(2)(a) requires “acquisition” of a renewable energy credit “by January 1st of the target year” and WAC 480-109-200(2)(b) provides that those credits may be “used to meet a requirement applicable to the year in which the credit was created, the year before the year in which the credit was created, or the year after the year in which the credit was created.” Thus, deleting WAC 480-109-200(2)(a) would appear to eliminate any contradiction with WAC 480-109-200(2)(b) and promote clarity in the regulations.

Participants at the July 28, 2020, adoption hearing also discussed the potential for added value to customers of allowing a utility to purchase RECs after January 1st of a target year, which may be priced lower than RECs available on or before January 1st of the target year.² Public Counsel supports interpreting the EIA REC requirements to reduce or eliminate unnecessary added financial burden on customers. Therefore, Public Counsel supports the proposed deletion, which should help clarify the ability for utilities to minimize unnecessary additional costs of complying with the EIA REC purchase requirements that might otherwise be passed on to customers.

² TR. 9:17–10:4 and 16:23–17:7 (July 28, 2020).

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We appreciate the opportunity to submit comments. If you have any questions about this filing, please contact Ann Paisner, at (206) 521-3211 or Ann.Paisner@ATG.WA.GOV, or Corey Dahl, at (206) 464-6380 or Corey.Dahl@ATG.WA.GOV.

Sincerely,

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