

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In re Petition of Public Utility District  
No. 1 of Chelan County, Washington,  
for a Declaratory Order Regarding  
Application of WAC 480-109-200

DOCKET UE-170840

ORDER 01

DECLARATORY ORDER

**BACKGROUND**

- 1 On July 27, 2017, the Public Utility District No. 1 of Chelan County, Washington (Chelan PUD) filed with the Washington Utilities and Transportation Commission (Commission) a Petition for Declaratory Order (Petition), requesting that the Commission approve the generation from incremental efficiency gains at Chelan PUD's hydroelectric projects as eligible renewable resources as defined in RCW 19.285.03, to comply with WAC 480-109-200.
- 2 The Petition includes Advisory Opinions from the Department of Commerce (Commerce) designating Chelan PUD's Rocky Reach and Rock Island Hydroelectric Projects as eligible renewable resources in the Western Renewable Energy Generation Information System (WREGIS). Based on Chelan PUD's engineering analysis, the Advisory Opinions find that Chelan PUD has satisfied the requirements of Commerce's rule governing quantification of incremental hydropower generation, WAC 194-37-130, and recognize 14.73 percent of total generation at Rocky Reach and 9.67 percent of total generation at Rock Island as renewable resources. Chelan PUD contends that it cannot sell the surplus of these renewable resources to investor-owned utilities in Washington without a declaration from the Commission that the resources comply with the requirements in WAC 480-09-200, the Commission's rule designating the methodologies utilities must use to quantify incremental generation.
- 3 The Petition requests that the Commission (1) accept Chelan PUD's engineering analysis as satisfying the Commission's methodology for determining the amount of incremental hydropower generation eligible as a renewable resource; and (2) enter an order declaring that (a) 14.73 percent of total generation at Chelan PUD's Rocky Reach hydroelectric project and 9.67 percent of the generation at the Rock Island project may be used for compliance with WAC 480-109-200; and (b) these percentages will be updated as Chelan PUD provides updated supporting information.

- 4 On July 28, 2017, the Commission issued a notice of opportunity for any interested person to respond to the Petition by August 11, 2017.
- 5 On August 11, 2017, Commission regulatory staff (Staff) submitted its response to the Petition. Staff asserts that Chelan’s methodology “produces substantially the same result” as the methodology in the Commission’s rule. Staff recommends that the Commission enter an order declaring that the incremental hydropower at Chelan PUD’s Rocky Reach and Rock Island projects may be used for compliance with WAC 480-109-200 in the percentages specified in the Petition. Staff, however, believes that the Commission need not make any finding on Chelan PUD’s engineering analysis or accept updates on the percentages. The Commission received no other responses to the Petition.
- 6 On August 28, 2017, the Commission issued a notice that it would enter a declaratory order in response to the Petition by September 30, 2017.

### **DISCUSSION**

- 7 “Any person may petition an agency for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency.”<sup>1</sup> The petitioner must demonstrate “(a) The uncertainty necessitating resolution exists; (b) That there is actual controversy arising from the uncertainty . . . ; (c) That the uncertainty adversely impacts the petitioner; (d) That the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public . . . ; and (e) That the petition complies with any additional requirements established by the agency.”<sup>2</sup>
- 8 Chelan PUD contends that uncertainty and actual controversy exists as to whether the incremental hydropower at its Rocky Reach and Rock Island projects may be used for compliance with WAC 480-109-200, which adversely impacts Chelan PUD and outweighs any adverse impact on others or on the general public. We agree that the Petition satisfies the statutory prerequisites for, and the Commission rule governing, declaratory orders. No person asserts that their rights may be substantially prejudiced by the Commission entering a declaratory order on the issues raised in the Petition. Accordingly, the Commission grants the Petition and enters this declaratory order on whether the incremental hydropower at Chelan PUD’s Rocky Reach and Rock Island projects may be used to comply with WAC 480-109-200.

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<sup>1</sup> RCW 34.05.240(1); WAC 480-07-930(1).

<sup>2</sup> RCW 34.05.240(1).

9 The Energy Independence Act (EIA) requires qualifying utilities to “use eligible renewable resources or acquire equivalent renewable energy credits, or any combination of them, to meet ... annual targets” of a percentage of the utilities load.<sup>3</sup> More specifically, each such utility must meet specified renewable energy targets by certain years, *i.e.*,

(i) At least three percent of its load by January 1, 2012, and each year thereafter through December 31, 2015;

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

(iii) At least fifteen percent of its load by January 1, 2020, and each year thereafter.<sup>4</sup>

Eligible renewable resources include “[i]ncremental 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 where the additional generation does not result in new water diversions or impoundments.”<sup>5</sup>

10 Chelan PUD is a consumer-owned utility, and the Commission does not regulate such utilities or determine their compliance with the EIA. Rather, Chelan PUD must document to Commerce that the incremental electricity from improvements to Chelan PUD’s hydroelectric generation projects qualify as renewable energy resources.<sup>6</sup> Here, Chelan PUD has presented the requisite documentation to Commerce for the Rocky Reach and Rock Island projects, and Commerce confirmed that 14.73 percent and 9.67 percent, respectively, of the total generation from those projects are eligible renewable resources.<sup>7</sup>

11 The Commission regulates investor-owned utilities (IOUs) and must assess whether the renewable energy resources or equivalent renewable energy credits on which they rely comply with the EIA. To the extent an IOU wants to include in its renewable resources any incremental electricity from Chelan PUD resulting from its hydroelectric generation

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<sup>3</sup> RCW 19.285.040(2)(a).

<sup>4</sup> RCW 19.285.040(2)(a)(i), (ii), and (iii).

<sup>5</sup> RCW 19.285.030(12)(b).

<sup>6</sup> WAC 194-37-130.

<sup>7</sup> Petition, Exhs. A & B.

projects, the Commission must confirm the extent to which that power may be used to satisfy the EIA's renewable resource requirements.<sup>8</sup>

- 12 The Commission's renewable portfolio standard rule, WAC 480-109-200, establishes three different methods a utility may use to calculate the quantity of incremental electricity produced by eligible efficiency upgrades to any hydropower facility.<sup>9</sup> Commerce also uses three methods for making these calculations that are similar, but not identical, to the Commission's methods.<sup>10</sup> Chelan PUD used Commerce's second method to calculate the percentages of the incremental power at the Rocky Reach and Rock Island projects that is an eligible renewable resource, and Commerce accepted those percentages.
- 13 We adopt Commerce's conclusions. The Commission and Commerce have independent authority to enforce the EIA with respect to the utilities that come within their respective jurisdiction. Here, however, that authority overlaps. In such circumstances, one agency should defer to the other's determinations to avoid unnecessary confusion and potential conflict. Commerce has determined that Chelan PUD, over which Commerce has jurisdiction with respect to EIA compliance, properly calculated the percentages of incremental electricity produced at the Rocky Reach and Rock Island projects that are renewable resources. For the reasons we discuss below, we will not second-guess that determination and declare that 14.73 percent of total generation at Chelan PUD's Rocky Reach hydroelectric project and 9.67 percent of the generation at the Rock Island project may be used for compliance with WAC 480-109-200.
- 14 We need not, and do not, reach the issue of whether Chelan PUD's engineering analysis satisfies the Commission's methodology for determining the amount of incremental hydropower generation eligible as a renewable resource. Commerce has determined that Chelan PUD's analysis satisfies Commerce's methodology, and we have accepted that determination for purposes of establishing the percentages of generation at the two Chelan PUD projects that are renewable resources. Any separate inquiry we might undertake to assess whether Chelan PUD's engineering analysis also complies with the Commission's methodology would be unnecessary and would undermine the comity with Commerce on which our decision is based. We therefore decline to do so.<sup>11</sup>

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<sup>8</sup> WAC 480-109-200(7)(a).

<sup>9</sup> WAC 480-109-200(7)(b)-(d).

<sup>10</sup> WAC 194-37-130.

<sup>11</sup> However, we are reassured that Staff finds the Commerce and Commission methodologies produce substantially the same result for determining the amount of incremental hydropower generation eligible as a renewable resource. Consistency in calculations of energy generated from

15 Nor will we preapprove or otherwise address future updates to the percentages. Chelan PUD should present any updated information to Commerce in the first instance. If Commerce revises the percentages, Chelan PUD may then seek Commission concurrence in that determination.

**ORDER**

THE COMMISSION ORDERS That

- 16 (1) The Commission grants the request for a declaratory order in the Petition of the Public Utility District No. 1 of Chelan County, Washington, for a Declaratory Order Regarding Application of WAC 480-109-200.
- 17 (2) The Commission declares that 14.73 percent of total generation at the Public Utility District No. 1 of Chelan County, Washington's Rocky Reach hydroelectric project and 9.67 percent of the generation at the Rock Island project may be used for compliance with WAC 480-109-200.

DATED at Olympia, Washington, and effective September 15, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner

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eligible renewable resources, including incremental hydropower generation, are critical for ensuring the integrity of renewable energy credits (RECs) under the EIA and to avoid any double counting of RECs by utilities or any entity purchasing RECs.