

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of)	
Amending)	DOCKET NOS. UE-030311 and
)	UG-030312
WAC 480-90-238 and)	
WAC 480-100-238)	GENERAL ORDER NO. R-526
)	
)	
Relating to)	ORDER AMENDING RULES
Least Cost Planning for Gas and Electric)	PERMANENTLY
Companies.)	
.....)	

1 **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and Transportation Commission takes this action under Notice WSR # 05-18-088, filed with the Code Reviser on September 7, 2005. The Commission brings this proceeding pursuant to RCW 80.01.040, and RCW 80.04.160.

2 **STATEMENT OF COMPLIANCE:** This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 **DATE OF ADOPTION:** The Commission adopts this rule on the date that this Order is entered.

4 **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW 34.05.325(6) requires that the Commission prepare and provide to commenters a concise explanatory statement about an adopted rule. The statement must include the identification of the Commission’s reasons for adopting the rule, a description of the difference between the version of the proposed rules published in the register and the rules as adopted (other than editing changes), a summary of the comments received regarding the proposed rule changes, and the Commission’s responses to the comments, reflecting the Commission’s consideration of them.

5 The Commission often includes a discussion of those matters in its rule adoption order. In addition, most rulemaking proceedings involve extensive work by Commission Staff that includes summaries in memoranda of stakeholder comments, Commission decisions, and Staff recommendations in each of those areas.

6 In this docket, to avoid unnecessary duplication, the Commission designates the discussion in this order as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda presented at the adoption hearing and at the open meetings where the Commission considered whether to begin a rulemaking and whether to propose adoption of specific language. Together, the documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

7 **REFERENCE TO AFFECTED RULES:** This Order amends the following sections of the Washington Administrative Code.

Amended

WAC 480-90-238, Least cost planning

WAC 480-100-238, Least cost planning

8 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** The Commission filed Preproposal Statements of Inquiry (CR-101) on April 15, 2003, at WSR # 03-09-068 and WSR # 03-09-069. The statement advised interested persons that the Commission was considering entering a rulemaking to review WAC 480-90-238 and WAC 480-100-238, least cost planning rules for gas and electric companies, for content and readability consistent with Executive Order 97-02.

9 **ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL STATEMENT:** The Commission also informed persons of the inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the Commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and the Commission's lists of all registered electric and gas companies, persons interested in electric and gas issues, as well as to attorneys representing these companies.

10 Pursuant to the notice, the Commission received comments from the following companies, organizations, and interested persons: Avista Utilities, Cogeneration Coalition of Washington, Department of Community, Trade and Economic Development, The Energy Project, Industrial Customers of Northwest Utilities, Natural Resources

Defense Council, Northwest CHP Advocates, Northwest Energy Coalition, Northwest Independent Power Producers Coalition, Northwest Natural Gas, Northwest Industrial Gas Users, PacifiCorp, Puget Sound Energy, Public Counsel, Renewable Northwest Project, Climate Solutions, BP West Cost Products, LLC and Andy Silber.

- 11 The Commission engaged in two stakeholder workshops in June 2003 and June 2005 to address stakeholder comments and discuss a variety of changes to the least cost planning rules. The following companies and organizations participated in the stakeholder workshops: Avista Utilities, Cogeneration Coalition of Washington, Cascade Natural Gas, Department of Community, Trade and Economic Development, The Energy Project, Energy Advocates LLP, Industrial Customers of Northwest Utilities, Natural Resources Defense Council, Northwest CHP Advocates, Northwest Energy Coalition, Northwest Independent Power Producers Coalition, Northwest Natural Gas, Northwest Industrial Gas Users, PacifiCorp, Puget Sound Energy, Public Counsel, Renewable Northwest Project, Citizens Utility Alliance, and UCONS, LLC.
- 12 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a notice of Proposed Rulemaking (CR-102) on September 7, 2005 at WSR # 05-18-088, scheduling the matter for oral comment and adoption at 9:30 a.m., Wednesday, November 9, 2005 in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission.
- 13 **COMMENTERS (WRITTEN COMMENTS):** The Commission received written comments from Bruce Folsom, representing Avista Utilities; Barry Pfundt, representing Climate Solutions; Elizabeth Klumpp, representing the Department of Community, Trade and Economic Development (CTED); Irion Singer, representing Industrial Customers of Northwest Utilities (ICNU); Ralph Cavanagh, representing the Natural Resources Defense Council (NRDC); Nancy Hirsh, representing the Northwest Energy Coalition (NVEC); Joseph M. Ross, representing Northwest Natural Gas (NWN); D. Douglas Larson, representing PacifiCorp; Karl Karzmar, representing Puget Sound Energy (PSE); Simon ffitich, representing Public Counsel; Ann Gravatt, representing the Renewable Northwest Project (RNP); and Mr. Andy Silber, an interested citizen. Several stakeholders provided comments common to the electric and gas least cost planning rules. Other comments were specific to either the electric or the gas planning rule.

- 14 **RULEMAKING HEARING:** The rule proposal was considered for adoption, pursuant to the notice in WSR # 05-18-088, at a rulemaking hearing scheduled during the Commission's regularly scheduled open public meeting on November 9, 2005, before Chairman Mark H. Sidran, Commissioner Patrick J. Oshie, and Commissioner Philip B. Jones. No interested person made oral comments.
- 15 **SUGGESTIONS FOR CHANGE THAT ARE REJECTED:** The Northwest Energy Coalition and Public Counsel commented on the topic of risk in the selection of resources. The NWECC believes that the portfolio selected by the utility should balance the costs and risks of various options. Public Counsel focused on the need to consider ratepayers' risk. Public Counsel recommended a clearer distinction between risk and "lowest reasonable cost," since cost is a scalar describing economic, social or environmental price, while risk is a probability distribution describing chances of multiple future scenarios. Both stakeholders provided specific language suggestions on the topic of risk.
- 16 The Northwest Energy Coalition suggested a modification of the definition in proposed WAC 480-100-238(1) or (2)(b) to explicitly state the need to include the notion of risk, and to require that each electric utility meet its system demand with a mix of generating resources and conservation that most effectively balances costs and risks to best protect ratepayers. The NWECC also proposed alternative language for WAC 480-100-238 (1) on balancing cost and risk. Public Counsel suggests adding the concept of risk in the definition of integrated resource plan in WAC 480-90-238 (2)(a) and WAC 480-100-238 (2)(a). The Commission agrees that a measure of risk should be weighed with the cost. However, since such a measure has always been weighed, there is no need to add special language to the proposed rules. Accordingly, the Commission does not accept the changes proposed by NWECC and Public Counsel.
- 17 Also on the topic of risk, Public Counsel suggested adding a new paragraph to subsection (3) of WAC 480-90-238 and WAC 480-100-238 that refers to the content of integrated resource plans. Public Counsel proposes that plans include evaluations of acceptable levels of the risk of price escalation and service interruption to ratepayers, and of sensitivity of the integrated resource plan to variations in the levels of risk. The Commission does not accept Public Counsel's proposal. Public Counsel's suggestion amounts to a new requirement that would greatly increase the scope of the plan. The Commission believes that the notion of risk evaluation clearly encompasses the concepts of cost variation and adequate service. The Commission further finds that the

requirement for a plan utilizing these elements presupposes analysis of a tradeoff between the two. More elaboration in the specific requirements is unnecessary.

- 18 The Natural Resources Defense Council suggested that the assessment of commercially available conservation prescribed by subsections WAC 480-90-238 (3)(b) and 480-100-238 (3)(b) be conducted for each customer class. The Commission does not agree. Such a study would be arduous and the potential benefits of such an assessment do not justify the costs of the task.
- 19 The NWECC, the RNP, Public Counsel, and Mr. Silber provided comments on the topic of externalities. The NWECC and the RNP requested the Commission to open an investigation at the conclusion of this rulemaking to examine the range of appropriate values for carbon dioxide (CO₂) that utilities should use in their integrated resource plans to provide consistency in the estimates used by the companies.
- 20 Public Counsel commented that the rule language should be more specific on cost risks of CO₂ mitigation. Public Counsel stated that ratepayers should not be held liable for future CO₂ mitigation costs that were well-recognized in the market, but were not incorporated into a utility's decision-making in the integrated resource planning (IRP) process. Public Counsel also stated that it will contest prudence and request disallowance of future CO₂ mitigation costs in rates if IRP evaluations fail to consider cost risks of CO₂ mitigation.
- 21 Mr. Silber proposed that the State should publish a cost for emission of CO₂ and other pollutants, a natural gas price model over the horizon of planning, and other inputs to the planning process. In Mr. Silber's opinion, the State should set the cost of emissions based on the true cost derived from the best available science and should include the cost of habitat and human health degradation. Mr. Silber suggested that the full cost of CO₂ mitigation or the cost set by the market in Europe or Japan could be used instead of estimates. Utilities would be responsible for the things that varied from utility to utility, like load growth and transmission constraints, and for putting together the lowest cost plan under the assumptions outlined by the State.
- 22 The Commission does not have jurisdiction to assign value or costs to CO₂ emissions (or any other externality). In the case of CO₂, Chapter 80.70 RCW assigns jurisdiction to the Energy Facility Site Evaluation Council (EFSEC) for reviewing CO₂ mitigation requirements for fossil-fuelled thermal electric facilities that apply for site certification. Presently, no estimates that have been endorsed by all concerned parties, and the Federal

and state governments. The value and remediation price of CO₂ emissions will certainly vary over time due to changing estimates of probable damage and market prices of green tags, for example. Further, the controversy surrounding the estimation of these costs is tainted with political, as much as scientific analysis. Deeming a value by fiat will not make decisions more economic nor will it demonstrably increase the welfare of society. Using the best knowledge available to energy company decision makers at the time of the planning or the acquisition will optimize the quality of information.

- 23 With respect to the planning cycle, Northwest Natural Gas stated that a strict 2-year cycle may lead to a misallocation of companies' and the Commission's resources. NWN also recommended adopting the date of plan acceptance as the anniversary date for the IRP planning cycle and allowing for a one year waiver accompanied by an annual action plan update on the first and subsequent anniversaries of the acknowledgement of the previous plan. The Commission does not accept NWN's recommendations. The Commission's experience is that a definite planning cycle will produce more filed plans that beneficially inform the Commission. Moreover, NWN's suggestion to alter the planning cycle could make IRPs less reflective of the dynamics in the energy markets. Waiver for special circumstances is always available.
- 24 Public Counsel proposed that the short-term and long-term components of the plan should be defined as having two- and twenty-year horizons with exceptions available on a case-by-case basis, and with the option, at the utility's discretion, of having additional timelines. The two-year horizon would allow the utility's IRP to overlap the typical time-frame of utility trading floor short-term contract purchases. The twenty-year horizon is most similar to standard long-term power purchase agreements (PPA), the expected life of a Combined Combustion Gas Turbine, coal plant, wind plant, or transmission upgrades and expansions. Thus, it best encompasses most resources in the candidate portfolio of the IRP. Public Counsel observes that the ability to lengthen and shorten the time horizon may lead to time horizons being chosen to include or exclude a significant resource event, skewing the resource-load balance.
- 25 On the other hand, the use of specific uniform planning horizons commits each utility to a significant and clearly stated plan objective avoiding any of the above irregularities. Public Counsel provided specific language suggestions on this topic.

- 26 The Commission does not accept Public Counsel's proposal. The planning horizons suggested by Public Counsel are in the current rules and may be elected under the amended rules. The amended rules add more flexibility for planning purposes, and recognize that in today's environment circumstances may change more quickly than within a twenty-year horizon. Many forward contracts are three-year deals. Trading floors change their strategies. Connecting the sections of the plan to a fixed time horizon does not necessarily improve the plan. The horizon should be long enough to accommodate the capital budget position each company faces. Thus, a flexible term is best. There is no real evidence that the ability to lengthen and shorten the time horizon could lead to time horizons being chosen to include or exclude a significant resource event.
- 27 On the topic of enforcement, Public Counsel requested that the Commission adopt at least one of the following enforcement strategies: (1) a \$1,000 fine per day late, in accordance with RCW 80.04.380, (2) refuse to consider petitions for power cost adjustments until the petitioning company files the IRP, (3) refuse to consider any company's petition until the IRP is filed, or (4) provide that any resource acquisition that occurs when a utility does not have an acknowledged plan in effect carry a rebuttable presumption of imprudence.
- 28 The Commission does not accept Public Counsel's proposed strategies. The Commission believes that the first suggested strategy is unnecessary. The Commission can always assess a penalty under RCW 80.04.380 for violation of the IRP rule. The second and third suggested strategies would limit the Commission's and companies' discretion to consider petitions and PCAs when circumstances otherwise warrant. The Commission may also not have legal authority to limit a company's options that otherwise exist to insure that rates remain just and reasonable and service safe and adequate. The fourth strategy is inconsistent with prior Commission practice that an IRP is only one consideration in a prudence review. Public Counsel's proposal is not supported by RCW 80.04.130 which states only that a company bears the burden to prove that proposed rates are just and reasonable. Finally, these suggestions may eliminate a useful collaborative opportunity for utilities.
- 29 With respect to alternative generating technologies, the Renewable Northwest Project recommended more specific language requiring all alternatives be evaluated on a consistent and comparable basis. Climate Solutions requests that WAC 480-100-238 be more clear and explicit in requiring a thorough examination of non-wires and smart energy alternatives to traditional infrastructure improvements. The Commission believes

that the rule is clear and allows for examination of other alternatives. Technically optimal non-wire alternatives will appear in the IRPs when merited.

30 PacifiCorp requested that the Commission keep the rule flexible and consistent with those of other states to facilitate the work of multi-state companies. The Commission believes that the Washington rule is and should be flexible but it should not be driven by other jurisdictions without concomitant agreement with those states.

31 Finally, commenting on WAC 480-90-238, NWN stated that changes in gas procurement strategies should be addressed in gas cost tracking filings, not in an IRP. The Commission disagrees. All costs that can be analyzed in a forecast have a place in the IRP.

32 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission finds and concludes that it should amend the rules in the CR-102 Notice at WSR # 05-18-088 with the changes described below.

33 **CHANGES FROM PROPOSAL:** The Commission adopts the proposal noticed at WSR #05-18-088 with the following changes:

34 The NWECA, Avista, and PSE provided comments to WAC 480-100-238 (3)(d) that would require electric companies to include an assessment of transmission system capability and reliability in their IRPs. The NWECA believes that the language in the subsection should be more explicit. On the other hand, Avista and PSE are concerned that the proposed language raises the possibility of conflict with the FERC's Standard of Conduct (SOC) rules. These rules limit Marketing and Energy Affiliate employees' access to information about the transmission system, information that is available to all customers on Open Access Same-time Information System (OASIS). Employees of the Transmission Provider are similarly prohibited from disclosing information off-OASIS to Marketing and Energy Affiliate employees. According to the companies, without access to a free exchange of transmission information, a utility cannot meaningfully assess the viability of transmission enhancements for IRPs.

The Commission believes that the language in subsection WAC 480-100-238 (3)(d) should acknowledge that the information requested is limited to that which can be provided within the boundaries of FERC's Standard of Conduct rules. In general, this means that the level of detail available will be less than is ordinarily expected in an IRP.

In some circumstances, the utility may only be able to provide a rough estimate of transmission impacts, but at least some acknowledgment of possible transmission issues needs to be addressed in order to cover this important aspect of resource development. The Commission adds clarifying language to WAC 480-100-238 (3)(d) to reflect this understanding. Subsection (3)(d) now reads as follows:

(d) An assessment of transmission system capability and reliability, to the extent such information can be provided consistent with applicable laws.

35 Some typographical and language changes identified by Staff or suggested by stakeholders were also incorporated into the rules.

36 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the Commission determines that WAC 480-90-238 and WAC 480-100-238 should be amended to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the Code Reviser.

ORDER

37 THE COMMISSION ORDERS:

38 The Commission amends and adopts WAC 480-90-238 and WAC 480-100-238 to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of filing with the Code Reviser pursuant to RCW 34.05.380(2).

39 This Order and the rules set out below, after being recorded in the register of the Washington Utilities and Transportation Commission, shall be forwarded to the Code Reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, this 3rd day of January 2006.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

Note: The following is added at Code Reviser request for statistical purposes:

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 2, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.