

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Amending, Adopting,) DOCKET UE-131723
and Repealing Rules in)
) GENERAL ORDER R-581
WAC 480-109)
) ORDER ADOPTING RULE
Relating to the Energy Independence) PERMANENTLY
Act.)
)
.....)

I. INTRODUCTION

1 **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and
Transportation Commission (Commission) takes this action under Notice WSR 15-07-
044, filed with the Code Reviser on March 12, 2015. The Commission has authority to
take this action pursuant to RCW 80.01.040, RCW 80.04.160, and RCW 19.285.080.

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

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

4 **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW
34.05.325(6) requires the Commission to prepare and publish a concise explanatory
statement about an adopted rule. The statement must identify the Commission’s reasons
for adopting the rule, describe the differences between the version of the proposed rules
published in the register and the rules adopted (other than editing changes), summarize
the comments received regarding the proposed rule changes, and state the Commission’s
responses to the comments reflecting the Commission’s consideration of them.

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| <p>OFFICE OF THE CODE REVISER STATE OF WASHINGTON FILED</p> <p>DATE: September 09, 2015 TIME: 11:06 AM WSR 15-19-032</p> |
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5 To avoid unnecessary duplication in the record of this docket, the Commission designates
the discussion in this Order as its concise explanatory statement. This Order provides a
complete but concise explanation of the agency's actions and its reasons for taking those
actions.

6 **REFERENCE TO AFFECTED RULES:** This Order adopts Washington
Administrative Code section 480-109-300 regarding the annual reporting of energy and
emissions intensity metrics.

II. PROCEDURAL HISTORY

7 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:**
The Commission filed a Preproposal Statement of Inquiry (CR-101) with the Code
Reviser on October 2, 2013, at WSR 13-20-127.

8 The statement advised interested persons that the Commission was considering entering a
rulemaking to consider whether the Commission should modify rules in chapter 480-109
WAC to implement the statutory changes and provisions of RCW 19.285. The
Commission also informed persons of this inquiry by providing notice of the subject and
the CR-101 to everyone on the Commission's list of persons requesting such information
pursuant to RCW 34.05.320(3). Pursuant to the notice, the Commission convened a
workshop for interested stakeholders on November 12, 2013, and solicited written
comments by December 2, 2013. On April 9, 2014, the Commission issued a notice
announcing that it published informal draft revisions to the rules and soliciting written
comments from stakeholders by May 9, 2014. The Commission held a second workshop
on May 15, 2014, where it received comments from stakeholders regarding the informal
draft revisions to the rules.

9 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a notice of
Proposed Rulemaking (CR-102) with the Code Reviser on September 3, 2014, at WSR
14-18-084. The Notice provided interested persons the opportunity to submit written
comments to the Commission by October 6, 2014. The Commission scheduled this matter
for oral comment and adoption on Wednesday, November 5, 2014, at 1:30 p.m., in the
Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 S.
Evergreen Park Drive S.W., Olympia, Washington.

10 **RULEMAKING HEARING:** The Commission considered the proposed rules for adoption at a rulemaking hearing on November 5, 2014, before Chairman David W. Danner, Commissioner Philip B. Jones, and Commissioner Jeffrey D. Goltz.¹ The Commission heard oral comments from Clint Kalich, representing Avista Corporation (Avista); Etta Lockey and Mary Wiencke, representing Pacific Power & Light Company (Pacific Power); Eric Englert, representing Puget Sound Energy; Mary Kimball, representing Public Counsel Section of the Washington Office of Attorney General (Public Counsel); and Dina Dubson Kelley and Megan Decker, representing Renewable Northwest; and Joshua Weber, representing the Industrial Customers of Northwest Utilities.

11 **ADOPTION AND NOTICE OF PROPOSED RULEMAKING:** On March 12, 2015, the Commission entered General Order R-578, filed at WSR 15-07-043, adopting revised rules addressing the Energy Independence Act's energy efficiency resource standard and renewable portfolio standard. In General Order R-578, the Commission deferred its consideration of a reporting requirement for energy and emissions intensity metrics (proposed WAC 480-109-300) pending more discussion regarding an effective reporting compliance methodology.² On the same day, the Commission filed a CR-102 at WSR 15-07-044 to continue its proposed rulemaking regarding WAC 480-109-300.

III. DISCUSSION

12 Proposed WAC 480-109-300 described reporting requirements for energy and emissions intensity metrics.³ Under this proposed section of the rule, utilities must report annual values for each metric for the preceding 10 calendar years. Metrics must be based on the annual energy or emissions from all generating resources providing service to customers in Washington, regardless of the location of the generating resources. For unknown generation, or "spot market" purchases, the utility shall report emission metrics using the

¹ Since the November 5, 2014, adoption hearing, Commissioner Goltz retired, and the Governor appointed Ann Rendahl as Commissioner. Commissioner Rendahl joins in this order, having reviewed the proposed rules, the comments submitted in response to the proposed rules, and attended the adoption hearing while holding a staff position with the Commission.

² General Order R-578 ¶ 138 (March 12, 2015).

³ The report shall include the following metrics: (a) average megawatt-hours per residential customer, (b) average megawatt-hours per commercial customer, (c) megawatt-hours per capita, (d) Million short tons of CO₂ emissions, and (e) Comparison of annual million short tons of CO₂ emissions to 1990 emissions.

average electric power carbon dioxide (CO₂) emissions rate described as the “net system mix” in the Washington state electric utility fuel mix disclosure reports compiled by the Washington Department of Commerce (Commerce) pursuant to RCW 19.29A.080. The utilities’ reports to the Commission must include narrative text and graphics describing trends and analysis of the likely causes of changes, or lack thereof, in the metrics.

- 13 We provided a detailed discussion of stakeholder comments regarding this section in General Order R-578.⁴ In written and oral comments, Renewable Northwest and the Northwest Energy Coalition supported the inclusion of this section, while Puget Sound Energy and Pacific Power recommended deleting this section in its entirety. Avista commented that the reporting requirements contemplated in this section warrant further discussion. We rejected the utilities’ requests to delete this section in its entirety,⁵ and explained that our decision to move forward with these reporting requirements was based on our general and specific authority:

First, the Commission has a responsibility to “ensure the proper implementation and enforcement of [the EIA] as it applies to investor-owned utilities.”⁶ In this role, the Commission has a duty to ensure that the EIA is implemented in a manner consistent with the policy goals of the statute. The EIA includes a stated policy goal to “increas[e] energy conservation.”⁷ While the existing reporting requirements enable the Commission to track biennial compliance, the statute contains no further guidance on how or how often the Commission should track utilities’ long-term progress toward meeting the state’s conservation goals. We believe that developing energy intensity metrics is reasonable, and consistent with the EIA’s goal to increase energy conservation in the state.

The EIA further states a policy to “protect clean air and water.” Reducing greenhouse gas emissions clearly fits within this broad policy goal.⁸ In its January 2014 report to the Legislature, the Climate Legislative and Executive Workgroup attributed more reductions in greenhouse gas emissions to the EIA over the next

⁴ General Order R-578, ¶¶ 129-138.

⁵ *Id.*, ¶ 131.

⁶ RCW 19.285.080(1).

⁷ RCW 19.285.020.

⁸ *Id.*

20 years than any other state policy.⁹ While neither the drafters of Initiative 937 nor the Legislature has specified how to measure the EIA's impact on the carbon intensity of generation used to serve Washington customers, establishing metrics to assess the EIA's effectiveness in reducing greenhouse gas emissions is appropriate.

In addition to its authority under the EIA, the Commission also has authority under RCW 80.04.080 to require companies subject to its jurisdiction to file periodic or special reports. Such reports include information based on metrics to assess the EIA's impact on the carbon intensity of generation used to serve Washington customers.¹⁰

14 We also acknowledged the utilities' concerns regarding the burden of additional reporting requirements.¹¹ In conclusion, we found that collecting

and reporting on energy and emissions intensity metrics will be instructive in guiding state energy policy. It may assist in the state's efforts in meeting the statutory obligation to reduce greenhouse gas emissions, and prove useful in the event state or federal regulations of carbon dioxide emissions are adopted in the future. However, given that questions remain concerning the appropriate methodology for collecting the data, we find it premature to adopt the proposed rule in this order. We encourage Staff to work with stakeholders to clarify the appropriate methodology and options for calculating these metrics. While we do not believe a full workshop is necessary to develop these methodologies, we do request further comments and discussion. Today we file a proposed rule making continuance regarding these metrics. Once stakeholders and Staff discuss the methodology further, we will consider adopting a rule requiring reporting of energy and emissions intensity metrics.¹²

⁹ The report projects a reduction of approximately 10.9 million metric tons of carbon dioxide equivalents of greenhouse gas emissions attributable to the Energy Independence Act in 2035. *A Report to the Legislature on the Work of the Climate Legislative and Executive Workgroup* at 10 (Table 1) (January 2014), available online at <http://www.governor.wa.gov/sites/default/files/documents/CLEWfinalCombinedReport20140130.pdf>.

¹⁰ General Order R-578, ¶¶ 132-134.

¹¹ *Id.*, ¶¶ 135-137.

¹² General Order R-578, ¶ 138. RCW 70.235.020 establishes policy goals for GHG emissions reductions relative to emission levels in 1990. On August 3, 2015, the United States

15 The Commission directed its Staff to “engage in further discussion with stakeholders to develop an appropriate methodology for the per capita measurement, as well as guidelines to allocate emissions for multistate utilities.”¹³ In response, the Commission’s Staff convened and led a series of meetings with stakeholders. Participants included representatives of all three electric utilities, Commerce, Public Counsel, the Northwest Energy Coalition, and Renewable Northwest. The stakeholders worked collaboratively and agreed upon guidelines and methodologies for the calculation of energy and emissions intensity metrics as proposed in WAC 480-109-300. The stakeholders filed a final report in this docket memorializing their agreement.¹⁴

16 In this Order, we adopt proposed WAC 480-109-300 with minor technical changes and provide guidance regarding the reporting of energy and emissions intensity metrics.

17 **SERVICE AREA POPULATION:** WAC 480-109-300(2)(c) requires a utility to annually report the number of megawatt-hours used per capita. The utilities expressed concern about the use of non-utility data to calculate their service area population.¹⁵ We understand that stakeholders have now examined various methodologies for deriving service area population using two different sources of publicly available population data, the Washington Office of Financial Management’s *Population Trends* and the United States Census Bureau’s *American Communities Survey*. The stakeholders’ collaborative review process resulted in general agreement regarding a methodology that would derive a utility’s service area population. Given the current availability of census data, the stakeholders agreed that the best method to apply across all three Washington electric utilities would be to multiply the average household size by the number of a utility’s residential customers in each county in its service area.¹⁶ Average household size should be determined using a five-year average of county-level data, published in the United States Census Bureau’s *American Communities Survey*. To produce the reports required

Environmental Protection Agency adopted final rules regulating carbon emissions from electric generating facilities.

¹³ *Id.*, ¶ 131.

¹⁴ Energy and Emissions Intensity Metrics Workgroup Final Summary Report (filed August 7, 2015).

¹⁵ General Order R-578, ¶¶ 136-137.

¹⁶ Utilities should consider making a separate adjustment for master-metered residential buildings, if appropriate.

by WAC 480-109-300(2)(c), the utilities should use the methodology agreed upon by stakeholders and described in the final report and this order.

18 **CO₂ EMISSIONS:** WAC 480-109-300(2)(d)-(e) require a utility to annually report the number of short tons of CO₂ emissions from electric generation, and compare that year's CO₂ emissions amount to the utility's CO₂ emissions in calendar year 1990. The utilities expressed concern about the administrative burden of calculating 1990 emissions.

19 Commerce calculates, but does not publish, electric CO₂ emissions for each utility when preparing the *Washington State Electric Utility Fuel Mix Disclosure Report*.¹⁷ The workgroup agreed to use Commerce's methodology to calculate annual CO₂ emissions for each utility. Commerce, Commission Staff, and representatives from each utility collected sufficient information to estimate 1990 CO₂ emissions for each utility using that same methodology. This group first reconstructed each utility's 1990 electric generation, sales, and purchases. Then, the group used Commerce's standard emission rates from the fuel mix report methodology to determine a CO₂ emission rate for each resource. Next, the amount of energy produced by each resource for Washington customers in 1990 was multiplied by the resource's CO₂ emission rate. The sum of all the resource's emissions is the utility's total 1990 CO₂ emissions. Finally, if necessary, the emissions for each utility were allocated among states using the utility's inter-jurisdictional cost allocation methodology. The results of this work applied to 1990 electric generation are shown in Table 1.

Table 1: Washington-allocated emissions in 1990

| Utility | Million short tons of CO₂ |
|--------------------|---|
| Avista | 1,131,957 |
| Pacific Power | 2,399,078 |
| Puget Sound Energy | 6,946,064 |

All stakeholders agreed that the method used to reach these emissions amounts is appropriate and to use this same method when providing the calculations required by WAC 480-109-300(2)(d)-(e) in future reports. Each utility agreed to use the Washington-allocated emissions values for 1990 as listed in Table 1 in their reports. The utility reports required by WAC 480-109-300(2)(d) should use the methodology agreed upon by

¹⁷ Commerce publishes the *Electric Utility Fuel Mix Disclosure Report* pursuant to RCW 19.29A.080. This annual report identifies the types of resources in each electric utility's fuel mix. Only statewide emissions data is shown in these reports.

stakeholders and described herein. The utility reports required by WAC 480-109-300(2)(e) should use the methodology agreed upon by stakeholders as well as the 1990 Washington-allocated emissions in 1990 listed in Table 1.

20 **TRANSPARENCY AND CONSISTENCY:** In order to promote transparency and consistency in this reporting, each utility must document in detail the sources of data and methods used to make each calculation required under WAC 480-109-300. We expect utilities to use the same source of data and methodology from year to year.

21 We recognize that other methods may become available in the future that would more effectively ascertain the average household size of utility customers or the short tons of CO₂ emissions allocated to a utility's electric generation. We do not foreclose the use of such methods here. However, when a utility considers any change to the stakeholders' agreed upon methodologies the Commission should review the method or data a utility proposes to use before a utility uses it to complete the reports required by this rule. If a utility considers such a change in applicable data or methodology, the utility should notify the commission of the proposed change, explain the reasons for the change, and describe the benefits expected from making the change. That notification should include, for purposes of comparison, the expected results derived from using the methodology we adopt here and the proposed new methodology.

22 **CHANGES FROM THE PROPOSED RULE:** We make several technical changes to the proposed rule. We spell out the term "megawatt-hours" instead of using the abbreviation "MWh." Additionally, we specify that reports must use short tons of CO₂ emissions rather than just referring to tons of CO₂.

IV. COMMISSION ACTION

23 After considering all of the information regarding this proposal, the Commission finds and concludes that it should adopt the rule as proposed in the CR-102 at WSR 15-07-044 with the changes described above.

24 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the Commission determines that WAC 480-109-300 should be adopted to read as set forth in Attachment A, as a rule 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.

V. ORDER

THE COMMISSION ORDERS:

- 25 The Commission adopts WAC 480-109-300 to read as set forth in Attachment A, as a rule 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).
- 26 This Order and the rule 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 RCW 80.01 and RCW 34.05 and WAC 1-21.

DATED at Olympia, Washington, September 9, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



DAVID W. DANNER, Chairman



PHILIP B. JONES, Commissioner



ANN E. RENDAHL, 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 1, amended 0, 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.

Attachment A
[WAC 480-109-300 - RULE]