

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

In the Matter of Repealing,	)	
Amending, and Adopting Rules in	)	DOCKET NO. UE-030423
	)	
Chapter 480-107 WAC	)	GENERAL ORDER NO. R-530
	)	
Relating to	)	
Electric Companies – Purchases of	)	ORDER REPEALING,
Electricity from Qualifying Facilities	)	AMENDING, AND ADOPTING
and Independent Power Producers, and	)	RULES PERMANENTLY
Purchases of Electric Savings from	)	
Conservation Suppliers.	)	
.....	)	

1     **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and Transportation Commission takes this action under Notice WSR # 06-03-127, filed with the Code Reviser on January 18, 2006. 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 repeals the following sections of the Washington Administrative Code.

- 480-107-005 Definitions.
- 480-107-010 Filing requirements for prototype contracts.
- 480-107-020 Eligibility for long-run generating facility purchase rates.
- 480-107-030 Eligibility for long-run conservation purchase rates.
- 480-107-040 Size of resource block.
- 480-107-050 Avoided cost schedules.
- 480-107-060 The solicitation process.
- 480-107-070 Project ranking procedure.
- 480-107-080 Pricing and contracting procedures.
- 480-107-090 Security considerations.
- 480-107-100 Contract finalization.
- 480-107-110 Obligations of generating facilities to electric utility.
- 480-107-120 Obligations of electric utility to qualifying facilities.
- 480-107-130 Rates for sales to qualifying facilities.
- 480-107-140 System emergencies.
- 480-107-150 Interconnection costs.
- 480-107-160 Special conditions for purchase of electrical power or savings from a utility subsidiary.
- 480-107-170 Filings--Investigations--Exceptions.

8 This Order amends the following section of the Washington Administrative Code:

480-107-001 Purpose and scope.

9 This Order adopts the following section of the Washington Administrative Code:

480-107-002 Application of rules

480-107-004 Additional requirements

480-107-006 Severability

480-107-007 Definitions

480-107-015 The solicitation process

480-107-025 Contents of the solicitation

480-107-035 Project ranking procedure

480-107-045 Pricing and contracting procedures

480-107-055 Schedules of estimated avoided cost

480-107-065 Eligibility for long-run conservation purchase rates

480-107-075 Contract finalization

480-107-085 Obligations of generating facilities to the utility

480-107-095 Obligations of the utility to qualifying facilities

480-107-105 Rates for sales to qualifying facilities

480-107-115 System emergencies

480-107-125 Interconnection costs

480-107-135 Conditions for purchase of electrical power or savings from a utility, a utility's subsidiary or affiliate

480-107-145 Filings--Investigations

480-107-999 Adoption by reference

10 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS**

**THEREUNDER:** The Commission filed a Preproposal Statements of Inquiry (CR-101) on April 15, 2003, at WSR # 03-09-070. The statement advised interested persons that the Commission was considering entering a rulemaking to review Chapter 480-107 WAC, "Electric Companies – Purchases of Electricity from Qualifying Facilities and Independent Power Producers, and Purchases of Electric Savings from Conservation Suppliers," for content and readability consistent with Executive Order 97-02.

- 11 **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.
- 12 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, PacifiCorp, Puget Sound Energy, Public Counsel, and Renewable Northwest Project.
- 13 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 electric resource bidding 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.
- 14 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a notice of Proposed Rulemaking (CR-102) on October 5, 2005, at WSR # 05-20-094. The Commission scheduled this matter for oral comment and adoption under Notice WSR # 05-20-094 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.

- 15 Pursuant to the notice, the Commission received comments from the following companies, organizations, and interested persons: Avista Utilities, Cogeneration Coalition of Washington, Industrial Customers of Northwest Utilities (ICNU), Natural Resources Defense Council, Northwest CHP Advocates, Northwest Energy Coalition, Northwest Independent Power Producers Coalition, PacifiCorp, Puget Sound Energy, Public Counsel, and the Renewable Northwest Project.
- 16 The Commission engaged in a technical writing workshop on November 30, 2005, to address stakeholder comments and discuss a variety of changes to the rules. The following companies and organizations participated in the technical writing workshop: Avista Utilities; Climate Solutions; Cogeneration Coalition of Washington; EPCOR; Industrial Customers of Northwest Utilities; Northwest CHP Advocates; Northwest Energy Coalition; Northwest Independent Power Producers Coalition; PacifiCorp; Preston, Gates, Ellis, LLP, representing EPCOR and the Northwest Independent Power Producers Coalition.; and Puget Sound Energy.
- 17 The Commission filed a notice of Supplemental Proposed Rulemaking (Supplemental CR-102) on January 18, 2006, at WSR # 06-03-127. The Commission scheduled this matter for oral comment and adoption under Notice WSR # 06-03-127 at a public hearing at 2:30 p.m., Wednesday, February 22, 2006, 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.
- 18 **COMMENTERS (WRITTEN COMMENTS):** The Commission received written comments from Donald Brookhyser, representing the Cogeneration Coalition of Washington; John Ryan, representing the Northwest CHP Advocates; Jeff Larsen, representing PacifiCorp; and Karl Karzmar, representing Puget Sound Energy. The Commission received oral comments from Bruce Folsom, representing Avista Utilities.
- 19 **RULEMAKING HEARING:** The rule proposal was considered for adoption, pursuant to the notice in WSR # 06-03-127 at a rulemaking hearing scheduled on February 22, 2006, before Chairman Mark H. Sidran, Commissioner Patrick J. Oshie, and Commissioner Philip B. Jones. Bruce Folsom, representing Avista Utilities; John Ryan, representing the Northwest CHP Advocates; and Karl Karzmar, representing

Puget Sound Energy made oral comments during the meeting. Mr. Folsom and Mr. Karzmar thanked the Commission and Commission staff for the rulemaking procedure and its completion. Mr. Ryan reiterated the comments he had previously submitted in writing.

- 20 **SUGGESTIONS FOR CHANGE THAT ARE REJECTED:** The Northwest CHP Advocates suggested that, by giving the purchaser the option to acquire resources based on the “least cost alternative” criterion, the proposed avoided cost language in fact gives the purchaser an option not to acquire cogeneration. The CHP Advocates believe that without strong language that will raise avoided costs, which recognize the triple benefits of cogeneration (1/3 more energy efficient, 1/2 less emissions, and no transmission costs), the likely impact of these new rules will be minimal. The Commission believes that including strong avoided cost language would be less of a bid-based and more of an “administrative” strategy for calculating schedules of avoided costs. The proposed rule retains the provision that schedules of avoided costs are calculated on a “case-by-case” basis.
- 21 The CHP Advocates suggested that imputed debt should not be included in a utility's cost calculations, and recommends that a rigorous investigation on this credit risk issue be completed before including these costs. They also support commencing an investigation as to why Washington State is 31st among states in cogeneration capacity and why no significant cogeneration has been built here in many years. The Commission believes that this level of detail is not necessary in a general rule. Appropriate studies on financial risk and cost will be discoverable in prudence investigations in general rate cases.
- 22 The Cogeneration Coalition of Washington (CCW) stated that the proposed rules allow the utility to evaluate and rank project proposals based on, among other items, “credit and financial risks to the utility.” (WAC 480-107-035). CCW observes that while this is a generic reference to any financial risk, it can easily include imputing additional costs to long-term purchase power agreements on the basis of debt equivalence. According to CCW, it remains uncertain whether the rating agencies’ consideration of debt equivalence actually affects a utility’s costs. CCW argues that given the guarantee that procurement costs related to qualifying facility (QF) contracts should be fully recoverable, it is not clear that entering into a QF contract should produce any increased credit risk.

- 23 For the CCW, allowing the consideration of debt equivalence in these regulations allows a utility broad discretion in how the factor is employed, without any effective review by this Commission. While draft requests for proposals (RFPs) and their proposed ranking criteria are filed for Commission review, Commission review may simply determine that some “consideration” of imputed debt is permissible. There may be no direct and final determination of how imputed debt should be applied or quantified, or whether it is justified in any particular circumstance. The utility’s evaluation of the RFP responses may never be filed at the Commission, and there may be no opportunity for Commission review of how the utility applied the criteria of financial risk. If the evaluations are filed with the Commission, it would likely be under seal so that none of the suppliers could review and question the treatment of imputed debt.
- 24 The Commission believes that this issue must be considered on a “case-by-case” basis. Financial, industry, and market effects will change so assuring a particular financial effect in rule damages future flexibility of the rule. Furthermore, financial, industry, and market effects may vary among companies.
- 25 CCW recommends that the Commission initiate a rulemaking into how debt equivalence will be considered in the procurement process. The Commission believes that as of this time there has been no evidence that such a rulemaking is warranted.
- 26 **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 # 06-03-127 with the changes described below.
- 27 **CHANGES FROM PROPOSAL:** The Commission adopts the proposal without any changes from the text noticed at WSR #06-03-127.
- 28 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the Commission determines that WAC sections 480-107-005, 480-107-010, 480-107-020, 480-107-030, 480-107-040, 480-107-050, 480-107-060, 480-107-070, 480-107-080, 480-107-090, 480-107-100, 480-107-110, 480-107-120, 480-107-130, 480-107-140, 480-107-150, 480-107-160, and 480-107-170 should be repealed, WAC 480-107-001 should be amended, and WAC sections 480-107-002,

480-107-004, 480-107-006, 480-107-007, 480-107-015, 480-107-025, 480-107-035, 480-107-045, 480-107-055, 480-107-065, 480-107-075, 480-107-085, 480-107-095, 480-107-105, 480-107-115, 480-107-125, 480-107-135, 480-107-145, and 480-107-999 should be adopted to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, effective on the thirty-first day after the date of filing with the Code Reviser pursuant to RCW 34.05.380(2).

### ORDER

29 THE COMMISSION ORDERS:

- 30 (1) The Commission repeals WAC sections 480-107-005, 480-107-010, 480-107-020, 480-107-030, 480-107-040, 480-107-050, 480-107-060, 480-107-070, 480-107-080, 480-107-090, 480-107-100, 480-107-110, 480-107-120, 480-107-130, 480-107-140, 480-107-150, 480-107-160, and 480-107-170.
- 31 (2) The Commission amends and adopts WAC sections 480-107-001, WAC 480-107-002, 480-107-004, 480-107-006, 480-107-007, 480-107-015, 480-107-025, 480-107-035, 480-107-045, 480-107-055, 480-107-065, 480-107-075, 480-107-085, 480-107-095, 480-107-105, 480-107-115, 480-107-125, 480-107-135, 480-107-145, and 480-107-999 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).
- 32 (3) 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, March \_\_\_\_, 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.