

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of
Commission Staff for an Exemption
From WAC 480-109-300

DOCKET

COMMISSION STAFF'S
PETITION FOR EXEMPTION
FROM WAC 480-109-300

I. RELIEF REQUESTED

1 The staff of the Washington Utilities and Transportation Commission (Commission) submits this Petition for Exemption from WAC 480-109-300, pursuant to WAC 480-109-030 and WAC 480-07-110. WAC 480-109-300 requires Avista Corporation, Pacific Power & Light Company, and Puget Sound Energy (collectively Companies) to report on carbon dioxide emission through energy and emissions intensity reports (EEI Reports) to be provided to the Commission on or before June 1st of each year. On March 27, 2020, the Commission filed proposed changes to Chapter 480-109 WAC with the Code Reviser to comply with the new statutory requirements of RCW 19.285, including changes to Section 300. The amendments, the adoption hearing for which is set for June 2, 2020, will require each utility to perform its greenhouse gas content calculations in accordance with rules enacted by the Washington Department of Ecology, which have not yet been promulgated.

2 For the reasons set forth below, Commission Staff (Staff) respectfully requests that the Commission exempt the Companies from the requirement that the Companies submit EEI Reports to the Commission on or before June 1, 2020, as mandated by WAC 480-109-300. In sum, an exemption would be in the public interest because it would not work a

hardship on the Companies, because it would support the efficient use of Commission and party resources, and because it is consistent with the purposes of WAC 480-109-300.

II. BACKGROUND

3 Pursuant to WAC 480-109-300, the Companies must file EEI Reports with the Commission on or before June 1st of each year.¹ The rule sets forth the required contents and metrics to be calculated by the Companies and provided in EEI Reports, including that “[t]he report must include annual values for each metric for the preceding ten calendar years.”²

4 On October 4, 2019, the Commission filed a Preproposal Statement of Inquiry (CR-101) with the Code Reviser, under Docket UE-190652, and issued a notice of opportunity to comment on the Commission’s draft rules addressing changes to WAC 480-109, related to the Energy Independence Act, made to comply with the new statutory requirements of RCW 19.285.³ On January 28, 2020, the Commission conducted a workshop and solicited comments from interested parties on draft rules, and additionally issued a Small Business Economic Impact Statement Questionnaire on January 16, 2020.⁴ On March 27, 2020, the Commission filed a Proposed Rule Making (CR-102) with the Code Reviser, issued a notice of opportunity to comment on the proposed rules, and provided notice of a rule adoption

¹ WAC 480-109-300(1).

² *Id.*

³ See *In re Rulemaking to Amend the Energy Independence Act (EIA) WAC 480-109*, Docket UE-190652, Notice of Opportunity to File Written Comments on Proposed Rules and Notice of Proposed Rule Adoption Hearing (Mar. 27, 2020); see also Preproposal Statement of Inquiry (CR-101) on the Commission’s website, available at <http://www.utc.wa.gov/190652> (accessed Apr. 23, 2020).

⁴ See Draft Rules, Comments, and SBEID Questionnaire on the Commission’s website, available at <http://www.utc.wa.gov/190652> (accessed Apr. 23, 2020).

hearing, presently scheduled for June 2, 2020, at 1:30 p.m.⁵ The CR-102 was published on April 15, 2020.⁶

5 The proposed changes to WAC 480-109-300 include the addition of “greenhouse gas content calculation” as a required component of the Companies’ yearly reports.⁷ The amendments additionally require that “[e]ach utility must perform its greenhouse gas content calculation in accordance with the rules enacted by the department of ecology,” among other changes.⁸ Importantly, however, the Washington Department of Ecology has not yet established its rules pertaining to the performance of greenhouse gas content calculations as contemplated by the proposed amendments.

III. DISCUSSION

6 The Commission may grant an exemption from one of its rules pursuant to WAC 480-07-110(2)(c):

The commission uses the public interest standard to determine whether to grant an exemption from, or modification to, a commission rule. Factors the commission may consider in making this determination include whether the rule imposes an undue hardship on the requesting person of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule to the requesting person would be contrary to the underlying purposes of the rule and the public interest.

7 WAC 480-109-030 provides that proposed exemptions to rules contained in Chapter 480-109 are to be considered by the Commission “in the same manner and consistent with the standards and according to the procedures set forth in WAC 480-07-110.”

⁵ *Id.*

⁶ *Id.*

⁷ *Proposed Rules, Utils. and Transp. Comm’n*, 2020 WA REG TEXT 539056, pp. 14-15 (Apr. 15, 2020) (Westlaw).

⁸ *Id.*

8 An exemption in this case would be in the public interest because it would not work a hardship on the Companies, because it would support the policies of efficiency that are incorporated into the Commission’s procedural rules, and because an exemption is consistent with the purposes of the rule and the public interest. First, exempting the Companies from the requirement that they file EEI Reports this year would represent a convenience and efficiency for the Companies, rather than impose any burden.

9 Second, an exemption would promote efficiency in the use of the Commission’s and therefore the public’s resources, as well as the resources of interested parties. The changes to WAC 480-109-300 are set to take effect at the rule adoption hearing scheduled for June 2, 2020, at 1:30 p.m., just *one day* after the Companies are presently required to file their EEI Reports under the outgoing rule provisions. Staff does not believe it would serve judicial economy or the efficient use of Staff, Company, or party resources to require the Companies to file (and the Commission to review and process) reports that are outdated and not reflective of the most recently applicable legislation and rules. Staff therefore believes that granting an exemption would serve the public interest by promoting judicial economy and efficiency.

10 Lastly, an exemption in this instance is consistent with the purposes of WAC 480-109-300 because the EEI Reports that the Companies are required to file next year (on June 1, 2021) will capture information from this year (*i.e.*, covering the date range that would not be provided on June 1, 2020, as a result of this requested exemption). WAC 480-109-300(1) will continue to require that EEI Reports “include annual values for each metric for the preceding ten calendar years,” and therefore the Companies’ 2021 EEI Reports will still capture information from this year.

11 Staff intends to schedule this petition for consideration at the Commission's Open Meeting to be held on May 7, 2020. A copy of this petition will be served electronically on each party, regulated company, or interested stakeholder who appeared in Docket UE-190652, in accordance with WAC 480-07-150(4)(a).

IV. CONCLUSION

12 For the reasons above, Staff respectfully requests an exemption for the Companies from the requirement that the Companies file EEI Reports with the Commission on or before June 1, 2020, as mandated by WAC 480-109-300.

Dated this 24th day of April, 2020.

Respectfully submitted,

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