

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of

PUBLIC UTILITY DISTRICT No. 1
OF CHELAN COUNTY,
WASHINGTON

For a Declaratory Order Regarding
Application of WAC 480-109-200

DOCKET UE-190459

ORDER 01

DECLARATORY ORDER

BACKGROUND

- 1 On June 3, 2019, 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 the Chelan Hydroelectric Project as an eligible renewable resource as defined in RCW 19.285.030, for purposes of compliance with WAC 480-109-200.
- 2 The Petition includes Advisory Opinions from the Department of Commerce (Commerce) designating incremental generation from units A1 and A2 of the Chelan Hydroelectric Project as an eligible renewable resource 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 5.42 percent of total production of the incremental hydropower at Chelan PUD's Chelan Hydroelectric Project as a renewable resource.
- 3 The Petition requests that the Commission (1) adopt Commerce's conclusion regarding the percentage of incremental hydropower production available from the Chelan Hydroelectric Project, and (2) enter an order declaring that 5.42 percent of total generation at Chelan PUD's Chelan Hydroelectric Project may be used for compliance with WAC 480-109-200.
- 4 On June 5, 2019, the Commission issued a notice of opportunity for any interested person to respond to the Petition by June 19, 2019.
- 5 On June 17, 2019, Avista Corporation d/b/a Avista Utilities (Avista) responded to the Petition. Avista supports Chelan PUD's request that that the Commission approve the incremental generation from the Chelan Hydroelectric Project because it will foster the use of new resources, which will benefit Washington customers.

6 On June 18, 2019, Commission regulatory staff (Staff) submitted its response to the Petition. Staff agrees that a declaratory order will facilitate the sale of Chelan PUD's surplus eligible renewable resources to an investor-owned utility or other entity regulated by the Commission. Staff is satisfied with Chelan PUD's engineering analysis, but does not believe it is necessary for the Commission to make a specific finding regarding the methods used to calculate incremental hydropower production. Staff recounts that the Commission concluded in a prior declaratory order entered at Chelan PUD's request that Commerce and the Commission should defer to the other's determinations to avoid unnecessary confusion and potential conflict.¹ Staff notes that the facts of this Petition are nearly identical to those in the previous docket, and therefore support the same conclusion. Finally, Staff considered whether the Clean Energy Transformation Act (CETA), which amends parts of the Energy Independence Act (EIA), has any impact on the Petition. Staff determined that CETA has no impact on the Petition because the portions of the EIA relevant to the Petition are unchanged.

DISCUSSION

7 Under WAC 480-07-930(1), any interested person may petition the Commission for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the Commission, as provided by RCW 34.05.240.

8 On September 15, 2017, the Commission issued a declaratory order in response to Chelan PUD's Petition for a Declaratory Order Regarding the Application of WAC 480-109-200 in Docket UE-170840 (2017 Declaratory Order). In the 2017 Declaratory Order, the Commission addressed the elements a petitioner must demonstrate in its petition and determined that Chelan PUD had satisfied them.² As Staff observes in its response, the facts in Chelan PUD's petition in the 2017 docket are nearly identical to the facts set out in the Petition at issue here; Chelan PUD seeks Commission approval of Commerce's conclusion regarding the percentage of incremental hydropower production available from the Chelan Hydroelectric Project.

9 We find that the Petition satisfies the statutory prerequisites for, and the Commission rule governing, declaratory orders. No persons assert that their rights may be substantially prejudiced by the Commission entering a declaratory order on the issues raised in the

¹ *In the Matter 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 at 4 (Sept. 15, 2017).

² RCW 34.05.240(1) provides that a petitioner must demonstrate that: (a) uncertainty necessitating resolution exists; (b) there is actual controversy arising from the uncertainty; (c) the uncertainty adversely impacts the petitioner; (d) the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public; and (e) the petition complies with any additional requirements established by the agency.

Petition. Accordingly, the Commission grants the Petition and enters this declaratory order determining that the incremental hydropower generated by the Chelan Hydroelectric Project may be used to comply with WAC 480-109-200.

- 10 The Energy Independence Act (EIA) establishes renewable energy targets for electric utilities based on a percentage of customer load.³ Each such utility must meet customer load targets of 3 percent from 2012 to 2015, 9 percent from 2016 to 2019, and 15 percent in 2020 and each year thereafter.⁴ Eligible renewable resources include incremental electricity produced as a result of efficiency improvements to hydroelectric generation projects owned by a qualifying utility where the additional generation does not result in new water diversions or impoundments.⁵
- 11 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.⁶ Here, Chelan PUD has presented the requisite documentation to Commerce for the Chelan Hydroelectric Project and Commerce confirmed that 5.42 percent of the total generation from those projects are eligible renewable resources.⁷
- 12 We adopt Commerce's conclusions. As we found in the 2017 Declaratory Order, the Commission and Commerce have independent authority to enforce the EIA with respect to the utilities that come within their respective jurisdiction. At times, the Commission's authority overlaps with Commerce's authority. 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 percentage of incremental electricity produced at Chelan Hydroelectric Project that is a renewable resource. We affirm that determination and declare that 5.42 percent of total generation from units A1 and A2 of the Chelan Hydroelectric Project may be used for compliance with WAC 480-109-200.
- 13 We agree with Staff that we need not reach the issue of whether Chelan PUD's engineering analysis satisfies the Commission's methodology for calculating the amount of incremental hydropower generation eligible as a renewable resource. We determined in the 2017 Declaratory Order that undertaking a separate inquiry to assess whether

³ RCW 19.285.040(2)(a).

⁴ RCW 19.285.040(2)(a)(i), (ii), and (iii).

⁵ RCW 19.285.030(12)(b).

⁶ WAC 194-37-130.

⁷ Petition, Exhs. A & B.

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.⁸

- 14 We also decline to preapprove or otherwise address future updates to the percentages. Chelan PUD should first present any updated information to Commerce. If Commerce revises the percentages, Chelan PUD may then seek Commission concurrence in that determination.

ORDER

THE COMMISSION ORDERS That:

- 15 (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.
- 16 (2) The Commission declares that 5.42 percent of total generation at units A1 and A2 of the Chelan Hydroelectric Project may be used for compliance with WAC 480-109-200.

DATED at Lacey, Washington, and effective June 28, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner

⁸ 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 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.