

MEMORANDUM

October 27, 2010

TO: Jeff Goltz, Chairman
Patrick Oshie, Commissioner
Philip Jones, Commissioner

FROM: Green House Gas Emissions Performance Rulemaking Team
Docket UE-100865

SUBJECT: Staff Adoption Hearing Memorandum
Proposed Revisions to WAC 480-100, Part VII.

BACKGROUND

On June 23, 2010, the Commission filed with the Code Reviser a Preproposal Statement of Inquiry (CR-101) to consider amending existing rules in WAC 480-100, Part VII, regarding Greenhouse Gas Emissions. The purpose of the proposed rule amendments was to reflect revisions to RCW 80.80, which took effect July 26, 2009, under Senate Bill 5989 and House Bill 2129.

Discussion draft rules prepared by Commission Staff were included with the CR-101. The Commission solicited comments on the Staff discussion draft rules. Comments were received on July 26, 2010, from the NW Energy Coalition, the Public Counsel Section of the Attorney General's Office, PacifiCorp, Puget Sound Energy, Inc. (PSE) and Avista Corporation.

After thorough consideration of the comments received, the Commission prepared proposed rules for further public comment and, on September 1, 2010, the Commission filed a Notice of Proposed Rulemaking (CR-102) in this docket with the Code Reviser. No comments on the CR-102 proposed rules were submitted to the Commission. Because of the lack of any controversial proposals in either the Staff discussion draft rules or the CR-102 proposed rules, no stakeholder work session was convened.

COMMENTS RECEIVED

Comments - Staff Discussion Draft Rules

The Commission received comments from interested parties on the Staff discussion draft rules on July 26, 2010. Only three of those parties had concerns or suggestions for changes in the Staff proposal: PacifiCorp, the NW Energy Coalition and PSE.

The CR-102 proposed rules reflected two proposed changes from the discussion draft rules; the majority of the suggested discussion draft changes were not accepted.

480-100-405 Electrical company generation resource compliance with the greenhouse gas emissions performance standard.

1. **PacifiCorp** proposed moving the Staff proposed wording regarding long-term financial commitment with the Bonneville Power Administration from WAC 480-100-405(2)(d), definitions, to the first paragraph of WAC 480-100-405 to avoid confusion. The proposed relocation of the rule language includes changing the word “definition” to “chapter” and changing “include” to “apply.”

Staff agreed that there may be confusion of the term “long-term financial commitment” if there are two definitions, one in statute and one in the related WAC. The CR-102 proposed rules incorporated PacifiCorp’s modification. Staff recommends that the Commission adopt the proposed change in wording and location in the rule.

2. **PacifiCorp** stated that the proposed change in WAC 480-100-405(2)(g) raises a significant question as to the Commission’s ability to regulate facilities located outside the state. PacifiCorp asked the Commission to provide an opportunity in this proceeding for the parties to discuss how the Commission interprets its extraterritorial authority.

Staff disagreed. The Commission has no authority to regulate facilities outside Washington State. The Commission is only regulating the power acquisition choices of the Commission-regulated company, whether the power comes from in-state or out-of-state. Plus, the rule only reflects the exact language of the statute. Staff believes the proposed meeting is unnecessary.

480-100-415 Electrical company applications for commission determination outside of a general rate case of electric generation resource compliance with greenhouse gas emissions performance standard.

3. **PacifiCorp** suggested that the wording in WAC 480-100-415(3)(a)(iii) and (3)(b)(iii) that requires applicants to provide “[s]uch other information as is available concerning...” be changed. According to PacifiCorp, the wording is “...vague and potentially unachievable.” PacifiCorp stated that it “...may not be aware of all available emissions characteristics”

Staff agreed. A company cannot provide information that it does not possess, know about or is unavailable to it. The CR-102 proposed rule refers to “such other information as is available to or in the possession of the electrical company.” Staff recommends that the Commission adopt that language.

4. **The NW Energy Coalition** believed that the proposed wording in WAC 480-100-415(1) confines the 12 percent electricity from unspecified sources limitation to filings before the Commission outside of a general rate case (GRC). They recommend either inclusion of the language in the definition of “long-term financial commitment” or an additional provision clarifying that no long-term financial commitment would be considered within the context of a GRC if it includes more than 12 percent electricity from unspecified sources.

Staff disagreed. The NW Energy Coalition takes too broad a view of the purpose of this rulemaking. The proposed rule merely adds the additional restriction provided in HB 2129 that addresses filings that are not GRCs. The suggestions offered by the NW Energy Coalition would broaden the scope of the rulemaking beyond its original intent; and is not necessary to effectively implement the 12 percent rule in the context of a GRC. The CR-102 proposed rule rejected the NW Energy Coalition’s recommended language.

480-100-425 Electrical company applications for exemption from the greenhouse gas emissions performance standard.

5. **PSE** recommended that the Commission provide some guidance to utilities regarding the criteria that will be considered in establishing “extraordinary cost impacts on utility ratepayers” as used in WAC 480-100-425. PSE suggested that the following specific standard should be adopted: “Extraordinary cost impacts on utility ratepayers means that the average bill of all utility customers will increase by 20 percent or more on average.”

Staff disagreed. Whether or not there are “extraordinary cost impacts” that would exempt a company from complying with the greenhouse gas emissions performance standard depends on the facts and circumstances of a particular case. The Commission should not set an arbitrary threshold that would limit its discretion to analyze the various factual situations that may come before it. The CR-102 proposed rules rejected PSE’s suggested language.

Comments - CR-102

In response to the proposed rules provided in the CR-102, the Commission received only one letter. PacifiCorp stated that it had no comments, but reserved its right to provide further comments in the future if the need arises.

RECOMMENDATION - Adopt

The proposed changes to the rules in WAC 480-100 are limited to changes in RCW Title 80.80 resulting from the passage of Senate Bill 5989 and House Bill 2129 during the 2009 legislative session. The proposed rule changes are consistent with the statutory amendments. Therefore, Staff recommends that the Commission adopt the attached proposed rules, as submitted in the CR-102 filing.

Attachments:

Comments Matrix

Proposed rules in legislative format