BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

Rulemaking to consider revisions to WAC 480-109 in order to align existing rules with provisions of ESSSB 5116	DOCKET UE-190652

INITIAL COMMENTS OF PUBLIC COUNSEL

November 4, 2019

I. INTRODUCTION

1. Pursuant to the Commission's October 4, 2019 Notice of Opportunity to File Written Comments, Public Counsel respectfully submits the following comments regarding the rulemaking for the Energy Independence Act (EIA), WAC 480-109. Public Counsel has reviewed the Draft Rules, including Attachment A, and we are generally supportive of the proposed changes. However, we do have some concerns regarding defining energy burden based on a national average and have a few minor edits to the proposed Draft Rules. We look forward to reviewing other stakeholder comments, and future discussions on the topics in the Notice and the Draft Rules.

II. GENERAL COMMENTS

2. Below are Public Counsel's general comments regarding the issue of energy burden. The Clean Energy Transformation Action (CETA) states the following:

> The legislature recognizes and finds that the public interest includes, but is not limited to: The equitable distribution of energy benefits and reduction of burdens to vulnerable populations and highly impacted communities; long-term and short-term public health, economic, and

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environmental benefits and the reduction of costs and risks; and energy security and resiliency.[1]

3. Given this directive, we believe energy burden to be a significant issue the Commission and the state will need to address. This is an immense issue that we believe should be evaluated and tackled thoughtfully and with the proper available information. As we state more thoroughly in response to the Notice Questions below, we believe it is too early to propose a percentage of energy burden that should be included at this time. Furthermore, we believe that the definition of energy burden also needs to be discussed and agreed upon before rules can be added to address CETA in any of the WACs.

III. NOTICE QUESTIONS

Low-Income Conservation

1. Do stakeholders have concerns with the additions of the statutory definitions for "energy assistance" and "energy burden" in WAC 480-109-060?

4. No, Public Counsel does not have any concerns with adding the statutory definitions of energy assistance and energy burden within WAC 480-109. In fact, we believe that energy efficiency will be one of the primary methods in which customers with high energy burdens can reduce their household energy costs; and thus, should be included in WAC 480-109.

5. However, we believe the Commission and stakeholders should give further consideration as to what energy burden means in this context. For example, are home energy bills referencing electricity, gas, or both? Should home energy bills only apply to

[1] Clean Energy Transformation Action (CETA), E2SSB 5116, § (1)(6) (2019).

heating bills? These are fundamental questions (as well as many others) that should be discussed by the Commission and stakeholders in order to address the issue of energy burden effectively.

2. Please propose the level of energy burden that should be included within the definition of "Energy assistance need." Please explain and provide justification for your proposal. Industry literature suggests an affordability benchmark as low as six percent of household income.

6. As we stated above, Public Counsel cannot recommend a specific percentage of energy burden at this time. We understand that a national average of six percent has been used for industry literature. However, we believe that if the rules reference a specific level of energy burden, this number should be based on Washington State specific data, not on a national average. For example, there are many favors that effect and influence energy burden, such as electricity price, building stock age, and the heating source within a home. These factors vary across the nation and have resulted in low-income energy burden ranging from an average of four percent to fourteen percent.[2]

7. Furthermore, most studies and information regarding energy burden are focused on urban or metropolitan households, and not on rural households. Rural households have been shown to have a higher energy burden than others in their respective regions (i.e. Pacific Northwest), as well as higher energy burden compared to urban households.[3]

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[2] U.S. Department of Energy (USDOE) Office of Energy Efficiency & Renewable Energy, *Low-income Household Energy Burden Varies Among States —Efficiency Can Help In All of Them* (Dec. 2018) https://www.energy.gov/sites/prod/files/2019/01/f58/WIP-Energy-Burden_final.pdf.

[3] Ross, Lauren, et al., *The High Cost of Energy in Rural America: Household Energy Burdens and Opportunities for Energy Efficiency,* American Council for an Energy-Efficient Economy (July 2018) http://www.aceee.org/sites/default/files/publications/researchreports/u1806.pdf.

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8. Given these disparities, Public Counsel would like more time to look into available data and studies before proposing a percentage. Furthermore, we believe a workshop on this issue would be valuable for all interested parties.

3. Please propose a definition of "low-income" based on area median household income or percentage of the federal poverty level. Please explain and provide justification for your proposal. The maximum allowed in Laws of 2019, Chapter 288, § 2(25), is the higher of 80 percent of area median household income or 200 percent of federal poverty level, adjusted for household size. Investor-owned utilities currently use 200 percent of the federal poverty level, adjusted for household size, for the low-income conservation programs.

9. Public Counsel supports the inclusion of both the maximum allowable definitions of low-income that includes both 80 percent of area median household income and 200 percent of federal poverty level, adjusted for household size. We believe it is important to include both of the metrics in the definition of low-income for flexibility, even though the federal poverty level is currently the metric used by utilities for low-income conservation.

10. Hence, we recommend the following language, "Low-income" means household incomes that are less than or equal to the higher of 80 percent of area median household income or 200 percent of federal poverty level, adjusted for household size."

4. Do stakeholders have concerns with the proposed changes to WAC 480-109-100(10) addressing funding and programs for low-income energy assistance as described in the Laws of 2019, Chapter 288, §§ 2(16) and 12? Is additional language necessary? If so, please propose alternative rule language.

11. The Draft Rules state the following:

> (a) A utility ~~may~~ must fully fund low-income conservation measures that are determined by the implementing agency to be cost-effective consistent with the *Weatherization Manual* maintained by the department. Measures identified through the priority list in the *Weatherization Manual* are considered cost-effective. In addition, a utility ~~may~~ must fully fund repairs, administrative costs, and health and safety improvements associated with cost-effective low income conservation measures.
>
> (b) The utility's biennial conservation plan must include low-income conservation programs and mechanisms identified pursuant to the

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Laws of 2019, chapter 288, section 12(4)(b), which pertains to energy assistance and progress toward meeting energy assistance need.

(i) A utility must consider the costs and benefits that accrue to the customer over the life of each conservation measure.

(ii) To the extent practicable, a utility must prioritize energy assistance to low-income households with a higher energy burden.

(~~b~~c) A utility may exclude low-income conservation from portfolio-level cost effectiveness calculations.

(~~c~~d) A utility must count savings from low-income conservation toward meeting its biennial conservation target. Savings may be those calculated consistent with the procedures in the *Weatherization Manual*.[4]

12. Public Counsel has several comments regarding this section. First, we agree with the Commission's amendments in subsection (a). We believe all electric utilities must fund not only cost-effective measures included within the Weatherization Manual, but also other important repairs, health and safety improvements, and administrative costs related with cost-effective conservation measures, pursuant to CETA. We believe this change will provide a necessary foundation for increasing low-income conservation and much needed repairs in homes that would normally not have been eligible for participation in weatherization.

13. Second, Public Counsel believes that subsection (b)(i) "costs and benefits" is too vague. We are unsure whether this means low-income programs must be included in a total resource cost test, should be subjected to some other form of cost-effectiveness testing, or whether non-energy benefits should be included in the evaluation of low-income conservation. As we describe below, Public Counsel recommends that low-income conservation programs should not be included in the portfolio level cost-

[4] WAC 480-109-100(10)(a)-(d), Draft Revisions.

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effectiveness calculation. Thus, we recommend that subsection (b)(i) be removed at this time.

14. Third, Public Counsel believes that low-income conservation should be excluded from the portfolio level cost-effectiveness calculation. Low-income conservation programs can be riskier and more costly, but are vastly needed to serve this hard-to-reach population. We believe that in order to increase the access and delivery of these programs, the current cost-effectiveness test must be altered or removed for the evaluation of a low-income portfolio. Furthermore, considering CETA's focus on alleviating energy burden and increasing energy assistance,[5] we believe that it is necessary to exclude low-income conservation programs from the portfolio level cost effectiveness tests to achieve these goals.

15. Finally, conservation will now play a greater role in achieving the state's energy goals in the coming years. Regulatory changes allowing special consideration of low-income programs may increase access to energy efficient measures and can directly assist low-income customers in reducing their energy burden. Other jurisdictions treat low-income programs differently than programs focused on other sectors. For example, Arizona does not include the costs of health and safety improvements within a utility's cost-effectiveness calculation,[6] while Iowa and Kentucky do not require low-income programs to be tested for cost-effectiveness.[7]

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[5] CETA § 12.

[6] Chapter 14-2 Ariz. Admin. Code (2018) https://apps.azsos.gov/public_services/Title_14/14-02.pdf.

[7] Iowa Admin. Code 199-35-8 (1999) https://www.legis.iowa.gov/docs/ACO/IAC/LINC/10-06-2010.Rule.199.35.8.pdf; *In the Matter of: The Jt. Appl. Of the Members of the LG&E Co. Demand-Side Mgmt. Collaborative for the Review, Modification, and Continuation of the Collaborative, DSM Programs,*

16. Thus, Public Counsel recommends the following language:

> (a) A utility ~~may~~ must fully fund low-income conservation measures that are determined by the implementing agency to be cost-effective consistent with the *Weatherization Manual* maintained by the department. Measures identified through the priority list in the *Weatherization Manual* are considered cost-effective. In addition, a utility ~~may~~ must fully fund repairs, administrative costs, and health and safety improvements associated with cost-effective low-income conservation measures.
>
> (b) The utility's biennial conservation plan must include low-income conservation programs and mechanisms identified pursuant to the RCW 19.405 ~~Laws of 2019, chapter 288, section 12(4)(b),~~ which pertains to energy assistance and progress toward meeting energy assistance need.
>
> (i) A utility must consider the costs and benefits that accrue to the customer over the life of each conservation measure.
>
> (ii) To the extent practicable, a utility must prioritize energy assistance to low-income households with a higher energy burden.
>
> (~~b~~c) A utility ~~may~~ must exclude low-income conservation from portfolio-level cost effectiveness calculations.
>
> (~~c~~d) A utility must count savings from low-income conservation toward meeting its biennial conservation target. Savings may be those calculated consistent with the procedures in the *Weatherization Manual*.

5. The Laws of 2019, Chapter 288, § 12(2), requires utilities to plan for the provision of energy assistance aimed toward reducing household energy burdens. To the extent practicable, this energy assistance must prioritize low-income households with higher energy burdens. What considerations should the Commission consider in determining what is practicable in the context of low-income conservation?

17. As stated previously, Public Counsel believes that Washington State specific data is required to meet this provision. Thus, we do not have any recommendations as this time.

and Cost Recovery Mechanism, Docket No. 97-083, Order (Apr. 27, 1998) http://psc.ky.gov/order_vault/Orders_1998/199700083_04271998.pdf.

Incremental Hydropower Method Three

6. **The Commission proposes to eliminate incremental hydropower method three and its associated five-year evaluation from its rules (see WAC 480-109-200(7)(d) and (e)). A recent analysis by Avista Utilities showed method three overestimated incremental generation. The Commission subsequently approved Avista's switch from method three to method one. Since no investor-owned utility currently uses method three, the Commission believes it reasonable to remove it from the rules. Additionally, while the proposed rules would allow the transfer of incremental hydropower renewable energy credits (RECs) per statute (see RCW 19.285.040(2)(e)(ii)(B)), this transferability would only apply to bundled RECs that cannot be calculated using method three because method three does not deal with real-time generation. Do stakeholders have concerns about deleting method three and its associated five-year evaluation?**

18. Public Counsel does not oppose the deletion of Method Three and its associated five-year evaluation.

Greenhouse Gas Emissions Reporting

7. **Do stakeholders have concerns with the additions of the statutory definitions for "carbon dioxide equivalent" and "greenhouse gases"?**

19. Public Counsel does not have any concerns with including the statutory definitions for carbon dioxide equivalent and greenhouse gas in WAC 480-109.

8. **Electric utilities currently report their carbon dioxide emissions through the energy emissions intensity reports required by WAC 480-109-300. The Laws of 2019, Chapter 288, § 7, requires reporting of "metric tons" of "carbon dioxide equivalent," which is further defined in the Laws of 2019, Chapter 288, § 2(22). Do stakeholders have concerns with the changes proposed in WAC 480-109-300? If so, please provide alternative rule language or justifications for retaining the existing language.**

20. Public Counsel considers these changes to be consistent with CETA and does not oppose the changes.

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9. The Laws of 2019, Chapter 288, §§ 2 and 7, define "greenhouse gas" and "carbon dioxide equivalent." However, the Laws of 2019, Chapter 288, § 7, does not provide a default emissions rate for greenhouse gas emissions other than carbon dioxide from unspecified electricity. How should the Commission's rules specify an emissions rate for greenhouse gas emissions other than carbon dioxide from unspecified electricity? What data source(s) and methodology should the Commission use to establish a default emissions rate from greenhouse gases other than carbon dioxide?

21. Public Counsel does not believe that the Commission should be setting emissions rates for other greenhouse gases. We believe that the Department of Ecology ("Ecology") should set any emission rates for other greenhouse gases, in consultation with the UTC and the Department of Commerce. Ecology has been named as the agency designated with adding gases to the definition of greenhouse gases per RCW 70.235.010. Furthermore, CETA has designated Ecology to create several calculations associated with greenhouse gases, such as the calculation for a conversion factor for energy transformation projects,[8] the greenhouse gas context calculation,[9] and the calculating the emissions rate for unspecified electricity.[10] Thus, Public Counsel believes that Ecology has the expertise to calculate the emission rates of greenhouse gases other than carbon dioxide.

[8] CETA § 4(2).
[9] CETA § 2(22).
[10] CETA § 7(2).

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10. The Laws of 2019, Chapter 285, § 15, requires natural gas companies to put a price-perton cost on greenhouse gas emissions, including "emissions occurring in the gathering, transmission, and distribution" processes. Should WAC 480-109-300 include language requiring electric companies to report on greenhouse gas emissions occurring during the gathering of fuel for electricity generators?

22. Public Counsel believes it would be beneficial for electric utilities to also track the emissions associated with the gathering, transmission, and distribution of energy fuel for electricity generators in its reporting of energy and emissions intensity metrics.

Definitions and Other Changes

11. Do stakeholders have concerns with any of the proposed changes to chapter 480-109 WAC described in Attachment A?

23. Yes, Public Counsel recommends the following changes to WAC 480-109-060. WAC 480-109-060(19): "Integrated resource plan" or "IRP" means the filing made every two years by an electric utility in accordance with WAC 480-100-238, ~~integrated resource planning~~.

24. CETA in Section 14 amends RCW 19.280.030(8) stating, "Plans developed under this section must be updated on a regular basis, on intervals approved by the commission or the department, or at a minimum on intervals of two years."[11] While the Integrated Resource Planning (IRP) Rulemaking in docket UE-190698 has opened, but not commenced, we believe that the IRP intervals will be discussed in this rulemaking and a change in intervals may be proposed or accepted. While we do not propose a new interval for the filing of IRP here, we believe a placeholder for a possible change is appropriate. Thus, we recommend the following, "Integrated resource plan" or "IRP" means the filing

[11] CETA § 14.

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made every [XX] years by an electric utility in accordance with WAC 480-100-238, ~~integrated resource planning~~.

12. Do stakeholders have suggestions to simplify or clarify the language? If so, please cite the specific rule and propose alternative rule language.

25. Public Counsel has three suggestions regarding clarity in the Draft Rules.

26. One: the Draft Rules at WAC 480-109-060(12)(f)(i) state the following:

> Incremental electricity produced as a result of a capital investment completed after January 1, 2010, that increases, relative to a baseline level of generation prior to the capital investment, the amount of electricity generated in a facility that generates qualified biomass energy as defined under subsection (28)(c)(ii) of this section and that commenced operation before March 31, 1999.[12]

27. Public Counsel is uncertain what the Draft Rule references in this subsection. We believe this subsection should be reworded for clarity.

28. Two: the Draft Rules at WAC 480-109-100(10)(b) state, "The utility's biennial conservation plan must include low-income conservation programs and mechanisms identified pursuant to the Laws of 2019, chapter 288, section 12(4)(b), which pertains to energy assistance and progress toward meeting energy assistance need."[13]

29. The Draft Rules references the "Laws of 2019, chapter 288". Public Counsel believes that for clarity and long-term future reference, CETA should be referenced by its codified chapter RCW 19.405. This is true for all references to CETA in the draft rules that refer to the Laws of 2019 instead of the RCW codification.

30. Three: The Draft Rules at WAC 480-109-200(2) state the following:

> **(2) Credit eligibility.** ~~Renewable energy credits produced during the target year, the preceding year or the subsequent year may be used to~~

[12] WAC 480-109-060(12)(f)(i), Draft Revisions.
[13] WAC 480-109-100(10)(b), Draft Revisions.

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~~comply with this annual renewable resource requirement provided that they were acquired by January 1st of the target year.~~ A qualifying utility may use renewable energy credits to meet the requirements of this section, subject to the following limitations:

(a) Renewable energy credits were acquired by January 1st of the target year;

(b) A renewable energy credit from electricity generated by a resource other than freshwater may be used to meet a requirement applicable to the year in which the credit was created, the year before the year in which the credit was created, or the year after the year in which the credit was created.

(c) A renewable energy credit from electricity generated by freshwater:

(i) May only be used to meet a requirement applicable to the year in which the credit was created; and

(ii) Must be acquired by the qualifying utility through ownership of the generation facility or through a transaction that conveyed both the electricity and the nonpower attributes of the electricity.

(d) A renewable energy credit transferred to an investor-owned utility pursuant to the Bonneville Power Administration's residential exchange program may not be used by any utility other than the utility receiving the credit from the Bonneville Power Administration.

(e) Each renewable energy credit may only be used once to meet the requirements of this section and must be retired using procedures of the renewable energy credit tracking system.

(f) For purposes of this subsection, the vintage month and vintage year of the renewable energy credit represent the date the associated unit of power was generated.[14]

31. It is unclear whether the limitations described mean that the renewable energy credits can or cannot be used if they meet the condition. For example, it is unclear as written whether renewable energy credits acquired by January 1st of the target year can or cannot be used. Clarifying language specifying the intent would be helpful.

Additional Questions

13. Do stakeholders believe a workshop is necessary for this rulemaking?

32. Public Counsel believes that it would be beneficial to have another round of comments before holding a workshop for this rulemaking. Specifically we believe the issue of

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energy burden and low-income conservation in WAC 480-109 requires more research and discussion.

14. Are there other definitions from Laws of 2019, Chapter 288, that the Commission should include in chapter 480-109 WAC?

33. At this time, Public Counsel does not believe any other definitions should be included. However, we are open to reviewing other definitions stakeholders would like to include.

15. Should this rulemaking establish protocols for designating confidential information inutilities' annual RPS reports? If so, how should the language in chapter 480-109 WAC be revised to address such protocols?

34. Yes. Public Counsel believes that it is important to allow for public participation in the review of the electric utilities' annual RPS filings. This cannot occur if the utilities are redacting a large portion of their RPS reports. Thus, we believe that the Commission, stakeholders, and the public would benefit from rules or restrictions on what qualifies as confidential information pursuant to these reports. Given the issues that arose in UE-190448, Public Counsel believes that only the redacted information in an annual RPS report should be (1) the renewable energy credit price forecasts, and (2) the planned renewable energy credit sales and/or purchases. It is our understanding that most electric utilities are already complying with these restrictions; hence, we do not believe any utilities will be harmed by only redacting these select items.

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16. Should the Commission consider changes to WAC 480-109-200 addressing incremental cost calculation for eligible renewable resources? Specifically, what modifications to the language in chapter 480-109 WAC do you propose to address potential upgrades or renovations to existing eligible renewable resources?

35. Public Counsel has no position at this time regarding incremental cost calculation for eligible renewable resources. We look forward to discussing this topic with other stakeholders.

17. The Laws of 2019, Chapter 288, § 10, requires the Commission and the Department of Commerce to adopt rules that "streamline" the implementation of this statute with chapter 19.285 RCW. Given that the Commission and the Department will be conducting several rulemakings resulting from enacted legislation in the next few years, should this streamlining be addressed in the current rulemaking or should streamlining take place closer to the point when both agency's finalize rulemakings implementing statutory changes? What sections of rules in WAC 480-109 should be subject to streamlining?

36. We believe that the Commission and the Department should streamline all rulemakings associated with enacting legislation that effects both agencies. Specifically, we believe that representatives of both agencies should monitor any rulemakings the other agency conducts. We believe this will not only help with streamlining and cohesion of each agencies rulemakings, but may also lead to sharing of ideas and processes.

18. The Laws of 2019, Chapter 288, § 6(a)(i), requires specific targets for energy efficiency, demand response, and renewable energy. Should planning and reporting requirements for energy efficiency integrate the planning and reporting requirements for demand response and other distributed energy resources? If so, how? Should any of this be addressed in chapter 480-109 WAC?

37. Public Counsel believes that the planning and reporting of energy efficiency, demand response, and other distributed energy resources should occur collectively for clarity. We believe all of these targets are associated with one another when considering

resource acquisition issues and should be planned together. However, we do not believe that these targets should be included in the EIA rules.

19. Do stakeholders recommend any additional changes to chapter 480-109 WAC in this rulemaking? If so, please explain and provide justification for the change.

38. Public Counsel does not have any further recommendations at this time.

IV. CONCLUSION

39. Public Counsel appreciates the opportunity to comment on the EIA Rulemaking. While we generally agree with the Draft Rules, we believe that further discussion and action is required on tackling the issue of energy burden pursuant to CETA.

40. We look forward to reviewing other stakeholder comments and further discussions on these topics. If there are any questions regarding these comments, please contact Carla Colamonici at Carla.Colamonici@atg.wa.gov or at (206) 389-3040 or Lisa Gafken at Lisa.Gafken@atg.wa.gov or at (206) 464-6595.

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