

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

In the Matter of Adopting)	DOCKET UE-080111
)	
WAC 480-100-405, WAC 480-100-415, WAC 480-100-425, and WAC 480-100-435)	GENERAL ORDER R-553
)	
Relating to Greenhouse Gas Emissions)	ORDER ADOPTING RULES
)	PERMANENTLY
.....)	

1 **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and Transportation Commission (Commission) takes this action under Notice WSR # 08-17-106, filed with the Code Reviser on August 20, 2008. The Commission brings this proceeding pursuant to RCW 80.01.040, RCW 80.04.160 and RCW 80.80.060.

2 **STATEMENT OF COMPLIANCE:** This proceeding complies with the Administrative Procedure Act (RCW 34.05), the State Register Act (RCW 34.08), the State Environmental Policy Act of 1971 (RCW 43.21C), and the Regulatory Fairness Act (RCW 19.85).

3 **DATE OF ADOPTION:** The Commission adopts these rules on the date this Order is entered.

4 **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW 34.05.325(6) requires the Commission to prepare and publish a concise explanatory statement about an adopted rule. The statement must identify the Commission’s reasons for adopting the rule, describe the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the Commission’s responses to the comments reflecting the Commission’s consideration of them.

<p>OFFICE OF THE CODE REVISER STATE OF WASHINGTON FILED</p> <p>DATE: November 14, 2008 TIME: 8:29 AM</p> <p>WSR 08-23-047</p>
--

- 5 To avoid unnecessary duplication in the record of this docket, the Commission designates the discussion in this Order, including Appendix A (*i.e.*, the rules adopted by this Order), as its concise explanatory statement, supplemented by the October 23, 2008, staff memorandum preceding the adoption hearing, insofar as that memorandum is pertinent to, and is consistent with, the requirements of the rules adopted by this Order. Together, these documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.
- 6 The rules establish the information required to be included in electrical company filings requesting determination by the Commission that new long-term financial commitments for base-load electric generation comply with the greenhouse gases emissions performance standard (EPS), and the process by which these requests will be considered. In addition, the rules establish the information required to be included in requests electrical companies may make to be exempted from the EPS under certain circumstances. Finally, the rules specify reports required to be filed by electrical companies using the cost deferral accounting authorized under RCW 80.80.060(6).
- 7 The reason the Commission is adopting these rules is to comply with Engrossed Senate Substitute Bill 6001, Chapter 307, Laws of 2007, with the title Climate Change – Mitigating Impacts (codified as RCW 80.80).
- 8 **REFERENCE TO AFFECTED RULES:** This Order adopts the following sections of the Washington Administrative Code:
- | | | |
|-------|-----------------|--|
| Adopt | WAC 480-100-405 | Electrical company generation resource compliance with the greenhouse gases emissions performance standard. |
| Adopt | WAC 480-100-415 | Electrical company applications for commission determination outside of a general rate case of electric generation resource compliance with greenhouse gases emissions performance standard. |
| Adopt | WAC 480-100-425 | Electrical company applications for exemption from the greenhouse gas emissions performance standard. |

Adopt WAC 480-100-435 Electrical company deferral of costs associated with long-term financial commitments—Notice and reporting.

9 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS**

THEREUNDER: The Commission filed a Preproposal Statement of Inquiry (CR-101) on February 5, 2008, at WSR # 08-04-087. The statement advised interested persons that the Commission was required to initiate a rulemaking to implement the requirements of RCW 80.80.060 regarding electrical company compliance with the greenhouse gases emissions performance standard contained in RCW 80.80.040. The Commission also informed persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the Commission's list of persons requesting such information pursuant to RCW 34.05.320(3), the Commission's lists of all registered electrical companies, interested persons listed in Docket UE-061895¹, and by sending notices to the Commission's lists of regulatory attorneys. The Commission posted the relevant rulemaking information on its Internet web site at <http://www.utc.wa.gov>. Pursuant to the notice, the Commission received written comments.

10 **MEETINGS OR WORKSHOPS:** The Commission held a workshop on August 5, 2008, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. Participants in the workshop included Puget Sound Energy (PSE), NW Energy Coalition, Avista Corporation, PacifiCorp, and Public Counsel.

11 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a notice of Proposed Rulemaking (CR-102) on August 20, 2008 at WSR # 08-17-106. The Commission scheduled this matter for oral comment and adoption under Notice WSR # 08-17-106 at 10:00 a.m., Thursday, October 23, 2008, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission.

¹ In this docket the Commission considered and adopted WAC 480-109 concerning utility compliance with renewable energy and conservation targets in accordance with RCW 19.285.

12 **WRITTEN COMMENTS:** The Commission received written comments from PSE with proposed language changes to WAC 480-100-405: Electrical company generation resource compliance with the greenhouse gases emissions performance standard.

13 **RULEMAKING HEARING:** The Commission considered the proposed rules for adoption at a rulemaking hearing on October 23, 2008, before Chairman Mark H. Sidran and Commissioner Patrick J. Oshie. The Commission heard oral comments from Tom DeBoer, representing PSE. Mr. DeBoer agreed with the disposition of PSE's written comments as described below.

14 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission finds and concludes that it should adopt the rules as proposed in the CR-102 at WSR # 08-17-106, changed as described below in this Order.

15 **SUGGESTIONS FOR CHANGES THAT ARE ACCEPTED OR REJECTED:** Written comments suggested certain changes to the proposed rules. The suggested changes and the Commission's reason for rejecting or accepting the suggested changes are described below.

16 **CHANGES FROM PROPOSAL:** The Commission addressed the written comments submitted by PSE for changes to WAC 480-100-405 as follows:

WAC 480-100-405(1)

17 PSE recommends that the following language be deleted from proposed WAC 480-100-405(1):

Electrical companies bear the burden to prove compliance with the greenhouse gases emissions performance standard under the requirements of WAC 480-100-405 or as part of a general rate case. For electrical companies that fail to carry their burden of proof, the Commission may disallow recovery of some or all costs in rates, impose penalties, or take such other action as is consistent with law.

PSE contends that requiring electrical companies to bear the burden of proving compliance with the greenhouse gases emissions performance standard is contrary to RCW 80.80.

18 The Commission rejects the proposed rule change. Being clear in the proposed rule that the burden to prove compliance with the EPS rests with the utility is reasonable for the following reasons:

- The statute makes specific reference to Commission review in the context of general rate cases, proceedings in which PSE concedes it bears the burden of proof. It is also reasonable to clarify the utility's burden as the moving party in any special single-issue proceeding to determine compliance.
- Compliance with the law is a characteristic of prudent utility management. PSE concedes it bears the burden to prove its resource choices are prudent.
- Utilities – not the Department of Ecology or the Commission – will possess the information necessary to prove compliance with the EPS.

WAC 480-100-405(2)(e)(ii)

19 PSE recommends the proposed definition of “new ownership interest” be modified to read:

“New ownership interest” means the acquisition by an electric utility of more than 50 percent of the assets, or more than 50 percent of the equity interests in the owner of the assets, of a baseload power plant or a cogeneration facility or the electrical generation portion of a cogeneration facility. In no event shall any direct or indirect change in ownership of an electric utility constitute a new ownership interest.

PSE suggested that the word “ownership” as used in the term “new ownership interest” means that the provisions of RCW 80.80 apply to changes in a controlling interest of a generation asset, rather than change in a minority interest. PSE contends that the 5 percent ownership threshold included in the rule adopted by Department of Ecology at WAC 173-407-110 and proposed in the Commission's rule will “create a substantial administrative burden on all parties and does not reflect the intent of RCW 80.80.”

20 The statute provides no specific definition of ownership interest. Nonetheless, PSE's proposal is at odds with the express terms of the statute. If the intent was to limit the meaning of new ownership interest to only a controlling interest the statute could have said simply "new ownership". Further, adopting the same definition for this term that is included in WAC 173-407-110 will lessen administrative burden by avoiding inconsistency with the Department of Ecology's regulations. We reject the proposed rule change to limit the scope of the term new ownership interest.

21 We believe the final sentence in PSE's proposal is a reasonable and constructive clarification of the statutory purpose to regulate utility actions regarding base-load power facilities and contracts, rather than the ownership of utilities themselves. Consequently, the Commission accepts a portion of PSE's recommendation with modifications, by adding the following language at WAC 480-100-405(2)(e)(ii) (the new language is italicized and underlined):

(ii) Five percent of the electrical output of the power plant or cogeneration facility.

The above thresholds apply to each unit within a multiunit generation facility. *A direct or indirect change in ownership of an electrical company does not constitute a new ownership interest in baseload electric generation.*

WAC 480-100-405(2)

22 The reference to WAC 480-100-415 was inadvertently omitted from WAC 480-100-405(2). We consider this an inadvertent, ministerial error. The application of the definitions to all four new sections of rule was clearly stated in the memorandum and oral presentation of the proposed rules at the adoption hearing. The revised language correcting the omission is italicized and underlined:

(2) The following definitions apply for purposes of this section, *WAC 480-100-415*, ~~WAC~~ 480-100-425 and 480-100-435:

23 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the Commission determines that WAC 480-100-405, WAC 480-100-415, WAC 480-100-425, and WAC 480-100-435 should be adopted to

read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the Code Reviser.

ORDER

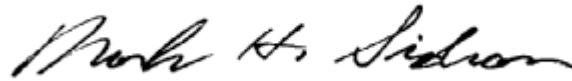
24 **THE COMMISSION ORDERS:**

25 The Commission adopts WAC 480-100-405, WAC 480-100-415, WAC 480-100-425, and WAC 480-100-435 to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after the date of filing with the Code Reviser.

26 This Order and the rule 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 RCW 80.01, RCW 34.05 and WAC 1-21.

DATED at Olympia, Washington, November 14, 2008.

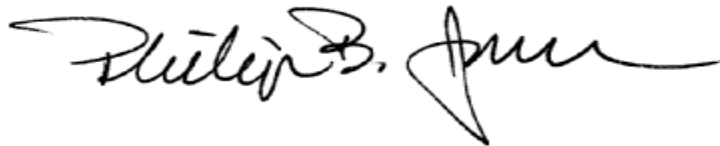
WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION



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 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, 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.

Appendix A