

DRAFT
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**ELECTRIC COMPANIES—ACQUISITION OF MINIMUM QUANTITIES OF
CONSERVATION AND RENEWABLE ENERGY
AS REQUIRED BY THE ENERGY INDEPENDENCE ACT**

WAC

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WAC 480-109-001 Purpose and scope. (1) The purpose of this chapter is to establish rules that electric utilities will use to comply with the requirements of the Energy Independence Act, Chapter 19.285.

WAC 480-109-002 Application of rules. (1) The rules in this chapter apply to any electric utility that is subject to the commission's jurisdiction under RCW 80.04.010 and chapter 80.28 RCW.

(2) Any affected person may ask the commission to review the interpretation of these rules by a utility by making an informal complaint under WAC 480-07-910, Informal complaints, or by filing a formal complaint under WAC 480-07-370, Pleading -- General.

(3) No exception from the provisions of any rule in this chapter is permitted without prior written authorization by the commission. Such exceptions may be granted only if consistent with the public interest, the purposes underlying regulation, and applicable statutes. Any deviation from the provisions of any rule in this chapter without prior commission authorization will be subject to penalties as provided by law.

WAC 480-109-004 Additional requirements. (1) These rules do not relieve any utility from any of its duties and obligations under the laws of the state of Washington.

(2) The commission retains its authority to impose additional or different requirements on any utility in appropriate circumstances, consistent with the requirements of law.

WAC 480-109-006 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

WAC 480-109-007 Definitions. (1) "Commission" means the Washington utilities and transportation commission.

(2) "Conservation" means any reduction in electric power consumption resulting from increases in the efficiency of energy use, production, or distribution.

(3) "Cost-effective" has the same meaning as defined in RCW 80.52.030.

(4) "Council" means the Pacific Northwest electric power and conservation council.

(5) "Customer" means a person or entity that purchases electricity for ultimate consumption and not for resale.

(6) "Department" means the department of community, trade, and economic development or its successor.

(7) "Distributed generation" means an eligible renewable resource where the generation facility or any integrated cluster of such facilities has a generating capacity of not more than five megawatts.

(8) "Eligible renewable resource" means:

(a) Electricity from a generation facility powered by a renewable resource other than fresh water that commences operation after March 31, 1999, where: (i) The facility is located in the Pacific Northwest; or (ii) the electricity from the facility is delivered into Washington state on a real-time basis without shaping, storage, or integration services; or

(b) Incremental electricity produced as a result of efficiency improvements completed after March 31, 1999, to hydroelectric generation projects owned by a qualifying utility and located in the Pacific Northwest or to hydroelectric generation in irrigation pipes and canals located in the Pacific Northwest, where the additional generation in either case does not result in new water diversions or impoundments.

(9) "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.

(10) "Load" means the amount of kilowatt-hours of electricity delivered in the most recently completed year by a qualifying utility to its Washington retail customers.

(11) "Nonpower attributes" means all environmentally related characteristics, exclusive of energy, capacity reliability, and other electrical power service attributes, that are associated with the generation of electricity from a renewable resource, including but not limited to the facility's fuel type, geographic location, vintage, qualification as an eligible renewable resource, and avoided emissions of pollutants to the air, soil, or water, and avoided emissions of carbon dioxide and other greenhouse gases.

(12) "Pro Rata" means the calculation used to establish a minimum level for a conservation target based on a utility's projected ten year conservation potential.

(13) "Pacific Northwest" has the same meaning as defined for the Bonneville power administration in section 3 of the Pacific Northwest electric power planning and conservation act (94 Stat. 2698; 16 U.S.C. Sec. 839a).

(14) "Request for proposal" or "RFP" means the documents describing an electric utility's solicitation of bids for delivering electric capacity, energy, or capacity and energy, or conservation

(15) "Renewable energy credit" means a tradable certificate of proof of at least one megawatt-hour of an eligible renewable resource where the generation facility is not powered by fresh water, the certificate includes all of the nonpower attributes associated with that one megawatt-hour of electricity, and the certificate is verified by a renewable energy credit tracking system selected by the department.

(16) "Renewable resource" means: (a) Water; (b) wind; (c) solar energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or tidal power; (g) gas from sewage treatment facilities; (h) biodiesel fuel as defined in RCW 82.29A.135 that is not derived from crops raised on land cleared from old growth or first-growth forests where the clearing occurred after December 7, 2006; and (i) biomass energy based on animal waste or solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include (i) wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; (ii) black liquor byproduct from paper production; (iii) wood from old growth forests; or (iv) municipal solid waste.

(17) "Retail Revenue Requirement" means the normalized retail revenue supported by the general tariffs approved in a utility's most recent general rate case.

(18) "Utility" means an electrical company that is subject to the commission's jurisdiction under RCW 80.04.010 and chapter 80.28 RCW.

(19) "Year" means the twelve-month period commencing January 1st and ending December 31st.

WAC 480-109-010 Conservation Resources. (1) Beginning January 1, 2010, and every two years thereafter, each utility must project its cumulative ten year conservation potential.

(a) This projection need only consider conservation resources that are cost-effective, reliable and feasible.

(b) This projection should be consistent with the utility's most recent IRP the time of the projection and any information learned in its subsequent RFP, or the utility must document the reasons for any differences.

(c) When developing this projection, utilities must use methodologies that are consistent with those used by the council in its most recent regional power plan. A utility may, with full documentation on the rationale for any modification, alter the council's methodologies to better fit the attributes and characteristics of its service territory. A utility may use a stakeholder advisor group to review the methodologies and assumptions used to develop its projected ten year conservation potential.

(2) Beginning January 1, 2010, and every two years thereafter, each utility must establish a biennial conservation target.

(a) The biennial conservation target shall identify all achievable conservation opportunities.

(b) The biennial conservation target shall be no lower than a pro-rata share of the utility's ten year cumulative conservation potential. Each utility must fully document how it pro-rated its ten year cumulative conservation potential to determine the minimum level for its biennial conservation target.

(3) On or before October 1, 2009, and every two years thereafter, each utility must file with the commission a report identifying its ten year conservation potential and its biennial conservation target. This report must discuss the technologies, data collection, processes, procedures and assumptions the utility used to develop these figures. In addition, this report must describe and support any changes in assumptions or methodologies used in the utility's most recent IRP or the council's power plan.

(4) Commission staff or other interested parties may file written comments regarding a utility's projected conservation potential or its biennial conservation target within thirty days of the utility filing.

(a) After reviewing any written comments, the commission will decide whether to hear oral comments regarding the utility's filing at a subsequent open meeting.

(b) The commission, considering any written or oral comments, may determine that additional scrutiny is warranted of a utility's projected ten year conservation potential or biennial conservation target. If the commission determines that additional

review is needed, the commission will establish an adjudicative proceeding or other process to fully consider appropriate revisions.

WAC 480-109-020 Renewable Resources. (1) Each utility shall meet the following annual targets:

(a) At least three percent of its load must be served by renewable resources beginning January 1, 2012, and each year thereafter through December 31, 2015;

(b) At least nine percent of its load must be served by renewable resources beginning January 1, 2016, and each year thereafter through December 31, 2019; and

(c) At least fifteen percent of its load must be served by renewable resources beginning January 1, 2020, and each year thereafter.

(2) To comply with this requirement utilities may use eligible renewable resources, equivalent renewable energy credits, or a combination of the two.

(3) A renewable resource within the Pacific Northwest may receive integration, shaping, storage or other services from sources outside of the Pacific Northwest and remain eligible to count towards a utility's renewable resource target.

(4) A biomass based resource may only consume a *de minimis* amount of wood from old growth forests to remain an eligible renewable resource.

WAC 480-109-030 Alternatives to the renewable resource requirement. (1) Instead of meeting its annual renewable resource target of WAC 480-109-020, a utility may make one of three demonstrations.

(a) A utility may demonstrate that:

(i) Its weather-adjusted load for the previous three years did not increase.

(ii) All new or renewed ownership or purchases of electricity from non-renewable resources other than daily spot purchases were offset by equivalent renewable energy credits.

(iii) It invested at least one percent of its total annual retail revenue requirement that year on eligible renewable resources and/or renewable energy credits.

(b) A utility may invest at least four percent of its total annual retail revenue requirement on the incremental costs of eligible renewable resources and/or the cost of renewable energy credits.

(c) A utility may demonstrate that events beyond its control that could not have been reasonably anticipated or ameliorated prevented it from meeting the renewable energy target. Such events may include weather-related damage, mechanical failure, strikes, lockouts, or actions of a governmental authority that adversely affect the

generation, transmission, or distribution of an eligible renewable resource owned by or under contract to a qualifying utility.

WAC 480-109-040 Annual reporting requirements. (1) On or before June 1, 2012, and annually thereafter, each utility must file a report with the Commission and the Department regarding its progress in meeting its conservation and renewable resource targets during the preceding year.

(a) Utilities must include in this report conservation expenditures, the expected and actual electricity savings from conservation, the utility's annual load for the prior two years, the megawatt-hours needed to meet the annual renewable energy target, the amount of megawatt-hours of each type of eligible renewable resource acquired, the type and amount of renewable energy credits acquired, the total annual investment in the incremental cost of eligible renewable resources and renewable energy credits, and the ratio of this investment relative to the utility's total annual retail revenue requirement.

(b) This report must state if the utility is using one of the alternative compliance mechanisms provided in 480-109-030 WAC instead of meeting its renewable resource target. Utility's using an alternative compliance mechanism must include sufficient data, documentation and other information in its report to demonstrate that it qualifies to use that alternative mechanism.

(2) Commission staff or other interested parties may file written comments regarding a utility's report within thirty days of the utility filing.

(a) After reviewing any written comments, the commission will decide whether to hear oral comments regarding the utility's filing at a subsequent open meeting.

(b) The commission, considering any written or oral comments, may determine that additional scrutiny of the report is warranted. If the Commission determines that additional review is needed, the Commission will establish an adjudicative proceeding or other process to fully consider appropriate revisions.

(3) Each utility shall submit its final report to the department.

(4) All current and historical reports required in subsection (1) of this section shall be available to a utility's customers.

WAC 480-109-050 Administrative penalties. (1) A utility shall pay an administrative penalty in the amount of fifty dollars for each megawatt-hour of shortfall in meeting its energy conservation target established in WAC 480-109-010, or its renewable energy target established in WAC 480-109-020, or one of the three alternatives to meeting the renewable target provided in WAC 480-109-030. The commission will adjust this penalty annually, beginning in 2007, to reflect changes in the

gross domestic product-implicit price deflator, as published by the bureau of economic analysis of the United States department of commerce or its successor.

(2) The commission will use each utility's annual report, filed in accordance with 480-109-040 WAC, as the basis for determining whether to assess administrative penalties.

(3) Payment of administrative penalties:

(a) Administrative penalties associated with failure to achieve a conservation target are due within 15 days of commission action on the utility's annual report.

(b) The commission will use the following process to collect administrative penalties associated with a utility's failure to achieve its renewable resource target.

(i) At the conclusion of the review of a utility's year 1 annual report, the commission will determine, whether that utility was short in meeting its renewable resource target.

(ii) Through December 31 of year 2, the utility may acquire additional renewable energy credits to reduce or eliminate that shortfall.

(iii) The utility, in its year 2 annual report, must document the amount of renewable energy credits it acquired, if any, to offset the utility's shortfall in meeting its renewable energy target identified in its year 1 annual report.

(iv) The commission will update the utility's shortfall in meeting its year 1 renewable resource target during the review of the utility's year 2 annual report.

(v) Administrative penalties associated with failure to achieve the year 1 renewable resource target are due within 15 days of the commission's final action on the utility's year 2 annual report.

(4) A utility may request to defer the cost of any administrative penalty assessed in subsection (1) for later recovery in electric rates. A utility seeking such recovery must provide a full accounting of the reasons for the utility's failure to either meet the energy conservation or renewable energy targets, or one of the provided compliance alternatives provided in WAC 480-109-030. When assessing a request for cost recovery, the Commission will consider the intent of the Energy Independence Act, other laws governing Commission actions, policies and precedents of the Commission, and the Commission's responsibility to act in the public interest.

(5) A utility that pays an administrative penalty under subsection (4), must notify its retail electric customers within three months of incurring a penalty stating the size of the penalty and the reason it was incurred.