



U-240281

Received
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Oct 9, 2024

Washington State Senate

October 9, 2024

Jeff Killip
Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

Re: Rulemaking required to implement ESHB 1589 (Ch. 351, Laws of 2024), Docket U-240281

Dear Director Killip,

We respectfully offer these comments for the Commission's consideration at the upcoming workshop under Docket U-240281, scheduled for October 25. The undersigned are senators who were deeply involved in the legislative deliberations that led to the enactment of ESHB 1589. We focus our comments on the proposed consolidated planning rules the Commission may adopt to implement RCW 80.86.020(2), a portion of the statute which is excerpted here:

By July 1, 2025, the commission shall complete a rule-making proceeding to implement consolidated planning requirements for gas and electric services for large combination utilities that may include plans required under: (i) RCW 19.280.030; (ii) RCW 19.285.040; (iii) RCW 19.405.060; (iv) RCW 80.28.380; (v) RCW 80.28.365; (vi) RCW 80.28.425; and (vii) RCW 80.28.130.¹

Unfortunately, the Commission is preparing to adopt rules that wander beyond the statutory limits set by the Legislature. We specifically note the list of statutes that authorize various plans that may be consolidated into a large combination utility's integrated system plan (ISP) is an *exhaustive* list. As such, the Commission's discretion to consolidate planning requirements is constrained by the statutes listed in the law. Nevertheless, in its proposed rules, the Commission seeks to consolidate planning requirements that are *not* authorized in the enumerated statutes contained in RCW 80.86.020. This is an error the Commission should fix.

¹ RCW 80.86.020(2)(a). It should be noted that, while listed among the enumerated statutes, RCW 19.285.040 was *not* amended like the other statutes to authorize the Commission to include its requirements in an integrated system plan. Compare RCW 19.280.030(11) ("The commission may require a large combination utility as defined in RCW 80.86.010 to incorporate the requirements of this section into an integrated system plan established under RCW 80.86.020.") with RCW 19.285.040 (lacking specific legislative direction to be included in a large combination utility's integrated system plan). **This omission may suggest to the Commission that it should exercise its discretion to exclude RCW 19.285.040 from the integrated system plan.**

We draw your attention to Table 1 of the Notice of Opportunity to File Written Comments, for example, where the Commission proposes to include the gas integrated resource plan in the ISP. This is impermissible because the gas integrated resource plan is not authorized by any of the statutes found in RCW 80.86.020. Indeed, the Commission highlights that the gas integrated resource plan is not specifically authorized by *any* statute, as the gas integrated resource plan is described by the Commission in Table 1 as “IRP not in RCW, only in WAC.”

Furthermore, it appears that the source of authority for the gas integrated resource plan is WAC 480-90-238, and that the source of authority for this rule is found in either RCW 80.01.040 or 80.04.160.² Obviously, neither of those statutes is listed in RCW 80.86.020(2), reproduced above, so any plans authorized under those other statutes may not be consolidated in an ISP.

Our basic position is straightforward: It is inappropriate to consolidate any plan that is not authorized under the statutes listed in RCW 80.86.020.

Why do we care which plans are consolidated in a large combination utility’s ISP? Two reasons rise to the top.

First, plans like the gas integrated resource plan are made available for public review and comment.³ Like the Commission, we highly value the role of affected consumers and the greater public in critiquing large combination utilities’ plans and the Commission’s evaluation of those plans. This is one reason the Legislature chose to limit the number and type of plans that may be consolidated in an ISP under ESHB 1589, to ensure that the public’s ability to comment would not get swallowed up by an ISP that is too voluminous to review in any meaningful way.

Second, the fraught history of ESHB 1589 clearly demonstrates that the Legislature did not intend to provide unbounded discretion to the Commission to determine which plans to consolidate. Some unenacted versions of ESHB 1589 broadly instructed the Commission to consolidate plans by waiving “any commission rules.”⁴ But this is *not* how the *law* ended up—RCW 80.86.020(2) strictly limits the statutes authorizing utility plans that may be consolidated in an ISP.⁵ Where the Legislature has set clear limits, the Commission must respect them.

In sum, we urge the Commission to limit the plans that will be consolidated in a large combination utility’s ISP to plans authorized by the statutes listed in RCW 80.86.020. The law affords discretion to the Commission, but the statutes enumerated in RCW 80.86.020 provide the *outermost* boundary for plans that may be consolidated in an ISP.

² See notes following WAC 480-90-283 (citing RCW 80.01.040 and 80.04.160 as statutory authority for the rule).

³ WAC 480-90-283(5) (requiring public participation in gas integrated resource planning).

⁴ See, e.g., ESHB 1589 as passed the House of Representatives on January 22, 2024.

⁵ ESHB 1589 was subjected to intense scrutiny in both legislative chambers, and amended to clarify the scope of plan consolidation after a parliamentary ruling from the Lieutenant Governor admonished the makers of the bill for presenting it to the body as, in his words, a “hot mess.” Carleen Johnson, ‘A hot mess’: Lt. Gov. Denny Heck blasts Dems over natural gas ban bill, *The Chronicle*, March 4, 2024.

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Thank you for the opportunity to comment on the Commission's proposed rules. We trust that our explanation of the Legislature's intent and work on this matter will be instructive.

Sincerely,



Drew MacEwen
State Senator
35th Legislative District



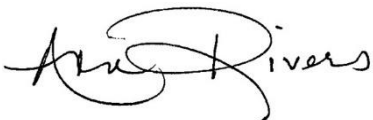
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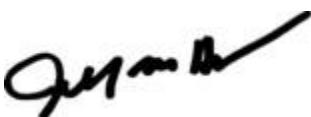
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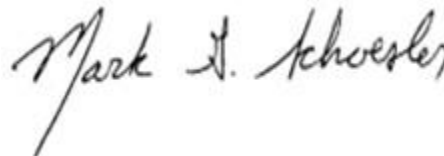
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