

**WSR 21-02-024**  
**PERMANENT RULES**  
**UTILITIES AND TRANSPORTATION**  
**COMMISSION**

[Docket UE-190652, General Order R-603—Filed December 28, 2020, 1:15 p.m., effective January 28, 2021]

In the matter of amending rules in chapter 480-109 WAC relating to the Energy Independence Act (EIA) and the Clean Energy Transformation Act (CETA).

1 **STATUTORY OR OTHER AUTHORITY:** The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 20-18-075, filed with the code reviser on September 1, 2020. The commission has authority to take this action pursuant to RCW 80.01.040, 80.04.160, 19.285.080, and 19.405.100.

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

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 adopted rules. The statement must identify the commission's reasons for adopting the rules, 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.

5 To avoid unnecessary duplication in the record of this docket, the commission designates the discussion in this order, including appendices, as its concise explanatory statement. This order provides a complete but concise explanation of the agency's actions and its reasons for taking those actions.

6 **REFERENCE TO AFFECTED RULES:** This order amends the following sections of the Washington Administrative Code: Amending WAC 480-109-060 Definitions, 480-109-100 Energy efficiency resource standard, 480-109-200 Renewable portfolio standard, 480-109-210 Renewable portfolio standard reporting, and 480-109-300 Greenhouse gas content calculation and energy and emissions intensity metrics.

7 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** The commission filed with the code reviser a Preproposal statement of inquiry (CR-101) on October 4, 2019, at WSR 19-21-016, and filed the CR-101 in Docket UE-190652. The statement advised interested persons that the commission was initiating a rule making to address changes to chapter 480-109 WAC as well as to clarify, streamline, and incorporate changes to EIA found in chapter 288, Laws of 2019, passed as E2SSB 5116, portions of which are now codified in CETA chapter 19.405 RCW, and also incorporate changes found in chapter 315, Laws of 2017, passed as ESB 5128. The amendments adopted by this order improve the processes in administering the EIA and address provisions and legislative intent not explicitly addressed by the commission's prior rules. The commission has coordinated the rules amended by this order with the Washington department of commerce (commerce).

8 On October 4, 2019, the commission issued a notice of opportunity to file written comments, informing persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the com-

mission's list of persons requesting such information pursuant to RCW 34.05.320(3), and by sending notice to all registered electric companies. Pursuant to the notice, the commission received comments between November 3 and December 6, 2019. The commission received written comments from Brian Henning, Klickitat Public Utility District and Renewable Hydrogen Alliance, Avista Corporation, d/b/a Avista Utilities (Avista), Vashon Climate Action Group, Northwest Renewables, Erica Dellwo, Sierra Club, PacifiCorp, d/b/a Pacific Power & Light Co. (PacifiCorp), NW Energy Coalition (NWECC), Puget Sound Energy (PSE), Solar Installers of Washington, Washington Environmental Council, the public counsel unit of the Washington attorney general's office (public counsel), Front and Centered, Trenton Miller, Robert Briggs, The Energy Project, and Cascade Natural Gas Corporation.

9 On January 8, 2020, the commission jointly with the Washington department of commerce issued a notice of joint workshop and discussion in this Docket and Docket UE-190698,<sup>1</sup> and pursuant to that notice held a workshop on January 28, 2020, to discuss and further inform potential rules and guidelines concerning the definitions of low-income, energy assistance, energy assistance need, and energy burden.

<sup>1</sup> On January 9, 2020, the commission issued an addendum to the notices of joint workshops and discussions, which clarified that the January 28, 2020, workshop would be held at the commission's headquarters in Lacey, Washington.

10 SMALL BUSINESS ECONOMIC IMPACT ANALYSIS: On January 16, 2020, the commission issued a small business economic impact statement (SBEIS) questionnaire to all interested persons. The commission received no responses to this questionnaire. Thus, the commission has no evidence that any business will incur more than minor costs to comply with the proposed rules. Accordingly, no small business economic impact statement is required.<sup>2</sup>

<sup>2</sup> See RCW 19.85.020 (2)-(3), 19.85.025(4), and 19.85.030 (1)(a).

11 WITHDRAWN NOTICES OF PROPOSED RULE MAKING: The commission filed a notice of proposed rule making on March 27, 2020, at WSR 20-08-081. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 20-08-081 at 1:30 p.m. on June 2, 2020, in the commission's Richard Hemstad Hearing Room, located at 621 Woodland Square Loop S.E., Lacey, WA. The notice provided interested persons the opportunity to submit written comments to the commission by May 1, 2020.

12 On May 18, 2020, the commission issued a notice of telephonic adoption hearing, modifying the June 2, 2020, hearing to permit only virtual participation due to the ongoing COVID-19 public health crisis.

13 The commission received written comments from Avista, Front and Centered, PSE, NWECC, The Energy Project, public counsel, and PacifiCorp. Some of the commenters requested that the commission modify the definition of "low-income" to include both statutory metrics: The higher of two hundred percent of the federal poverty level, or eighty percent of area median income, adjusted for household size.<sup>3</sup>

<sup>3</sup> The March 27, 2020, proposed rules included only two hundred percent of the federal poverty level in the definition of "low-income."

14 On May 27, 2020, the commission issued a notice canceling adoption hearing, informing all interested stakeholders that the commission would withdraw its Notice No. WSR 20-08-081 due to the commission's determination that additional revisions to the rules were necessary.

15 The commission made substantive modifications to the rules contemplated in Notice No. WSR 20-08-081, including a modification to the definition of "low-income," to include the second available metric

set at the statutory maximum of eighty percent of area median income, and the following additional changes:

- Clarifying language pertaining to low-income conservation;
- Updating two subsection titles to reflect their content more accurately; and
- Referencing CETA in WAC 480-109-300(2).

16 The modification to the definition of "low-income" is intended to denote thresholds of eligibility only. The commission will provide guidance at a later time related to assistance program design, prioritization of benefits, and benefit calculations, all of which will be informed by RCW 19.405.120. Specifically, RCW 19.405.120(2) requires utilities to prioritize low-income households with a higher energy burden to the extent practicable.

17 On June 5, 2020, the commission filed a new notice of proposed rule making at WSR 20-13-014 with the identified modifications. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 20-13-014 at 9:30 a.m. on July 28, 2020.<sup>4</sup> The notice provided interested persons the opportunity to submit written comments to the commission by July 6, 2020.

4 The commission conducted this rule-making hearing virtually, with telephonic or online participation, to conform to social distancing requirements related to the COVID-19 pandemic.

18 The commission received written comments from NWECC, PSE, The Energy Project, Climate Solutions, and commerce.

19 On July 28, 2020, the commission held a virtual adoption hearing in this matter. The commission heard oral comments from staff representatives Andrew Rector and Deborah Reynolds. Avista, PacifiCorp, PSE, public counsel, The Energy Project, and NWECC also provided comments during the virtual adoption hearing.

20 During the July 28, 2020, hearing, PacifiCorp supported Avista's recommendation that the commission modify WAC 480-109-200 (2)(a). Avista explained that the subsection was confusing and could pose difficulty for the utilities to comply with EIA under circumstances noticed by Avista in 2020.

21 After consideration of the comments provided at [the] hearing regarding WAC 480-109-200 (2)(a), along with relevant written comments submitted, we determined that substantively modifying the rules as proposed at WSR 20-13-014 to address PacifiCorp and Avista's recommendation was justified. We found that removing WAC 480-109-200 (2)(a) eliminates confusion and provides greater clarity for all stakeholders. This deletion will not alter the requirement that electric utilities have adequate eligible renewable resources or equivalent renewable energy credits (RECs) under contract to meet their annual targets by January 1 of the target year, as required by RCW 19.285.040(2). Rather, this deletion will clarify the commission's existing practice to allow utilities to buy RECs after January 1 if there is any additional need, or if cheaper options become available to replace the RECs already acquired by January 1. Accordingly, the commission determined that WAC 480-109-200 (2)(a) should be removed and that, therefore, a new notice of proposed rule making should be filed.

22 NOTICE OF PROPOSED RULE MAKING: The commission made a substantive modification to the rules contemplated in the Notice at WSR 20-13-014 and subsequently filed a new notice of proposed rule making (CR-102) on September 1, 2020, at WSR 20-18-075. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 20-18-075 at 9:30 a.m. on November 6, 2020.<sup>5</sup> The notice provided interested persons

the opportunity to submit written comments to the commission by October 1, 2020. The CR-102 proposed clarifying and streamlining amendments to chapter 480-109 WAC to incorporate changes to EIA found in CETA, portions of which are now codified in chapter 19.405 RCW, and also to incorporate changes found in ESB 5128.

<sup>5</sup> The commission conducted this rule-making hearing virtually, with telephonic or online participation, to conform to social distancing requirements related to the COVID-19 pandemic.

<sup>23</sup> **WRITTEN COMMENTS:** Initially, the commission received written comments to the first withdrawn notice of proposed rule making at WSR 20-08-081 from Avista, Front and Centered, PSE, NWECC, The Energy Project, public counsel, and PacifiCorp. The commission later received written comments in response to the second withdrawn notice of proposed rule making at WSR 20-13-014 from NWECC, PSE, The Energy Project, Climate Solutions, and commerce. Subsequently, the commission received written comments to the CR-102 at WSR 20-18-075 from Avista and public counsel. Staff's responses to the written comments submitted in this proceeding, which the commission adopts by this order, are contained in Appendix A.

<sup>24</sup> **RULE-MAKING HEARING:** On September 1, 2020, the commission issued a notice of opportunity to file written comments on proposed rules and notice of proposed rule virtual adoption hearing, finding good cause to conduct the rule-making hearing virtually due to social distancing requirements related to the COVID-19 pandemic. The commission considered the proposed rules for adoption at a rule-making hearing on Friday, November 6, 2020, before Chair David W. Danner, Commissioner Ann E. Rendahl, and Commissioner Jay M. Balasbas. The commission heard oral comments from staff representative Andrew Rector. Representatives from PSE and NWECC also provided comments.

<sup>25</sup> **SUGGESTIONS FOR CHANGES:** Stakeholder comments suggested changes to the proposed rules. A summary of the suggested changes to the proposed rules submitted to this docket and staff's proposed reasons for rejecting or accepting the suggestions are included in Appendix A. The commission adopts as its own the reasons proposed by staff for rejecting or accepting stakeholders' suggested changes to the rules as proposed in the CR-102 at WSR 20-18-075, subject to any modifications we make to the proposed rules and the rationale for those modifications explained in this order. Several of the stakeholders' comments with suggested changes warrant further discussion below.<sup>6</sup>

<sup>6</sup> In the event of any discrepancy between the rationale presented in this order and the responses contained in Appendix A, this order will control.

<sup>26</sup> **Commission Authority.** In Avista's written comments, it recommends removing: (1) The proposed definitions of energy assistance, energy assistance need, energy burden, and low-income from WAC 480-109-060; (2) proposed language in WAC 480-109-100 (1)(a)(ii) that would require a utility's conservation portfolio to include programs and mechanisms identified in CETA pertaining to energy assistance; and (3) proposed language in WAC 480-109-100 (10)(b) requiring a utility's biennial conservation plan to include conservation programs and mechanisms identified in CETA pertaining to energy assistance and requiring the utility to prioritize energy assistance to low-income households with a higher energy burden. Avista argues that the commission lacks authority to amend its rules regulating utility conservation programs, including low-income conservation programs, with language consistent with or in light of CETA. We disagree.

<sup>27</sup> In CETA, the Washington legislature stated:

It is the policy of the state to eliminate coal-fired electricity, transition the state's electricity supply to one hundred percent carbon-neutral by 2030, and one hundred percent carbon-free by 2045. In implementing this chapter, the state must prioritize the maximization of family wage job creation, seek to ensure that all customers are benefiting from the transition to a clean energy economy, and provide safeguards to ensure that the achievement of this policy does not impair the reliability of the electricity system or impose unreasonable costs on utility customers.<sup>7</sup>

<sup>7</sup> RCW 19.405.010(2).

CETA authorizes the commission to adopt rules to ensure CETA's proper implementation and enforcement, and also requires the commission to adopt rules to streamline its implementation with EIA in order to simplify compliance and avoid duplicative processes.<sup>8</sup> CETA's policy goals, among others, include lowering household energy burden and making energy assistance funds available to low-income households.<sup>9</sup>

<sup>8</sup> RCW 19.405.100(1), 19.405.100(2). CETA authorizes the commission to, among other things, use its broad regulatory authority over utility ratemaking and its regulatory tools and incentives to empower utilities to achieve the goals of CETA's policy. See RCW 19.405.010(5); see also RCW 19.405.050, 19.405.060, 19.405.090, 19.405.120.

<sup>9</sup> RCW 19.405.020, 19.405.120.

<sup>28</sup> The commission has authority to regulate utilities' conservation programs and determine whether they are cost-effective based on the commission's policies and practice.<sup>10</sup> Since EIA was approved, the commission has given special consideration for low-income conservation because of the higher barriers to such programs. For example, in General Order R-578, the commission found that, because low-income conservation programs have significant non-energy benefits, it was appropriate that utilities "maintain robust low-income conservation offerings" despite the high barriers to cost-effectiveness, even allowing utilities to exclude low-income conservation from portfolio-level cost-effectiveness screens.<sup>11</sup>

<sup>10</sup> RCW 19.285.040(1); see RCW 80.01.040, 80.04.160, 19.285.080.

<sup>11</sup> *In re Amending, Adopting, and Repealing Rules in WAC 480-109 Relating to the EIA*, Docket UE-131723, General Order R-578, 14, ¶ 41 (Mar. 15, 2015); *Id.* at 13-14, ¶¶ 39-41; WAC 480-109-100 (10)(b).

<sup>29</sup> Considering the directives in CETA and EIA, the commission finds it appropriate in this order to update its policies and procedures for cost-effective low-income conservation programs and to amend chapter 480-109 WAC accordingly. We determine that the commission's broad grant of regulatory authority includes authority to amend its rules in chapter 480-109 WAC to address the cost-effectiveness of low-income conservation programs in light of CETA and in consideration of low-income energy assistance and household energy burden.<sup>12</sup>

<sup>12</sup> RCW 80.01.040, 80.04.160, 19.285.040, 19.285.080, 19.405.010, 19.405.020, 19.405.120.

<sup>30</sup> Definition and Calculation of Energy Burden. Several stakeholders, including PacifiCorp and public counsel, submitted comments recommending language limiting or expanding the meaning of "energy burden" and what types of fuel sources and income are included in the calculation of a household's energy burden. PacifiCorp recommends that the commission limit the meaning of energy burden only to those services delivered by the utility - in PacifiCorp's case, electricity. Public counsel recommends that the commission clarify that the meaning includes a customer's total energy expense, without an apparent limitation. To address these comments, we observe that the commission has made no change or supplement to the definition of "energy burden" found in CETA. We do, however, find it necessary to specify how energy

burden should be calculated and what types of fuels and the types of income should, therefore, be included.

31 We understand the term "energy burden" as relating only to expenses incurred for residential or domestic purposes. This includes more than PacifiCorp's recommended definition, but less than public counsel's. Energy burden therefore includes expenses of any fuel source for residential or domestic energy, such as electricity, natural gas, propane, heating oil, and wood. It excludes nonenergy utilities and transportation-related energy expenses. To the extent feasible, it would distinguish and exclude electricity expenses for electric vehicle charging, home businesses or shops, and agricultural or irrigation purposes. Thus, for purposes of RCW 19.405.120, we determine that energy burden can be calculated using the following formula.

$$\text{energy burden} = \frac{\text{annual home energy expenses}}{\text{annual household income}}$$

Annual household income used in the calculation above should be based on gross income for all household members, consistent with the method identified by commerce for the Low-Income Home and Energy Assistance Program (LIHEAP) in Washington.<sup>13</sup> Use of this method, or one consistent with it, will align with existing processes, thereby reducing administrative burden and duplicative processes.

13 Wash. Dept of Commerce, 2020 LIHEAP State Plan, "Determination of Eligibility - Countable Income" at 9 (Jun. 2019) available at <http://www.commerce.wa.gov/wp-content/uploads/2019/06/ceo-liheap-state-plan-2020.pdf>.

32 This understanding of energy burden is also pertinent to energy assistance and energy assistance need. The commission opened Docket UE-200269 to investigate, among other topics, the relationship between the definition of "low-income" in the rules amended and adopted by this order and CETA's goals to provide energy assistance to low-income households.<sup>14</sup> We encourage stakeholders interested in this topic to follow Docket UE-200269, wherein the commission intends to provide further guidance on these goals.

14 See RCW 19.405.120(2).

33 Fully-funding Low-Income Conservation. Several comments from stakeholders addressed the proposed amended language in WAC 480-109-100 (10) (a) related to a utility's obligation to fully fund low-income conservation measures. The intent of this subsection is to require utilities to fully fund cost-effective low-income conservation measures without limiting the source of funding to utilities. Instead, the amended language of this section should allow a utility and non-utility entities to leverage other funds, when available, in combination with utility funds. Neither the commission nor utilities have the discretion to determine dispersion of outside funds. We therefore expect that a utility will collaborate with community action agencies and any other interested outside entities when contributing to the most cost-effective funding to implement low-income conservation projects.

34 As it regards subsection (b) of that same section, PSE provided comments in this rule making expressing concern with the requirement that a utility must prioritize energy assistance to low-income households with a higher energy burden. We understand PSE's concern with regard to what is practicable for a utility and to what extent a utility should be directly involved in the intake and prioritization of low-income customers. The language PSE recommends modifying is directly from CETA and we do not attempt in this rule making to modify the language or intent of the Washington legislature.<sup>15</sup> We are able,

however, to provide some guidance for utilities. A utility should seek review and advice from its low-income advisory group when developing a plan to prioritize energy assistance to households with a higher energy burden. It should then coordinate with community action agencies and other interested outside entities to meet this requirement. We expect that with the advice of its low-income advisory group and collaboration with community action agencies, a utility will develop, manage, and improve its program in compliance with this statutory requirement.

15 RCW 19.405.120(2).

35 CETA Compliance as EIA Compliance Alternative. We next address WAC 480-109-200(10), concerning alternative compliance with the renewable portfolio standard, and explain how "average annual retail electric load" as provided in RCW 19.285.040 (2)(m) should be interpreted for purposes of determining compliance with EIA starting in 2030. Consistent with statute, this subsection will allow utilities to use compliance with CETA as an alternative compliance mechanism for EIA. While EIA uses a one-year compliance period based on the average annual load of the previous two years, CETA uses a four-year compliance period, with all calculations of compliance based on the four years within the compliance period.<sup>16</sup> To comply with EIA, a utility must use eligible renewable resources or acquire equivalent RECs to meet at least fifteen percent of its load by January 1.<sup>17</sup> Starting in 2030, a utility can comply with EIA by using electricity equaling one hundred percent of the utility's average annual retail electric load from any combination of renewable resources and associated RECs as defined in EIA, and nonemitting electric generation as defined in CETA.<sup>18</sup> However, no statute defines how the utility's average annual retail electric load is determined.

16 See RCW 19.285.040 (2)(a), 19.405.040(1).

17 RCW 19.285.040 (2)(a).

18 WAC 480-109-200(10); RCW 19.285.030, 19.285.040 (2)(m), 19.405.020.

36 We find that the proper interpretation should be consistent with the calculation of a utility's EIA target, found in RCW 19.285.040. A utility's EIA target, also referred to as its "annual load," is calculated based on the average of the utility's load for the previous two years.<sup>19</sup> While compliance with CETA is prescribed as an alternative for EIA compliance, basing our interpretation on EIA's calculation will maintain consistency for the commission's implementation of EIA and avoid incompatible duplicative processes between EIA and CETA. Accordingly, we determine that for purposes of RCW 19.285.040 (2)(m) and WAC 480-109-200(10), a utility's average annual retail electric load should be calculated as the average of the utility's load for the previous two years.

19 RCW 19.285.040 (2)(c).

37 Emissions Rate for Unspecified Electricity. Several interested stakeholders commented upon the commission's proposed language updating WAC 480-109-300. Although many recommendations for striking or modifying this subsection were subsequently withdrawn, we provide additional guidance or clarity regarding the use of the emissions rate of 0.437 metric tons of carbon dioxide per megawatt-hour of electricity for unspecified electricity. This rate comes directly from legislative direction in CETA at RCW 19.405.070(2). The commission's understanding is that the rate stems from calculations contained in the California Air Resources Board's rules. It is used in CETA, and here,

as a back-stop figure until the department of ecology (DOE) adopts an emissions rate for unspecified electricity. CETA requires DOE to update its adopted emissions rate periodically, but it has not yet made any adoption. The rule we adopt by this order is designed to require utilities to apply DOE's adopted emissions rate for unspecified electricity or, if DOE has not adopted a rate, to apply the emissions rate of 0.437 metric tons of carbon dioxide per megawatt-hour of electricity identified in CETA.

38 CHANGE FROM PROPOSAL: The commission adopts the proposal with the following modification from the text noticed at WSR 20-18-075. The ministerial modification described below was made in consideration of and in coordination with amendments to and the adoption of other commission rules relevant to those under consideration in this rule-making proceeding.

39 The commission makes a ministerial modification to the definition of integrated resource plan (IRP) in WAC 480-109-060 as follows:

"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~~ has the same meaning as in WAC 480-100-605.<sup>20</sup>

20 Currently, the definition of IRP is identified in subsection (15) of WAC 480-109-060. With the amendments to the chapter adopted by [the] commission in this order, the definition will now be identified in subsection (20).

40 WAC 480-100-238 is affected by the commission's rule making in Docket UE-190698 relating to integrated resource planning. The commission has not substantially revised its IRP rules since 2006, and those rules need to be updated to reflect statutory amendments made after 2009.<sup>21</sup> When the Washington legislature passed E2SSB 5116 in May 2019, it made changes to chapter 19.280 RCW pertaining to IRPs, and required the commission, by January 1, 2021, to incorporate those changes in its rules. We must therefore remove the reference to WAC 480-100-238 in the IRP definition in WAC 480-109-060 to correctly identify the applicable rule.

21 *In re Amending, Adopting, and Repealing WAC 480-100-238, Relating to Integrated Resource Planning*, Docket UE-190698, CR-101 at WSR 19-23-005 (Nov. 6, 2019).

41 The commission also is undertaking a separate rule making in Docket UE-191023 relating to Clean Energy Implementation Plans (CEIP) and compliance with CETA as directed by the Washington legislature. That rule making adopts a definition of IRP in WAC 480-100-605. Therefore, and in summary, we find it appropriate to amend the definition of IRP in WAC 480-109-060 to align with the meaning in WAC 480-100-605.

42 Accordingly, the commission determines that the definition of IRP in WAC 480-109-060 should be amended to read as reflected in Paragraph 39, above.

43 COMMISSION ACTION: After considering all of the information regarding this proposal, the commission finds and concludes that it should amend the rules as proposed in the CR-102 at WSR 20-18-075 with the change described in Paragraphs 38-42, above.

44 STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE: After reviewing the entire record, the commission determines that it should amend WAC 480-109-060, 480-109-100, 480-109-200, 480-109-210, and 480-109-300 to read as set forth in Appendix B, 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.



Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 5, 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 the 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 0, 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 5, Repealed 0.

ORDER

THE COMMISSION ORDERS :

45 (1) The commission amends WAC 480-109-060, 480-109-100, 480-109-200, 480-109-210, and 480-109-300 to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

46 (2) This order and the rules set forth in Appendix B, after being recorded in the register of the Washington utilities and transportation commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW, and 1-21 WAC.

DATED at Lacey, Washington, and effective December 28, 2020. Washington Utilities and Transportation Commission

David W. Danner, Chairman
Ann E. Rendahl, Commissioner
Jay M. Balasbas, Commissioner

Appendix A
Comment Summary Matrix

Energy Independence Act Rule Making, Docket UE-190652
Summary of Comments

This document summarizes all CR-102 comments the commission received regarding the Energy Independence Act (EIA) rule making, Docket UE-190652. Note: Two CR-102 forms, with accompanying proposed rules, were submitted in this docket. Some stakeholders submitted comments during both CR-102 comment periods. Where necessary, the commission has indicated which CR-102 comment is being summarized using superscript numbers 1 and 2.

CR-102 PHASE

Table with 3 columns: Stakeholder, General Comments Not Applicable to a Specific Section of the Rule, Staff Response. Row 1: Front and Centered, Hopes that the commission will consider the adoption of all prior comments, See responses provided in "UE-190652 EIA Rulemaking CR-101 Comment Summary Matrix.pdf" posted to the commission website on March 30, 2020.

Pacific Power	Requested clarification on the proposed addition of the "carbon dioxide equivalent" (CO2e) and "greenhouse gas" (GHG) definitions in the revised rules. Asked how CO2e can impact emitting resource dispatch in its integrated resource plan (IRP) based on CETA.	After discussion with staff, Pacific Power revised its comments to disregard its request for clarification on the inclusion of CO2e into utility planning processes. The company does not have any concerns with the inclusion of the definition of CO2e as proposed in the draft EIA rules. The company may file the planning portions of the CO2e comments in a subsequent CETA rule making.
	Expressed concern that RECs associated with new qualifying facilities (QFs), in operation after the effective date of the law, are not addressed in statute or the draft rules. In case the utility cannot procure RECs from new QFs, a penalty will be imposed. Requested that the commission resolve this issue by requiring QFs to provide project RECs to the purchasing utility.	After discussion with staff, the company agreed that this section is not a part of the EIA rule making. Pacific Power may resolve ownership of RECs associated with energy procured from QFs by revising its Public Utilities Regulatory Policies Act tariff(s).
<b>Comments affecting WAC 480-109-060 Definitions</b>		
<b>(13) Energy assistance</b>		
<b>Stakeholder</b>	<b>Summary of Comments</b>	<b>Staff Response</b>
Avista	Recommends removing the definition of energy assistance from the rules.	The EIA rules have provisions governing LI conservation and the commission chooses to update those rules in light of CETA.
	The changes that incorporate low-income (LI) energy assistance from CETA into the EIA are inappropriate.	As discussed in the 2015 order adopting amendments to chapter 480-109 WAC, the commission's rules provide for determining the cost-effectiveness of LI conservation programs to ensure utilities pursue all cost-effective conservation. These amendments ensure that utilities pursue all cost-effective conservation consistently with state law and commission policy.
Front and Centered	Recommends: "Energy assistance includes, but is not limited to, weatherization, conservation and efficiency services, <u>reduction of shut-offs</u> and monetary assistance, such as a grant program or discounts for lower income households, intended to lower a household's energy burden."	The definition provided in rule is the statutory definition. The commission will provide additional guidance on eligible energy assistance programs in the future.
	By calling out the needs of those who are not connected to or are at risk of being disconnected from energy, we ensure those households receive the attention and assistance needed for the energy security necessary to protect families.	
The Energy Project	Definition appropriately mirrors the statutory definition in RCW 19.405.020(15).	No staff response needed.
<b>(14) Energy assistance need</b>		
<b>Stakeholder</b>	<b>Summary of Comments</b>	<b>Staff Response</b>
Public Counsel	Believes the definition should reflect WA state data and recommends further discussion to consider local data on energy burden. For WA households with income between zero to 150 percent of the federal poverty limit (FPL), the average energy burden is eight percent. For WA households with income between zero to 200 percent of the FPL, the average energy burden is six percent. WA households also have varying levels of energy burden based on respective county of residence.	Six percent energy burden is an appropriate input for "energy assistance need" calculations pursuant to the statewide assessment required in RCW 19.405.120(3) and the utility assessments pursuant to RCW 19.405.120(4). Defining energy assistance as six percent or less would introduce variability into the statewide assessment pursuant to RCW [19.405].120(3). The definition of "energy assistance need" does not limit the commission's discretion to approve energy assistance programs that target levels of energy burden below six percent.
	Flexibility is needed in setting an appropriate energy burden target for a particular energy assistance program. If the average local energy burden is lower than six percent, the draft rules could have unintended consequences. Recommends: "Energy assistance need" means the amount of assistance necessary to achieve an energy burden, <u>from all energy sources</u> , equal to six percent <u>or less</u> for utility customers."	
Avista	Recommends removing the definition from the rules.	The EIA rules have provisions governing LI conservation and the commission chooses to update those rules in light of CETA.
	The changes that incorporate LI energy assistance from CETA into the EIA are inappropriate.	As discussed in the 2015 order adopting amendments to chapter 480-109 WAC, the commission's rules provide for determining the cost-effectiveness of LI conservation programs to ensure utilities pursue all cost-effective conservation. These amendments ensure that utilities pursue cost-effective conservation consistently with state law and commission policy.
Front and Centered	Recommends: "'Energy assistance need[']' means the amount of assistance necessary to <del>achieve an energy burden equal</del> <u>reduce a household's energy burden to well below six percent for utility customers and for those who do not have energy due to lack of access or income.</u> "	The statutory definition in RCW 19.405.020 states that the commission will determine "a level of household energy burden" within the definition of "energy assistance need."
	The statutory directive is not to establish a flat level of burden, conveyed with the use of the phrase "equal to," but rather it is to reduce the energy burden as low as possible with six percent as a ceiling. This change brings greater clarity in addition to alignment with the intent of the statute.	

	Believes that selecting a specific percentage warrants a deeper discussion and input because energy burden is a portion of disposable income available to pay energy costs. If the income of a household is so low that they are not able to pay bills, they may not have a measurable energy burden, but clearly, they have an energy burden.	Energy burden is defined by statute and included as the sole metric within the statutory definition of "energy assistance need." Energy burden is an imperfect metric for assessing all needs. Additional metrics are outside the scope of this rule making. The definition of "energy assistance need" does not limit the commission's discretion to approve programs.
	Recommends specific recognition of those who have had their energy shut off due to an inability to pay or do not have an energy bill because they lack access to the energy grid.	
NW Energy Coalition	Recommends: "Energy assistance need" means the amount of assistance necessary to achieve an energy burden equal to not to exceed six percent for utility customers." (Reiterated in 2nd CR-102 comments.)	Six percent energy burden is an appropriate input for "energy assistance need" calculations pursuant to the statewide assessment required in RCW 19.405.120(3) and the utility assessments pursuant to RCW 19.405.120(4). Defining energy assistance as six percent or less would introduce variability into the statewide assessment pursuant to RCW [19.405].120(3). The definition of "energy assistance need" does not limit the commission's discretion to approve energy assistance programs that target levels of energy burden below six percent.
	While WA state's overall utility costs and average energy burden are lower compared to the rest of the United States, those lower costs are often offset by much higher housing and other living costs in several parts of the state. Utilities should be able to determine a threshold lower than six percent to determine bill affordability based on local economic conditions.	
The Energy Project	Supports the use in the proposed rule of a six percent energy burden. There is ample support in the record for using this metric.	No staff response needed.
	Notes that staff has indicated that utility programs could target any level of energy burden subject to commission approval, as the definition of "energy assistance need" does not interact with programmatic design.	Six percent energy burden is an appropriate input for "energy assistance need" calculations pursuant to the statewide assessment required in RCW 19.405.120(3) and the utility assessments pursuant to RCW 19.405.120(4). Defining energy assistance as six percent or less would introduce variability into the statewide assessment pursuant to RCW [19.405].120(3). The definition of "energy assistance need" does not limit the commission's discretion to approve energy assistance programs that target levels of energy burden below six percent.
	To clarify this intent in the rule language itself, believes that including language stating the level is "no greater than" six percent would remove doubt that the rule allows utilities to adopt more aggressive standards for their programs if they desire.	
<b>(15) Energy burden</b>		
<b>Stakeholder</b>	<b>Summary of Comments</b>	<b>Staff Response</b>
Public Counsel	Recommends that the definition of "energy burden" should clarify that the term considers the customer's total energy expense. Recommends: "Energy burden" means the share of annual household income used to pay annual home energy bills from all energy sources."	The definition included in the rules is from statute. The commission will provide additional guidance in the adoption order to clarify which fuels are associated with "home energy bills." A plain-language interpretation of "home energy" includes commonly used energy sources, including electricity, natural gas, propane, and wood.
Avista	Recommends removing the definition from the rules.	The EIA rules have provisions governing LI conservation and the commission chooses to update those rules in light of CETA.
	The changes that incorporate LI energy assistance from CETA into the EIA are inappropriate.	As discussed in the 2015 order adopting amendments to chapter 480-109 WAC, the commission's rules provide for determining the cost-effectiveness of low-income conservation programs to ensure utilities pursue all cost-effective conservation. These amendments ensure that utilities pursue cost-effective conservation consistently with state law and commission policy.
The Energy Project	Definition appropriately mirrors the statutory definition in RCW 19.405.020(17).	No staff response needed.
Pacific Power	"Energy burden" should be clearly defined to be specific to the utility services for which the utility bills its customers. Recommends: "(15) 'Energy burden' means the share of annual household income used to pay annual home energy bills for the services delivered by the utility for which it bills its customers."	The definition included in the rules is from statute. The commission will provide additional guidance in the adoption order to clarify which fuels are associated with "home energy bills." A plain-language interpretation of "home energy" includes commonly used energy sources, including electricity, natural gas, propane, and wood.
<b>(22) Low-income</b>		
<b>Stakeholder</b>	<b>Summary of Comments</b>	<b>Staff Response</b>
Public Counsel	Recommends the definition be more flexible and reflect the maximum limit contained in CETA, which is the higher or [of] 80 percent area median income (AMI) or 200 percent of the federal poverty level (FPL), adjusted for household size.	The definition has been updated to include 80 percent AMI.
	Limiting the definition to 200 percent FPL may unnecessarily exclude households that fall between 200 percent of the FPL and 80 percent AMI. The rule should preserve the use of AMI if it becomes a better measure for LI programs.	
	A more flexible definition would allow utilities and their partners to design programs that best suit their service territories.	The commission will provide guidance in the future on how the definition of "low-income" interacts with program eligibility.
Avista	Recommends removing the definition from the rules.	The EIA rules have provisions governing LI conservation and the commission chooses to update those rules in light of CETA.
	The changes that incorporate LI energy assistance from CETA into the EIA are inappropriate.	As discussed in the 2015 order adopting amendments to chapter 480-109 WAC, the commission's rules provide for determining the cost-effectiveness of LI conservation programs to ensure utilities pursue all cost-effective conservation. These amendments ensure that utilities pursue cost-effective conservation consistently with state law and commission policy.

Front and Centered	Recommends: "'Low-income' means household incomes that are <u>less than or equal to the higher of 80 percent of area median household income</u> or 200 percent of federal poverty level or less, adjusted for household size."	The definition has been updated to include 80 percent AMI.
	The statute included both measures because the federal poverty level alone is not an adequate measure for WA state given the extreme range of cost of living across the state.	The statute provided the commission and the WA department of commerce (commerce) discretion in setting the definition for "low-income" as long as the definition does not exceed 200 percent FPL or 80 AMI, adjusted for household size.
	Interprets this definition to mean that some assistance must be provided to households up to 80 percent of AMI, but not to mean that all programs must be offered to all customers.	RCW 19.405.120 is not fully represented in chapter 480-109 WAC. The commission will provide guidance on how the definition of "low-income" interacts with program eligibility in future guidance.
	The statutory direction to prioritize households with the greatest energy burden and to equitably distribute benefits requires a geographically variable definition of "low income."	RCW 19.405.120(2), which is mirrored in WAC 480-109-100 (10)(b), requires utilities to prioritize LI households with a higher energy burden. This prioritization is based on the definition of "low-income" set by the commission and commerce for investor-owned and consumer-owned utilities, respectively. The statute does not require a geographically variable definition of "low-income." The statute only requires that the definition does not exceed 200 percent FPL or 80 AMI, adjusted for household size.
PSE	Recommends: "'Low-income' means household incomes that <u>do not exceed two hundred percent of federal poverty level or eighty percent of area median household income</u> , adjusted for household size."	The definition has been updated to include 80 percent AMI.
	The company's LI weatherization programs currently use 200 percent FPL or 60 percent state median income (SMI), whichever is greater. Eligibility criterion is based on how commerce currently administers the state weatherization assistance program. Concerned that the current definition would result in agencies losing the ability to leverage utility funds for those applicants that qualify at 60 percent SMI, which is higher than 200 percent FPL for most households served by the program.	RCW 19.405.120 is not fully represented in chapter 480-109 WAC. The commission will provide guidance on how the definition of "low-income" interacts with program eligibility in future guidance.
NW Energy Coalition	Recommends: "'Low-income' means household incomes that <u>are may not exceed the higher of eighty percent of area median household income</u> or two hundred percent of federal poverty level or less, adjusted for household size.	The definition has been updated to include 80 percent AMI.
	Appreciates efforts to maintain administrative simplicity but believes CETA is explicit in its intentions to improve service to LI and highly impacted communities throughout the state. Notes that achieving this goal will require less simplicity and more fine-tuned efforts to understand influencing factors to poverty and vulnerability in utility service territories.	
	The statutory language choice was intentional, to allow utilities to choose the standard that adjusts for circumstances in local jurisdictions.	The statute provided the commission and commerce discretion in setting the definition for "low-income" as long as the definition does not exceed 200 percent FPL or 80 AMI, adjusted for household size.
The Energy Project	Recommends use of 200 percent of FPL in the proposed rule's definition of LI in conjunction with 80 percent of AMI, with the greater of the two establishing the income eligibility cap.	The definition has been updated to include 80 percent AMI.
	Notes that the FPL metric has long been viewed as "one of the most challenged indicators" and an outdated and unreliable way to measure actual poverty levels. The use of AMI allows recognition of income disparities and high cost of living areas. Notes that using a metric lower than 80 percent AMI could nullify the benefit of including the AMI metric.	
	Does not have a significant concern about the administrative burden of using both metrics. Overlapping eligibility criteria are already in use for LI weatherization.	
	Notes that CETA's definition of LI allows the commission and commerce to establish a combined metric for both FPL and AMI as part of the definition. Believes the rule language is most reasonably interpreted as requiring the agencies to use both metrics.	The statute restricts the content of the definition(s) created by commerce or the commission. The statute does not require a combined metric.
	Believes that giving utilities more flexibility to tailor programs to specific LI households will improve services. Gives example of offering arrearage management programs to households at the higher end of the eligibility spectrum, which can be as useful as offering percentage-of-income payment plans for very LI households.	RCW 19.405.120 is not fully represented in chapter 480-109 WAC. The commission will provide guidance on how the definition of "low-income" interact[s] with program eligibility in future guidance.
<b>All other definitions</b>		
<b>Stakeholder</b>	<b>Summary of Comments</b>	<b>Staff Response</b>

<p>NW Energy Coalition</p>	<p>In subsection (12)(f)(ii) incremental energy from qualified biomass, recommends including the missing part from current rule WAC 194-37-135 (3)(b):                  "(ii) Beginning January 1, 2007, the facility must demonstrate its baseline level of <u>average net</u> generation over a three-year period, <u>excluding any periods in which operation of the qualified biomass facility was unrepresentative of normal operating conditions</u>, prior to the capital investment in order to calculate the amount of incremental electricity produced";                  (Reiterated in 2nd CR-102 comments.)</p>	<p>Staff declines to recommend this definition change. Follow up with the NW Energy Coalition confirmed this revision was requested to harmonize the commission's EIA rules with those of commerce. While staff generally supports such rule alignment, follow-on discussions with commerce staff confirmed the circumstances causing the department's corresponding biomass definition to deviate are largely inapplicable to the WA electric investor-owned utility landscape.</p>
	<p>Proposes new draft language for subsection (12)(g) federal incremental eligible hydropower (IEH) omitted part of the description in the statute RCW 19.405.040 (1)(d) from which it is derived:                  "(g) That portion of incremental electricity produced...where the additional generation does not result in new water diversions, <u>or</u> impoundments, <u>bypass reaches or expansion of existing reservoirs</u> ..."                  (Reiterated in 2nd CR-102 comments.)</p>	<p>Staff declines to recommend this definition change. Proposed new language refers to nonemitting electric generation per RCW 19.405.040 (1)(d), not eligible renewable resources. The subsection (12)(g) definition for federal IEH currently in draft rule is an augmentation to the definition of eligible renewable resources required by RCW 19.285.030 (1)(g).</p>
	<p>In subsection (17), GHG content calculation, recommends adding additional underlined text:                  "(17) "Greenhouse gas content calculation" means a calculation expressed in CO2e made by the department of ecology for the purposes of determining <u>the complete lifecycle</u> emissions attributable to a fuel, <u>including emissions resulting from the extraction, production transport, and from</u> the complete combustion or oxidation of fossil fuels and the GHG emissions in electricity for use in calculating the GHG emissions content in electricity."                  (Reiterated in 22nd CR-102 comments.)</p>	<p>The definition in the proposed rules is directly from CETA. The commission is still evaluating if and where to require additional GHG information, considering the dynamics of all CETA rule makings.</p>

**Comments affecting WAC 480-109-100 Energy efficiency resource standard**

<p><b>Subsection (1) Process for pursuing all conservation</b></p>		
<p><b>Stakeholder</b></p>	<p><b>Summary of Comments</b></p>	<p><b>Staff Response</b></p>
<p>The Energy Project</p>	<p>Supports adoption of the proposed rule language for portfolio development.</p>	<p>No staff response needed.</p>
	<p>Understands the proposed rule to not require inclusion of energy assistance which do not involve conservation, such as discount-based bill assistance. The first clause of the new sentence is clear that it is "conservation programs and mechanisms" that must be included.</p>	<p>No staff response needed.</p>
<p>Pacific Power</p>	<p>Recommends adding: <u>The portfolio must include all conservation programs and mechanisms identified pursuant to RCW 19.405.120, which pertain to energy assistance and progress toward meeting energy assistance need, including the low-income conservation programs and mechanisms in subsection 10(b) of this section.</u></p>	<p>Language already included in proposed rule in WAC 480-109-100 (1)(a)(ii).</p>
<p><b>Subsection (10) Low-income conservation</b></p>		
<p><b>Stakeholder</b></p>	<p><b>Summary of Comments</b></p>	<p><b>Staff Response</b></p>
<p>Avista</p>	<p>Maintains the changes that incorporate LI energy assistance goals from CETA into the EIA [which] go beyond the commission's authority which is bound by a strict "cost-effective" test and based on "standard practice."                  Maintains the term "non-energy benefits" is not defined in WAC 480-109-060, however, the EIA requires utilities to use Northwest Power and Conservation Council methodology.</p>	<p>The commission's authority in RCW 19.285.040 (1)(e) to determine if a conservation program is cost-effective is based on "the Commission's policies and practice." The changes to the LI conservation standard evaluate cost-effectiveness using the commission's policies and practice[s], which have historically given special consideration to LI conservation.                  While RCW 19.285.040 (1)(a) requires utilities to use methodologies consistent with the NWPCC's most recent plan to set targets, the EIA gives the commission the power to determine whether conservation is cost-effective, and the amended rules provide the manner it will do so in accordance with its policies and practices.</p>
<p>PSE</p>	<p>To balance the requirement in CETA with the practical realities of how weatherization programs are administered through agencies today, suggests the following revisions to subsection (10)(b):                  "(b) The utility's biennial conservation plan must include low-income conservation programs and mechanisms identified pursuant to RCW 19.405.120 with advice and review provided by <u>its Advisory Group</u>. To the extent practicable, a utility must <u>include a description of how the plan prioritizes energy assistance to low-income households with the highest energy burden, in conjunction with low-income agencies, and future actions under consideration to improve this prioritization, prioritize energy assistance to low-income households with a higher energy burden.</u>"                  (Reiterated in 2nd CR-102 comments.)</p>	<p>The second sentence in subsection (10)(b) is directly from RCW 19.405.120(2). The commission expects to provide guidance in the future on what is "practicable."                  The utility can and should seek advice and review from its advisory group, including a description of how the plan prioritizes energy assistance to households with a higher energy burden, coordinate with LI agencies to accomplish the statutory requirement, and adaptively manage the program to improve this prioritization when necessary.</p>

	Believes it would be administratively burdensome for utilities to become directly involved in the intake process or for the LI weatherization program to become involved in applications, which is what would be required to prioritize LI customers with the highest energy burden.	
	Believes within weatherization programs that are currently implemented today, energy burden is best taken into consideration at a local level where program implementation and the intake process occurs.	
	Believes the Weatherization Manual already requires agencies to prioritize customers with high energy burden, among other criteria for prioritization.	
	Has concerns with section (a) and has worked with TEP and NW Energy Coalition to align proposed changes to the third sentence of this subsection. In addition, recommends the following additional language: "For purposes of this subsection, "fully fund" may include the agency leveraging other funding sources, in combination with utility funds, to fund LI conservation projects."	This change has been incorporated into the proposed rules, along with the modification suggested by NW Energy Coalition.
	Company proposes that it work with its advisory group and commission staff to develop a clear set of guidelines accounting for nonenergy impacts in subsection (c). Suggests modifying language "in consultation with its Advisory Group, develop metrics to," "quantifiable," and "to the extent practicable." (Reiterated in 2nd CR-102 comments.)	Utilities should consult with their advisory groups on these issues, as outlined in existing rules. The commission may issue additional guidance at a later date. The additional language is unnecessary.
NW Energy Coalition <sup>1</sup>	Believes the changes to this section overall are appropriate and needed for the adequate implementation of CETA. Particularly supports the changes in subsections (b) and (c), which effectively capture needed elements of CETA to account for LI conservation in an appropriate manner, acknowledging that these costs are not exclusively conservation costs, but also energy assistance costs, and therefore must be excluded from portfolio level cost-effectiveness calculations.	No staff response needed.
	Recommends adding the word "either" for clarity and removing "when alternate funding sources are unavailable" and reverting back to "may" from "must" in the sentence to retain flexibility. Language recommendation: (a) A utility must fully fund LI conservation measures that are determined by the implementing agency to be cost-effective consistent with either the Weatherization Manual maintained by the department or when it is cost-effective to do so using utility-specific avoided costs. Measures identified through the priority list in the Weatherization Manual are considered cost-effective. In addition, when alternate funding sources are unavailable, a utility may (must) fully fund repairs, administrative costs, and health and safety improvements associated with cost-effective LI conservation measures.	This change has been incorporated into the proposed rules.
NW Energy Coalition <sup>2</sup>	Concerned that the new language "For purposes of this subsection, "fully fund" may include ... conservation projects" is ambiguous and open for interpretation. Suggests a clarifying edit that replace "may include" with "does not prohibit." Requests a clarifying statement be included in the adoption order if modification of the language is unwelcome at this stage.	Staff will recommend that the commission adopt this clarifying edit.
The Energy Project <sup>1</sup>	Supports the proposed amendment to subsection (10)(b). As CETA places new emphasis on LI programs, it is appropriate to ensure that EIA conservation plans incorporate these CETA-related efforts.	No staff response needed.
	Supports most language in subsection (10)(a) with the exception of recommending a return to "may" fund repairs, administrative costs, and health and safety improvements after consideration of alternative language.	This change has been incorporated into the proposed rules.
	Supports the requirement to account for costs and benefits, including nonenergy impacts.	No staff response needed.
The Energy Project <sup>2</sup>	Concerned that the new language "For purposes of this subsection, "fully fund" may include ... conservation projects" could be interpreted to allow a utility to decline funding for a project by asserting how an agency could or should be utilizing funds. Suggests a clarifying edit that replace "may include" with "does not prohibit." Requests a statement be included in the adoption order, if modification of the language is unwelcome at this stage, clarifying that the intent of the language is to allow the agency to leverage other funds, in combination with utility funds, to fund low-income conservation projects.	Staff will recommend that the commission adopt this clarifying edit.

Pacific Power	Believes the portfolio of conservation resources to meet energy assistance need must be based on information known to the electric utility through its own billing systems. Other types of energy costs from gas, propane, or wood are not known by the electric utility. Energy assistance must provide an opportunity to mitigate the impact through changes to electricity consuming equipment at the customer location.	LI conservation has traditionally been provided utilizing income data not available to the utility. The commission will provide additional guidance in the adoption order to clarify which fuels are associated with "home energy bills." A plain-language interpretation of "home energy" includes commonly used energy sources, including electricity, natural gas, propane, and wood. The definition of energy burden used to determine energy assistance need included in the rules is from statute.
	Proposes that energy assistance costs be compared with a historical average of LI weatherization investments in prior biennial periods and that the difference, if any, be treated as an incremental cost of CETA compliance.	Incremental cost of CETA compliance will be addressed in Docket UE-191023.
<b>Comments affecting WAC 480-109-200 Renewable portfolio standard</b>		
<b>Subsection (2) Credit eligibility</b>		
<b>Stakeholder</b>	<b>Summary of Comments</b>	<b>Staff Response</b>
Avista	Believes draft rule requirement, "renewable energy credits were acquired by January 1st of the target year," appears to conflict with the timing and use of RECs for meeting RPS requirements. Provides the following language revisions: (2) Credit eligibility. A qualifying utility may use renewable energy credits to meet the provisions of this section, provided the renewable energy credits meet the following requirements: (a) Renewable energy credits were acquired by <u>January 1st</u> December 31 of the target year <u>or the following year pursuant to subsection (b) of this subsection</u> ;	Staff declines to recommend Avista's requested rule revision. The rule language in question requiring RECs to be acquired by January 1st of the target year aligns with EIA statute that utilities, "acquire ... RECs ... to meet ... annual targets ... by January 1" of each target year (RCW 19.285.040 (2)(a)). Avista may be confusing the REC acquisition requirement with the REC creation eligibility guidance provided in the proposed rules. Draft WAC 480-109-200 (2)(b) allows for nonfreshwater RECs to be used for compliance in the year they were created, the year before, or the year after. Rule subsection (2)(c) only allows freshwater RECs to be used in the year they were created.
Pacific Power and Light	Maintains the revised WAC section adds that the annual report must include the number of renewable resources needed to meet the annual target by January 1st of the target year. This concept is missing in the statute. In other words, the administrative rules require a specific plan for how the utility will comply, whereas the statute appears to require only a compliance report showing the utility's "progress in the preceding year." When dealing with unbundled RECs, believes the term "acquired" is not defined in EIA statute, so there is no reason for the commission to change its practical interpretation of this term, which has been interpreted as "acquired" in a contractual sense. Such RECs should be eligible for use in a given target year, if they are expected to be generated at any point in the target year or the year following the target year.	Staff maintains "by January 1st of the target year," a rule clause that precedes this current EIA revision cycle, is mandated by statute based on the following passages within RCW 19.285.040 and [19.285].070. Within the target section of RCW 19.285.040 (2)(a) - Utilities must account for "at least [X] percent of load by January 1 [of the target year]." Within the reporting requirements specified in RCW 19.285.070(1) - "report progress ... in meeting the target established in RCW 19.285.040, include[s] ... the amount of megawatt-hours of each type of eligible renewable resource acquired, the type and amount of renewable energy credits acquired ... " No revision to the rule language is needed. Staff maintains the current rule language allows for "acquired" to be interpreted in a contractual sense. As long as a relevant contract is in place, the rule language allows for RECs to be generated at any point in the target year or the year following the target year. No revision to the rule language is needed.
<b>Subsection (10) Use of nonemitting electric generation</b>		
<b>Stakeholder</b>	<b>Summary of Comments</b>	<b>Staff Response</b>
Climate Solutions	Agrees the EIA has an annual renewable energy compliance obligation. However, the language in CETA relieves the utility of that renewable compliance obligation if a utility has met 100 percent of its "average annual retail electric load" using renewable energy, RECs, or nonemitting generation. A conflict exists because the CETA compliance obligation is based on four-year average loads, but the EIA is based on the utility's annual load over the previous two years. The "average annual retail electric load" is never defined in statute nor rules. Hence, there should be some clarification in rule so that a utility is not relieved of their annual compliance obligation until the end of the given four-year CETA compliance period.	Per RCW 19.405.110, the four-year compliance obligation in CETA does not impact the EIA. Therefore, there is no conflict. The commission will continue to verify EIA compliance as noted in WAC 480-109-210(6).
WA Department of Commerce	Title of WAC [480-109]-200(10), which currently reads: "Use of nonemitting electric generation," should be changed. Nonemitting generation will likely account for a small amount of the combination of renewable resources, RECs, and nonemitting electric generation utilities will use to elect this compliance option come 2030. Instead utilities electing this option would primarily rely on legacy hydropower, which is categorized as a renewable resource per RCW 19.285.030(21) and not nonemitting generation per WAC 480-109-060 (23)(b) of the current version of the draft EIA rules.	Staff has incorporated into the proposed rules a revised subsection title reading, "Compliance when renewable and nonemitting electric generation used to meet one hundred percent of annual retail electric load." Staff acknowledge utilities electing this compliance option will likely not rely on nonemitting electric generation.
NW Energy Coalition	To comply with section 4, chapter 288, Laws of 2019, with regard to renewable resources and section 4 (1)(f) nonemitting resources, believes the rules should be modified to ensure that it is clear that utilities utilizing this compliance option must comply with the requirement to surrender nonpower attribute documentation for any non-emitting resources used to meet the law. Recommend adding additional underlined text: "(b) Non-emitting electric generation, as defined in WAC 480-109-060(23) and consistent with RCW 19.405.040 (1)(f)."	Staff declines to recommend this rule change given the request is outside the scope of this EIA rule making. RCW 19.405.040 (1)(f) addresses nonpower attributes of the electricity generated by the nonemitting electric generation resource. A more appropriate venue for resolution is the joint carbon and electricity markets rule making the commission will undertake with commerce (see U-190485 <i>Energy Legislation Implementation Plan Phase II</i> ). Pursuant to RCW 19.405.130 (3)(b), that rule making will "address the prohibition on double counting of nonpower attributes under RCW 19.405.040(1) that could occur under other programs" like the EIA RPS.

<b>Comments affecting WAC 480-109-210 Renewable portfolio standard reporting</b>		
<b>Subsection (2)</b> Annual report contents		
<b>Stakeholder</b>	<b>Summary of Comments</b>	<b>Staff Response</b>
Pacific Power and Light	Believes the incremental costs of eligible renewable resources should be included in the target year in which those resources are used for compliance. Specifically, the incremental costs should reflect the operating attributes of relevant resources, even if the given resources are not operating as described by January 1st of the target year but at some point later in the calendar year.	Staff declines to recommend any further action at this time. Staff maintains "by January 1st of the target year," a rule clause that precedes this current EIA revision cycle, is mandated by statute based on the following passages within RCW 19.285.040 and [19.285].070. Within the target section of RCW 19.285.040 (2)(a) - Utilities must account for "at least [X] percent of load by January 1 [of the target year]." Within the reporting requirements specified in RCW 19.285.070(1) - "report progress ... in meeting the target established in RCW 19.285.040, include[s] ... the incremental cost of eligible renewable resources and the cost of renewable energy credits." Based on stakeholder collaboration concurrently taken outside of this EIA rule making, staff acknowledge the existing rule language does not specifically address incremental cost considerations associated with upgrades or renovations to existing eligible renewable resources.
<b>Subsection (6)</b> Final compliance report		
<b>Stakeholder</b>	<b>Summary of Comments</b>	<b>Staff Response</b>
Pacific Power and Light	Believes the EIA RPS has a two-step compliance process, with the annual report being the first step and actual compliance being determined two years after the compliance year. It would be logical for the June 1 report to be in the form of an estimate, given non-IEH RECs can be used on a year-ahead, year-behind, or year-of-creation basis.	Staff maintains the current rule language indicates the annual renewable portfolio standard report is a plan or an "estimate." The final compliance report described in subsection (6) confirms how the utility actually met the annual target. No revision to the rule language is needed.
<b>Comments affecting WAC 480-109-300 Greenhouse gas content calculation and energy and emission intensity metrics</b>		
<b>Subsection (1)</b> "A utility must report its ..."		
<b>Stakeholder</b>	<b>Summary of Comments</b>	<b>Staff Response</b>
Avista	Recommends striking the GHG content calculation language. Did not provide an explanation for why this language should be struck.	Avista confirmed via email that these amendments were proposed in error and the commission should disregard them.
<b>Subsection (2)</b> "Each utility must perform its ..."		
<b>Stakeholder</b>	<b>Summary of Comments</b>	<b>Staff Response</b>
Avista	Recommends striking the entire subsection. Did not provide an explanation for why this language should be struck.	Avista confirmed via email that these amendments were proposed in error and the commission should disregard them.
NW Energy Coalition	Recommends adding "... consistent with RCW 19.405.020(22)" at end of subsection.	This change has been incorporated into the proposed rules.
<b>Subsection (3)</b> "In addition to the greenhouse gas content calculation ..."		
<b>Stakeholder</b>	<b>Summary of Comments</b>	<b>Staff Response</b>
Avista	Recommends striking the GHG content calculation language. Did not provide an explanation for why this language should be struck.	Avista confirmed via email that these amendments were proposed in error and the commission should disregard them.
<b>Subsection (4)</b> Unknown generation sources		
<b>Stakeholder</b>	<b>Summary of Comments</b>	<b>Staff Response</b>
WA Department of Commerce	Recommends changing the title of the subsection to "Unspecified electricity" to more accurately reflect the content of the subsection.	This change has been incorporated into the proposed rules.
<b>Subsection (5)</b> "The greenhouse gas content calculation and..."		
<b>Stakeholder</b>	<b>Summary of Comments</b>	<b>Staff Response</b>
Avista	Recommends striking the GHG content calculation language. Did not provide an explanation for why this language should be struck.	Avista confirmed via email that these amendments were proposed in error and the commission should disregard them.

**Appendix B  
Amended Rules**

OTS-2143.5



AMENDATORY SECTION (Amending WSR 15-07-043, filed 3/12/15, effective 4/12/15)

**WAC 480-109-060 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Annual retail revenue requirement" means the total revenue the commission authorizes a utility an opportunity to recover in Washington rates pursuant to a general rate proceeding or other general rate revision.

(2) "Biomass energy" means:

(a) The electrical energy produced by a generation facility powered by:

(i) Organic by-products of pulping and the wood manufacturing process;

(ii) Animal manure;

(iii) Solid organic fuels from wood;

(iv) Forest or field residues;

(v) Untreated wooden demolition or construction debris;

(vi) Food waste and food processing residuals;

(vii) Liquors derived from algae;

(viii) Dedicated energy crops; and

(ix) Yard waste.

(b) Biomass energy does not include:

(i) Wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome arsenic;

(ii) Wood from old growth forests; or

(iii) Municipal solid waste.

(3) "Carbon dioxide equivalents" or "CO<sub>2</sub>e" has the same meaning as in RCW 70.235.010.

(4) "Certificate" means proof of ownership, registered in WREGIS, of the nonpower attributes associated with a megawatt-hour of generation from an eligible renewable resource.

~~((4))~~ (5) "Coal transition power" means the output of a coal-fired electric generation facility that is subject to an obligation to meet the standards contained in RCW 80.80.040 (3) (c).

~~((5))~~ (6) "Commission" means the Washington utilities and transportation commission.

~~((6))~~ (7) "Conservation" means any reduction in electric power consumption resulting from increases in the efficiency of energy use, production, or distribution.

~~((7))~~ (8) "Cost-effective" means, consistent with RCW 80.52.030, that a project or resource is forecast:

(a) To be reliable and available within the time it is needed; and

(b) To meet or reduce the electric power demand of the intended consumers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative project or resource, or any combination thereof.

~~((8) "Council" means the Northwest Power and Conservation Council.)~~

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

(10) "Department" means the department of commerce or its successor.

(11) "Distributed generation" means an eligible renewable resource where the generation facility or any integrated cluster of such facilities has a nameplate capacity of not more than five megawatts alternating current. An integrated cluster is a grouping of generating facilities located on the same or contiguous property having any of the following elements in common: Ownership, operational control, or point of common coupling.

(12) "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.

(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, where the additional generation does not result in new water diversions or impoundments;

(c) Hydroelectric generation from a project completed after March 31, 1999, where the generation facility is located in irrigation pipes, irrigation canals, water pipes whose primary purpose is for conveyance of water for municipal use, and wastewater pipes located in Washington, where the generation does not result in new water diversion or impoundments;

(d) Qualified biomass energy; ((~~⊕~~))

(e) For a qualifying utility that serves customers in other states, electricity from a generation facility powered by a renewable resource other than freshwater that commenced operation after March 31, 1999, where:

(i) The facility is located within a state in which the qualifying utility serves retail electrical customers; and

(ii) The qualifying utility owns the facility in whole or in part or has a long-term contract with the facility of at least twelve months.

~~((13))~~ (f) (i) 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 (29) (c) (ii) of this section and that commenced operation before March 31, 1999;

(ii) Beginning January 1, 2007, the facility must demonstrate its baseline level of generation over a three-year period prior to the capital investment in order to calculate the amount of incremental electricity produced;

(iii) The facility must demonstrate that the incremental electricity resulted from the capital investment, which does not include expenditures on operation and maintenance in the normal course of business, through direct or calculated measurement.

(g) That portion of incremental electricity produced as a result of efficiency improvements completed after March 31, 1999, attributable to a qualifying utility's share of the electricity output from hydroelectric generation projects whose energy output is marketed by the Bonneville Power Administration where the additional generation does not result in new water diversions or impoundments; or

(h) The environmental attributes, including renewable energy credits, from (g) of this subsection transferred to investor-owned utilities pursuant to the Bonneville Power Administration's residential exchange program.

(13) "Energy assistance" means a program undertaken by a utility to reduce the household energy burden of its customers.

(a) Energy assistance includes, but is not limited to, weatherization, conservation and efficiency services, and monetary assistance, such as a grant program or discounts for lower income households, intended to lower a household's energy burden.

(b) Energy assistance may include direct customer ownership in distributed energy resources or other strategies if such strategies achieve a reduction in energy burden for the customer above other available conservation and demand-side measures.

(14) "Energy assistance need" means the amount of assistance necessary to achieve an energy burden equal to six percent for utility customers.

(15) "Energy burden" means the share of annual household income used to pay annual home energy bills.

(16) "Greenhouse gas," "greenhouse gases," "GHG," and "GHGs" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other gas or gases designated by the department of ecology in WAC 173-441-040 or its successor, should that provision be amended or recodified.

(17) "Greenhouse gas content calculation" means a calculation expressed in carbon dioxide equivalents made by the department of ecology for the purposes of determining the emissions from the complete combustion or oxidation of fossil fuels and the greenhouse gas emissions in electricity for use in calculating the greenhouse gas emissions content in electricity.

(18) "High-efficiency cogeneration" means the sequential production of electricity and useful thermal energy from a common fuel source resulting in a reduction in customer load where under normal operating conditions the useful thermal energy output is no less than thirty-three percent of the total energy output. The reduction in customer load is determined by multiplying the annual electricity output of the cogeneration facility by a fraction equal to one minus the ratio of:

(a) The heat rate (in British thermal units per megawatt hour) of the cogeneration facility based on the additional fuel requirements attributable to electricity production and excluding the fuel that would be required to produce all other useful energy outputs of the project without cogeneration, divided by the heat rate (in British thermal units per megawatt hour) of a combined cycle natural gas-fired combustion turbine. The heat rate of the combustion turbine must be based on a facility using best commercially available technology on a new and clean basis.

(b) Calculation of the reduction in customer load is made with the following formula:

$$\text{Megawatt-hours reductions in customer load} = \left( \frac{\text{Annual megawatt-hours of cogen. elect.}}{\text{Annual megawatt-hours of cogen. elect.}} \right) \times \left[ 1 - \left( \frac{\text{heat rate based on fuel used for electric portion of cogen.}}{\text{heat rate for a new clean natural gas fired combined cycle combustion turbine using best available commercial technology}} \right) \right]$$

((14)) (19) "Incremental cost" means the difference between the levelized delivered cost of an eligible renewable resource, regardless of ownership, compared to the levelized delivered cost of an equiva-

lent amount of reasonably available substitute resources that do not qualify as eligible renewable resources, where the resources being compared have the same contract length or facility life.

~~((15))~~ (20) "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)~~) has the same meaning as in WAC 480-100-605.

~~((16))~~ (21) "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. Load does not include off-system sales or electricity delivered to transmission-only customers.

~~((17))~~ (22) "Low-income" means household incomes that do not exceed the higher of eighty percent of area median income or two hundred percent of federal poverty level, adjusted for household size.

(23) (a) "Nonemitting electric generation" means electricity from a generating facility or a resource that provides electric energy, capacity, or ancillary services to an electric utility and that does not emit greenhouse gases as a by-product of energy generation.

(b) "Nonemitting electric generation" does not include renewable resources.

(24) (a) "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.

(b) "Nonpower attributes" does not include any aspects, claims, characteristics, and benefits associated with the on-site capture and destruction of methane or other greenhouse gases at a facility through a digester system, landfill gas collection system, or other mechanism, which may be separately marketable as greenhouse gas emission reduction credits, offsets, or similar tradable commodities. However, these separate avoided emissions may not result in or otherwise have the effect of attributing greenhouse gas emissions to the electricity.

~~((18))~~ (25) "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).

~~((19))~~ (26) "Pro rata" means the calculation dividing the utility's projected ten-year conservation potential into five equal proportions to establish the minimum biennial conservation target.

~~((20))~~ (27) "Production efficiency" means investments and actions that save electric energy from power consuming equipment and fixtures at an electric generating facility. The installation of electric power production equipment that increases the amount of power generated for the same energy input is not production efficiency in this chapter or conservation under RCW 19.285.030(4) because no reduction in electric power consumption occurs.

~~((21))~~ (28) "Pursue all" means an ongoing process of researching and evaluating the range of possible conservation technologies and programs, and implementing all programs which are cost-effective, reliable and feasible.

~~((22))~~ (29) "Qualified biomass energy" means electricity produced from a biomass energy facility that:

(a) Commenced operation before March 31, 1999;

(b) Contributes to the qualifying utility's load; and

(c) Is owned either by:

(i) A qualifying utility; or

(ii) An industrial facility that is directly interconnected with electricity facilities that are owned by a qualifying utility and capable of carrying electricity at transmission voltage.

~~((23))~~ (30) "Regional technical forum" means the advisory committee established by the Northwest Power and Conservation Council.

~~((24))~~ (31) "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~~((r))~~ and the certificate is verified by a renewable energy credit tracking system selected by the department.

~~((25))~~ (32) "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;

(i) Generation facilities in which fossil and combustible renewable resources are cofired in one generating unit that is located in the Pacific Northwest and in which the cofiring commenced after March 31, 1999. These facilities produce eligible renewable resources in direct proportion to the percentage of the total heat value represented by the heat value of the renewable resources; or

(j) Biomass energy, where the eligible renewable energy produced by biomass facilities is based on the portion of the fuel supply that is made up of eligible biomass fuels.

~~((26))~~ (33) "Request for proposal" or "RFP" means the documents describing an electric utility's solicitation of bids for delivering electric capacity, energy, capacity and energy, or conservation.

~~((27))~~ (34) "River discharge" means the total volume of water passing through, over and around all structural components of a hydroelectric facility over a given time.

~~((28))~~ (35) "Single large facility conservation savings" means cost-effective conservation savings achieved in a single biennial period at the premises of a single customer of a utility whose recent annual electricity consumption prior to the conservation savings exceeded five average megawatts.

~~((29))~~ (36) "System cost" means, consistent with RCW 80.52.030, an estimate of all direct costs of a project or resource over its effective life including, if applicable, the costs of distribution to the consumer and among other factors, waste disposal costs, end-of-cycle costs, and fuel costs (including projected increases), and such quantifiable environmental costs and benefits as are directly attributable to the project or resource.

~~((30))~~ (37) "Target year" means the twelve-month period commencing January 1st and ending December 31st used for compliance with the renewable portfolio standard requirement in WAC 480-109-200(1).

~~((31))~~ (38) "Utility" means an "electrical company" as that term is defined in RCW 80.04.010 that is subject to the commission's jurisdiction under RCW 80.04.010 and chapter 80.28 RCW.

~~((32))~~ (39) "WREGIS" means the Western Renewable Energy Generation Information System. WREGIS is the renewable energy credit tracking system designated by the department according to RCW 19.285.030(20).

~~((33))~~ (40) "Year" means the twelve-month period commencing January 1st and ending December 31st.

[Statutory Authority: RCW 80.01.040, 80.04.160, and 19.285.080. WSR 15-07-043 (Docket UE-131723, General Order R-578), § 480-109-060, filed 3/12/15, effective 4/12/15.]

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 15-07-043, filed 3/12/15, effective 4/12/15)

**WAC 480-109-100 Energy efficiency resource standard. (1) Process for pursuing all conservation.**

(a) **Process.** A utility's obligation to pursue all available conservation that is cost-effective, reliable, and feasible includes the following process:

(i) **Identify potential.** Identify the cost-effective, reliable, and feasible potential of possible technologies and conservation measures in the utility's service territory.

(ii) **Develop portfolio.** Develop a conservation portfolio that includes all available, cost-effective, reliable, and feasible conservation. A utility must develop programs to acquire available conservation from all of the types of conservation identified in (b) of this subsection. The portfolio must include all conservation programs and mechanisms identified pursuant to RCW 19.405.120, which pertain to energy assistance and progress toward meeting energy assistance need, including the low-income conservation programs and mechanisms in subsection (10)(b) of this section.

If no cost-effective, reliable and feasible conservation is available from one of the types of conservation, a utility is not obligated to acquire such a resource.

(iii) **Implement programs.** Implement conservation programs identified in the portfolio to the extent the portfolio remains cost-effective, reliable, and feasible. Implementation methods shall not unnecessarily limit the acquisition of all available conservation that is cost-effective, reliable and feasible.

(iv) **Adaptively manage.** Continuously review and update as appropriate the conservation portfolio to adapt to changing market conditions and developing technologies. A utility must research emerging conservation technologies, and assess the potential of such technologies for implementation in its service territory.

(b) **Types.** Types of conservation include, but are not limited to:

(i) End-use efficiency;

(ii) Behavioral programs;

(iii) High-efficiency cogeneration;

- (iv) Production efficiency;
- (v) Distribution efficiency; and
- (vi) Market transformation.

(c) **Pilots.** A utility must implement pilot projects when appropriate and expected to produce cost-effective savings within the current or immediately subsequent biennium, as long as the overall portfolio remains cost-effective.

(2) **Ten-year conservation potential.** By January 1, 2010, and every two years thereafter, a utility must project its cumulative ten-year conservation potential.

(a) This projection must consider all available conservation resources that are cost-effective, reliable, and feasible.

(b) This projection must be derived from the utility's most recent IRP, including any information learned in its subsequent resource acquisition process, or the utility must document the reasons for any differences. When developing this projection, utilities must use methodologies that are consistent with those used in the Northwest Conservation and Electric Power Plan.

(c) The projection must include a list of each measure used in the potential, its unit energy savings value, and the source of that value.

(3) **Biennial conservation target.** Beginning January 2010, and every two years thereafter, a utility must establish a biennial conservation target.

(a) The biennial conservation target must identify, and quantify in megawatt-hours, all available conservation that is cost-effective, reliable, and feasible.

(b) The biennial conservation target must be no lower than a pro rata share of the utility's ten-year conservation potential.

(c) **Excess conservation.** No more than twenty-five percent of any biennial target may be met with excess conservation savings allowed by this subsection. Excess conservation may only be used to mitigate shortfalls in the immediately subsequent two biennia and may not be used to adjust a utility's ten-year conservation potential or biennial target. The presence of excess conservation does not relieve a utility of its obligation to pursue the level of conservation in its biennial target.

(i) Cost-effective conservation achieved in excess of a biennial conservation target may be used to meet up to twenty percent of each of the immediately subsequent two biennial targets.

(ii) A utility may use single large facility conservation savings achieved in excess of its biennial target to meet up to five percent of each of the immediately subsequent two biennial conservation targets.

(iii) Until December 31, 2017, a utility with an industrial facility located in a county with a population between ninety-five thousand and one hundred fifteen thousand that is directly interconnected with electricity facilities that are capable of carrying electricity at transmission voltage, may use cost-effective excess conservation savings from that industrial facility to meet the subsequent two biennial conservation targets. For purposes of this subsection, transmission voltage is one hundred thousand volts or higher.

(4) **Prudence.** A utility retains the responsibility to demonstrate the prudence of all conservation expenditures, consistent with RCW 19.285.050(2).

(5) **Energy savings.** A utility must use unit energy savings values and standard protocols approved by the regional technical forum, unless a unit energy savings value or standard protocol is:

(a) Based on generally accepted methods, impact evaluation data, or other reliable and relevant data that includes verified savings levels; and

(b) Presented to its advisory group for review. The commission retains discretion to determine an appropriate value or protocol.

(6) **High efficiency cogeneration.** A utility may count as conservation savings a portion of the electricity output of a high efficiency cogeneration facility in its service territory that is owned by a retail electric customer and used by that customer to meet its heat and electricity needs. Heat and electricity output provided to anyone other than the facility owner is not available for consideration in determining conservation savings. High efficiency cogeneration savings must be certified by a professional engineer licensed by the Washington department of licensing.

(7) **Applicable sectors.** A utility must offer a mix of conservation programs to ensure it is serving each customer sector, including programs targeted to the low-income subset of residential customers.

(8) **Cost-effectiveness.** A utility's conservation portfolio must pass a cost-effectiveness test consistent with that used in the Northwest Conservation and Electric Power Plan. A utility must evaluate conservation using cost-effectiveness tests consistent with those used by the Northwest Power and Conservation Council, and as required by the commission, except as provided by subsection (10) of this section.

(9) **Utility incentives.** A utility may propose to the commission positive incentives designed to stimulate the utility to exceed its biennial conservation target as identified in RCW 19.285.060(4). Any proposed utility incentive must be included in the utility's biennial conservation plan.

(10) **Low-income conservation.**

(a) A utility (~~may~~) must fully fund low-income conservation measures that are determined by the implementing agency to be cost-effective consistent with either the Weatherization Manual maintained by the department or when it is cost-effective to do so using utility-specific avoided costs. For purposes of this subsection, "fully fund" does not prohibit the agency leveraging other funding sources, in combination with utility funds, to fund low-income conservation projects. Measures identified through the priority list in the *Weatherization Manual* are considered cost-effective. In addition, a utility may 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 RCW 19.405.120. To the extent practicable, a utility must prioritize energy assistance to low-income households with a higher energy burden.

(c) A utility (~~may~~) must exclude low-income conservation from portfolio-level cost-effectiveness calculations. A utility must account for the costs and benefits, including nonenergy impacts, which accrue over the life of each conservation measure.

(~~(e)~~) (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*.



[Statutory Authority: RCW 80.01.040, 80.04.160, and 19.285.080. WSR 15-07-043 (Docket UE-131723, General Order R-578), § 480-109-100, filed 3/12/15, effective 4/12/15.]

AMENDATORY SECTION (Amending WSR 15-07-043, filed 3/12/15, effective 4/12/15)

**WAC 480-109-200 Renewable portfolio standard.** (1) **Renewable resource target.** Each utility must meet the following annual targets.

(a) By January 1st of each year beginning in 2012 and continuing through 2015, each utility must use sufficient eligible renewable resources, acquire equivalent renewable energy credits, or a combination of both, to supply at least three percent of its two-year average load for the remainder of each target year.

(b) By January 1st of each year beginning in 2016 and continuing through 2019, each utility must use sufficient eligible renewable resources, acquire equivalent renewable energy credits, or a combination of both, to supply at least nine percent of its two-year average load for the remainder of each target year.

(c) By January 1st of each year beginning in 2020 and continuing each year thereafter, each utility must use sufficient eligible renewable resources, acquire equivalent renewable energy credits, or a combination of both, to supply at least fifteen percent of its two-year average load for the remainder of each target year.

(2) **Credit eligibility.** (~~Renewable energy credits produced during the target year, the preceding year or the subsequent year may be used to 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 provisions of this section, provided the renewable energy credits meet the following requirements:

(a) 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;

(b) 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.

(c) 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;

(d) 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; and

(e) 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.

(3) **WREGIS registration.** All eligible (~~(hydropower generation and all)~~) renewable (~~(energy credits)~~) resources used for utility compliance with the renewable resource target must be registered in WREGIS, regardless of facility ownership. Any (~~(megawatt-hour of eligible hydropower or)~~) renewable energy credit that a utility uses for compliance must have a corresponding certificate retired in the utility's WREGIS account.

(4) **Renewable energy credit multipliers.** The multipliers described in this subsection do not create additional renewable energy credits. A utility may count retired certificates at:

(a) One and two-tenths times the base value where the eligible resource:

(i) Commenced operation after December 31, 2005; and

(ii) The developer of the facility used apprenticeship programs approved by the Washington state apprenticeship and training council.

(b) Two times the base value where the eligible resource was generated by distributed generation and:

(i) The utility owns the distributed generation facility or has purchased the energy output and the associated renewable energy credits; or

(ii) The utility has contracted to purchase the associated renewable energy credits.

(c) A utility that uses a multiplier described in this subsection for compliance must retire the associated certificate at the same time. A utility may not transact the multipliers described in this subsection independent of the associated base value certificate.

(5) **Target calculation.** In meeting the annual targets of this section, a utility must calculate its annual target based on the average of the utility's load for the previous two years.

(6) **Integration services.** 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.

(7) **Incremental hydropower calculation.**

(a) **Method selection.** A utility must use one of the following methods to calculate the quantity of incremental electricity produced by eligible efficiency upgrades to any hydropower facility, regardless of ownership, that is used to meet the annual targets of this section. A utility shall use the same method for calculating incremental hydropower production at all of the facilities it owns. Once the commission approves a utility's method for calculating incremental hydropower production, that utility shall not use another method unless authorized by the commission.

(b) **Method one.** An annual calculation performed by:

(i) Determining the river discharge for the facility in the target year;

(ii) Measuring the total amount of electricity produced by the upgraded hydropower facility during the target year;

(iii) Using a power curve-based production model to calculate how much energy the pre-upgrade facility would have generated under the same river discharge observed in the target year; and

(iv) Subtracting the model output in (b)(iii) of this subsection from the measurement in (b)(ii) of this subsection to determine the quantity of eligible renewable energy produced by the facility during the target year.

(c) **Method two.** An annual application of a percentage to total production performed by:

(i) Determining the river discharge for the facility over a historical period of at least five consecutive years;

(ii) Using power curve-based production models to calculate the facility's generation under the river discharge of each year in the historical period for the pre-upgrade state and the post-upgrade state;

(iii) Calculating the arithmetic mean of generation in both the pre-upgrade and post-upgrade states over the historical period;

(iv) Calculating a factor by dividing the arithmetic mean post-upgrade generation by the arithmetic mean pre-upgrade generation and subtracting one; and

(v) Multiplying the facility's observed generation in the target year by the factor calculated in (c)(iv) of this subsection to determine the share of the facility's observed generation that may be reported as eligible renewable energy.

~~((d) **Method three.** A one-time calculation of the quantity of renewable energy performed by:~~

~~(i) Determining the river discharge for the facility over a historical period of at least ten consecutive years;~~

~~(ii) Using a production model to calculate the facility's generation in megawatt-hours under the river discharge of each year in the historical period for the pre-upgrade state and the post-upgrade state;~~

~~(iii) Calculating the arithmetic mean generation of the pre-upgrade and post-upgrade states over the historical period in megawatt hours; and~~

~~(iv) Subtracting the arithmetic mean pre-upgrade generation from the arithmetic mean post-upgrade generation to determine the amount of eligible renewable generation for the target year.~~

~~(e) **Five-year evaluation.** Any utility using method three shall provide, beginning in its 2019 renewable portfolio standard report and every five years thereafter, an analysis comparing the amount of incremental hydropower the utility reported in every year using method three to the amount of incremental hydropower the utility would have reported over the same period using one of the other two methods. If the commission determines that this analysis shows a significant difference between method three and one of the other methods, it may order the utility to use a different method in the future reporting years.)~~

(8) **Qualified biomass energy.** Beginning January 1, 2016, only a utility that owns or is directly interconnected to a qualified biomass energy facility may use qualified biomass energy to meet its annual target obligation.

(a) A utility may no longer use electricity and associated renewable energy credits from a qualified biomass energy facility if the associated industrial pulping or wood manufacturing facility ceases operation other than for purposes of maintenance or upgrade.

(b) A utility may acquire renewable energy credits from a qualified biomass energy resource hosted by an industrial facility only if the facility is directly interconnected to the utility at transmission voltage. For purposes of this subsection, transmission voltage is one hundred thousand volts or higher. The number of renewable energy credits that the utility may acquire from an industrial facility for the utility's target compliance may not be greater than the utility's renewable portfolio standard percentage times the industrial facility load.

(c) A utility that owns a qualified biomass energy facility may not transfer or sell renewable energy credits associated with qualified biomass energy to another person, entity, or utility.

**(9) Use of energy output marketed by Bonneville Power Administration.** Beginning January 1, 2020, a qualifying utility may use eligible renewable resources as identified under RCW 19.285.030 (12)(g) and (h) to meet its compliance obligation under RCW 19.285.040(2). A qualifying utility may not transfer or sell eligible renewable resources obtained from the Bonneville Power Administration to another utility for compliance purposes under RCW 19.285.040.

**(10) Alternative compliance when renewable and nonemitting electric generation used to meet one hundred percent of annual retail electric load.** Pursuant to RCW 19.285.040 (2)(m), beginning January 1, 2030, a qualifying utility is considered to be in compliance with an annual renewable energy target in RCW 19.285.040 (2)(a) if the utility meets one hundred percent of the utility's average annual retail electric load using any combination of electricity from:

(a) Renewable resources and renewable energy credits as defined in RCW 19.285.030; and

(b) Nonemitting electric generation, as defined in WAC 480-109-060(23).

Nothing in subsection (10) of this section relieves the requirements of a qualifying utility to comply with the conservation targets established under RCW 19.285.040(1).

[Statutory Authority: RCW 80.01.040, 80.04.160, and 19.285.080. WSR 15-07-043 (Docket UE-131723, General Order R-578), § 480-109-200, filed 3/12/15, effective 4/12/15.]

AMENDATORY SECTION (Amending WSR 15-07-043, filed 3/12/15, effective 4/12/15)

**WAC 480-109-210 Renewable portfolio standard reporting.** (1) **Annual report.** On or before every June 1st, each utility must file an annual renewable portfolio standard report with the commission and the department detailing the resources the utility has acquired or contracted to acquire to meet its renewable resource obligation for the target year.

(2) **Annual report contents.** The annual renewable portfolio standard report must include the utility's annual load for the prior two years, the total number of megawatt-hours from eligible renewable resources and/or renewable resource credits the utility needed to meet its annual renewable energy target by January 1st of the target year, the amount (in megawatt-hours) of each type of eligible renewable resource used, and the amount of renewable energy credits acquired. Additionally, the annual renewable portfolio standard report must include the following:

(a) **Incremental cost calculation.** To calculate its incremental cost, a utility must:

(i) Make a one-time calculation of incremental cost for each eligible resource at the time of acquisition or, for historic acquisitions, the best information available at the time of the acquisition:

(A) **Eligible resource levelized cost.** Determine the levelized cost of each eligible resource, including integration costs as determined by the utility's most recently completed renewable resource in-

tegration study, using the utility's commission-approved weighted average cost of capital at the time of the resource's acquisition as the discount rate;

(B) **Eligible resource capacity value.** Identify the capacity value of each eligible renewable resource as calculated in the utility's most recent integrated resource plan acknowledged by the commission;

(C) **Noneligible resource selection.** Select and document the lowest-reasonable-cost, noneligible resource available to the utility at the time of the eligible resource's acquisition for each corresponding eligible resource;

(D) **Noneligible levelized energy cost.** For each noneligible resource selected in (a)(i)(C) of this subsection, determine the cost of acquiring the same amount of energy as expected to be produced by the eligible resource, levelized over a time period equal to the facility life or contract length of the eligible resource and at the same discount rate used in (a)(i)(A) of this subsection;

(E) **Noneligible levelized capacity cost.** Calculate the levelized capital cost of obtaining an equivalent amount of capacity provided by the eligible resource, as determined in (a)(i)(B) of this subsection, from a noneligible resource. This cost must be levelized over a period equal to the facility life or contract length of the eligible resource and at the same discount rate used in (a)(i)(A) of this subsection. To make this calculation, a utility must use the lowest-cost, noneligible capacity resource identified in its most recent integrated resource plan acknowledged by the commission. However, if a utility determines that cost information in the integrated resource plan is no longer accurate, it may use cost information from another source, with documentation of the source and an explanation of why the source was used((-));

(F) **Calculation.** Determine the incremental cost of each eligible resource by subtracting the sum of the levelized costs of the noneligible resources calculated in (a)(i)(D) and (E) of this subsection from the levelized cost of the eligible resource determined in (a)(i)(A) of this subsection. The result of this calculation may be a negative number((-));

(G) **Legacy resources.** Any eligible resource that the utility acquired prior to March 31, 1999, is deemed to have an incremental cost of zero.

(ii) **Annual calculation of revenue requirement ratio.** To calculate its revenue requirement ratio, a utility must annually:

(A) Sum the incremental costs of all eligible resources used for target year compliance;

(B) Add the cost of any unbundled renewable energy credits purchased for target year compliance;

(C) Subtract the revenue from the sales of any renewable energy credits and energy from eligible facilities; and

(D) Divide the total obtained in (a)(ii)(A) through (C) of this subsection by the utility's annual revenue requirement, which means the revenue requirement that the commission established in the utility's most recent rate case, and multiply by one hundred.

(iii) **Annual reporting.** In addition to the revenue requirement ratio calculated in (a)(ii) of this subsection, the utility must:

(A) Report its total incremental cost as a dollar amount and in dollars per megawatt-hour of renewable energy generated by all eligible renewable resources in the calculation in (a)(i) of this subsection; and

(B) Multiply the dollars per megawatt-hour cost calculated in (a)(iii)(A) of this subsection by the number of megawatt-hours needed for target year compliance.

(b) **Alternative compliance.** State whether the utility is relying upon one of the alternative compliance mechanisms provided in WAC 480-109-220 instead of fully meeting its renewable resource target. A utility using an alternative compliance mechanism must use the incremental cost methodology described in this section and include sufficient data, documentation and other information in its report to demonstrate that it qualifies to use that alternative mechanism.

(c) **Compliance plan.** Describe the resources that the utility intends to use to meet the renewable resource requirements for the target year.

(d) **Eligible resources.** A list of each eligible renewable resource that serves Washington customers, for which a utility owns the certificates, with an installed capacity greater than twenty-five kilowatts. Resources with an installed capacity of less than twenty-five kilowatts may be reported in terms of aggregate capacity. The list must include:

(i) Each resource's WREGIS registration status (~~and use of certificates, whether it be for annual target compliance, a voluntary renewable energy program as provided for in RCW 19.29A.090, or owned by the customer~~); and

(ii) Eligible resources being included in the report for the first time and documentation of their eligibility.

(e) **Multistate allocations.**

(i) If a utility serves retail customers in more than one state, the utility must allocate certificates consistent with the utility's most recent commission-approved interstate cost allocation methodology. The report must show how the utility applied the allocation methodology to arrive at the number of certificates allocated to Washington ratepayers.

(ii) After documenting the number of certificates allocated to Washington ratepayers, a utility may transfer certificates to or from Washington ratepayers. The report must document the compensation provided to each jurisdiction's ratepayers for such transfers.

(f) **Sales.** If a utility sold certificates, report the number of certificates that it sold, their WREGIS certificate numbers, their source, and the revenues obtained from the sales. For multistate utilities, these requirements only apply to certificates that were allocated to the utility's Washington service territory according to (e) of this subsection.

(3) **Report review.**

(a) Interested persons may file written comments regarding a utility's annual renewable portfolio standard report within thirty days of the utility's filing.

(b) Upon conclusion of the commission review of the utility's annual renewable portfolio standard report, the commission will issue a decision accepting or rejecting the calculation of the utility's renewable resource target; determining whether the utility has generated, acquired or arranged to acquire enough renewable energy credits or qualifying generation to comply with its renewable resource target; and determining the eligibility of new renewable resources pursuant to subsection (2)(d) of this section.

(c) If a utility revises its annual renewable portfolio standard report as a result of the commission review, the utility must submit

the revised final annual renewable portfolio standard report to the department.

(4) **Publication of reports.** All renewable portfolio standard reports required by chapter 19.285 RCW and this section since January 1, 2012, must be posted and maintained on the utility's website. Reports must be posted on the utility's website within thirty days of the commission order approving the report. A copy of any such report must be provided to any person upon request.

(5) **Customer notification.** Each utility must provide a summary of its annual renewable portfolio standard report to its customers by bill insert or other suitable method. This summary must be provided within ninety days of final action by the commission on the report.

(6) **Final compliance report.** Within two years following submission of its annual renewable portfolio standard report, a utility must submit, in the same docket, a final renewable portfolio standard compliance report ~~((that))~~.

(a) The report must list((s)):

(i) The certificates that it retired in WREGIS for the target year; and

(ii) The use of certificates, whether for annual target compliance, a voluntary renewable energy program as provided for in RCW 19.29A.090, or owned by the customer.

(b) If a utility does not meet its annual target described in WAC 480-109-200, the commission will determine the amount in megawatt-hours by which the utility was deficient.

[Statutory Authority: RCW 80.01.040, 80.04.160, and 19.285.080. WSR 15-07-043 (Docket UE-131723, General Order R-578), § 480-109-210, filed 3/12/15, effective 4/12/15.]

AMENDATORY SECTION (Amending WSR 15-19-032, filed 9/9/15, effective 10/10/15)

**WAC 480-109-300 Greenhouse gas content calculation and energy and emissions intensity metrics.** (1) A utility must report its greenhouse gas content calculation and metrics of energy and emissions intensity to the commission on or before June 1st of each year. The report must include annual values for each metric for the preceding ten calendar years. Each value reported must be based on the annual energy or emissions from all generating resources providing service to customers of that utility in Washington state, regardless of the location of the generating resources. When the metrics are calculated from generators that serve out-of-state and in-state customers, the annual energy and emissions outputs must be prorated to represent the proportion of the resource used by Washington customers.

(2) ~~((The energy and emissions intensity report))~~ Each utility must perform its greenhouse gas content calculation in accordance with the rules enacted by the department of ecology, consistent with RCW 19.405.020(22).

(3) In addition to the greenhouse gas content calculation, the report shall include the following metrics:

(a) Average megawatt-hours per residential customer;

(b) Average megawatt-hours per commercial customer;

(c) Megawatt-hours per capita;

(d) Million (~~(short)~~) metric tons of CO<sub>2</sub>e emissions; and

(e) Comparison of annual million (~~(short)~~) metric tons of CO<sub>2</sub>e emissions to 1990 emissions.

~~((3) Unknown generation sources.))~~ **(4) Unspecified electricity.**

For resources where the utility purchases energy from unknown generation sources, (~~(often called "spot market" purchases,)~~) from which the emission rates are unknown, the utility (~~(shall report emission metrics using the average electric power CO<sub>2</sub> emissions rate described as the net system mix (spot market) in the Washington state electric utility fuel mix disclosure reports compiled by the department pursuant to RCW 19.29A.080)~~) must use an emissions rate determined by the department of ecology. If the department of ecology has not adopted an emissions rate for unspecified electricity, a utility must apply an emissions rate of 0.437 metric tons of CO<sub>2</sub> per megawatt-hour of electricity. For the resources described in this subsection, a utility must show in the report required in subsection (1) of this section the following:

(a) (~~(Short)~~) Metric tons of CO<sub>2</sub>e from unknown generation sources;

(b) Megawatt-hours delivered to its retail customers from unknown generation sources; and

(c) Percentage of total load represented by unknown generation sources.

~~((4))~~ **(5)** The greenhouse gas content calculation and energy and emissions intensity report must include narrative text and graphics describing trends and an analysis of the likely causes of changes, or lack of changes, in the metrics.

[Statutory Authority: RCW 80.01.040, 80.04.160, and 19.285.080. WSR 15-19-032 (Docket UE-131723, General Order R-581), § 480-109-300, filed 9/9/15, effective 10/10/15.]