

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of

Commission Staff's Petition for an Order
Granting Exemption from the
Requirements of WAC 480-100-238(4)-
(5) and WAC 480-90-238(4)-(5)

DOCKETS UE-180607
UG-180608

COMMISSION STAFF'S PETITION
FOR EXEMPTION FROM
WAC 480-100-238(4)-(5) AND
WAC 480-90-238(4)-(5)

I. RELIEF REQUESTED

1 Staff of the Washington Utilities and Transportation Commission (Commission) submits this Petition for Exemption from WAC 480-100-238 and WAC 480-90-238, pursuant to WAC 480-07-110. Commission Staff seeks:

1. Exemptions from WAC 480-100-238(4) and WAC 480-90-238(4) until December 31, 2020. These rules require Puget Sound Energy to file electric and natural gas Integrated Resource Plans (IRP) in 2019. Instead, Staff requests that the Commission accept upcoming the November 15, 2019, filings as a progress reports under RCW 19.280.030(1).
2. An exemption from WAC 480-100-238(5) and WAC 480-90-238(5) until December 31, 2020. These rules require Staff to consult with the gas and electric utilities in the development of the IRPs, and requires the Commission to hear comment at a public hearing after the final plan is submitted.
3. The Commission's standard practice is to issue letters acknowledging that integrated resource plans are consistent with the rules. Staff requests that the Commission suspend the practice of acknowledging IRPs until the same dates above.
4. Lastly, Staff requests that the Commission establish due dates of January 4, 2021, for the next draft IRPs, and April 1, 2021, for the next final IRPs, which will be filed in a new docket.

2 Staff is making these requests in all the electric IRP dockets to ensure that the electric IOUs can meet current and future planning requirements under recent legislation.

II. BACKGROUND AND ISSUES PRESENTED

3 Under the current Commission rules, electric and natural gas utilities must file IRPs at least every two years pursuant to WAC 480-100-238(4) and WAC 480-90-238(4), and the Commission must hold a hearing on the plan pursuant to WAC 480-100-238(5) and WAC 480-90-238(5). The statutory requirements are less stringent. Under RCW 19.280.030, electric utilities must file an IRP at least every four years, and produce a progress report reflecting changing conditions and the progress of the IRP at least every two years.¹ In complying with WAC 480-100-238(5), electric utilities have typically held a series of advisory group meetings to get input from Commission Staff and other stakeholders on the development of the IRP prior to the public hearing. The statute does not require a hearing.

4 Legislation passed in 2019 updated the statutory requirements for electric IRPs² and created a separate, new planning requirement called the clean energy implementation plan (CEIP).³ A CEIP must be based on an electric IRP that is compliant with the new requirements under Chapter 19.280 RCW. Specifically, RCW 19.405.060(1)(b)(i) states that the CEIP must “be informed by the investor-owned utility’s clean energy action plan developed under RCW 19.280.030.” A clean energy action plan (CEAP) is one of the new legislative requirements for electric IRPs, which became effective May 7, 2019. In order to

¹ In practice, progress reports have not been filed, as an updated IRP every two years would meet the statutory description of a progress report. *See*, RCW 19.280.030(1); WAC 480-100-238(3)(h). Because under WAC 480-100-238(4) electric IOUs are required to submit an IRP every two years, it is unclear whether Commission rules require a hearing for progress reports under subsection (5). Arguably, if the exemption from subsection (4) is granted, then an exemption from subsection (5) is unnecessary, as the hearing requirement applies only to “plans,” not progress reports. Nevertheless, Staff requests an exemption from subsection (5) if the Commission finds that the hearing requirement under the current rules would apply to a progress report filing.

² Laws of 2019, ch. 288, contains multiple relevant elements in different sections of the bill. These include the Clean Energy Transformation Act, composed of §§ 1-13 and 26, amendments to the IRP statute RCW 19.280.030, found in § 14, and a requirement for electric utilities to incorporate the social cost of carbon in their integrated resource planning, codified as RCW 80.28.405, found in § 15.

³ Laws of 2019, ch. 288, § 6, codified as RCW 19.405.060.

meet the statutory requirements for a CEIP, the next electric IRP filing from the electric IOUs must be fully compliant with the new legislation, *and* must be filed with sufficient time to incorporate the CEAP into the CEIP.

5 The new legislation also directed the Commission to issue rules.⁴ On August 27, 2019, the Commission issued its Energy Legislation Implementation Plan in Docket U-190485 for developing rules to address these new statutes. Rulemakings on purchases of electricity, integrated resource plans, clean energy implementation plans, and Energy Independence Act updates are required to be completed by December 31, 2020.⁵

6 The Company is scheduled to file draft IRPs on November 15, 2019, in Dockets UE-180607 and UG-180608. Staff recommends that the Commission accept the 2019 electric filing as a progress report under the statute, rather than an updated IRP. Staff recommends the same for the natural gas IRP. Although natural gas IRPs have no statutory requirement for a progress report, resetting the due dates for the next natural gas IRP still requires an exemption from Commission rule. The Commission may grant an exemption from one of its rules pursuant to WAC 480-07-110(2)(c).⁶

III. ARGUMENT

7 The requested exemption is in the public interest because it avoids the utility making an electric IRP filing that does not incorporate the new statutory requirements. Revisions to RCW 19.280.030 became effective on May 7, 2019. If the 2019 electric filing (scheduled for

⁴ See, e.g., RCW 19.405.100(9); RCW 19.280.030(11).

⁵ See, Docket U-190485, *2019-2022 Energy Legislation Implementation Plan (final)*, at 2-5 (August 27, 2019).

⁶ WAC 480-07-110(2)(c): The commission uses the public interest standard to determine whether to grant an exemption from, or modification to, a commission rule. Factors the commission may consider in making this determination include whether the rule imposes an undue hardship on the requesting person of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule to the requesting person would be contrary to the underlying purposes of the rule and the public interest.

November 15, 2019) was considered an “updated integrated resource plan”⁷ under the revised statute, it would need to comply with all the new statutory requirements, even though the IRP drafting process began before it became law. Staff notes that the upcoming 2019 filing in this docket is not expected to be CETA-compliant, nor will it include a CEAP.⁸ Without an exemption from Commission rule, this would create a situation in which the 2019 filing should not be acknowledged by the Commission because it does not comply with statute, and yet it would be unfair to penalize the IOU for failure to comply with a statute enacted halfway through the drafting process. Recognizing the 2019 filing as a progress report circumvents this issue. A progress report only needs to reflect changing conditions and the progress of the IRP in order to comply with statute.⁹

8 An exemption from WAC 480-100-238(4)-(5) and WAC 480-90-238(4)-(5) is also in the public interest because it provides time for Staff to develop the required expertise in modeling that will be necessary for Commission review of IRPs under the new law. Fundamentally, the exemption will optimize the use of Commission resources by allowing Staff resources to be focused first on developing a suite of required rules, which includes new IRP rules. Once those rules are crafted and adopted, the electric IRPs that are filed in 2021 will be based on the new IRP rules. Because IRPs filed in 2021 will be based on the new statutes and rules, the IRPs will have going-forward applicability. The current round of IRP filings do not. In Order 01 of these dockets, the Commission granted an exemption

⁷ RCW 19.280.030(1).

⁸ Although the Commission ordered a January 2020 filing in this docket, the Commission’s IRP rulemaking under Docket UE-190698 will not be complete at that time. Even if the January 2020 filing is compliant with statute, it will not be compliant with those rules. Staff believes the IRP filing that informs the first CEIP should be compliant with the IRP rules which are statutorily required to be complete by December 31, 2020.

⁹ *See*, RCW 19.280.030(1).

allowing the Company to file the next IRPs by January 15, 2020.¹⁰ While these filings could be compliant with the new legislation, they would be filed too soon to comply with the Commission's new electric IRP rules, which are required to be published by December 31, 2020.

9 Because the first CEIPs must be filed by January 1, 2022,¹¹ Staff expects that draft CEIPs will be filed with the Commission by September 1, 2021, and final CEIPs by November 1, 2021, thus allowing sufficient time for the Commission to approve the CEIP before January 1, 2022. This creates a limited window between the publishing of new Commission IRP rules, and the due dates for the first CEIPs. An IRP compliant with new legislation and new rules should be filed within that window.

10 If this exemption request is not granted, the Commission would implicitly be requiring the investment of time and resources evaluating plans against rules that will expire on December 31, 2020, rather than investing time in developing a suite of rules that provide a platform for future utility planning. Without this exemption, Staff and other parties would find themselves spending resources reviewing IRPs that are based on current rules that don't conform to the requirements of the new legislation. The IRPs would have limited future relevance, and engaging in their review would divert resources that could otherwise be used in developing future rules. Considering these filings as progress reports is much more appropriate in light the new legislation. In sum, Staff believes that spending resources developing new rules with long-term utilization is a better use of stakeholder resources than spending effort reviewing IRPs based on rules that will expire on December 31, 2020. Staff requests these exemptions for all three electric utilities, and therefore granting the exemption

¹⁰ Docket UE-180607 and UG-180608, Order 01 at 4 ¶ 23.

¹¹ RCW 19.405.060(1)(a).

would not impose an undue hardship on similarly situated companies.

11 Staff intends to schedule this petition for consideration at the November 7, 2019, Open Meeting. This will enable interested parties to file a written response in this docket, to comment at the Open Meeting, or both. To facilitate the response of interested parties to this petition, a copy is being served electronically on the interested parties list in Docket U-190485.

IV. CONCLUSION

12 Commission Staff requests that the Commission grant its petition for exemptions from WAC 480-100-238 (4)-(5) and WAC 480-90-238(4)-(5), refrain from its practice of issuing a letter of acknowledgement until December 31, 2020, and issue an order setting the next IRP due dates (both gas and electric) for January 4, 2021, for the draft IRP, and April 1, 2021, for the final IRP.

DATED this 28th day of October, 2019.

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General

/s/ Nash Callaghan, WSBA No. 49682
Assistant Attorney General
Office of the Attorney General
Utilities and Transportation Division
P.O. Box 40128
Olympia, WA 98504-0128
(360) 664-1187
nash.callaghan@utc.wa.gov