

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Amending and)	DOCKET UE-112133
Repealing Rules in)	
)	GENERAL ORDER R-571
WAC 480-108)	
)	ORDER AMENDING AND
Relating to Electric Companies-)	REPEALING RULES
Interconnection With Electric)	PERMANENTLY
Generators.)	
)	
.....)	

TABLE OF CONTENTS

I. INTRODUCTION 2

II. HISTORY 4

III. DISCUSSION AND RESPONSE TO WRITTEN AND ORAL COMMENTS 6

 1. External disconnect switches are not required by the Commission
 for tier 1 inverter-based systems. 7

 2. The third-party ownership of net metering systems is permissible
 under RCW 80.60.010..... 10

 3. Commission jurisdiction to regulate third-party owners as
 “Public Service Companies.” 15

IV. COMMISSION ACTION 16

V. ORDER..... 21

Appendix A: WAC 480-108 Amended Rules

Appendix B: May 17, 2013 Comment Summary and Commission Response

OFFICE OF THE CODE REVISER STATE OF WASHINGTON FILED
DATE: July 18, 2013
TIME: 12:27 PM
WSR 13-15-089

I. INTRODUCTION

- 1 **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and
Transportation Commission (Commission) takes this action under Notice WSR 13-
09-054, filed with the Code Reviser on April 16, 2013. The Commission has
authority to take this action pursuant to RCW 80.01.040, and RCW 80.04.160.
- 2 **STATEMENT OF COMPLIANCE:** This proceeding complies with the
Administrative Procedure Act (RCW 34.05), the State Register Act (RCW 34.08), the
State Environmental Policy Act of 1971 (RCW 43.21C), and the Regulatory Fairness
Act (RCW 19.85).
- 3 **DATE OF ADOPTION:** The Commission amends and adopts this rule on the date
this Order is entered.
- 4 **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW
34.05.325(6) requires the Commission to prepare and publish a concise explanatory
statement about an adopted rule. The statement must identify the Commission's
reasons for adopting the rule, describe the differences between the version of the
proposed rules published in the register and the rules adopted (other than editing
changes), summarize the comments received regarding the proposed rule changes,
and state the Commission's responses to the comments reflecting the Commission's
consideration of them. The Commission designates the discussion in this Order as its
concise explanatory statement.
- 5 The revised rules establish standards for interconnection of distributed generation
facilities, including renewable energy facilities such as small solar and wind, to the
electric delivery systems of electrical companies subject to Commission jurisdiction.
These revised rules are designed to encourage distributed generation, simplify and
streamline the application process, and address technological advancements.
- 6 In 2006, the Commission adopted WAC 480-108, establishing an application process
and standards for the interconnection of distributed generation facilities to electric
systems owned by electrical companies under the Commission's jurisdiction.¹ In

¹ WSR 06-07-017.

response to federal and state legislation passed in 2005 and 2006, the Commission amended these rules in 2007.²

7 In early 2011, at the request of the Washington State House Technology, Energy, and Communications Committee, the Commission conducted a study of distributed electric generation and offered recommendations for changes in statute and rules to encourage development of cost-effective distributed generation in areas served by electrical companies.³ During the Commission’s study in the summer of 2011, stakeholders suggested that streamlining the interconnection application process could reduce the costs of interconnecting distributed generation facilities, and technological advances made some of the current requirements obsolete.⁴ As a result, the Commission initiated this rulemaking to determine if amending the rules governing the interconnection of generation facilities was warranted.

8 **REFERENCE TO AFFECTED RULES:** This Order amends and repeals certain sections of the Washington Administrative Code, WAC 480-108, Electric Companies – Interconnection with Electric Generators. The following sections are amended:

WAC 480-108-001	Purpose and scope.
WAC 480-108-005	Application of rules.
WAC 480-108-010	Definitions.
WAC 480-108-015	Scope of Part 1.
WAC 480-108-020	Eligibility and technical requirements for tier 1, tier 2, and tier 3 interconnection.
WAC 480-108-030	Application for interconnection.
WAC 480-108-040	General terms and conditions for interconnection.
WAC 480-108-050	Completion of interconnection process.
WAC 480-108-080	Interconnection service tariffs.
WAC 480-108-110	Required filings – Exceptions.
WAC 480-108-120	Cumulative effects of interconnections.

² WSR 07-20-059.

³ *Study of the Potential for Distributed Energy in Washington State*, Docket UE-110667, Report on the Potential for Cost-Effective Distributed Generation in Areas Served by Investor-Owned Utilities in Washington State (October 7, 2011) (hereinafter “Distributed Generation Report”).

⁴ *Id.* at 11-19.

WAC 480-108-999 Adoption by reference.

The following sections are repealed:

WAC 480-108-035	Model interconnection agreement, review and acceptance of interconnection agreements and costs.
WAC 480-108-055	Dispute resolution.
WAC 480-108-060	Required filings--Exceptions.
WAC 480-108-065	Cumulative effects of interconnections with a nameplate capacity rating of 300 kW or less.
WAC 480-108-070	Scope of Part 2.
WAC 480-108-090	Alternative interconnection service tariff.

II. HISTORY

9 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS**

THEREUNDER: On December 21, 2011, the Commission filed with the Code Reviser, at WSR 12-01-100, a Preproposal Statement of Inquiry (CR-101) to consider revising the standards for interconnecting electric generators in the service territories of Commission-regulated electrical companies in WAC 480-108. The Commission opened Docket UE-112133 to commence this proceeding.

10 **ADDITIONAL NOTICES AND ACTIVITIES PURSUANT TO**

PREPROPOSAL STATEMENT: On March 29, 2012, the Commission held a workshop in this rulemaking proceeding to discuss comments filed by interested persons. In joint comments, the Washington Public Utility District Association (WPUDA), the Washington Rural Electric Cooperatives Association (WRECA) and the Association of Washington Cities (AWC) proposed that interested stakeholders form a workgroup with technical staff from electric utilities, both public and private, to discuss possible rule changes. At the workshop, there was wide stakeholder support to pursue the collaborative discussions proposed by WPUDA, WRECA and AWC.

11 The Commission formed a workgroup of technical representatives to recommend changes to the rule. Representatives of WPUDA, Puget Sound Energy, Inc. (PSE), Inland Power and Light Company (Inland) and the Interstate Renewable Energy Council (IREC) jointly chaired the workgroup, and other stakeholders were invited to participate. The workgroup filed a report and a draft proposed rule, termed a “model

rule,” with the Commission on July 13, 2012. On July 26, 2012, the Commission circulated a notice soliciting comments on the report and model rule. The Commission received comments on the report and model rule on September 7, 2012.

- 12 The primary purpose of the rulemaking is to streamline and simplify the process of applying to interconnect distributed generation with the distribution system of Commission-regulated electric companies. The model rule embraced this primary purpose. The Commission issued draft rules on November 21, 2012, including most of the substantive changes the workgroup proposed. The Commission received comments on its draft rules on December 21, 2012. In response to these comments, the Commission issued a second set of draft rules on February 5, 2013, and received comments on March 6, 2013.
- 13 All comments submitted and draft rules issued by the Commission are available on the Commission’s website at <http://www.utc.wa.gov/112133>. Similarly, a summary of the comments on the draft rules filed in this docket, and the Commission’s response to the issues raised in the comments are available on the Commission’s website.
- 14 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a CR-102 notice, proposed rules, and small business economic impact statement with the Code Reviser on April 16, 2013, WSR 13-09-054, scheduling the matter for oral comment and providing interested persons the opportunity to submit written comments to the Commission by May 17, 2013. On June 5, 2013, the Commission circulated a notice of revisions to the proposed rules based on the comments received and issued a notice of opportunity to respond to certain stakeholder comments.
- 15 **WRITTEN COMMENTS:** The Commission received written comments from PSE; Northwest Sustainable Energy for Economic Development (NW SEED); members of the Washington State Senate Energy, Environment and Telecommunications Committee; Cascade Power Group; NW Energy Coalition (NVEC); PacifiCorp; Avista Corporation, d/b/a Avista Utilities (Avista); Renewable Northwest Project (RNP) and NW SEED, jointly; Tacoma Power; and WPUDA, WRECA, Inland, and Klickitat Public Utility District, jointly, identifying themselves as COU [Consumer-Owned Utilities] Parties. With a few exceptions, all stakeholders support the changes in the proposed rules, which streamline and simplify the process of applying to interconnect distributed generation with electric systems owned by electrical

companies under the Commission's jurisdiction. Summaries of all written comments and the Commission's responses are contained in Appendix B, attached to, and made part of, this Order.

- 16 **RULEMAKING HEARING:** The Commission considered the proposed rule for adoption at a rulemaking hearing on June 13, 2013, before Chairman David W. Danner, Commissioner Jeffrey D. Goltz, and Commissioner Philip B. Jones. The Commission heard oral comments from: David Meyer, representing Avista Corporation; Lou Walter, International Brotherhood of Electrical Workers, Local Union 77 (IBEW); David Warren, WPUDA; Tim Stearns, Evergreen State Solar Partnership, Department of Commerce (Commerce); Mary Winke and Eric Anderson, PacifiCorp; Thad Culley, IREC; Michael O'Brien and Megan Decker, RNP; Lynne Dial, NWEC; Linda Irvine, NW SEED; and Lynn Logen, PSE.
- 17 The oral comments addressed three issues: disconnect switches for tier 1 systems, third-party ownership of net metering systems, and the Commission's regulation of third-party owners of net metering systems. The investor-owned utility representatives also provided data concerning the level of net metering in their service territories.

III. DISCUSSION AND RESPONSE TO WRITTEN AND ORAL COMMENTS

- 18 WAC 480-108 requires electric utilities under Commission jurisdiction to interconnect distributed generation facilities, including renewable energy such as small solar and wind, owned by a customer or located on a customer's property. Our task is to simplify and streamline the rules governing this service to advance Washington State's policies encouraging renewable energy, distributed generation, and net metering, while at the same time fulfilling our longstanding statutory obligation to ensure safe and reliable electric utility service for all customers at prices that are just and reasonable.⁵ With that task in mind, we turn to the comments and recommendations we received regarding the proposed rules.

⁵ RCW 80.60.005 ("The legislature finds that it is in the public interest to: (1) Encourage private investment in renewable energy resources; . . . and (3) Enhance the continued diversification of the energy resources used in this state."); RCW 19.285.010 *et seq.* (requiring the state's largest electric utilities to procure 15 percent of their energy from renewable sources by 2020, and

19 Commenters agree on the majority of the revisions to the rules, which are focused on streamlining and simplifying the process of applying to interconnect distributed generation with the electrical system. The commenters concentrate primarily on three substantive issues: Whether the Commission should (1) require an external disconnect switch for tier 1 systems in WAC 480-108-020(3)(a)(iv), (2) address the ownership of net metering systems in WAC 480-108-010, and (3) address the Commission’s jurisdiction to regulate third-party owners of net metering systems as public service companies. We address each of these issues in detail below. In addition to these issues, commenters also raised several other issues for clarification and requested minor technical changes. A detailed summary of the comments and the Commission’s response to the issues raised in those comments is provided in Appendix B.

1. External disconnect switches are not required by the Commission for tier 1 inverter-based systems.

- 20 Utilities have traditionally required all generating facilities to have an external disconnect switch in order to protect worker safety. Line workers occasionally must come in close contact with an electric line. To prevent injury, line workers disconnect the line from the utility’s grid, including the utility’s generating stations. The customer’s generating facility must also be disconnected. An external disconnect switch provides a physical switch that a line worker can turn to ensure that the customer’s generating facility is not exporting power to the line.
- 21 Proposed WAC 480-108-040(20) requires any inverter used for interconnection to “be certified by an independent, nationally recognized testing laboratory to meet the

providing an incentive for distributed generation resources); RCW 19.280.030(1)(d) (requiring an electric utility to determine the value of certain transmission and distribution costs in its integrated resource plan); RCW 80.80 (setting a greenhouse gas performance standard that prohibits the use of certain polluting power plants); RCW 82.16.110 *et seq.* (providing tax incentives for certain types of distributed generation); RCW 80.28.020 (“the commission shall determine the just, reasonable, or sufficient rates, charges, regulations, [and] practices” of electrical companies); RCW 80.28.010(2) (every electrical company shall provide services that are “safe, adequate and efficient, and in all respects just and reasonable.”)

requirements of [Underwriters Laboratories] 1741.”⁶ The Underwriters Laboratories standard requires that an inverter automatically shut off and stop the export of power when no other source of power is connected to the utility’s grid.⁷ Accordingly, after the worker disconnects the line from the utility’s grid, the inverter will detect that no other source of power is present and automatically prevent the export of power. Thus, inverters that meet the Underwriters Laboratories standard automatically perform the same function as a disconnect switch.

22 NW SEED commented that requiring a disconnect switch is obsolete and unnecessary.⁸ Cascade Power Group said that the disconnect switch requirement is an appropriate issue for the Washington State Department of Labor and Industries to address.⁹ Mr. Stearns of Commerce commented at the hearing that streamlining and standardizing interconnection practices is important to the development of distributed solar resources and that addressing line worker safety may be an issue of training rather than requiring disconnect switches.¹⁰

23 In written comments, Avista and the COU Parties suggested that an external disconnect switch should be required unless the utility agrees otherwise.¹¹ In oral comments at the rulemaking hearing, Avista clarified its position to mean the Commission should not require a disconnect switch for tier 1 systems.¹² At the hearing, Mr. Warren of WPUDA reiterated the comments of the COU Parties,

⁶ Power produced by renewable energy systems is direct current electricity, while the utility’s grid and household appliances use alternating current electricity. An inverter converts direct current electricity to alternating current electricity.

⁷ See, *i.e.*, Comments of the Interstate Renewable Energy Council on the Utilities and Transportation Commission’s Proposed Rulemaking on Generator Interconnection Procedures, at 9-11 (January 30, 2012).

⁸ May 16, 2013, letter from Jennifer Grove and Linda Irvine, at 1.

⁹ May 17, 2013, letter from Chuck Collins, at 4.

¹⁰ Tim Stearns for Commerce, TR 27:16-28:12.

¹¹ May 17, 2013, letter from Linda Gervais, at 2-4; May 20, 2013, letter from David Warren, Richard Damiano, Kent Lopez, and Holly Dohrman (hereinafter “COU Parties Letter”), at 1.

¹² David Meyer for Avista, TR 9:21-10:10.

recommending that the language be changed to allow utilities to waive the requirement for tier 1 systems.¹³

24 In written comments, PSE stated it “is not opposed to eliminating the requirement for a disconnect switch,” but noted that the elimination of the disconnect switch requirement “will likely impact PSE’s service restoration guarantee and its Service Quality Indices.”¹⁴ PSE said that it will address the impact of not installing a disconnect switch in its tariff.¹⁵

25 At the hearing, Mr. Walter of IBEW stated that to protect worker safety a disconnect switch should be required.¹⁶ IBEW argued that relying on an inverter (a new computer technology) to disconnect a generating facility is not sufficient to guarantee safety.¹⁷

26 The proposed rule language in WAC 480-108-020(2)(a)(iv) prohibits electrical companies from requiring a visible, lockable Alternating Current disconnect switch for small inverter-based systems, unless the Washington State Department of Labor and Industries (LNI) requires a switch. The record in this docket, and our previous investigation into distributed generation, does not persuade us that worker safety requires a redundant disconnect switch on small inverter-based systems.¹⁸ However, we defer in the rule to LNI, an agency dedicated to the safety, health and security of workers. LNI may determine that such a switch is required. In the absence of such a determination, a utility may not require a redundant disconnect switch for small inverter-based systems.

¹³ David Warren for WPUDA, TR 23:17-24.

¹⁴ May 14, 2013, letter from Kenneth S. Johnson, at 3.

¹⁵ *Id.*

¹⁶ Lou Walter for IBEW, TR 13:25-14:3.

¹⁷ Lou Walter for IBEW, TR 13:20-14:3.

¹⁸ *See i.e.*, Comments of the Interstate Renewable Energy Council on the Utilities and Transportation Commission’s Proposed Rulemaking on Generator Interconnection Procedures, at 9-11 (January 30, 2012); Distributed Generation Report, 16-18.

27 WAC 480-108-020(2)(b)(ix) requires a disconnect switch for larger systems that qualify for tier 2 procedures, but allows the utility to waive this requirement for inverter-based systems. The Commission inadvertently removed any reference to a tier 2 disconnect switch in the proposed rules circulated with the CR-102 notice on April 17, 2013. Accordingly, we will restore the provision in WAC 480-108-BBB(2)(b)(ix) from the February 5, 2013, draft, but modify the language so as not to require a specific placement of the switch. A utility may specify the placement of the switch in its interconnection agreement or tariff. This language is included in paragraph 48 of this Order.

2. The third-party ownership of net metering systems is permissible under RCW 80.60.010.

28 Net metering is a program that “encourage[s] private investment in renewable energy resources” by allowing electric utilities to provide a bill credit for certain types of power produced on a customer’s property.¹⁹ Power produced from a small fuel cell, cogeneration, or renewable energy system qualifies for the program, which is most commonly used by homeowners who install rooftop solar panels.²⁰ The homeowner is often called the “host customer” or “customer-generator” because she hosts the power generating system, and we adopt this terminology for use in this Order. The question presented in this rulemaking is whether a host customer must own the power generating facility located on her property in order to qualify for the net metering program, or whether a third party may own the facility. We first examine this question and then respond to several specific concerns regarding our resolution of this issue.

29 NWECA, RNP, and NW SEED argue in written and oral comments that third-party ownership is permissible under the state’s net metering statute and express support for the definitions of “interconnection customer” and “third-party owner” in the proposed rule.²¹ Mr. Culley of IREC recommends the Commission clarify that third-party

¹⁹ RCW 80.60.005; RCW 80.60.010(10)(a).

²⁰ RCW 80.60.010(10).

²¹ May 17, 2013, letter from Lynn Dial, at 1-2; May 17, 2013, letter from Megan W. Decker, Michael O’Brien, Jennifer Grove, and Linda Irvine, at 1.

ownership is allowed under the net metering statutes.²² Mr. Stearns of Commerce states that the Commission's proposed rules would promote clarity in the law.²³

30 In written comments, PacifiCorp suggests that third-party ownership is not authorized by, and may not be legal under, Washington law.²⁴ Avista originally commented that the legislative process is the best setting for resolving this question,²⁵ but at the rulemaking hearing recommended that the Commission address the issue of third-party ownership in the rulemaking and expressed support for the definitions of "interconnection customer" and "third-party owner" in the proposed rules.

31 The COU Parties requested the Commission remove all references to third-party ownership, launch an investigation into the issue, and open a new docket for net metering rules.²⁶ Alternatively, the COU Parties requested that this rulemaking include an investigation into the issue of third-party ownership.²⁷ During the rulemaking hearing, Mr. Warren repeated the concerns expressed in written comments, opposing the interpretation of "interconnection customer" in the proposed rules and arguing that by allowing third-party owners, the proposed rule would expand the meaning of "customer-generator" in the net metering statute to include both a host customer and a generator.²⁸

32 Our review of Washington's net metering statutes, as currently enacted, leads us to conclude they allow third parties to own net metering systems. The statute provides two definitions that guide our interpretation of the net metering program's

²² Thad Cully for IREC, TR 39:25-40:3.

²³ Tim Stearns for Commerce, TR 68:6-8.

²⁴ PacifiCorp raised this concern in written comments submitted on December 21, 2012. These earlier comments are incorporated by reference into PacifiCorp's May 17, 2013, comments.

²⁵ May 17, 2013, letter from Linda Gervais, at 5. On May 16, 2013, Members of the Washington Senate Energy, Environment, and Telecommunications Committee submitted a letter making similar comments, asking the Commission to omit references to third-party ownership in the rule.

²⁶ May 20, 2013, COU Parties Letter, at 2-3.

²⁷ *Id.* at 3.

²⁸ David Warren for WPUA, TR 52:10-54:21.

requirements. First, RCW 80.60.010 defines the types of power-generating facilities that qualify for the program:

"Net metering system" means a fuel cell, a facility that produces electricity and used and useful thermal energy from a common fuel source, or a facility for the production of electrical energy that generates renewable energy, and that:

- (a) Has an electrical generating capacity of not more than one hundred kilowatts;
- (b) *Is located on* the customer-generator's premises;
- (c) Operates in parallel with the electric utility's transmission and distribution facilities; and
- (d) Is intended primarily to offset part or all of the customer-generator's requirements for electricity.²⁹

33 This provision only specifies certain requirements, including the type, size, location, and use of a net metering system. The law requires that the system be located on the customer-generator's property, but does not require the system be owned by the customer-generator.

34 Second, the statute requires an electric utility to "offer to make net metering available to eligible customers-generators."³⁰ "Customer-generator" is further defined as "*a user of a net metering system.*"³¹ The meaning of "user" is not synonymous with the meaning of "owner," suggesting that a customer can "use" a system owned by a third party. Similar to the definition of net metering system discussed above, there is no requirement in statute that a customer-generator own the net metering system.

35 Additionally, RCW 80.60.010 uses the term "owned" or "owned by" three times in other definitions, indicating that as a matter of statutory construction the legislature appreciated the difference between the concepts of ownership and use when drafting the definitions of "customer-generator" and "net metering system."³² Therefore, we

²⁹ RCW 80.60.010(10) (emphasis added).

³⁰ RCW 80.60.020(1)(a).

³¹ RCW 80.60.010(2) (emphasis added).

³² The legislative history of this chapter does not address the third-party ownership of net metering systems.

interpret the statutes to mean that the net metering program, as defined in RCW 80.60, is open to a customer-generator using a net metering system owned by a third party.

36 Several commenters ask the Commission to delay this rulemaking to investigate further the Commission's authority to allow third-party ownership. We decline to do so. RCW 80.60.040(2) allows the Commission to "adopt by regulation additional safety, power quality, and interconnection requirements for customer-generators." We embrace our responsibility under the net metering statute and the Administrative Procedure Act, RCW 34.05, to clarify through rule the meaning of laws we have the authority to administer. Accordingly, this rule addresses net metering in several places and has since the rule was first adopted in 2006. As there are no separate net metering rules, the interconnection rules are an appropriate place to address the third-party ownership of net metering systems.

37 Further, there is no reason to delay this rulemaking to conduct further inquiry into the issue of whether third parties may own net metering systems. Beginning in Docket UE-110667, the Commission since 2011, has closely examined the question of third-party ownership. The Commission received extensive comments on the issue in the distributed generation docket, resulting in the Distributed Generation Report, and in this docket leading up to this rule. A complete record on this question of third-party ownership, including multiple rounds of comments, is available in this docket.³³ While some issues remain related to the third-party ownership of net metering systems, the definitions in the proposed rules address only whether third-party ownership is allowed under the current statute. Further investigation is unlikely to raise any new issues or arguments related to this narrow issue.³⁴

³³ The Commission solicited written comments five times in this docket. In response to four of these solicitations, we received substantive comments from stakeholders regarding third-party ownership issues.

³⁴ The COU Parties Letter requests that the Commission delay its rulemaking due to COU Parties' recent discovery that Germany is installing smart inverters. We agree that smart inverters are worthy of consideration and note that the Federal Energy Regulatory Commission's (FERC) is currently addressing this issue a rulemaking. *Small Generator Interconnection Agreements and Procedures*, FERC Docket No. RM13-2-000. The Commission may choose to open an investigation into smart inverters at a later date, including whether to modify these rules to

- 38 Finally, we address other concerns raised by commenters. Cascade Power Group and PSE raised concerns about the rule’s definition of “third-party owner.” Cascade Power Group disagrees with the definition of “third-party owner,” preferring that it participate in a business relationship with the utility.³⁵ Cascade Power Group also asks that the definition make clear that a third-party owner is allowed to resell electricity produced from a net metering facility.³⁶
- 39 We decline to make any changes along the lines suggested by Cascade Power Group because the resale of power may implicate federal jurisdiction. One purpose of this rule is to interpret RCW 80.60 to clarify that a third-party owner may legally provide power to a host customer on whose property a net metering system is located. The host customer may export power to the grid pursuant to a legal net metering arrangement.³⁷ The definition of third-party owner in the proposed rule, as modified in paragraph 47 below, excludes a person who resells power produced by the net metering system to a person who is not the customer-generator.
- 40 In written and oral comments, PSE noted that the definition of “interconnection customer” allows a customer to purchase power from a third-party owner, and the definition of “third-party owner” may be in conflict with this provision by prohibiting a utility from allowing a third-party owner to resell electricity produced from a net

address smart inverter issues. However, as noted above, we do not wish to delay further the adoption of these rules.

³⁵ May 17, 2013, letter from Chuck Collins, at 3.

³⁶ *Id.*

³⁷ FERC determined that a net metering arrangement does not normally constitute a sale of electricity. *MidAmerican*, 94 FERC ¶ 61,340, 62,262-63 (2001). Thus, the export of power from a net metering system owned by a third party is not a resale of power. *Sun Edison LLC*, 129 FERC ¶ 61,146, 61,621 (2009) (“We agree that, where the [customer-generator] does not, in turn, make a net sale to a utility, the sale of electric energy by [the third-party owner] to the [customer-generator] is not a sale for resale, and our jurisdiction under the [Federal Power Act] is not implicated.”). We do not intend this rule to prevent an electrical company from accepting power exported by a net metering system.

metering system.³⁸ PSE recommended the Commission delete the last sentence of the definition of “third-party owner” to eliminate this potential conflict.³⁹

41 The Commission does not believe there is a conflict between the two definitions, as a third-party owner is selling, not reselling, power to a customer-generator. Nevertheless, one purpose of these rules is to eliminate ambiguity in the interpretation of the state’s net metering statutes. So while we believe there is no conflict between the definitions, we modify the last sentence of the definition of “third party owner” to read: “A third-party owner does not resell the electricity produced from a net metered generating facility.” We identify this language change below in paragraph 47. By making this modification, we exclude from the definition of “third-party owner” one who resells electricity produced from a net metering system. This rule *does not* authorize a customer-generator to accept power from a person who resells electricity, or provide power to a person who is not the incumbent electrical company.

42 In sum, the plain language of the statute allows a third party to own a net metering system, the Commission has the authority to interpret the statute through this rule, and the definitions in the rule are carefully crafted to comply with the law.

3. Commission jurisdiction to regulate third-party owners as “Public Service Companies.”

43 In written comments, RNP and NW SEED, jointly, and NW Energy Coalition urged the Commission to signal in this Order that a third-party owner, in factual circumstances described in the comments, would not be subject to regulation as a public service company.⁴⁰ The COU Parties recommended that the Commission regulate third-party owners of net metering systems.⁴¹ After receiving these comments, the Commission issued a notice requesting further discussion of this issue at its rule adoption hearing on June 13, 2013. At the hearing, David Warren, representing WPUDA, repeated the COU Parties’ arguments that the Commission to

³⁸ Lynn Logen for PSE, TR 104:10-105:15.

³⁹ May 14, 2013, letter from Kenneth S. Johnson, at 2.

⁴⁰ May 17, 2013, letter from Megan W. Decker, Michael O’Brien, Jennifer Grove, and Linda Irvine; May 17, 2013, letter from Lynn Dial.

⁴¹ COU Parties Letter, at 2.

should regulate third-party owners of net metering systems.⁴² David Meyer for Avista Corporation, Thad Culley for IREC, and Michael O'Brien and Megan Decker for RNP, asked the Commission to use its adoption order to clarify that third-party owners are not subject to Commission jurisdiction.⁴³

44 We are authorized and encouraged under RCW 34.05.230(1) to advise the public of our "current opinions, approaches and likely courses of action by means of interpretive or policy statements." We construe the joint request by RNP and NW SEED as one to issue an interpretive statement on this issue, and we grant this request. We will issue an interpretive statement on this issue in a separate order.

IV. COMMISSION ACTION

45 After considering all of the information and comments regarding this proposal, the Commission finds and concludes that it should repeal and amend the rules as proposed in the CR-102 at WSR 13-09-054, subject to the modifications discussed in this Order.

46 **CHANGES FROM PROPOSAL:** After reviewing the entire record, the Commission adopts the CR-102 proposal with the minor changes from the text noticed at WSR 13-09-054. We adopt the rule as presented below, with the minor changes italicized. These changes clarify the meaning of the rule and respond to comments, as discussed above and in Appendix B.

47 For clarity in the rule and pursuant to comments received, the Commission removes the definitions of "Grid network distribution system," "In-service date," "Model interconnection agreement," "PURPA qualifying facility," and "Spot network distribution system," which are not used in the chapter, and modifies the following definitions in WAC 480-108-010:

"Interconnection customer" means the person, corporation, partnership, government agency, or other entity that proposes to interconnect, or has executed

⁴² David Warren for WPUA, TR 113:18-19.

⁴³ David Meyer for Avista Corporation, TR 76:25-77:3; Thad Culley for IREC, TR 90:12-14; Megan Decker for RNP, TR 96:1-23.

an interconnection agreement with the electrical company. *The interconnection customer must:*

- (a) Own a generating facility interconnected to the electric system;
- (b) *Be* a customer-generator of net-metered facilities, as defined in RCW 80.60.010(2); or
- (c) Otherwise *be authorized to interconnect* by law.

The interconnection customer is responsible for the generating facility, and may assign to another party responsibility for compliance with the requirements of this rule only with the express written permission of the electrical company. A net metered interconnection customer may lease *a generating facility* from, or purchase power from, a third-party owner of an on-site generating facility.

"Net metering," *as defined in RCW 80.60.010,* means measuring the difference between the electricity supplied by an electrical company and the electricity generated by a generating facility that is fed back to the electrical company over the applicable billing period.

"Network protectors" means devices installed on a ~~spot~~ network distribution system designed to detect and interrupt reverse current-flow (flow out of the network) as quickly as possible, typically within three to six cycles.

"Point of common coupling" or "PCC" means the point where the generating facility's local electric power system connects to the electric system, such as the electric power revenue meter or at the location of the equipment designated to interrupt, separate or disconnect the connection between the generating facility and electrical company. The point of common coupling is the point of measurement for the application of Institute of Electrical and Electronics Engineers standard (IEEE) 1547.

"Third-party owner" means an entity that owns a generating facility located on the premises of an interconnection customer and has entered into a contract with the interconnection customer for provision of power from the generating facility. When a third-party owns a net-metered generating facility, the interconnection customer maintains the net metering relationship with the electrical company. A third-party owner *does not* resell the electricity produced from a net metered generating facility.

48 Throughout this rulemaking, the Commission intended to require a disconnect switch for larger systems that qualify for tier 2 procedures but allow the utility to waive this requirement for inverter-based systems. The Commission inadvertently removed this reference to a tier 2 disconnect switch in the proposed rules noticed on April 17, 2013. For this reason, and for additional clarifications, the proposed WAC 480-108-020 is modified as follows:

(1) **Applicability.** (a) **Tier 1.** Interconnection of a generating facility will use Tier 1 processes and technical requirements if the proposed generating facility meets all of the following *criteria*:

* * *

(2) **Technical requirements.** * * * (b) **Tier 2.** * * *

(ix) ***Disconnect switch.***

(A) *Except as provided in subsections B, C, and D of this subsection, the generating facility must include a visible, lockable AC disconnect switch. The electrical company shall have the right to disconnect the generating facility at a UL listed disconnect switch to meet electrical company operating safety requirements.*

(B) *An electrical company may waive the visible, lockable disconnect switch requirement for an inverter-based system.*

(C) *To maintain electrical company operating and personnel safety in the absence of an external disconnect switch, the interconnection customer shall agree that the electrical company has the right to disconnect electric service through other means if the generating facility must be physically disconnected for any reason, without liability to the electrical company. These actions to disconnect the generating facility (due to an emergency or maintenance or other condition on the electric system) will result in loss of electrical service to the customer's facility or residence for the duration of time that work is actively in progress. The duration of outage may be longer than it would otherwise have been with an AC disconnect switch.*

(D) *In the absence of an external disconnect switch, the interconnection customer is required to operate and maintain the inverter in accordance with the manufacturer's guidelines, and retain documentation of commissioning. In the absence of such documentation the electric company may, with 5 days' notice and at the interconnection customer's expense, test or cause to be tested the inverter to ensure its continued operation and protection capability. The person that tests the inverter shall provide documentation of the results to both the electrical company and the interconnection customer. Should the inverter fail the test, the electric company may disconnect the generating facility, and require the interconnection customer to repair or replace the inverter. The cost of any such repair or replacement required by the electric company shall be the sole responsibility of the interconnection customer.*

49

For clarification and to correct an inadvertent error, the Commission modifies the proposed WAC 480-108-030 as follows:

(8)(b)(iv) **Initial operation.** An interconnection customer must interconnect and operate the generating facility within one year from the date of approval of the application, or the application expires, unless the electrical company, in its sole discretion, grants an extension in writing.

(9) **Tier 2 application timeline.**

(a) **Notice of receipt.** Notice of receipt of an application and application fee shall be sent by the electrical company to the interconnection customer within five business days.

(b) **Notice of complete application.** (i) The electrical company shall notify the interconnection customer if the application is complete or incomplete, and if incomplete specifying any deficiencies, within *ten* business days after notice of receipt of application.

* * *

(e) **Initial operation.** An interconnection customer must interconnect and operate the generating facility within one year from the date of approval of the application, or the application expires, unless the electrical company, in its sole discretion, grants an extension in writing.

(10) **Tier 3 application timeline.**

* * *

(e) An interconnection customer must execute an interconnection agreement, and simultaneously pay any deposit required by the electrical company not to exceed fifty percent of the estimated costs to complete the interconnection, within thirty business days from the date of approval of the final application. *At the electrical company's discretion, an extension may be granted in writing.* If the electrical company must upgrade or construct new electric system facilities, the interconnection customer must meet the credit requirements of the electric company prior to the start of construction.

(f) **Initial operation.** An interconnection customer must begin operation of the generating facility within two years of the effective date of the interconnection agreement, or both the application and subsequent interconnection agreement expire. At the electrical company's discretion, an extension may be granted in writing.

50 For clarification and to maintain consistency with the previously enacted rule, the Commission modifies proposed WAC 480-108-040(16) as follows:

Chapter 80.60 RCW limits the total capacity of generation for net metering. However, the electrical company may restrict or prohibit new or expanded net metered systems on any feeder, circuit or network if engineering, safety, or reliability studies *establish the need for a restriction or prohibition*.

51 The Commission modifies, for clarification, proposed WAC 480-108-080(5) as follows:

Tier 3 alternative interconnection service tariff. If an electrical company demonstrates that the small generator interconnection provisions will impair service adequacy, reliability or safety or will otherwise be incompatible with its electric system, the electrical company may file a Tier 3 alternative interconnection service tariff. An alternative interconnection service tariff must meet the following requirements *and be consistent with all provisions of this chapter*:

* * *

52 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the Commission determines that WAC 480-108-001, WAC 480-108-005, WAC 480-108-010, WAC 480-108-015, WAC 480-108-020, WAC 480-108-030, WAC 480-108-040, WAC 480-108-050, WAC 480-108-080, WAC 480-108-110, WAC 480-108-120, and WAC 480-108-999 should be amended to read as set forth in Appendix A, as rules of the Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the Code Reviser.

53 After reviewing the entire record, the Commission determines that WAC 480-108-035, WAC 480-108-055, WAC 480-108-060, WAC 480-108-065, WAC 480-108-070, and WAC 480-108-090 should be repealed as rules of the Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the Code Reviser.

V. ORDER

THE COMMISSION ORDERS:


- 54 (1) The Commission amends WAC 480-108-001, WAC 480-108-005, WAC 480-108-010, WAC 480-108-015, WAC 480-108-020, WAC 480-108-030, WAC 480-108-040, WAC 480-108-050, WAC 480-108-080, WAC 480-108-110, WAC 480-108-120, and WAC 480-108-999 to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the Code Reviser.
- 55 (2) The Commission repeals WAC 480-108-035, WAC 480-108-055, WAC 480-108-060, WAC 480-108-065, WAC 480-108-070, and WAC 480-108-090 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.
- 56 (3) This Order and the rule set out below, after being recorded in the order register of the Washington Utilities and Transportation Commission, shall be forwarded to the Code Reviser for filing pursuant to RCW 80.01 and RCW 34.05 and WAC 1-21.

DATED at Olympia, Washington, July 18, 2013.


WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



DAVID W. DANNER, Chairman



PHILIP B. JONES, Commissioner



JEFFREY D. GOLTZ, Commissioner

Note: The following is added at Code Reviser request for statistical purposes:

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 12, repealed 6.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 12, repealed 6.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

Appendix A
WAC 480-108 Amended Rules

Appendix B

May 17, 2013, Comment Summary and Commission Response