

**BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION)	
)	Docket No. UE-100177
Complainant,)	
)	NW Energy Coalition’s
v.)	Motion for Summary
)	Determination
PUGET SOUND ENERGY, INC.,)	
)	
Respondent.)	

I. Introduction

1. The NW Energy Coalition (“Coalition”) files this Motion for Summary Determination pursuant to the discussion at the Prehearing Conference on April 1, 2010.¹
2. We contend that the 2010-2011 conservation target that Puget Sound Energy (“PSE” or “the Company”) filed in this docket on January 29, 2010, is inconsistent with the 10-year conservation potential that PSE identified on December 31, 2009. For that reason, the target does not meet the requirements set by the Washington Legislature and by this Commission.² We ask the Commission to grant our Motion and to require PSE to file a 2010-2011 conservation target that meets these requirements.³

¹ At the Prehearing Conference, the parties agreed to resolve threshold legal issues in this proceeding via motions for summary determination and responses thereto. WUTC Staff, Public Counsel and the Coalition submitted a Legal Issues List on March 29, 2010, in accordance with the Commission’s Notice of Deadline to File Legal Issues Lists (at ¶ 11). This Legal Issues List responded to a list submitted by PSE. The Coalition and other parties did not object in principle to most of PSE’s issues, but reserved the right to brief those issues in their full legal and factual context. (Legal Issues List, ¶ 9) The Coalition’s Motion focuses on PSE’s Issue No. 5 under “Ten-Year Conservation Potential.”

² RCW 19.285.040(1)(a)-(b); WAC 480-109-010.

³ While this Motion focuses on one threshold legal issue, the Coalition reserves the right to respond to legal issues that are raised by other parties.

II. Background

3. In 2006, the state's voters approved Initiative 937, codified into law as the Energy Independence Act ("Clean Energy Act" or "I-937").⁴ The Clean Energy Act requires qualifying electric utilities, including PSE, to "pursue all available conservation that is cost-effective, reliable, and feasible."⁵ Each utility must identify its 10-year conservation potential by January 1, 2010, and update that potential at least every two years thereafter.⁶

4. Also beginning January 2010, the utility must establish a biennial conservation acquisition target that is "consistent with [the utility's] identification of achievable opportunities in (a) of this subsection."⁷ This means that the biennial target must be consistent with the utility's 10-year conservation potential, developed and updated as described above.

5. On December 31, 2009, PSE notified its Conservation Resources Advisory Group ("CRAG") that it had assessed its 10-year conservation potential at 427.9 aMW based on the results of its integrated resource plan ("IRP").⁸ PSE stated that this assessment complied with the Commission's rules implementing I-937:

This combined demand-side resource potential and distribution efficiency potential is referred to as Bundle D in the 2009 IRP. In addition to the Bundle D potential from the IRP, PSE subsequently estimated the potential for electric energy savings from improvements to the efficiency of PSE's power generation

⁴ Chapter RCW 19.285.

⁵ RCW 19.285.040(1).

⁶ RCW 19.285.040(1)(a).

⁷ RCW 19.285.040(1)(b); *see also* WAC 480-109-010 (repeating the statutory requirement that a utility must establish a biennial conservation target).

⁸ Docket No. UE-091986, "E-mail 12-31-2009," page 1. This email is a communication dated December 31, 2009, from PSE's Energy Efficiency Services Program Manager, Andrew W. Hemstreet, to the Company's CRAG. It is attached to the Coalition's Motion as Exhibit A. We note that PSE's 2009 IRP, referenced in this e-mail, states: "[T]he results of the electric conservation potential reported here are reflected in PSE's upcoming IRP and will *provide the basis for compliance with the requirements of WAC Chapter 480-109.*" *See* Docket Nos. UE-080949 and UG-080948, Appendix L1, p. 3 (emphasis added).

facilities in Washington State. *The total of Bundle D plus generation facility efficiency improvements constitutes the total 10 year conservation potential that complies with the definition of conservation in WAC 480-109-107 and with the requirements for projecting the 10 year conservation potential in WAC 480-109-010.*⁹

Using this 10-year assessment, PSE projected a biennial target range of 69.4 aMW - 90.3 aMW at the customer meter level.¹⁰

6. In a separate but related proceeding, on December 23, 2009, the Commission allowed PSE's conservation program tariff filing to become effective on January 1, 2010.¹¹ That filing set an energy savings goal of 71.0 aMW for 2010-2011, which is within the target range that PSE communicated to its CRAG on December 31, 2009.¹²

7. On January 29, 2010, however, PSE filed its I-937 "compliance report" with the Commission. That report identified a 10-year achievable conservation potential of only 1,871,908 MWh (213.7 aMW), and a biennial target of only 369,796 MWh (42.2 aMW)¹³ – figures that are far less than the assessments that PSE gave to its CRAG just one month earlier.

III. Washington Law Requires a Utility's Biennial Target to Be Consistent with Its Identification of 10-Year Achievable Conservation Opportunities

8. The Commission's rules detail its expectations that, consistent with I-937, utilities must assess their 10-year achievable cost-effective conservation potential by January 1,

⁹ Docket No. UE-091986, "E-mail 12-31-2009," page 1 (emphasis added).

¹⁰ *Id.*

¹¹ Docket No. UE-091859.

¹² PSE submitted proposed rates for its 2010 Electricity Conservation Service Rider (Docket No. UE-100382) consistent with the budget initially identified in Docket No. UE-091859. Those rates, approved by the Commission on March 11, 2010, are designed to pay for PSE's achievement of the first year of the two-year savings target — again, 71 aMW.

¹³ Docket No. UE-100177, Report 1-29-2010, page 1.

2010.¹⁴ Further, I-937 requires a qualifying utility, beginning January 2010, to establish a biennial acquisition target that is “consistent with its identification of achievable opportunities in (a) of this subsection” – *i.e.*, with its 10-year conservation assessment – and no lower than the utility’s pro rata share of the 10-year potential.¹⁵

9. The filing PSE made on January 29, 2010, does not meet the consistency requirement in I-937, for several reasons:

- In interpreting the words of a statute, courts look to the plain and obvious meaning of the words in the statute.¹⁶ Here, the ordinary meaning of the term “consistent” is “marked by harmony, regularity, or steady continuity; free from variation or contradiction.”¹⁷ But PSE’s proposed two-year target of 42.2 aMW is not harmonious – and hence not consistent -- with the 10-year potential of 427.9 aMW that PSE identified on December 31, 2009.
- The proposed biennial target fails to satisfy RCW 19.285.040(1)(b), which requires that the target be no lower than a pro rata share of the 10-year potential identified by January 1. In this case, 42.2 aMW is less than 10% of the 10-year potential that PSE identified on December 31, 2009. While the Commission’s rules appear to allow some flexibility in defining the term *pro rata*,¹⁸ the ordinary meaning of that term is “proportionately according to an exactly calculable factor

¹⁴ WAC 480-109-010(1)

¹⁵ RCW 19.285.040(1)(b).

¹⁶ See *Young v. Estate of Snell*, 134 Wn.2d 267, 279, 948 P2d 1291 (1997); *State ex rel. Royal v. Board of Yakima County Comm’rs*, 123 Wn2d 451, 451, 869 P2d 56 (1994) (meaning of a statute must be derived from the wording of the statute itself where the statutory language is plain and unambiguous).

¹⁷ Merriam-Webster Dictionary; see also *American Legion v. Walla Walla*, 116 Wn.2d 1, 8, 802 P.2d 784 (1991) (court relies on dictionary definition for plain meaning of word).

¹⁸ WAC 480-109-007(14).

(as share or liability).”¹⁹ Thus we would expect a utility’s biennial target to be at least proximal to 20% of its 10-year potential. The target that PSE proposes, however, does not come close to this percentage figure.

- The January 29, 2010 filing is inconsistent with PSE’s other filings and submittals, including its 2010-2011 conservation program savings target of 71 aMW and budget designed to achieve that savings objective (as well as statements in its 2009 IRP).

For the aforementioned reasons, the biennial target does not satisfy the requirements of the Clean Energy Act.

IV. Conclusion

10. The plain meaning of RCW 19.285.040(1)(a)-(b) is unambiguous: a qualifying utility’s biennial target must be consistent with its assessment of 10-year conservation potential provided by January 1, 2010. But the target that PSE filed in this proceeding is not consistent with the Company’s 10-year assessment identified on December 31, 2009. Accordingly, we respectfully ask the Commission to find that PSE did not calculate its biennial target in accordance with the Clean Energy Act and the Commission’s rules.

Dated this 6th day of April, 2010



NW Energy Coalition
Danielle Dixon, Senior Policy Associate

¹⁹ Merriam-Webster Dictionary.

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EXHIBIT A:

**December 31, 2009 E-mail Communication from PSE to
Its Conservation Resources Advisory Group (Docket No. UE-091986)**

From: Hemstreet, Andrew W [mailto:andrew.hemstreet@pse.com]

Sent: Thursday, December 31, 2009 2:00 PM

To: dana@kcha.org; danielle@nwenergy.org; gerryg@microsoft.com; jiles@kemperdc.com; mearly@icnu.org; ppyron@nwigu.org; Kimball, Mary (ATG); stan@putnamprice.com; steven.e.lafond@boeing.com; TEckman@nwcouncil.org; chuck_eberdt@oppco.org; Johnson, Stefanie (ATG); Reynolds, Deborah (UTC); Johnson, Steven (UTC); Murray, Chuck (COM); Daeschel, Lea (ATG); Nightingale, David (UTC)

Cc: Ken.ross@terasengas.com; Shirley, Calvin E - Cal; Stolarski, Robert W; Ringel, H Grant; Gaines, Janet; Starnes, Todd A; France, H. Syd; Hopkins, William; Maclean, Thomas; O'Brien, Megan K; Younger, William J -Bill; Norton, Liz; Logen, Lynn; Englert, Eric; Wappler, Andrew W - Andy; Anderson, Daniel J; Anderson, Rebekah; Moran, Anna; Hemstreet, Andrew W; Atwood, Nancy; Worthington, Janet; Chahian, Mariana

Subject: PSE's IRP Advisory Group Meeting - Dec 15, WAC 480-109 Compliance

Dear CRAG Members,

A version of this email was just delivered to IRPAG members; my apologies to those of you who are receiving it twice!

Thank you for your participation in the discussion on compliance with the conservation provisions of WAC 480-109 (I-937) at the public IRPAG meeting on December 15. In response to input received at that public meeting and our own review, attached are PSE's projected cumulative ten-year conservation potential and biennial conservation target range. The changes from the draft figures presented on December 15 are due mainly to revision of the total conservation potential projections to be consistent with the data that was the basis for the graph in Figure 8-8 of the 2009 IRP, as well as the feedback received at the meeting.

<<WAC 480-109 Potential Target FINAL 12-30-09.pdf>>

The cumulative ten-year conservation potential of 3,748,773 MWh (427.9 aMW) at the customer meter level, or 3,990,138 MWh (455.5 aMW) at the generator, primarily consists of the optimized level of demand-side resource potential selected by PSE's resource portfolio model for the 2009 IRP, plus the estimated potential for distribution system efficiency, also from the 2009 IRP. This combined demand-side resource potential and distribution efficiency potential is referred to as Bundle D in the 2009 IRP. In addition to the Bundle D potential from the IRP, PSE subsequently estimated the potential for electric energy savings from improvements to the efficiency of PSE's power generation facilities in Washington State. The total of Bundle D plus generation facility efficiency improvements constitutes the total 10 year conservation potential that complies with the definition of conservation in WAC 480-109-107 and with the requirements for projecting the 10 year conservation potential in WAC 480-109-010.

The revised biennial target range is 608,032 MWh to 790,862 MWh (69.4 aMW to 90.3 aMW) at the customer meter level, or 647,980 MWh to 842,174 MWh (74.0 aMW to 96.1 aMW) at the generator. The top of the range represents the maximum amount of conservation identified in Bundle D of the 2009 IRP that is technically available, cost-effective, and achievable in the long run. This includes all potential savings from any combination of utility programs, new codes and standards, and market transformation. It assumes that all retrofit end use energy efficiency and fuel conversion potential is accelerated and acquired at an even rate over ten years without regard to real-world timing issues that would cause conservation resources to be acquired at an uneven rate. The bottom of the range was developed to address a number of short term market feasibility and uncertainty factors, including those considered for Bundle D38, which represents the planned level of conservation savings in the 2009 IRP electric resource plan, as well as others identified subsequent to the IRP.

By contrast, PSE's share of the Power Council's 5th regional plan would be a cumulative ten-year potential of 219.4 aMW (2009 - 2018, the latest period in the Council's published calculator) and a 2010-11 "target" of 42.7 aMW.

One request made at the December 15 IRPAG meeting was to show the path for acquiring the energy savings in the ten-year conservation potential if the low end of the target range were achieved. The attachment includes such a projected path, although subsequent IRP analysis over the next ten years will be used to refine the amount and trajectory of the potential. The Low Target scenario achieves the same level of savings as the High Target (Bundle D) level of savings by the 2020-2021 biennium. This is consistent with the path followed by Bundle D38, which was the level of conservation potential used in the 2009 IRP electric resource plan.

The ten-year conservation potential and biennial conservation target range will be described and documented in compliance with reporting requirements in WAC 480-109-010 and filed with the WUTC by January 31, 2010.

Best regards,
Andy

[Andy Hemstreet | Program Manager, Energy Efficiency Services | Puget Sound Energy](#)
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