

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET UE-100177

MOTION OF COMMISSION
STAFF FOR SUMMARY
DETERMINATION ON LEGAL
ISSUES CONCERNING FILING
OF TEN-YEAR CONSERVATION
POTENTIAL, AND ARGUMENT
IN SUPPORT THEREOF

I. RELIEF REQUESTED

1 The Washington Utilities and Transportation Commission Staff (“Commission Staff”
or “UTC Staff”) move for an order declaring as follows:

- A. In determining whether Puget Sound Energy has complied with the procedural and substantive requirements of RCW 19.285.040(1) and WAC 480-109-010, the Washington Utilities and Transportation Commission may consider documents that UTC Staff received from Puget Sound Energy on December 31, 2009, and that were filed with the UTC Records Center on that date.
- B. The fact that Puget Sound Energy substantially changed its identified ten-year conservation potential between December 31, 2009 and January 29, 2010 is evidence that Puget Sound Energy has not complied with RCW 19.285.040(1).

II. STATEMENT OF FACTS AND EVIDENCE RELIED UPON

2 Washington voters approved Initiative 937 in the 2006 general election. Now codified in Chapter 19.285 of the Revised Code of Washington, it imposes procedural and substantive requirements on electric utilities with 25,000 or more customers, such as Puget Sound Energy

(PSE). Among other things, such utilities must set and meet certain targets for energy conservation, and pay penalties if they do not meet them.

3 RCW 19.285.040(1) sets out the requirements for utility conservation targets. RCW 19.285.040(1)(a) establishes a deadline for utilities to identify a ten-year conservation potential, as follows:

- (1) Each qualifying utility shall pursue all available conservation that is cost-effective, reliable, and feasible.
 - (a) **By January 1, 2010**, using methodologies consistent with those used by the Pacific Northwest electric power and conservation planning council in its most recently published regional power plan, **each qualifying utility shall identify its achievable cost-effective conservation potential through 2019**. At least every two years thereafter, the qualifying utility shall review and update this assessment for the subsequent ten-year period.

(Emphasis added.)

4 RCW 19.285.080(1) authorizes the UTC to “adopt rules to ensure the proper implementation and enforcement of this chapter as it applies to investor-owned utilities.” RCW 19.285.080(2) directs the Washington Department of Commerce (“Commerce”) to adopt rules concerning “documentation to ensure the proper implementation of this chapter” as it applies to consumer-owned utilities. Both agencies have adopted rules implementing RCW Chapter 19.285.¹

5 Commerce adopted a rule specifying how consumer-owned utilities shall document compliance with the January 1, 2010 mandate of RCW 19.285.040(1)(a). Under WAC 197-37-070(3)(d), such a utility must “hold a noticed public meeting” at which its governing board adopts its identified ten-year conservation potential. Some Public Utility Districts

¹ The UTC adopted its rules in Docket UE-06185, General Order R-546. The rule adoption order is published in issue 08-1 of the Washington State Register as WSR 07-24-012. The UTC rules are codified at Chapter 480-109 of the Washington Administrative Code. The rules that the Department of Commerce adopted are codified at Chapter 194-37 of the Washington Administrative Code.

(PUDs) have documented their procedural compliance with RCW 19.285.040(1)(a) by posting the meeting minutes on their websites.²

6 In its rules, the UTC incorporated the January 1, 2010 mandate of RCW 19.285.040(1)(a) but did not specify a mechanism for documenting procedural compliance. Instead, the UTC rule, WAC 480-109-010(1), allows each utility to choose the mechanism that will best fit its needs. One option was to file a document with the UTC Records Center. In Puget Sound Energy's case, UTC Staff opened Docket UE-091986 for that purpose. UTC Staff opened Docket UE-091982 for PacifiCorp, and Docket UE-091983 for Avista. All three dockets show filings on December 31, 2009, in which each company identified its ten-year conservation potential.³

7 RCW 19.285.040(1)(b) establishes a second deadline for utilities to identify biennial conservation targets, as follows:

(1) Each qualifying utility shall pursue all available conservation that is cost-effective, reliable, and feasible.

(a) . . .

(b) **Beginning January 2010, each qualifying utility shall establish and make publicly available a biennial acquisition target for cost-effective conservation consistent with its identification of achievable opportunities in (a) of this subsection, and meet that target during the subsequent two-year period. At a minimum, each biennial target must be no lower than the qualifying utility's pro rata share for that two-year period of its cost-effective conservation potential for the subsequent ten-year period.**

(Emphasis added.)

² See http://www.cowlitzpud.org/pdf/Board_Minutes11-10-09.pdf (Cowlitz County PUD); http://www.chelanpud.org/documents/Minutes_111609.pdf (Chelan County PUD); <http://www.snopud.com/Site/Content/Documents/minutes/2009/20091201regfinal.pdf> (Snohomish County PUD).

³ See <http://www.utc.wa.gov/rms2.nsf/vw2005OpenDocket/859DCF80A5B1A712882576A2005CC235> (Puget Sound Energy); <http://www.utc.wa.gov/rms2.nsf/vw2005OpenDocket/77FAFA91B0BF52AB8825769D0075A938> (PacifiCorp); <http://www.utc.wa.gov/rms2.nsf/vw2005OpenDocket/2F47A363C877D0448825769D0078663F> (Avista).

8 The UTC rules implementing RCW Chapter 19.285 do specify the manner in which investor-owned utilities must document compliance with the January 2010 mandate of RCW 19.285.040(1)(b):

On or before January 31, 2010, and every two years thereafter, each utility must file with the commission a report identifying its ten-year achievable conservation potential and its biennial conservation target. . . .⁴

The UTC rules require utilities to explain how they determined their biennial conservation targets.⁵

9 On January 29, 2010, PSE filed a “Report Identifying PSE’s Ten-Year Achievable Conservation Potential and Biennial Conservation Target” under WAC 480-109-010(3). The ten-year achievable conservation potential and biennial conservation target identified in the report were substantially lower than those identified in the December 31, 2009 PSE documents that were filed in Docket UE-091986.

10 In accordance with WAC 480-109-010(4), PSE’s report came before the Commission at its regularly scheduled meeting on March 11, 2010. The Commission determined that PSE had not provided enough information to determine whether the ten-year achievable conservation potential and biennial target contained in the report should be approved, and set the matter for hearing.⁶

III. ISSUES

11 In its Legal Issues List filed on March 29, 2010, Puget Sound Energy listed ten issues, including these two:

⁴ WAC 480-109-010(3).

⁵ WAC 480-109-010(2)(b); WAC 480-109-010(3)(b).

⁶ UTC Docket UE-100177 Order 01 (March 11, 2010).

Whether WAC 480-109-010(1), which states that a utility must project its cumulative ten-year conservation potential by January 1, 2010 and every two years thereafter, requires a utility to file its projection by January 1.

Whether WAC 480-109-010 prohibits a utility from developing and finalizing its projected ten-year conservation potential after it makes a projection on January 1st, and before it files its final report with the UTC by January 31st.

12 UTC Staff believe those two issues should be rephrased as follows:

In determining whether Puget Sound Energy has complied with RCW 19.285.040(1) and WAC 480-109-010, may the Commission consider documents that UTC Staff received from PSE on December 31, 2009, and that were filed with the UTC Records Center on that date?

Is the fact that Puget Sound Energy substantially changed its ten-year conservation potential between December 31, 2009 and January 29, 2010 evidence that PSE has not complied with RCW 19.285.040(1)(a)?

IV. ARGUMENT

13 RCW 19.285.040(1) imposes procedural and substantive requirements on utilities.

Under RCW 19.285.060(6), the Commission is responsible for determining whether investor-owned utilities are in compliance with all of those requirements, both procedural and substantive.⁷

14 With respect to procedural compliance, the Commission must determine whether PSE met the January 1, 2010 deadline of RCW 19.285.040(1)(a). The Commission needs some type of evidence to make that determination. Under RCW 19.285.040(1)(e), the Commission “may rely on its standard practice for review and approval of investor-owned utility conservation targets.” Standard practice includes opening dockets and filing documents with the UTC Records Center. To document PSE’s compliance with the January 1, 2010 deadline, Commission staff opened Docket UE-091986 and filed the ten-year achievable conservation

⁷ RCW 19.285.060(6) provides: “For a qualifying utility that is an investor-owned utility, the commission shall determine compliance with the provisions of this chapter and assess penalties for noncompliance as provided in subsection (1) of this section.”

potential that PSE provided to UTC Staff on December 31, 2009. They had authority to do so.

15 With respect to substantive compliance, the Commission has authority to review PSE's conservation targets to determine whether they meet the standards of RCW 19.285.040(1).⁸ That section requires PSE to establish a biennial conservation target that is "consistent with"⁹ the ten-year conservation potential that PSE was supposed to identify "[b]y January 1, 2010."¹⁰ Under WAC 480-109-010(3), PSE was supposed to file a report with the Commission by January 31, 2010, explaining how it did that.¹¹

16 On January 29, 2010, PSE initiated Docket UE-10177 by filing a "Report Identifying PSE's Ten-Year Achievable Conservation Potential and Biennial Conservation Target" with the UTC Records Center.¹² The numbers in the January 29 report differ substantially from those that PSE provided to UTC Staff on December 31. In determining whether PSE's biennial target complies with RCW 19.285.040(1)(b) and is indeed "consistent with"¹³ the ten-year conservation potential that PSE was supposed to identify "[b]y January 1, 2010,"¹⁴ the Commission is entitled to consider PSE's December 31 document and to inquire why the numbers PSE provided in the January 29 report are so different.¹⁵

17 RCW 19.285.040(1)(a) sets a clear deadline: "By January 1, 2010, . . . each qualifying utility shall identify its achievable cost-effective conservation potential through 2010." Puget Sound Energy has put forward two very different numbers for its ten-year conservation

⁸ RCW 19.285.040(1)(e); RCW 19.285.060(6).

⁹ RCW 19.285.040(1)(b).

¹⁰ RCW 19.285.040(1)(a).

¹¹ See WAC 480-109-010(2)(b) ("Each utility must fully document how it prorated its ten-year cumulative conservation potential to determine the minimum level for its biennial conservation target"); WAC 480-109-010(3)(b) (utility's "report must also clearly state how the utility prorated this ten-year projection to create its two-year conservation target").

¹² See <http://www.utc.wa.gov/rms2.nsf/frm2005VwDSWeb!OpenForm&vw2005L1DktSh=100177-Documents&NAV9999999>.

¹³ RCW 19.285.040(1)(b).

¹⁴ RCW 19.285.040(1)(a).

¹⁵ RCW 19.285.040(1)(e); see RCW 80.04.020; RCW 08.04.070.

potential, one on December 31, 2009 in Docket UE-091986 (427.9 aMW), and the other on January 29, 2010 in Docket UE-100177 (219.3 aMW). If the January 29 number is the “real” number, then PSE did not meet the statutory deadline. If the December 31 number is the “real” number, then the biennial conservation target PSE identified on January 29 is not “consistent with” its ten-year conservation potential as required by RCW 19.285.040(1)(b). The fact that PSE substantially changed its ten-year conservation potential between December 31 and January 29 is evidence that PSE is not in compliance with RCW 19.285.040(1). PSE can cure that noncompliance by filing a new 2010-2011 biennial conservation target that is “consistent with” the ten-year conservation potential it identified on December 31, 2009.

V. CONCLUSION

18 In determining whether Puget Sound Energy has complied with the procedural and substantive requirements of RCW 19.285.040(1) and WAC 480-109-010, the Commission may consider documents that UTC Staff received from PSE on December 31, 2009, and that were filed with the UTC Records Center in Docket UE-091986. Commission Staff respectfully request that this tribunal enter an order declaring that to be so.

19 The fact that Puget Sound Energy substantially changed its identified ten-year conservation potential between December 31, 2009 and January 29, 2010 is evidence that Puget Sound Energy is not in compliance with RCW 19.285.040(1). Commission Staff respectfully request that this tribunal enter an order declaring that to be so.

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The motion of Commission staff for summary determination should be granted.

DATED this 6th day of April, 2010.

Respectfully submitted,

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