May 18, 2007

VIA ELECTRONIC FILING

Ms. Carole J. Washburn
Executive Secretary
Washington Utilities & Transportation Commission
133 S. Evergreen Park Drive SW
Olympia, WA 98504=7250

Re: Docket No. UE-061895: Rulemaking to Implement Initiative Measure No. 937; Comments of Avista Corp., PacifiCorp and Puget Sound Energy, Inc.

Dear Ms. Washburn:

In response to the Commission's March 30, 2007 Notice of Opportunity to File Written Comments ("March 30 Notice") and the April 18, 2007 Notice of Extension of Time to File Written Comments ("April 18 Notice"), Avista Corp, PacifiCorp and Puget Sound Energy, Inc. ("the Utilities") provide the following joint written comments on the draft rules to implement the Energy Independence Act, RCW 19.285 (the "Act"). In addition to the comments contained herein, the Utilities are filing herewith revisions to the March 14 Draft Rules.

Procedural Background

After the March 26, 2007 stakeholder workshop, the Utilities agreed to work together, and to work with other stakeholders, to try to reach consensus on key issues relating to the proposed rulemaking. Several meetings have been held in an effort to reach that goal. Initially the Utilities met amongst themselves to determine the areas of common ground. After that, meetings were held with the Utilities and the environmental stakeholders --Renewable Northwest Project ("RNP") and the Northwest Energy Coalition ("NWEC"). Later, the group was broadened to include Public Counsel and Industrial Customers of Northwest Utilities ("ICNU"). We discovered that reaching consensus is hard work and a long process. We have reached consensus with environmental stakeholders on some issues, particularly in the conservation area, and we plan to continue working with all stakeholders to try to reach further consensus on rule language.

Organization of Comments

As requested in the March 30 Notice, the Utilities have categorized the regulatory issues as follows: (A) Regulatory issues best dealt with in adjudications or other fact specific decision making processes; (B) Regulatory issues best dealt with in rules but that do not need immediate Commission action; and (C) Regulatory issues for which near term Commission action is needed so that utilities may properly implement the statute. For those issues in the third category, we submit revisions to the Draft Rules. Our comments on these proposed rule revisions are broken into two categories—Conservation Issues and Renewable Energy Issues. On the revisions to conservation rules, the Utilities and RNP/NWEC have reached consensus on most points.

A. The following are regulatory issues best dealt with in adjudications or other fact specific decision making processes:

1. Incentives: The Act provides that the Commission may consider providing positive incentives for investor-owned utilities. RCW 19.285.060(4). Further, the Act provides that the Commission may rely on its standard practice for review and approval of utility conservation targets. Incentives should be handled on a case-by-case basis, and nothing in the Act or these rules should preclude the Commission from authorizing incentives in the same manner that incentives have been authorized in the past; nor should the Act or the rules preclude the Commission from the creative use of incentives to encourage conservation programs and the use of renewable energy by utilities.

2. High Efficiency Cogeneration: The Act provides that customer owned and used high efficiency cogeneration may be counted toward meeting utility conservation targets. RCW 19.285.040(1)(c). The Act also defines the parameters for determining whether a resource qualifies as high efficiency cogeneration and how to calculate the reduction in load that can be counted toward the conservation target. Assessment and selection of high efficiency cogeneration projects should be addressed on a case-by-case basis through each utility's existing resource acquisition process.

B. The following are regulatory issues best dealt with in rules but that do not need immediate Commission action:

1. Use of Conservation Credits: The Act addresses the use of Renewable Energy Credits but is silent on the use of Conservation Credits. The Utilities request that on or before June 30, 2009, the Commission establish rules defining "Conservation Credits" and addressing the use of

conservation credits to meet the conservation target. Such rules should include the verification, trade, and tracking of conservation credits and other related issues.

C. The following are regulatory issues for which near term Commission action is needed so that utilities may properly implement the statute:

The issues addressed below and in the attached revisions to the Draft Rules are the issues that the Utilities have determined require near term Commission action.

CONSERVATION ISSUES

1. Definitions of "Achievable," "Feasible" and "Reliable" conservation (WAC 480-109-007): These are important qualifiers used in RCW 19.285.040 to describe conservation potential and targets and therefore need clarifying definitions. The investor-owned utilities have a relatively long history of setting and achieving conservation goals, and in working within the frameworks established by the Northwest Power and Conservation Council, and their own resource-planning efforts. The statute directs utilities to establish and meet conservation targets in manners consistent with their own Integrated Resource Plan ("IRP") methods and the Councils' approach. Since there are varying definitions of conservation in use in the Region, we believed it was helpful to rely on definitions of potential and achievable conservation provided by the Council. This clarity will promote consistency in understanding and in the application of the law. The technical conservation potential recognizes the potential for all conservation that could be accomplished in the region. Achievable conservation recognizes that effective programs need to be developed to acquire this conservation. In our proposed revisions to the draft rule, we have very specifically applied the Councils' terminologies in a way consistent with the statute, and in agreement with the sponsors and other parties.

2. Sources for ten year conservation potential (WAC 480-109 010(1)(b) and (3)): The Utilities seek the flexibility to base their ten-year conservation potential on either their own integrated resource planning and acquisition process or their pro rata share of the Northwest Power and Conservation Planning Council's most recent regional power plan. Of particular importance is the ability to update IRP data and assumptions on conservation potential, if new information is available as utilities proceed through their subsequent resource acquisition processes. This ensures that the ten year potential, which forms the basis for the biennial conservation target, is based on the most current information available.

3. Methods for expedient action by the Commission (WAC 480-109-010(4)): This clarifies that the Commission may approve a utility's two-year target as filed if it is at least 19% of the ten-year conservation potential, or the Commission may hear additional comments before making a decision. Nothing in this rule would preclude utilities from filing, or the Commission

from approving, a two-year target that is less than 19% of its ten-year potential if that is the amount demonstrated to be cost-effective, reliable, and feasible to achieve in the biennial target period.

4. Deadband (WAC 480-109-010(5)): The Utilities and NWEC/RNP have proposed deadbands of 10%, but differ on where the deadband falls in relation to the target. The Utilities propose that they should be considered in compliance if they achieve 90%-100% of their target, while NWEC/RNP propose the range of compliance to be 95%-105% of the target. The range proposed by the Utilities is the same as that proposed by Staff and approved by the Commission for Puget Sound Energy in Docket Nos. UE-060266 and UG-060267. Since the deadband is relevant to the threshold for penalties and, potentially, future incentives, the following excerpt from Staff's initial brief in the above dockets is relevant in explaining the rationale for the utility deadband:

"The simplest and most straightforward message to convey to PSE is that PSE should achieve a conservation savings target that is aggressive, but itself achievable. That message is compromised if incentives start anywhere other than 100% of the target. The Company will strive to achieve an incentive. If the incentive starts somewhere above or below the target, then the target itself loses meaning."

5. Gross electric savings (WAC 480-109-040(1)(a)): The Utilities propose adding language to clarify that measurement of energy savings to determine compliance with conservation targets will be consistent with the per-unit savings assumptions originally used to establish the target, and not retroactively adjusted for new information from *ex post* program evaluations or other information obtained after the two-year target is established. Utilities would use actual program costs and program participation levels to measure compliance. This clarification is intended to recognize that targets are set with the best information available at that time, including regionally accepted "deemed" savings for specific energy efficiency measures or the results of program evaluation studies. As new information on energy savings is developed, it should be used to prospectively establish subsequent targets. This encourages utilities to engage in objective energy savings evaluation research without the threat of being retroactively penalized with the results of that research.

6. Mitigation of penalties for failure to meet biennial target (WAC 480-109-050(6): The Utilities propose adding a provision to allow utilities to seek mitigation of administrative penalties for failure to meet their conservation target for reasons outside the utility's control. The intent is to provide utilities with an avenue to seek relief from penalties, similar to renewables. The Commission has previously approved such mitigation. *See, e.g.,* Settlement Terms for Conservation from PSE General Rate Case, Docket Nos. UE-011570 and UG-011571.

Renewable Energy Issues

1. Definition of Real Time Basis Without Shaping, Storage, or Integration Services (WAC 480-109-007(16)): The Utilities have had ongoing discussions with the sponsors of the Act over the interpretation of what energy products could be counted against the utilities' load-service targets from renewable projects located outside the Pacific Northwest. The Utilities believe the term 'real time' is adequately defined in our industry as any timeframe shorter than the 'day-ahead' market. The Utilities also believe the definitions of the terms "shaping, storage, and integration services", with regard to renewable resources, are in constant flux. At the time the statute was drafted and passed, it is our view these terms were best defined by integration products offered by the Bonneville Power Administration and a few utilities, where renewables energy was delivered to the purchasing utility 'in block' and in time-frames of a week, and up to a month, following the actual generation at the facility.

The language proposed in the draft rule represents the Utilities effort to develop a consensus definition consistent with concepts that we understood were acceptable to the sponsors. The compromise language significantly restricts the utilities' ability to cost-effectively import renewable energy from outside the Region, yet it does provide slightly more flexibility than the strict interpretation originally promoted by the sponsors.

2. Annual Targets for Renewable Resources (WAC 480-109-020): The proposed revisions in section (1) are intended to reflect language in the law that allows a utility to meet its target through the use of eligible renewable resources or by acquiring equivalent renewable energy credits, or a combination of both. *See* RCW 19.285.040(2)(a).

Section (2) allows a utility to rely on the average expected output from an intermittent or other eligible renewable resource. The Act does not specify whether target levels should be based on average expected output from renewable resources or the actual electricity generated from such sources. However, information on average expected output is presented to the Commission when a new resource is acquired, and utilities plan their resource portfolio based on average expected output.

The Utilities have the concern that our customers could be in a position of 'having to pay twice' for installed renewable resources, if language regarding "average expected output" is not included in the rules. This situation could arise in a year when wind generation is particularly low and renewable credits in the current and subsequent compliance year are priced at or above the penalty cost. In other words, the customers pay for the new resource; then in a low-wind year they pay for the replacement energy. In addition, they have to pay for the purchase of renewable credits or a penalty to qualify the replacement energy. While the statute aims to avoid situations like these by providing flexibility over time for acquiring, banking and applying credits to meet the target in a given compliance year, there remains uncertainty because a utility

can not know in advance how much the wind will blow or what the hydro conditions will be. Under the rules put forth by the Utilities, a utility would know, if it so chose, from the project development phase forward, the contribution the new project would make toward each year's renewable load-service target. While our proposed language provides the utility flexibility over time in choosing whether to use actual or average expected output, it does, we believe, fully meet the intent of the statute.

The Utilities are proposing Sections (5) and (6) to WAC 480-109-020 to provide the Commission and stakeholders an opportunity to comment on proposed implementation plans. The Commission may want to develop rules to establish requirements for the content of implementation plans; establish the procedure for acknowledgement of implementation plans, including provisions for public comment; and provide for the integration of the implementation plan with the integrated resource planning guidelines established by the commission. The Commission's acknowledgement would inform any subsequent prudence review. The implementation plan filed under this section may also include procedures that will be used by the utility to determine whether the costs of constructing a facility that generates electricity from a renewable energy source, or the costs of acquiring renewable power or renewable energy certificates, are consistent with the standards of the commission relating to least-cost, least-risk planning for acquisition of resources.

3. Determination of incremental costs on which the four percent cost cap is based (WAC 480-109-030): The Utilities proposed revisions to this section clarify how the cost cap is calculated. The language reflects the current practice of analyzing potential resources based on their impact on the utility's portfolio, rather than attempting to analyze such resources in a vacuum. As stated in the rule, the portfolio analysis will be reasonably consistent with principles used in the utility's resource planning and acquisition analyses.

Further, the Utilities proposed revisions to this section clarify that RECs, recoverable penalties and other prudently incurred costs may be included in the calculation of the incremental cost cap. These costs should be included in the calculation of the incremental cost cap as a way to ensure customers benefit from least cost options.

4. Administrative Penalties (WAC 480-109-050): RCW 19.285.060(6) grants the Commission authority to review utility compliance with RCW 19.285 and to assess a $50 per MWh penalty for any shortfall. The Commission's draft rule, WAC 480-109-050, includes language that mirrors the statute. The Utilities propose adding provisions to WAC 480-109-050 to address several key issues.

The Utilities propose adding a subsection (a) to subsection (4) to allow a utility to recover in rates any penalties imposed if the utility can demonstrate the cost of the penalty is less than the

cost of compliance with the standard (e.g., the prevailing cost of renewable energy credits or eligible renewable resources). Requiring a utility to bear the costs of pursuing the least cost option for consumers is poor regulatory and public policy and obviously discourages desirable conduct on the part of the utility.

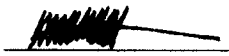
5. Cost Recovery (WAC 480-109-060): RCW 19.285.050(2) requires the Commission to address cost recovery issues. The proposed section WAC 480-109-060 seeks to provide a framework for consideration of some of the cost recovery considerations for this rulemaking. The proposed section is broken down into three subsections as follows:

Subsection (1) permits a utility to recover in rates all prudently incurred costs associated with complying with the renewable portfolio standard.

Subsection (2) allows all prudently incurred costs and offsets to costs to be passed through to customers at the same time. This will provide a matching of the costs and benefits of renewable resources. This is important, for example, if a utility has a Power Cost Adjustment mechanism (PCAM) that only reflects the energy component of renewable resources such as wind. To the extent renewable resources are acquired by power purchase agreements (PPAs), the cost of the PPAs is recovered through the PCAM at the same time as the energy is delivered to customers. However, most of PacifiCorp's renewable resources are not in the form of PPAs but, rather, are in the form of PacifiCorp investment in and ownership of the renewable resource because this is often the lowest cost option for our customers. But, a PCAM that does not permit recovery of capital and other fixed costs discourages pursuit of this lower cost option. The mismatch is extreme for renewable generation because the energy component of renewable energy resources is near zero, reflecting only a minimal amount of variable operations and maintenance expense. Effectively, a PCAM that only includes variable costs provides customers the benefit of zero cost energy from renewable resources with no recognition of the plant investment or the operating costs for the facility providing the zero power cost benefit. This mismatch is neither equitable nor is it sending customers correct price signals.

Subsection (3) allows a utility to use deferred accounting costs incurred in connection with acquisitions of eligible renewable resources to meet the renewable energy targets and to later seek recovery of these costs in rates.

Very truly yours,



Avista Corp

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Puget Sound Energy, Inc.

cc: Nicolas Garcia

Very truly yours,

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Very truly yours,

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