**BEFORE THE**
**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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| In the Matter of a Proposed Rulemaking To Implement Initiative Measure No. 937 | ) | Docket No. UE-061895 |
| | ) | COMMENTS OF THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES |

## I. INTRODUCTION

The Industrial Customers of Northwest Utilities ("ICNU") submits these comments in response to the Washington Utilities and Transportation Commission's (the "Commission") Notice of Opportunity to File Written Comments issued on June 15, 2007. ICNU supports the Commission's revised draft rules regarding the implementation of Initiative 937 ("I-937"), and believes that the draft rules provide a good balance between adopting rules necessary for the implementation of I-937 and those that are better left to a case-by-case determination, with the exception of the Commission's proposed treatment of penalties.

## II. COMMENTS

### 1. ICNU Supports the Commission's Proposed Definition of "Annual Retail Revenue Requirement"

Recalculating a utility's revenue requirement on an annual basis for purposes of measuring compliance with I-937 would require an extraordinary amount of effort for the Commission, utilities, and intervenors in a compliance docket. The Commission's current definition of "annual retail revenue requirement" as the retail revenue supported by Commission-approved tariffs will ensure accuracy and avoid administrative burden.



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**2. ICNU Supports the Commission's Proposed Definition of "Pro Rata"**

RCW § 19.285.040(1)(b) requires that a utility's biennial conservation targets be at least a "pro rata" share of the ten-year target. "Pro rata" need not be defined literally, i.e., 20% of the ten-year target. The dictionary defines "pro rata" as "proportionately according to some exactly calculable factor." Webster's Third Int'l Dictionary 1820 (2002); see also, Black's Law Dictionary 1236 (7th ed. 1999). As long as a utility provides the calculations showing how it determined the pro rata share, the requirements of I-937 have been met. Adherence to a rigid, inflexible definition of "pro rata" fails to account for the reality that certain conservation measures may not be available until the later years of a utility's ten-year target. With the possibility of penalties for missing the biennial conservation targets, it does not make sense to bind utilities in such a manner.

**3. ICNU Supports a "Grace Period" to Allow Utilities to Comply with the Renewable Resource Targets**

*Proposed* WAC § 480-109-050(3)(ii) allows utilities to acquire renewable energy credits ("RECs") in a subsequent year to make up any shortfall in meeting the renewable energy targets for the previous year. The Commission's interpretation of I-937 is entirely consistent with the statutory language and helps to more effectively meet the goals of I-937.

Although RCW § 19.285.040(2)(a) requires the acquisition of either renewable resources or RECs to meet the year's target by January 1 of the next year, subsection (e) allows utilities to meet the targets with RECs "produced during . . . the subsequent year," with no limitation as to when a REC was actually acquired. Reading these two provisions together creates an ambiguity, and it is reasonable to conclude that RECs produced *and* acquired in the



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subsequent year can be used to comply with the previous year's renewable resource target. The Commission's interpretation of an ambiguous statute within the Commission's field of expertise is entitled to substantial deference.[1/]

Further, the Commission's interpretation is more practical from a policy standpoint. Utilities are being forced to acquire to the exact megawatt hour ("MWh") renewable resources to meet an unknown target, as utilities will not know what their exact loads are for the year by January 1 of the next year. If utilities were not allowed to acquire RECs to meet a previous year's target, utilities would be unfairly punished for making and meeting the targets based on a good faith estimate of their loads, which will likely differ from actual loads when that information becomes available. Ultimately, customers could be punished if the utilities seek the recovery of penalties in rates. Allowing utilities to count RECs acquired and produced in a subsequent year will more accurately capture the intent of I-937.

**4. The Commission Should Make Clear that Issues Regarding Cost Recovery Will Not Be Decided in a Proceeding to Determine Whether a Utility Is in Compliance**

*Proposed* WAC § 480-109-040 establishes a proceeding to determine whether a utility is in compliance with the renewable resource and conservation targets for a given year and allows the Commission to assess penalties for noncompliance. It is possible that issues related to cost recovery may be interjected in such a proceeding, and the determination of those issues by the Commission may influence future proceedings in which a utility seeks the recovery of penalties in rates. The Commission should add a provision to *proposed* WAC § 480-109-040 clarifying that issues regarding cost recovery may not be raised or decided in a proceeding under

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[1/] See, e.g., Arco Prods. Co. v. Washington Util. and Transp. Comm'n, 125 Wn.2d 805, 810-11 (1995).



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this section. ICNU suggests the following language be inserted as *proposed* WAC § 480-109-040(2)(c):

> A proceeding under this section is limited to determining only whether a utility is in compliance. No issues regarding cost recovery may be raised or decided in a proceeding under this section.

**5. *Proposed* WAC § 480-109-050(5) Is Not Necessary for the Implementation of I-937**

Throughout the rulemaking proceedings, the Commission has expressed a desire to adopt only the rules necessary for the implementation of I-937 and to resolve other issues on a case-by-case basis under specific factual scenarios. ICNU believes the recovery of penalties in rates should be addressed on a case-by-case basis based on the specific reasons for noncompliance.

*Proposed* WAC § 480-109-050(5) allows a utility to request an accounting order authorizing the deferral of penalties. Under WAC § 480-07-370(b)(i), however, a utility already has the authority to request an accounting order. The addition of *proposed* WAC § 480-109-050(5) could be interpreted as affording utilities some greater right to a deferral in the context of penalties than already granted by the Commission's rules. Accordingly, it is not necessary for the Commission to adopt *proposed* WAC § 480-109-050(5).

## IV. CONCLUSION

ICNU appreciates the opportunity to submit these comments and looks forward to further working with the Commission in this rulemaking proceeding.



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Dated this 9th day of July, 2007.

Respectfully submitted,

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# Attachment A

## INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

Air Liquide
Air Products
Amcor PET Packaging USA, Inc.
BPB Gypsum
Blue Heron Paper Company
Boeing
Boise Cascade
Dyno Nobel, Inc.
ConAgra Foods
Eka Chemicals, Inc.
Emerald Kalama Chemical, LLC
Evanite Fiber
Georgia-Pacific
Grays Harbor Paper, L.P.
Hewlett-Packard
Hynix Semiconductor Manufacturing America
Inland Empire Paper Co.
Intel
J.R. Simplot
Kimberly-Clark Corporation
Longview Fibre
Microsoft Corporation
Norpac Foods
Oregon Steel Mills
PCC Structurals, Inc.
SP Newsprint
Shell Oil Products US
Simpson Paper
Simpson Timber
Solar Grade Silicon LLC
Tesoro Refining and Marketing Co.
Wah Chang
West Linn Paper Company
Weyerhaeuser