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October 6, 2014

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Steven V. King
Executive Director
Washington Utilities & Transportation Commission
1300 S. Evergreen Pk. Dr. S.W.
P.O. Box 47250
Olympia, WA 98504-7250

Re: *Rulemaking for Energy Independence Act, WAC 480-109*
Docket UE-131723

Dear Mr. King:

Enclosed please find Public Counsel's Comments for filing in the above referenced rulemaking docket, considering changes to the Commission's rules implementing the Energy Independence Act (EIA). With over four years of experience with EIA implementation, it is appropriate to review and modify the Commission's rules. With respect to the conservation requirements of the EIA, the Commission's orders approving utility biennial conservation targets and ten-year potential have included a set of conditions that have served as an effective framework, providing guidance to each utility regarding its responsibilities to comply with the EIA. Public Counsel has strongly supported the development, retention, and refinement of those conditions. We recognize and support the inclusion of many of those conditions in the proposed rules and believe they will help ensure the acquisition of cost-effective conservation as an important least cost resource. Our comments today respectfully request the Commission consider one modification to the proposed rules regarding energy savings, and one new addition to the proposed rules regarding new conservation programs. We also provide comment on changes to the proposed rules regarding the process for pursuing all conservation.

I will attend the Commission's November 5, 2014 Rule Adoption Hearing and will be available to discuss these comments and answer any questions.

Sincerely,

Mary Kimball
Senior Analyst
Public Counsel Division
(206) 389-2529

MK:cjb

UTC Comment form for Energy Independence Act Rulemaking, Proposed WAC 480-109, Docket UE-131723

Submit this form by 5 PM Monday, Oct. 6, 2014 via the Commission's Web portal at www.utc.wa.gov/e-filing or by e-mail to records@utc.wa.gov.

Comments on behalf of: Public Counsel, WA Attorney General's Office Commenter: Mary Kimball, Lea Fisher, Stefanie Johnson
 E-mail: maryk2@atg.wa.gov Phone: (206) 389-2529 (M. Kimball)

In the first column, fill in the section or subsection of interest in the rule. In the next columns provide the specific text, proposal for change, and rationale.

Comment 1	Current Text	Proposed Text	Comments or Rationale for proposed change
<p>Regarding WAC 480-109-060 Definitions</p> <p>Subsection (20) and WAC 480-109-100 Conservation Resources and Energy efficiency resource standard</p> <p>(1) Process for pursuing all conservation</p>	<p>(20) "Pursue all" means an ongoing process of researching and evaluating the range of possible conservation technologies and programs, and implementing all programs which are cost-effective, reliable and feasible.</p> <p>(1) Process for pursuing all conservation. (a) A utility's obligation to pursue all available conservation that is cost-effective, reliable, and feasible includes the following process: (i) Identify potential. *** (ii) Develop portfolio. *** (iii) Implement programs. *** (iv) Adaptively manage. ***</p>		<p>Public Counsel's understanding of the proposed rule language is that it provides further clarity and more detail as to how utilities shall comply with the statutory requirements of the EIA. In our view, some significant changes were made from the April 2014 informal draft rule, such as the removal of a proposed requirement in proposed Draft WAC 480-109-010(4)(a)(ii)(B) that specified "A utility's conservation portfolio must contain programs that are not included in the biennial conservation target and are available, cost-effective, reliable, and feasible." By removing that language and making other modifications, the proposed rules are more consistent with Commission Staff's statements at the May 15, 2014 workshop that the intent of the "pursue all" rule subsections is to preserve the integrity of the biennial conservation target setting process. This will help ensure a robust process for development of the biennial conservation targets, program development and implementation, and also specifies the expectation that utilities shall adaptively manage the conservation portfolio. In this regard then, we do not believe the current proposed rule language establishes a separate requirement outside of the biennial conservation target, which was a concern we raised with prior proposed rule language.</p>

<p>Comment 2 Regarding WAC 480-109-100(5)</p>	<p>Current Text (5) Energy savings. A utility must use unit energy savings values and protocols approved by the regional technical forum or by commission order. The commission will consider a unit energy savings value or protocol that is: (a) Based on generally accepted impact evaluation data or other reliable and relevant data that includes verified savings levels; and (b) Presented to its advisory group for review. The commission retains discretion to determine an appropriate value or protocol.</p>	<p>Proposed Text (5) Energy Savings A utility must use unit energy savings values and protocols approved by the regional technical forum, except as provided in this subsection. or by commission order. The commission will consider a unit energy savings value or protocol that is- <u>If a utility utilizes unit energy savings values or protocols other than those established by the regional technical forum such values or protocols must be:</u> (a) Based on generally accepted impact evaluation data or other reliable and relevant data that includes verified savings levels; and (b) Presented to its advisory group for review. The commission retains discretion to determine an appropriate value or protocol.</p>	<p>Rationale for proposed change Existing reference to approving energy savings values by “commission order” is new and may cause confusion and/or create new burdensome processes and have unintended consequences. Specifically, we observe that the proposed rule language may create unintended confusion in the event that the independent third party evaluator has findings that recommend an adjustment to reported savings. For example, if the commission order approving the biennial conservation plan is considered to ‘approve’ a certain savings value that the independent third party evaluator later finds inappropriate and recommends an adjustment, the commission arguably may not be able to consider such an adjustment depending upon how the proposed rule language is interpreted and implemented. Current practice as incorporated into conditions requirements is that the utilities must use RTF approved values, or in the alternative, they may use a different value if it is (a) based on rigorous impact evaluation with relevant and verified savings levels, and (b) presented to the advisory group for review. In general this practice has worked well and we recommend proposed rule language modification accordingly.</p>
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Comment 3	Current Text	Proposed Text	Rationale for proposed change
Regarding WAC 480-109-120	<p>WAC 480-109-120</p> <p>Conservation planning and reporting (1) Biennial conservation plan</p>	<p><u>(1)(c) When a utility proposes a new program, it must present it to the Advisory Group for comment with program details fully defined. After consultation with the Advisory Group in accordance with WAC 480-109-110, a utility must file an update or addendum to its biennial conservation plan or annual conservation plan. The update or addendum may be acknowledged by placement on the Commission’s No Action Open Meeting agenda.</u></p>	<p>The proposed rule does not include any specific requirements in the event a utility establishes new programs mid-biennium. We expect that from time to time utilities will implement new programs mid-biennium, consistent with expectations regarding adaptive management of the conservation portfolio. Current practice for all of the utilities is that when this occurs, the utility provides the advisory group with program details and allows for review and comment. A condition requiring this was incorporated for each of the three IOUs for the 2014-2015 biennium. The intent is to ensure that a similar process is followed in terms of engagement with the advisory group, whether programs are implemented as part of the biennial conservation plan, or mid-biennium. Since this requirement is part of the conditions for the 2014-2015 biennium, our understanding is that it would continue to apply to the IOUs for 2014-2015, even if it is not explicitly added to the proposed rules. For clarity purposes, and since we do not believe this to be a burdensome or controversial requirement, we recommend it be considered for inclusion in the rules.</p>
			<p>The language proposed here by Public Counsel is substantially similar to existing condition (6)(d) for all three of the electric IOUs for the 2014-2015 biennium. The current conditions have some slight wording differences (e.g. Avista and PacifiCorp refers to “new program” while PSE’s refers to “new program tariff.” (See UE-132043, Order 01, Appendix A, Condition (6)(d) for PSE; UE-132045, Order 01, Attachment A, Condition (6)(d) for Avista; UE-132047, Order 01, Attachment A, Condition (6)(d) for PacifiCorp.)</p>