

**Summary of Written Comments Draft Rules
Energy Independence Act - UE-061895
September 20, 2007**

ISSUE	INTERESTED PERSON	COMMENTS	RESPONSE
General	Industrial Customers of Northwest Utilities (ICNU)	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.	
WAC 480-109-007(1) Annual Retail Revenue Requirement	Puget Sound Energy (PSE) ICNU PacifiCorp Public Counsel	<ol style="list-style-type: none"> 1) PSE suggested a modification to this definition for clarity. 2) ICNU Supports the Commission's Proposed Definition of "Annual Retail Revenue Requirement." 3) PacifiCorp supports the proposed rules' definition of annual revenue requirement. 4) Public Counsel stated that the change in the regulatory language from the June 15 draft to recognize that a regulated utility's authorized revenue level can change in between rate cases as a result of a PCA or a PCORC appears reasonable. 	The proposed rules retained the definition but accepted PSE's suggested modification.
WAC 480-109-007(14) Gross Electric Savings	PSE	Define "gross electricity savings" to make clear that conservation savings will be measured using actual program participation levels and will not be retroactively adjusted based on program evaluation studies completed after the two-year target was set.	The proposed rules did not include this definition. Reported conservation savings should be based on the best available information. However, the proposed rules added WAC 480-109-010 (2)(c) which allows utilities to identify a range for the conservation potential and target. This should help deal with variations between expected and actual electricity savings.
WAC 480-109-007(14) Pro Rata	ICNU Renewable Northwest Project et al (RNP) PacifiCorp	<ol style="list-style-type: none"> 1) Supports the Commission's proposed definition of "pro rata" 2) The definition of "pro rata" is not based on the plain meaning definition of the term 3) The pro-rata share could also be a range. 	The definition proposed for "pro rata" is within the range of meanings found for this term. This definition would provide flexibility for each utility to match its conservation target with a realistic conservation implementation schedule. A target range is specifically allowed by WAC 480-109-010 (2)(c).

WAC 480-109-007 Definition of Real Time	Avista PacifiCorp PSE	1) We need to understand how restrictions in the statute might affect the economics of projects we might acquire. 2) It is in customers' best interest to adopt a definition for this term as soon as possible. Legal issues the Commission must consider in defining this term include consistency with the Commerce Clause and North American Free Trade Agreement. 3) Suggested a definition for real time	The Commission could find no industry standard definition for the term "real-time." Given the importance of this definition to renewable requirement, it needs to be based on sound analysis and study. However, the timing of this rulemaking does not allow a full analysis. Therefore, the best approach appears to be to delay establishing a definition for real-time to a later rule making.
WAC 480-109-010(1)(b) Altering the Council's Conservation Assessment methodology	RNP	The option to alter the Council's methodologies to better fit the characteristics of the utility's service territory is unlawfully broad.	RCW 19.285.040 (1)(a) excludes from the conservation potential any conservation that is not cost-effective. RCW 19.285.040 (1)(d) states that "the Commission may determine if a conservation program implemented by an investor-owned utility is cost-effective based on the Commission's policies and practice." Together, these provisions provide the Commission flexibility to allow utilities to deviate from the council's approach to determine what conservation is appropriate for their service territory.
WAC 480-109-010(2)(c) Conservation target	RNP PacifiCorp PSE	1) The statute does not provide the flexibility to set the target as a range rather than a point estimate. 2) The statute does not preclude setting the conservation potential as a range or the pro-rata share could also be a range. 3) Allowing some flexibility around the conservation target is good policy and is consistent with past Commission practices.	The statute does not address whether either a utility's conservation potential or conservation target must be a single number or a range. The proposed rule allows utilities to identify a range so that conservation target is realistically matched to the conservation implementation schedule.
WAC 480-109-010(3)(a) Public Participation	Public counsel	Require utilities to use stakeholder advisor groups to review the methodologies and assumptions used to develop its projected ten year conservation potential.	The draft language notes that public participation in the development of the ten-year conservation potential and the two-year conservation target is essential. Utilities must report the extent of public participation in the conservation target development. However, the draft rules do not specify how utilities must involve the public.
WAC 480-109-010(3) Reporting date	PSE	Require the report identifying the ten-year achievable potential and the biennial conservation target to be filed on January 31, 2010, consistent with the Act.	The proposed rule includes this modification.
WAC 480-109-010(4) Expedited Approval	PSE	Provide for expedited approve of a utility's two-year target if it is at least 19% of the ten-year conservation potential.	The proposed rule does not include this modification. A pro rata share may indicate a higher or lower amount of conservation than 20% depending on the conservation programs available to a utility. Thus, one cannot automatically assume that 19% is appropriate
WAC 480-109-010(4)(c) Approval of Conservation target	PacifiCorp/Public Counsel	The Commission should issue a decision approving the ten year and biennial conservation targets.	The proposed rule includes this modification.

WAC § 480-109-020 Renewable Resources	ICNU RNP	<ol style="list-style-type: none"> 1) The regulation should include a “grace period” to allow utilities to comply with the renewable resource targets 2) Utilities must comply “by January 1” of the compliance year. 	<p>A “grace period” appears inconsistent with the statute. RCW 19.285.040(2)(a) requires that utilities, by January 1 of each year, must have some combination of the following in their possession sufficient to meet the renewable target for that year:</p> <ol style="list-style-type: none"> a) RECs that were generated in the previous year, b) Rights to RECs that will be generated in the current or following year, c) MWhs from utility owned renewable generating assets that were produced in the previous year, or d) MWhs from utility owned renewable generating assets that are expected to be produced in the current or following year.
WAC § 480-109-020(1) Initial year of Compliance	Avista PacifiCorp PSE	<ol style="list-style-type: none"> 1) Does the first year of compliance commence on Jan. 1, 2012? 2) The most critical clarification the Commission can bring to the Act is to specify the first year for which compliance will be required. 3) The rules must provide additional clarity as to the dates by which the renewable targets must be met 	<p>The first compliance year is 2012. However, because utilities must have all the RECs or MWhs needed for 2012 on the first day of that year, utilities will have to take steps in the preceding year to meet the January 1, compliance date. The one exception is if a utility relies on MWhs from its own renewable generating assets that are expected to be produced in the current or following year.</p>
WAC 480-109-030 (1) (b) Incremental cost calculation	PacifiCorp PSE	<ol style="list-style-type: none"> 1) The cost of acquired renewable energy credits, recoverable penalties and other prudently incurred costs should be included in the calculation of the incremental cost cap 2) Incremental costs should be based on an analysis of the impact of the renewable resource on the utility's portfolio. As stated in the rule, the portfolio analysis will be reasonably consistent with principles used in the utility's resource planning and acquisition analyses. 	<p>The proposed rules do not detail what costs may be included in the incremental cost calculation. The act specifies that incremental costs are the expenditures made to acquire renewable resources or RECs. Any utility submitting an incremental cost calculation will have to support the costs it includes in that calculation.</p> <p>One approach to determining incremental costs would be to use a portfolio analysis to compare the utility's overall costs with the renewable resource relative to the utility's costs with the most cost-effective conventional resource.</p>
WAC 480-109-030 (1) (c) Alternatives to the renewable resource requirement.	PacifiCorp	Support retaining this provision	Agree
WAC 480-109-040 Compliance reporting	Avista/PSE	The compliance report for the year 2012 renewable resource requirement, must be filed on or before June 1, 2013	<p>RCW 19.285.070 (1) On or before June 1, 2012, and annually thereafter, each qualifying utility shall report to the department on its progress in the preceding year in meeting the targets established in RCW 19.285.040...</p> <p>The conservation and renewable targets established in RCW 19.285.040 begin in 2010 and 2012, respectively. Since the June 1, 2012 report is to cover “progress in the preceding year,” or 2011, that first report need only focus on the conservation requirement. The June 1, 2013 report would be the first report to deal with both conservation and renewables.</p>

WAC 480-109-040(1)(c) Alternative Compliance Mechanisms	RNP	Reliance on alternative compliance mechanisms must be adjudicated	The statute allows utilities the choice to select an alternative compliance mechanism. The proposed WAC requires utilities to declare if they are relying on an alternative compliance mechanism in the June 1 report. Any utility making such a declaration must also demonstrate that it met the requirements for that alternative mechanism. The proposed rules provide interested parties an opportunity to comment on whether a utility has made a sufficient demonstration. The Commission will consider any such comments when determining whether questions about a utilities compliance demonstration rise to the point that adjudication is warranted.
WAC 480-109-040 Annual reporting requirements	ICNU	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	WAC 480-109-050(4) makes clear that a utility may seek to recover deferred administrative penalties in a general rate case or power cost only type rate proceeding. A utility that seeks to recover deferred administrative penalties in rates must demonstrate that its decisions and actions were prudent when it failed to meet the renewable resource targets.
WAC 480-109-040 (1)(a) Expected and Actual electrical Savings	PacifiCorp	Report expected and actual gross electricity savings from conservation. This distinction clarifies that per unit savings will not be retroactively adjusted for results of program evaluations studies or changes to regionally accepted studies completed after the biennial target is established.	The proposed rules did not adopt this suggestion. Reported conservation savings should be based on the best available information. However, the proposed rules added WAC 480-109-010 (2)(c) which allows utilities to identify a range for the conservation potential and target. This should help deal with variations between expected and actual electricity savings.
WAC 480-109-040 (2) Commission Proceeding to Determine Compliance	RNP PacifiCorp	1) There is need for only one Commission proceeding to determine compliance and penalties 2) Include explicit language stating the Commission will make a decision	Agree. The draft rules [at WAC 480-109-040 (2)(c)] were revised to make clear that Commission review and action on a utility's June 1 report is the proceeding where compliance or non-compliance is established.
WAC 480-109-040 (5) Customer Notification	PacifiCorp/PSE Public Counsel	The regulation should allow flexibility relating to the manner by which a utility could satisfy the notification requirement. The utility should be able to work with the Commission to ensure the requirement is met in a cost effective and appropriate manner. Utilities need to provide reasonable access to the current and historical reports	Agree. The proposed language provides this flexibility. Each utility must provide a summary of this report to its customers by bill insert <u>or other suitable method</u> . The current full report and all past reports must be placed on the company's website.

WAC 480-109-050(4) Recovery of Administrative Penalties	ICNU PacifiCorp PSE Public Counsel	<p>1) This section is not necessary. Recovery of penalties should be addressed on a case-by-case basis based on the specific reasons for noncompliance. Under WAC § 480-07-370(b)(i), however, a utility already has the authority to request an accounting order. By specifically allowing a utility to request an accounting order authorizing the deferral of penalties, this section 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.</p> <p>2) RCW 19.285.050(2) requires the Commission to address cost recovery issues</p> <p>3) Add a subsection that expressly allows a utility to recover in rates any administrative penalties imposed if the utility can demonstrate the cost of the administrative penalty is less than the prevailing cost of renewable energy credits or eligible renewable resources.</p> <p>4) Ratepayers should not be responsible for paying penalties incurred by regulated utilities for failure to comply with state law. Cost recovery should not be allowed in a PCORC type proceeding.</p>	<p>Agree that recovery of penalties should be addressed on a case-by-case basis. However, stating that a utility has the authority to request an accounting order does not prejudice the question of recovery. It would be premature to detail the types of costs and circumstances where recovery would be allowed – especially given that the Commission can undertake a fact based inquiry to determine the prudence of a utility's action when it paid the penalty rather than acquired the specified conservation or renewable resources.</p> <p>The act specifies that the Commission may determine if an investor-owned utility may recover the cost of an administrative penalty in rates. PCORC type proceedings deal specifically with changes to power costs. Since decisions on the type of resources to acquire (renewable or non-renewable) could directly impact power costs, recovery of administrative penalties through these proceedings seems appropriate.</p>
Mitigation of penalties if events beyond a utilities' control prevented it from achieving its conservation target.	PSE	This proposed addition allows utilities to seek mitigation of administrative penalties if events beyond the utilities' control prevent them from meeting their conservation targets.	Force majeure is specifically included for the renewable target but not for the conservation target. Statutory construction would suggest the omission for conservation was purposeful and therefore should not be added by regulation.
Remedial Action	RNP	It is possible that an eligible renewable resource or renewable energy credit upon which the utility relied to demonstrate compliance could fail to perform due to some unexpected event during the compliance year 1 (such as underperformance of a generating resource). Absent remedial action, such underperformance would cause the utility to fail in actual fact to produce the renewable energy or ensure that the REC was produced that was used to satisfy the annual target for that compliance year.	This is an issue that is not necessary to resolve at this time. At the earliest, this issue would not become relevant until the year 2013 ends.