Comments of the Northwest Energy Efficiency Council and the NW Energy Coalition Regarding Notice of Proposed Rulemaking (CR-102) to Implement *the Energy Independence Act*

Washington Utilities and Transportation Commission - Docket UE-061895

September 26, 2007

The Council and the Coalition appreciate this final opportunity to submit comments in the rulemaking process to implement I-937. During the past nine months our organizations have submitted detailed comments on previous draft rules and we have participated in all stakeholder meetings held by the Commission during this rulemaking. As a result, our comments here focus only on 3 critical aspects of the conservation provisions and one related to recovery of administrative penalties.

The Commission's filing with regard to the concept of "pro-rata" (both in the definition and operation) deviates from the dictionary definition of the term as well as common sense application. Numerous dictionary definitions cite the necessity for "equal proportions" as key to the precise definition of the term. The clear and simple reading of the statutory language requires that each biennial conservation goal represent an equally proportionate share of the ten year achievable conservation potential. Any other disproportionate scheme for target setting, on a practical basis, renders the overall requirements of this law (capturing all cost effective and achievable conservation) as unenforceable. Utilities are required to file new ten-year conservation potentials and resultant two-year targets every biennium. Disproportionate target setting would allow a utility to continually forecast higher levels conservation acquisitions in the "out-years" of the ten-year planning horizon. Such a series of events would result in reduced conservation accomplishments over what would have been achieved had the targets been established on an equally proportionate basis. The language in WAC 480-109-010 2 (b) should be amended to require utility targets be set in at least equal proportion to the ten-year conservation potential. And of course, the proportional pro-rata target is a minimum target and nothing in the rule should discourage a utility from acquiring more cost effective energy savings than their target in any given biennium.

Section WAC 480-109-010 2 (c) establishes a rule which is incongruent with the intent of the law and dysfunctional in relation to the administrative penalty rules written in WAC 480-109-050. Ranges make no sense as conservation targets. The law requires that utilities establish "…a biennial acquisition target..." [emphasis added]. The rule filing permits a range of acquisition rates which cease to function as a range and operate as a point target when administrative penalty language is applied. To calculate the administrative penalty for failure to meet conservation goals, an exact point target is necessary. In effect, this establishes the minimum value of a range as the de facto point target for the biennial period. As such, the implied "maximum" end of the range provides no value in driving utility resource acquisition. If the Commission is seeking flexibility for utilities in the event that energy savings do not materialize, the Commission should consider limited flexibility when applying the penalty in WAC 480-109-050

rather than establish a meaningless conservation range. Again, the clear intent of the statute is to establish a single point biennial conservation target calculated as an equally proportioned share of the utility's ten-year conservation potential.

One small clarification is needed in Section WAC 480-109-040 (a) regarding reporting of conservation savings attributed to use of co-generation resources. The statute is clear that electricity savings can be counted toward the conservation target where the "high efficiency cogeneration is owned and used by a retail electric customer to meet its own needs." The last sentence of 040 (a) should read: The electricity savings reported for each high-efficiency cogeneration facility is the amount of energy consumption avoided at that site by the cogeneration facility owner by the sequential production of electricity and useful thermal energy from a common fuel source.

Section WAC 480-109-050 (4) outlines the process by which a utility can seek to recover deferred administrative penalties in rates. It is not clear that the Commission has requested sufficient documentation from a utility of the prudence of its decision and actions if it seeks recovery of penalties for non-compliance in rates. In addition, the Commission outlines a list of factors that the Commission will use when evaluating a request for recovery in rates. It is vital to the intent of the law that the Commission maintain a high threshold of prudence when considering recovery. A utility claim that it is cheaper for customers to pay the penalty than to comply with the law should not be sufficient demonstration for the Commission to grant recovery. In this example, the ratepayers paying the penalty receive none of the other benefits that come from investments in conservation and renewable resources – such as resource diversity, power delivery, lower electric bills, lower risk margins, reduced exposure to future carbon regulation, etc. The Commission should maintain a high standard before allowing recovery of penalties in rates.