

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RULEMAKING TO IMPLEMENT THE
INITIATIVE MEASURE NO. 937

Fourth Comment Opportunity (CR 102)

DOCKET NO. UE-061895

FOURTH COMMENTS OF PUBLIC COUNSEL (CR-102)

September 26, 2007

I. INTRODUCTION

Pursuant to the Notice of Extension of Time to File Comments of September 21, 2007, the Public Counsel Section of the Washington Attorney General's Office (Public Counsel) respectfully submits this fourth set of comments. The comments discuss and propose revisions to the proposed rules, WAC 480-109, referenced in the September 21st Notice.

II. COMMENTS

As a general proposition, Public Counsel continues to support the Commission's approach reflected in the revised draft rules. As we stated in previous comments, the Commission need not adopt a complex new regulatory framework at this stage of implementation. The proposed rules effectively avoid unnecessary complexities.

However, there are three sections of the proposed rules which Public Counsel urges should be revised.

A. Conservation Resources.

1. Stakeholder Participation and IRP Matters -- WAC 480-109-010.

Public Counsel respectfully restates its recommendation that the use of stakeholder advisory panels be mandatory. As stated in previous comments, the Commission benefits by having the participation of an active and knowledgeable stakeholder group because it both improves the quality of the utility's filed end product and the quality of the comments that the Commission receives after the filing. Proposed language for such a provision can be found on page 3 of our Third Comments (July 9, 2007). If stakeholder advisory panels are not made mandatory in the rules and if a utility has not facilitated public and Commission Staff participation, Public Counsel urges that during the review of that utility's report the Commission exercises its authority from the bench to require actions by the utility to provide an opportunity for stakeholder participation prior to approval of the filing.

2. Commission Approval of Targets.

Public Counsel supports the new rule language providing for the approval, approval with conditions or rejection of the utility's ten-year achievable conservation potential and biennial target. WAC 480-109-010(4)(c). This addition to the previous set of rules would have provided guidance for any further Commission proceedings and a clear goal for the utility to achieve.

The desire for a clear goal, however, is thwarted by the addition of language in the proposed rule that provides, "a range rather than a point target" for the biennial conservation target. WAC 480-109-010(2)(c). Public Counsel recommends striking this provision. This

definition of “target” is not within the common meaning as used in the Act. As the proposed rule is written, the lowest value in the range may be interpreted by the utility as the de facto actual target. This may lead to the underachievement of conservation goals or the re-litigation during a later penalty docket of the level in the range at which penalties are assessed. Moreover, the Commission must set a specific amount of conservation as the target so that utilities are aware of when administrative penalties could be assessed. If the Commission does not remove this provision, the Commission should specify the level within the range at which administrative penalties can be levied when it is approving the target for each utility.

B. Annual Reporting Requirements – WAC 480-109-040(4).

Public Counsel supports the Commission’s addition of language requiring that utilities post all current and historic annual reports electronically and provide reports to any person upon their request. This language recognizes the modern nature of electronic communications via web postings which reduce the transactional cost for individuals to learn of a utility’s compliance with the Act.

C. Administrative Penalties – WAC 480-109-050.

1. Requests to Recover Penalties in Rates --WAC 480-109-050(5).

Public Counsel reiterates its position that ratepayers are not responsible for paying penalties incurred by regulated utilities for failure to comply with state law. Other parties comments on Public Counsel’s position fail to grasp the meaning of the Act in the context of existing law, policy and precedent. While the Act provides a utility the opportunity to present a

request for deferral of penalties and a request for recovery in rates, the Act also provides authority to the Commission to make a determination of recoverability of penalties in rates. Under the existing law, policy and precedent, which the Commission will use to make that determination, Public Counsel believes there are no grounds for recovery of penalties in rates for a violation of the Act.

Public Counsel supports the addition of its proposed language for WAC 480-109-040(5). We still urge the removal of the Power Cost Only Rate Case (PCORC) as one of the proceedings for petitioning for recovery of deferred penalties in rates. We reiterate our previous arguments about why a PCORC is not an appropriate time for such a petition. The limited scope of the PCORC and the short four month schedule of the PCORC is an inappropriate proceeding for the litigation of the unique issue of recovery of deferred penalties under the Act.

Puget Sound Energy (PSE) appears to argue that its 2002 PCORC settlement somehow requires the Commission to include this provision. As a signatory to that settlement Public Counsel disagrees. Administrative penalties for law violations are not power costs. Moreover, the Act had not even passed at that time and it cannot reasonably be argued that the settlement intended to allow recovery of penalties which did not even exist at the time. Finally, as PSE and the Commission are fully aware, a collaborative is now under way to review and to better define the nature of the PCORC.

Public Counsel has continuing concerns with the interrelationship between the rules for assessing penalties, WAC 480-109-050(1)-(4), and for requests to recover penalties in rates. WAC 480-109-050(5). We have raised these concerns in previous comments and incorporate

them here again by reference. While Public Counsel does not have specific language to propose on this issue, it would be helpful to make clear, perhaps in the adopting order for the rules, that the penalty proceeding is limited to the question of liability for the penalty and will not include any pre-determination that the penalty is recoverable in rates.

III. CONCLUSION

Except as specifically noted in our comments, Public Counsel is in support of the Commission's proposed rules. Public Counsel respectfully requests that the Commission consider these few but important changes before adopting a final rule.