M E M O R A N D U M

October 22, 2007

To: Mark Sidran, Chairman
Patrick Oshie, Commissioner
Phil Jones, Commissioner

FROM: Energy Independence Act Rulemaking Team

SUBJECT: Energy Independence Act Rulemaking, Docket UE-061895
Adoption Hearing, Scheduled for October 24, 2007, at 1:30 p.m.

Background

On November 7, 2006, citizens Initiative No. 937 passed by public vote. That initiative established the Energy Independence Act (Act) which is now codified at RCW Chapter 19.285. The Act requires the three investor-owned electrical companies regulated by the Utilities and Transportation Commission (UTC), as well as certain large publicly owned electrical companies, to undertake cost-effective energy conservation and obtain 15 percent of their electricity from new renewable resources by 2020. The Act provides that the UTC "may adopt rules to ensure the proper implementation and enforcement of this chapter as it applies to investor-owned utilities." RCW 19.285.080(1). In addition, the Act provides that "rules needed for the implementation of this chapter must be adopted by December 31, 2007." RCW 19.285.080(4). Therefore, the Commission must conclude this rulemaking by the end of this year.

On January 24, 2007, the UTC filed a Preproposal Statement of Inquiry (CR-101) with the Office of the Code Reviser. On January 30, 2007, the UTC issued a notice requesting comments on the preferred approaches to implementing the Act. Ten interested parties filed comments revealing wide differences in preferences regarding the form and content of any rules resulting from this process.

From these comments and recommendations by UTC staff, the UTC developed and circulated a set of draft rules. The UTC convened a workshop to discuss the draft on March 26, 2007, requested comments by May 18, 2007, and provided interested parties an opportunity to negotiate a consensus approach to these rules. The interested parties were unable to reach consensus and the Commission received seven

comments on the draft rules. After reviewing these comments, the UTC circulated for comment a revised set of draft rules on June 15, 2007. The UTC received six comments on the revised draft rules.

On August 23, 2007, the UTC filed a Notice of Proposed Rule Making (CR-102) with the Code Reviser, requesting comment by September 21, 2007. On September 20, the deadline for comments was extended to September 26, 2007. The UTC received comments from seven interested parties.

Changes to the Proposed Rules

After careful review of the public comment, two changes to the proposed rules are recommended by staff. First, the Renewable Northwest Project (RNP) pointed out that the term "portfolio" as used in WAC 480-109-030(1) may be misconstrued to represent only resource additions considered as part of a utility's Integrated Resource Plan. The RNP recommended substituting the term "system" for "portfolio" to make clear that the utility must examine the difference in total system costs. This change, as well as other minor conforming language revisions, was made to the proposed rules. Second, again at RNP's suggestion, staff recommends revising the proposed rules to include a time period ("After December 7, 2006") specified in the Act that was omitted from WAC 480-109-030(3)(b).

The proposed rules, including the changes discussed above, are attached to this memorandum.

Other Comments on the Proposed Rules

Interested parties commenting on the proposed rules raised several other issues and suggested wording changes that were not accepted. Among others these issues include the request that the rules:

1) Define "real-time" electricity and "gross" electricity conservation;
2) Require utilities to use stakeholder advisor panels to develop their projected ten year conservation potential;
3) Allow utilities to demonstrate compliance at the end of the compliance year rather than on January 1 of that year;
4) Detail the costs that may be counted when a utility uses an alternative compliance mechanism based on overall expenditures; and,
5) Identify the conditions (if any) for when a utility may recover administrative penalties in rates.

The matrix accompanying this memorandum sets forth the reasons for staff's recommendation not to include these suggestions.

Conclusion

The UTC should adopt the proposed rules in rulemaking Docket UE-061895 with the changes recommended by staff.

Attachments

Chapter 480-109 WAC

ELECTRIC COMPANIES--ACQUISITION OF MINIMUM QUANTITIES OF CONSERVATION AND RENEWABLE ENERGY AS REQUIRED BY THE ENERGY INDEPENDENCE ACT (CHAPTER 19.285 RCW)

NEW SECTION

WAC 480-109-001 Purpose and scope. The purpose of this chapter is to establish rules that electric utilities will use to comply with the requirements of the Energy Independence Act, chapter 19.285 RCW.

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NEW SECTION

WAC 480-109-002 Application of rules. (1) The rules in this chapter apply to any electric utility that is subject to the commission's jurisdiction under RCW 80.04.010 and chapter 80.28 RCW.

(2) Any affected person may ask the commission to review the interpretation of these rules by a utility by making an informal complaint under WAC 480-07-910, Informal complaints, or by filing a formal complaint under WAC 480-07-370, Pleadings--General.

(3) No exception from the provisions of any rule in this chapter is permitted without prior written authorization by the commission. Such exceptions may be granted only if consistent with the public interest, the purposes underlying regulation, and applicable law. Any deviation from the provisions of any rule in this chapter without prior commission authorization will be subject to penalties as provided by law.

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NEW SECTION

WAC 480-109-003 Exemptions from rules in chapter 480-109 WAC. The commission may grant an exemption from the provisions of any rule in this chapter in the same manner and consistent with the standards and according to the procedures set forth in WAC 480-07-110 (Exemptions from and modifications to commission rules; conflicts involving rules).

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NEW SECTION

WAC 480-109-004 Additional requirements. (1) These rules do not relieve any utility from any of its duties and obligations under the laws of the state of Washington.

(2) The commission retains its authority to impose additional or different requirements on any utility in appropriate circumstances, consistent with the requirements of law.

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NEW SECTION

WAC 480-109-006 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

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NEW SECTION

WAC 480-109-007 Definitions. (1) "Annual retail revenue requirement" means the total revenue the commission authorizes a utility an opportunity to recover in Washington rates pursuant to a general rate proceeding or other general rate revision.

(2) "Commission" means the Washington utilities and transportation commission.

(3) "Conservation" means any reduction in electric power consumption resulting from increases in the efficiency of energy use, production, or distribution.

(4) "Conservation council" means the Pacific Northwest electric power and conservation council.

(5) "Cost-effective" has the same meaning as defined in RCW 80.52.030.

(6) "Customer" means a person or entity that purchases electricity for ultimate consumption and not for resale.

(7) "Department" means the department of community, trade, and economic development or its successor.

(8) "Distributed generation" means an eligible renewable resource where the generation facility or any integrated cluster of such facilities has a generating capacity of not more than five megawatts.

(9) "Eligible renewable resource" means:

(a) Electricity from a generation facility powered by a renewable resource other than fresh water that commences operation after March 31, 1999, where:

(i) The facility is located in the Pacific Northwest; or

(ii) The electricity from the facility is delivered into Washington state on a real-time basis without shaping, storage, or integration services; or

(b) Incremental electricity produced as a result of efficiency improvements completed after March 31, 1999, to hydroelectric generation projects owned by a qualifying utility and located in the Pacific Northwest or to hydroelectric generation in irrigation pipes and canals located in the Pacific Northwest, where the additional generation in either case does not result in new water diversions or impoundments.

(10) "High-efficiency cogeneration" means a cogeneration facility with a useful thermal output of no less than thirty-three percent of the total energy output, under normal operating conditions. Electrical output will be calculated as the kWh output of the facility over a period of time, converted to BTUs using the conversion factor of 3413 BTUs/kWh. Total energy output must be calculated by summing all useful energy outputs of the cogeneration facility over the same period of time expressed in BTU units.

(11) "Integrated resource plan" or "IRP" means the filing made every two years by an electric utility in accordance with WAC 480-100-238, Integrated resource planning.

(12) "Load" means the amount of kilowatt-hours of electricity delivered in the most recently completed year by a qualifying utility to its Washington retail customers. Load does not include off-system sales or electricity delivered to transmission-only customers.

(13) "Nonpower attributes" means all environmentally related characteristics, exclusive of energy, capacity reliability, and other electrical power service attributes, that are associated with the generation of electricity from a renewable resource, including but not limited to the facility's fuel type, geographic location, vintage, qualification as an eligible renewable resource, and avoided emissions of pollutants to the air, soil, or water, and avoided emissions of carbon dioxide and other greenhouse gases.

(14) "Pro rata" means the calculation used to establish a minimum level for a conservation target based on a utility's projected ten year conservation potential.

(15) "Pacific Northwest" has the same meaning as defined for the Bonneville power administration in section 3 of the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2698; 16 U.S.C. Sec. 839a).

(16) "Request for proposal" or "RFP" means the documents describing an electric utility's solicitation of bids for delivering electric capacity, energy, or capacity and energy, or conservation.

(17) "Renewable energy credit" means a tradable certificate of proof of at least one megawatt-hour of an eligible renewable

resource where the generation facility is not powered by fresh water, the certificate includes all of the nonpower attributes associated with that one megawatt-hour of electricity, and the certificate is verified by a renewable energy credit tracking system selected by the department.

(18) "Renewable resource" means:

(a) Water;

(b) Wind;

(c) Solar energy;

(d) Geothermal energy;

(e) Landfill gas;

(f) Wave, ocean, or tidal power;

(g) Gas from sewage treatment facilities;

(h) Biodiesel fuel as defined in RCW 82.29A.135 that is not derived from crops raised on land cleared from old growth or first-growth forests where the clearing occurred after December 7, 2006; and

(i) Biomass energy based on animal waste or solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include:

(i) Wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic;

(ii) Black liquor by-product from paper production;

(iii) Wood from old growth forests; or

(iv) Municipal solid waste.

(19) "Utility" means an electrical company that is subject to the commission's jurisdiction under RCW 80.04.010 and chapter 80.28 RCW.

(20) "Year" means the twelve-month period commencing January 1st and ending December 31st.

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NEW SECTION

WAC 480-109-010 Conservation resources. (1) By January 1, 2010, and every two years thereafter, each utility must project its cumulative ten-year conservation potential.

(a) This projection need only consider conservation resources that are cost-effective, reliable and feasible.

(b) This projection must be derived from and reasonably consistent with one of two sources:

(i) The utility's most recent IRP, including any information learned in its subsequent resource acquisition process, or the utility must document the reasons for any differences. When developing this projection, utilities must use methodologies that are consistent with those used by the conservation council in its most recent regional power plan. A utility may, with full documentation on the rationale for any modification, alter the conservation council's methodologies to

better fit the attributes and characteristics of its service territory.

(ii) The utility's proportionate share, developed as a percentage of its retail sales, of the conservation council's current power plan targets for the state of Washington.

(2) Beginning January 2010, and every two years thereafter, each utility must establish a biennial conservation target.

(a) The biennial conservation target must identify all achievable conservation opportunities.

(b) The biennial conservation target must be no lower than a pro rata share of the utility's ten-year cumulative achievable conservation potential. Each utility must fully document how it prorated its ten-year cumulative conservation potential to determine the minimum level for its biennial conservation target.

(c) The biennial conservation target may be a range rather than a point target.

(3) On or before January 31, 2010, and every two years thereafter, each utility must file with the commission a report identifying its ten-year achievable conservation potential and its biennial conservation target.

(a) Participation by the commission staff and the public in the development of the ten-year conservation potential and the two-year conservation target is essential. The report must outline the extent of public and commission staff participation in the development of these conservation metrics.

(b) This report must identify whether the conservation council's plan or the utility's IRP and acquisition process were the source of its ten-year conservation potential. The report must also clearly state how the utility prorated this ten-year projection to create its two-year conservation target.

(c) If the utility uses its integrated resource plan and related information to determine its ten-year conservation potential, the report must describe the technologies, data collection, processes, procedures and assumptions the utility used to develop these figures. This report must describe and support any changes in assumptions or methodologies used in the utility's most recent IRP or the conservation council's power plan.

(4) Commission staff and other interested parties may file written comments regarding a utility's ten-year achievable conservation potential or its biennial conservation target within thirty days of the utility's filing.

(a) After reviewing any written comments, the commission will decide whether to hear oral comments regarding the utility's filing at a subsequent open public meeting.

(b) The commission, considering any written or oral comments, may determine that additional scrutiny is warranted of a utility's ten-year achievable conservation potential or biennial conservation target. If the commission determines that additional review is needed, the commission will establish an adjudicative proceeding or other process to fully consider appropriate revisions.

(c) Upon conclusion of the commission review, the commission will determine whether to approve, approve with conditions, or reject the utility's ten-year achievable conservation potential and biennial conservation target.

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NEW SECTION

WAC 480-109-020 Renewable resources. (1) Each utility must meet the following annual targets.

(a) By January 1 of each year beginning in 2012 and continuing through 2015, each utility must acquire sufficient eligible renewable resources, equivalent renewable energy credits, or a combination of both, to supply at least three percent of its load for the remainder of each year.

(b) By January 1 of each year beginning in 2016 and continuing through 2019, each utility must acquire sufficient eligible renewable resources, equivalent renewable energy credits, or a combination of both, to supply at least nine percent of its load for the remainder of each year.

(c) By January 1 of each year beginning in 2020 and continuing each year thereafter, each utility must acquire sufficient eligible renewable resources, equivalent renewable

energy credits, or a combination of both, to supply at least fifteen percent of its load for the remainder of each year.

(2) Renewable energy credits produced during the target year, the preceding year or the subsequent year may be used to comply with this annual renewable resource requirement provided that they were acquired by January 1 of the target year.

(3) In meeting the annual targets of this subsection, a utility must calculate its annual load based on the average of the utility's load for the previous two years.

(4) A renewable resource within the Pacific Northwest may receive integration, shaping, storage or other services from sources outside of the Pacific Northwest and remain eligible to count towards a utility's renewable resource target.

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NEW SECTION

WAC 480-109-030 Alternatives to the renewable resource requirement. Instead of meeting its annual renewable resource target in WAC 480-109-020, a utility may make one of three demonstrations.

(1) A utility may invest at least four percent of its total annual retail revenue requirement on the incremental costs of eligible renewable resources, renewable energy credits, or a

combination of both. The incremental cost of an eligible renewable resource is the difference between the levelized delivered ~~portfolio~~ system cost of the eligible renewable resource and the levelized delivered system cost of an equivalent amount of reasonably available nonrenewable resource. The ~~portfolio~~ analysis used to calculate system costs will be reasonably consistent with principles used in the utility's resource planning and acquisition analyses.

(2) A utility may demonstrate that events beyond its reasonable control that could not have been reasonably anticipated or ameliorated prevented it from meeting the renewable energy target. Such events may include weather-related damage, mechanical failure, strikes, lockouts, or actions of a governmental authority that adversely affect the generation, transmission, or distribution of an eligible renewable resource owned by or under contract to a qualifying utility.

(3) A utility may demonstrate all of the following:

(a) Its weather-adjusted load for the previous three years on average did not increase.

(b) After December 7, 2006, all new or renewed ownership or purchases of electricity from nonrenewable resources other than daily spot purchases were offset by equivalent renewable energy credits.

(c) It invested at least one percent of its total annual retail revenue requirement that year on eligible renewable resources, renewable energy credits, or a combination of both.

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NEW SECTION

WAC 480-109-040 Annual reporting requirements. (1) On or before June 1, 2012, and annually thereafter, each utility must file a report with the commission and the department regarding its progress in meeting its conservation and renewable resource targets during the preceding year.

(a) The report must include the conservation target for that year, the expected and actual electricity savings from conservation, and all expenditures made to acquire conservation.

The report may count electricity savings from new high-efficiency cogeneration facilities operating within the utility's service area towards the utility's conservation target during the biennium when the cogeneration facility commences operation. The electricity savings reported for each high-efficiency cogeneration facility is the amount of energy consumption avoided by the sequential production of electricity and useful thermal energy from a common fuel source.

(b) The report must include the utility's annual load for the prior two years, the total number of megawatt-hours from eligible renewable resources and/or renewable resource credits the utility needed to meet its annual renewable energy target by

January 1 of the target year, the amount (in megawatt-hours) and cost of each type of eligible renewable resource used, the amount (in megawatt-hours) and cost of renewable energy credits acquired, the type and cost (per megawatt-hour) of the least-cost substitute resources available to the utility that do not qualify as eligible renewable resources, the incremental cost of eligible renewable resources and renewable energy credits, and the ratio of this investment relative to the utility's total annual retail revenue requirement.

(c) The report must state if the utility is relying upon one of the alternative compliance mechanisms provided in WAC 480-109-030 instead of meeting its renewable resource target. A utility using an alternative compliance mechanism must include sufficient data, documentation and other information in its report to demonstrate that it qualifies to use that alternative mechanism.

(d) The report must describe the steps the utility is taking to meet the renewable resource requirements for the current year. This description should indicate whether the utility plans to use or acquire its own renewable resources, plans to or has acquired contracted renewable resources, or plans to use an alternative compliance mechanism.

(2) Commission staff and other interested parties may file written comments regarding a utility's report within thirty days of the utility's filing.

(a) After reviewing any written comments, the commission will decide whether to hear oral comments regarding the utility's filing at a subsequent open meeting.

(b) The commission, considering any written or oral comments, may determine that additional scrutiny of the report is warranted. If the commission determines that additional review is needed, the commission will establish an adjudicative proceeding or other process to fully consider appropriate revisions.

(c) Upon conclusion of the commission review of the utility's report, the commission will issue a decision determining whether the utility complied with its conservation and renewable resource targets. If the utility is not in compliance, the commission will determine the amount in megawatt-hours by which the utility was deficient in meeting those targets.

(3) If a utility revises its report as a result of the commission review, the utility must submit the revised final report to the department.

(4) All current and historical reports required in subsection (1) of this section must be posted on the utility's web site and a copy of any report must be provided to any person upon request.

(5) Each utility must provide a summary of this report to its customers by bill insert or other suitable method. This summary must be provided within ninety days of final action by the commission on this report.

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NEW SECTION

WAC 480-109-050 Administrative penalties. (1) A utility that fails to achieve either its conservation target or its renewable resource target must pay an administrative penalty for each megawatt-hour of shortfall in the amount of fifty dollars adjusted annually, beginning in 2007, to reflect changes in the gross domestic product-implicit price deflator, as published by the Bureau of Economic Analysis of the United States Department of Commerce or its successor.

(2) Administrative penalties are due within fifteen days of a commission determination, pursuant to WAC 480-109-040(2), that a utility failed to achieve its conservation or renewable resource target.

(3) A utility that pays an administrative penalty under subsection (2) of this section, must notify its retail electric customers within three months of incurring a penalty stating the size of the penalty, the reason it was incurred and whether the utility expects to seek recovery of the penalty amounts in rates. The utility must provide this notification in a bill insert, a written publication mailed to all retail electricity customers, or another approach approved by the commission.

(4) A utility may request an accounting order from the commission authorizing the deferral of the cost of any administrative penalty assessed under this section. The approval of an accounting order to defer penalties does not constitute approval of recovery of penalties in rates. A utility may seek to recover deferred administrative penalties in a general rate case or power cost only type rate proceeding. If a utility seeks to recover deferred administrative penalties in rates, the utility must demonstrate the prudence of its decisions and actions when it failed to meet the renewable resource targets or one of the compliance alternatives provided in WAC 480-109-030, or the energy conservation targets. When assessing a request for recovery of deferred administrative penalties, the commission will consider the intent of the Energy Independence Act, other laws governing commission actions, policies and precedents of the commission, and the commission's responsibility to act in the public interest.

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Summary of Written Comments in Response to the CR102

ISSUE	INTERESTED PERSON	COMMENTS	RESPONSE
General	PacifiCorp Public Counsel	Significant uncertainty remains which will impact how and whether compliance is achieved, and the costs associated with compliance. Support the Commission's approach reflected in the revised draft rules	
WAC 480-109-007(1) (1) "Annual retail revenue requirement" means the total revenue the commission authorizes a utility an opportunity to recover in Washington rates pursuant to a general rate proceeding or other general rate revision.	Renewable Northwest Project et al (RNP)	The proposed definition is not consistent with the law. It does not take into account increases in costs from year to year. An approach that would meet the spirit of the law would adjust the retail revenue requirement based on annual adjustments to the utility's test year sales to reflect changes from the test year to the compliance year.	Reject. The Energy Independence Act (Act) states that a utility that invests 4% of its "annual retail revenue requirement" on the incremental costs of renewable resources, the cost of RECs, or a combination thereof is in compliance with the renewable standard. RCW 19.285.050(1)(a). The Commission uses the phrase "annual retail revenue requirement" is used in a specific way and the proposed rules follow this practice. The Act did not establish an alternate meaning. The RNP proposal would contradict that practice by removing the word "requirement" from the phrase "annual retail revenue requirement".
WAC 480-109-007(14) "Pro rata" means the calculation used to establish a minimum level for a conservation target based on a utility's projected ten year conservation potential.	Northwest Energy Efficiency Council et al (EEC)	The Commission's deviates from the dictionary definition of pro rata. Numerous dictionary definitions cite "equal proportions" as key to the precise definition of the term. The statutory language requires that each biennial conservation goal represent an equal proportionate share of the ten year achievable conservation potential.	Reject. The proposed definition mirrors the Act at RCW 19.285.040(1)(b). The definition is also 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.
WAC 480-109-007(18)(i) Biomass energy based on animal waste or solid organic	Avista	Eligible renewable electricity produced by biomass facilities should be based on the portion of the fuel	RNP, in their July 9, 2007, comments, suggested that eligible renewable resources used in co-

ISSUE	INTERESTED PERSON	COMMENTS	RESPONSE
fuels from wood, forest, or field residues, or dedicated energy crops that do not include: (i) Wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; (ii) Black liquor by-product from paper production; (iii) Wood from old growth forests; or (iv) Municipal solid waste.		supply that is made up of eligible biomass fuels.	firing applications should qualify towards meeting the renewable energy target based on the prorated share of the eligible renewable resource. We agree.
Add definition for "Gross electric savings"	PSE PacifiCorp	1) Conservation savings should not be retroactively adjusted based on program evaluation studies completed after the two-year target was set. The assumptions used to establish the target should be used to measure compliance. This is how PSE and its CRAG operate. 2) The Commission should clarify if it intends to allow reported conservation savings to be based on assumptions used in setting the conservation target or the "based on the best available information."	The Act is clear that administrative penalties are required "for each megawatt-hour of shortfall." RCW 19.285.060(1). And, the determination of whether there was a conservation shortfall should be based on the best available information, information that may update the conservation savings assumed at the time the target was set. The rules do allow utilities to identify a range for the conservation potential and target. WAC 480-109-010(2)(c). This should help address variations between expected and actual electricity savings.
Add a definition for the phrase "Real-time basis without shaping, storage or integration"	PacifiCorp PSE	1) It is important to clarify the phrase "real-time basis without shaping, storage or integration." The Commission must explain the process used to determine whether a resource is eligible. 2) Postponing this issue leaves utilities facing uncertainty when they acquire resources. Suggested a definition for real time	Reject. There is no industry standard definition for the term "real-time." This definition needs to be based on sound analysis given its importance of to the renewable mandate. However, the timing of this rulemaking does not allow a full analysis. Therefore, establishing a definition for "real-time" should be delayed to a later rule making.

ISSUE	INTERESTED PERSON	COMMENTS	RESPONSE
WAC 480-109-010(2)(c) The biennial conservation target may be a range rather than a point target.	EEC PacifiCorp Public Counsel	1) Ranges make no sense as conservation targets. A point target is needed to determine if a utility met its conservation goals. The minimum value of the range will become the de facto point target. 2) Allow the biennial conservation target to "be a range rather than a point target." 3) A range is not within the common meaning of the term "conservation target." The lowest value in the range may become the de facto target leading to underachievement of conservation goals or later litigation. Utilities need a specific conservation target to know when administrative penalties will be assessed. The Commission, if it retains this provision, should specify the level within the range at which administrative penalties can be levied.	The Act does not limit a utility's conservation potential or conservation target to a single number. Allowing a conservation range gives utilities the flexibility to realistically match the conservation target to the conservation implementation schedule. Finally, proposed WAC 480-109-010(4) provides that the Commission will approve a utility's biennial conservation target. This will minimize the risks identified by the comments.
WAC 480-109-010(3)(a) Participation by the commission staff and the public in the development of the ten-year conservation potential and the two-year conservation target is essential. The report must outline the extent of public and commission staff participation in the development of these conservation metrics.	Public Counsel	Restates its recommendation to require utilities to use stakeholder advisor panels to review the methodologies and assumptions used to develop its projected ten year conservation potential.	Reject. It is essential to have the public involved in the development of the conservation target and potential. Utilities know best how to accomplish this. The Commission expects that public will be involved in a manner similar to other ongoing public processes such as the CRAG (PSE), the EEE (Avista), or the Washington Advisory Group (PacifiCorp).
WAC 480-109-010(4)(c) Upon conclusion of the commission review, the commission will determine whether to approve, approve with conditions, or reject the utility's ten-year achievable conservation potential and biennial conservation target.	Avista	Establish March 31 as the date by which the commission will make a determination on the utility's targets filed in January of the same year.	Reject. The Commission will endeavor to make a determination on a utility's goals and targets as quickly as possible. However, given that these metrics could become subject to an adjudicative or other review process (See WAC 480-109-010(4)(c)) the Commission cannot establish a fixed date by which it will make a final determination.

ISSUE	INTERESTED PERSON	COMMENTS	RESPONSE
WAC § 480-109-020 Renewable Resources	PacifiCorp	Remove WAC 480-109-020 entirely. This language essentially mirrors the language in RCW 19.285(2)(a).	Reject. The rule language provides important context and the detail needed to implement the Act.
WAC § 480-109-020 (1) Each utility must meet the following annual targets. (a) By January 1 of each year beginning in 2012 and continuing through 2015, each utility must acquire sufficient eligible renewable resources, equivalent renewable energy credits, or a combination of both, to supply at least three percent of its load for the remainder of each year. (b) By January 1 of each year beginning in 2016 and continuing through 2019, each utility must acquire sufficient eligible renewable resources, equivalent renewable energy credits, or a combination of both, to supply at least nine percent of its load for the remainder of each year. (c) By January 1 of each year beginning in 2020 and continuing each year thereafter, each utility must acquire sufficient eligible renewable resources, equivalent renewable energy credits, or a combination of both, to supply at least fifteen percent of its load for the remainder	ICNU PSE PacifiCorp Avista	1) Allowing utilities to use RECs acquired and produced in a subsequent year is a plausible interpretation of the statutory language and furthers the goals of I-937 and the Commission's duty to regulate in the public interest. The Commission need not be constrained by the Sponsors argument that I-937 precludes utilities from using RECs that are not acquired by January 1, of the target year. Differing interpretations of the statutory language show that I-937 is ambiguous.[1] Because I-937 is a statute within the Commission's field of expertise, the Commission is afforded substantial deference in the interpretation of an ambiguous statute.[2] 2) The Draft Rules are inconsistent with the language and spirit of the Act because they require utilities to meet the renewable resource target on January 1 of the target year, rather than allowing the use of the full statutory three-year time period to meet the targets. 3) The reference to a single day in time, January 1, in relation to the annual target is at odds with the definition of "load" and "year." 4) The commission should follow the template CTED's September 5, 2007 draft rule language. CTED's draft rule requires each utility to "…demonstrat[e]	The requirements of RCW 19.285.040(2)(a) are clear. By January 1 of each year beginning 2012, each utility must use or acquire one of the following or some combination of the following to meet an annual renewable target: 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, (see discussion below on WAC § 480-109-020(2)) or The statutory language does not allow the Commission to alter the compliance date, or the date by which utilities must acquire the rights to future RECs. Avista appears to interpret CTED's proposed rules to allow a demonstration of compliance at the conclusion of the target year rather than on January 1 of that year. The Commission disagrees with that interpretation. We understand CTED's rules to require compliance on the first day of the target year.

[1/] See, e.g., Lane v. Dep't of Labor and Indus., 21 Wn.2d 420, 423 (1944) (statute is ambiguous where "reasonable minds are uncertain or disagree as to its meaning").
[2/] See Arco Prods. Co. v. WUTC, 125 Wn.2d 805, 810-11 (1995); Nationscapital Mortgage Corp. v. Dep't of Financial Institutions, 133 Wn. App. 723, 737 (2006).

ISSUE	INTERESTED PERSON	COMMENTS	RESPONSE
of each year.		that it acquired in the target year: (a) eligible renewable resources by December 31 of the target year; (b) RECs from the target year, the prior year or the year subsequent to the target year; or (c) any combination of (a) and (b)…"	
WAC § 480-109-020(2) Renewable energy credits produced during the target year, the preceding year or the subsequent year may be used to comply with this annual renewable resource requirement provided that they were acquired by January 1 of the target year.	RNP PSE PacifiCorp	1) The Act only permits RECs from prior and subsequent years to count towards the targets, not MWhs. A utility relying on MWhs produced in the prior or subsequent years must first turn those MWhs into RECs prior to counting them towards compliance. 2) There is no basis in law for the Draft Rules to distinguish between RECs from a renewable resource owned by a utility and RECs purchased from a third party. No penalty can be assess until a utility has had the full benefit of RECs produced during the target year, the preceding year, and the subsequent year. 3) Why will a utility not have to take steps in the preceding year to meet the January 1 compliance date if it is relying on MWhs from its own generating resources expected to be produced in the current year or following year.	RCW 19.285.040(2)(a) establishes targets that utilities must meet each January 1 beginning in 2012. Those targets may be satisfied by using eligible renewable resources, acquiring equivalent RECs, or a combination of both. It appears that the statutory intention was to limit the use of MWhs to the target year.
WAC § 480-109-020(3) In meeting the annual targets of this subsection, a utility must calculate its annual load based on the average of the utility's load for the previous two years.	Avista PSE	1) The target for compliance year 2012 is the load from year 2011. And under this section, the year 2011 load is then the average of the utility's load for 2009 and 2010. 2) Utilities will not know the load on which the renewable target is based until after the date for setting the target has passed. This is unreasonable, violates due process and will not be enforced.	RCW 19.285.040(2)(c) is unambiguous: "In meeting the annual targets in (a) of this subsection, a qualifying utility shall calculate its annual load based on the average of the utility's load for the previous two years." Therefore, the January 1, 2012 target is based on the average of the utility's 2010 and 2011 load.

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	PacifiCorp	3) The Commission should confirm it intends for a utility to comply with an unknown and unknowable the target or clarify how it reconciles the fact that the utility will not know its target by the time it is expected to comply.	Staff recognizes that some latter portion of a utility's 2011 load will not be known on January 1, 2012. In response utilities should make a reasonable projection of that portion of their load based on assumptions for weather, load growth, and other important factors. Should actual load fall outside the projection due to, for example, unusual weather, the utility could include the occurrence of that event as part of any request to recover any penalties associated with non-compliance. A utility could also determine to acquire some level of excess RECs or MWhs to ensure that it complied with the renewable mandate.
WAC 480-109-030 (1) A utility may invest at least four percent of its total annual retail revenue requirement on the incremental costs of eligible renewable resources, renewable energy credits, or a combination of both. The incremental cost of an eligible renewable resource is the difference between the levelized delivered portfolio cost of the eligible renewable resource and the levelized delivered cost of an equivalent amount of reasonably available nonrenewable resource. The portfolio analysis used will be reasonably consistent with principles used in the utility's resource planning and acquisition analyses.	PSE RNP	1) Disagrees with the decision not to include detail in the Draft Rules regarding the costs that may be included in the incremental cost calculation. 2) The term "portfolio" may be misconstrued to represent sets of resource additions a utility is considering in its Integrated Resource Plan. The Commission's intent appears to be to examine the difference in total system costs with the eligible renewable and the substitute resource, in the context of the utility's full portfolio of existing resources. Suggest substituting the term "system" for "portfolio" to avert a potential misunderstanding.	The proposed rule mirrors the Act at RCW 19.285.050(1)(a) and (b). Moreover, with the Commission's authority to conduct fact based adjudications of utility filings, it is important not to pre-judge what costs may be included in an incremental cost calculation. Any utility following this alternative compliance approach, must support the costs it wants included in the calculation. A utility may, for example, 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. Agree, substitute the word "system" for "portfolio" (along with other minimal wording changes) to minimize the potential for confusion.

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WAC 480-109-030 (3) (b) All new or renewed ownership or purchases of electricity from nonrenewable resources other than daily spot purchases were offset by equivalent renewable energy credits.	RNP	RCW 19.285.040(2)(d) provides that "after December 7, 2006" the utility did not invest in new or incremental purchases of nonrenewable resources (except spot purchases) without acquiring offsetting renewable energy credits. The date was omitted in the rules.	Agree. Reword the section to read: WAC 480-109-030 (3) (b) <u>After December 7, 2006,</u> all new or renewed…
WAC 480-109-040(1)(a) The report may count electricity savings from new high-efficiency cogeneration facilities operating within the utility's service area towards the utility's conservation target during the biennium when the cogeneration facility commences operation. The electricity savings reported for each high-efficiency cogeneration facility is the amount of energy consumption avoided by the sequential production of electricity and useful thermal energy from a common fuel source.	EEC	Electricity savings can count towards 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 be amended to read: The electricity savings reported for each high-efficiency cogeneration facility is the amount of energy consumption avoided <u>at that site by the cogeneration facility owner</u> by the sequential production of electricity and useful thermal energy from a common fuel source.	A customer with a cogen facility may operate at several sites within a utility's service territory. The Act does not preclude the use of the electrical output of a cogen facility to offset the electricity the customer acquires from the utility to power an off-site facility.
WAC 480-109-040(1)(c) The report must state if the utility is relying upon one of the alternative compliance mechanisms provided in WAC 480-109-030 instead of meeting its renewable resource target. A utility using an alternative compliance mechanism must include sufficient data, documentation and other information in its report to demonstrate that it qualifies to use that alternative mechanism.	RNP	Interested parties should have the right to an adjudication anytime a utility relies on an alternative compliance mechanism. The proposed rules lack detail on important issues related to compliance. An adjudication, with opportunity for discovery and cross examination, is necessary.	Reject. Any utility relying on an alternative compliance mechanism must demonstrate that it met the requirements for that mechanism. Interested parties will have 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(1)(d) The report must describe the steps the utility is taking to	RNP	1) A utility "will have to take steps in the preceding year to meet the January 1, compliance date."	RCW 480-109-040 (1) On or before June 1, 2012, and annually thereafter, each qualifying

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meet the renewable resource requirements for the current year. This description should indicate whether the utility plans to use or acquire its own renewable resources, plans to or has acquired contracted renewable resources, or plans to use an alternative compliance mechanism.	RNP PacifiCorp	Because 2012 compliance requires 2011 actions, the 2012 report should include information about compliance with the renewable targets. 2) The draft rule refers to a requirement that annual reports filed by the utility should refer to "the steps the utility is taking to meet the renewable resource requirements for the current year." The rule also states that "[t]his description should indicate whether the utility plans to use or acquire its own renewable resources, or plans to use an alternative compliance mechanism." The language could suggest that, long after the January 1 deadline, a utility could still be making compliance "plans" when it files of the June report. This section must be deleted or clarified to state that the plans being made during a current year are to allow the utility to meet the following January 1 target. 3) The proposed rules imply that the Commission intends to assess a utility's compliance with the 2012 renewable target by using the June 1, 2013 annual report. PacifiCorp respectfully requests that the Commission confirm that its interpretation.	utility shall report to the department on its progress in the preceding year in meeting the targets established in section 4 of this act… In the first report submitted on June 1, 2012, utilities must demonstrate compliance with the renewable requirement of January 1, 2012. The June 1, 2012 report must also describe a utility's progress towards meeting the January 1, 2013 renewable target.
WAC 480-109-040 (4) All current and historical reports required in subsection (1) of this section must be posted on the utility's web site and a copy of any report must be provided to any person upon request.	PSE Public Counsel	1) Do not require utilities to provide copies of current and historical reports to any person on request. Require utilities to post current and historical reports on their web site. 2) Supports requiring utilities to post current and historic annual reports electronically and provide reports to any person upon their request.	It is reasonable for utilities to have to provide these reports to the public on request.
WAC 480-109-040 (5) Each utility must provide a summary of this report to its	PSE	The Act requires a utility to notify customers in published form within three months of incurring a	The rule language allows utilities the flexibility to provide a summary of this report to its

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customers by bill insert or other suitable method. This summary must be provided within ninety days of final action by the commission on this report.		penalty. "published form" includes many forms other than those specified in sub (5) including bill print messages and newspaper notices.	customers by a suitable method. One suitable method would be a bill insert. Presumably there would be other suitable approaches as well.
WAC 480-109-040 Compliance reporting	Avista	1) If an intermittent resources under-performs in a given year, or a contracted-for RECs is not delivered, a utility short may fall short of meeting its annual target even though it was in compliance on January 1 of the target year. The Commission should add a provision that would allow the purchase of additional RECs in the compliance year and the subsequent year in either event (while still requiring the utility to have acquired renewable resources and RECs to meet its target by January 1 of the compliance year).	The Act requires utilities to demonstrate that they had sufficient RECs and/or MWhs on January 1 of the target year for that year. A utility that met this target will have met the requirements of the Act in this regard. The rules do not contemplate a back check to demonstrate that all RECs were delivered or that all assumed MWhs were achieved. All RECs acquired will have to comply with the requirements of the tracking mechanism selected by the Department of Community Trade and Economic Development. The Commission presumes that that tracking mechanism will provide some assurances that traded RECs were real. Utilities relying on MWhs from owned eligible generation will have to demonstrate that they assumed a reasonable number of MWhs.
	PacifiCorp	2) Clarify if the Commission intends to assess compliance with a single target at two separate points in time (e.g. the June 1, 2013 report and the June 1, 2014 report for the January 1, 2012 target) or reconcile how it will assess compliance based on the June 1, 2013 report when six months remain in the subsequent year period.	
	RNP	3) Utilities may rely on a renewable resource or REC to demonstrate compliance that fails to perform due to some unexpected event (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	The statute establishes specific targets, reports and timelines. The statute does not establish an auditing regime. Moreover, this concern is theoretical and may or may not be experienced in practice. Also, at the earliest this issue would become relevant in the year 2013. Therefore, absent a statutory directive or any demonstration of a real and serious problem, this is an issue that is not necessary

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			to address at this time.
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 must demonstrate that its actions were prudent when it failed to meet the targets.
WAC 480-109-050(4) A utility may request an accounting order from the commission authorizing the deferral of the cost of any administrative penalty assessed under this section. The approval of an accounting order to defer penalties does not constitute approval of recovery of penalties in rates. A utility may seek to recover deferred administrative penalties in a general rate case or power cost only type rate proceeding. If a utility seeks to recover deferred administrative penalties in rates, the utility must demonstrate the prudence of its decisions and actions when it failed to meet the renewable resource targets or one of the compliance alternatives provided in WAC 480-109-030, or the energy conservation targets. When assessing a request for recovery of deferred administrative penalties, the commission will consider the intent of the Energy Independence Act, other laws governing commission actions, policies	ICNU Public Counsel EEC PSE	1) Opposed to the possibility of allowing utilities to recover penalties in rates. Further, utility recovery of penalties in a power cost only type rate proceeding should be governed by that mechanism, not the Commission's rules. PSE's PCORC is currently under review. The Commission should not automatically give the utilities the right to seek the recovery of penalties in such a proceeding, as it may violate the terms of the mechanism. 2) Under the existing law, policy and precedent, there are no grounds for recovery of penalties for a violation of the Act. Remove PCORC proceedings as place where a utility could petition for recovery of deferred penalties. 3) The Commission should 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. 4) Expressly allow recovery of any administrative penalties imposed if the utility can demonstrate the cost of the penalty is less than the cost of acquiring	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, examining whether to allow recovery of administrative penalties through these proceedings seems appropriate. Recovery of penalties should be addressed on a case-by-case basis. However, specifying 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

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and precedents of the commission, and the commission's responsibility to act in the public interest.		RECs or eligible renewable resources.	renewable resources.
Mitigation of penalties if events beyond a utilities' control prevented it from achieving its conservation target.	PSE	Allow utilities to seek mitigation of penalties if events beyond their control prevent them from meeting their conservation targets. It is wrong to conclude that mitigation of conservation penalties is not allowed because the Act does not include a "force majeure" provision for conservation, while it does include such language for renewables.	. Any utility may present a force majeure argument in the context of a conservation compliance report under 040 and the Commission can decide whether that argument is available even in the absence of specific force majeure provision in the Act.
Conservation Incentives.	PSE	The Act provides that the Commission may consider providing positive conservation incentives for a utility. Incentives should be handled on a case-by-case basis.	Agree that incentives should be handled on a case-by-case basis.
Cost recovery.	PSE	The Act entitles utilities to recover prudently incurred costs associated with complying with the Act. It further requires the Commission to address cost recovery issues. The draft rules do not do this. PSE proposes adding a section to specifically address cost 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.
Conservation Credits	PSE	By June 30, 2009, the Commission should establish rules defining "conservation credits" and addressing the use of conservation credits to meet the conservation target.	The Commission may consider such a rulemaking at a later date.