

October 29, 2007

VIA ELECTRONIC FILING

Ms. Carole J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
133 S. Evergreen Park Drive SW
Olympia, WA 98504-7250

**Re: Docket No. UE-061895, Rulemaking to Implement Initiative Measure No. 937,
Additional Comments of PacifiCorp on CR-102**

Dear Ms. Washburn:

PacifiCorp, d.b.a. Pacific Power (“PacifiCorp” or “Company”) hereby submits additional comments in Docket No. UE-061895 Rulemaking to Implement Initiative Measure No. 937.

On September 20, 2007, the Washington Utilities and Transportation Commission (“Commission”) Staff (“Staff”) first released a matrix of written comments submitted by parties and its response to those comments. Parties to Docket No. UE-061895 filed final comments on the draft rules on September 26, 2007. On October 22, 2007 Staff issued a memo to the Commission recommending that the Commission adopt the rules as drafted, included a revised matrix summarizing the parties’ comments and Staff’s response to those comments. The Commission held a rule adoption hearing at 1:30 PM on October 24, 2007, during which several parties, including PacifiCorp, presented oral comments on CR-102 (“Proposed Rules”). Several hours prior to the rule adoption hearing, Staff issued a further revised matrix. The timing of the issuance of the revised matrix allowed only a brief opportunity for review and potential for responding during the rule adoption hearing. PacifiCorp respectfully submits these comments to highlight concerns briefly mentioned during the rule adoption hearing and urges the Commission to consider them when preparing its order adopting the rules and considering next steps in implementing the Energy Independence Act (“Act”).

Proposed WAC 480-109-020

As mentioned during the rule adoption hearing, the rules regarding the renewable energy targets, as currently drafted, could lead a utility to be in compliance with the Act but be in violation of the rules. RCW 19.285.040(2)(a) states:

Each qualifying utility shall **use** eligible renewable resources or acquire equivalent renewable energy credits, or a combination of both, to meet the following annual targets...

[Emphasis added]. The Act clearly contemplates both the use of eligible renewable resources to meet the renewable energy targets, as well as the option to acquire renewable energy credits (“RECs”). The eligible renewable resources that can be “used” are of at least two types: (1) a utility may acquire (e.g., contract for) renewable energy from eligible renewable resources owned or operated by another person or (2) a utility may use energy from its own renewable resources.

Proposed WAC 480-109-020(1)(a-c) states that each utility must **acquire** sufficient eligible resources, RECs, or a combination of both to meet the renewable energy targets. Note that the rule neglects to incorporate the statutory reference to “use.” This omission in the rule could be construed to mean the only method of complying with the renewable energy targets would be to demonstrate proof that there has been some sort of “acquisition.” In other words, while the Act focuses on a utility actually using renewable energy, the rules focus narrowly upon whether a utility can demonstrate proof of a contractual right to renewable energy or a REC. Query: how will the term “acquisition” be interpreted with respect to utility-owned facilities?

For example, the Act clearly would allow a utility to count the 2012 renewable energy production from an eligible renewable resource, regardless of when in 2012 that resource was placed in service. Yet, if the term “acquisition” in the rules is interpreted to mean that a resource must be in service on January 1, 2012, the production would not count under the rules. This creates an obvious conflict between the Act and the rules.

The most straightforward way for the Commission to resolve this problem is to have the rules mirror the language of the Act. This would not be a substantial change since the rule language would then be the same as the language in the Act and would not affect the deadline for promulgating the rules. Alternatively, in its order adopting rules, the Commission could clarify that a utility may demonstrate compliance with the term “acquire” in proposed WAC 480-109-020 by evidence of any of the following on January 1 of the target year:

- The right by virtue of ownership or contract to a reasonable estimate of the target year production of an eligible renewable resource; the eligible renewable resource must be in service or reasonably expected to be in service in the target year;
- The right by virtue of ownership or contract to RECs associated with production from an eligible renewable resource in the year prior to the target year;
- The right by virtue of ownership or contract to a reasonable estimate of the RECs associated with production from an eligible renewable resource in the target year or the year following the target year; the eligible renewable resource must be in service as of January 1 of the target year or reasonably expected to be in service prior to the end of the year following the target year.

These clarifications to address the inconsistency between the Act and the rules will also help address the problems created by proposed WAC 480-109-040 and WAC 480-109-050. Without

the clarifications to WAC 480-190-020 suggested by PacifiCorp, these two rules could be interpreted to suggest the Commission will make a final determination of compliance and assess penalties based upon information contained in reports filed on June 1 of the target year. That interpretation would be inconsistent with the Act for at least two reasons. First, an eligible renewable resource need not be in service on January 1 or even June 1 of the target year to have its production count toward the “use” provision of the Act. As noted in our oral comments, it is entirely feasible to install an eligible renewable resource in October of the target year with production from that resource satisfying the statutory requirement to “use” X% of renewable energy by the end of the target year. Second, as noted above, the Act allows a utility to effectively borrow forward against RECs associated with production in the year following the target year. The possibility exists that the production will not occur and the RECs won’t be created – whether the eligible renewable resource is owned by the utility or a third party. Thus, while the Commission may assess **the likelihood** of compliance midway through a target year, it cannot **determine** actual compliance until two years after the target year. PacifiCorp would make one additional observation in this regard. The Staff matrix suggests these issues do not need to be addressed until 2013. PacifiCorp strongly disagrees. The primary objective of the rules should be to facilitate compliance with the Act, not create uncertainty that could result in penalties for the absence of compliance. Facilitating compliance with the Act requires that utilities know in advance how the rules will be enforced and the Act interpreted. None of us have the option for delay until 2013. Good renewable energy sites with satisfactory resources and transmission are becoming scarce in the limited geographic area permitted by the Act. Turbine shortages mean that orders placed in the primary market today likely will not be delivered until 2010. With essentially only two general contractors in the country with the equipment and experience to construct utility-scale wind projects, construction schedules become extended. The Commission should act now to clarify its intent.

Proposed WAC 480-109-040

Proposed WAC 480-109-040(1)(b) contains annual reporting requirements for the renewable energy target. Among other things, the rule would require a utility to report on the number of megawatt hours of each type of eligible resource used to meet the target. Staff states in its October 24, 2007 matrix that utilities must demonstrate compliance with the January 1, 2012 target in the June 1, 2012 annual report. However, the amount of megawatt hours used to meet the target cannot be known until after the completion of the year following the target year, as discussed above. Staff’s interpretation of the proposed rules on this issue should not be adopted. In the final order adopting rules, the Commission should clarify that utilities may also demonstrate compliance with the previous target year in the annual reports filed beginning in the year 2014 by providing the number of megawatt hours used. Alternatively, if the Commission believes more discussion is needed on this issue, the Commission could schedule additional workshops.

Additionally, the proposed rules leave unanswered questions related to eligible resource ownership. For example, in determining compliance, how should a utility report on resources that might come online during the target year but after January 1? It would be helpful if the

Commission provided input on how ownership of eligible resources will be considered when evaluating compliance with the renewable energy targets.

Other Issues

It would also be helpful if the Commission clarified another minor issue, either in the final order adopting the rules or in future workshops. The rules as currently drafted would require a utility to provide up to three estimates to determine renewable energy targets. It is not clear from the rules how estimates that materially differ from actual results might affect a utility's compliance with the renewable energy targets. The Commission should clarify how any estimates will be used to determine compliance.

Conclusion

PacifiCorp respectfully requests that the Commission resolve these issues as soon as possible to provide clarity to utilities while they are planning to meet the renewable energy targets. The simplest way to accomplish this would be to revise the proposed rules as suggested above and provide explanations in the final order. If more discussion is necessary, the discussions should take place as soon as possible in workshops commenced for that purpose. PacifiCorp thanks the Commission and Staff for the efforts in this rulemaking and looks forward to swift resolution of these critical issues.

Sincerely,



Andrea L. Kelly
Vice President, Regulation

cc: Dick Byers
Docket No. UE-061895 list of interested persons (see attached list)

RECIP_ID	NAME	ADDRESS			
105604	Arellano, Susan	Ater Wynne LLP; Two Union Square; 601 SW Union Street STE 1501	Seattle	WA	98101-2341
358450	Bennett, Mitzi	SNOHOMISH COUNTY PUD; PO Box 1107	Everett	WA	98206-1107
357107	Birgisson, Gunnar	Bracewell & Giuliani LLP; 2000 K Street NW STE 500	Washington	DC	20006
357288	Braff, Andrew T	Stoel Rives, LLC; 600 University Street STE 3600	Seattle	WA	98101
286028	Brookhyser, Don	Alcantar & Kahl, LLP; 1300 SW Fifth Ave. STE 1750	Portland	OR	97201
358466	Bumgarner, Jeff	Pacific Power & Light Company; 825 NE Multnomah STE 600	Portland	OR	97232
32140	Butler, Arthur	ATER WYNNE LLP; 601 SW Union Street; STE 1501	SEATTLE	WA	98101-2341
359271	Carrington, Gregg	Public Utility District No. 1 of Che; PO Box 1231	Wenatchee	WA	98807-1231
123996	Carson, Sheree	Perkins Coie; 10885 N.E. Fourth Street STE 700	Bellevue	WA	98004-5579
357251	Chan, Allen C	Davison Van Cleve, PC; 333 SW Taylor St. STE 400	Portland	OR	97204
253563	Cromwell, Robert, Jr	Seattle City Attorney's Office; 600 Fourth Ave.; P.O. Box 94769 FL 4	Seattle	WA	98124-4769
357329	Davis, Kyle	PacifiCorp; 825 NE Multnomah STE 2000	Portland	OR	97232
233962	Davison, Melinda	Davison Van Cleve; 333 S.W. Taylor STE 400	Portland	OR	97204
208822	DeBoer, Tom	Puget Sound Energy (E012); PO Box 97034, PSE-08N	Bellevue	WA	98009-9734
231004	Dixon, Danielle	NW Energy Coalition; 811 1st Ave # 305	Seattle	WA	98104
358477	Drajoon, Ken	Renewable Northwest Project; 917 SW Oak STE 303	Portland	OR	97205
246381	Englert, Eric	Puget Sound Energy; OBC-03W; PO Box 97034 PSE-08N	Bellevue	WA	98009-9734
314373	English Gravatt, Ann	Renewable Northwest Project; 917 SW Oak STE 303	Portland	OR	97205
140939	ffitch, Simon	OFFICE OF THE ATTORNEY GENERAL; PUBLIC COUNSEL; 800 Fifth Avenue STE 2000	Seattle	WA	98104-3188
45592	FOLSOM, BRUCE	Avista Corporation, d/b/a Avista Uti; PO Box 3727	SPOKANE	WA	99202
357121	Garst, Sam	6015 Mirantha Lane SW	Olympia	WA	98512
358308	Gervais, Linda	Avista Corp.; 1411 E. Mission	Spokane	WA	99220
357330	Goddard, Nancy	PacifiCorp; 825 NE Multnomah STE 600	Portland	OR	97232
356833	Grassell, Suzanne	Chelan PUD; 327 N. Wenatchee Ave.; P.O. Box 1231	Wenatchee	WA	98807
155639	Harris, Kimberly	Puget Sound Energy; PO Box 97034	Bellevue	WA	98009-9734
351491	Hocken, Natalie	Pacific Power & Light Company; 825 N.E. Multnomah STE 2000	Portland	OR	97232
358471	Hopkins, Bill	Puget Sound Energy (E012); 10885 NE 4th St.	Bellevue	WA	98004
315916	Kalich, Clint	Avista Corporation; PO Box 3727	Spokane	WA	99220-3727
358465	Kaplan, David	V2 Green, Inc.; 1725 Westlake Ave. N.	Seattle	WA	98119
289377	Kelly, Andrea	PacifiCorp; 825 NE Multnomah, Suite 800	Portland	OR	97232
347916	Keyes, Jason B	Stoel Rives, LLP; 600 University Street STE 3600	Seattle	WA	98101
313590	Klumpp, Liz	Washington Department of Community; 906 Columbia St. SW	Olympia	WA	98504-3173
358447	LaBolle, Larry	Avista Corp.; 1411 E. Mission Ave.	Spokane	WA	99220
349958	Labray, Shay	Pacific Power & Light Company; 825 NE Multnomah STE 2000	Portland	OR	97232
358455	Martin, Camille	Avista Corp.; 1411 E. Mission Ave.	Spokane	WA	99220
266713	McGaffey, Karen	Perkins Coie, LLP; 1201 Third Avenue	Seattle	WA	98101
357332	Mishoe, Michelle	PacifiCorp; 825 NE Multnomah STE 1800	Portland	OR	97232
358490	Moghadam, Brian	Powerex Corp.; 666 Burrard Street STE 1400	Vancouver	BC	V6C-2X8
357263	Paisner, Joel R	Ater Wynne, LLP; Two Union Square; 601 Union Street STE 5450	Seattle	WA	98101-2327
70585	Patton, Sara	NW Energy Coalition; 811 1st Ave # 305	SEATTLE	WA	98104
358452	Pinkerton, Eddie	BP Alternative Energy; 700 Louisiana FL 33RD	Houston	TX	77002
208678	Price, Stan	Northwest Energy Efficiency Council; 157 Yesler Way STE 409	Seattle	WA	98104
357258	Rhoads-Weaver, Heather E	eFormative Options, LLC; 11824 Vashon Hwy SW	Vashon	WA	98070
349653	Secrist, Steve	Puget Sound Energy; P.O. Box 97034; MS: OBC-3 W	Bellevue	WA	98009-9734
314243	Shirley, Cal	Puget Sound Energy; Energy Efficiency Services; 200000 N. Creek Prkway; BOT-01H	Bothell	WA	98011
212397	Sjoding, Dave	WSU Energy Extension Program; State Mail Stop 43165			
358472	Stolarski, Bob	Puget Sound Energy (E012); 10885 NE 4th St.	Bellevue	WA	98004
358121	Swedo, Robert L	Bonneville Power Administration; Spokane Customer Service Center; 707 W. Main Street STE 500	Spokane	WA	99201-0608
358650	Thumma, Eric	Iberdrola Renewable Energies USA; 207 King of Prussia Road STE 500	Radnor	PA	19127
343135	Van Nostrand, James	Perkins Coie LLP; 1120 NW Couch St; FL 10	Portland	OR	97209-4128
357122	Wineman, Marian	3611 45th Ave. W.	Seattle	WA	98199
358445	Young, Brian	Imperium Renewables, Inc.; 1418 3rd Ave. STE 300	Seattle	WA	98101