BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

REVIEW OF PURPA STANDARDS IN THE ENERGY INDEPENDENCE AND SECURITY ACT OF 2007	DOCKET NO. U-090222

INITIAL COMMENTS OF PUBLIC COUNSEL (CR-101)

INTRODUCTION

1. Pursuant to the Notice of Opportunity to File Written Comments of March 20, 2009, (Notice), the Public Counsel Section of the Washington State Attorney General's Office (Public Counsel) respectfully submits these initial comments. The Notice asks commenters to address whether new regulations are needed to govern six aspects of investor-owned electric and natural gas utility operations for which new federal standards are included in the Energy Independence and Security Act of 2007 (EISA).[1] As a general proposition, Public Counsel agrees with the Commission's preliminary conclusions, stated in the Notice, that new rules are not needed in most areas. This initial filing attempts to address generally some of the questions identified in the Notice, focusing on those of particular concern to Public Counsel. We may wish to provide additional detailed comments as the docket progresses, responding to other parties, and to specific areas where the Commission decides to pursue further inquiry.

2. The Commission raises three broad classes of questions: (1) potential changes in electric and gas rate design; (2) implementation and cost recovery of smart grids; and (3) defining

[1] Public Law 110-140.

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
800 5th Ave., Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

electric and gas efficiency measures as a "priority resource." Public Counsel's comments on each of these broad categories can be summarized as follows.

3. First, regarding potential changes to electric and gas rate design, Public Counsel believes that the Commission already balances a wide-range of important considerations in formulating rate design. These include not only the role of efficiency and conservation, but also rate continuity, equity and simplicity. Public Counsel believes that no further modifications to the Commission's practices are necessary nor is codification required. To the extent any changes occur, Public Counsel recommends these changes be evaluated on a utility-by-utility basis in an adjudicated proceeding.

4. Second, regarding the implementation and cost-recovery of smart grid resources, Public Counsel believes that the Commission's Interpretive and Policy Statement in Docket UE-060629, [2] as well as requirements in IRP rules and processes, provide adequate and appropriate direction for the implementation of new smart grid resources. Utilities must continue to bear the burden of proof that investment in this technology is prudent, through evidence offered in a general rate case.

5. Third, Public Counsel opposes any modification that would depart from the Commission's long-held policies of using cost-effectiveness as the standard for evaluating electric and gas energy efficiency measures. Defining electric or gas energy efficiency as a priority resource without regard to cost effectiveness would result in rates that are not fair, just,

[2] *In the Matter of the Commission's Investigation of Public Utility Regulatory Policies Act Standards Pertaining to Smart Metering and Time of Use Rates*, Docket No. UE-060649 (August 23, 2007), Interpretative and Policy Statement Regarding Energy Policy Act of 2005 Standards for Net-Metering, Fuel Sources, Fossil Fuel Generation and Efficiency and Time-Based Metering, (*2007 PURPA Policy Statement*).

and reasonable, start the Commission down a slippery slope of choosing technology winners and losers with unanticipated rate impacts and consequences.

COMMENTS

I. PURPA STANDARDS FOR ELECTRIC UTILITIES

A. Integrated Resource Planning

6. Public Counsel agrees with the Commission's conclusion that it has already determined how to implement the policies stated in PURPA Standard 16 (A) and that no additional consideration of this standard is necessary.[3] The following discussion addresses the Commission's questions regarding part B of Standard 16 and the "priority resource" issue.

(1) Should the Commission, by rule, implement part B of PURPA Standard 16 establishing cost-effective energy efficiency as a priority resource?

7. While Public Counsel does not believe additional rulemaking is required, as discussed below, if a rule is adopted, it should certainly incorporate the requirement of cost-effectiveness in any definition of energy efficiency as a priority resource.

(2) What is a priority resource?

8. Public Counsel agrees with the context stated by the Commission for its inquiry into the definition of energy efficiency as a priority resource. This includes the IRP rule which establishes that energy efficiency must be pursued if it is a cost-effective resource, as well as the purpose of PURPA to encourage conservation of energy supplied by electric utilities; optimal efficiency of electric utility facilities and resources and equitable rates for electric consumers.

[3] Notice, p. 3.

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
800 5th Ave., Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

9. In addition, as noted by the Commission, Washington's Energy Independence Act (EIA) appears to place a priority on energy efficiency by requiring electric utilities to achieve certain targets for cost-effective conservation with penalties for failure to meet those targets.

10. Public Counsel does not support, however, a definition of a priority resource that would set a priority for any given resource, supply-side or demand-side, irrespective of cost-effectiveness. Pursuing such policies would result in rates that are inconsistent with traditional regulatory objectives of setting fair, just, and reasonable rates. Public Counsel is opposed to changing this approach in any way that would encourage the utilization of uneconomic preferences.

(3) Does the term "priority resource" differ in effect from the requirement to pursue all cost-effective conservation and if so, how?

11. No. As the Commission notes, the IRP rules do not establish any "priority resources,"[4] but *do* establish that energy efficiency must be pursued if it is cost-effective. Adoption of a "priority" resource definition should not trump the cost-effectiveness or prudence requirements.

(4) If establishing energy efficiency as a priority resource requires the acquisition of energy efficiency in aggregate that is above the cost-effectiveness threshold, would its establishment as a priority resource conflict with any existing policy established in state law, statute, or regulation?

12. Yes, adopting a priority resource definition that does not meet cost-effectiveness standards would conflict with existing Commission policy and result in rates that are not fair, just, and reasonable. Public Counsel is opposed to any policies establishing resource preferences that would unnecessarily (uneconomically) increase ratepayers' costs. Setting preferences for

[4] Notice, p. 3.

DSM are unnecessary in order to attain the full cost-effective benefits of energy efficiency resources.

(5) If establishing energy efficiency as a priority resource does not mean pursuing additional energy efficiency above the cost effectiveness threshold, then how would it differ from current Commission regulation and policy?

13. To the extent a definition of "priority resource" is used, it should be directly tied to cost-effectiveness, and therefore, tied directly to the Commission's current policies and practices. No new actions should be necessary. Public Counsel would recommend that the Commission, in any response to federal regulators or Congress on these matters, highlight that its policies are consistent with federal intent in the EISA, and that no further regulatory action, in terms of "codifying" preferences through generic rulemakings, is necessary.

B. Rate Design and Modifications to Promote Energy Efficiency Investments (Electric).

14. Public Counsel concurs with the Notice's review of the existing statutory framework, the existing guidance in past case decisions, and prior rulemaking.[5] Public Counsel agrees that through these actions the Commission has considered both the general and specific policy options listed in parts A and B of PURPA Standard 17. No additional policies or practices are required. While Public Counsel believes that existing law, rule, and company-specific adjudications are sufficient to promote energy efficiency investments in Washington, the following addresses some of the Commission's specific inquiries.

(1) Are there modifications to current utility block electric rate designs that could promote conservation? How would such modifications be implemented in a rulemaking?

15. It is possible to conceptualize modifications to current rate blocks that might promote conservation, such as steeper or additional rate blocks. However, Public Counsel does not

believe any generalized rulemaking on rate design is necessary or beneficial. The differing impacts of generic standards across different utilities and regions of the state could be quite dramatic. Each utility's rate design is best evaluated on a data-supported basis within the context of its own individual rate case to ensure to insure costs, benefits and impacts are properly understood. New ideas for designs that promote energy efficiency can be presented by the company, intervenors, or Commission Staff and considered on a case-by-case basis.

(2) What are the implications for utility conservation efforts if the incremental cost of power is higher than the cost of power embedded in rates? Under such circumstances, what, if any incentives should be considered to encourage a utility to promote conservation between rate cases.

16. While in some past cases, Public Counsel has supported energy efficiency incentive mechanisms, the "bar" for adopting such incentives is much higher than in past years. The framework of legal requirements making acquisition of energy efficiency mandatory, the need to meet customer demand and expectations, and the need to follow public policy trends, all make it important to ask -- why should utility companies receive additional ratepayer incentive payments for doing something they are required to do by law, and would do in any event to meet customer demand? This question is even more valid in an era when ratepayers are seeing huge rates of increase in underlying rates. At a minimum, incentive programs currently in place, such as the PSE incentive program referenced by the Commission (Docket UE-060266) must be evaluated before new programs are mandated.

[5] Notice, pp. 406.

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
800 5th Ave., Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

(4) Would an electric rate design with larger fixed charges reduce the customer incentive to conserve?

17. Yes, allocating more costs into fixed charges reduces the price signals sent to ratepayers regarding energy consumption choices and in turn, reduces their incentives to conserve.

(5) To what extent will the penalties under Initiative 937 provide an incentive for utilities to achieve the energy efficiency goals established in Initiative 937?

18. The I-937 penalties can potentially provide an incentive to meet goals. However, utilities have consistently argued that they are permitted to recover these penalties in rates. Public Counsel has taken the position that recovery is not permitted because incurring the penalty is by definition imprudent. If the utility view prevails, the penalties are essentially meaningless in terms of providing an incentive to the utility.

C. STATE CONSIDERATIONS OF SMART GRID

A. Consideration of Smart Grid Investments Generally (Part A)

19. In the *2007 PURPA Policy Statement*, the Commission explored and took comment on various utility demand-response programs such as net-metering, smart-metering and time-of-use rates. Public Counsel agrees with the Commission's finding in that docket reaffirming its policy that time-of-day rates are acceptable only if cost justified.[6] Notably, in that docket, concluded less than two years ago, all of the commenting utilities (PSE, Avista, PacifiCorp) recommended against a requirement of specific smart metering technology or time-of-use rate design.[7] At a minimum, any finding which determines a smart grid system to be "qualified" should consider

[6]The policy originated in a 1980 decision. *In the Matter of Investigation on the Commission's Own Motion: Into Rate Design and Rate Structure for Electrical Service of Pacific Power & Light Company, Puget Sound Power and Light Company and the Washington Water Power Company, and the Alterations, if any, that should be Ordered to such Rate Design and Rate Structures, and, Into the Adequacy of Existing Rules of the Commission Relating to Electrical Companies and Amendment or Additions Thereto That May be Appropriate Regarding Master Metering, Information To Consumers, Advertising, and Termination of Service*, Commission Decision and Order at 8, Cause No. U-78-05, (October 29, 1980).

the broad range of factors that Commission stated it will consider when examining advanced metering and rate design proposals in the *2007 PURPA Policy Statement.*[8]

(3) The IRP rule currently requires the lowest reasonable cost set of resource to be determined after a "detailed and consistent analysis of a wide range of commercially available sources." Does this requirement already encompass "qualified smart grid systems?"

20. Utilities should develop all least cost resources necessary to provide safe, economic, and reliable service to their customers which could encompass resources such as advanced metering systems (AMS) and demand response programs. The key in meeting this requirement is demonstrating that the systems and associated programs are cost effective when compared to alternative resources that might achieve similar benefits, such as demand-side management and direct load control programs implemented at a lower cost and with fewer implications or concerns for consumers.

21. Public Counsel recommends that all potential costs associated with AMS deployment need to be considered in AMS cost-effectiveness analyses including the early retirement/replacement of older meters and other legacy systems, the costs associated with achieving load reduction, and the elasticity of customers to reduce usage or shift usage. As the Commission has already stated, AMS should only be deployed in situations where the evidence establishes that it achieves net benefits for ratepayers.

[7] *2007 PURPA Policy Statement,* ¶¶21-22.
[8] *Id.*, ¶33.

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
800 5th Ave., Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

(5) Are the six factors listed an adequate set for reviewing smart grid investments? Should additional factors be included? If so, what additional factor? What, if any, rules should govern measurement and evaluation of these listed or additional factors?

22. In addition to the factors already cited from the *2007 PURPA Policy Statement,* Public Counsel recommends considering the following factors:

- Cost of smart grid technologies as compared to alternative resources
- Costs associated with achieving load reduction
- Impact on low-income residential customers

B. Rate Recovery (Part B)

23. Public Counsel agrees with the conclusion in the Notice[9] that the Commission already allows for the recovery of prudently incurred costs. No additional cost recovery policies or practices are required.

C. Obsolete Equipment (Part C)

(2) Is there a distinction between replacing existing equipment with a "system" versus the replacement of some existing equipment with individual components?"

24. Yes, there are differences between system and component replacement and it could be the case that certain strategic upgrades in various parts of a utility metering and billing system can lead to a more cost-effective transition strategy of moving forward with AMS. This is one of the reasons why a utility-by-utility approach is more reasonable in the examination of smart grid systems. Further, Public Counsel strongly supports pilot programs to gather experience and information about the integration of new technologies into existing systems as well as the experience in developing reasonable cost and schedule estimates for broader implementation.

[9] Notice, p. 8.

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
800 5th Ave., Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

(4) What constitutes "obsolete equipment?"

25. Equipment that is no longer economically or technically compatible with current requirements or equipment that is no longer capable of performing at its planned or prior capabilities. It would be very difficult to classify today's metering and usage measuring systems as obsolete since they are still economic and are still technologically compatible with existing systems.

(5) Should a cost-effectiveness test be applied to the equipment replacement before recovery of book value costs are allowed?

26. Yes, all costs associated with the development of an AMS need to be considered in any cost-effectiveness test. This includes the early retirement/replacement of existing meters, as well as the retirement/replacement of other back-office equipment and customer billing and service reporting software and systems. These costs should be compared to potential operational benefits, such as lower labor costs for meter reading and other customer service activities.

D. Smart Grid Information

27. Public Counsel agrees with the conclusions in this section of the Notice that existing statutes and rules already implement the policies of PURPA Standard 19, and that information identified in the standard is not available or practicable to obtain. No additional policies or practices are needed in this area.

II. PURPA STANDARDS FOR NATURAL GAS UTILITIES

A. Energy Efficiency

28. Public Counsel agrees with the conclusion in the Notice that the Commission has already adopted PURPA Standard 5 through rule and practice and no further action is required. With regard to the "priority resource" issue, please refer to the discussion in the electric section above.

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
800 5th Ave., Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

B. Rate Design Modifications to Promote Energy Efficiency Investments

(1) Are there any benefits from separating fixed-cost revenue recovery from the volume of transportation or sales service provided to customers that the Commission has not yet considered in either a rulemaking or in adjudication?

(2) Are there any drawbacks of separating fixed-cost revenue recovery from the volume of sales service provided to customers that the Commission has not yet considered?

29. Public Counsel sees no valid justification for making a dramatic shift in the Commission's current rate design policy with respect to recovery of fixed costs. The Notice appropriately reviews the extensive analysis which the Commission has undertaken on this issue in recent dockets. The alleged benefits and drawbacks of increased recovery of fixed cost in fixed charges have been considered. The Commission will soon have the ability to consider these issues further in analyzing the results of the current Avista and Cascade decoupling pilots. In addition, the current frequency of general rate case filings provides an ongoing opportunity for the Commission to review fixed cost recovery for the regulated utilities. In Public Counsel's view, the utilities will be hard pressed to point to any evidence that they have been denied recovery of their fixed costs under the existing ratemaking approach reflected in recent orders.

(3) What advantages are there in establishing by rule (rather than through case-by-case adjudications) an incentive for the utility to successfully manage energy efficiency that allows the utility to keep some portion of the "cost-reducing benefits" accruing from the programs?

30. Public Counsel believes there are no particular advantages to establishing a specific incentive policy through a generic rulemaking rather than through specific adjudicated proceedings. In fact, pursuing a policy of this nature could result in considerable costs and inefficiencies. Public Counsel does not support moving forward on any incentive measures on a

generic rulemaking basis and instead, would recommend these be done on a utility-by-utility basis, if at all.

31. Utilities vary considerably by their cost profiles, risks, customer mixes, sales levels, and overall commitments and experience in the development of energy efficiency programs. The Commission, for example, specifically noted the ". . . significant geographic, economic and technological differences between the four natural gas companies doing business in Washington" in its Natural Gas Decoupling Rulemaking. In fact, it was these specific differences that led the Commission into declining to set a "one-size-fits-all" policy on revenue decoupling.[10]

32. It would be inefficient, from a policy perspective, to attempt to develop an overarching incentive mechanism since it would have to be based on an average level. While the mechanism might work for the average utility, it would set incentives too high for those companies that can aggressively and cost effectively pursue energy efficiency and would set incentives too low for those that may have more difficulty in offering efficiency programs. Ultimately, cost-effectiveness and prudence defines the boundary of programs that companies can pursue. If each company IRP is based upon maximizing cost-effective energy efficiency savings and prudent decision-making, it is difficult to understand how greater incentives will change (or expand) this cost-effectiveness constraint.

(5) If the utility received some portion of the cost savings from energy efficiency, should that portion of cost be added to the TRC?

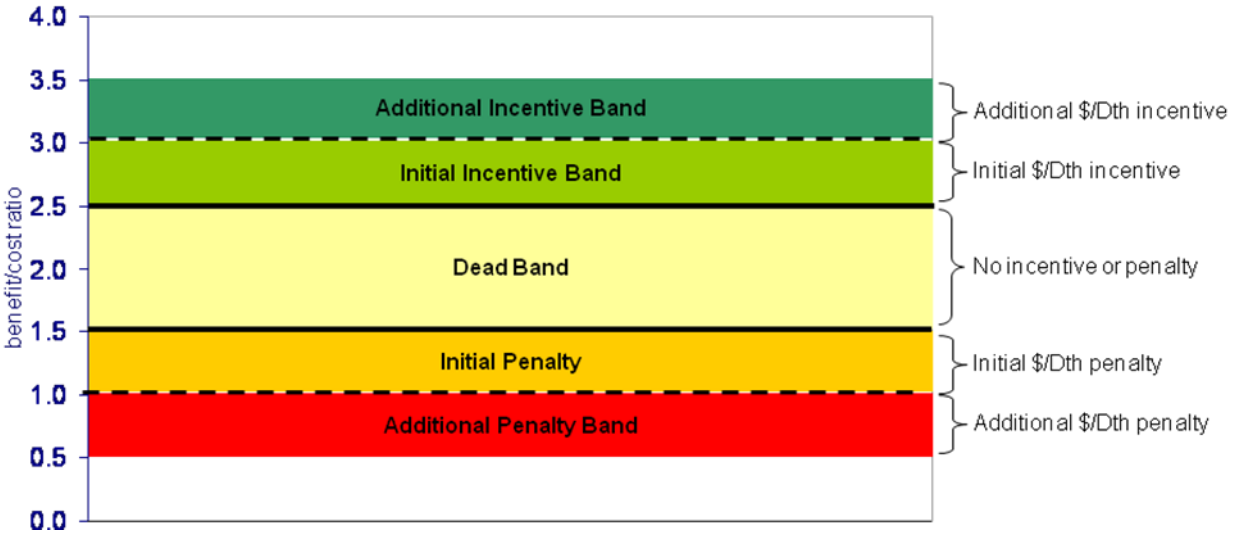
33. If the Commission is considering developing an incentive-based mechanism that encourages energy efficiency, the mechanism should share cost savings between ratepayers and

[10] *Rulemaking to Review Natural Gas Decoupling*, Docket No. UG-050369, Summary Analysis of Comments and Decision to Close Docket Without Action, p. 10.

utility shareholders. This type of program could be based on comparisons between estimated to achieve benefit-cost ratios (B-C ratios). Benchmarks, or targets could be based upon an adjudicated estimate arrived at during the course of an energy efficiency or rate case proceeding.

34. A dead-band could be established around the benchmark within which neither penalties nor rewards would be set. Exceptional performance outside of the dead-band would be rewarded on some increasing sharing basis where shareholders get higher percentages as actual B-C ratios exceed originally estimated benchmarks. Likewise, sub-standard performance would result in penalties that increase as B-C ratios fall short of their targeted levels. An illustrative example has been provided in Figure 1 below.

Figure 1: Illustrative Incentive Mechanisms Based Upon Benefit-Cost Ratios



(6) Would such "cost-reducing benefits" to be shared be calculated on a measure-by-measure basis? If not, would such sharing mechanism encourage the utility not to pursue a mix of measures that are, in sum, at the cost effective threshold?

35. Public Counsel's recommendation would be that any cost-reducing benefits shared between ratepayers and utility shareholders be conducted on a measure-by-measure basis.

(7) Could a practical rule be fashioned that states promoting energy efficiency is one of the goals of natural gas rate design while at the same time allowing actual rate design to vary with each company's cost structure and needs?

36. Public Counsel believes that the Commission's policies setting rate design objectives and priorities have been well established through case precedents and do not require further embellishment or clarification through a rulemaking proceeding. The Commission has often recognized the importance of setting rates that are fair, just, and reasonable, consistent with public policy goals of rate continuity and gradualism, easily understandable, equitable, and which promote the goals of energy efficiency. No further rulemaking in this regard is necessary.

CONCLUSION

37. Public Counsel appreciates the opportunity to present comments on the important questions raised by the Commission on the implementation of the EISA. Public Counsel believes that the Commission's past actions, policies and practices have been supportive of the goals and themes of the EISA and that no further actions or policy changes are required. To the extent any changes are deemed necessary to the Commission's rate design or resource evaluation criteria, Public Counsel recommends that these policy changes be implemented, like the Commission's recent policy on revenue decoupling, on a utility-by-utility basis. Public Counsel looks forward to further participation n this proceeding.

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
800 5th Ave., Suite 2000
Seattle, WA 98104-3188
(206) 464-7744