

3THER Environmental Forecast Group
 Advocates for the West
 Alaska Housing Finance Corporation
 Alliance to Save Energy
 Alternative Energy Resources Organization
 American Rivers
 The Apollo Alliance
 Audubon Washington
 Avista Utilities
 BC Sustainable Energy Association
 Bonneville Environmental Foundation
 Central Area Motivation Program
 Citizens Utility Board of Oregon
 City of Ashland
 Clackamas County Weatherization
 Climate Solutions
 The Climate Trust
 Community Action Partnership of Oregon
 Community Action Partnership Assoc. of Idaho
 Conservation Services Group
 David Suzuki Foundation
 Earth and Spirit Council
 Earth Ministry
 Ecos Consulting
 Ecological Design Center
 eFormative Options, LLC
 Emerald People's Utility District
 The Energy Project
 Energy Trust of Oregon, Inc.
 enXco Development Corporation
 Environment Oregon
 Environment Washington
 Eugene Water & Electric Board
 Friends of the Earth
 Golden Eagle Audubon Society
 Horizon Wind Energy
 Home Performance Washington
 Housing and Comm. Services Agency of Lane Co.
 Human Resources Council, District XI
 Iberdrola Renewables
 Idaho Conservation League
 Idaho Rivers United
 Idaho Rural Council
 Idaho Wildlife Federation
 Interfaith Network for Earth Concerns
 Kootenai Environmental Alliance
 League of Women Voters - ID, OR & WA
 Metrocenter YMCA
 Missoula Urban Demonstration Project
 Montana Audubon
 Montana Environmental Information Center
 Montana Public Interest Research Group
 Montana Renewable Energy Association
 Montana River Action
 Montana Trout Unlimited
 Moontown Foundation
 The Mountaineers
 Multnomah County Weatherization
 National Center for Appropriate Technology
 Natural Resources Defense Council
 New Buildings Institute
 Northern Plains Resource Council
 Northwest Energy Efficiency Council
 Northwest Renewable Energy Institute
 Northwest Solar Center
 NW Natural
 NW SEED
 Olympic Community Action Programs
 Opportunities Industrialization Center of WA
 Opportunity Council
 Oregon Action
 Oregon Energy Coordinators Association
 Oregon Environmental Council
 Oregon HEAT
 Oregon State Public Interest Research Group
 Pacific Energy Innovation Association
 Pacific NW Regional Council of Carpenters
 Pacific Rivers Council
 The Policy Institute
 Portland Energy Conservation Inc.
 Portland General Electric
 Puget Sound Alliance for Retired Americans
 Puget Sound Energy
 Renewable Northwest Project
 Salmon for All
 Save Our Wild Salmon
 Seattle Audubon Society
 Seattle City Light
 Sierra Club
 Sierra Club, BC and MT Chapters
 Snake River Alliance
 Solar Oregon
 Solar Washington
 South Central Community Action Partnership, Inc
 Southeast Idaho Community Action Agency
 Southern Alliance for Clean Energy
 Spokane Neighborhood Action Programs
 Student Advocates for Valuing the Environment
 Tahoma Audubon Society
 Trout Unlimited
 Union Of Concerned Scientists
 United Steelworkers of America, District 11
 WA CTED - Housing Division
 Washington CAN!
 Washington Environmental Council
 Washington State University Energy Program
 Working for Equality And Economic Liberation
 A World Institute for a Sustainable Humanity
 World Steward



NW Energy Coalition

for a clean and affordable energy future

April 28, 2010

BY ELECTRONIC FILING AND FIRST CLASS MAIL

Mr. David Danner, Executive Director and Secretary
 Washington Utilities and Transportation Commission
 P.O. Box 47250
 1300 S. Evergreen Park Drive SW
 Olympia, WA 98504-7250

RE: WUTC vs. Puget Sound Energy, Docket No. UE-100177

Dear Mr. Danner:

Attached please find the NW Energy Coalition's Reply to Responses to Motions for Summary Determination in the above-referenced docket. The originals and 12 copies are being sent to the Records Department via First Class Mail. They have also been sent via electronic mail and first class mail to the attached service list.

Sincerely,

Danielle Dixon
 Senior Policy Associate

2010 APR 28 AM 11:06
 STATE OF WASHINGTON
 PUBLIC UTILITIES DIVISION
 1000 4TH AVENUE
 OLYMPIA WA 98501



CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2010, I served a copy of the foregoing Reply to Responses to Motions for Summary Determination of the NW Energy Coalition by first class, U.S. Mail and via electronic mail on the following persons.

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NW Energy Coalition

**BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)
)
Complainant,)
)
v.)
)
PUGET SOUND ENERGY, INC.,)
)
Respondent.)
_____)

Docket No. UE-100177

**NW Energy Coalition's
Reply to Responses to Motions
for Summary Determination**

2010 APR 28 AM 11:05
FILED IN 100177
OFFICE OF THE CLERK
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

I. Introduction.

1. The NW Energy Coalition files this Reply to Responses to Motions for Summary Determination.
2. In our Motion for Summary Determination, we asked that PSE file a 2010-2011 conservation target consistent with the 10-year identification it made on December 31. PSE has not presented any basis for denying our request.

II. PSE has not shown that its biennial target is at all consistent with its 10-year identification.

3. As we discuss in our Motion, the law that applies here is plain and unambiguous. A utility's biennial conservation target must be consistent with its 10-year conservation potential identified by January 1, 2010.¹ PSE does not dispute that it is subject to this requirement.
4. Instead, PSE asserts that it provided two conservation assessments in its December 31 communication to the CRAG: one drawn from the Company's IRP, and the other based on

¹ RCW 19.285.040(1).

PSE's share of the Council's Fifth Plan.² PSE argues that the law entitles it to use either source (the IRP or the Fifth Plan) when identifying its 10-year potential. Thus, according to PSE, it may select either assessment when it determines its biennial target.³

5. The statute does not say, however, that a utility may use its share of the Council's conservation assessment when determining its biennial target. Rather, I-937 simply requires utilities to "[use] methodologies consistent with those used by" the Council in identifying its achievable cost-effective conservation potential.⁴ This language is plain, unambiguous, and straightforward – it does not give PSE the broad leeway it now seeks from the Commission.

6. Further, it seems indefensible to interpret the statute in the way that PSE argues. If the Commission were to accept the Company's position, then any utility could selectively pick and choose among multiple conservation assessments. This could lead to "lowball" assessments such as the assessment that PSE filed with the Commission on January 29. Such an outcome would not be consistent with one of I-937's overriding objectives -- to increase conservation in Washington state.

7. PSE's position is faulty in another way. The Company does not refute the fact that its filings with the Commission, prior to January 29, consistently document the Company's intent to use its IRP's conservation assessment as the basis for its I-937 biennial target.⁵ Further, the

² PSE Response at ¶ 15.

³ *Id.*

⁴ RCW 19.285.040(1)(a). In contrast, WAC 480-109-010(1)(b) provides utilities with an option of deriving their biennial target from their IRP analysis or their share of the Council's Plan. But as Staff points out in its Response to PSE's Motion (at ¶ 27), the Commission is charged with determining compliance with the statute. The rule must be read in a manner that is consistent with RCW 19.285.040(1)(a).

⁵ Coalition Motion at ¶ 5 and Coalition Response at ¶ 14. While the statute and rules do not require a utility's I-937 biennial target to be consistent with other filings and submittals before the Commission (as noted in PSE's Response at ¶ 19), we believe the Commission should consider those filings here – because, in stark contrast to the January 29 filing, they specifically state PSE's intent to use its IRP as the basis for I-937 compliance.

December 31 communication to the CRAG referenced PSE's share of the Fifth Plan merely as a point of contrast to the Company's intent to proceed with its IRP analysis.⁶

8. According to PSE,

[T]he language of RCW 19.285.040 distinguishes between the biennial conservation target that a utility must "establish and make publicly available" by January 31, and the mere "identification" of the ten-year conservation potential that must occur before January 1.⁷

However, the statute never refers to a January 31 due date.⁸ RCW 19.285.040(1)(a) requires a utility to identify its 10-year conservation potential "by January 1," and the subsequent subsection then requires the utility "beginning January 2010" to establish and make publicly available its biennial target "consistent with" the utility's identification of achievable 10-year potential.

9. On December 31, PSE identified its 10-year conservation potential assessment at 427.9 aMW in keeping with its IRP analysis.⁹ Yet its biennial target of 42.2 aMW, submitted at the end of January, was based on a 10-year potential assessment that was approximately half of the December filing¹⁰ – despite the statutory requirement for the biennial target to be a "pro rata share" of the 10-year conservation potential.¹¹ PSE's biennial target, therefore, was wholly inconsistent with the 10-year conservation potential identified in December.

⁶ Docket No. UE-091986, "E-mail 12-31-2009," page 2.

⁷ PSE Response at ¶ 15 (footnote omitted).

⁸ In contrast, WAC 480-109-010(3) does require each electric utility to file a report with the Commission by January 31 identifying its 10-year conservation potential and biennial target.

⁹ Docket No. UE-091986, "E-mail 12-31-2009," page 1 (Exhibit A to the Coalition's Motion).

¹⁰ Coalition Response at ¶ 17.

¹¹ RCW 19.285.040(1)(b). PSE's Response at FN 41 suggests the Coalition's explanation of the term "pro rata" is inconsistent with Council methodology. However, as the Council itself recognizes, the provisions of I-937 are a matter of state law. Further, "[h]aving to acquire 20 percent of any ten-year target in any two-year period under I-937 may produce different two-year targets than would result using ramp rates consistent with the Council's methodology." (p. 2 of the section from the Council's 6th Plan discussing I-937, which is attached to the Coalition's Reply as Exhibit A. Note that Exhibit A to Staff's Response is an early draft of this final document.)

10. The plain meaning of the statute is unambiguous – a utility’s biennial target must be consistent with its 10-year conservation potential, which must be identified by January 1. The statute and rules do not contemplate a situation in which a utility files multiple 10-year conservation potential assessments, and subsequently selects the one it deems most favorable to its interests at a particular time.

11. Staff’s Response to PSE’s Motion includes a section detailing how PSE’s substantial revision to its 10-year conservation potential (after the January 1, 2010 deadline) does not comply with the governing statute or the rules.¹² According to Staff,

Puget Sound Energy says it was free to abandon its pre-January 1 approach and switch to a new one after the deadline because, under WAC 480-109-010(3), it did not have to file anything with the UTC until January 31. The UTC is charged with determining compliance with the *statute*, however. WAC 480-109-010 is designed to implement the statute, not to give utilities loopholes to avoid statutory deadlines. Being based on a completely new approach adopted after the January 1 deadline, the ten-year conservation potential PSE filed on January 29 is untimely and complies neither with RCW 19.285.040(1)(a) nor WAC 480-109-010(1).¹³

We agree that PSE’s position creates loopholes to the enforcement of I-937 – loopholes that do nothing to advance the initiative’s intent.

12. Public Counsel defers to the Coalition’s briefing on this issue,¹⁴ and further notes:

The filing made on January 29 was a complete and dramatic departure from PSE’s December 31 projections and from all information provided throughout the entire multi-year process of conservation goal development.¹⁵

We agree that the Commission should look to the conservation projection from its IRP that PSE provided on December 31 as the appropriate reference point for I-937 compliance.

¹² Staff Response at ¶¶ 25-28.

¹³ *Id.* at ¶ 27 (footnotes omitted) (emphasis in original).

¹⁴ Public Counsel Response at ¶ 27.

¹⁵ *Id.* at ¶ 26.

III. Conclusion.

13. PSE claims that the open Staff investigation into its conservation programs, coupled with other drivers, led it to select the Fifth Plan as the source of its biennial conservation target.¹⁶

Those motivations are not relevant here. What is relevant is whether PSE complied with the law and the Commission's rules. That does not appear to be the case.

14. Under RCW 19.285.040(1)(a)-(b), a utility's biennial target must be consistent with its assessment of 10-year conservation potential provided by January 1. The target that PSE filed on January 29, however, is not consistent with the 10-year assessment that the Company identified on December 31.¹⁷ Accordingly, we respectfully ask the Commission to grant our Motion and require PSE to file a biennial conservation target consistent with the 10-year potential identified in its IRP and provided to the CRAG.

Dated this 27th day of April, 2010



NW Energy Coalition

Danielle Dixon, Senior Policy Associate

¹⁶ PSE Response at ¶ 20.

¹⁷ Coalition Motion at ¶ 9.

**BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION)
)
Complainant,)
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v.)
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PUGET SOUND ENERGY, INC.,)
)
Respondent.)
_____)

Docket No. UE-100177

**NW Energy Coalition's Reply to
Responses to Motions for
Summary Determination**

2010 APR 28 AM 11:06
OFFICE OF THE CLERK
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

EXHIBIT A:

**Excerpt from the Northwest Power and Conservation Council's Sixth Plan,
Chapter 4: Conservation Supply Assumptions,
pages 4-22 to 4-23**

(pre-publication version 2/10/10)

Implications for the State of Washington's I-937 Requirements

Initiative 937 (I-937) in the State of Washington, approved by the voters in 2006, obligates seventeen utilities that serve 88 percent of the retail load in that state to “pursue all available conservation that is cost-effective, reliable, and feasible.” By January 2010, each utility to which the law applies must develop a conservation plan that identifies its “achievable cost-effective potential” for the next ten years, “using methodologies consistent with those used by the Pacific Northwest electric power and conservation planning council in its most recently published regional power plan.” Every succeeding two years, the utility must review and update its assessment of conservation potential for the subsequent ten-year period.

I-937 is a matter of state law, and does not alter or obligate the Council in its conservation and power planning under the Northwest Power Act. Similarly, the Council has no authority to interpret or apply or implement I-937 for the utilities and regulators in the State of Washington. But because of the intersection between the two mandates -- the state's utilities are to engage in conservation planning “using methodologies consistent with” the conservation planning methodology used by the Council – it is helpful to understand some of the issues raised by the two planning processes.

There is some misunderstanding that I-937 requires Washington utilities to meet some pro-rata share of the conservation targets in the Power Plan. In fact, I-937 does not require the state's utilities to adopt or meet conservation targets set forth in the Council's plan nor does the plan identify any particular utility's “share” of regional conservation targets. However, I-937 does require utilities to develop their own plan using methods “consistent with” the methodology used in the Council's plan, leaving the utilities discretion to adapt the planning methods to their particular circumstances. To assist Washington consumer-owned utilities in this effort, the Washington Department of Commerce (Commerce),⁷ with the assistance of the Council staff and others, adopted rules in 2008 that outline the methodology that the Council uses in its conservation planning. Although one sub-section of these rules allows utilities to adopt a share of the Council's regional targets, this is an option, not a requirement. The Washington Utilities and Transportation Commission (UTC) also adopted rules to guide the investor-owned utilities. These rules are not as prescriptive and, per the law, integrate I-937 requirements into ongoing regulatory practice.

Concern has also been expressed about the fact that utilities will need to produce their first I-937 conservation plans at the precise moment the Council is making the transition from the Fifth to the Sixth Regional Power Plan. On this issue we should point out that the Council's methodology is essentially the same in the Sixth and Fifth power plans and is clearly described in Chapter 4 of this draft. The conservation targets are higher in the Sixth Plan because of changes in prices, technology, and other factors, not because of a change in methodology.

The Council's plan describes the analytical methods used to identify cost-effective achievable conservation and provides a menu of possible cost-effective measures for the utilities to consider. Neither I-937 nor the Council's plan requires utilities to choose any of the plan's particular measures in particular amounts. The utilities may make that judgment based on their own loads

⁷ Formerly the Washington Department of Community Trade and Economic Development (CTED)

(composition, amounts, and growth rates) and their own determination of avoided cost and the measures available to them.

There are two issues—“ramping” and “penetration rates”—that may present potential inconsistencies between I-937 and the Council’s conservation methodology. An important element in the Council’s methodology is the principle that it takes time to develop certain conservation measures to their full potential, while other measures are available right away. Consequently, conservation potential ramps up and on occasion ramps down. The Council uses its ramp rate assumptions along with other information and the results of its regional portfolio model to establish five-year cumulative conservation targets for the region. The end result is that achievable conservation potential under the Council’s planning assumptions will not be evenly available across each year in the period. I-937 separately instructs the utilities to identify not just cost-effective potential over the ten-year life of the utility’s conservation plan for I-937, but also to identify and meet biennial conservation acquisition targets that must be “no lower than the qualifying utility’s pro rata share for that two-year period of its cost-effective potential for the subsequent ten-year period.” Having to acquire 20 percent of any ten-year target in any two-year period under I-937 may produce different two-year targets than would result using ramp rates consistent with the Council’s methodology. Commerce rules do not address what is meant by “pro-rata share,” but the UTC rules state that “‘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.” Because the provisions of I-937 are a matter of state law, this issue is not one that the Council can resolve in its plan.

A related but distinct issue concerns conservation measure “penetration” rates. Part of the Council’s methodology is to estimate the extent of total penetration of a conservation measure in the area of study over the total period analyzed. The Commerce rules address this issue, calling on utility conservation plans to “[i]nclude estimates of the achievable customer conservation penetration rates for retrofit measures and for lost-opportunity (long-lived) measures.” Because, as with “ramp rates,” I-937 requires a ten-year plan while the Council produces a twenty-year plan, the rules needed to harmonize the potential difference between penetration rates over ten years versus penetration rates over twenty years. As a result, the Commerce rules then go on to describe the Council’s 20-year and 10-year penetration rates (from the Fifth Plan, although they do not differ in the Sixth Plan), “for use when a utility assesses its” conservation potential. The UTC rules are silent on penetration rates.

One final point to consider is the treatment of savings achieved through building codes and other standards. The Council’s conservation methodology calculates the conservation potential for measures that might, at some point, be covered by building codes or energy codes, and then assumes that the savings will be accomplished over time by either utility programs or codes. If codes are adopted that ensure the capture of the potential savings, then those savings are “counted” against the regional target. The rules adopted by Commerce for I-937 do not appear to be inconsistent with this approach while the UTC rules do not address this issue specifically.