

[Service Date January 30, 2007]

January 30, 2007

**NOTICE OF OPPORTUNITY TO FILE WRITTEN COMMENTS
(By February 26, 2007)**

RE: *Rulemaking to Implement Initiative Measure No. 937*
Docket UE-061895

TO ALL INTERESTED PERSONS:

On January 24, 2007, the Washington Utilities and Transportation Commission (Commission) filed with the Office of the Code Reviser a Preproposal Statement of Inquiry (CR-101) to examine whether new or revised regulations are needed to govern the Commission's implementation of Initiative Measure No. 937, titled the Energy Independence Act (Act). Washington voters approved the Act, now codified at chapter 19.285 RCW, on November 7, 2006.

The Act concerns requirements for new electrical energy resources. Large utility companies are required to obtain 15 percent of their electricity from new renewable resources such as solar and wind by 2020 and to undertake cost-effective energy conservation. The three investor-owned electrical companies regulated by the Commission must comply with these new requirements. The new law provides that the Commission "may adopt rules to ensure the proper implementation and enforcement of this chapter as it applies to investor-owned utilities." *RCW 19.285.080*. This inquiry may lead to proposed new rules and proposed amendments to existing rules, including without limitation existing rules in chapter 480-100 WAC.

The Act assigns to the Commission responsibilities to "determine compliance with the provisions of this chapter and assess penalties for noncompliance" as those provisions apply to investor-owned utilities. *RCW 19.285.060(6)*. Specifically, the Commission must determine investor-owned utility compliance with the following provisions of the Act:

- Assessment of energy conservation potential, conservation targets and conservation performance. *RCW 19.285.040(1)*.

- Renewable resource targets and exceptions. *RCW 19.285.040(2) and 19.285.050.*
- Penalties for noncompliance and whether such penalties may be recovered in customer rates. *RCW 19.285.060(4) and (6).*
- Annual reporting requirements to utility customers and the Department of Community Trade and Economic Development. *RCW 19.285.070.*

The Act places new requirements on the investor-owned utilities, as well as broad responsibility on the Commission. The Commission's objective is to propose such rules or to adopt such policy and interpretative statements as are shown by this inquiry to be necessary to promote effective, efficient and practical implementation of the objectives of RCW 19.285. Rules or policy statements may be necessary to guide interpretation and minimize controversy concerning utility compliance with certain of the statutory provisions. Rules that spell out clear and practical Commission administrative processes for reviewing utility plans, performance and any requests for exceptions or exemptions as are allowed under the statute may be necessary to advance the goals of the Act most efficiently.

To initiate its investigation, the Commission invites interested parties to comment on the following questions, which are organized by category. In each category, the Commission welcomes comments and suggestions in addition to the questions posed.

A. With regard to utility energy conservation potential, conservation targets and conservation performance:

- 1) WAC 480-100-238 requires electric utilities to file integrated resource plans every two years. Such plans are required to include long-term assessments of cost-effective conservation resources as well as short-term action plans for acquisition of conservation and other resources. What, if any, additional analysis and information should the commission require of utilities to demonstrate compliance with RCW 19.285.040(1)(a) (10 year conservation assessment) and RCW 19.285.040(1)(b) (biennial conservation target)?
- 2) What process and timeframe should the Commission use for review and approval of electric utility biennial conservation targets? Would a review and approval process similar to the practice for approval of requests for proposals under WAC 480-107-015(3)(b) be adequate?
- 3) Should the Commission by rule establish standard input assumptions and calculation formula for determining whether high-efficiency, customer-owned cogeneration qualifies as conservation counting toward a utility's biennial conservation target? If so, what should be the standard assumptions and formula? What documentation should the Commission require from utilities

regarding customer-owned cogeneration equipment and thermal loads to determine utility compliance with RCW 19.285.040(1)(c)?

B. With regard to renewable resource targets and exceptions:

- 1) RCW 19.285.030(10)(a) requires that electricity from a generation facility outside the Pacific Northwest must be “delivered into Washington state on a real-time basis without shaping, storage, or integration services” to qualify as an eligible renewable resource. What contract, system dispatch, or other information should the Commission require of utilities to demonstrate compliance with this provision?
- 2) RCW 19.285.040(2)(f) prohibits electric utilities from crediting eligible renewable resources or distributed generation against their annual targets if renewable energy credits are owned by “a separate entity” or used in an optional green pricing program. RCW 19.285.030(17) defines renewable energy credits as including all of the non-power-related attributes associated with an eligible renewable resource. What reliable documentation should the Commission require of an electric utility to demonstrate compliance with this provision?
- 3) RCW 19.285.030(18)(h) and (i) generally preclude bio-fuels derived from clearing or harvesting old-growth forests from qualifying as eligible renewable resources. What reliable documentation should the Commission require of electric utilities to demonstrate compliance with this provision?
- 4) RCW 19.285.040(2)(d) exempts utilities from the requirement to meet annual renewable targets under certain conditions. Should the Commission establish standard assumptions and formula to evaluate these conditions? If so, what should be the assumptions and formula? Should the Commission interpret revenue requirement to mean the last approved normalized level of revenue? If not, what other interpretation of revenue requirement should the Commission use to determine compliance with this condition?
- 5) RCW 19.285.040(2)(g) establishes criteria for the valuation of eligible renewable resources co-fired with fossil fuel resources. Should the Commission by rule establish standard assumptions and formulae to apply to such co-fired generation? What reliable documentation should the Commission require of utilities regarding the “heat values” of renewable fuels to demonstrate compliance with this provision?
- 6) RCW 19.285.050(1)(a) provides that an electric utility complies with the renewable resource target if it can demonstrate that it invested at least 4

percent of its “total annual retail revenue requirement” on the “incremental costs” of eligible renewable resources or renewable energy credits. Should the Commission by rule establish standard assumptions and formula to apply to this test? If so, what should be the standard assumptions and formula, including assumptions concerning existing eligible renewable resources acquired after March 31, 1999? What reliable documentation should the Commission require of utilities to demonstrate compliance with this provision?

- 7) RCW 19.285.050(2) requires the Commission to “address” cost-recovery issues for multi-state electric utilities complying with chapter RCW 19.285. Should the Commission by rule establish policies to govern cost-recovery by multi-state utilities, or should such issues be considered on a case by case basis? If a policy is established by rule, what should that policy be?

C. With regard to penalties for noncompliance and whether such penalties may be recovered in customer rates:

- 1) RCW 19.285.060(6) gives to the Commission authority and responsibility to determine whether utilities have complied with chapter RCW 19.285 and, if not, to assess penalties determined under RCW 19.285.060(1). Should the Commission by rule establish a set of factors it will consider in determining assessment of penalties? If so, what factors should the Commission consider?
- 2) RCW 19.285.060(4) gives the Commission authority to determine whether electric utilities may recover administrative penalties in electric rates. Should the Commission by rule establish a set of factors it will consider in determining whether administrative penalties can be recovered in electric rates? If so, what factors should the Commission consider?

D. With regard to reporting requirements.

RCW 19.285.070(2) requires electric utilities to submit an annual report to the Commission documenting information relevant to utility targets for conservation and eligible renewable resources as well as related performance, expenditures and other factors pertinent for determining compliance with chapter RCW 19.285. Should the Commission use this report as the primary basis for determining utility compliance with the chapter’s various requirements? If so, what, if any, additional information should be included?

WRITTEN COMMENTS

Written comments must be filed with the Commission no later than **Monday, February 26, 2007**. The Commission requests that comments be provided in electronic format to enhance public access, for ease of providing comments, to reduce the need for paper copies, and to facilitate quotations from the comments. Comments may be submitted by electronic mail to the Commission's Records Center at records@wutc.wa.gov. Please include:

- The docket number of this proceeding (UE-061895).
- The commenting party's name.
- The title and date of the comment or comments.

An alternative method for submitting comments is by mailing or delivering an electronic copy to the Commission's Records Center on a 3 ½ inch, IBM-formatted, high-density disk, in .pdf Adobe Acrobat format or in .doc Word 97 or later format. Include all of the information requested above. The Commission will post on its web site all comments that are provided in electronic format. The web site is located at the following URL address: www.wutc.wa.gov/061895.

If you are unable to file your comments electronically or to submit them on a disk, the Commission will accept a paper document. Questions may be addressed to Nicolas Garcia at (360) 664-1346 or e-mail at ngarcia@wutc.wa.gov >.

Opportunity for further comment is anticipated. Information about the schedule and other aspects of the rulemaking, including comments, will be posted on the Commission's web site as it becomes available. If you wish to receive further information on this rulemaking you may:

- 1) Call the Commission's Records Center at (360) 664-1234.
- 2) E-mail the Commission at records@wutc.wa.gov.
- 3) Mail written comments to the address below.

When contacting the Commission, please refer to Docket UE-061895 to ensure that you are placed on the appropriate service list(s). The Commission's mailing address is:

Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, Washington 98504-7250

Sincerely,

CAROLE J. WASHBURN
Executive Secretary