PACIFICORP
A MIDAMERICAN ENERGY HOLDINGS COMPANY

February 26, 2007

VIA ELECTRONIC FILING

Ms. Carole J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, WA 98504-7250

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

Dear Ms. Washburn:

In response to the Commission's January 30, 2007 Notice of Opportunity to File Written Comments ("Notice"), PacifiCorp dba Pacific Power & Light Company ("PacifiCorp") hereby submits written comments in response to questions posed by the Commission regarding the Commission's implementation of Initiative Measure No. 937, titled the Energy Independence Act ("the Act") that was approved by Washington voters on November 7, 2006.

Pursuant to the Act, 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. According to the CR-101 Statement, 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*. The review in this proceeding "may lead to proposed new rules and proposed amendments to existing rules, including without limitation existing rules in chapter 480-100 WAC." 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.*

PacifiCorp appreciates the opportunity to participate in the Commission's review of the Act and offers to assist the Commission with obtaining any necessary information to ensure a smooth and thorough review. On January 15, 2007, PacifiCorp filed initial questions and comments in this rulemaking PacifiCorp respectfully requests that the Commission also address the critical policy questions raised in PacifiCorp's initial comments. Some aspects of the initiative are ambiguous, particularly with regard to compliance issues.

Activities undertaken pursuant the Act have the potential to achieve policies with overall social benefits. Also, there are risks within this developing process for complying with the renewable and conservation targets established by the Act. The appropriate balance of managing that risk and the associated cost recovery issues needs to be carefully considered throughout this process. Some of the key items for measuring compliance with the targets are variable and, as such, clarification of theseitems up front will help mitigate some of the inherent risks.

For example,

- Section 2(12) defines "Load" as the amount of kilowatt-hours of electricity delivered in the most recently-completed calendar year by a qualifying utility to its Washington retail customers. Section 4(2)(d)(i) refers to "load" as the utility's "weather adjusted load." PacifiCorp agrees with Avista that the definition of "load" should be consistent and also recommends the use of weather adjusted or normalized load as the standard based on each utility's approved normalization method.

Additionally,

- Section 4(2)(c) requires that a qualifying utility "calculate its annual load based on the average of the utility's load for the previous two years," in meeting the annual targets set forth in Section 4(2)(a). This is problematic as load data for the most recently completed year will not be available at the time compliance is required. For January 1, 2012, load data will not be available for the twelve months proceeding until after the compliance date. For purposes of averaging a utility's load for the previous two years a rule should be established that defines the previous two completed years such that for compliance January 1, 2012, an average of load data for 2009 and 2010 would be the time period used in the calculation. This method would also allow for a window of time in which the utility could assess its progress in meeting the target and make prudent decisions towards achieving the target in ways that manage risk and minimize cost.

- Lastly, with significant risk associated with forecast of load and forecast of the output, penalties that are not recoverable could put utilities in a position to overbuild to ensure compliance. The Commission needs to adopt policies related to cost recovery of penalties that manages this risk but provides incentive to meet, and possibly, exceed targets.

The above issues impact several broad-reaching sections of the developing rules and requirements. As a result, PacifiCorp encourages the Commission to consider these topics as it continues its development of the rules.

Additionally, the Act states in Section 8 (3) that "The Commission and department may coordinate in developing rules related to process, timelines, and documentation that are necessary for implementation, of this chapter." PacifiCorp attended the February 23, 2007 workshop hosted by the Washington Community, Trade and Economic Development (CTED). The Notice of CTED Rulemaking Meeting and Opportunity to File Written Comments raised several of the same questions and requests for clarifications on specific provisions of the Act as were raised by the investor-owned utilities in comments filed previously. PacifiCorp encourages the Commission to evaluate opportunities to maintain consistency, to the extent possible, between the Commission rulemaking and the rules developed by CTED for the non investor-owned utilities.

PacifiCorp respectfully submits the following comments in response to the topics identified in the Notice.

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)?

Response:

It is PacifiCorp's opinion RCW 19.285.040(1)(d and e) regarding Commission cost-effectiveness policies and practices and WAC 480-100-238 rules regarding biennial integrated resource plans provide for sufficient review and identification of utility conservation potentials as to demonstrate compliance with RCW 19.285.040 (1)(a and b).
There should be a uniform process for addressing the efforts of regional entities such as the Northwest Energy Efficiency Alliance in meeting the requirements of RCW 19.285.040. The same process should apply to all qualifying utilities.

Some utility integrated resource planning cycles may not align perfectly with the timelines defined in RCW 19.285.40. In these cases, it would be reasonable to allow the utility to add the out year(s) (e.g. 2019 in the case of the conservation potential required by January 1, 2010) by extrapolation. This would have no impact on the first two years used to establish the biennial acquisition targets. It is adequate since the assessment will be updated at least every two years.

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?

Response:

The existing process used for energy efficiency program filings is preferred. Utilities would preview their draft filings with their advisory groups, and then file their biennial conservation targets and supporting assessment in advice letter format. The filings would be made in time for the Commission to approve the targets prior to the start of the performance period. Utilities would reference their most recent integrated resource planning work in their filing and include any carryover from exceeding targets in the prior performance period.

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)?

Response:

For certain dual fuel utilities, it may be appropriate to count high-efficiency cogeneration owned and used by a retail electric customer toward that utility's conservation target. However, it should be determined on a case-by-case basis because it may not be applicable to all utilities. In addition if the fuel source for the cogeneration project is a renewable fuel (i.e., biomass) then it may be more appropriate to count that cogeneration toward the utility's renewable goal or ensure that the project is not double-counted.

In the event customer-owned cogeneration qualifies toward a utility's conservation target, standardized input assumptions and calculation formulas are not uniformly appropriate given the site-specific nature (use and technology) of this type of installation.

The documentation required should be defined within the program or project filing process and/or during the reporting process.

In PacifiCorp's integrated resource plan, customers with their own generation are considered as full requirements customers due to the obligation to serve their entire load should their generation be down for scheduled maintenance or a forced outage. As a result, the system benefits of customer-owned cogeneration are not the same as energy efficiency measures affecting customer electric consumption.

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?

Response:

Intermittent resources such as wind typically require shaping and integration services regardless of their location. This provision effectively excludes potential Washington RPS-eligible resources (located outside of the Pacific Northwest) until a compliant delivery mechanism can be demonstrated.

There are two practical methods of applying RCW 19.285.030(10)(a). One method is when a multi-jurisdictional utility, such as PacifiCorp, operates an interstate transmission system that includes delivery points within Washington, but also extends beyond the Pacific Northwest. When a renewable resource delivers to PacifiCorp's transmission system, the output is delivered on a real-time basis into a transmission system that includes delivery points within the state of Washington. As long as the utility can demonstrate that an otherwise Washington RPS-eligible generation facility is connected to its transmission system, then no other information should be required to demonstrate compliance with RCW 19.285.030(10)(a). Additionally, the term "real-time" should be defined and applied consistently throughout the rules.

A second means of demonstrating compliance with RCW 19.285.030(10)(a) would be if a utility can demonstrate that it has contracted for adequate transmission capacity to take delivery into Washington of output from a Washington RPS-eligible generation facility located outside the Pacific Northwest. In this instance, the utility would need to provide proof that the generation facility, the transmission capacity and the contracted point of delivery into Washington are sufficient to allow the utility to use the output to serve Washington retail load on the same day it is generated.

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?

Response:

As part of its annual compliance filing, a utility should attest that for the renewable power it is claiming within its Washington RPS compliance filing, it has neither sold nor retired any non-power attributes (e.g., renewable energy credits, green tags, renewable energy certificates, etc.). If a utility has sold the non-power attributes associated with the output of an eligible renewable resource that was used to serve Washington retail load, then the utility would disclose such non-power attribute sales annually to the Commission and record those megawatt-hours as "null" power.

The Commission should also clarify the status of the non-power attributes of power purchased by utilities from a Washington RPS-eligible Qualifying Facility (QF). If the price paid by the utility for the QF power exceeds avoided energy costs, the utility should be deemed the owner of the non-power attributes. If the price paid by the utility for the QF power does not exceed avoided cost, the utility should have the right to purchase the non-power attributes. In either case, the Commission should allow

utilities to recover all reasonable costs of compliance with the RPS, including the costs of the non-power attributes.

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?

Response:

Electric utilities should only be required to obtain an attestation as part of either a QF, a power purchase agreement (PPA) or a biofuels supply contract that the biofuels are not entirely derived from clearing or harvesting of old-growth forests. To the extent a portion of the biofuels is derived from either the clearing or harvesting of old-growth forests, the Commission should clarify that the output from the facility may be prorated and remain eligible for use toward the Washington RPS.

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?

Response:

The Commission should specify the process a utility would undertake to obtain approval for use of exemptions and any force majeure events and specify the necessary documentation. The rulemaking should include the listing of a more expansive range of factors, beyond a utility's reasonable control, which if encountered, would deem the utility to be in compliance. Some additional areas of consideration include:

- Availability of integration services and tariffs required to integrate some renewable resources, including regulation, and load-following services.

- Availability of transmission.

- Availability of equipment and contractors.

- The latter-stage failure in permitting and siting of a planned-for and contracted eligible resource, given the considerable lead times for new resource development.

- The combinations of variations in weather, loads, hydro conditions, and wind-resource performance could prove to have catastrophic consequences for utility customers (either by over-building or penalties). To avoid these potentially unmanageable consequences, it might be prudent to normalize these and potentially other variables. These normalized values could be trued up over time.

- The term revenue requirement should be defined by the Commission. If the Commission should interpret revenue requirement to mean the last approved normalized level of revenue it should be applied based on the Company's most recently filed annual results. The outcome of this decision will be influenced by answers to some of the questions raised in Question 6 below.

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?

Response:

The Commission should establish standard assumptions and clarify that the output from a generation facility co-firing biofuels with fossil fuel resources is prorated and remains eligible for use toward the Washington RPS. Electric utilities should only be required to obtain an annual attestation as part of either a QF, a PPA or a biofuels supply contract that states the actual annual volume and average "heat value" of the biofuels co-fired with the fossil fuel resources. As part of its annual report, a utility

would only be obligated to report the amount of biofuels co-fired with fossil fuel resources.

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?

Response:

Yes, the Commission should establish rules that provide explicit guidance as to how this test will be calculated and applied. To do so, the Commission will need to articulate policy decisions related to several key questions. For example:

- How does the Commission define "a given year"?
- What year should the utility use to determine the "total annual retail revenue requirement" and the "incremental costs"? Given that the utilities will be entering into binding agreements potentially years in advance of the on-line date, is the cost-effectiveness and application of the cost cap measured at the time that the agreement is entered into or in the year in which delivery occurs? What happens if the utility's forecasts of future total revenue requirement or cost effectiveness are not representative of the actual future?
- Does the four percent cost cap compound annually?
- If the utility elects to invest more than the 4%, will the incremental costs above the costs of complying with the chapter be recoverable?
- How does the Commission define levelized delivered cost?
- How should utilities compare resources of different contract lengths or facility life?
- How does the Commission protect customers from excessively high above-market projects that would not trigger the 4% overall cost cap? See the illustrative example provided below.

	2012	2016	2020
Washington Revenue Requirement*	279,830,168	327,361,717	382,966,907
	4%	4%	4%
Cost Cap Total	11,193,207	13,094,469	15,318,676
Washington Total Energy Sales in MWH**	4,514,000	4,680,000	4,944,000
	3%	9%	15%
MWH of Renewables	135,420	421,200	741,600
Total Above-Market Cost Potential - $/MWH	$ 82.66	$ 31.09	$ 20.66
Penalty - $/MWH***	$ 55.20	$ 59.75	$ 64.68

* Assumes average growth of 4% per year
**Estimated Average Annual Growth Rates MWH Sales
*** Escalated 2% to reflect inflation

The above example demonstrates that in the initial years the cost of non-compliance is significantly less than the cost of compliance. In later years, when the renewable target is increased, the above-market cost potential decreases and is less than the penalty rate even when escalated for inflation (estimated at 2% per year). Section 6(4) states that the Commission "shall determine if an investor-owned utility may recover the cost of this administrative penalty in electric rates and may consider providing positive incentives for an investor-owned utility to exceed the targets established in section 4 of this act." If the utility elects to invest more than the 4%, will the incremental costs above the costs of complying with the chapter be recoverable? If the penalty payment for compliance is less harmful to ratepayers will it be recoverable?

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?

Response:

PacifiCorp supports the adoption of general guidelines in the rules that will form the basis for review of projects that serve multiple states. Given the mandate of renewable acquisition, PacifiCorp supports implementation of a renewable tracker ratemaking mechanism that would allow utilities expedited recovery of the capital costs related to renewable

generating resources and transmission resources that facilitate delivery of renewables, without the need for a full general rate case proceeding. The Commission could then implement the tracker mechanism on a case-by-case basis, providing sufficient time for parties to review the prudence of the resource costs in advance of passing the costs through to customers.

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?

Response:

The Commission should consider the following factors:

- Whether penalty is least cost means of meeting RPS (consider whether this will be accepted as an alternative method of compliance)
- Events occur that are beyond utility control (force majeure, weather, third-party contract breach, etc)
- Unfavorable market conditions
- Insufficient resources available
- Other circumstances that would indicate utility is not at fault or has shown good faith efforts to comply

Additionally, it is foreseeable that utilities could experience a shortfall even after making good faith efforts to meet the targets. A wholesale supplier could default or otherwise fail to meet contractual obligations, governmental action could impede efforts, weather systems could cause damage, mechanical failures could occur, there could be a lack of transmission capacity or availability, responses to RFPs might be inadequate to provide sufficient eligible resources, and labor shortages could mean inadequate staffing levels. A utility that makes a good faith effort to meet the targets, but does not succeed because of extenuating circumstances should be exempt from an administrative penalty. The

Commission should consider all of these factors, including *force majeure,* when determining whether to impose an administrative penalty. The above list is not intended to be an exhaustive list, but a representative list.

If, after reviewing a qualifying utility's compliance report, the Commission makes an initial determination that the utility did not meet the standards, the Commission should issue a notice of non-compliance. To determine whether an administrative remedy is appropriate, the Commission should issue notice and provide an opportunity for the utility to respond within 30 days, through a hearing. The utility should be able to present evidence of good faith efforts to meet the standard to either earn an exemption or mitigate any penalties.

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?

Response:

The Commission should allow administrative penalties to be recovered in rates/cost-recovery mechanism/upon (1) a finding that events occurred beyond a utility's control that would affect compliance with the conservation and renewable energy targets or (2) a finding that the actions of the utility resulted in a lower cost for customers than compliance. Aside from the cost floor exemption already enumerated in RCW 19.285.040(2)(d), the statute contemplates events and circumstances that could lead to non-compliance, such as weather-related damage, mechanical failure, strikes, lockouts, and actions of governmental bodies. The statute also recognizes that a utility may be considered in compliance with the renewable targets if these events occur.

The Commission should also consider other factors that could lead to difficulties in meeting renewable energy and conservation targets, such as third party default or other breach of contract, scarcity of resources or other unfavorable market conditions and any other unforeseen circumstance that might affect a utility's ability to meet the standards. If a

utility makes a good faith effort to comply, yet falls short, the Commission should allow administrative penalties to be recovered in rates.

Additionally, the Commission should allow utilities to pay an administrative penalty if doing so would be the least cost means of achieving compliance. In this instance, the Commission should allow the penalty to be recovered in rates.

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?

Response:

PacifiCorp agrees that the Commission should use an annual report as the primary basis for determining utility compliance.

In summation, PacifiCorp looks forward to working with the Commission and parties on this rulemaking. Please direct any questions regarding these comments to Shay LaBray at (503) 813-6176.

Thank you.

Respectfully,

Andrea L Kelly/pr

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