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MEMORANDUM

DATE: June 21, 2010

TO: Jeff Goltz, Chair, Washington Utilities and Transportation Commission

FROM: Fronda Woods, Assistant Attorney General

SUBJECT: **Commission's Authority and Renewable Portfolio Standards**

I have been asked to provide a review of the Utilities and Transportation Commission's existing authority to ensure that investor-owned utilities meet the renewable portfolio standards (RPS) of Chapter 19.285 RCW and to create incentives for utilities to exceed the statutory targets.

A. Washington's Renewable Portfolio Standard: Chapter 19.285 RCW

During the first decade of the twenty-first century, there has been much debate about how the United States should generate the electricity it consumes. Policy-makers have sought ways to increase the diversity of energy sources, reduce air pollution, and sustain harvestable fish populations while maintaining a reliable and affordable electricity supply. Among the programs that have been proposed are Renewable Portfolio Standards, which require retail sellers of electric power to obtain a certain percentage of their power from renewable resources, such as wind, solar, or geothermal resources.

A federal RPS has been debated, but not enacted.¹ Twenty-nine states have enacted Renewable Portfolio Standards.² Washington is one of them.

Washington voters approved Initiative 937, the Energy Independence Act, in the 2006 general election. Now codified as Chapter 19.285 of the Revised Code of Washington, it sets a

¹ *E.g.*, S. 111-826 (available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s826is.txt.pdf).

² North Carolina State University maintains an online Database of State Incentives for Renewables and Efficiency (DSIRE), <http://www.dsireusa.org/>. The United States Department of Energy also maintains information about state Renewable Portfolio Standards on its website, http://apps1.eere.energy.gov/states/maps/renewable_portfolio_states.cfm.

ATTORNEY GENERAL OF WASHINGTON

Chairman Jeff Goltz

June 21, 2010

Page 2

Renewable Portfolio Standard, among other things. RCW 19.285.040(2)(a) requires electric utilities with more than 25,000 customers in the state of Washington to do the following:

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:

- (i) At least three percent of its load by January 1, 2012, and each year thereafter through December 31, 2015;
- (ii) At least nine percent of its load by January 1, 2016, and each year thereafter through December 31, 2019; and
- (iii) At least fifteen percent of its load by January 1, 2020, and each year thereafter.

Many states that have enacted Renewable Portfolio Standards have set higher targets than those in RCW 19.285.040.³

RCW 19.285.030(18) lists nine types of “renewable resources,” including wind, solar, and geothermal energy. A renewable resource is “eligible” if the generation facility started operating after March 31, 1999, in the Pacific Northwest south of Canada.⁴ Extra credit is provided for certain types of facilities.⁵ With limited exceptions, use of fresh water by hydroelectric dams is not an eligible renewable resource.⁶ Electricity generated outside the American Pacific Northwest is “eligible” only under limited circumstances.⁷

Under RCW 19.285.030(17), a “renewable energy credit,” sometimes called a “green tag,” is a tradable certificate of proof of at least one megawatt-hour of an eligible renewable resource.⁸ The credits can be bought and sold in the energy marketplace.⁹ A renewable energy credit may

³ For a map of state Renewable Portfolio Standards, see http://www.dsireusa.org/documents/summarymaps/RPS_map.pptx.

⁴ RCW 19.285.030(10).

⁵ RCW 19.285.040(2)(b); RCW 19.285.040(2)(h).

⁶ See RCW 19.285.030(10). The Oregon RPS statute treats hydroelectric energy somewhat differently. See ORS 469A.020; ORS 469A.025(4), (5) (available at <http://www.leg.state.or.us/ors/469a.html>).

⁷ RCW 19.285.030(10)(a).

⁸ See *In re Puget Sound Energy, Inc.*, Docket UE-070725, Final Order Granting in Part, & Denying in Part, Amended Petition; Determining Appropriate Accounting and Use of Net Proceeds from the Sales of Renewable Energy Credits & Carbon Financial Instruments ¶¶ 13-17 (Wash. Utils. & Transp. Comm’n May 20, 2010).

⁹ The Washington Department of Commerce has selected the Western Renewable Energy Generation Information System as the renewable energy credit tracking system under RCW 19.285.030(17). WAC 194-37-040(31); WAC 194-37-210. The Western Renewable Energy Generation Information System has a website at <http://www.wregis.org/>.

ATTORNEY GENERAL OF WASHINGTON

Chairman Jeff Goltz

June 21, 2010

Page 3

be used once for RPS compliance, either during the year in which it is produced or during the year immediately before or after the year in which it is produced.¹⁰

The statute provides utilities with four alternative means of RPS compliance. A utility may:

- Meet the targets by using eligible renewable resources, acquiring renewable energy credits, or some combination of those two.¹¹
- Invest at least four percent of its total annual retail revenue requirement on some combination of eligible renewable resources and renewable energy credits.¹²
- Make certain showings about its load, electricity purchases, and investments in eligible renewable resources and renewable energy credits.¹³
- Show that events beyond the utility's reasonable control prevented it from meeting the target.¹⁴

Beginning in 2012, investor-owned utilities must report to the Washington Department of Commerce and the Washington Utilities and Transportation Commission (Commission) on their progress in meeting the statutory renewable portfolio targets.¹⁵ A utility that fails to meet the targets must pay a penalty of \$50 for each megawatt-hour of shortfall.¹⁶

B. Commission Authority under Chapter 19.285 RCW

Chapter 19.285 RCW authorizes and directs the Commission to implement the statute in several respects.

The Commission “may adopt rules to ensure the proper implementation and enforcement of this chapter as it applies to investor-owned utilities.”¹⁷ In 2007, the Commission adopted a set of rules now codified as Chapter 480-109 of the Washington Administrative Code.¹⁸

¹⁰ See RCW 19.285.040(2)(e).

¹¹ RCW 19.285.040(2)(a).

¹² RCW 19.285.050(1).

¹³ RCW 19.285.040(2)(d).

¹⁴ RCW 19.285.040(2)(i).

¹⁵ RCW 19.285.070.

¹⁶ RCW 19.285.060(1).

¹⁷ RCW 19.285.080(1).

ATTORNEY GENERAL OF WASHINGTON

Chairman Jeff Goltz

June 21, 2010

Page 4

The Commission must “address cost recovery issues:”

An investor-owned utility is entitled to recover all prudently incurred costs associated with compliance with this chapter. The commission shall address cost recovery issues of qualifying utilities that are investor-owned utilities that serve both in Washington and in other states in complying with this chapter.¹⁹

The statute does not specify a process for “address[ing] cost recovery issues,” but the phrase “prudently incurred” is commonly associated with rate making.²⁰ In its rule-making order, the Commission observed that the statute “reiterates the Commission’s longstanding practice concerning cost recovery of any investment.”²¹ Options for addressing cost recovery issues are general rate cases or other specific cost recovery mechanisms approved for individual utilities.²²

The Commission “may consider providing positive incentives for an investor-owned utility to exceed the targets established in RCW 19.285.040.”²³ The statute does not specify a process for doing that. In its rule-making order, the Commission suggested, “Any utility may propose incentives and the Commission will consider them on a case-by-case basis.”²⁴

The Commission must “determine compliance with the provisions of this chapter and assess penalties for noncompliance” with respect to investor-owned utilities.²⁵ The Commission’s rules describe the process for determining compliance and assessing penalties.²⁶

¹⁸ The Commission adopted its rules in Docket UE-061895, General Order R-546. The rule adoption order is published in issue 08-1 of the Washington State Register as WSR 07-24-012.

¹⁹ RCW 19.285.050(2).

²⁰ *People’s Org. for Wash. Energy Res. v. Utils. & Transp. Comm’n*, 104 Wn.2d 798, 801, 711 P.3d 319 (1985); see *In re Provision of Basic Generation Serv.*, 984 A.2d 437 (N.J. Super. Ct. App. Div. 2009) (rejecting challenge to New Jersey Board of Public Utilities’ decision to approve the pass-through to utility ratepayers of a portion of the costs of solar renewable energy certificates as having been “prudently incurred”), *review granted*, 991 A.2d 229 (N.J. 2010) (No. 65,275).

²¹ Docket UE-061895, General Order R-546 ¶ 45.

²² For example, the Commission has used a Power Cost Only Rate Case (PCORC) mechanism for Puget Sound Energy. The PCORC mechanism provides an expeditious means for the Company to include new resource costs in rates. See *WUTC v. Puget Sound Energy, Inc.*, Docket UE-072300, Order 13 (Wash. Utils. & Transp. Comm’n Jan. 15, 2009).

²³ RCW 19.285.060(4).

²⁴ Docket UE-061895, General Order R-546 ¶ 44.

²⁵ RCW 19.285.060(6).

²⁶ WAC 480-109-040; WAC 480-109-050.

ATTORNEY GENERAL OF WASHINGTON

Chairman Jeff Goltz

June 21, 2010

Page 5

The Commission must “determine if an investor-owned utility may recover the cost of this administrative penalty in electric rates.”²⁷ In its rule-making order, the Commission said that it would “address the recovery of penalties on a case-by-case basis.”²⁸

C. Other Authority With Respect to Renewable Energy Resources

1. Greenhouse Gas Emissions – Chapter 80.80 RCW

In 2007, the Legislature enacted a law designed to mitigate the impacts of climate change by reducing greenhouse gas emissions.²⁹ It established a greenhouse gas emission performance standard for baseload electric generation.³⁰ Electric utilities may not enter into long-term financial commitments for baseload electric generation unless the generation complies with the performance standard.³¹ Electric generation facilities powered exclusively by renewable resources, including hydroelectric dams, are deemed to be in compliance.³²

With respect to investor-owned utilities, the statute directs the Commission to enforce the performance standard “in a general rate case,”³³ and to address cost recovery issues in “a general rate case or other proceeding for the recovery of” costs.³⁴ A utility may apply to the Commission outside a general rate case proceeding for a determination on whether a proposed transaction complies with the performance standard.³⁵

The Commission has adopted rules in accordance with RCW 80.80.060(8).³⁶

²⁷ RCW 19.285.060(4).

²⁸ Docket UE-061895, General Order R-546 ¶ 43.

²⁹ 2007 Wash. Laws ch. 307, *codified as amended at* Ch. 80.80 RCW.

³⁰ RCW 80.80.040(1).

³¹ RCW 80.80.060(1).

³² RCW 80.80.040(4); *see* RCW 19.280.020(13); WAC 173-407-110.

³³ RCW 80.80.060(2).

³⁴ RCW 80.80.060(5), (6).

³⁵ RCW 80.80.060(5).

³⁶ WAC §§ 480-100-405, 480-100-415, 480-100-425, 480-100-435; *see* Docket UE-080111, General Order R-553, published at Wash. St. Reg. 08-23-047.

ATTORNEY GENERAL OF WASHINGTON

Chairman Jeff Goltz

June 21, 2010

Page 6

2. Green Power – RCW 19.29A.090(5)

In 2001, the Legislature enacted a law requiring electric utilities to offer their customers a voluntary option to purchase electricity generated by certain renewable resources.³⁷ This is commonly called “Green Power.” The Commission has authority to approve the “rates, terms, conditions, and customer notification” of each investor-owned utility’s Green Power options.³⁸ The statute does not expressly authorize the Commission to adopt rules, but language added in 2002 to address aggregated purchases by investor-owned utilities recognized the Commission’s pre-existing authority to adopt rules or policies “related to least-cost planning or the acquisition of renewable resources.”³⁹ At the time, the Commission had a rule entitled “least cost planning.”⁴⁰

Green Power is separate from and in addition to the Energy Independence Act. Electricity obtained for and used in the Green Power program cannot be used to meet the Renewable Portfolio Standards of Chapter 19.285 RCW.⁴¹

3. Integrated Resource Plans – Chapter 19.280 RCW

At the outset of the 2005 legislative session, a group of legislators introduced House Bill 59-1010, whose stated goal was to “encourag[e] the construction and development of renewable energy in the state of Washington.” It would have required electric utilities to develop integrated resource plans. In general, an integrated resource plan (IRP) forecasts electricity demand, analyzes the resources available to meet it, and plots the steps needed to match resources with demand at the lowest reasonable cost and risk.

House Bill 59-1010 did not pass during the 2005 legislative session. The Commission was already considering revisions to its least-cost planning rule, however, and moved forward under its general rule-making authority⁴² to accomplish much of what House Bill 59-1010 would have required with respect to investor-owned utilities. The Commission adopted final revisions to WAC 480-100-238 in January 2006.⁴³

³⁷ 2001 Wash. Laws ch. 214, § 28, *codified as amended at RCW 19.29A.090*.

³⁸ RCW 19.29A.090(5). The most recent updates to Washington investor-owned utilities’ Green Power programs took effect pursuant to the Commission’s open meeting No Action agenda. *See* Dockets UE-100107 (PacifiCorp), UE-070422 (Puget Sound Energy), and UE-041067 (Avista).

³⁹ 2002 Wash. Laws ch. 285, § 6, *codified at RCW 19.29A.090(5)*.

⁴⁰ WAC 480-100-238 (2002); *see* Docket UE-990473, General Order No. R-482, published at Wash. St. Reg. 01-11-004.

⁴¹ RCW 19.285.040(2)(f)(ii).

⁴² RCW 80.01.040; RCW 80.04.160.

⁴³ Docket UE-030311, General Order R-526, published at Wash. St. Reg. 06-03-001.

ATTORNEY GENERAL OF WASHINGTON

Chairman Jeff Goltz

June 21, 2010

Page 7

A revised version of House Bill 59-1010 passed during the 2006 legislative session. Now codified at Chapter 19.280 RCW, it requires electric utilities with more than 25,000 customers to prepare integrated resource plans periodically.⁴⁴ Investor-owned utilities must submit their IRPs to the Commission.⁴⁵

The statute requires utilities to undertake a “comparative evaluation of renewable and nonrenewable generating resources.”⁴⁶ The Commission has interpreted its rule as requiring utilities to include renewable technologies in their planning.⁴⁷ The statute and the rule also require utilities to consider “policies regarding resource preference adopted by Washington state or the federal government” when evaluating costs and risks.⁴⁸

The Legislature authorized the Commission to adopt rules concerning integrated resource plans.⁴⁹ The Commission considers the information reported in a utility’s IRP “when it evaluates the performance of the utility in rate and other proceedings.”⁵⁰

4. Net Metering – Chapter 80.60 RCW

In 1998, the Legislature enacted a law designed to “[e]ncourage investment in renewable energy resources” by requiring electric utilities to allow customers with their own generating facilities (such as solar panels) to interconnect with the electric grid.⁵¹ The legislation specifies that, by January 1, 2014, a utility must make available to such customers 0.5 percent of the utility’s 1996 peak demand, reserving at least half of that for “net metering systems that generate renewable energy.”⁵² The customer’s utility bill for a given period is to be based on the difference between

⁴⁴ RCW 19.280.030(1).

⁴⁵ RCW 19.280.040(1).

⁴⁶ RCW 19.280.030(1)(d).

⁴⁷ Docket UE-060649, *Interpretive and Policy Statement Regarding Energy Policy Act of 2005 Standards for Net-Metering, Fuel Sources, Fossil Fuel Generation Efficiency and Time-Based Metering*, ¶ 12.

⁴⁸ RCW 19.280.030(1)(d); RCW 19.280.020(11); WAC 480-100-238(2)(b), (3)(e).

⁴⁹ RCW 19.280.040.

⁵⁰ WAC 480-100-238(6); see WAC 480-108-040(13) (cost allocation for interconnection between utilities and customer generation facilities); WAC 480-108-090(2)(d) (alternative interconnection tariff standards).

⁵¹ 1998 Wash. Laws ch. 318, *codified as amended at Ch. 80.60 RCW*.

⁵² RCW 80.60.020(1)(a). “Renewable energy” sources includes water, wind, solar, and animal waste sources, but not plant biomass. RCW 80.60.010(14).

ATTORNEY GENERAL OF WASHINGTON

Chairman Jeff Goltz

June 21, 2010

Page 8

the electricity supplied by the electric utility and the electricity generated by the customer and supplied to the grid.⁵³

The statute sets provisions for metering equipment and fees, which the Commission may alter on a case-by-case basis for investor-owned utilities.⁵⁴ The Commission may adopt rules for “additional safety, power quality, and interconnection requirements” that it determines to be “necessary to protect public safety and system reliability.”⁵⁵ The Commission has adopted such rules.⁵⁶

5. Other Legislative Policy Enactments

As described in the attached table, the Legislature has enacted other laws stating a policy of promoting renewable energy statewide.⁵⁷

⁵³ RCW 80.60.010(9); RCW 80.60.030; *see* Final Bill Report SHB 2773, *available at* <http://apps.leg.wa.gov/documents/billdocs/1997-98/Pdf/Bill%20Reports/House/2773-S.FBR.pdf>.

⁵⁴ RCW 80.60.020.

⁵⁵ RCW 80.60.040(2).

⁵⁶ Chapter 480-108 WAC; *see* Docket UE-051106, General Order No. 5-528, published at Wash. St. Reg. 06-07-017; Docket UE-060649, General Order 545, published in Issue 07-21 of the Washington State Register as WSR 07-20-059.

⁵⁷ *See* RCW 28.B.20.298; 2005 Wash. Laws ch. 300 § 1 (codified as a note to RCW 82.16.110); 2010 Wash. Laws ch. 271, §§ 1, 401, 402, 403.

ATTORNEY GENERAL OF WASHINGTON

Chairman Jeff Goltz
 June 21, 2010
 Page 9

Sets Forth Policy of Promoting Renewable Energy	Sets Renewable Portfolio Standard	Confers Approval Authority on UTC	Confers Rule Making Authority on UTC	Authorizes UTC to Assess Penalties for Noncompliance with the Statute	Authorizes UTC to Consider Incentives to Utilities to Invest in Renewables
<i>Energy Independence Act (Chapter 19.285 RCW)</i>					
Yes	Yes (RCW 19.285.040(2))	Yes, for cost recovery issues (RCW 19.285.050(2))	Yes (RCW 19.285.080(1); <i>see</i> Chapter 480-109 WAC)	Yes (RCW 19.285.060(2), (6))	Yes (RCW 19.285.060(4))
<i>Greenhouse Gas Emissions (Chapter 80.80 RCW)</i>					
Yes (RCW 80.80.005)	No	Yes, for certain transactions, through rate-making or case-by-case application (RCW 80.80.060)	Yes (RCW 80.80.060(8); <i>see</i> WAC 480-100-405 through 480-080-435)	No	No
<i>Green Power Option (RCW 19.29A.090)</i>					
No	No	Yes, for rates, terms, conditions, and customer notification	No	No	No
<i>Integrated Resource Planning (Chapter 19.280 RCW)</i>					
Yes (RCW 19.280.010)	No	No	Yes (RCW 19.280.040; <i>see</i> WAC 480-100-238)	No	No

ATTORNEY GENERAL OF WASHINGTON

Chairman Jeff Goltz
 June 21, 2010
 Page 10

Sets Forth Policy of Promoting Renewable Energy	Sets Renewable Portfolio Standard	Confers Approval Authority on UTC	Confers Rule Making Authority on UTC	Authorizes UTC to Assess Penalties for Noncompliance with the Statute	Authorizes UTC to Consider Incentives to Utilities to Invest in Renewables
<i>Net Metering (Chapter 80.60 RCW)</i>					
Yes	No, but requires utilities to allow certain percentages of customer-generated capacity from renewable energy (RCW 80.60.020(1)(a))	Yes, for metering equipment and cost allocation (RCW 80.60.020(1)(b), (c))	Yes, for safety, power quality, and interconnection (RCW 80.60.040(2); <i>see</i> Chapter 480-108 WAC)	No	No
<i>Clean Energy Research (RCW 28B.20.298)</i>					
Yes	No	No	No	No	No, but directs state agencies to encourage utilities to invest in new renewables
<i>2005 Wash. Laws ch. 300, § 1 (codified as a note to RCW 82.16.110)</i>					
Yes	No	No	No	No	No
<i>1980 Wash. Laws ch. 149 (codified as amended at RCW 80.28.024, 80.28.025, and 82.16.055)</i>					
Yes	No	Yes, for return on investment of projects constructed during the 1980s	No	No	Yes, for projects constructed during the 1980s
<i>State Energy Strategy (2010 Wash. Laws ch. 271, §§ 1, 401, 402, 403, to be codified in Ch. 43.21F RCW)</i>					
Yes	No	No	No	No	No