Steven V. King December 2, 2013
Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, Washington 98504-7250

RE: DOCKET NO. UE-131723 (I-937 rulemaking)

The NW Energy Coalition and Renewable Northwest Project submit the following comments in response to the Commission's October 4 Notice of Opportunity to File Written Comments in the Energy Independence Act (I-937, WAC 480-109) Rulemaking. Our comments focus on rule revisions we believe are necessary to promote effective, efficient, and practical implementation of I-937 as amended since the Commission adopted rules in 2007. **(Note: The attached matrix summarizes our comments, with page references back to the extended explanations in this narrative.)**

Summary Statement 1: The Commission should consider deleting all definitions in WAC 480-109-007 that repeat statutory definitions.

The CR-102 recently issued by Commerce in its rulemaking to amend provisions related to implementation of I-937 deletes definitions that repeat statutory definitions. This eliminates inconsistences resulting from statutory amendments in 2012 and 2013, and reduces the likelihood of future inconsistencies due to statutory changes, given that the definition section is the most commonly amended. If the Commission opts to retain the definitions that repeat statutory language, the rules need to be updated to include new or modified definitions of non-power attributes (HB 1154 in 2013), biomass energy, qualified biomass energy (SB 5575 in 2012), eligible renewable resource (SB 5575 in 2012, SB 5400 in 2013), and coal transition power (SB 5297 in 2013).

In either case, WAC 480-109-007 should be amended to include a definition for the Western Renewable Energy Generation Information System (WREGIS), adopted by the Department of Commerce in WAC 194-37-210 as the renewable energy credit tracking system in accordance with RCW 19.285.030(20). We recommend using the same definition for WREGIS as proposed by Commerce in its CR-102:

> "WREGIS" means the Western Renewable Energy Generation Information System. WREGIS is an independent, renewable energy registry and tracking system for the region covered by the Western Interconnection. WREGIS creates renewable energy certificates, WREGIS certificates, for verifiable renewable generation from units that register in the registry and tracking system.

Summary Statement 2: The rules need to be modified to reflect certain substantive changes to the law that occurred in 2012 and 2013.

If the Commission opts to delete from the rules those definitions that repeat statutory definitions as recommended above, no additional modifications are needed to address changes to the law in HB 1154 (modifying the definition of nonpower attributes) or SB 5400 (expanding the definition of eligible renewables for certain multistate utilities). Further, there appears to be no need to modify the Commission's rules regarding implementation of SB 6414, establishing an advisory opinion process for determining whether a proposed electric generation or conservation project qualifies to meet the standards in RCW 19.285.040, as that process applies to consumer-owned utilities.

Recommendation 2.1: Modify WAC 480-109-030 to reference coal transition power in accordance with SB 5297 (enacted in 2013).

> (3) A utility may demonstrate all of the following:
> (a) Its weather-adjusted load for the previous three years on average did not increase.
> (b) After December 7, 2006, all new or renewed ownership or purchases of electricity from nonrenewable resources other than daily spot purchases or coal transition power were offset by equivalent renewable energy credits.
> (c) It invested at least one percent of its total annual retail revenue requirement that year on eligible renewable resources, renewable energy credits, or a combination of both.

Recommendation 2.2: Modify WAC 480-109-040 to require reporting related to a qualifying utility's use of legacy biomass to meet its renewable energy target as allowed in SB 5575 (enacted in 2012).

We recommend adopting rules akin to those proposed by Commerce in its CR-102. These new rules address legacy biomass as well as co-firing of electricity (allowed in RCW 19.285.040(2)(g)). Proposed rule language follows:

> 1) A utility using biomass energy produced by a multifuel generating facility, where the biomass energy fuel provides less than ninety-eight percent of the total heat input, must document the eligible renewable energy using RECs created by WREGIS pursuant to the multifuel generating unit procedures of WREGIS.
> (2) A utility using qualified biomass energy must document the eligible renewable energy using RECs created by WREGIS and must document:
> (a) Information about the facility generating electricity from biomass energy:
> (i) Ownership of the biomass energy facility;
> (ii) Date of commercial operation of the biomass energy facility; and

(iii) Specific type of biomass used for generation by the biomass energy facility.
(b) Information about the industrial facility that hosts the biomass energy facility:
(i) The utility's load in megawatt hours that results from serving the industrial facility;
(ii) Evidence that the industrial facility had not ceased operation, other than for purposes of maintenance or upgrade, during the target year;
(iii) Evidence that the industrial facility engages in industrial pulping or wood manufacturing; and
(iv) If the facility generating electricity from biomass energy is not owned by the utility, evidence that the industrial facility owns the biomass energy facility and is directly interconnected with the electricity facilities that are owned by the utility and capable of carrying electricity at transmission voltage.

Summary Statement 3: The rules should be amended to reflect the functional two-step compliance documentation and review arrangement that the Commission has laid out by order.

The Commission may wish to adopt one rule for its two-step compliance review process, and another separate rule for the annual reporting and public disclosure required by RCW 19.285.070. The latter section defines utilities' obligation to report to Commerce, but presents only a floor for what the Commission (or the Auditor, in the case of most consumer-owned utilities) may require for effective compliance review.

Recommendation 3.1: *Retain WAC 480-109-020 and -030 largely in their current forms* because they state fairly accurately the basic renewable energy requirements and alternatives to fully meeting those requirements. (We recommend only one change to WAC 480-109-030 and WAC 480-109-040, discussed below in Summary Statement 4.)

Recommendation 3.2: *Adopt a new WAC 480-109-035 that describes the Commission's two-step compliance review arrangement, including the names of the facilities used as eligible renewable resources as well as the qualifying electricity produced at each.*

480-109-035 Documenting compliance with renewable resource requirement
The Commission reviews utility compliance with RCW 19.285.040(2) in two steps, as described in this section.

(1) Step One evaluates whether the qualifying utility used eligible renewable resources or acquired equivalent RECs, or a combination of the two, by January 1 of the target year.

(a) On or before every June 1, each qualifying utility must demonstrate that it had in hand, as of January 1 of that same year (i.e., six months before the report date), rights to eligible renewable resources or RECs that are likely to produce the output required by WAC 480-109-020 for that year.

(b) In its Step One report, a qualifying utility need not define precisely which megawatt-hours it ultimately will use and RECs it ultimately will retire for compliance in Step Two. Rather, the qualifying utility must identify all assets or contracts for eligible renewable resources or RECs in place as of January 1 of the target year. For a finding of compliance in Step One, the expected output of those assets or contracts must be likely to be equal to or greater than that required by WAC 480-109-020 for that year.

(c) Documentation for a qualifying utility's Step One report shall include sufficient information for the Commission to be able to confirm that the qualifying utility possessed, as of January 1, the right to claim the nonpower attributes associated with the assets or contracts identified in the Step One report.

(2) Step Two evaluates whether the qualifying utility eventually produced and acquired sufficient megawatt-hours, RECs, or a combination to meet the renewable energy requirement for the target year.

(a) On or before June 1 of the second year after each target year, each qualifying utility must demonstrate that it generated sufficient megawatt-hours from eligible renewable resources during the target year; procured sufficient RECs that were produced during the target year, the year preceding the target year, or the year subsequent to the target year; or a combination of the two to satisfy the requirement in WAC 480-109-020 for that target year.

(b) In its Step Two report, the qualifying utility must document precisely the qualifying output from eligible renewable resources that it used, the RECs it acquired, or a combination sufficient to satisfy the renewable energy requirement in WAC 480-109-020 for that target year.

(c) Within 30 days following a Commission order approving a qualifying utility's Step Two report, the qualifying utility must make a compliance filing demonstrating that it has retired the RECs approved for compliance.

(i) For compliance using RECs or megawatt-hours from eligible renewable resources that are registered in WREGIS, a WREGIS retirement report must accompany the compliance filing.

(ii) For compliance using eligible renewable resources that are not registered in WREGIS, an equally rigorous form of attestation and documentation is required.

Recommendation 3.3: *Break WAC 480-109-040 into two separate sections, with WAC 480-109-040 covering annual public reporting and new WAC 480-109-045 covering the Commission's compliance review process*.

Recommendation 3.4: *Clarify the time periods intended to be covered by WAC 480-109-040's annual public reporting requirement.* The Commission should avoid merely repeating the statutory phrase "progress in the preceding year in meeting the targets established in RCW 19.285.040." *See* RCW 19.285.070 ("Reporting and public disclosure"). Instead, the Commission should interpret the phrase "preceding year" to

require the report to cover progress made in the year preceding the target year during which the report is filed toward meeting the target year's January 1 requirement. (The statute requires such reports to begin in June 1, 2012, and therefore the intent must have been to cover progress made in 2011 to meet the target of January 1, 2012.) Public reporting can also cover progress in the preceding year toward closing out that *preceding* target year's books (i.e., a report in 2014 that covers progress in 2013 toward closing out the 2012 or 2013 target years). But the rules will continue to be unclear and inconsistent with the statute if they do not also clearly require, for example, June 1, 2016, reports to cover progress in 2015 toward meeting the January 1, 2016 target. The current Commerce template accomplishes this goal, and the Commission could use a dedicated annual public reporting rule section to maintain consistency with Commerce's rules.

In revising WAC 480-109-040(1), the Commission also should either eliminate or begin to enforce the originally intended meaning of WAC 480-109-040(1)(d). Use of the term "current year" in that subsection confuses the existing rule. When we pointed out the potential for confusion in 2007, the Commission said:

> "The rule is sufficiently clear that in the first report submitted on June 1, 2012, a utility must demonstrate that it complied with the requirements of WAC 480-109-020 and describe its progress towards meeting the January 1, 2013, renewable target."

As we feared, however, this forward-looking meaning of the term "current year" has never been accepted by utilities or the Commission in practice. We are not opposed to eliminating this now-meaningless provision, since IRPs generally provide sufficient public information about planning to meet forward renewable resource targets.

Recommendation 3.5: *Move WAC 480-109-040(2) into its own new section WAC 480-109-045 ("Procedure for compliance review"), so that the review process is more obviously identifiable in the rules*.

At this stage of the Commission's parallel procedural rulemaking, we are not prepared to recommend that the Commission abandon its review of I-937 filings using open meeting procedures. The existing rule allows the Commission to establish an adjudicative proceeding or other process if additional scrutiny is warranted. For example,we recommend that an "adjudicative proceeding or other process" be used if scrutiny of confidential information is critical to the Commission's resolution of an important issue surrounding RPS compliance, and an interested party requests such process.

The Commission may wish, however, to consider improving some procedural details either in this rule or in the procedural rulemaking. For instance, it would be

helpful to have a more defined process and list of interested parties for notice of utility filings and important open meeting dates and deadlines.

Summary Statement 4: The Commission should make small wording changes to WAC 480-109-030 and WAC 480-109-040 to clarify the effect of the alternative compliance provisions.

The alternative compliance mechanisms are ways to reduce the compliance obligation or to end the renewable energy obligation before fully meeting the target, because a certain threshold has been reached. Triggering the mechanisms does not automatically excuse utilities from delivering *any* renewable energy to customers, and the current rule language should be modified accordingly.

Recommendation 4.1: *Modify the opening sentence of WAC 408-109-030 to avoid the erroneous implication that qualifying for an alternative to the renewable energy target completely eliminates the need to use or acquire eligible renewable energy or RECs in that year*. The current sentence says:

> "Instead of meeting its annual renewable resource target in WAC 480-109-020, a utility may make one of three demonstrations."

The subsections then lay out the 4% incremental cost cap, the "events beyond its reasonable control" provision, and the 1% no-load-growth cost cap.

A good clarifying addition to that subsection would be:

> "Instead of **fully** meeting its annual renewable resource target in WAC 480-109-020, a utility may make one of three demonstrations."

This would make clear that hitting the 4% incremental cost cap or the 1% cost cap would only excuse compliance up to that point, and being affected by an event beyond its reasonable control would only excuse compliance to the degree the event impacted compliance. A similar edit would be needed in WAC 480-109-040(1)(c), which currently states, "The report must state if the utility is relying upon one of the alternative compliance mechanisms provided in WAC 480-109-030 *instead of meeting* its renewable resource target." (emph. added)

Summary Statement 5: We encourage the Commission to incorporate the parameters established in its recent orders and staff recommendations regarding calculation of incremental hydropower into its I-937 rules.

We appreciate Commission staff's strong effort to evaluate how the incremental electricity produced by efficiency improvements to hydroelectric facilities can most accurately and efficiently be measured. We recommend that the rule establish a

preference for methodologies that use actual annual flow or generation information, because these will make the rule more durable and accurate over time. We also recommend that incremental electricity purchased from a hydroelectric facility that is owned by a qualifying utility not regulated by the Commission be held to the same standards of measurement accuracy.

If the Commission allows a "Method 3" one-time estimate methodology in addition to the preferred annual-data methodologies, then it should establish by rule at least the following: the historical period used to determine average flows (i.e., last ten years); the minimum intervals, no greater than every five years, that a utility must compare its fixed MWh estimate against one of the preferred methodologies; and the consequences if the fixed estimate differs from the annual-data analysis by more than a set percentage (i.e., revert to the annual methodology or recalculate Method 3). Otherwise, a fixed MWh estimate of production from a variable resource (whose output is likely to be affected significantly by climate change) could become disconnected from reality.

Summary Statement 6: The Commission should consider the appropriate process for supplementing its rules on incremental cost to achieve greater consistency with the statute.

We have consistently argued, and continue to believe, that there is inconsistency among utilities, and between utility methods and RCW 19.285.050(1)(b), in how the incremental cost of RPS resources has been calculated to date.[1] The Commission's existing rules provide very little guidance beyond repeating RCW 19.285.050(1)(b), and this rulemaking presents an opportunity to change that. We are prepared to work with other parties to address this issue during this rulemaking.

At the same time, we are not aware of any near-term intention by the investor-owned utilities to make use of a cost-based alternative. Although the utilities' incremental cost estimates do have significant public informational value, a methodology's consistency with the statutory parameters is more critical if the utility using it is seeking to reduce its obligation to use eligible renewable energy. And finding a methodology that is acceptable to all parties and consistent with the statute can take a significant commitment of Commission staff, utility, and stakeholder time and resources.

[1] *See, e.g.*, Comments of Renewable Northwest Project and NW Energy Coalition, Docket Nos. UE-120802, UE-120791 and UE-120813 (July 16, 2012).

If desired, a fruitful starting point for discussion could be the stipulation that parties recently entered on the incremental cost calculation for the Oregon RPS.[2] Oregon's rules require comparison between an RPS resource and a proxy gas plant, which would satisfy the "same contract length or facility life" requirement in RCW 19.285.050(1)(b). *See* Oregon Admin. Rule 860-083-0100. The stipulation modifies the hypothetical proxy gas plant by removing a significant portion of its fixed costs, so that its capacity as well as its energy values better match those actually delivered by the RPS resource. The stipulation also advances analytical tools to measure renewable resource capacity value and risk reduction value, though it does not represent an agreement among all parties on those issues. The end result of the capacity, energy, and risk equivalence methodology described in the stipulation is not significantly different from the market + SCCT fixed cost approach that Puget Sound Energy has taken. But considering the Oregon methodology would help resolve the "same contract length or facility life" issue and also would allow the Commission to establish consistent practices for levelization and negative incremental costs (other key issues identified in our July 16, 2012, comments).

We support action on this issue and recognize that continuing to observe these inconsistencies without resolving them is not a comfortable position for the Commission. Yet, we also acknowledge that further delay will allow the Commission to devote resources to issues that presently are higher priorities. We stand ready to participate further if the Commission provides a forum for discussion.

Summary Statement 7: The Commission should codify in rules the conclusions it reached regarding interpretation of provisions in I-937 in its declaratory orders and in response to motions for summary judgment.

First, the Commission's Declaratory Order Interpreting RCW 19.285.040(2)(h), Docket No. U-111663 (December 1, 2011), related to the "extra credits" a renewable energy resource might produce by qualifying for the apprentice labor multipliers, and concluded that a utility cannot use those "extra credits" for compliance if it has not retained the underlying REC. That finding should be reflected in the rules. The Commission also should consider using this rulemaking to extend the logic of its Order to the distributed generation multiplier. The reasoning and statutory interpretation is exactly the same; the declaratory order petition, however, limited the scope of the question the Commission could consider. The advantage of placing this conclusion in a rule is that the Commission's conclusion will be visible to those who may not have been involved in the declaratory order proceeding.

[2] The Oregon Public Utility Commission docket number for this investigation is UM 1616, which is available at http://apps.puc.state.or.us/edockets/docket.asp?DocketID=17741. The stipulation itself is available at http://edocs.puc.state.or.us/efdocs/HAR/um1616har142917.pdf and joint testimony in support of the stipulation should be filed shortly.

In Docket No. U-121165, the Commission issued Order 01 declaring that the obligation under RCW 19.285.040(1) to pursue all available conservation that is cost-effective, reliable, and feasible does not require a qualified utility to include as "conservation" its capital investments in electric power production equipment, where such capital investments do not reduce electric power consumption. The rules should reflect this finding.

In Docket No. UE-100177, the Commission issued Order 04 granting in part and denying in part PSE's motion for summary judgment regarding its proposed 10-year conservation potential and biennial target. Several of the conclusions reached in this Order are moot if the Commission removes the reference in the existing rules to a utility's ability to use its share of the regional conservation potential assessed by the Northwest Power and Conservation Council (*see our discussion in Summary Statement 8*). The rules implementing I-937 could be clarified to reflect the following additional Commission determinations and suggestions:

- A utility should formally file its projected conservation potential by January 1 of each even-numbered year (¶ 132); and
- The biennial conservation target must be consistent with and not differ significantly from the projected ten-year potential identified by January 1 (¶¶ 63, 67, 133).

<u>Summary Statement 8</u>: The option for a utility to use its share of the regional conservation potential identified by the Northwest Power and Conservation Council should be removed from the rules.

We agree with the Council that a utility's share of the regional conservation assessment generally should be used as a benchmark rather than a specific target.

> The purpose of this calculator is to provide utilities with a simple means to compute "their share" of the Northwest Power and Conservation Council 6th Plan's regional conservation target. This calculator is intended to provide utilities with an "approximation" of the level of conservation they should target in order to be consistent with the Council's regional goals. The Council does not formally assign individual utility targets in its planning process. Individual utility conservation goals are best established through utility integrated resource planning processes which can better account for local conditions and legal requirements. Nevertheless, the results of this calculator can be used as rough guidance for utility conservation program planning until such time as a utility completes its own integrated resource plan or other similar process.[3]

[3] Introduction, Northwest Power and Conservation Council's Sixth Plan Conservation Target Calculator, as revised 1/14/2010.

Stakeholders appeared to be in agreement at the Commission's November 12 workshop regarding elimination of the conservation calculator option, referenced in WAC 480-109-010 (1)(b)(ii), (3)(b) and 3(c).

Summary Statement 9: The rules should provide clear guidance with regard to how savings due to improvements in energy codes and efficiency standards are counted toward a utility's biennial target.

Building energy codes and standards aimed at increasing equipment and appliance efficiency represent two of the cheapest and best conservation options. Utilities can play an instrumental role in the adoption and implementation of strong energy codes and equipment standards, through direct programs, upstream programs, support for adoption, and enforcement training, among other activities. However, the Commission's rules do not provide clear guidance regarding the ability of a utility to count toward its biennial target efficiency savings due to energy codes and efficiency standards and thus may not encourage utilities to proactively support adoption of new codes and standards. We urge the Commission to consider modifying the rules to better motivate utilities to promote energy codes and efficiency standards, while ensuring that double-counting of savings (e.g., with NEEA) does not occur.

Summary Statement 10: The rules should be modified to provide clear guidance regarding a utility's ability to count savings from behavioral programs toward meeting its biennial target, including how those savings will be verified and the programs will be evaluated.

Since the rules were written, utility conservation programs that focus on encouraging behavioral changes (e.g. usage reports, school education programs, etc.) have become more prevalent. In addition, the body of research regionally and nationally is growing with regard to behavioral program evaluation, measurement and verification of savings. The rules should provide explicit guidelines regarding how savings from behavioral programs can be measured, verified and counted toward a utility's biennial targets.

Summary Statement 11: The rules should clarify a utility's options should an RTF deemed savings number change within the biennium.

As interpreted by the Commission in Order 04 of Docket UE-100177 (at ¶¶ 63, 67), WAC 480-109-010 allows a utility to modify its ten-year conservation potential between January 1 and January 31 of each even-numbered year, within limits. Implicit in that rule (and explicit in RCW 19.285.040(1)(b), regarding setting a biennial target in January and meeting *that* target during the subsequent two-year period) is the notion that a utility cannot change its biennial target once that has been set.

The conditions lists that have been adopted with each utility's biennial conservation filings have encouraged use of the Regional Technical Forum's deemed savings for electricity measures where appropriate.[4] However, there appears to be some uncertainty with regard to a utility's options should the RTF change unit energy savings (UES) values for a particular measure mid-biennium. This issue arose in discussions of the Washington Conservation Working Group convened by Staff in 2011. We recommend the rules be modified to address such circumstances.

We are amenable to a utility being able to hold its deemed RTF savings value constant at least for the calendar year, even if the RTF changes that value mid-year, given a utility cannot modify its biennial target (as discussed above). For example, if a utility established its biennial target based on certain assumptions regarding RTF deemed savings, then the RTF changed some of those deemed savings numbers in the second year of the biennium, the utility should be able to rely on its original savings estimate for the entire biennium. If the RTF changed its deemed savings number in the first year of the biennium, a utility should be able to keep its deemed savings constant for that first year then adaptively manage its programs in the second year to account for any excess or deficit. We are also open to discussing the pros and cons of a utility keeping its RTF UES values constant for the entire biennium. To the best of our knowledge, the RTF in recent years has not increased any UES values, but we don't preclude that possibility – and the rules should be modified in a way that is agnostic as to whether deemed savings increase or decrease (i.e., a utility should treat either circumstance equally).

Summary Statement 12: The Commission should consider incorporating into the rules key provisions from the conditions lists adopted with each utility's energy efficiency biennial targets.

In 2010 and 2012, the Commission adopted biennial conservation targets for each of the three investor owned utilities subject to conditions. Those conditions lists resulted from extensive negotiations between each utility and its conservation advisory group members. Some conditions are intended to be short-term and some are specific to individual utilities, but many of the conditions are essentially identical across the three utilities. Rather than continuing to adopt those conditions every two years for each utility, it would be helpful to incorporate long-term, in-common conditions into the rules at this time (e.g., related to annual budgets and energy savings, approved strategies for selecting and evaluating energy conservation savings, and program design principles, among others).

[4] *See for example* Docket UE-111881, ¶ 35.

<u>Summary Statement 13:</u> Additional specificity in the rules could be considered in a future I-937 rulemaking.

Although extensive conversation occurred during the 2007 rulemaking process, stakeholders never reached agreement on a proposal and the current rules do not provide any guidance concerning the provision in RCW 19.285.030(12) allowing delivery of eligible renewable resources on a "real-time basis without shaping, storage or integration services." (WAC 480-109-020(4)) Also, WAC 480-109-040 does not provide guidance regarding what documentation a utility would provide in its annual report to demonstrate that biodiesel fuel did not originate from old growth or first growth forests (RCW 19.285.030(21)(h)).

While these are conversations worth having, we believe they are lower priority than the other issues raised above, but we take this opportunity to point them out for consideration in future years.

We appreciate the Commission's consideration of our comments, and we look forward to continued productive implementation of the Energy Independence Act.

Sincerely,

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