BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RULEMAKING TO IMPLEMENT INITIATIVE MEASURE NO. 937 Comment Opportunity (CR 101)	DOCKET NO. UE-061895

INITIAL COMMENTS OF PUBLIC COUNSEL (CR-101)

February 26, 2007

I. INTRODUCTION

The Public Counsel Section of the Washington Attorney General's Office respectfully submits these comments in response to the Commission's January 30, 2007, Notice of Opportunity to File Written Comments on the Proposed Rules (CR-101) in the above captioned matter. Public Counsel looks forward to assisting the Commission in the development of these rules and intends to submit comments in response to future notices.

Crafting and adopting rules implementing I-937 ("Initiative") – with its robust policy goals and its partial framework for achieving those goals – will undoubtedly be challenging. However, Public Counsel cautions against premature conclusions that utility compliance with the Initiative will inevitably result in higher costs than the status quo. That analysis must be made on a case-by-case basis with consideration of all of the complexities inherent in measuring success on these issues.

Few would disagree that the Initiative's goals are critical to prevent or at least curb the disturbing trend towards the degradation of our air and our water. And so it is difficult to talk about money in the face of such an imperative. But that is what the Commission is asked to do

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
800 5th Ave., Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

all the time: weigh the cost-effectiveness and prudence of utility decisions about energy conservation and electric power generation purchasing and determine what is in the public interest.[1] Therefore, in many ways, even without these rules, the Commission already has the tools to make many of the difficult decisions resulting from the Initiative.

II. COMMENTS

The Notice raises an extensive number of topics. Public Counsel will address only some of these at this time.

A. RELATION TO THE IRP RULE

1. Energy Conservation

One extremely important matter is whether and to what extent the framework established by I-937 should be incorporated into the Integrated Resource Planning (IRP) process established by the Commission's rule, WAC 480-100-238. Public Counsel believes there are some matters that should be incorporated into the IRP process and others that would be best addressed though other means.

Whatever the process chosen for implementing the Initiative, it must be both rigorous and thoughtful. That requires the process meet public expectations of transparency, accessibility and accountability. Indeed, stakeholder advisory groups like the one actively involved in Puget Sound Energy's conservation efforts have long been integral to the success of these efforts and should be a central component of the rules adopted by the Commission. Public Counsel will offer some specific areas where stakeholder input is essential.

[1] RCW 19.285.040(1)(d)-(e). Indeed, the Initiative itself recognizes the Commission's long-standing statutory obligation in this regard.

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
800 5th Ave., Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

With regard to those matters appropriate for incorporation into the IRP process, it is fitting for the requirements of RCW 19.285.040(1)(a) – identifying achievable cost-effective conservation potential through 2019 and at least every two years thereafter, reviewing and updating this assessment for the subsequent ten-year period – to be met through the IRP. Using the IRP, utilities already identify achievable cost-effective conservation every two years for the following two years.[2]

The difference contemplated by the Initiative in RCW 19.285.040(1)(a) is that a utility (1) use methodologies consistent with the Pacific Northwest electric power and planning council, (2) initially identify its conservation goals through 2019 instead of the next two years and (3) update its two-year assessments with ten-year conservation projections instead of two year projections. These three new requirements could all easily be added to the IRP. Consistent with Public Counsel's observation that the Initiative contemplates existing Commission procedures, it explicitly says that the Commission may rely on its standard practice of reviewing and approving conservation targets. [3] Public Counsel offers ways to strengthen those practices below.

As with the current IRP process, the setting of conservation goals is greatly enhanced by stakeholder input. Here, in particular, stakeholder input is essential because the targets set will have meaningful consequences i.e., penalties for a utility should the targets not be met. The involvement of participants other than the utilities would militate against "gaming" the targeted levels. Gaming occurs when a utility sets targets lower than what is achievable. With regard to the Initiative, gaming allows a utility to avoid reaching its full conservation potential and at the

[2] WAC 480-100-238(3).

[3] RCW 19.285.040(1)(e). We raise the question in passing of whether the Commission must adopt a standard methodology for weather normalization under RCW 19.285.040(2)(d)(i), which requires load be weather adjusted for adjudging targets. No such standard methodology exists and some companies are operating with only an agreed-to revenue requirement adjustment without any methodology at all.

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
800 5th Ave., Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

same time avoid risking penalties. Stakeholder involvement could help prevent this kind of problem.

Another problem that can be spotted by stakeholders is inadequate evaluation of conservation achievement. Again, it is possible that an inadequate evaluation will fail to truly assess whether the conservation goals were set at the correct level and whether they were in fact met. Whether setting targets or evaluating achievement, the point cannot be overemphasized that a credible and effective process requires outside evaluation and that must include, in part, stakeholder groups.

The Initiative also requires that utilities establish two year acquisition targets for cost-effective conservation consistent with its identification of achievable conservation in RCW 19.285.040(1)(a).[4] The utility must meet the target established within the next two years or face penalties.[5] These requirements would also be new to the IRP process. Utilities have identified goals in the IRP process but not "acquisition targets" and they have certainly not faced penalties for a failure to meet these targets. Still, these requirements fit hand-in-glove with the IRP process. Here again, for the reasons stated earlier, stakeholder participation is essential.

Additionally, a number of reporting requirements are contained in the Initiative. While RCW 19.285.070 requires particular reporting, for the Commission's purposes, Public Counsel believes these reporting requirements are inadequate. Utilities should be required to show the Commission through a filing that it has complied with the Initiative. Whatever the format the Commission chooses to require this filing, it should be comprehensive and as easy to understand

[4] RCW 19.285.040(1)(b).
[5] RCW 19.285.040(1)(b); RCW 19.285.060.

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
800 5th Ave., Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

as possible. Moreover, the filing must be made available well in advance of its submission to the Commission to allow for public examination and input.

Public Counsel recognizes that after time for public scrutiny it is appropriate for the filing to be received at an open meeting. However, given the magnitude of the issues involved, including penalties, Public Counsel urges that the Commission formally adopt the utilities' filings thereby binding the utilities to their representations. The rules should be clear, however, that the Commission's receipt of such a filing in no way affects the Commission's determination regarding cost-effectiveness, prudence and other issues the Commission deems relevant. Nor should other parties be prejudiced from raising such issues at a later date where appropriate.

2. Renewable Energy

In addition to conservation, the Initiative establishes power planning to meet renewable energy targets. Renewable energy targeting and evaluation should be a separate process from the IRP. Nonetheless, the renewable energy process must also meet the same criteria identified with regard to stakeholder participation. Perhaps this is even more so since the nature of the planning process is even more difficult than energy conservation. Many factors drive power procurement – resource availability, costs, taxation, natural gas prices, environmental regulations, capitalization and more. In fact, since power procurement requires that decisions are made well in advance of when load will become available, stakeholders must be brought into the discussions as early as possible.

For example, RCW 19.285.030(2)(a) requires a planning process to ensure that a utility can obtain 3% of their load from renewable sources by 2012, 9% by 2016, and 15% by 2020. Understanding the changing nature of power procurement, the rules should require the utilities to file status reports regarding their plans for achieving these goals well in advance. These need not

be adopted by the Commission. However, Public Counsel urges that the Commission take up the status reports at the open meeting to allow essential stakeholder participation in evaluating these reports.

With regard to the actual procurement of renewable energy, the rules must require that utilities demonstrate that they met these requirements on time. Like the conservation plans, the Commission should formally adopt the filing and again, bind the utility. In no uncertain terms does that mean that the power procured by the utility will not be subject to further scrutiny whether with regard to multi-jurisdictional allocation, prudence or any other issue deemed appropriate by the Commission. Here the language regarding the Commission's approval over securities transactions in instructive. *See e.g.,* Order No. 1, Docket No. UE-060822 (May 31, 2006), ¶ 11 ("This Order shall in no way affect the authority of this Commission over rates, services, accounts, valuations, estimates, or determination of costs, or any matters whatsoever that may come before it, nor shall anything herein be construed as acquiescence in any estimate or determination of costs, or any valuation of property claimed or asserted."). And as discussed above, other parties should not be prejudiced from raising such issues at a later date where appropriate.

B. RATE TREATMENT AND PENALTIES

1. Penalties

The Initiative leaves the regulatory treatment of penalties up to the discretion of the Commission.[6] Thus, it does not provide for recovery of penalties from consumers through electric rates. Obviously, this is a very important issue to Public Counsel.

[6] RCW 19.285.060(4).

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
800 5th Ave., Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

Public Counsel urges that the rules make it perfectly clear that any assessment of penalties will be paid by the utility shareholders and unrecoverable in rates charged to consumers. This statement should be included in the definition section of what is a penalty – it is something to be paid by shareholders and unrecoverable from consumers – and that requirement should be repeated in any section in which penalties are discussed. There should be no ambiguity.

It is counterintuitive that a penalty provision designed to spur utility compliance with an extensive set of requirements should be borne by ratepayers if the utility fails in its efforts or makes no effort at all. This is especially the case when we do not know how all of this will work in practice. For instance, perhaps a shrewd company determines that it is cheaper to pay a penalty than comply with the initiative. Nothing prevents this in the Initiative and it is a potential loophole the Commission may need to fill purely because it allows a company to bypass the purpose of the Initiative. If ratepayers were saddled with the penalty bill, they would then be paying a penalty AND never receive the conservation and renewable energy they should have gotten.

Our point is simple. If a utility complies with the Initiative and obtains cost-effective, prudent conservation and renewable energy, the utility would almost certainly recover the cost of compliance from ratepayers. If a utility does not comply, its shareholders should face penalties.[7]

2. Rate Treatment

Similar to which party bears the penalties, the definition of "retail revenue requirement" should also be contained in the rules. There are a number of instances in which the Initiative refers to a "retail revenue requirement."

[7] Nor does Public Counsel rule out the possibility of the Commission imposing penalties under Chapter RCW 80.04.

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
800 5th Ave., Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

In one instance the text says that investments in renewable resources shall be "at least one percent of its total annual retail revenue requirement that year."[8] In another provision regarding reporting and disclosure, the text says that a utility must report the costs of what is essentially the full range of its requirements under the Initiative as a percentage of its "retail revenue requirement."[9]

The problem with this language is that it refers to something that does not exist. There is no such thing as an annual retail revenue requirement set on a yearly basis. From a regulatory accounting standpoint, and this is all that legally matters to the Commission, a company has an "authorized" revenue requirement established in a rate case. That "authorized" revenue requirement carries forward from one year to the next until a subsequent general rate case. Therefore, it must be clear that anywhere the Initiative uses the term "retail revenue requirement" what is meant is the revenue requirement established by the order in the last general rate case.

III. CONCLUSION

Public Counsel appreciates the opportunity to submit these comments. In conclusion, the Commission's rules should establish a central role for stakeholder participation, including a transparent and accessible process for decisionmaking. Setting and implementation of conservation targets and renewable energy goals must be exacting and accountable to be successful and the process should reflect this. The rules should also reflect that any penalties imposed must be paid by shareholders since they are responsible for ensuring that their company's legal obligations are met.

---

[8] RCW 19.285.040(2)(d).
[9] RCW 19.285.070(1).

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
800 5th Ave., Suite 2000
Seattle, WA 98104-3188
(206) 464-7744