BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of PUGET SOUND ENERGY, INC. For a Declaratory Order on the Meaning of Conservation in Chapter 19.285 RCW	U-121165 NW ENERGY COALITION STATEMENT OF FACT AND LAW IN RESPONSE TO PETITION FOR DECLARATORY ORDER

I. SUMMARY OF ISSUE AND POSITION

1. Petitioner Puget Sound Energy ("PSE") has asked the Washington Utilities and Transportation Commission ("Commission") to interpret the definition of "conservation" in the Washington Energy Independence Act ("I-937" or "the Act") to exclude a qualifying utility's capital investments in electric power production equipment that do not reduce electric power consumption.[1] Through notice issued on July 12, 2012, the Commission invited interested persons to submit a statement of fact and law on the issues raised by PSE's petition.

2. The NW Energy Coalition ("Coalition") contends that I-937 requires qualifying utilities to assess the potential for increases in efficiency in electricity production, including measures to reduce consumption of energy at power plants[2] as well as opportunities for improving output efficiency, e.g., through turbine upgrades. The Act's definition of conservation and the origins of that definition, plus the requirement for utilities to use methodologies

[1] Petition of Puget Sound Energy, Inc. for a Declaratory Order on the Meaning of Conservation in Chapter 19.285 RCW (July 6, 2012). ("Petition")

[2] PSE's Petition does not question whether efforts to reduce consumption at electric power plants are considered "conservation" under the Act, and in fact, PSE's Schedule 292 provides for energy efficiency in Company-owned or operated production or distribution facilities, with a focus on measures that will reduce energy use (e.g., through lighting upgrades at generation facilities).

consistent with those of the Pacific Northwest Power and Conservation Council ("Council") in assessing conservation potential and the history of those methodologies, must be considered when interpreting the Act with regard to production efficiency improvements.

II. ARGUMENT

A. The Plain Language of the Act Requires that PSE's Capital Investments in Electric Power Production Equipment Be Included as Conservation to Be Projected and Reported

3. Three inter-linked provisions are critical to demonstrating that I-937 requires qualifying utilities to pursue power plant output efficiency upgrades: the definition of conservation, including its origins; the requirement for a qualifying utility to pursue all available cost-effective conservation; and the utility's obligation to assess its conservation potential using methodologies consistent with those used by the Council.

4. I-937 defines conservation as "any reduction in electric power consumption resulting from increases in the efficiency of energy use, production, or distribution."[3] That definition is substantively identical to the definition of conservation in the Pacific Northwest Electric Power Planning and Conservation Act ("Northwest Power Act).[4] The Northwest Power Act established the Council and mandated it to produce regional electricity plans every five years.

5. I-937 requires:

> By January 1, 2010, using methodologies consistent with those used by the Pacific Northwest electric power and conservation planning council in its most recently published regional power plan, each qualifying utility shall identify its achievable cost-

[3] RCW 19.285.030(4).
[4] "Conservation" means any reduction in electric power consumption as a result of increases in the efficiency of energy use, production, or distribution. Northwest Power Act, §3(3), 94 Stat. 2698.

effective conservation potential through 2019. At least every two years thereafter, the qualifying utility shall review and update this assessment for the subsequent ten-year period.[5]

6. Ultimately the methodologies used in the regional plans are based on the Northwest Power Act and the Council's interpretation of that Act. While the definitions of conservation in I-937 and the Northwest Power Act refer to reductions in consumption, the Council has interpreted that definition to include turbine efficiency improvements and similar efforts to enhance electricity production efficiency. For example, the second[6] and the third[7] regional plans describe generation system efficiency improvements in the region. In the Second Plan, "the Council […] concluded that energy savings from turbine runner replacement and electronic governors [in hydropower facilities] should be included in the resource portfolio."[8] In the Third Plan, the Council began "compiling estimates of regional thermal upgrade potential"[9] in addition to its analysis of potential improvements to the efficiency of existing hydropower facilities. Further, "the Council encourage[d] owners and operators of the region's thermal power plants to fully explore the potential for cost-effective upgrades to these facilities, and to implement these improvements when cost-effective."[10]

7. I-937 references using methodologies consistent with the most recently published plan. The Sixth Plan does not include a specific assessment of generation efficiency potential.

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[5] RCW 19.285.040(1)(b), emph. added.
[6] Northwest Power Planning Council. Northwest Conservation and Electric Power Plan Volume Two (1986). *See* p. 6_2 to 6_7. For example, the Plan discusses possibilities for improving efficiency in existing thermal plants ranging from "minor component replacement to complete repowering using advanced design heat sources such as fluidized bed combustors." (at pp. 6-7) http://www.nwcouncil.org/library/1986/1986Plan_Vol2.pdf
[7] Northwest Power Planning Council. 1991 Northwest Conservation and Electric Power Plan. Volume II-Part I. *See* pp. 594-618.
http://www.nwcouncil.org/library/1991/91-4/1991Plan_Vol2_Part2.pdf
[8] Northwest Conservation and Electric Power Plan Volume Two, p. 6-7.
[9] Id., p. 596.
[10] Id.

However, the basic methodologies have not changed and are still relevant to assessing generation system efficiency improvements.[11] Limited budget and resources in recent years have constrained Council staff from conducting specific analyses comparable to those done for the second and third plans, but the necessary methodologies are included in the most recently published plan.

8. In interpreting the words of a statute, courts look to the plain and obvious meaning of the words in the statute.[12] Here, the ordinary meaning of the word "methodology" is "a body of methods, rules, and postulates employed by a discipline; a particular procedure or set of procedures; the analysis of the principles or procedures of inquiry in a particular field."[13] The basic methodologies or procedures used for assessing electricity production facility upgrades are still relevant, even if those methodologies were not employed to conduct a specific analysis of regional potential in the Sixth Plan.

9. I-937 clearly requires qualifying utilities to "pursue all available conservation that is cost-effective, reliable, and feasible."[14] This requirement is plain and unambiguous. The word "all" in the statute means "the whole amount" or "as much as possible," and the word "available" means "accessible" or "obtainable."[15] In assessing their cost-effective conservation potential, qualifying utilities must use methodologies consistent with those used by the Council. The Council has interpreted the definition of conservation in the Northwest Power Act, copied almost verbatim in I-937, to include output efficiency improvements at power production facilities. Council staff has analyzed the potential for such improvements in past regional power plans. In

[11] Personal communications with the Council's Manager of Conservation Resources (Dec. 1, 2011).
[12] *See Young v. Estate of Snell*, 134 Wn.2d 267, 279, 948 P2d 1291 (1997); *State ex rel. Royal v. Board of Yakima County Comm'rs*. 123 Wn23 451,451, 869 P2d 56 (1994) (meaning of a statute must be derived from the wording of the statute itself where the statutory language is plain and unambiguous).
[13] Merriam-Webster Dictionary; *see also American Legion v. Walla Walla*, 116 Wn.23 1, 8, 802 P.2d 784 (1991) (court relies on dictionary definition for plain meaning of word).
[14] RCW 19.285.040(1).
[15] Merriam-Webster Dictionary.

order to meet the fundamental requirement of the Act to pursue all available cost-effective conservation, qualifying utilities must include, in their conservation potential assessments and biennial targets, cost-effective opportunities for turbine upgrades and other output efficiency improvements in addition to efficiency measures that reduce overall consumption at production facilities.

B. Investments in Production Plant Should Continue to Be Reviewed in Rate Cases

10. PSE currently pursues recovery of capital investments in its generation facilities in a general rate case or power cost only rate case, at which time a review of reasonableness or prudence occurs.[16] PSE is correct in its assertion that "capital investments in production plant are more properly reviewed in a rate case rather than as part of a qualifying utility's conservation expenditure recovery filings, as allowed for in Docket UE-970686."[17] However, PSE is incorrect in its belief that the cost of capital investments in generation facilities would necessarily be passed through to customers via its conservation rider (Schedule 120) if the Commission rejects its Petition.[18]

11. I-937 clearly grants authority to the Commission to continue to use its standard practices and procedures when implementing the conservation mandate:

> The commission may determine if a conservation program implemented by an investor-owned utility is cost-effective based on the commission's policies and practice.[19]
>
> The commission may rely on its standard practice for review and approval of investor-owned utility conservation targets.[20]

[16] Id. at ¶ 28.
[17] Petition, at ¶ 9.
[18] Id.
[19] RCW 19.285.040(1)(d).
[20] RCW 19.285.040(1)(e).

The law is silent with regard to how a utility funds its conservation programs. That decision is up to the discretion of the utility and the Commission.

12. The Commission already recognized, in approving PacifiCorp's 2012-2013 conservation target and associated conditions list, that a company's tariff rider may not collect funds for all conservation activities required under I-937.

> Recovery of costs associated with Distribution and Production Efficiency initiatives are not funded through the SBC because these programs are not customer conservation initiatives; these are company infrastructure conservation programs. As such, these costs are recovered in the general rate making process over time and may be requested through a general rate case, a deferred accounting petition or other allowed mechanism.
> Only for the 2012-2013 biennium, PacifiCorp may continue to use SBC funds to complete the Distribution and Production Efficiency potential assessment studies.[21]

PSE and the Commission could follow a similar path with regard to funding PSE's capital investments to increase the efficiency of output from its generation facilities. Nothing in the law necessitates that PSE pass through all its conservation costs via the rider approved in Docket UE-970686.[22]

C. Provisions Related to High Efficiency Cogeneration and Hydropower Efficiency Upgrades Are Not Inconsistent with Defining Conservation to Include Increases in Efficiency in Production Facility Output

13. PSE's Petition refers to the Act's inclusion of certain high efficiency cogeneration as a conservation resource and contends that the reduction in load that results is in contrast to investments to increase the efficiency of electric power production equipment.[23] What the Petition fails to recognize here is that the Act defines conservation in three separate and distinct

[21] Docket No. UE-111880, Order 01, ¶ 32, condition 11(d).
[22] We note that the Final Order in Docket UE-970686, issued on 5/16/97, may need to be clarified or amended if the Commission denies PSE's petition in favor of the Coalition's argument, and PSE continues to recover costs associated with capital investments in its generation facilities in a general rate case or power cost only rate case.
[23] Petition, at ¶ 21-23 and FN 14.

categories: energy use, production and distribution. High efficiency cogeneration owned and used by a retail electric customer to meet its own needs falls into the category of end-use conservation, because it directly results in utility load reduction. Production efficiency is a separate category of conservation. At the same time, the focus on "high efficiency" output within the cogeneration provision highlights the Act's intent to prioritize efficiency gains in generation units where possible – in this case, through improvements to facilities owned and used by retail customers. Without this cogeneration provision, the conservation mandate in the Act would apply only to generation facilities owned by a qualifying utility.

14. PSE's Petition also discusses hydropower efficiency improvements that qualify towards the Act's renewable energy standard,[24] positing that "the exclusion of utility-owned generation efficiency improvements in the definition of "conservation" is notable and must be given meaning by the Commission."[25] PSE is correct that the Act specifically allows for incremental efficiency improvements at hydropower facilities owned by a qualifying utility to count towards the renewable standard.[26] As stated in its policy declaration, the Act "builds on the strong foundation of low-cost renewable hydroelectric generation in Washington state…"[27] While hydropower is a renewable resource, if all hydropower counted towards I-937's renewable standard, no additional new renewable resources would have been needed to meet the standard. Therefore, a limited amount of hydropower was deemed to qualify to meet the standard, and those efficiency upgrades needed to be expressly referenced in the Act. Notably, the Act focuses on enhancing the efficiency of existing hydropower resources, underscoring the policy focus on

[24] RCW 19.285.040(2).
[25] Petition, at ¶ 25.
[26] RCW 19.285.030(10)(b).
[27] RCW 19.285.020.

"increasing energy conservation."[28] Similarly, the definition of conservation encompasses production efficiency improvements, and the Act specifies that utilities be consistent with the Council's methodologies in assessing production conservation potential. The intent is clear, and additional specificity was not considered necessary at the time the law was drafted.[29]

D. To the Extent Feasible and Practical, the Commission's Interpretation of I-937 Should Be Consistent with the Interpretation of the Law by the Department of Commerce

15. I-937 currently applies to 17 Washington utilities: three investor-owned utilities (IOUs), 10 public utility districts, two municipalities, and two electric cooperatives. The Act tasks the Commission with determining compliance for the IOUs, and the auditor with auditing compliance for the public utilities and the attorney general for enforcing that compliance.[30] With regard to rulemaking,

> (1) The commission may adopt rules to ensure the proper implementation and enforcement of this chapter as it applies to investor-owned utilities.
> (2) The department shall adopt rules concerning only process, timelines, and documentation to ensure the proper implementation of this chapter as it applies to qualifying utilities that are not investor-owned utilities…
> (3) The commission and department may coordinate in developing rules related to process, timelines, and documentation that are necessary for implementation of this chapter.[31]

I-937 established a conservation standard and a renewable energy standard intended for uniform application across all electric utilities in Washington with more than 25,000 retail electric customers. The law recognizes critical differences between IOUs and public utilities with regard to governance and procedures for determining statutory compliance, but also provided for

[28] RCW 19.285.020.
[29] In addition to hydropower efficiency upgrades, additional power produced due to turbine improvements in other generation facilities that are considered eligible renewable resources also would be counted towards the renewable standard. To avoid double-counting of resource acquisition, we recommend the Commission clarify that only turbine efficiency upgrades at generation facilities that are not eligible renewable resources be included in an investor-owned utility's assessment of production output efficiency potential.
[30] RCW 19.285.060(6) & (7).
[31] RCW 19.285.080.

coordination of rules between the two state agencies responsible for developing implementation guidelines.

16. While the Commission's implementing rules are silent with regard to defining production efficiency,[32] the rules adopted by the Department of Commerce are specific. The Department unambiguously interpreted the reference to "production" in the definition of conservation to include output efficiency improvements.

> A utility will measure production efficiency improvements as the fraction of fuel savings achieved by the utility. The percentage reduction in fuel use per kilowatt-hour will be applied to the annual generation to determine the amount that is to be reported as conservation.[33]
>
> A utility that includes production efficiency improvements in its annual report pursuant to RCW 19.285.070 shall document the electricity savings for each generating unit … [including] A simple calculation showing the fuel use per kilowatt-hour before the efficiency improvement, the fuel use per kilowatt-hour after the efficiency improvement, and the amount of energy conservation being reported as the product of the percentage improvement in fuel use per kilowatt-hour and the number of kilowatt-hours generated.[34]

Further, the Department clarified:

> A utility shall not count towards its biennial conservation target the results from efficiency improvements made to hydropower facilities that are qualified incremental hydropower efficiency improvements and are counted towards any utility's renewable energy targets under RCW 19.285.040 or 19.285.050.[35]

The Commission's interpretation of the Act with regard to defining production efficiency should not differ from that provided by Commerce.

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[32] WAC 480-109-007 and 480-109-010.
[33] WAC 194-37-100(1).
[34] WAC 194-37-100(2). Documentation includes a description of the efficiency improvements made to the generating unit; annual fuel use and electrical output for three preceding years; the amount of capital investment and/or annual operating expenditure associated with the efficiency improvements; the cost-effectiveness analysis prepared by the utility in planning the efficiency improvement(s); and any post-retrofit analysis evaluating the performance and/or cost-effectiveness of the efficiency improvement(s).
[35] WAC 194-37-100(4).

III. CONCLUSION AND RECOMMENDATION

17. I-937 must be interpreted holistically.[36] The relevant provisions in the statute work together and are unambiguous: utilities must pursue all available cost-effective conservation, which includes production efficiency measures; utilities must assess conservation potential using methodologies consistent with those used by the Council; and the methodologies used by the Council to assess output efficiency improvements in power production facilities are still relevant today. We recommend the Commission enter an order denying PSE's Petition and declaring that:

(1) The Commission has jurisdiction to interpret the Energy Independence Act including the definition of "conservation" set forth in RCW 19.285.030(4) and the requirement in RCW 19.285.040(1) that PSE "pursue all available conservation that is cost-effective, reliable, and feasible;"

(2) Capital investments in electric power production equipment that increase the amount of power generated for the energy input fall within the definition of "conservation" in RCW 19.285.030(4);

(3) The obligation in RCW 19.285.040(1) to pursue all available conservation that is cost-effective, reliable, and feasible—by identifying an achievable ten-year conservation potential, establishing a biennial conservation target, and meeting the targets—requires a

[36] *Kokoszka v. Belford*, 417 U.S. 642, 650 (1974) ("[when 'interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute (or statutes on the same subject) and the objects and policy of the law, as indicated by its various provisions, and give to it such a construction as will carry into execution the will of the Legislature.'"). *See also Advanced Silicon Materials, LLC v. Grant County*, 156 Wn.2d 84, 89-90, 124 P.3d 294 ("The plain meaning of a statute 'is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.'") (citation omitted); *Washington State Human Rights Comm'n ex rel. Spangenberg v. Cheney School Dist. No. 30*, 97 Wn. 2d 118, 641 P.2d 163 (1982) (holding that each part of a statute should be construed in connection with every other part so as to produce a harmonious whole).

qualifying utility to include as "conservation" its capital investments in electric power production equipment, even if such capital investments do not reduce electric power consumption;

(4) A utility shall not count towards its biennial conservation target the results from efficiency improvements made to eligible renewable resources that are counted towards any qualifying utility's renewable energy targets under RCW 19.285.040 or 19.285.050; and

(5) In accordance with the Conditions List approved in Docket UE-111881,[37] PSE will assess cost-effective opportunities for pursuing production output efficiency improvements in generation facilities it owns in whole or in part, prior to filing its 2014-2015 biennial conservation target.

Respectfully submitted this 25th day of July, 2012

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[37] Order 01, para 41, condition 12(a).