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Puget Sound Energy, Inc.  
P.O. Box 97034  
Bellevue, WA 98009-9734

*Via electronic mail*

February 26, 2007

Ms. Carole Washburn  
Executive Secretary  
Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive S.W.  
P.O. Box 47250  
Olympia, WA 98504-7250

**Subject: Docket No. UE-061895  
Rulemaking to Implement Initiative No. 937  
Comments of Puget Sound Energy, Inc.**

Dear Ms. Washburn:

Puget Sound Energy, Inc. ("PSE" or the "Company") appreciates the opportunity to participate in the Commission's examination of whether new or revised regulations are needed to govern the Commission's implementation of Initiative Measure No. 937 (codified as the Energy Independence Act, Chapter 19.285 RCW). In response to the Commission's Notice of Opportunity to File Written Comments dated January 30, 2007 in Docket No. UE-061895, PSE offers the following comments and suggested rule language.

#### **INTRODUCTORY COMMENTS**

The enactment of the Energy Independence Act ("Act") highlights the need to re-examine current regulatory practices in order to better align a necessarily aggressive renewable resource acquisition program with marketplace realities and rate-making needs. The existing protracted, multi-year process of integrated resource planning ("IRP") development, Commission review of the IRP, requests for proposal ("RFP") development, Commission review of the RFP, RFP issuance, respondent evaluation and respondent negotiation and documentation followed by rate filings is ponderous at best for all the participants in the resource supply chain. This existing process is not conducive to producing sufficient and

cost effective renewable resources in a timely manner given the global competition for these resources and the relative scarcity of these resources in, or adjacent to, the Company's service area. Site options, permitted sites, turbine orders, balance of plant contractors and key subcontractors, transmission service and wind integration service are all in very short supply at present. Regional and global competition for these same limited resources strongly suggest that existing resource procurement and rate-making processes may have to be supplemented to assure the Company a reasonable chance of meeting its RPS requirements and recovering its costs in a timely manner. With these sobering facts as a backdrop, PSE offers the following specific comments on the I-937 implementation rules.

### SPECIFIC COMMENTS

The following sections provide specific comments and suggested rule language in response to the questions posed in the Notice of Opportunity to File Written Comments. For ease of reading, the questions are reproduced below followed by PSE's comments.

***Question A.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) (ten-year conservation assessment) and RCW 19.285.040(1)(b) (biennial conservation target)?*

#### **Comments:**

Utilities should demonstrate compliance through methodologies consistent in overall analytic approach with the Northwest Power and Conservation Council ("NW Council"). Since individual utilities operate within service territories considerably smaller than the geographic area analyzed by the NW Council, specific findings of the NW Council stemming from assumptions, calculation formulas, and models will likely vary from the utilities' findings given the unique characteristics and granularity of each utility. Therefore, utilities should use analytical tools appropriate to their area of operation which may differ from the specific tools used by the NW Council in demonstrating their methodological consistency.

Utilities should be allowed to use existing stakeholder advisory groups to review consistency.

The measure of achievable conservation targets should include both realistic total market penetration and timing.

Rather than relying on the IRP, PSE recommends the Commission rely on specific tariff filings to demonstrate that the long-term conservation potential and targets meet the requirements of the Act. This would be consistent with PSE's current process. Currently, PSE updates its conservation program tariffs every two years, on a schedule a few months following the IRP. PSE's IRP will be filed in May of 2007 and new conservation tariff

schedules will be filed to be effective on or around January 1, 2008. Using a tariff filing that is informed by the IRP would be a better alternative than relying on the IRP for two primary reasons. First, the IRP is a strategic document setting a direction. More detailed analysis is necessary to support specific program design, which is done for the tariff filing.

Second, the Commission does not “approve” the IRP. Tariff filings, however, are approved. Information to support the utility’s 10-year targets, that are informed by the IRP, could be included as part of the evidence in the tariff filing to support a Commission finding that the tariff filing is consistent with the public interest.

Utilities should use tariffs filed from the existing IRP process (WAC 480-100-238) as the vehicle for their analysis of conservation potential. The tariffs filed from the 2009 IRP should be used to set biennial targets for 2010-11. In order to set targets, a utility must have completed its analysis in the prior year. The next NW Council Plan is not due until January 1, 2010.

IRP potential may include savings that may be best acquired outside of programs such as codes and standards, or market transformation. IRP potential assessments may be affected by real world factors such as: free riders, customer acceptance, market barriers, or other implementation issues that may preclude the acquisition of some potential in any given period.

Pro-rata shares should allow for timing issues reflected in the potential assessment. Achievement of biennial targets in a ten-year period may better fit a curvilinear rather than linear path. Utilities need the flexibility to select the best magnitude and timing based on all factors. Therefore, the IRP potential assessment and the pro-rata share should inform the biennial target setting, but also should be balanced by these other factors and should not be linearly translated into biennial targets.

Potential assessments contain uncertainties and cannot foresee all market and infrastructure factors.

As a fallback, if a utilities assessment is not accepted, it should be able to use its “share” of NW Council potential.

**Suggested Rule Language:**

WAC 480-100-xxx. Assessment of Conservation Resources. Utilities can use potential assessments developed from tariffs filed subsequent to their IRP process. Utilities should prepare a report on the results of their potential assessment that includes a section describing the methodology used and how it is consistent with the Northwest Power and Conservation Council.

The methodology should include a consistent general approach, scope and components such as similar customer segments and technologies, data collection, process, procedures and tasks. However, consistency should not extend to the domain of using identical inputs, assumptions, applications or arriving at identical results as the NW Council.

WAC 480-100-xxx. Assessment of Conservation Resources. Utilities can consider other factors that affect achievement of cost-effective conservation in balancing the guidelines generated from their IRP planning process and the pro rata share of the two year period in setting their biennial targets.

WAC 480-100-xxx. Assessment of Conservation Resources. Utilities can establish indicators in consultation with existing stakeholder advisory groups to consider adjustments in setting reasonable biennial targets. One such indicator may be if market power prices in the Pacific Northwest vary from those forecasted through Aurora or similar tools by 30% for longer than 3 months.

**Question A.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?*

**Comments:**

In order to have conservation programs in place at the beginning of the year that may be evaluated against the penalty in RCW 19.285.060, utilities must have Commission approval of biennial conservation targets and prepare to file appropriate tariffs. As mentioned above, the Commission could review and approve a tariff filing for conservation programs. Part of the evidence utilities submit in support of such tariff filing could include the 10-year targets and how the specific set of programs will be consistent with such targets.

**Suggested Rule Language:**

WAC 480-100-xxx. Review of Targets. Utilities can make use of their existing stakeholder advisor groups to review target guidelines from the IRP and pro-rata share in order to set biennial targets that reference additional factors affecting achievable cost-effective conservation. Utilities can demonstrate their biennial targets through filing tariffs subsequent to the IRP process.

WAC 480-100-xxx. Review of Targets. If a utility submits a request for proposals earlier than 135 days after filing its IRP with the Commission, the Commission will approve or suspend the RFP within 90 days of the RFP submission date.

**Question A.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)?*

**Suggested Rule Language:**

WAC 480-100-xxx. Heat Rate Comparison. In addressing the calculation of conservation for customer-owned cogeneration as specified in RCW 19.285.040(1)(c)(i) utilities can use a comparable best-commercially available technology combined-cycle natural gas-fired combustion turbine parameters as exemplified in either their IRP or RFP process.

**Question B.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?*

**Comments:**

The terms and conditions of the purchase power agreement and/or the transmission agreement should be sufficient evidence. This requirement for real-time delivery provides a bias for Washington utilities to purchase renewable power by contract from out-of-state generators rather than to own the out-of-state facilities. A Washington utility will not have the network control or system ability to integrate out of state renewable generation on a second-to-second basis and thus will have to rely on a transmission provider to integrate the renewable power; provided, however, such integration service is available from the transmission provider. If acquired through a power purchase agreement, the integrated power and the renewable energy credit can be purchased as separate products. But if the renewable generation was owned by a Washington utility, this real time requirement seems to exclude an out-of-state resource from counting towards the renewable targets. However, acquisition of far-distant renewable resources from out of state is not very likely due to cost and transmission constraints.

**Question B.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?*

**Comments:**

Although renewable energy is defined differently under RCW 19.285.020 than it is in RCW 19.29A.090, the reporting requirements of RCW 19.29A.090(6) should provide the Commission adequate information to determine utility compliance with RCW 19.285.040(2)(f). If the energy is obtained from a purchased power agreement, the terms and conditions of such agreement should be sufficient evidence.

**Question B.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?*

**Comments:**

If the energy is obtained from a purchased power agreement, the terms and conditions of such agreement should be sufficient evidence.

**Question B.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?*

**Comments:**

For the purposes of RCW 19.285.040(2)(i), actions of a governmental authority should include entities such as the Bonneville Power Administration (“BPA”) and Energy Facility Site Evaluation Council (“EFSEC”).

The Commission should interpret “total annual retail revenue requirement” as normalized retail revenue supported by the general tariffs approved in a Company’s most recent general rate case. Accounting for Public Utilities, Publication 016, Release 22, defines revenue requirement as the total of (a) operation and maintenance expenses; (b) depreciation; (c) taxes; and (d) cost of capital invested in the rate base.

**Suggested Rule Language:**

WAC 480-100-xxx. Actions of a Governmental Authority. For the purposes of RCW 19.285.040(2)(i), actions of a governmental authority should include entities such as the Bonneville Power Administration (“BPA”) and the Washington Energy Facility Site Evaluation Council (“EFSEC”). The actions of BPA or EFSEC that adversely effect the generation, transmission, and distribution, including, but not limited to: (1) a lack of BPA transmission and integration tariffs for wind or other intermittent renewable resources; (2) a change in the transmission queuing system from the current policy by the BPA; (3) EFSEC denying permits to obtain a renewable resource that had been planned by the utility for meeting a renewable target.

All such actions of any governmental authority shall not force a utility to unexpectedly participate in a market for purchasing renewable energy credits in order to achieve a target.

WAC 480-100-xxx. Events beyond the control of the utility. For the purposes of RCW 19.285.040(2)(i), events beyond the reasonable control of the utility that could not have been

reasonably anticipated or ameliorated shall include any under-performance of any intermittent, non-dispatchable resources, and those events should not count as non-compliance with respect to achieving the target.

WAC 480-100-xxx. Total Annual Retail Revenue Requirement. For the purposes of RCW 19.285, total annual retail revenue requirement shall be defined as normalized retail revenue supported by the general tariffs approved in a Company's most recent general rate case.

**Questions B.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?*

**Comments:**

The Commission should allow for deferred exchange with metered co-firing.

**Questions B.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?*

**Comments:**

This needs to be examined from a portfolio perspective. The current Integrated Resource Planning process and the current Request for Proposals Acquisition Process rely upon an examination of a portfolio-level analysis. Therefore, the determination of the levelized delivered cost of an equivalent amount of reasonably available substitute resource needs to be calculated on a portfolio basis.

**Suggested Rule Language:**

WAC 480-100-xxx. Incremental costs; Equivalent substitute resource. For purposes of RCW 19.285.050, in determining the levelized delivered cost of an equivalent amount of reasonably available substitute resource, the utility shall be able to rely on information that is consistent with the lowest reasonable cost portfolio in its own completed Integrated Resource Plan.

**Questions B.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?*

**Comments:**

RCW 19.285.050(2) states that an investor-owned utility is entitled to recover all prudently incurred costs associated with compliance with this law. The rules must clarify that it is reasonable and necessary for the Commission to indicate which projects are prudent for the utility to invest in prior to incurring those costs. This *ex-ante* prudence determination can and should occur before costs are incurred and before resource costs are recovered in rates. In order to comply with this statute, utilities will clearly need to move further up the development chain given the competition for, and scarcity of, renewable resources. An example would be to acquire wind rights or purchase land at several locations, some of which may prove not to be economically developable. The rule should clearly allow utilities to recover all reasonably incurred development costs, equipment deposits, option payments and other like-type development costs in rates.

**Suggested Rule Language:**

WAC 480-100-xxx. Entitlement of Cost Recovery. For purposes of RCW 19.285.050(2), which entitles a utility to recover all prudently incurred costs, the Commission shall, upon the request of the utility, determine if the project(s) are a prudent investment for the utility prior to the utility investing in the project. This *ex-ante* prudence determination is necessary for the utility to be entitled to recover all the Commission-determined prudently incurred costs.

**Question C.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?*

**Comments:**

Yes, the Commission should establish a set of factors it will consider in determining assessment of penalties.

If a utility has entered into a contract with a power producer who was later found to be in breach of the contract, that is, the counter-party sold environmental attributes multiple times, legal remedies outside the Commission would suffice. The utility, however, would still be found to be in compliance, on the basis of the contract.



**Suggested Rule Language:**

WAC 480-100-xxx. Breach of Contract by Counter-parties. If a utility has entered into a contract with a power producer who was later found to be in breach of the contract, that is, the counter-party sold environmental attributes multiple times, the contracting utility, however, would still be found to be in compliance, on the basis of the contract.

**Question C.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?*

**Comments:**

Paying the penalty may be a lower cost option than building a resource, or buying a renewable energy credit (“REC”) and therefore should be included in rate recovery. The market for RECs may be thin or nonexistent in any given future year, therefore paying the penalty may not only be the lower cost option, it may be the only option, therefore the cost of the state-imposed penalty should be included in rate recovery.

**Suggested Rule Language:**

WAC 480-100-xxx. Recovery of State-Imposed administrative penalties. Paying the state-imposed administrative penalty may be a lower cost option than building a resource, or buying a REC, and may be the only option available to a utility and therefore should be included in rate recovery.

WAC 480-100-xxx. Conservation Savings Target. Utilities can seek mitigation before the Commission of the penalty for failure to meet the conservation savings target, if the Company can demonstrate that factors occurred, after the annual targets were established, beyond the Company’s control that negatively impact customer participation in its programs such as a significant local economic recession or major natural disaster. The Company may address additional factors in its petition.

**Question D.1.** *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?*

**Comments:**

No, the report in RCW 19.285.070(1) is described as reporting “progress in the preceding year.” The timing of this report will not allow it to contain the completed results of the

utility's efforts. To accurately assess a utility's compliance with statutes, the Commission will need to wait until several months after the year subsequent to the year it is evaluating. RCW 19.285.040(2)(e) clearly allows utilities to use renewable energy credits generated in a subsequent year in relation to the year being evaluated. Therefore an additional year will need to transpire before an evaluation of whether or not the utility has met the requirements of meeting its annual target. The Commission should require a separate report to determine utility compliance.

PSE appreciates the opportunity to present its viewpoint on this issue and looks forward to further discussions on this topic. Please direct any questions regarding these comments to Eric Englert at (425) 456-2312 or the undersigned at (425) 462-3495.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom DeBoer", is positioned above a solid horizontal line. To the left of the signature, there are several small, faint icons or symbols.

Tom DeBoer  
Director – Rates & Regulatory Affairs