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BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of  
  
PUGET SOUND ENERGY, INC.  
  
For a Declaratory Order on the Extra Credits  
for Apprentice Labor Provision of  
RCW 19.285.040(2)(h).

NO. \_\_\_\_\_  
  
PETITION FOR  
DECLARATORY ORDER

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**I. INTRODUCTION**

1. In accordance with RCW 34.05.240, WAC 480-07-370 and WAC 480-07-930, Puget Sound Energy, Inc. ("PSE") hereby petitions the Washington Utilities and Transportation Commission ("Commission" or "WUTC") for a declaratory order interpreting RCW 19.285.040(2)(h), the provision of Washington's Energy Independence Act, Chapter 19.285 RCW (the "Act") providing extra credits for use of apprentice labor. PSE has used, and would like to use in the future, apprentice labor in the construction of certain wind generation facilities to allow PSE to take full advantage of the extra credits provided by the Act to meet its renewable energy target under RCW 19.285.040 and maximize any future sale of renewable energy credits ("RECs") to third parties to benefit its customers. Other stakeholders have interpreted the statute to limit the flexibility and use of these extra apprenticeship credits. As discussed in more detail below, PSE requests the Commission

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PETITION FOR  
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1 enter a declaratory order to resolve this dispute as to how PSE may use these extra  
2 apprenticeship credits towards its renewable energy target or for the benefit of PSE  
3 customers.

4 2. PSE is engaged in the business of providing electric and gas service within the  
5 State of Washington as a public service company and is subject to the regulatory authority of  
6 the Commission as to its retail rates, service, facilities and practices. Its full name and  
7 mailing address are:

8 Puget Sound Energy, Inc.  
9 Attn: Tom DeBoer  
10 Director of State and Federal Regulatory Affairs  
11 P.O. Box 97034  
12 Bellevue, WA 98009-9734

13 PSE's representatives for purposes of this proceeding are:

14 Sheree Strom Carson  
15 Donna L. Barnett  
16 Perkins Coie LLP  
17 10885 N.E. Fourth Street, Suite 700  
18 Bellevue, WA 98004-5579  
19 Phone: 425-635-1400  
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22 dbarnett@perkinscoie.com

23 3. The following rules or statutes may be brought into issue by this Petition:  
24 RCW 80.28 *et seq.*, RCW 80.01.040, RCW 34.05.240, RCW 19.285.040, WAC 480-07-370,  
25 and WAC 480-07-930.

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## II. BACKGROUND AND FACTS

### A. Summary

4. Pursuant to RCW 80.01.040, the Commission has broad authority over the practices of all companies it regulates.

5. The Act provides the Commission with specific authority over proper implementation and enforcement of its provisions as applied to investor-owned utilities ("IOUs"). RCW 19.285.080(1); *see also In re Energy Independence Act*, WUTC Docket No. UE-061895, R-546, 2007 WL 4812185 (Nov. 30, 2007); *In the Matter of Adopting Rules to Implement the Energy Independence Act RCW 19.285 WAC 480-109 Relating to Electric Companies Acquisition of Minimum Quantities of Conservation and Renewable Energy*, WUTC Docket No. UE-61895, R-546, 2007 WL 4287316 (Nov. 26, 2007). PSE is an IOU and a qualifying utility under the Act, as defined in RCW 19.285.030(16).

6. In 2006, Washington State voters approved Initiative 937 ("I-937"), which adopted the Act. The Act contains a broad statement of policy objectives:

Increasing energy conservation and the use of appropriately sited renewable energy facilities builds on the strong foundation of low-cost renewable hydroelectric generation in Washington state and will promote energy independence in the state and the Pacific Northwest region. Making the most of our plentiful local resources will stabilize electricity prices for Washington residents, provide economic benefits for Washington counties and farmers, create high-quality jobs in Washington, provide opportunities for training apprentice workers in the renewable energy field, protect clean air and water, and position Washington state as a national leader in clean energy technologies.

RCW 19.285.020.

1           7.       The Act established renewable energy targets requiring "large utilities to  
2 obtain fifteen percent of their electricity from new renewable resources such as solar and  
3 wind by 2020[.]" RCW 19.285.010. The Act establishes incremental targets for such  
4 utilities to comply with the Act (*i.e.*, at least three percent of load by January 1, 2012, at least  
5 nine percent of load by January 1, 2016, and at least fifteen percent of load by January 1,  
6 2020). *See* RCW 19.285.040(2)(a).

7           8.       In addition to establishing renewable energy targets, the Act offers incentives  
8 to encourage utilities to meet the Act's other specified policy objectives. One such incentive  
9 is found in RCW 19.285.040(2)(h), which provides an incentive for use of apprentice labor in  
10 development of renewable facilities. According to this provision,

11                   (i) A qualifying utility that *acquires an eligible renewable resource*  
12                   or *renewable energy credit* may count that acquisition at one and  
13                   two-tenths times its base value:

14                           (A) Where the eligible renewable resource comes from a facility  
15                           that commenced operation after December 31, 2005; and

16                           (B) Where the developer of the facility *used apprenticeship*  
17                           *programs approved by the council during facility*  
18                           *construction.*

19                   (ii) The council shall establish minimum levels of labor hours to be  
20                   met through apprenticeship programs to qualify for this extra  
21                   credit.

22 (Emphasis added.)

23           9.       The extra credit encourages the use of apprentice labor in the construction of  
24 renewable generation facilities and serves the Act's policies of "creat[ing] high-quality jobs  
25 in Washington" and "provid[ing] opportunities for training apprentice workers in the  
26 renewable energy field." RCW 19.285.020. These policies are fulfilled without regard to  
27 whether associated RECs are utilized by the qualifying utility to meet its Washington

1 renewable energy target – or alternatively, if the RECs are sold to others. This provision is  
2 the only provision of the Act that fulfills the Act's stated labor policies.

3 10. The question presented is one of interpreting and applying a statute.  
4 Specifically, under RCW 19.285.040(h), if a qualifying utility utilized apprentice labor in the  
5 construction of its facility, commencing initial operation after December 31, 2005, and sells  
6 RECs generated by such facility to a third party, can the utility count the extra apprenticeship  
7 credit towards its renewable target – provided that the utility provides documentation in its  
8 compliance reports demonstrating that no double-counting of the extra apprenticeship credits  
9 will occur?

10 11. PSE believes the answer to that question is "yes." Other interested persons,  
11 specifically Renewable Northwest Project ("RNP") and the Northwest Energy Coalition  
12 ("NWEC") interpret the Act differently. At the Implementation Workshop with Commission  
13 staff held on May 10, 2011, RNP and NWEC expressed their joint position that  
14 RCW 19.285.040 did not allow for severability of the RECs and the credit for apprentice  
15 labor. In a position paper filed with Commission staff on June 20, 2011, RNP and NWEC  
16 stated, "the Act does not contemplate bifurcation of RECs, and specifically disallows utilities  
17 from counting eligible renewable resources . . . where the RECs are owned by a separate  
18 entity." Technical Working Group, WUTC Docket No. UE-110523. In short, PSE believes  
19 that it has a right pursuant to the Act to count for its own reporting requirements the extra  
20 apprenticeship credit obtained through its acquisition of an eligible renewable resource that  
21 qualifies pursuant to RCW 19.285.040(2)(h)(i), notwithstanding the fact that PSE may  
22 subsequently sell the associated resource or REC to a third party. RNP and NWEC believe  
23 PSE does not have such right.

1           12.     PSE recognizes that the parties have conflicting interpretations of this  
2 provision and there is currently uncertainty about proper reading of the statute. PSE believes  
3 its interpretation and the transparent reporting processes that are being developed with the  
4 Commission to track sales of resources, RECs, and the counting of extra apprenticeship  
5 credits are consistent with the policies and language of RCW 19.285.040(2)(h). Therefore,  
6 PSE respectfully requests that the Commission issue an order applying and interpreting  
7 RCW 19.285.040 in light of the facts presented herein to provide increased certainty for  
8 further decision-making and future reporting by qualifying utilities.

9           13.     PSE respectfully requests that the Commission issue an order no later than 90  
10 days after the date this petition was filed with the Commission, pursuant to WAC 480-07-  
11 930(5), because the controversy at issue in this Petition directly relates to the surplus quantity  
12 of RECs that PSE plans to market.

13           14.     The Commission has primary jurisdiction over the subject matter of this  
14 proceeding. The Commission may issue a declaratory order with respect to the applicability  
15 to specified circumstances of a rule, order, or statute enforceable by the agency. This  
16 Petition requests the Commission to apply RCW 19.285.040 to the sale of RECs and  
17 reporting by qualifying utilities. RCW 19.285.040 is a statute enforceable by the  
18 Commission, and the Commission has issued similar declaratory orders. *See, e.g., City of*  
19 *Kent et al. v. PSE*, WUTC Docket Nos. UE-010778 and UE-010911, Third Supp. Order:  
20 Declaratory Order on Motions for Summary Determination, 2002 Wash. UTC LEXIS 4  
21 (Jan. 28, 2002) (interpreting PSE's tariff); *City of Sea Tac et al. v. PSE*, WUTC Docket Nos.  
22 UE-010891 and UE-01102, Third Supp. Order: Declaratory Order on Motions for Summary  
23 Determination, 2002 Wash. UTC LEXIS 6 (Jan. 28, 2002) (interpreting PSE's tariff).

1 Therefore, the Commission has authority to and experience in ordering declaratory relief in  
2 similar matters.

3 **B. Extra Credit for Using Apprentice Labor**

4 15. RCW 19.285.040 sets out four main elements required in order for a  
5 qualifying utility to obtain the extra apprenticeship credits described above.

6 **1. Acquisition**

7 16. First, these extra credits are provided to "[a] qualifying utility that **acquires** an  
8 eligible renewable resource or renewable energy credit." RCW 19.285.040(h)(i). The term  
9 "acquire" is not defined in the statute.<sup>1</sup> In the absence of a statutory definition, Washington  
10 courts "give the term its plain and ordinary meaning ascertained from a standard dictionary."  
11 *State v. Sullivan*, 143 Wn.2d 162, 175, 19 P.3d 1012 (2001) (internal citations omitted). The  
12 dictionary defines "acquisition" as "the act or action of acquiring," and "acquire" means "to  
13 come into possession, control, or power of disposal. . . ." *Robertson v. Wash. State Parks*  
14 *and Recreation Comm'n*, 135 Wn. App. 1, 6, 145 P.3d 379 (2005) (citing Webster's Third

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<sup>1</sup> As this statute was enacted through the initiative process, in determining its meaning the

purpose is to ascertain the collective intent of the voters who, acting in their legislative capacity, enacted the measure. Where the language of an initiative enactment is 'plain, unambiguous, and well understood according to its natural and ordinary sense and meaning, the enactment is not subject to judicial interpretation.' In construing the meaning of an initiative, the language of the enactment is to be read as the average informed lay voter would read it. An initiative must be read in light of its various provisions, rather than in a piecemeal approach, and in relation to the surrounding statutory scheme. A court must, when possible, 'give effect to every word, clause and sentence of a statute.'

*Am. Legion Post #149 v. Wash. State Dep't of Health*, 164 Wn.2d 570, 585, 192 P.3d 306 (2008) (internal citations omitted).

1 New International Dictionary 18-19 (1993)). "According to the dictionaries, the term  
2 'acquisition' may mean *ownership, possession, or control.*" *Lynott v. Nat'l Union Fire Ins.*  
3 *Co. of Pittsburgh, Pa.*, 123 Wn.2d 678, 693, 871 P.2d 146 (1994) (emphasis in original).  
4 PSE acquires an eligible renewable resource (*i.e.*, electricity) when it generates electricity  
5 from an eligible facility, because PSE comes into ownership and/or possession of the energy  
6 and has the power to control how the energy is used.

7 **2. Object Acquired Must Be a Renewable Resource or REC**

8 17. The statute also establishes the object of the acquisition activity. Two types  
9 of acquisitions qualify. Per RCW 19.285.040(h)(i), the object of the acquisition that triggers  
10 the extra apprenticeship credit must be either an eligible renewable resource or a REC.

11 18. Under the statute's defined terms, an "eligible renewable resource" is  
12 "*electricity from a generation facility powered by a renewable resource other than fresh*  
13 *water . . . , where: (i) the facility is located in the Pacific Northwest; or (ii) the electricity*  
14 *from the facility is delivered into Washington state on a real-time basis without shaping,*  
15 *storage, or integration services[.]*" RCW 19.285.030(10) (emphasis added).

16 19. For purposes of the Act, a "renewable energy credit"

17 means a tradable certificate of proof of at least one megawatt-hour of  
18 an eligible renewable resource where the generation facility is not  
19 powered by fresh water, *the certificate includes all of the nonpower*  
20 *attributes associated with that one megawatt-hour of electricity,* and  
21 the certificate is verified by a renewable energy credit tracking system  
22 selected by the department.

23 RCW 19.285.030(17) (emphasis added.)

24 20. The statute defines "nonpower attributes" as

25 all *environmentally related characteristics,* exclusive of energy,  
26 capacity reliability, and other electrical power service attributes, *that*



1            *are associated with the generation of electricity from a renewable*  
2            *resource, including but not limited to the facility's fuel type,*  
3            *geographic location, vintage, qualification as an eligible renewable*  
4            *resource, and avoided emissions of pollutants to the air, soil, or water,*  
5            *and avoided emissions of carbon dioxide and other greenhouse gases.*

6 RCW 19.285.030(13) (emphasis added).

7            21.     The extra apprenticeship credit granted for use of apprentice labor is not an  
8 environmentally related characteristic. Training of a workforce skilled in renewable  
9 development may further the broader public interest, but it is not similar to environmentally  
10 related characteristics. Additionally, it is not an attribute associated with the generation of  
11 electricity. Under Washington's standards, the extra apprenticeship credit is not a REC or an  
12 attribute that accompanies a REC; it is merely an extra credit to be counted toward the  
13 qualifying utility's renewable energy target compliance calculations.

14            22.     Given the alternative presented in plain language of RCW 19.285.040(2)(h) to  
15 acquire *either* the generation *or* a REC, extra credits may be severed from RECs.

16            **3.     Commencement**

17            23.     "The eligible renewable resource" must come from a facility that commenced  
18 operation after December 31, 2005. The goal is to encourage using apprentice labor in the  
19 development of new renewable resources. The statute does not allow reaching back to  
20 facilities where construction commenced before the incentive was offered.

21            **4.     Use of Apprenticeship Programs**

22            24.     The facility must have been built using apprenticeship programs approved by  
23 the Washington State apprenticeship and training council ("Council") within the Department  
24 of Labor and Industries. The cost of using such labor is higher than the labor rate would be  
25 otherwise. The Council sets minimum levels of apprentice labor that must be satisfied before

1 a qualifying utility can avail itself of this additional credit toward its compliance  
2 calculations.

3 **C. Application of Extra Apprenticeship Credit Following Sale of REC**

4 25. While RCW 19.285.040(2)(f)(i) indicates that extra distributed generation  
5 credits cannot be counted if the associated RECs are owned by a separate entity, the statute  
6 does not include such language when providing for extra apprenticeship credits. RCW  
7 19.285.040 provides the extra two-tenths credit to acquisition of *either* an eligible renewable  
8 resource or a REC. In other words, the extra apprenticeship credit is severable. Further,  
9 bolstering the severability is the fact that extra apprenticeship credits do not fall within the  
10 definition of "nonpower attributes" under the Act. Thus, a qualifying utility may sell RECs  
11 associated with an eligible renewable resource acquired by the utility and calculate its extra  
12 credits against the base value of eligible renewable resources acquired. However, the  
13 qualifying utility cannot use the retained eligible renewable resource (*i.e.*, the "brown  
14 power") to satisfy its renewable energy targets after its sale of associated RECs; the base  
15 value of the eligible renewable resource is simply used to calculate eligible extra  
16 apprenticeship credits.

17 26. This interpretation fulfills the economic and labor policies of the Act without  
18 impinging on its environmental objectives. This reading is consistent with the plain language  
19 of the statute and reflects the intent to provide incentives for utilities to use apprentice labor  
20 in development of new renewable resource facilities and thereby create high-quality jobs and  
21 provide apprenticeship training opportunities in the renewable energy field in Washington.  
22 An interpretation of the Act that does not allow for severability would create a disincentive  
23 for a qualifying utility to sell RECs from facilities constructed with apprentice labor, harming

1 customers who would otherwise realize the value of the sale of surplus RECs. By  
2 minimizing the potential for third party sales, such an interpretation could nullify the  
3 incentive to use apprentice labor going forward in construction of new renewable facilities.

### 4 **III. ARGUMENT**

#### 5 **A. Severability of RECs and Extra Apprenticeship Credits Is Consistent with the** 6 **Plain Language and Policies of the Act.**

##### 7 **1. Consistency with Plain Language**

8 27. PSE interprets RCW 19.285.040(2)(h) to mean that if a qualifying utility owns  
9 a facility that was developed with apprentice labor and commenced operation after December  
10 31, 2005, and sells RECs associated with an eligible renewable resource generated by such  
11 facility to a third party, it can count the extra apprenticeship credit associated with the  
12 eligible renewable resource (but not the eligible renewable resource itself) for the utility's  
13 Act reporting purposes provided that the qualifying utility provides documentation ensuring  
14 that no double-counting of the extra apprenticeship credits will occur.

15 28. PSE's interpretation reflects the plain language of the statute. The Act does  
16 not require qualifying utilities to transfer extra apprenticeship credits with RECs.  
17 Environmentally related characteristics are the nonpower attributes that must remain with the  
18 REC. RCW 19.285.030(13) (defining nonpower attributes as "all environmentally related  
19 characteristics. . ."). The extra apprenticeship credit is not an environmentally related  
20 characteristic. The Act's only assignment of extra credit qualification responsibilities affirms  
21 that this provision is labor-related, not environmentally-related. RCW 19.285.040(2)(h)(ii)  
22 charges the Council within the department of labor and industries with establishing and  
23 approving apprenticeship program and labor standards "to qualify for this extra credit"—not  
24 an environmental agency. For these reasons, this "extra credit" for workforce training is not

1 tied to a REC like environmentally related characteristics are and need not be transferred  
2 with a REC to comply with the Act.<sup>2</sup> Accordingly, PSE may retain and utilize the extra  
3 apprenticeship credit after selling the REC.

4 29. In contrast to the extra apprenticeship credit provided in  
5 RCW 19.28.040(2)(h), the extra credit offered for ownership of distributed generation  
6 explicitly requires that the qualifying utility "owns or has contracted for the distributed  
7 generation *and* the associated renewable energy credits." RCW 19.285.040(2)(b)(i). The  
8 statute also expressly provides that a qualifying utility may not count "eligible renewable  
9 resources or distributed generation where the associated renewable energy credits are owned  
10 by a separate entity." RCW 19.285.040(2)(f)(i). When there is a requirement that RECs not  
11 be severed, the statute imposes a direct prohibition. Such is not the case with the extra  
12 apprenticeship credits, and the express inclusion of a prohibition against severing the  
13 distributed generation incentive from RECs found in the RCW 19.285.040(2)(f)(i) and the  
14 omission of such language in the extra apprenticeship credits clause should both be  
15 interpreted as intentional.<sup>3</sup>

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<sup>2</sup> These extra apprenticeship credits have no value for a utility that is not a "qualifying utility" under the Act (*i.e.*, those that serve Washington consumers). *See* RCW 19.285.030(16). NWEC and RNP have suggested that additional credit retirement may be required of qualifying utilities that participate in REC sales out of state to non-qualifying utilities, where the other state's RPS compliance standards or voluntary market standards may affect the REC's eligibility for the non-qualifying utility's own uses. However, the Commission has no jurisdiction to determine eligibility of such resources or RECs under another state's RPS framework. The Commission only has the authority here to rule regarding its interpretation of the Act for compliance by Washington investor-owned utilities.

<sup>3</sup> "Under the statutory canon expression *unius est exclusio alterius*, the express inclusion in a statute of situations in which it applies implies that other situations are intentionally omitted." *In re Det. of Strand*, 167 Wn.2d 180, 190, 217 P.3d 1159 (2009).

1           30.     The Act does not disallow the counting of extra apprenticeship credits where  
2 RECs associated with an eligible renewable resource have been sold by the utility. It  
3 indicates that the qualifying utility claiming the extra apprenticeship credit must acquire  
4 either an eligible renewable resource or a REC. That acquisition may be counted "at one and  
5 two-tenths times its base value." RCW 19.285.040(2)(h). The Act does not specify when to  
6 perform this calculation. Given that the incentive's objective is achieved through  
7 construction of the generation facility using apprentice labor, there is no policy reason for  
8 requiring the qualifying utility to retain ownership and claim for its own compliance  
9 purposes the associated generation or REC.

10           **2.     Consistency with Policies of the Act**

11           31.     While it is good public economic and social policy, on-the-job training of a  
12 highly skilled workforce requires investment at a premium price. The Act provides extra  
13 apprenticeship credits as an incentive for utilities to make such an investment. Creation of  
14 jobs and development of such skilled labor is a distinguishable policy of the Act.

15           32.     The effect of the NWECA/RNP interpretation is to create a disincentive for  
16 utilities to sell surplus RECs and cause utilities to choose between abandoning the value of  
17 extra apprenticeship credits or abandoning the highest and best use of the RECs associated  
18 with eligible renewable resources. It is the customer who will suffer the loss of this value.  
19 Prohibiting the sale of associated RECs will, as a practical matter, render the incentive  
20 meaningless in the near term, given both the value of RECs in out-of-state markets and the  
21 progress already made by Washington qualifying utilities to meet renewable energy targets.  
22 There is no provision in the Act other than RCW 19.285.040(2)(h) that provides for the labor

1 policy adopted by voters in passage of I-937. To interpret the Act in a manner that removes  
2 the incentive would frustrate the intent of providing a highly skilled workforce.

3 33. Statutes should be interpreted to promote, not defeat, the purpose of the  
4 statute. *Pub. Util. Dist. No. 1 of Clark Cnty. v. Pub. Employment Relations Comm'n*, 110  
5 Wn.2d 114, 120, 750 P.2d 1240 (1988) (interpreting the Public Employees Collective  
6 Bargaining Act in accordance with its declaration of purpose). Requiring that PSE retain its  
7 RECs to receive apprenticeship credits creates a disincentive for PSE to use apprentice labor.  
8 This disincentive would hinder one of the express purposes of the Act: to "provide  
9 opportunities for training apprentice workers in the renewable energy field." RCW  
10 19.285.020. The Commission should instead promote the use of apprentice labor by  
11 counting extra apprenticeship credits independently from RECs.

12 **B. Transparent Reporting Can Further Resolve Ambiguities, Avoid Double**  
13 **Counting and Achieve the Labor Policies of the Act.**

14 34. The Commission is currently working with stakeholders to address the  
15 mechanisms for reporting compliance with the Act. Clear accounting and transparency  
16 through reporting mechanisms can be used to avoid double-counting by qualifying utilities.  
17 The reports can and should clearly identify the eligible renewable resources or RECs used,  
18 the extra apprenticeship credits obtained and used, and the transfer of RECs or extra  
19 apprenticeship credits to third parties. Such reports should provide a means for verifying that  
20 particular extra apprenticeship credits are counted by only one qualifying utility.

21 **C. Issuance of a Declaratory Order Is Appropriate.**

22 35. By authority of WAC 480-07 and RCW 34.05.240(1), the Commission may  
23 enter a declaratory order upon a showing:

- 24 (a) That uncertainty necessitating resolution exists;

- 1 (b) That there is actual controversy arising from the uncertainty  
2 such that a declaratory order will not be merely an advisory  
3 opinion;
- 4 (c) That the uncertainty adversely affects the petitioner;
- 5 (d) That the adverse effect of uncertainty on the petitioner  
6 outweighs any adverse effects on others or on the general  
7 public that may likely arise from the order requested; and
- 8 (e) That the petition complies with any additional requirements  
9 established by the agency under subsection (2) of this section.

10 36. The declaratory order requested by PSE meets these requirements, as set forth  
11 below.<sup>4</sup>

12 **1. Existing Uncertainty Necessitates Resolution**

13 37. The uncertainty to be resolved by this Petition is whether PSE has the right to  
14 the value and utility of extra apprenticeship credits from eligible renewable resources it has  
15 acquired or will acquire. This uncertainty affects REC marketing and resource development  
16 business and economic decisions and may have a rate impact on customers, as customers  
17 directly benefit from PSE's sale of RECs. The question presented requires interpretation and  
18 application of RCW 19.285.040 to certain resource acquisitions by investor-owned utilities,  
19 and is within the purview of the Commission's primary jurisdiction.

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<sup>4</sup> The Commission has not established additional requirements under RCW 34.05.240(1)(e), but rather requires that petitions for declaratory order comply with the remaining four subsections of RCW 34.05.240(1). *See* RCW 34.05.240(2).

1           **2.     There Is an Actual Controversy Arising From the Uncertainty Such That**  
2           **a Declaratory Order Will Not Be Merely an Advisory Opinion**

3           38.     PSE interprets RCW 19.285.040 to mean that PSE can sever the extra  
4 apprenticeship credit from the REC and sell the REC while retaining the extra credit. This  
5 interpretation is consistent with the Act, which states that the acquisition of *either* an eligible  
6 renewable resource *or* a REC trigger the extra apprenticeship credit. At least two interested  
7 stakeholders, RNP and NVEC, interpret RCW 19.285.040 to mean that the extra  
8 apprenticeship credit must be conveyed as part of the REC. In other words, they interpret the  
9 Act as disallowing severability of the extra apprenticeship credit and RECs. PSE and other  
10 qualifying utilities face immediate business and economic decisions that are affected by this  
11 interpretation. PSE must comply with renewable energy targets beginning in 2012, and the  
12 interpretation PSE seeks has an impact on the calculation of compliance with renewable  
13 energy targets. In order for PSE to comply with the Act with respect to upcoming REC sales  
14 and its renewable energy target reporting requirements, this controversy must be resolved. A  
15 declaratory order would not be merely an advisory opinion.

16           **3.     The Uncertainty Adversely Affects the Petitioner**

17           39.     PSE needs certainty regarding the counting of extra apprenticeship credits in  
18 order to make decisions regarding resource acquisitions and REC trades that protect  
19 customer interests. If PSE abandons value of either RECs or extra apprenticeship credits  
20 based on the unproven assertion that the two are not severable, customers are substantially  
21 harmed by a loss of value. Per the Commission's 2010 order determining appropriate  
22 accounting and use of net proceeds from the sales of RECs, the Commission "determined  
23 fundamentally that the REC benefits should go to all of PSE's retail ratepayers." *In re Puget*  
24 *Sound Energy, Inc.*, "Final Order Granting, in Part, and Denying, in Part, Amended Petition;



1 Determining Appropriate Accounting and Use of Net Proceeds from the Sales of Renewable  
2 Energy Credits and Carbon Financial Instruments," WUTC Docket No. UE-070725, 2010  
3 WL 2033120 (May 20, 2010). On the other hand, if PSE relies upon these credits as it  
4 determines what RECs are surplus to its needs and later it is ruled that the RECs and extra  
5 apprenticeship credits cannot be bifurcated, PSE may, despite its current surplus, come up  
6 short for its own compliance needs.

7 40. Continued uncertainty presents risks and would likely force PSE to alter its  
8 business decisions with regard to the REC market. Such a shift in business strategy would  
9 result in both fewer RECs sold and lower prices for such RECs, ultimately abandoning  
10 significant value for PSE's customers.

11 41. Uncertainty surrounding interpretation of the Act also adversely affects PSE  
12 decisions to invest in apprentice labor. In reliance upon the extra apprenticeship credit  
13 provided under the Act, PSE used apprentice labor in recent construction of renewable  
14 energy generating facilities. If PSE is unable to use the extra apprenticeship credits as  
15 anticipated, PSE is not likely to consider using apprentice labor for future resource  
16 development.

17 **4. The Adverse Effect of Uncertainty on the Petitioner Outweighs Any**  
18 **Adverse Effects on Others or on the General Public That May Likely**  
19 **Arise From the Order Requested**

20 42. Resolution of the questions raised in this petition will not result in any adverse  
21 effect to others or the general public. Public interests including, but not limited to, the  
22 interests of PSE customers, would-be apprenticeship labor forces, and I-937 voters, are  
23 served by interpreting RCW 19.285.040 as allowing for the severability of RECs and extra  
24 apprenticeship credits. The public interest requires prompt resolution of this matter so that

1 PSE can exercise its rights pursuant to the Act and obtain full value for its investments in  
2 both renewable energy and apprentice labor.

3 **IV. RELIEF REQUESTED**

4 A. Petitioner respectfully requests that the Commission enter an order declaring  
5 that:

6 1. the Commission has jurisdiction to interpret RCW 19.285.040 in the context  
7 of the sale of RECs and subsequent reporting by qualifying utilities;

8 2. if an eligible utility owns a facility that was developed with apprentice labor  
9 and commenced operation after December 31, 2005, and sells RECs associated with an  
10 eligible renewable resource generated by such facility to a third party, such qualifying utility  
11 can count the extra apprenticeship credit associated with the eligible renewable resource (but  
12 not the eligible renewable resource itself) toward its renewable target for the utility's  
13 compliance reporting purposes, provided that the utility demonstrates that no double-  
14 counting of the extra apprenticeship credits will occur; and

15 3. qualifying utilities will count and track extra apprenticeship credits for an  
16 eligible generation facility to allow the Commission to verify compliance calculations.

