

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Proposed)	Docket No. UE-061895
Rulemaking To Implement)	
Initiative Measure No. 937)	COMMENTS OF THE INDUSTRIAL
)	CUSTOMERS OF NORTHWEST
)	UTILITIES
_____)	

I. INTRODUCTION

The Industrial Customers of Northwest Utilities (“ICNU”) submits these comments in response to the Washington Utilities and Transportation Commission’s (“WUTC” or the “Commission”) Notice of Opportunity to File Written Comments in this Docket. ICNU recommends that the Commission implement the provisions of Initiative 937 (“I-937”) in a manner that would be the least burdensome for utilities and least costly for ratepayers. Many of the provisions of I-937 are designed to supplement or follow existing processes and procedures, as opposed to creating entirely new and unfamiliar regulatory procedures. Adhering to such principles will ensure that the implementation of I-937 goes as smoothly as possible.

II. BACKGROUND

On November 7, 2006, voters in the State of Washington passed I-937, which implements a Renewable Portfolio Standard for Washington state “qualifying utilities.”^{1/} I-937 is codified at RCW § 19.285. The WUTC issued a Notice of Opportunity to File Written Comments on January 30, 2007.

I-937 grants the WUTC discretion to “adopt rules to ensure the proper implementation and enforcement of this chapter as it applies to investor-owned utilities.”^{2/} In addition, the WUTC is specifically directed to “determine compliance with the provisions of this

^{1/} A “qualifying utility” is defined as a consumer or investor owned electric utility that serves at least 25,000 customers.

^{2/} RCW § 19.285.080.

chapter and assess penalties for noncompliance”^{3/} In the WUTC’s Notice of Opportunity to File Written Comments, the Commission posed 13 specific questions in regards to certain provisions of I-937, and also invited additional comments and suggestions. ICNU does not take a position at this time on every inquiry posed by the Commission, but submits comments on certain issues as explained below and raises additional issues for the Commission’s consideration.

III. COMMENTS

1. **The Definition of “Eligible Renewable Resource” Should Not Be Narrowly Interpreted to Exclude Cost-Effective Renewable Resources Located Outside the Pacific Northwest**

RCW § 19.285.030(10)(a) defines an “eligible renewable resource” as:

“Electricity from a generation facility powered by a renewable resource other than fresh water that commences operation after March 31, 1999, where: (i) The facility is located in the Pacific Northwest; or (ii) the electricity from the facility is delivered into Washington state on a real-time basis without shaping, storage, or integration services.”

Subsection (ii) of the definition of “eligible renewable resource” is ambiguous, and if interpreted in a particular way, has the potential to exclude a significant amount of renewable resources located outside the Pacific Northwest. Specifically, the Commission should clarify the terms “real-time basis” and “shaping, storage, or integration services,” as that term has the potential to exclude significant amounts of wind resources located outside the Pacific Northwest.

Almost all new sources of wind energy will need to be integrated into the existing grid in some fashion, including resources in the State of Washington. For example, most new

^{3/} RCW § 19.285.060(6).

wind resources will require the construction of additional transmission, which should not be considered “integration services.”

Moreover, the need for “shaping, storage, or integration services” for out-of-region resources should not exclude renewable resources even if the resource providing these services is outside the state, *i.e.*, the issue is where the integration occurs, not where the resource is located. Due to wind power’s inability to always run at full capacity, integration resources are necessary when the wind resource is not producing electricity. This problem makes integration of a large volume of wind capacity into a utility’s system very difficult.^{4/} Without such integration services, however, it would be impossible to serve load with wind resources.

A separate issue is whether the interpretation of “real-time basis.” As Avista advocates in its pre-rulemaking comments, ICNU agrees that “real-time basis” should mean same day delivery in this context. Such an interpretation would allow for the inclusion of renewable resources that could be integrated in an efficient manner. Without such a clarifying interpretation, it may be very difficult for utilities to meet their renewable resource targets with resources outside the Pacific Northwest. Limiting new renewables in this way will create its own set of challenges, as it is unlikely that the goals of I-937 can be accomplished with resources located in the Pacific Northwest. It is highly unlikely that utilities will be able to secure enough viable sites in the Pacific Northwest to meet the annual targets.

2. Compliance with the Conservation Goals of I-937 should be Made a Part of the Integrated Resource Planning (“IRP”) Process (Question A1)

Compliance with the conservation goals of I-937 should be made part of the already existing IRP process required by WAC § 480-100-238 and RCW § 19.280.030. Under those rules, utilities are already required to file IRPs every two years assessing “a least cost mix

^{4/} See Re PacifiCorp, Public Utility Commission of Oregon Docket No. LC 39, Order No. 06-029 at 27 (Jan. 23, 2006) (recognizing the difficulties of integrating wind into PacifiCorp’s system).

of energy supply resources and conservation.”^{5/} Working the conservation requirements of I-937 into the already familiar IRP process would be the most cost-effective and least burdensome way to implement the conservation provisions of I-937.

I-937 does not seem to alter the utilities’ existing obligations under the IRP process. The IRP process requires utilities to assess every two years all “commercially available conservation, including load management, as well as [...] currently employed and new policies and programs needed to obtain the conservation improvements.”^{6/} Similarly, I-937 requires utilities to “identify its achievable cost-effective conservation potential through 2019,” and also requires utilities to “review and update this assessment” every two years.^{7/}

Requiring IOUs to assess conservation opportunities every two years in two separate filings would be an enormous waste of resources for all parties involved, since both the conservation assessment requirements in the IRP process and I-937 contain similar standards. Therefore, for ease of administration and consistency, conservation assessments mandated under RCW § 19.285.040(1) should be made a part of the IRP process.

a. The Commission Should Clarify to What Extent the Methodologies of the Pacific Northwest Electric Power and Conservation Planning Council (“NWPPC”) Are Binding

RCW § 19.285.040 requires that utilities use “methodologies consistent with those used by [NWPPC] in its most recently published regional power plan” in assessing potential conservation. The Commission should clarify what are the methodologies and the inputs and policy choices within these methodologies, and to what extent utilities are allowed deviate from NWPPC’s methodologies. In addition, the Commission should clarify when utilities are bound to follow new methodologies developed by NWPPC in the future. After

^{5/} WAC § 480-100-238(1).

^{6/} WAC § 480-100-238(3)(b).

^{7/} RCW § 19.285.040(1)(a).

adopting its fourth power plan in 1996, NWPPC adopted its fifth and most recent power plan in 2004. It is reasonable to expect that NWPPC will revise its fifth power plan in the near future. There must be some adequate lead time allowed for the utility to modify its assessment if the NWPPC changes its methodology.

b. Requiring a Utility to Achieve a “Pro Rata” Share for Its Biennial Target Could Prove Problematic

In setting biennial acquisition targets for conservation, utilities are required to meet, at a minimum, the “pro rata share for that two-year period of its cost-effective conservation potential for the subsequent ten-year period.”^{8/} That provision could be interpreted to require utilities to achieve *at least* 20% of its ten-year assessment in every two year period. This provision could require utilities to acquire more conservation than is cost-effective in the early years of its ten-year assessment.

For example, cost-effective conservation opportunities may be lumped into the later years of a utility’s ten-year assessment. If RCW § 19.285.040(1)(b) were interpreted in the above manner, utilities would be forced to make conservation acquisitions that may not be prudent, and thus, excluded from recovery in rates, or be forced to pay penalties under RCW § 19.285.060. With that in mind, the Commission should clarify the meaning of “pro rata share.”

3. The Process for Setting Biennial Acquisition Targets Should Be Similar to the Process for Requests for Proposals (“RFP”) (Question A2)

As stated previously, I-937 should be implemented in the least burdensome manner possible. The process for submitting RFPs pursuant to WAC § 480-107-015 is already a familiar process for IOUs. If achievable conservation identified under RCW § 19.285.040(a) is made a part of the IRP process, then creating a process similar to the RFP process to solicit bids to meet the conservation targets may be easier to administrate.

^{8/} RCW § 19.285.040(1)(b).

Under WAC § 480-107-015(3)(b), a utility is required to submit a RFP within 135 days after filing its IRP. After a utility submits its proposed RFP, interested parties then have 60 days to comment, and the Commission must approve or suspend the RFP within 30 days after the close of the comment period.^{9/} After approval of the RFP, the utility must then solicit bids for electrical savings associated with the utility’s conservation opportunities identified in its IRP.

It is reasonable to apply this same process for approval of a utility’s biennial conservation targets. This process has worked in the past, and utilities are already familiar with how the RFP process works. Creating a new, separate process for the mandates of I-937 would be unduly burdensome and potentially create unnecessary confusion.

4. The WUTC Should Allow Utilities to Count Renewable Energy Credits (“RECs”) Purchased or Accepted from Customers Toward Their Annual Targets

RCW § 19.285.040(f) prohibits utilities from counting towards their annual targets “[e]ligible renewable resources or distributed generation where the associated renewable energy credits are owned by a separate entity; or [e]ligible renewable resources or renewable energy credits obtained for and used in an optional pricing program such as the program established in RCW 19.29A.090.” This provision could produce absurd results because all the renewable energy and RECs purchased to serve the load of a customer under an optional pricing program count toward a utility’s annual load, but cannot be counted towards the utility’s annual targets.^{10/}

Customers should be allowed to sell or donate RECs purchased pursuant to an optional pricing program back to the utility, and those RECs should count toward the utility’s annual target. The statutory language accommodates this situation, as the REC would no longer be owned by a separate entity, and would no longer be “used in an optional pricing program.”

^{9/} WAC § 480-107-015(3)(b).

^{10/} “Load” is defined as “the amount of kilowatt-hours of electricity delivered in the most recently completed year by a qualifying utility to its Washington retail customers.” RCW § 19.285.030(12).

Accordingly, the WUTC should adopt a rule making clear that utilities are able to count toward their annual targets RECs purchased or accepted from their customers.

5. In Determining Whether a Utility Has Met the 4% Cost Cap, “Revenue Requirement” Should be Determined as of the End of 2006, and Incremental Costs Should Not Be Determined on an Annual Basis (Question B6)

RCW § 19.285.050 provides a cost cap on purchases of renewable resources to meet the annual targets. If a utility has invested 4% of “its total annual retail requirement on the incremental costs of eligible renewable resources,” then the utility will be considered in compliance. In order to make this cost cap meaningful, the Commission should adopt a utility’s most recent Commission-approved annual revenue requirement as of December 31, 2006, as the revenue requirement to which the 4% is applied, and should adopt rules establishing the *total* cost cap of 4% of this revenue requirement. The cost cap is reached when the *total* incremental cost of renewable resources reaches this cap.

The most logical way to interpret “total annual retail revenue requirement” is to use the utility’s revenue requirement as of December 31, 2006, as that represents the revenue requirement in effect at the time I-937 was passed by the voters. Moreover, using that date allows utilities to know immediately and with certainty what the 4% cost cap will be. Meeting the annual targets of I-937 requires advance planning to ensure that customers are provided the lowest-cost mix of eligible renewable resources achievable; knowing the cost cap figure as soon as possible will be invaluable in helping the utilities plan accordingly.

In addition, to avoid making the protection to ratepayers of the cost cap illusory, the 4% should not be made an annual calculation. For example, Puget Sound Energy’s (“PSE”) latest approved revenue requirement totaled \$1.73 billion.^{11/} If the 4% cost cap were applied

^{11/} WUTC v. PSE, WUTC Docket Nos. UE-060266 and UG-060267, Order No. 08, Appendix B, Attachment A at 2 (Jan. 5, 2007).

annually, PSE would be required to spend \$69.2 million *each* year on the *incremental costs* of eligible renewable resources. To make an annual investment of that amount *every* year would be an unacceptable burden on utilities and ratepayers, and would not be consistent with the intent of the voters.

6. “Incremental Cost” Should Be Measured as the Cost of Eligible Renewable Resources Less the Cost of the Least Cost Non-Renewable Resource Alternative Identified in the Utility’s IRP

RCW 19.285.050(1)(b) defines “incremental costs” as the “difference between the levelized delivered cost of the eligible renewable resource” and the cost of an “equivalent amount of reasonably available substitute resources that do not qualify as eligible renewable resources, where the resources being compared have the same contract length or facility life.” In order to correctly capture the costs of complying with I-937 for purposes of the cost cap, the acquisition of eligible renewable resources should be measured against a utility’s resource decision in the absence of I-937. Such a measure would ensure that the same characteristics of each resource are being considered when calculating the resource’s value.

For example, if an alternative thermal resource had a longer life than the eligible renewable resource purchased by the utility, then the cost of the thermal resource should be scaled back to a fraction of its total lifetime cost to match the life of the renewable resource. Similarly, the “levelized delivered cost” of an intermittent wind resource should not simply consider the delivered cost, but should take into account other factors such as the cost of back-up thermal resources necessary for the integration of the resource.

In addition, the Commission should clarify at what time the incremental costs of eligible renewable resources are calculated. The costs of different resources are constantly changing and would require almost daily calculation to capture the true incremental costs up to 2020. Although the incremental costs of an eligible renewable resource may change, for ease of

administration, the WUTC should adopt an approach that requires only a one-time analysis at a point in time defined by rule. Logically, this point should be at the end of the RFP process.

7. Cost Recovery for Multi-State Utilities Should Be Governed by the Utility’s Multi-State Cost Allocation Methodology (Question B7)

RCW § 19.285.050(2) delegates to the Commission the responsibility of determining cost recovery for multi-state utilities. Cost recovery for a particular resource decision should first be judged for prudence as with any other utility. Second, the costs of that resource should be allocated to Washington ratepayers consistent with the utility’s Commission-approved cost allocation methodology. As long as the resources that the multi-state utility seeks to include in rates were prudently acquired and are “used and useful” in Washington, the costs should be includable in rates.^{12/} That does not suggest that Washington ratepayers should bear the full burden of renewable resources in the state since, as the utilities argue, multi-state utilities operate as an entire system. In PacifiCorp’s case, the issue is further complicated by its 1400 MW renewable resource commitment contained in its merger conditions.

8. In Evaluating Prudently Incurred Costs, the Commission Should Exclude Acquisitions That Exceed the 4% Cost Cap and All Research and Development Costs Incurred That Do Not Benefit Ratepayers

The 4% cost cap should be just that, a cap. An increase in rates equal to 4% of a utility’s annual revenue requirement, without any increase in MW or MWh produced, will already have a huge impact on Washington ratepayers. Moreover, such expenditures on the incremental costs of eligible renewable resources still represents a significant investment toward meeting the targets. Ratepayers should not be required to foot the bill for the unnecessary ambitions of a particular utility. The Commission should take these factors into account when determining the prudence of a utility’s decision to exceed the 4% cost cap.

^{12/} See, e.g., WUTC v. PacifiCorp, WUTC Docket No. UE-050684, Order No. 04 at ¶¶ 50-52 (Apr. 17, 2006) (rejecting PacifiCorp’s proposed cost allocation methodology because it did not meet the “used and useful” standard).

In addition, research and development costs incurred for the purposes of meeting the annual renewable targets that do not ultimately benefit ratepayers should not be included in rates. The WUTC has allowed the recovery of research and development costs in the past only if the costs were beneficial to ratepayers.^{13/} If the costs of research and development to meet the annual targets do not result in the acquisition of a load-serving eligible renewable resource, there is no benefit to ratepayers. Accordingly, those costs should be disallowed from recovery in rates.

9. The Commission Should Adopt an Alternative Compliance Standard Similar to RCW § 19.285.040(2)(i) For the Biennial Conservation Targets

RCW § 19.285.040(2)(i) exempts utilities from complying with the annual renewable targets if:

events beyond the reasonable control of the utility that could not have been reasonably anticipated or ameliorated prevented it from meeting the renewable energy target. Such events include weather-related damage, mechanical failure, strikes, lockouts, and actions of a governmental authority that adversely affect the generation, transmission, or distribution of an eligible renewable resource under contract to a qualifying utility.

Many of these events would be equally applicable to the failure to meet a biennial conservation target. As I-937 is written, it neither provides nor precludes a similar provision for failing to meet a biennial conservation target. The result is an unduly harsh requirement that does not take into account the complexities and unpredictability of real life. To address this issue, the Commission should adopt a similar exception with respect to the biennial conservation targets.

^{13/} See, e.g., WUTC v. US West Communications, Inc., WUTC Docket No. UT-950200, Fifteenth Supp. Order at 55-57 (Apr. 11, 1996) (allowing the recovery of research and development costs only if beneficial to ratepayers); WUTC v. Puget Sound Energy, WUTC Docket No. U-85-53, Second Supp. Order at 49-51 (May 16, 1986) (same).

10. In Determining Compliance with the Renewable or Conservation Targets, the Commission Should Provide for a Grace Period Before Assessing Penalties (Question C1)

Situations are most likely to arise where a utility is not in compliance by the first day of the new year, but expects to be in compliance thereafter. For example, if a utility purchases the output of a wind facility that is more cost-effective, but expected to go online shortly after the first of the new year, the utility should be allowed to delay its compliance for a reasonable amount of time to allow that wind facility to be counted toward its annual renewable target. The Commission does not necessarily need to set a firm time limit in formulating such a grace period, but can take into account a utility's unique circumstances on a case-by-case basis by setting a "reasonable" time for the utility to comply.

11. Utilities Should Not Be Able to Recover Penalties in Rates (Question C2)

Under no circumstances should a utility be able to recover penalties in rates. Complying with the mandates of I-937 is no different than any other provision of law with which a utility must comply.^{14/} It is incumbent on the utility to meet the specified targets or any alternative compliance provision. The cost to ratepayers of complying with I-937 is potentially high enough; allowing the recovery of penalties in rates would further drive up the costs of electricity throughout the state. Most importantly, allowing the recovery of penalties in rates would not give utilities any incentive to comply with the mandates of I-937. Ratepayers should not be penalized for the outcome of a situation over which they have no control. Furthermore, recovery of such costs from ratepayers is likely not permissible under Washington law.

^{14/} See, e.g., WUTC v. PSE, WUTC Docket No. U-061239, Order No. 02 at ¶ 53 (Jan. 22, 2007) (prohibiting rate recovery for penalties assessed for the unlawful release of customer information).

12. The Commission Should Clarify How a Utility’s Annual Load Is Calculated

RCW § 19.284.040(2)(c) defines annual load as “the average of the utility’s load for the previous two years.” The Commission should clarify that the year immediately preceding the target date should not be included in the previous two years. It would be impossible for a utility to know its annual load for the preceding year by the first day of the new year.

To illustrate, in calculating the annual load to meet the 3% target by January 1, 2012, it would be impossible for the utility to include the year 2011 in the calculation because that information would not yet be available. It would be reasonable, however, for the utility to use its load figures from 2009 and 2010 in calculating the annual load as of January 1, 2012. The statutory language is ambiguous on this point. Accordingly, the Commission should pass a rule adopting such a construct.

13. The Commission Should Clarify the Definition of “Paper Production” Provided in RCW § 19.285.030(18)(i)(ii)

RCW § 19.285.030(18)(i)(ii) excludes biomass energy derived from “black liquor byproduct from paper production” from the definition of renewable resource. The Commission should clarify that “paper production” does not include production of pulp or liquid packaging, as those products do not involve the production of paper.

14. The Commission Should Clarify That There Is No Cut-Off Date for Cogeneration Resources

Certain renewable resources that commenced operation before March 31, 1999, are excluded from being counted toward a utility’s annual renewable targets.^{15/} No such specific exemption applies, however, to cogeneration resources. The Commission should make clear that a cogeneration facility can be counted towards a utility’s conservation targets regardless of when the cogeneration facility commenced operation.

^{15/} RCW § 19.285.030(10).

15. Under the Definition of “Eligible Renewable Resource,” the March 31, 1999 Cut-Off Date Under RCW § 19.285.030(10)(a) Applies Only to Hydroelectric Generation

RCW § 19.285.030(10)(a) defines “eligible renewable resource” as “[e]lectricity from a generation facility powered by a renewable resource other than fresh water that commences operation after March 31, 1999 . . .” Under a plain reading of RCW § 19.285.030(10)(a), the March 31, 1999 cut-off date modifies only “other than fresh water.” Accordingly, the Commission should clarify that all renewable resources are included in the definition of “eligible renewable resource” *except* hydroelectric generation that predates March 31, 1999.

IV. CONCLUSION

ICNU will be an active participant in this process and appreciates the opportunity to submit these comments.

Dated this 26th day of February, 2007.

Respectfully submitted,

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Of Attorneys for Industrial Customers of

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Attachment A

INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

Air Liquide
Air Products
Amcor PET Packaging USA, Inc.
BPB North American Services
Blue Heron Paper Company
Boeing
Boise Cascade
Chemi-Con Materials Corporation
Dyno Nobel, Inc.
ConAgra Foods
Eka Chemicals, Inc.
Emerald Kalama Chemical, LLC
Evanite Fiber
Georgia-Pacific
Grays Harbor Paper, L.P.
Hewlett-Packard
Inland Empire Paper Co.
Intel
J.R. Simplot
Kimberly-Clark Corporation
Longview Fibre
Microsoft Corporation
Norpac Foods
Oregon Steel Mills
PCC Structural, Inc.
Ponderay Newsprint Co
SP Newsprint
Shell Oil Products US
Simpson Paper
Simpson Timber
Solar Grade Silicon LLC
Tesoro Refining and Marketing Co.
Wah Chang
West Linn Paper Company
Weyerhaeuser