BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Inquiry on regulatory treatment for renewable energy resources.	)	DOCKET NO. UE-100849
	)	COMMENTS OF THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

I. INTRODUCTION

1 The Industrial Customers of Northwest Utilities ("ICNU") submit the following comments regarding the Washington Utilities and Transportation Commission's ("Commission" or the "WUTC") inquiry regarding treatment for renewable energy resources. As requested, ICNU's comments follow the structure of the consolidated list of issues. ICNU supports the development of cost effective renewable energy resources which are an important component of Washington utilities' least cost resource portfolio. Washington's renewable portfolio standard ("RPS") imposes rigorous requirements for the electric utilities to acquire a significant amount of new renewable resources, but it does not provide justification for pre-approval of resources or to otherwise weaken Washington's prudence standard. The RPS is not a license to provide incentives to acquire non-cost effective renewable resources beyond the statutory mandates. The Commission should also prevent utilities from placing into rates renewable resources built in advance of need because early compliance with the RPS could significantly harm ratepayers. ICNU also recommends that Washington's RPS be modified or implemented in a different manner to reduce the costs of compliance, while ensuring that a similar or even greater amount

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of renewable resources are developed as new resources are needed. In these economic times it is important that the utilities not acquire new resources in advance of need.

II. COMMENTS

1. Demonstration of Need

2 The requirement that a specific amount of renewable resources be used to serve load modifies, but does not supersede, the Commission's "need requirement" used in prudence determinations.[1/] When evaluating the prudence of resource acquisitions, the Commission requires the utilities to demonstrate, *inter alia*, that the resource is needed.[2/] The strict statutory requirements in the RPS simplify the evaluation of certain resource needs by imposing specific requirements to acquire certain types of renewable resources. There are other "resource need" issues, however, which are not superseded by the passage of the RPS, including but not limited to the determination of how much renewable resources will be needed to meet the statutory obligations, the normal goal of matching estimated loads to resource acquisitions and the needs associated with integration services or resources.

3 Other issues related to the utilities' overall "resource need" should also be considered when utilities acquire renewable resources to meet their RPS requirements. The utilities should not ignore their actual energy and capacity resource needs or the location of their loads. The utilities' actual resource needs should be important considerations when evaluating which type, size and location of renewable resource to acquire. Essentially, the utilities must ensure that any resources acquired to meet their RPS requirements will also meet their actual

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1/ ICNU understands that the Commission's question is only evaluating the issue of resource need, and not considering other prudence related issues.

2/ WUTC v. PSE, Docket Nos. UE-090704 and UG-090705, Order No. 11 ¶ 320 (April 2, 2010).

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resource needs, will be used and useful, and provide electric service to customers at fair, just and reasonable rates.

2. Integration Resources Must Be Prudent

4 The traditional prudence standard in Washington requires a utility to demonstrate that resources are needed, the resources fill the need in a cost-effective manner, the utility evaluated the resource against other available purchases and resources, and the costs were reasonable.[3/] The Washington RPS does not eliminate this traditional standard, and essentially codifies it, stating that utilities are "entitled to recover all prudently incurred costs associated with compliance" with the statute.[4/]

5 This principle was recently recognized by the Oregon Public Utility Commission in interpreting Oregon's RPS standard, which has very similar language stating that "all *prudently* incurred costs associated with compliance with a renewable portfolio standard are recoverable in the rates of an electric company."[5/] The OPUC disagreed with a utility's arguments that the Oregon RPS altered the traditional prudence standard holding that:

> Prudently incurred costs always have been recoverable in rates. . . . Just as the statute does not make new law with respect to recovery of prudently incurred costs, nor does it modify current law or practice with respect to prudence review. The standard to be applied has not been 'lowered' to foster the acquisition of renewable resources.[6/]

6 ICNU agrees that utilities will be required to acquire new resources and/or change how they utilize current resources to successfully integrate intermittent renewable resources.

3/ WUTC v. PSE, Docket Nos. UE-090704 and UG-090705, Order No. 11 (April 2, 2010).
4/ RCW § 19.285.050(2).
5/ ORS § 469A.120 (Emphasis added).
6/ Re PacifiCorp, OPUC Docket No. UE 200, Order No. 08-548 at 18 (Nov. 14, 2008).

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The Commission should conduct its traditional analysis to determine whether these new resources, or the changes in the use of existing resources, were needed to integrate renewable resources, and if their acquisition was the least cost, reasonable and prudent. There is no reason to assume that any aspect of the Commission's prudence analysis would not apply to integration resources.

3. The Commission Should Not Provide Any Increased Certainty of Recovery of the Costs of Renewables

7 The Commission should not provide the utilities with any increased certainty for recovery of the costs associated with renewable resources before they are constructed or acquired. There is no aspect of Washington's RPS that contemplates that utilities should be provided with rate certainty in order to acquire new renewable resources. Washington's RPS imposes clear requirements on the utilities' obligations and the threat of non-compliance penalties provides sufficient incentives to meet their obligations. The need to acquire renewable resources is fundamentally no different than the utilities' need to acquire resources to meet their energy needs, capacity needs or changing loads.

8 The Commission has a long history of rejecting utility efforts to provide some sort of pre-approval or other rate certainty associated with resource acquisitions. For example, in response to significant changes in the electric industry in the 1990s, the Commission conducted a review of its policies, including the prudence review process. The Commission rejected proposals to "pre-approve" resource acquisitions, concluding that it "would inappropriately shift the risk of those decisions from utility management to rate payers."[7/] The Commission

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[7/] Re Regulation of Elec. Utilities in the Face of Change in the Elec. Industry, Docket No. UE-940932 (April 22, 1998).

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reaffirmed the prudence process because it is critical "to ensure that utilities are not indifferent to cost or to the consequences of poor decision-making."[8/]

9 The changes required by Washington's RPS also do not warrant providing increased cost recovery certainty or preapproval. The prudence standard is even more important because the statutory requirement to acquire renewable resources is not a *carte blanche* to acquire any renewable resource, but only those prudently acquired.[9/] Providing the utilities increased cost recovery certainty will only serve to protect the utilities from imprudent actions and potentially increase the costs or reduce the quality of renewable acquisitions, all of which would harm ratepayers.

4. Consideration of the Costs of Pre-approved Facilities

10 The Commission has asked to what extent the Commission would be limited in its review of the costs at a later time, if "the Commission preapproves an acquisition of a site for renewable resources like a wind site . . . ." As previously stated, ICNU opposes the preapproval of any utility resource acquisitions. If the Commission allows for the preapproval of utility wind sites, however, then the Commission should allow parties to review the costs of the acquisition for prudency during a subsequent proceeding. Any preapproval process should have a very limited scope. For example, preapproval of wind site acquisition should limited to only whether the site was thoroughly and appropriately evaluated. Any preapproval should not include price, need, or other prudence related issues such as capacity factors. Similarly, preapproval should only provide a rebuttable assumption that parties can dispute in a subsequent proceeding.

[8/] Id.
[9/] RCW § 19.285.050(2).

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5. Early Compliance with the Renewable Portfolio Standard Violates the Used and Useful Standard

11 The utilities are prohibited from including the costs of early acquisition of certain resources in rate base under Washington's used and useful statute.[10/] Washington law imposes a substantive limit upon the Commission's ability to set rates, including the requirement that Commission cannot authorize a utility to include in rate base and earn a return on its investment on property that is not used and useful in this state.[11/] Although very broad in its application to resource types and locations, the used and useful limitation does not apply to utility expenses[12/] or to construction work in progress.[13/] The Washington Supreme Court, however, has concluded that the statute is a strict limitation that the Commission cannot depart from, even if strict conformity harms the financial condition of utilities.[14/]

12 Parties have argued that the used and useful statute does not prohibit the Commission from including in rate base the costs of undeveloped property that may be used in the future. ICNU recognizes that there is a 1943 case finding that certain unused property was used and useful under the previous version of Washington's used and useful statute.[15/] The legitimacy of the Pacific Telephone holding is highly questionable, given that the unanimous court in POWER I criticized the 1943 court as failing "to analyze the plain language of the predecessor statute" and the Court refused to "twist or redefine the plain language of RCW

[10/] RCW § 80.04.250.

[11/] Id.; POWER v. WUTC, 101 Wash.2d 425, 426 (1984) ("POWER I").

[12/] A sharply divided Washington Supreme Court ruled that the used and useful statute was limited to rate base items and not utility expenses. POWER v. WUTC, 104 Wash.2d 798, 799, 826 (1985) ("POWER II").

[13/] RCW 80.04.250 (the used and useful statute was amended by the Legislature to not apply to construction work in progress if the Commission finds its inclusion is in the public interest).

[14/] POWER I, 101 Wash.2d 425 at 434.

[15/] State ex rel. Pac. Tel. & Tel. Co. v. Dep't of Pub. Serv., 19 Wash.2d 200 (1943) ("Pacific Telephone").

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80.04.250 in order to achieve consistency with Pacific Telephone."[16/] Instead, the Court stated that "we question the reasoning in Pacific Telephone court, which failed to ground its decision upon any analysis of the controlling statute." The court in POWER I stopped short of overruling Pacific Telephone only because the factual circumstances differed. The Commission should follow the more recent guidance set forth by the court in POWER I and refuse to allow undeveloped or unused property in rate base because it violates RCW § 80.04.250.

6. Early Compliance with the Renewable Portfolio Standard Is Poor Public Policy and Will Likely Increase the Costs of Renewable Resources

13 There is a significant amount of technological and legal uncertainty associated with the development of renewable resources, which cautions against the early acquisitions. The Commission should not allow the utilities to recover the costs of early acquisitions in rates, unless utilities are willing to shoulder all the risks (and higher costs) associated with acquiring renewable resources before the Washington RPS mandates apply. Early acquisition also harms ratepayers by including costly new renewable resources in rates before they are needed. Compliance with the RPS results in increasing the costs of electricity more than other resources, and ratepayers should not be further harmed by being required to pay these higher costs earlier than necessary.

14 A significant risk associated with early acquisition of renewable resources is the danger of missing future technological changes that could reduce the costs or increase efficiency of renewable resources if they were acquired at a later time. The large scale acquisition of non-hydro renewable energy resources is a relatively new development in the United States, and costs associated with certain renewable energy sources have declined dramatically in the past decade.

[16/] POWER I, 101 Wash.2d at 433.

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Just as the costs of wind energy was significantly higher at the end of the last millennium, the costs to meet Washington's 2020 RPS requirements could be significantly lower closer to a future compliance period than today.

15 Early acquisitions should also be discouraged because forecasted load growth is always inaccurate and dependent upon uncertain economic conditions which can eliminate or reduce the need for the acquisition of any new resources. Acquisitions in advance of need could result in unnecessarily high rates if the utilities overshoot their RPS mandates by incorrectly estimating their loads.

16 Acquisition of renewable resources in advance of need may be harmful because of the potential legal and regulatory changes can eliminate or change the RPS requirements or the difficulty in meeting them. Some parties have argued that the short-term nature of external incentives (e.g., production tax credits, investment tax credits, etc.) support early acquisition and would compensate ratepayers for the higher costs of early recovery in rates. While utilities should take the existence or lack of existence of external financing incentives into account, these factors should not be the drivers for early acquisition. Many of these external financing incentives have been extended or renewed, and ratepayers should not be required to shoulder the higher costs of early acquisitions based on the potential uncertainty regarding tax credit renewals.

7. Washington's REC Rules Appear to Conflict with the Washington RPS

17 Washington's administrative rule regarding use of RECs appears to be inconsistent with and more limited than the RPS's directions regarding the use of RECs. The Washington RPS states that a utility may meet any year's obligations with RECs that were

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produced in that year, the preceding year or the subsequent year.[17/] The statute does not require that the RECs need to be acquired by any specific date.[18/] The Washington rules similarly allow for RECs to be used if they were produced during the target year, the preceding year or the subsequent year, but impose an additional requirement that they must be "acquired by January 1 of the target year."[19/] The Commission should not use its administrative rules to impose any unnecessary limitations because the statute does not prevent utilities from acquiring or planning to acquire RECs in the year following a target year. The Commission's rule may have the practical effect of turning a three year rolling compliance period into a two year period. Utilities should be provided with the flexibility provided under the statute to acquire RECs to meet their needs as long as those RECs were produced within one year of the targeted compliance year. This flexibility may be important to allow utilities to meet their RPS needs which may be difficult to predict with exact precision for each reporting period because utilities' loads shift and renewable resources have variable output.

8. The Limited Statutory Three-Year Banking Provisions Impede Renewable Acquisition

18 The Commission should recommend that the Washington legislature amend the limited three year statutory banking provisions to remove a potential impediment to the acquisition of renewable energy. Unlimited banking will allow utilities to use extra RECs generated to meet future compliance needs, and could potentially reduce the alleged problem associated with the stepped "lumpiness" of the RPS requirements (e.g., the increases from zero,

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17/ RCW § 19.285.040(2)(e).
18/ Id.
19/ WAC § 480-109-020(2).

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3%, 9% and 15%). This will provide the utilities with additional flexibility to reduce the costs of renewable resource acquisitions and to acquire the resources they need.

9. The Commission Should Not Provide Any Incentives for the Utilities to Exceed or Meet their RPS Compliance Requirements

19 ICNU strongly opposes providing the utilities with financial or other incentives to exceed their RPS targets or meet them early. There is no reason to assume that the utilities will be unable to meet their RPS requirements without incentives. Utility resource acquisitions beyond their RPS requirements should be based on traditional least cost planning and resource need requirements, and there is no reason to provide incentives for the utilities to acquire more higher-cost, intermittent resources than required by law. ICNU is not opposed to the utilities acquiring more renewable resources than mandated, if additional renewable resources are truly the lowest cost resources to meet their load requirements. As previously discussed in these comments, additional or early renewable acquisition should be discouraged because it will unnecessarily increase rates.

20 The Commission should not consider "positive externalities" in renewable resource acquisition. Calculation of the negative or positive externalities is a highly assumption driven exercise which is outside of the Commission's responsibility to set fair, just and reasonable rates. The Commission would be required to weigh the alleged environmental and job benefit claims renewable advocates claim exist against the job losses associated with the lack of development of fossil fuel resources and higher rates that result from the acquisition of certain higher cost renewable resources. These are issues beyond the Commission's expertise and

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authority, and are largely political decisions that the Commission should leave to the legislature and voters.

10. The Statutory Limitations on Hydroelectric Generation Impede the Development of Renewable Resources

21 The Washington's RPS standard limits the amount of clean and cost-effective hydro renewable resource that can be used to serve load and meet RPS requirements. The Washington RPS only allows limited amounts of electricity produced at hydro facilities to count toward the Washington RPS.[20/] The restrictive treatment excludes certain hydro facilities that generate reliable, clean, low-cost renewable energy. The restriction also discourages utilities from investing in efficiency improvements in hydro projects. At a minimum, the Commission should recommend to the legislature that efficiency upgrades at all hydro facilities should be counted for meeting the Washington RPS requirements.

11. The Geographic Area for Renewable Resources Should Be Expanded

22 The geographic area for qualifying renewable resources should be expanded beyond the Pacific Northwest to benefit ratepayers and reduce the costs associated with RPS compliance. The Washington RPS requires that eligible renewable resources must be located in the Pacific Northwest, or delivered into Washington State without shaping, storage or integration services.[21/] Expansion of the geographic area will allow a wider array of renewable potential resources to be used to meet the RPS requirements, many of which may be at significantly lower costs than those located in Washington or the Pacific Northwest.

[20/] RCW § 19.285.030(10).
[21/] RCW § 19.285.030(10)(a).

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12. A Real Cost Cap Should Be Adopted to Protect Ratepayers

23 The RPS "cost cap" is essentially an illusory protection because it does not provide any effective protection for ratepayers. The current "cost cap" is based on whether the incremental costs of eligible renewable resources exceed 4% of the utility's annual retail revenues requirement in a given compliance year.[22/] Incremental costs are defined as the difference between the levelized delivered cost of renewable resources compared to the levelized costs of resources that do not meet the RPS's strict definition of renewable resource.[23/] Due to the size of the utilities' revenue requirements and the focus on incremental, levelized costs, this cost cap will likely never be triggered, unless the utilities are grossly imprudent in their renewable energy acquisitions.

24 The Commission should recommend that the legislature revise the cost cap to provide meaningful protection for ratepayers. First, the cost cap should apply to smaller overall amount of the utility's revenue requirement that could potentially be implicated. Second, the cost cap should not be a cost cap that theoretically limits the amount of investments, but a rate cap that limits the amount customer rates can increase in any year. Third, the comparison of resources should not be the incremental, levelized costs, but the actual, total costs of renewable resources. Reviewing costs on a levelized basis requires assumptions regarding the costs of future resources, including difficult to predict gas and carbon costs. These assumption based levelized costs do not provide meaningful protections for ratepayers. The Commission may be able to remedy some of the problems associated with using incremental costs by using reasonable assumptions, but that does not obviate the need for a statutory revision.

22/ RCW § 19.285.050(1)(a).
23/ RCW § 19.285.050(1)(b).

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25 The RPS should also be revised to have a more accurate cost comparison. The RPS requires that the cost comparison be based on the costs of an eligible renewable resource and a non-eligible renewable resource.[24/] The utilities, however, are acquiring some renewable resources because they are cost effective resources, and these resources are being used to serve loads today. If the RPS were not in existence, then the utilities would use the power to serve load, but then sell their associated RECs to lower customers' rates. Therefore, in some circumstances, the RPS compliance costs are not a non-renewable resource, but the foregone REC revenues associated with the renewable resource. The RPS should be revised to reflect actual compliance costs, not the artificially low estimated compliance costs mandated in the statute.

26 Through the administrative process, the Commission should ensure that all the costs of renewable resources are included in the cost estimates. The costs of renewable resources are greater than only the capital and fuel costs, but also including integration, shaping and firming costs, and the cost to build new transmission facilities to move certain resources to load. There is no reason to exclude these costs from the calculation of eligible renewable resources for purposes of the cost cap.

13. Reasonable Changes to Biomass Renewables Should Be Made

27 The RPS includes restrictive limitations on the types of biomass facilities that qualify as renewable resources.[25/] The vintage date for biomass facilities is unnecessarily narrow, and the statute should be revised so that facilities which are rebuilt or significantly expanded should qualify as renewable resources. The Washington RPS also should be expanded

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[24/] RCW § 19.285.050(1)(b).
[25/] RCW § 19.285.030.

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to include "black liquor," which can be used to generate electricity. Generation facilities powered by black liquor should qualify as renewable as they reduce fossil fuel usage, and result in no net increase of carbon dioxide. This is another change that the WUTC should recommend to the legislature.

III. CONCLUSION

28 The Commission should utilize this proceeding to protect ratepayers and ensure that renewable resources are acquired in the lowest cost manner. The Commission should reaffirm its long standing prudence standard, used and useful requirement, and prohibition on pre-approval of resources. Ratepayers should also be protected by preventing the utilities from including any costs associated with early RPS compliance in rates and modifying or clarifying its rules to ensure a proper three year compliance period. The Commission should recommend reasonable changes to the RPS that would lower compliance costs while maintain or increasing the amount of renewable that are developed, including a expanded geographic area, greater use of banking, and expanding the definition of renewable energy to include other truly renewable resources like hydro and additional biomass. ICNU appreciates the opportunity to comment on these important issues.

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Dated this 22nd day of July, 2010.

Respectfully submitted,

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