

BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of  
  
PUGET SOUND ENERGY, INC.  
  
For a Declaratory Order on the Meaning of  
Conservation in Chapter 19.285 RCW

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

**I. INTRODUCTION**

1. In accordance with RCW 34.05.240, WAC 480-07-370, WAC 480-07-930 and Order 01 in Docket UE-111881,<sup>1</sup> Puget Sound Energy, Inc. ("PSE") hereby petitions the Washington Utilities and Transportation Commission ("Commission" or "WUTC") for a declaratory order clarifying the definition of "conservation" in the Energy Independence Act, Chapter 19.285 RCW (the "Act"). Specifically, PSE requests a Commission determination that:

(1) a qualified utility's capital investments in electric power production equipment that increase the amount of power generated for the energy input do not fall within the

---

<sup>1</sup> *In re Petition of Puget Sound Energy, Inc.'s 2012-2021 Ten-Year Achievable Conservation Potential and 2012-2013 Biennial Conservation Target Under RCW 19.285.040 and WAC 480-109-010*, Docket UE-111881, Order 01 ¶ 15 (June 14, 2012) (committing to file this petition).

PETITION FOR  
DECLARATORY ORDER - 1

**PERKINS COIE LLP**  
The PSE Building  
10885 N.E. Fourth Street, Suite 700  
Bellevue, WA 98004-5579  
Phone: 425.635.1400  
Fax: 425.635.2400

definition of conservation in RCW 19.285.030(4) because they do not result in a "reduction in electric power consumption;" and

(2) the obligation in RCW 19.285.040(1) to pursue all available conservation that is cost-effective, reliable, and feasible—by identifying an achievable ten-year conservation potential, establishing a biennial conservation target, and meeting the targets—does not require a qualified utility to include as "conservation" its capital investments in electric power production equipment, where such capital investments do not reduce electric power consumption.

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

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

PSE's representatives for purposes of this proceeding are:

Sheree Strom Carson  
Donna L. Barnett  
Perkins Coie LLP  
10885 N.E. Fourth Street, Suite 700  
Bellevue, WA 98004-5579  
Phone: 425-635-1400  
Fax: 425-635-2400  
scarson@perkinscoie.com  
dbarnett@perkinscoie.com

3. The following rules or statutes may be brought into issue by this Petition: RCW 80.01.040, RCW 34.05.240, Chapter 19.285 RCW, Chapter 80.28 RCW, WAC 480-07-370, WAC 480-07-930, and Chapter 480-109 WAC.

## II. BACKGROUND AND FACTS

### A. The Act and the Commission's Role in Implementing and Enforcing the Act

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

5. In 2006, Washington State voters approved Initiative 937 ("I-937"), which was codified as the Energy Independence Act, Chapter 19.285 RCW. The Act requires PSE to pursue cost-effective energy conservation by identifying its ten-year conservation potential, establishing a biennial target, and meeting its target.<sup>2</sup>

6. The Act provides the Commission with specific authority over proper implementation and enforcement of the Act as applied to investor-owned utilities.<sup>3</sup> PSE is an investor-owned utility and a qualifying utility under the Act, as defined in RCW 19.285.030(16).

7. The Act authorized the Commission to adopt rules to ensure the proper implementation and enforcement of the Act as it applies to investor-owned utilities.<sup>4</sup> The Commission adopted rules codified in Chapter 480-109 WAC to implement the Act.

---

<sup>2</sup> RCW 19.285.040(1).

<sup>3</sup> RCW 19.285.080(1); *see also 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*, Docket UE-061895, R-546, 2007 WL 4812185 (Nov. 30, 2007).

<sup>4</sup> RCW 19.285.080(1).

**B. The Controversy Requiring Resolution By the Commission**

8. In the course of reviewing PSE's 2012 ten-year conservation potential and biennial conservation target, a difference of opinion arose between PSE and NW Energy Coalition ("NWECC") as to whether PSE's capital investments in electric power production equipment that increase the amount of power generated for the energy input fall within the definition of "conservation" in the Act. NWECC points to the language in the Act requiring utilities to "pursue all available conservation that is cost-effective, reliable, and feasible,"<sup>5</sup> and NWECC argues that the capital investments at issue fall within this mandate and the definition of conservation.

9. In contrast, PSE does not interpret the statutory definition of "conservation" in RCW 19.285.030(4) to include a qualifying utility's investments in electric power production equipment that increases the amount of power generated for the energy input because conservation is defined as "any reduction in electric power consumption" and these investments do not reduce power consumption. PSE has never included these capital investments in production plant in its conservation program in the past, and the Pacific Northwest Electric Power and Conservation Planning Council (the "Council") does not include such utility production plant investments in its regional power plan. These capital investments in production plant are more properly reviewed in a rate case rather than as part of a qualifying utility's conservation expenditure recovery filings, as allowed for in Docket UE-970686.

---

<sup>5</sup> RCW 19.285.040(1).

10. At NWEC's request and in light of the differing interpretations of the Act, PSE agreed to file this petition for a declaratory order. The resolution of this controversy will have an impact on PSE's determination of its 2014 biennial conservation target and ten-year conservation potential that must be submitted to the Commission in 2013. Therefore, PSE respectfully requests that the Commission issue an order interpreting Chapter 19.285 RCW and specifically determining that PSE's capital investments in electric power production equipment that increase the power generated for the energy input do not fall within the definition of conservation in RCW 19.285.030(4). The answer to that definitional question will resolve the issue of whether such capital investments by utilities fall within the requirement to "pursue all available *conservation* that is cost-effective, reliable, and feasible" by identifying a ten-year conservation potential, establishing a biennial conservation target, and meeting the target.<sup>6</sup>

11. PSE requests that the Commission adopt the schedule for this proceeding that PSE and NWEC agreed to in Docket UE-111881, and which is set forth below:

- August 24, 2012: Responses from interested parties due;
- September 12, 2012: Replies to responses from interested parties due;
- Mid-November: Commission Order entered.<sup>7</sup>

---

<sup>6</sup> RCW 19.285.040(1).

<sup>7</sup> See *In re Puget Sound Energy, Inc.'s 2012-2021 Ten-Year Achievable Conservation Potential and 2012-2013 Biennial Conservation Target Under RCW 19.285.040 and WAC 480-109-010*, Docket UE-111881, Order 01 ¶ 15 (June 14, 2012). None of the other stakeholders who participated in that docket objected to the proposed schedule. The stakeholders who participated in that docket included NWEC, Commission Staff, Public Counsel, and ICNU.

12. The Commission has primary jurisdiction over the subject matter of this proceeding. The Commission may issue a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency.

Chapter 19.285 RCW is a statute enforceable by the Commission, and the Commission has issued similar declaratory orders.<sup>8</sup> Therefore, the Commission has authority to order the declaratory relief requested.

**C. Relevant Sections of the Act**

13. RCW 19.285.030(4) defines conservation as follows:

"Conservation" means *any reduction in electric power consumption* resulting from increases in the efficiency of energy use, production, or distribution.<sup>9</sup>

14. RCW 19.285.040(1) addresses a qualified utility's duty to pursue conservation as identified in the utility's ten-year conservation potential and its biennial conservation target and refers to "reduction in load" and "conservation savings" that are consistent with the definition of "conservation":

Each qualifying utility shall pursue all available conservation that is cost-effective, reliable, and feasible.

(a) By January 1, 2010, using methodologies consistent with those used by the Pacific Northwest electric power and

---

<sup>8</sup> See, e.g., *In re 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)*, Docket UE-111663, Order 01 Declaratory Order Interpreting RCW 19.285.040(2)(h) (Dec. 1, 2011); *City of Kent et al. v. PSE*, Dockets UE-010778 and UE-010911, Third Supp. Order: Declaratory Order on Motions for Summary Determination, 2002 Wash. UTC LEXIS 4 (Jan. 28, 2002) (interpreting PSE's tariff); *City of Sea Tac et al. v. PSE*, Dockets UE-010891 and UE-01102, Third Supp. Order: Declaratory Order on Motions for Summary Determination, 2002 Wash. UTC LEXIS 6 (Jan. 28, 2002) (interpreting PSE's tariff).

<sup>9</sup> RCW 19.285.030(4)(emphasis added).

conservation council in its most recently published regional power plan, each qualifying utility shall identify its achievable cost-effective conservation potential through 2019. At least every two years thereafter, the qualifying utility shall review and update this assessment for the subsequent ten-year period.

(b) Beginning January 2010, each qualifying utility shall establish and make publicly available a biennial acquisition target for cost-effective conservation consistent with its identification of achievable opportunities in (a) of this subsection, and meet that target during the subsequent two-year period. At a minimum, each biennial target must be no lower than the qualifying utility's pro rata share for that two-year period of its cost-effective conservation potential for the subsequent ten-year period.

(c) In meeting its conservation targets, a qualifying utility may count high-efficiency cogeneration owned and used by a retail electric customer to meet its own needs. High-efficiency cogeneration is the sequential production of electricity and useful thermal energy from a common fuel source . . . . The *reduction in load* due to high-efficiency cogeneration shall be: (i) Calculated as the ratio of the fuel chargeable to power heat rate of the cogeneration facility compared to the heat rate on a new and clean basis of a best-commercially available technology combined-cycle natural gas-fired combustion turbine; and (ii) counted towards meeting the biennial conservation target in the same manner as other *conservation savings*.<sup>10</sup>

15. RCW 19.285.070(1) contains the following relevant provisions:

On or before June 1, 2012, and annually thereafter, each qualifying utility shall report to the department on its progress in the preceding year in meeting the targets established in RCW 19.285.040, including expected electricity *savings* from the biennial conservation target, expenditures on conservation, actual electricity *savings* results . . . .<sup>11</sup>

---

<sup>10</sup> RCW 19.285.040(1)(a)-(c)(emphasis added).

<sup>11</sup> RCW 19.285.070(1) (emphasis added).

### III. ARGUMENT

#### A. The Plain Language of the Act and Its Implementing Rules Demonstrate that PSE's Capital Investments in Electric Power Production Equipment Do Not Constitute Conservation To Be Projected or Reported Under the Act

16. PSE's capital investments in electric power production equipment that increase the amount of power generated for the energy input, but do not reduce electric power consumption, do not fall within the definition of "conservation" as set forth in RCW 19.285.030(4). As discussed below, several sections of the Act support PSE's position.

##### 1. The Definition of Conservation in the Act Requires a Reduction in Electric Power Consumption

17. A key element of the statutory definition of "conservation" is a reduction in electric power consumption. "Conservation means any *reduction in electric power consumption* resulting from increases in the efficiency of energy use, production, or distribution."<sup>12</sup> It is not enough that there be increases in efficiency of energy production; these increases in energy production must reduce electric power consumption in order to qualify as "conservation" under the Act.

18. This concept that conservation requires a reduction in consumption appears in the annual reporting requirement in the Act and implementing rule, both of which require the utility to report expected and actual "electricity *savings*."<sup>13</sup> WAC 480-109-040 defines electricity savings as "the amount of energy *consumption avoided*."<sup>14</sup>

---

<sup>12</sup> RCW 19.285.030(4); WAC 480-109-007(3) (emphasis added).

<sup>13</sup> RCW 19.285.070(1)(requiring each qualifying utility to report on expected electricity *savings* from the biennial conservation target, and actual *savings* results)(emphasis added); WAC



19. The scenario presented to the Commission in this case involves capital investments in electric power production equipment that do not reduce or avoid electric power consumption. Because there is no resulting reduction or savings in electric power consumption, these investments do not constitute conservation as defined in the Act. Accordingly, the directive to "pursue all available *conservation* that is cost-effective, reliable, and feasible" does not require PSE to include in its biennial conservation target and ten-year conservation potential the incremental energy produced as a result of these capital investments.

## 2. Other Provisions in the Act Support PSE's Position

20. In addition to the definition of conservation, other provisions in the Act support PSE's position that capital investments in electric power production equipment that increase the amount of power generated for the energy input are not "conservation" that must be pursued, projected, and reported under the Act. These provisions include RCW 19.285.040(1)(c), addressing high-efficiency cogeneration; RCW 19.285.030(10)(b), addressing efficiency improvements to utility-owned hydroelectric generation projects; and RCW 19.285.040(1)(a), requiring utilities to use methodologies consistent with the Pacific

---

480-109-040(1)(a)(annual report must include expected and actual electricity *savings from conservation*)(emphasis added).

<sup>14</sup> WAC 480-109-040(1)(a)("The electricity *savings* reported for each high-efficiency cogeneration facility *is the amount of energy consumption avoided* by the sequential production of electricity and useful thermal energy from a common fuel source.")(emphasis added); *see also* RCW 19.285.040(1)(c)(describing how the "reduction in load" due to high-efficiency cogeneration shall be calculated and that it shall be "counted towards meeting the biennial conservation target in the same manner as other conservation *savings*"). While this definition is found specifically in the context of high-efficiency cogeneration, it is the only definition of "savings" in the rules or the Act.

Northwest Electric Power and Conservation Planning Council ("Council") to identify their ten-year conservation potential.

**a. High-Efficiency Cogeneration**

21. The Act allows utilities to count in their conservation target high-efficiency cogeneration owned and used by a retail electric *customer* to meet its own needs:

In meeting its conservation targets, a qualifying utility may count high-efficiency cogeneration *owned and used by a retail electric customer to meet its own needs*. High-efficiency cogeneration is the sequential production of electricity and useful thermal energy from a common fuel source, where, under normal operating conditions, the facility has a useful thermal energy output of no less than thirty-three percent of the total energy output. *The reduction in load due to high-efficiency cogeneration* shall be: (i) Calculated as the ratio of the fuel chargeable to power heat rate of the cogeneration facility compared to the heat rate on a new and clean basis of a best-commercially available technology combined-cycle natural gas-fired combustion turbine; and (ii) counted towards meeting the biennial conservation target in the same manner as other conservation savings.<sup>15</sup>

22. There are two important points to note in this section of the Act. First, while this section of the Act includes production of electricity as conservation, it is the production of electricity by a retail electric customer to meet that customer's needs. Second, the production of energy from high-efficiency cogeneration addressed in this section results in a "reduction in load."

23. The high-efficiency cogeneration that reduces a utility's load by allowing a customer to produce electricity to meet its needs described in RCW 19.285.040(1)(c) stands

---

<sup>15</sup> RCW 19.285.040(1)(c) (emphasis added).

in contrast to PSE's capital investments in electric power production equipment at issue here that do not reduce load or the consumption of electricity.

**b. Hydro-Electric Generation**

24. Significantly, the Act expressly addresses efficiency improvements to *utility-owned* hydroelectric generation projects in the definition of "Eligible renewable resource" but it does not expressly include any discussion of efficiency improvements to *utility-owned* production facilities in the definition of, or other requirements addressing, conservation. Under RCW 19.285.030(10)(b), "incremental electricity produced as a result of efficiency improvements . . . to hydroelectric generation projects *owned by a qualifying utility*" may be included as an *eligible renewable resource* under certain circumstances.<sup>16</sup>

25. The express inclusion of efficiency improvements in generation plants owned by a qualifying utility in the definition of "eligible renewable resource" and the exclusion of utility-owned generation efficiency improvements in the definition of "conservation" is notable and must be given meaning by the Commission. Had the Act intended to include utility-owned efficiency improvements as "conservation," it could have plainly stated such intent, just as it does in the definition of "eligible renewable resource."

**c. The Conservation Council's Sixth Power Plan Does Not Include Capital Investments by Utilities that Increase the Amount of Power Generated for the Energy Input.**

26. The Council's Sixth Power Plan also supports PSE's view that capital investments in electric power production equipment that increase the amount of power generated for the energy input are not subsumed within the Act's definition of

---

<sup>16</sup> RCW 19.285.030(10)(b) (emphasis added).

"conservation." Both the Act and its implementing rules require a qualifying utility to use methodologies consistent with those used by the Council in its most recently published regional power plan when identifying its ten-year conservation potential.<sup>17</sup> Significantly, the Council's Sixth Power Plan does not include utility generation resources in its Conservation Supply Assumptions.<sup>18</sup>

27. The requirement to use methodologies consistent with the Council's most recently published regional power plan in setting ten-year achievable conservation potential, combined with the absence of utility generation resources in the Council's Sixth Power Plan, support PSE's position that such investments are not conservation as defined in the Act and should not be included in PSE's ten-year conservation potential and biennial conservation target.

---

<sup>17</sup> RCW 19.285.040(1)(a) requires qualifying utilities to use methodologies consistent with those used by the Council in its most recently published regional power plan to identify its ten-year achievable cost-effective conservation potential. Similarly, WAC 480-109-010(1)(b) requires a utility to base its ten-year projection on either (1) its IRP, using methodologies consistent with the Council's most recent regional plan, or (2) its proportionate share of the Council's current power plan targets for the State of Washington.

<sup>18</sup> See generally Sixth Northwest Conservation and Electric Power Plan, Ch. 4, pp. 4-4 to 4-21, Northwest Power and Conservation Council (February 2010). As the Council acknowledges, the Act and the Sixth Power Plan are separate mandates and there are differences between the two. *Id.* p. 4-22 ("I-937 is a matter of state law, and does not alter or obligate the Council in its conservation and power planning under the Northwest Power Act. Similarly, the Council has no authority to interpret, apply or implement I-937 for the utilities and regulators in the state of Washington. But because the two mandates intersect--the state's utilities are to engage in conservation planning "using methodologies consistent with" the conservation planning methodology used by the Council--it is helpful to understand some of the issues raised by the two planning processes."). One important difference between the Act and the Sixth Power Plan is their respective definitions of conservation. The Sixth Power Plan defines conservation broadly as "improved energy efficiency." See *id.* p. 4-1.

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

28. PSE has invested, and plans to continue to invest, in upgrades to its production facilities that increase the amount of power generated for the energy input. But neither the language of the Act nor the history of PSE's conservation program supports the premise that these production plant investments should be counted as conservation and passed through to customers in PSE's electric conservation rider. Historically, and at the present time, when PSE upgrades its generation plant it seeks recovery of these capital investments in a general rate case or power cost only rate case, and depending on the magnitude of the expenditures and upgrades, these investments are subject to a reasonableness or prudence review in those proceedings. PSE and its Conservation Resource Advisory Group ("CRAG") have never considered such production upgrades to be energy efficiency measures that are counted towards conservation targets or included in conservation budgets. If these capital investments in generation plant are included in PSE's conservation targets then they would arguably be subject to scrutiny under a cost-effectiveness test, as is the case with other conservation measures; and assuming they met that test, they would be passed through to customers under the conservation rider, as allowed for in Docket UE-970686. There is no indication that the Act intended to undertake such a massive overhaul of the manner in which utility capital expenditures are reviewed and included in rates.

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

29. By authority of WAC 480-07-930 and RCW 34.05.240(1), the Commission may enter a declaratory order upon a showing:

- (a) That uncertainty necessitating resolution exists;

- (b) That there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion;
- (c) That the uncertainty adversely affects the petitioner;
- (d) That the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested; and
- (e) That the petition complies with any additional requirements established by the agency under subsection (2) of this section<sup>19</sup>

30. The declaratory order requested by PSE meets these requirements, as set forth below.

**1. Uncertainty Necessitating Resolution Exists**

31. The uncertainty to be resolved by this petition is whether capital investments in electric power production equipment that increase the power generated for the energy input fall within the definition of conservation in RCW 19.285.030(4). PSE and NWECA have differing views on this issue, which creates uncertainty as to whether these capital expenditures should be included in PSE's conservation budget and in the calculation of PSE's 2014 biennial conservation target and ten-year conservation potential. The uncertainty necessitates resolution by the Commission so PSE can move forward with identifying its 2014 targets.

---

<sup>19</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).

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

32. There is an actual controversy between NWECA and PSE, as discussed above.

A Commission order will not be merely an advisory opinion but will resolve this controversy.

**3. The Uncertainty Adversely Affects PSE**

33. PSE is adversely affected by the existing uncertainty with respect to the definition of "conservation". PSE cannot comply with the statutory requirements to identify its achievable cost-effective conservation potential and establish its biennial conservation target given this uncertainty and controversy with respect to the definition of conservation.

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

34. Resolution of the questions raised in this petition will not result in any adverse effect to others or the general public. PSE, its customers, and interested stakeholders all benefit from a clarification of the Act as to what constitutes conservation for purposes of biennial conservation targets and ten-year conservation potential. The public interest requires prompt resolution of this matter so that PSE will have more certainty regarding the development of its biennial conservation targets and ten-year conservation potential, which will be filed in 2013.

**IV. RELIEF REQUESTED**

35. PSE respectfully requests that the Commission enter an order declaring that:

(1) The Commission has jurisdiction to interpret the Energy Independence Act including the definition of "conservation" set forth in RCW 19.285.030(4) and the

requirement in RCW 19.285.040(1) that PSE "pursue all available conservation that is cost-effective, reliable, and feasible;"

(2) Capital investments in electric power production equipment that increase the amount of power generated for the energy input do not fall within the definition of "conservation" in RCW 19.285.030(4) because they do not result in a "reduction in electric power consumption;"

(3) The obligation in RCW 19.285.040(1) to pursue all available conservation that is cost-effective, reliable, and feasible—by identifying an achievable ten-year conservation potential, establishing a biennial conservation target, and meeting the targets—does not require a qualifying utility to include as "conservation" its capital investments in electric power production equipment, where such capital investments do not reduce electric power consumption.

Respectfully submitted this 6th day of July, 2012.

PERKINS COIE LLP

By 

Sheree Strom Carson, WSBA #25349

Donna L. Barnett, WSBA # 36794

Attorneys for Puget Sound Energy, Inc.

PETITION FOR  
DECLARATORY ORDER - 16

07771-0100/LEGAL24023001.1

PERKINS COIE LLP  
The PSE Building  
10885 N.E. Fourth Street, Suite 700  
Bellevue, WA 98004-5579  
Phone: 425.635.1400  
Fax: 425.635.2400