

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKET UE-100177

LEGAL ISSUES LIST OF  
COMPLAINANT WASHINGTON  
UTILITIES AND  
TRANSPORTATION  
COMMISSION STAFF, PUBLIC  
COUNSEL, AND INTERVENOR  
NW ENERGY COALITION

1 In accordance with the March 16, 2010 Notice of Deadline to File Legal Issues List, Puget Sound Energy (PSE) circulated a list of issues (Attachment A). The Washington Utilities and Transportation Commission Staff (“WUTC Staff”), Public Counsel, and the NW Energy Coalition (joint parties) have reviewed the list and have communicated with counsel for PSE. At this time, all parties have not reached agreement on a joint issues list, but they will continue to seek agreement before the prehearing conference.

2 In the meantime, the joint parties submit the following additions, modifications, and objections to the list of nine threshold legal issues that Puget Sound Energy (PSE) proposes for consideration in this docket. The joint parties believe that PSE has framed the issues more narrowly than is appropriate. Though the joint parties have not attempted to redraft all of the issues as proposed by PSE, they reserve the right to address all the issues in their full legal and factual context during briefing and argument in this docket.

### **One Additional Issue**

3           The WUTC Staff, Public Counsel, and the NW Energy Coalition believe that the following is the overarching threshold legal issue before the Commission in this proceeding: Must Puget Sound Energy's filings in this docket, PSE's arguments, and WAC 480-109-010 be addressed and applied in light of RCW Chapter 19.285 and WAC Chapter 480-109 as a whole?

### **Modifications to Two Issues**

4           “Ten-Year Conservation Potential” Issue #1 should be modified as follows: Whether WAC 480-109-010(1) allows a utility to begin the process of developing its projection of project its cumulative ten-year conservation potential using either (1) the most recent IRP, or (2) the utility's proportionate share of the conservation council's current power plan targets for the state, regardless of which source provides the higher projection.

5           “Other Report Requirements” Issue #2 should be modified as follows: Whether a report filed pursuant to WAC 480-109-010(3) must include program detail such as: detailed program descriptions; measures, incentives and eligibility requirements; evaluation plans, annual and quarterly progress reports; and cost recovery tariffs; ~~despite the fact that none of these are required nor even mentioned in WAC 480-109-010(3).~~

### **Objections to Three Issues**

6           The WUTC Staff object to PSE's “Ten-Year Conservation Potential” Issue #4, which asks whether WAC 480-109-010 requires a utility to file its ten-year conservation potential by January 1. There has been no allegation that PSE's filing in this docket was untimely. If PSE believes otherwise, that creates a factual dispute, making the issue inappropriate for resolution as a threshold legal issue.

7           The WUTC Staff, Public Counsel, and the NW Energy Coalition object to PSE's "Biennial Conservation Target" Issue #3, which concerns penalties. Because no penalties are currently before the Commission, the joint parties believe the issue is not ripe for resolution, and is beyond the scope of this proceeding.

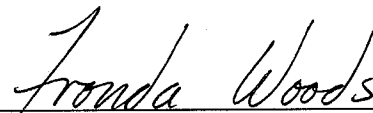
8           The WUTC Staff, Public Counsel, and the NW Energy Coalition object to PSE's "Other Report Requirements" Issue #1, which asks whether the public participation outlined in PSE's report is sufficient. The joint parties believe PSE's report does not tell the whole story. Accordingly, factual disputes make the issue inappropriate for resolution as a threshold legal issue. Should PSE's "Other Report Requirements" Issue #1 be accepted as a threshold legal issue, however, the joint parties propose that the following additional issue be included as well: "May the Washington Utilities and Transportation Commission reject a utility's ten-year achievable conservation potential and biennial conservation target under WAC 480-109-010 on the basis that the utility provided insufficient opportunities for participation by Commission staff and the public in the development of the targets?"

9 The WUTC Staff, Public Counsel, and the NW Energy Coalition do not object in principle to PSE's identification of the remaining issues. As discussed above, however, they reserve the right to brief those issues in their full legal and factual context, regardless of how narrowly they are drafted.

DATED this 29th day of March 2010.

Respectfully submitted,

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**Attachment A**  
**PSE'S PROPOSED LEGAL ISSUES**  
**DOCKET NO. UE-100177**

Ten-Year Conservation Potential

1. Whether WAC 480-109-010(1) allows a utility to project its cumulative ten-year conservation potential using either (1) the most recent IRP, or (2) the utility's proportionate share of the conservation council's current power plan targets for the state, regardless of which source provides the higher projection.
2. Whether WAC 480-109-010(3) requires a utility to explain why it identified the source of its ten-year conservation potential as either (1) the most recent IRP or (2) the utility's proportionate share of the conservation council's current power plan targets for the state.
3. Whether the option in WAC 480-109-010(1)(a)(ii) to derive a ten-year projection from the "conservation council's current power plan" allows a utility to use the plan that is currently in effect as of the date the projection is filed with the WUTC.
4. Whether WAC 480-109-010(1), which states that a utility must project its cumulative ten-year conservation potential by January 1, 2010 and every two years thereafter, requires a utility to file its projection by January 1.
5. Whether WAC 480-109-010 prohibits a utility from developing and finalizing its projected ten-year conservation potential after it makes a projection on January 1st, and before it files its final report with the WUTC by January 31<sup>st</sup>.

Biennial Conservation Target

1. Whether a utility's biennial conservation target complies with WAC 480-109-010(3)(b) where the utility uses Option 2 of the Conservation Counsel's Target Calculator (target based on utility share of total regional retail sales by a sector) for the years 2010 and 2011.
2. Whether WAC 480-109-010 limits the range that may be used in setting a biennial conservation target?
3. Whether a utility is subject to penalties only if conservation falls below the lower end of an approved biennial conservation target range.

Other Report Requirements

1. Whether the public participation outlined in PSE's report is sufficient to meet the requirements of WAC 480-109-010(3), given that the WAC does not prescribe a specific process for participation, a time limit for participation, or an end product as a result of the participation.
2. Whether a report filed pursuant to WAC 480-109-010(3) must include program detail such as: detailed program descriptions; measures, incentives and eligibility

requirements; detailed program budgets; cost-effectiveness standards; projected program cost-effectiveness; evaluation plans; annual and quarterly progress reports; and cost recovery tariffs; despite the fact that none of these are required nor even mentioned in WAC 480-109-010(3).