Summary of Comments

Responding to a Notice of Opportunity to File Written Comments Regarding Rules to Implement Initiative No. 937, Docket No. UE-061895

On January 30, 2007, the Utilities and Transportation Commission (UTC) issued a Notice of Opportunity to File Written Comments regarding the development of regulations to implement the Energy Independence Act ("Act") RCW 19.285. That notice included a series of questions to help focus attention on important areas of the Act.

1. Assessment of energy conservation potential, setting of conservation targets and determining conservation performance. RCW 19.285.040(1).
2. Determining compliance with renewable resource targets or available exceptions. RCW 19.285.040(2) and 19.285.050.
3. Assessing penalties for noncompliance and whether such penalties may be recovered in customer rates. RCW 19.285.060(4) and (6).
4. Reporting requirements to utility customers and the Department of Community Trade and Economic Development. RCW 19.285.070.

This document presents a summary of comments received.

1. ENERGY CONSERVATION.

Question A.1. *WAC 480-100-238 requires electric utilities to file integrated resource plans every two years. Such plans are required to include long-term assessments of cost-effective conservation resources as well as short-term action plans for acquisition of conservation and other resources. What, if any, additional analysis and information should the commission require of utilities to demonstrate compliance with RCW 19.285.040(1)(a) (ten-year conservation assessment) and RCW 19.285.040(1)(b) (biennial conservation target)?*

Avista	Integrated Resource Plans (IRPs) with their comprehensive assessment of resource supply and demand-side resource opportunities, extensive documentation and public involvement, are the cornerstone of the utility's planning process. These plans should serve as the basis for establishing the conservation targets for each utility. The UTC should encourage the use of regional DSM resource acquisition as part of the utility's DSM savings achievement. This is under discussion by Northwest Energy Efficiency Alliance and the Washington utilities.
ICNU	Compliance with the conservation goals of I-937 should be part of the existing IRP process. Requiring two separate filings to assess conservation opportunities every two years would be a waste of resources, since both the conservation assessment requirements in the IRP process and I-937 contain similar standards. For ease of administration and consistency, conservation assessments mandated

	under RCW § 19.285.040(1) should be made a part of the IRP process.
NW Energy Efficiency Council	The IRP process seems sufficient for the assessment of cost effective energy conservation resources – as long as the assumptions used in the IRP are reasonably consistent with those used by the Northwest Power and Conservation Council. The UTC should check for consistency prior to each 2 year IRP process.
PacifiCorp	The UTC's policies and practices and rules (WAC 480-100-238) regarding IRPs are sufficient to identify the utility conservation potentials required by RCW 19.285.040 (l)(a and b). The UTC should establish process for addressing the efforts of regional entities such as the Northwest Energy Efficiency Alliance in meeting the requirements of RCW 19.285.040. When utility IRP cycles do not align with the timelines defined in RCW 19.285.40, it would be reasonable to allow the utility to add the off year by extrapolation.
Public Counsel	The requirements of RCW 19.285.040(1)(a) may be met through the IRP. The requirement for consistency with the Northwest Power and Conservation Council (NW Council) could easily be added to the IRP. Stakeholder input greatly enhances the setting of conservation goals.
PSE	Utilities should be able to vary the conservation assessment methodologies from those of the NW Council to reflect the unique characteristics of their service territories. Existing stakeholder advisory groups could assess consistency. Conservation potential should include indirect savings acquired through codes, standards and market transformation. Conservation acquisition may be affected by real world factors such as: free riders, customer acceptance, market barriers, or other implementation issues. Approved conservation targets should consider both realistic total market penetration and timing. Also, a "pro-rata" share for the biennial targets may mean something other than a linear translation of the 10 year conservation assessment. As a fallback, utilities should be able to use its "share" of the conservation potential identified by the NW Council. Rather than using the IRP, the UTC should rely on specific tariff filings to demonstrate that the long-term conservation potential and targets meet the requirements of the Act. Under this approach, utilities would file conservation tariffs around December 1 of each year. Tariff filings are a better alternative for two primary reasons: 1. The IRP is a strategic document setting a direction. More detailed analysis is necessary to support specific program design, which is done for the tariff filing. 2. While the UTC does not "approve" IRPs, it does approve tariff filings.

Renewable Northwest Project	The existing IRP process seems appropriate for determining conservation potential. The methodologies used by the utilities in conducting the potential assessment should be consistent with those used by the NW Council.

Question A.2. *What process and timeframe should the Commission use for review and approval of electric utility biennial conservation targets? Would a review and approval process similar to the practice for approval of requests for proposals under WAC 480-107-015(3)(b) be adequate?*

Avista	Existing IRP rules establish the biennial planning target and associated targets for demand-side management resource acquisition. This process provides substantial opportunity for public involvement and has proven adequate for establishing utility conservation targets. The UTC should consider modifying its IRP "acknowledgement" standard to incorporate an order stipulating energy efficiency targets. The process provided by WAC 480-107-015(3)(b) could be appropriate. This process requires a utility to submit to the UTC a proposal and accompanying documentation no later than 135 days after the utility's IRP is filed with the UTC. Interested persons have 60 days from the IRP's filing date with the UTC to submit written comments. The UTC approves or suspends the proposal within 35 days after the close of the comment period.
ICNU	It is reasonable to apply the WAC 480-107-015(3)(b) process for approval of a utility's biennial conservation targets. Utilities are familiar with how this process works. Creating a new, separate process for the mandates of I-937 would be unduly burdensome and potentially create unnecessary confusion.
NW Energy Efficiency Council	The Act requires utilities to identify their cost effective conservation potential beginning January 1, 2010 and then every two years thereafter (presumably in January). The WAC 480-107-015(3)(b) review and approval timeframe would be problematic. Under that timeline, up to 255 days, or nearly 8 months, would pass before the 2-year conservation acquisition goal was established. Such an extensive period of uncertainty presents execution hurdles that might make it difficult for utilities to meet their goals. Given that the conservation acquisition target is a simple mathematical computation of the 10 year achievable potential (i.e. greater than or equal to 20% of the 10 year achievable potential), a lengthy process for establishing the goal seems unnecessary. The target should be established at the same time that the 10 year conservation potential is determined. A rigorous review is more appropriate during the analysis phase of the 10 year conservation potential (aka IRP process).

PacifiCorp	The existing process used for energy efficiency program filings is preferable. Utilities preview their draft filings with their advisory groups, and then file their biennial conservation targets and supporting assessment in advice letter format. The filings would be made in time for UTC approval of targets prior to the start of the performance period. Utilities would reference their most recent IRP work, and should be able to carryover from the prior period any exceed of previous targets.
PSE	To have conservation programs that may be evaluated against the penalty in RCW 19.285.060, utilities must have UTC approval of biennial conservation targets. The UTC could review and approve a tariff filing for conservation programs. Part of the evidence utilities submit in support of such tariff filing could include how the overall conservation effort is consistent with the conservation target.
Renewable Northwest Project	The process described within WAC 480-107-015(3)(b) may be more complex than needed. The calculation of the biennial target itself should be a simple one – a utility must pursue at least the pro rata share of its 10-year potential in the 2-year period. We believe the utility and stakeholders therefore would focus on associated programs and budget. The UTC has an existing process for reviewing and approving utility conservation targets. Utilities convene stakeholders (through one or more meetings) to discuss savings targets, budgets and programs. Utilities then file conservation proposals with the UTC which are considered at an open meeting. The UTC should direct utilities to file their biennial acquisition targets no later than December 1 for each upcoming two-year period, and otherwise follow the existing process.

Question A.3. *Should the Commission by rule establish standard input assumptions and calculation formula for determining whether high-efficiency, customer-owned cogeneration qualifies as conservation counting toward a utility's biennial conservation target? If so, what should be the standard assumptions and formula? What documentation should the Commission require from utilities regarding customer-owned cogeneration equipment and thermal loads to determine utility compliance with RCW 19.285.040(1)(c)?*

Avista	The UTC may want to avoid trying to establish, at this time, standard input assumptions and formulae regarding the qualification of customer-owned cogeneration facilities toward a utility's conservation target. In each case where application is made under this provision, the thermal and electrical energy characteristics of the proposed equipment will have to be carefully scrutinized with regard to the rule. A case-by-case approach to this analysis would likely provide promote a more effective implementation of the rule than might flow from a prescription developed on a pro-forma basis.

NW Chip Application Center	The UTC should address this issue to provide a clear understanding of what does and does not qualify as "high efficiency co-generation." This will help project developers to know upfront what is the standard
NW Energy Efficiency Council	The UTC can play a role is standardizing assumptions for the calculation of co-generation resources that qualify to meet the energy conservation requirements of the RCW. For example, the heat rate of a best commercially available technology combined cycle natural gas fired combustion turbine would be amenable to UTC standardization. With regard to documentation of equipment performance and thermal loads, the UTC should at minimum require the manufacturer's specifications and a professional engineer's stamped calculations of loads and system performance as the basis for determining compliance with this section.
PacifiCorp	Standardized input assumptions and calculation formulas are not uniformly appropriate given the site-specific nature of this type of installation. It may be appropriate to count high efficiency cogeneration owned and used by a retail electric customer toward that utility's conservation target for certain dual fuel utilities. Or, it may be appropriate to count the cogeneration toward the utility's renewable goal if the project uses a renewable fuel. This should be determined on a case-by-case basis.
Renewable Northwest Project	The UTC can standardize at least some of the assumptions related to cogeneration resources that qualify for the energy conservation requirements in RCW 19.285, e.g., the heat rate on a new and clean basis of a best commercially available technology combined cycle natural gas fired combustion turbine. We recognize that the best commercially available CCCT is a moving target, and the UTC should establish a process for determining how it will adjust the heat rate accordingly over time. The The UTC should consider establishing standard assumptions related to how to count the kWhs produced at a cogeneration facility towards meeting the biennial target in the same manner as traditional end-use conservation. The UTC should require manufacturer's specifications and a professional engineer's stamped calculations to document the loads on and performance of customer-owned cogeneration equipment. The date the cogeneration facility commenced operations and the incentives the utility provided the customer to serve its needs with high efficiency cogeneration must also be documented.

2. RENEWABLE ENERGY.

Question B.1. *RCW 19.285.030(10)(a) requires that electricity from a generation facility outside the Pacific Northwest must be "delivered into Washington state on a real-time basis without shaping, storage, or integration services" to qualify as an eligible renewable resource. What contract, system dispatch, or other information should the Commission require of utilities to demonstrate compliance with this provision?*

Avista

The UTC should define the electricity product(s) allowed under this rule. For instance, "real time" is not an industry standard term. "Real-Time" trading refers to intra-day trading of energy and capacity blocks as short as one hour, and extending up to many hours.

Regarding the demonstration of compliance, it's more the absence of integration services contracts that demonstrates compliance, rather than some form of affirmative documentation the utility would provide.

PowerEx

The Act specifies that for a facility located outside of the Pacific Northwest to be considered an eligible renewable resource, the electricity from that facility must be delivered into Washington State on a real-time basis without shaping, storage or integration services." However, the Act does not define "shaping, storage or integration services."

The Act does not restrict use of these services, regardless if they come from outside the Pacific Northwest, so long as the renewable facility is located in the Pacific Northwest. The UTC should clarify that integration, balancing, shaping and other services from outside the Pacific Northwest do not render ineligible otherwise eligible renewable resources located within the Pacific Northwest.

For compliance purposes, utilities should have no difficulty in separately identifying renewable energy under the Act and other energy and ancillary services they purchase. Bilateral contracts will likely be the favored tool for procuring energy from renewable resources. Sales of electricity across control areas require North American Electric Reliability Corporation (NERC) tags which contain information on the transaction. This information could include the specific generator source, the transmission path, and the load serving entity. This could be used to track the renewable energy.

PSE

The terms and conditions of the purchase power agreement and/or the transmission agreement should be sufficient evidence to demonstrate compliance. The requirement for real-time delivery provides a bias for Washington utilities to purchase renewable power by contracts from out-of-state generators rather than to own the out-of-state facilities. A Washington utility will not have the network control or system ability to integrate out of state renewable generation on a second-to-second basis and thus will have to rely on a transmission provider to integrate the renewable power. If acquired through a power purchase agreement, the

integrated power and the renewable energy credit can be purchased as separate products.

This real time requirement seems to exclude out-of-state renewable resources owned by a Washington utility from counting towards the renewable targets. However, acquisition of far-distant renewable resources from out of state is not very likely due to cost and transmission constraints.

Renewable Northwest Project

A real time delivery requirement is not a new concept. Several states with renewable portfolio standards, including states in New England, New York, and California have such provisions. This provision is limited to eligible renewables located outside of the Pacific Northwest. There is no restriction as to how utilities acquire eligible renewables located within Washington, Oregon, Idaho and western Montana.

Utilities must demonstrate two things to the UTC to ensure compliance with this provision:

1. The utility must dynamically schedule the power from the generator to Washington. They must show evidence that the renewable generator sends an electronic SCADA signal in near real-time (e.g., every 4 seconds) to the receiving control area to take the power; and,
2. The utility must have proof of a contractual right to transmit the purchased power on a transmission path into Washington. The utility must only show that it was delivered to any entity into the state of Washington, not necessarily the qualifying utility.

The California Energy Commission issued rules requiring use of NERC tags to verify delivery for their RPS.

Question B.2. *RCW 19.285.040(2)(f) prohibits electric utilities from crediting eligible renewable resources or distributed generation against their annual targets if renewable energy credits are owned by "a separate entity" or used in an optional green pricing program. RCW 19.285.030(17) defines renewable energy credits as including all of the non-power-related attributes associated with an eligible renewable resource. What reliable documentation should the Commission require of an electric utility to demonstrate compliance with this provision?*

Avista

The UTC may want to identify an entity qualified to certify the REC status of energy from eligible renewable sources. The UTC could participate in the Western Renewable Energy Generation Information System (WREGIS) under WECC, or delegate certification responsibility to a Washington state agency, such as CTED. CTED already receives information on renewables generation from each utility. They may be able to tailor this existing reporting / tracking program to meet the need for certification.

Documentation of compliance with the rule can be provided either

	through an attestation received as part of a power purchase that includes RECs or through an attestation by the utility for RECs produced by its own certified generation.
PacifiCorp	As part of its annual compliance filing, a utility should attest that it has neither sold nor retired any non-power attributes for the renewable power it is claiming (e.g., renewable energy credits, green tags, renewable energy certificates, etc.). A utility that has sold the non-power attributes associated with the output of an eligible renewable resource that was used to serve Washington retail load would disclose such non-power attribute sales annually to the UTC and record those megawatt-hours as "null" power. The UTC should clarify that if the price paid for the RPS-eligible Qualifying Facility (QF) power exceeds avoided energy costs, the utility should be deemed the owner of the non-power attributes. If the price paid for the QF power does not exceed avoided cost, the utility should have the right to purchase the non-power attributes. The UTC should allow utilities to recover all reasonable costs of compliance with the RPS, including the costs of the non-power attributes.
Powerex	WREGIS (a project to track renewable generation attributes in WECC) is expected to be operational in Q3 of 2007. WREGIS was developed specifically to ensure appropriate tracking of renewable attributes and to avoid concerns regarding double-counting.
PSE	Although renewable energy is defined differently under RCW 19.285.020 than it is in RCW 19.29A.090, the reporting requirements of RCW 19.29A.090(6) should provide the UTC adequate information to determine utility compliance with RCW 19.285.040(2)(f). If the energy is obtained from a purchased power agreement, the terms and conditions of such agreement should be sufficient evidence.
Renewable Northwest Project	RCW 19.285.030 (17) directs CTED to select a REC tracking system. It is our hope that CTED will select WREGIS, an independent regional tracking system providing data to substantiate and support the verification and tracking of renewable energy certificates. WREGIS is in final testing and is expected to “go live” on June 18, 2007. As we understand it, generators and utilities will register and set up WREGIS accounts (similar to a bank account). The generator will provide a variety of information about its facility (online date, fuel type, geographic location, etc.). WREGIS certificates will be created automatically when power is generated by that generator. Each certificate will have a unique identification number that may be transferred between registered WREGIS users’ accounts. Transfers will be recorded to show chain of ownership. The “bought and sold” RECs will be transferred throughout WREGIS until they get to a utility’s “retirement account.” The utility will mark the reason for the retirement

on each certificate – i.e., this one for meeting RCW 19.285, this one for our green power program, etc. – to ensure no double counting.

In addition to WREGIS, either the UTC or CTED will need to establish an eligibility certification process for generators or utilities to prove the relevant resource meets the definition of eligible renewables. WREGIS can verify many claims made by the generator (e.g., size, fuel type, annual generation total) but they will not be able to verify state-specific requirements.

Under RCW 82.16.120 (9), "the environmental attributes of the renewable energy system belong to the applicant, and do not transfer to the state or the light and power business upon receipt of the investment cost recovery incentive." In cases where the customer-generator decides to sell or otherwise provide to its serving utility the environmental attributes associated with its renewable energy system, we don't expect the RECs will necessarily be registered with WREGIS. In this case, a utility would need to show a contract signed by itself and the customer-generator showing that the utility owns the environmental attributes of the project, and the dates that transfer of ownership is in effect.

Question B.3. *RCW 19.285.030(18)(h) and (i) generally preclude bio-fuels derived from clearing or harvesting old-growth forests from qualifying as eligible renewable resources. What reliable documentation should the Commission require of electric utilities to demonstrate compliance with this provision?*

Avista — Any documentation / certification protocol developed for wood-waste fuels should be realistic, practical, and workable. The fuel certification process should not be so onerous that it precludes the development of this potential eligible resource. The UTC should consider a certification process that would discount from eligibility, a percentage of the output of a plant that corresponds to a known or suspected percentage of the fuel supply composed of material from old-growth forests. This approach might be particularly useful in the event there is way to guarantee the composition of the fuel supply.

One approach to documentation would involve a certification process for the fuels supplier who would document or an attest to the origin of the fuels. A similar approach would be for the utility to require an attestation from the fuels supplier in their supply contracts. There are likely many other approaches to this question of documentation. Finally, a related question is whether a definition of "old growth forests" exists in rule.

PacifiCorp — Electric utilities should only be required to attest that the biofuels are not entirely derived from clearing or harvesting of old-growth forests. If a portion of the biofuels is derived from either the clearing or harvesting of old-growth forests, the UTC should clarify that the output from the

	facility may be prorated and remain eligible for use toward the Washington RPS.
PSE	If the energy is obtained from a purchased power agreement, the terms and conditions of such agreement should be sufficient evidence.
Renewable Northwest Project	The Forest Stewardship Council (FSC), an internationally recognized nonprofit organization, has Pacific Coast Standards that define old-growth forests. This definition and guidelines could be used to help clarify the types of forests that are "off-limits" to biomass and biodiesel harvesting. FSC also employs a rigorous Chain of Custody procedure that ensures all wood products that make it to the end-user actually come from certified forests. Land used for the cultivation of oilseeds ultimately used for biomass or biofuel production must be verified as not having been cleared of old growth or first-growth forests prior to November 2006 via the following methods: • Designate areas in the major oilseed producing regions of the world that have been in production for long periods of time and from which there is obviously no chance of old growth or first growth deforestation, such as the United States Midwest region and Peninsular Malaysia. • Clear documentation that the land in question has been cultivated, in its entirety, prior to the above date must be made available for inspection by the UTC. If questions arise as to the authenticity of these documents; or the UTC does not feel the documentation is adequate; or such documentation does not exist, then a third-party independent inspection must be completed. The third party independent inspection must be completed by a company recognized for their expertise in this field. The UTC should maintain a list of acceptable companies.

Question B.4. *RCW 19.285.040(2)(d) exempts utilities from the requirement to meet annual renewable targets under certain conditions. Should the Commission establish standard assumptions and formula to evaluate these conditions? If so, what should be the assumptions and formula? Should the Commission interpret revenue requirement to mean the last approved normalized level of revenue? If not, what other interpretation of revenue requirement should the Commission use to determine compliance with this condition?*

Avista	The UTC should not establish assumptions and formulae to evaluate a utility's exemption from the requirement to meet annual renewable targets. It would be nearly impossible to develop an evaluation template prospectively given the myriad of combinations of events that could produce an exemption case. A case-by-case approach to this analysis would promote the most effective implementation of the rule in both the

	short and longer term. What would be useful would be the development of a process for a utility to follow in filing a notice to request an exemption in a given year. The UTC should interpret 'revenue requirement' under this rule, as the last approved normalized level of revenue.
PacifiCorp	The UTC should specify the process a utility would use and the documentation needed to request an exemption. The rule should include a list of factors, beyond a utility's reasonable control, which if encountered, would deem the utility to be in compliance. Some of these include : • Availability of integration services and tariffs required to integrate some renewable resources, including regulation, and load-following services. • Availability of transmission. • Availability of equipment and contractors. • The latter-stage failure in permitting and siting of a planned-for and contracted eligible resource. • Combinations of variations in weather, loads, hydro conditions, and wind-resource performance could have catastrophic consequences for utility customers (either by over-building or penalties). • An expansive range of force majeure events which, if encountered, would deem the utility to be in compliance. The term revenue requirement should be defined by the UTC. If the UTC should interpret revenue requirement to mean the last approved normalized level of revenue it should be applied based on the Company's most recently filed annual results.
PSE	For the purposes of RCW 19.285.040(2)(i), actions of a governmental authority should include decisions by the Bonneville Power Administration ("BPA") or the Energy Facility Site Evaluation Council ("EFSEC") that disrupt a utilities ability to acquire renewable resources. The UTC should interpret "total annual retail revenue requirement" as normalized retail revenue supported by the general tariffs approved in a Company's most recent general rate case. Accounting for Public Utilities, Publication 016, Release 22, defines revenue requirement as the total of (a) operation and maintenance expenses; (b) depreciation; (c) taxes; and (d) cost of capital invested in the rate base.
Renewable Northwest Project	We do not believe this is an issue the UTC needs to consider in rulemaking. It is highly unlikely that any of Washington's investor-owned utilities will meet the provisions of this section.

Question B.5. *RCW 19.285.040(2)(g) establishes criteria for the valuation of eligible renewable resources co-fired with fossil fuel resources. Should the Commission by rule establish standard assumptions and formulae to apply to such co-fired generation? What reliable documentation should the Commission require of utilities regarding the "heat values" of renewable fuels to demonstrate compliance with this provision?*

Avista	Sources of information regarding renewable resources co-fired with fossil fuel resources may already exist. Operators of thermal-fueled projects generally perform a BTU analysis of the fuel taken under contract. The quarterly Cost and Quantity of Fuels report to the FERC contains this information. A contract attestation from the fuels suppliers could also provide the heat value documentation.
PacifiCorp	The UTC should clarify that the output from a generation facility co-firing biofuels with fossil fuel resources is prorated and remains eligible for use toward the Washington RPS. Electric utilities should only be required to obtain an annual attestation as part of either a QF, a PPA or a biofuels supply contract that states the average "heat value" and amount of the biofuels co-fired with the fossil fuel.
PSE	The UTC should allow for deferred exchange with metered co-firing.
Renewable Northwest Project	The UTC should require an independent, third-party expert to certify the percent of eligible renewables used in a co-firing process.

Question B.6. *RCW 19.285.050(1)(a) provides that an electric utility complies with the renewable resource target if it can demonstrate that it invested at least 4 percent of its "total annual retail revenue requirement" on the "incremental costs" of eligible renewable resources or renewable energy credits. Should the Commission by rule establish standard assumptions and formula to apply to this test? If so, what should be the standard assumptions and formula, including assumptions concerning existing eligible renewable resources acquired after March 31, 1999? What reliable documentation should the Commission require of utilities to demonstrate compliance with this provision?*

Avista

The UTC should clarify the "percent of revenue requirement cost exemption" by formulating for eligible resources a detailed list of renewable resource costs allowable as incremental costs of. The incremental costs should, with substantial detail, include at least:

- Capital (including financing) and operating costs.
- Fuel costs.
- Quantifiable environmental externalities.
- Royalty or land right payments.
- Incentives or other payments from state or federal governments.
- Transmission interconnection – costs associated with substation and feeder lines required to physically connect the output of the

generating resource into the high-voltage transmission system.

- Regulation – costs to follow moment-to-moment changes in system balance. This is usually provided by power plants on Automatic Generation Control.
- Load following – costs associated with balancing loads and resources over longer time periods, beyond the moment-to-moment changes associated with regulation.
- Forecast Error – costs associated with balancing the difference between a forecast timeframe (e.g. hour ahead) forecast of energy delivery and the actual delivery of energy.
- Capacity cost – the cost of any additional dispatchable, capacity-type resources required to meet system reliability standards.

The calculation of incremental cost for conventional and renewable resources should be based on substantially similar energy products in terms of firmness, heavy and light-load-hour characteristics, and seasonality.

Utilities use portfolio or system analysis to estimate the total system cost associated with combining their current power supply resources with the prospective new resources. To demonstrate compliance, utilities can compare the system cost of a renewable resource portfolio with the costs associated with a conventional resource portfolio.

A utility's total incremental renewable resources costs should also include research and demonstration costs and a substantial portion of "dry-hole" costs for a renewable-resource project that, for reasons beyond the utility's control, is terminated prior to commercial operation.

ICNU The UTC should adopt a utility's most recent UTC-approved annual revenue requirement as of December 31, 2006, as the revenue requirement to which the 4% is applied. Using that date allows utilities to know immediately and with certainty what the 4% cost cap will be. The UTC's rules should establish that the cost cap is reached when the *total* incremental cost of renewable resources reaches this 4% cap.

In addition, the 4% should not be an annual calculation. For example, PSE latest approved revenue requirement totaled $1.73 billion. With an annual 4% cost cap, PSE would spend $69.2 million *each* year on the *incremental costs* of eligible renewable resources. This level of investment would be an unacceptable burden on utilities and ratepayers, and would not be consistent with the intent of the voters.

PacifiCorp The UTC rules should provide explicit guidance as to how this test will be calculated and applied. To do so, the UTC will need to articulate policy decisions related to several key questions. For example:

- How does the UTC define "a given year"?

- What year should the utility use to determine the "total annual retail revenue requirement" and the "incremental costs"? Given that utilities may enter into binding agreements years in advance of the on-line date, is the cost cap applied and cost-effectiveness measured at the time that the agreement is entered into or in the year in which delivery occurs? What happens if the utility incorrectly forecasts future total revenue requirement or cost effectiveness?
- Does the four percent cost cap compound annually?
- If the utility elects to invest more than the 4%, will the incremental costs above the costs of complying with the chapter be recoverable?
- How does the UTC define levelized delivered cost?
- How should utilities compare resources of different contract lengths or facility life?
- How does the UTC protect customers from excessively high above-market projects that would not trigger the 4% overall cost cap?

PSE

This needs to be examined from the same portfolio perspective as the current IRP and RFP processes. The determination of the levelized delivered costs of an equivalent amount of reasonably available renewable and conventional resources needs to be calculated on a portfolio basis.

Renewable Northwest Project

The UTC should establish standard assumptions and formula to determine compliance with RCW 19.285.050(1). This would provide certainty to utilities and stakeholders. Examples of standard assumptions include: generally accepted engineering economics principles for determining present value; what values to assume for discount rate and inflation rate; and how to account for inflation, taxes, etc.

For the comparison of eligible renewables to other new substitute resources, the utility must declare where the cost data is derived from and demonstrate the resources are comparable in contract length and facility life.

For eligible renewables already included in rate base, the utility must show the cost of those resources on an annual levelized basis and compare that cost with its revenue requirement beginning in 2012.

The UTC should address instances where eligible renewable resources are less costly than reasonably available new substitute resources. For example, how to incorporate that circumstance within the cost cap calculation.

Question B.7. *RCW 19.285.050(2) requires the Commission to "address" cost-recovery issues for multi-state electric utilities complying with chapter RCW 19.285. Should the*

Commission by rule establish policies to govern cost-recovery by multi-state utilities, or should such issues be considered on a case by case basis? If a policy is established by rule, what should that policy be?

Avista	The UTC should address cost recovery issues for multi-state electric utilities on a case-by-case basis.
ICNU	Cost recovery for particular resource decisions must first be judged for prudence. The costs of prudently acquired resource that are "used and useful" in Washington should be allocated to Washington ratepayers consistent with the utility's UTC-approved cost allocation methodology. However, Washington ratepayers should not bear the full burden of renewable resources 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.
PacifiCorp	General guidelines in rules will provide a basis for review of projects that serve multiple states. Given the mandate of renewable acquisition, a renewable tracker ratemaking mechanism is in order to expedite recovery of the capital costs related to renewable generating resources and associated transmission resources, without the need for full general rate case proceedings. The tracker mechanism should provide sufficient time for parties to review the prudence of the resource costs on a case-by-case basis, in advance of passing the costs through to customers.
PSE	Under the statute, investor-owned utilities are entitled to recover all prudently incurred costs associated with compliance with the law. The UTC must clarify that it is reasonable and necessary for the UTC to indicate which projects are prudent for the utility to invest in prior to incurring those costs. This *ex-ante* prudence determination can and should occur before costs are incurred and before resource costs are recovered in rates. In order to comply with this statute, utilities will have to aggressively compete for potential renewable resources. As a result, utilities may need to acquire wind rights, land or other renewable assets. Some of these assets may not lead to functional renewable facilities. The rule should allow utilities to recover all reasonably incurred development costs, equipment deposits, option payments and other like-type development costs in rates.

3. COMPLIANCE AND PENALITIES.

Question C.1. *RCW 19.285.060(6) gives to the Commission authority and responsibility to determine whether utilities have complied with chapter RCW 19.285 and, if not, to assess*

penalties determined under RCW 19.285.060(1). Should the Commission by rule establish a set of factors it will consider in determining assessment of penalties? If so, what factors should the Commission consider?

Avista	The UTC should address the issue of factors evaluated in consideration of penalties on a case-by-case basis.
ICNU	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. If a utility purchases the output of a wind facility that is 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. The UTC does not 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.
NW Energy Efficiency Council	The UTC should establish the factors that it might consider when applying penalties for noncompliance. The RCW specifies a series of events outside a utility's control that shall be considered for failure to meet the renewable standard. The UTC may establish others. The process for adding additional factors should include an opportunity for public comment.
PacifiCorp	The UTC should consider the following factors: • Whether penalty is least cost means of meeting RPS (consider whether this will be accepted as an alternative method of compliance) • Events occur that are beyond utility control (force majeure, weather, third-party contract breach, etc) • Unfavorable market conditions • Insufficient resources available • Other circumstances that would indicate utility is not at fault or has shown good faith efforts to comply Utilities may not comply with the statutory renewable or conservation targets for a variety of causes: a wholesale supplier could default on its contractual obligations; governmental action may not issue needed permits; weather systems could damage equipment; mechanical failures could occur; transmission capacity may not be available; could be lacking: RFPs may not provide sufficient eligible resources; or, labor shortages could restrict construction and operation. Administrative penalties should not apply to utilities that despite their good faith efforts, does not meet the targets because of extenuating circumstances. The UTC should consider these types of factors, including force majeure, when determining whether to impose an administrative penalty. The UTC, upon determining that a utility did not meet the standards, should issue a notice of non-compliance. The utility should have the

	opportunity to respond within 30 days and, if the utility requests, a hearing to determine whether administrative remedies are appropriate. The utility should be able to present evidence of good faith efforts to meet the standard to either earn an exemption or mitigate any penalties.
Public Council	The rules should make clear that any penalties will be paid by utility shareholders and will not be recovered in rates. This statement should be included in the definition section of what is a penalty. It is counterintuitive that a penalty provision designed to spur utility compliance should be borne by ratepayers if the utility fails in its efforts or makes no effort at all. The initiative does not prevent a shrewd company from determining that it is cheaper to pay a penalty than comply with the statutory mandates. The UTC may need to fill this potential loophole purely because it allows a company to bypass the purpose of the Initiative.
PSE	The UTC should establish a set of factors it will consider in determining assessment of penalties. The UTC should find utilities in compliance if it entered into a contract with a power producer who later broke the contract (e.g., sold the environmental attributes multiple times).
Renewable Northwest Project	The intent of the law is not to penalize utilities, it is to ensure a gradually increasing amount of clean energy serving Washington customers. The UTC could implement via rulemaking a brief "true up" period (e.g., three months) to demonstrate compliance and avoid penalties.

Question C.2. *RCW 19.285.060(4) gives the Commission authority to determine whether electric utilities may recover administrative penalties in electric rates. Should the Commission by rule establish a set of factors it will consider in determining whether administrative penalties can be recovered in electric rates? If so, what factors should the Commission consider?*

Avista	The UTC should evaluate the prudency of a utility's actions on a case-by-case basis in determining whether to allow the recovery of administrative penalties in electric rates.
ICNU	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. It is incumbent on the utility to meet the specified targets or any alternative compliance provision. Allowing the recovery of penalties in rates would eliminate utilities' incentive to comply with the mandates of I-937. Furthermore, recovery of such costs from ratepayers is likely not permissible under Washington law.
NW Energy	The RCW does provide the UTC with the authority to allow the recovery of penalties in rates. Should the UTC choose to establish

Efficiency Council	factors which ultimately lead to a decision to allow rate recovery, those factors should be subject to a public process of review and comment.
PacifiCorp	The UTC should allow administrative penalties to be recovered in rates upon a finding that events occurred beyond the utility's control prevented its compliance with the conservation or renewable energy targets. The statute recognized that a utility may be considered in compliance with the renewable targets if weather-related damage, mechanical failure, strikes, lockouts, or actions of governmental bodies prevented compliance. The UTC should also consider other factors that could interfere with a utility meeting the renewable energy and conservation targets, such as third party default or other breach of contract, scarcity of resources or other unfavorable market conditions. The UTC should also allow utilities to recover administrative penalties in rates if paying the penalty results in lower overall customer costs.
PSE	Paying the penalty may be a lower cost option than building a resource, or buying a renewable energy credit ("REC") and therefore should be included in rate recovery. The market for RECs may be thin or nonexistent in a future year. Therefore, paying the penalty may not only be the lower cost option, it may be the only option, and should be included in rate recovery.
Renewable Northwest Project	Utilities should not be allowed to recover penalties in rates. Shareholders should be responsible for any penalty incurred as a result of a failure to meet the statutory targets. Rules that give utilities some flexibility in demonstrating compliance may be appropriate. But a utility that fails to meet the targets – or satisfactorily demonstrate that it was unable to do so – should be subject to a penalty which should be incurred by the shareholders.

4. REPORTING.

Question D.1. *RCW 19.285.070(2) requires electric utilities to submit an annual report to the Commission documenting information relevant to utility targets for conservation and eligible renewable resources as well as related performance, expenditures and other factors pertinent for determining compliance with chapter RCW 19.285. Should the Commission use this report as the primary basis for determining utility compliance with the chapter's various requirements? If so, what, if any, additional information should be included?*

Avista	The UTC should use the required annual report as the primary basis for determining compliance with this chapter's requirements. A qualifying utility's annual performance report should document the utility's compliance with this chapter. The decisions made in this rulemaking should help identify the documentation required to ensure utility compliance.
NW Energy Efficiency Council	The annual report filed with the UTC by the utilities seems sufficient documentation for compliance. These reports need sufficient detail to substantiate conservation and renewable energy acquisitions and serve as the basis for any audit or verification activities that the UTC may choose to pursue after the report is submitted.
PacifiCorp	The UTC should use an annual report as the primary basis for determining utility compliance.
PSE	The report mandated in RCW 19.285.070(1) covers the "progress in the preceding year." The timing of this report will not allow it to contain the completed results of the utility's efforts. The UTC will need to wait several months after the close of the year to accurately assess a utility's compliance with statutes. RCW 19.285.040(2)(e) allows utilities to use renewable energy credits generated in a year subsequent to the year being evaluated. Therefore an additional year will need to transpire before an evaluation of whether or not the utility has met the requirements of meeting its annual target. The UTC should require a separate report to determine utility compliance.
Renewable Northwest Project	The UTC should rely on this report as the basis for determining compliance with the law. However, information beyond what is in this report may be needed by the UTC. For example, analysis relied on by the utility to show that it met the "cost cap" in RCW 19.285.050 (1).