[Service Date December 1, 2011]

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of	)	DOCKET U-111663
	)	
PUGET SOUND ENERGY, INC.	)	
	)	ORDER 01
For a Declaratory Order on the Extra	)	
Credits for Apprentice Labor Provision	)	DECLARATORY ORDER
of RCW 19.285.040(2)(h)	)	INTERPRETING RCW
	)	19.285.040(2)(h)
. . . . .	)	

MEMORANDUM

I. Background and Procedural History

1 In 2006, Washington State voters approved Initiative 937 ("I-937"), which adopted the Washington Energy Independence Act (Act), now RCW Chapter 19.285. The Act, among other things, established renewable portfolio standards (RPS). The RPS require utilities subject to the Act to "use eligible renewable resources or acquire equivalent renewable energy credits, or a combination of both, to meet" certain annual targets stated as percentages of load, by certain dates.[1] RCW Chapter 19.285 also establishes what utilities may and may not count toward meeting their RPS targets. Among other things, RCW 19.285.040 includes provisions that allow application of certain multipliers to the base value of electricity that is considered to be an "eligible renewable resource." The use of such multipliers creates "extra credits" that utilities may count toward compliance.

[1] RCW 19.285.040(2).

2 On September 13, 2011, Puget Sound Energy, Inc. (PSE), filed with the Washington Utilities and Transportation Commission (Commission) a Petition for a Declaratory Order (Petition) seeking interpretation of RCW 19.285.040(2)(h), the provision of Washington's Energy Independence Act, Chapter 19.285 RCW (the "Act") providing extra credits for use of apprentice labor. PSE states that:

> [The Company] has used, and would like to use in the future, apprentice labor in the construction of certain wind generation facilities to allow PSE to take full advantage of the extra credits provided by the Act to meet its renewable energy target under RCW 19.285.040 and maximize any future sale of renewable energy credits ("RECs") to third parties to benefit its customers.[2]

3 According to RCW 19.285.040(2)(h) (emphasis added):

> (i) A qualifying utility that *acquires an eligible renewable resource or renewable energy credit* may count that acquisition at one and two-tenths times its base value:
>
> (A) Where the eligible renewable resource comes from a facility that commenced operation after December 31, 2005; and

[2] Petition ¶ 1. PSE seeks support for its argument in comparing the language specific to apprenticeship labor credits referenced in RCW 19.285.040(h) with the more general language earlier in the section in RCW 19.285.040(f)(i), drawing a negative implication from the differing language. The Company argues:

> In contrast to the extra apprenticeship credit provided in RCW 19.285.040(2)(h), the extra credit offered for ownership of distributed generation explicitly requires that the qualifying utility "owns or has contracted for the distributed generation *and* the associated renewable energy credits." RCW 19.285.040(2)(b)(i). The statute also expressly provides that a qualifying utility may not count "eligible renewable resources or distributed generation where the associated renewable energy credits are owned by a separate entity." RCW 19.285.040(2)(f)(i). When there is a requirement that RECs not be severed, the statute imposes a direct prohibition. Such is not the case with the extra apprenticeship credits . . . and the omission of such language in the extra apprenticeship credits clause should both be interpreted as intentional."

Petition ¶29 (footnote omitted).

(B) Where the developer of the facility *used apprenticeship programs approved by the council during facility construction*.

(ii) The council shall establish minimum levels of labor hours to be met through apprenticeship programs to qualify for this extra credit.

4 PSE states in its Petition:

> The extra credit encourages the use of apprentice labor in the construction of renewable generation facilities and serves the Act's policies of "creat[ing] high-quality jobs in Washington" and "provid[ing] opportunities for training apprentice workers in the renewable energy field." RCW 19.285.020.[3]

According to PSE, the apprenticeship credit is neither a REC nor an energy or environmental attribute that accompanies a REC; "it is merely an extra credit to be counted toward the qualifying utility's renewable energy target compliance calculations."[4] This "extra credit," as PSE characterizes it, arises from the application of a multiplier either to the base value of the production from a renewable resource or the base value of a REC.[5]

5 The specific question PSE states in its Petition is:

> If a qualifying utility utilized apprentice labor in the construction of its facility, commencing initial operation after December 31, 2005, and sells RECs generated by such facility to a third party, can the utility count the extra apprenticeship credit towards its renewable target – provided that the utility provides documentation in its compliance reports demonstrating that no double-counting of the extra apprenticeship credits will occur?[6]

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[3] Petition ¶ 9.

[4] *Id.* ¶ 21.

[5] RCW 19.285.040(2)(h)(i).

[6] Petition ¶ 10.

PSE argues the answer to this narrow question is yes. That is, PSE believes RCW 19.285.040(2)(h) allows the Company to count toward its own reporting requirements the extra apprenticeship credit obtained through its ownership of an eligible renewable resource that qualifies for the credit, even if PSE converts production from the facility into REC certificates and sells them to a third party. According to PSE's Petition, its question relates specifically to "certain wind generation facilities" it has constructed using sufficient apprentice labor to qualify under the statute.

6 Under the belief that the Renewable Northwest Project ("RNP") and the Northwest Energy Coalition ("NWEC") would answer "no" to the question stated, PSE contends there is an actual controversy concerning the meaning of RCW 19.285.040(2)(h). PSE states that its belief is based on statements made by these organizations during a Commission workshop on May 10, 2011, expressing their view that RCW 19.285.040 does not allow for severability of a REC from its associated credit for apprentice labor. PSE states, furthermore, that RNP and NWEC submitted to staff on June 20, 2011, a "position paper" stating that "the Act does not contemplate bifurcation of RECs, and specifically disallows utilities from counting eligible renewable resources . . . where the RECs are owned by a separate entity."[7]

7 The Company sums up the actual controversy in its Petition as follows:

> PSE believes that it has a right pursuant to the Act to count for its own reporting requirements the extra apprenticeship credit obtained through its acquisition of an eligible renewable resource that qualifies pursuant to RCW 19.285.040(2)(h)(i), notwithstanding the fact that PSE may subsequently sell the associated resource or REC to a third party. RNP and NWEC believe PSE does not have such right.[8]

8 PSE's perspective on the existence of a controversy is understandable in light of the comments by RNP and NWEC in Docket UE-110523 - Renewable Portfolio Standard Implementation. As reported by PSE in its Petition, and confirmed by their

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[7] *Id.* ¶ 11 (citing Technical Working Group, WUTC Docket No. UE-110523). The cited document apparently was not filed with the Commission, as it is not part of the Commission's official record in this docket. RNP and NWEC, however, provide it as an attachment to their joint Statement of Facts and Law filed in this docket.

[8] *Id.*

comments filed in this docket, RNP and NWEC earlier opined that Washington's Energy Independence Act does not allow for the bifurcation of either apprentice labor or distributed generation extra credits available under the Act.

9 RNP and NWEC state in their response in this docket, however, that their concern is with the "general concept of bifurcating 'extra credit' multipliers from renewable resources or RECs used for compliance with the RPS."[9] Apparently putting their earlier perspective aside, they say in this docket that they do not oppose the interpretation of RCW 19.285.040(2)(h)(i) as requested by PSE's Petition "if, while approving bifurcation in this narrow circumstance, the Commission can simultaneously foreclose other, more problematic applications of the concept."[10] What RNP and NWEC want the Commission to specifically foreclose is any interpretation of RCW 19.285 that would allow for bifurcation of a distributed generation (DG) multiplier, as provided by RCW 19.285.040(2)(b), or for transfer of such a credit or transfer of an apprenticeship labor credit.[11]

10 RNP and NWEC state finally that if the Commission cannot grant PSE's Petition while granting the relief they request, then further proceedings are required. This is necessary, they argue, to consider what "significant adverse effects approving the general concept of multiplier bifurcation could have on RPS and REC markets, and whether benefits to PSE outweigh those adverse effects."[12]

11 Several other interested persons filed comments or expressed an interest in the outcome of this proceeding. Seattle City Light, a municipal utility, asked to be included on the Commission's service list for this docket, but did not offer substantive comment. Peninsula Light Company, an electric cooperative that serves customers in

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[9] Statement of Fact and Law by the Renewable Northwest Project and NW Energy Coalition at 1.

[10] *Id.* at 2. This statement suggests that RNP and NWEC somewhat misapprehend what PSE asks for in its Petition. PSE asks us to interpret a statute. The task of statutory interpretation, guided by well-established principles of law, does not leave room for the exercise of discretion. The statute expresses by its terms the collective intent of the voters who, acting in their legislative capacity by means of the initiative process, enacted the measure. There is no question of the Commission "approving bifurcation." The statute, by its terms, either allows it, or not.

[11] *Id.* at 2-3.

[12] *Id.* at 3.

west Pierce County, also requested inclusion on the Commission's list of persons interested in this docket for purposes of service. While making perfectly clear that it is not subject to the Commission's jurisdiction, Peninsula Light is interested because it is similarly situated to PSE vis-à-vis the RPS under the Act and subject to the same statutory provisions as concern PSE. Peninsula Light states that it agrees with PSE's interpretation of RCW 19.285.040(2)(h). PacifiCorp and Avista also filed comments supporting PSE's interpretation. Avista, in addition, specifically requests that the Commission refrain from interpreting RCW 19.285.040(2)(b)(i) regarding the distributed generation multiplier provided under the Act.

12 The Commission's regulatory staff (Staff)[13] expressed no opinion concerning the merits of PSE's proposed interpretation of RCW 19.285.040(2)(h). Staff limited its comments to expressing its view that this matter is one that qualifies for resolution via the Commission's declaratory order procedure and to providing certain background information concerning the implementation of relevant portions of RCW Chapter 19.285.

13 PSE requests by its Petition specific relief that does not directly implicate the questions about which RNP and NWEC are concerned. Considering this, the Commission afforded interested persons an additional opportunity to file comments.[14] In its Notice allowing for additional comments, the Commission stated:

> It would be useful to the Commission to hear whether it would be legally appropriate and, if so, advisable from a legal and policy perspective, to grant PSE's petition while foreclosing future consideration of additional interpretation of the Act to allow or not

[13] In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

[14] *In the Matter of the 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)*, Notice of Commission Intention To Enter Declaratory Order Within Ninety Days After September 14, 2011, and Notice Providing an Opportunity To Submit Additional Statements of Fact and Law**,** Docket U-111663 (October 6, 2011). ("Second Notice").

allow certain treatment of extra credits associated with apprentice labor.

14 In response to the Commission's second Notice, several interested persons filed comments. Two of these were in the nature of initial comments.[15] The others were more directly responsive to the purpose of the Commission's request for additional comments.

II. Threshold Issues

15 In light of this background, we face two preliminary questions:

- Would it be appropriate for the Commission to expand its interpretation of provisions in RCW Chapter 19.285 beyond the narrow question raised by PSE's Petition, as we are urged to do by RNP and NWEC?

- If not, is it appropriate to resolve this matter via a declaratory order or should this proceeding be converted to an adjudicatory proceeding?

16 PSE and Avista filed additional comments in response to the Commission's Second Notice that are directly on point to the first question. These commenters respond, as reflected in PSE's words, that:

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[15] These comments were from the Center for Resource Solutions, a nonprofit organization that represents itself as administering "the nation's leading independent certification and verification consumer protection program for renewable energy sold in the voluntary market," and the Renewable Energy Markets Association, which describes itself as representing "the collective interests of both for-profit and nonprofit organizations that sell or promote renewable energy products through voluntary markets . . . throughout North America." The comments these entities filed state opposition to bifurcation of the apprenticeship labor "credit" and discuss possible market effects of granting PSE's interpretation of RCW 19.285.040(2)(h), but do not offer any legal argument that helps answer the question of its proper interpretation.

The Commission received yet an additional comment from the Department of Commerce on November 7, 2011. The comment discusses briefly points that are not addressed in, or implicated by, this Order. This should alleviate the Department's concern about a possible misinterpretation of parts of the Energy Act.

> There is no legal basis for the Commission to enter a declaratory order that goes beyond the scope of issues raised in PSE's Petition. The Petition does not request that the Commission rule on the issue of whether bifurcated extra credits can be traded intrastate separately from the associated renewable energy credits ("RECs"). PSE's Petition also does not request that the Commission rule on the issue of bifurcation of distributed generation credits. This is an entirely separate issue from that raised in PSE's Petition, although PSE did contrast language regarding distributed generation with language regarding extra credits for apprentice labor in its Petition. No other party has filed a petition for declaratory order on this topic pursuant to RCW 34.05.240 and WAC 480-07-930. The Commission's declaratory order must declare the applicability of the statute, rule, or order in question to the *specified circumstances*. *See* RCW 34.05.240(5)(a) (emphasis added). Because the Petition does not request a ruling on the tradability of bifurcated extra credits, nor on the bifurcation of distributed generation credits, the Commission should decline the invitation of RNP and NWEC to broaden the order beyond the facts and circumstances specified in PSE's Petition.

17 We agree with this analysis and determine that it would be inappropriate for the Commission to expand its interpretation of provisions in RCW Chapter 19.285 beyond the narrow question raised by PSE's Petition. It would be inappropriate to expand our inquiry, too, because our initial notice calling for statements of fact and law expressly refers and is limited, to "the issues raised by the Petition."[16] Thus, others who may be interested in any interpretation the Commission might make concerning the separate transferability of apprenticeship labor credits, or the bifurcation and transferability of distributed generation credits, have not been given proper notice and opportunity to be heard.

18 As to the second preliminary question, our interpretation of RCW 19.285.040(2)(h) one way or another does not turn on a balancing of interests between what RNP and NWEC, and others, perceive to be the adverse effects approving the general concept of multiplier bifurcation under various provisions of the Act and whether benefits to PSE outweigh those adverse effects. This is fundamentally the case because we have not been asked to approve or disapprove of the *general concept* of multiplier

[16] Notice at 1.

bifurcation, which is a policy question inappropriate for determination in a declaratory judgment proceeding.[17] No purpose would be served by conducting additional process to allow RNP and NWEC, or others, to develop further their policy arguments concerning the general concept about which they express concern.

19 Given the conditional nature of RNP and NWEC's decision to not oppose PSE's proposed interpretation of the statute, there remains a live controversy concerning the allowed use of apprenticeship labor credits under its provisions. PSE's Petition satisfies the other standards under RCW 34.05.240(1) and WAC 480-07-930 and the issues raised are appropriate for resolution through the declaratory order process. To resolve this controversy, we must apply familiar principles of statutory interpretation that are fully developed as matters of law. There are no issues of fact that need to be developed. Hence, there is no reason to convert this proceeding as allowed under WAC 480-07-930(4).

III. Discussion and Determinations

20 The question posed by PSE's Petition is whether a qualifying utility that has built a generation facility that produces electricity that is an eligible renewable resource, using the requisite apprentice labor, as these terms are defined in RCW 19.285, can sell REC certificates based on the facility's eligible renewable resource production, yet still count toward satisfaction of its RPS targets the "extra credit" available from application of the apprenticeship labor multiplier. PSE contends the answer to this question is "yes." PSE offers in support arguments grounded both in principles of statutory construction and policy arguments.

21 RNP and NWEC earlier took the position that the answer to the question PSE poses is "no," based in part on their analysis of the plain language of the statute. RNP and NWEC, referring to RCW 19.285.040(f)(i), took the position that "the Act does not contemplate bifurcation of RECs, and specifically disallows utilities from counting

[17] The most appropriate form of proceeding to address such questions as RNP and NWEC raised here most likely would be initiated by a petition for an interpretive and policy statement under WAC 480-07-920(1).

eligible renewable resources . . . where the RECs are owned by a separate entity."[18] In this docket, RNP and NWEC set their earlier statutory analysis to one side and say that they do not oppose PSE's interpretation, if the Commission is willing to expand its inquiry in this docket and make what are essentially policy determinations.[19]

22 While the policy discussions offered up by PSE, RNP/NWEC, and other commenters are interesting and important in their own way, we emphasize again that it is the principles of statutory construction that govern our interpretation of the statute, not our view of the better policy outcome that follows from one interpretation or another.[20] We must look first to the plain meaning of the words used in the statute, considering them in the context of the entire statute so as to harmonize and give meaning to every term.[21] If the language we are asked to interpret is clear and

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[18] *See supra* ¶ 5.

[19] *See supra* ¶¶ 7, 8, 15 and 16.

[20] *Brown v. State, supra note 21* (an initiative must be read as written, not as a court would like it to be written). We consider in this context, the principle of statutory construction that requires us to interpret a statute to effect its policies. *E.g., HTK Management, L.L.C. v. Seattle Popular Monorail Auth.*, 155 Wn.2d 612, 627, 121 P.3d 1166 (2005). Here, the statute expresses multiple policy goals. On one hand, allowing the selling utility to count the apprenticeship labor credit would seem to promote the policy of encouraging the use of apprentice labor that is the obvious purpose of the credit. Given that the present market for RECs is populated largely by out-of-state purchasers, a Washington qualifying utility has less incentive to use more expensive apprentice labor if it cannot both sell RECs and retain the apprentice labor credit for its own use. On the other hand, as RNP, NWEC and others argue, there may be tracking and accounting issues associated with any bifurcation of credits from RECs that are then sold, which arguably undermines the environmental policies the Act, in part, is meant to promote. We emphasize that in this Order we are not resolving, or even opining about, these issues. Our interpretation, based on the plain meaning of the statute's language, does not disturb the balance among these sometimes conflicting policy goals, implementing them as intended by the voters.

[21] The Supreme Court observes in *Am. Legion Post #149 v. Wash. State Dep't of Health*, 164 Wn.2d 570, 585, 192 P.3d 306 (2008) (internal citations omitted), that:

> In determining the meaning of a statute enacted through the initiative process, the court's purpose is to ascertain the collective intent of the voters who, acting in their legislative capacity, enacted the measure. Where the language of an initiative enactment is 'plain, unambiguous, and well understood according to its natural and ordinary sense and meaning, the enactment is not subject to judicial interpretation.' In construing the meaning of an initiative, the language of the enactment is to be read as the average informed lay voter would read it. An initiative must be read in light of its various provisions, rather than in a

unambiguous when thus read, our inquiry ends. We find this to be the case here and determine that the short answer to PSE's question is "no." We elaborate on this short answer, and discuss in detail below, our reasons for reaching this conclusion.

23 RCW 19.285.040(2)(h) provides:

> (i) A qualifying utility that acquires an eligible renewable resource[22] or renewable energy credit[23] may count that acquisition at one and two-tenths times its base value:

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piecemeal approach, and in relation to the surrounding statutory scheme. A court must, when possible, 'give effect to every word, clause and sentence of a statute.'

[22] "Eligible renewable resource" is defined in RCW 19.285.030(10) to mean:

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

(b) Incremental electricity produced as a result of efficiency improvements completed after March 31, 1999, to hydroelectric generation projects owned by a qualifying utility and located in the Pacific Northwest or to hydroelectric generation in irrigation pipes and canals located in the Pacific Northwest, where the additional generation in either case does not result in new water diversions or impoundments.

"Renewable resource" is defined in RCW 19.285.030(18) to mean: (a) Water; (b) wind; (c) solar energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or tidal power; (g) gas from sewage treatment facilities; (h) biodiesel fuel as defined in RCW 82.29A.135 that is not derived from crops raised on land cleared from old growth or first-growth forests where the clearing occurred after December 7, 2006; and (i) biomass energy based on animal waste or solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include (i) wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; (ii) black liquor by-product from paper production; (iii) wood from old growth forests; or (iv) municipal solid waste.

[23] "Renewable energy credit," or REC, is defined in RCW 19.285.030(18) as: A tradable certificate of proof of at least one megawatt-hour of an eligible renewable resource where the generation facility is not powered by fresh water, the certificate includes all of the nonpower attributes associated with that one megawatt-hour of electricity, and the certificate is verified by a renewable energy credit tracking system selected by the department.

"Nonpower attributes" defined in RCW 19.285.030(13) as: All environmentally related characteristics, exclusive of energy, capacity reliability, and other electrical power service attributes, that are associated with the generation of electricity from a renewable resource, including but not limited to the facility's fuel type, geographic location, vintage, qualification as an eligible renewable resource, and avoided emissions of pollutants to the air, soil, or water, and avoided emissions of carbon dioxide and other greenhouse gases.

(A) Where the eligible renewable resource comes from a facility that commenced operation after December 31, 2005; and

(B) Where the developer of the facility used apprenticeship programs approved by the council during facility construction.

(ii) The council shall establish minimum levels of labor hours to be met through apprenticeship programs to qualify for this extra credit.

24 PSE's proposed interpretation of this language depends on the idea that the apprenticeship labor "extra credit" is independent of the "eligible renewable resource base value" from which it is derived, and can be accounted for separately. This idea is squarely contradicted, however, when RCW 19.285.040(2)(h) is read in the context of RCW 19.285.040(2)(f)(i), which says:

> (f) In complying with the targets established in (a) of this subsection, a qualifying utility may not count:
>
> (i) Eligible renewable resources or distributed generation where the associated renewable energy credits are owned by a separate entity.

25 Thus, the owner of eligible renewable resources may either count them toward meeting its own RPS targets, or it may use them to create REC certificates and sell them. The owner cannot do both. If the eligible renewable resources are used to create RECs, the qualifying utility that acquires them can count the underlying eligible renewable resources in meeting its RPS targets.[24]

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[24] The plain language of RCW 19.285.040(2)(f)(i) answers PSE's negative implication argument discussed in note 2, *supra.* PSE argues that the direct prohibition language in subparagraph (f)(i), and the absence of such language in subparagraph (h), implies that there is no such prohibition in the context of apprenticeship labor credits. However, what PSE overlooks is that the prohibitory language in subparagraph (f)(i) covers all "eligible renewable resources" whether or not they were constructed with apprenticeship labor. The language in subparagraph (h) simply defines the conditions under which the "extra credit" may be obtained. It does not address the severability of the REC associated with renewable resource. That issue, is addressed in, and clearly resolved by, subparagraph (f)(i).

26 If the owner elects to use the eligible renewable resources to meet its RPS targets, it may apply the apprenticeship labor multiplier to their "base value," assuming the criteria under RCW 19.285.040(h) are otherwise met. On the other hand, if the owner elects to convert the eligible renewable resources into RECs and sell them, the base value of the underlying eligible renewable resources to which the apprenticeship labor multiplier may be applied is carried with the RECs. That is, the "eligible renewable resource base value" used to create the RECs necessarily is transferred with them, as is the opportunity to take advantage of the apprenticeship labor multiplier. This reading of the statute is consistent with, if not required by, the provision in RCW 19.285.040(h)(i) that states the buyer of a REC "may count that acquisition at one and two-tenths times its base value," if the eligible renewable resource used to create the REC is otherwise eligible for the apprenticeship labor multiplier.

27 PSE's Petition states that the Company has used the requisite apprentice labor in the construction of certain wind generation facilities that allow it to apply the apprenticeship labor multiplier. PSE wishes to "take full advantage of the extra credits" available by virtue of the apprenticeship labor multiplier in meeting the Company's RPS targets and to "maximize any future sale of [RECs] to third parties to benefit its customers."[25] Considering our discussion and determinations above, PSE can apply the multiplier to electricity produced by its facilities (*i.e.*, the "eligible renewable resource"). It will thus earn one and two-tenths time the base value of this production when accounting for and measuring the eligible renewable resources as a percentage of its load.

28 Alternatively, PSE can convert each megawatt hour of the eligible renewable resources into a REC certificate for sale to another utility. When the sale is to another qualifying utility subject to RCW Chapter 19.285, RCW 19.285.040(h)(i) provides that the purchaser may apply the apprenticeship labor multiplier to the base value of its acquisition and count toward its RPS target 1.2 RECs for each REC purchased.

29 We recognize this arguably results in market distortion and undermines the policy underlying the apprentice labor multiplier because such RECs have added value only

[25] Petition ¶ 1.

when purchased by qualifying utilities subject to RCW Chapter 19.285. This added value is not present for sales to out-of-state utilities that are subject to their own state's RPS requirements. We recognize, too, that it might be desirable for RCW Chapter 19.285 to be amended to allow the owner of the underlying renewable generation facility to apply the apprenticeship labor multiplier to the base value of the eligible renewable resources it converts into REC certificates and retain the apprentice labor extra credit when they are sold in interstate commerce. This, however, is not how the law is written today. The Commission can only interpret and apply the law as written. It is only the Legislature, or another act passed by voter initiative, that can make such a change in the law.

Dated at Olympia, Washington, and effective November 30, 2011.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.