

May 9, 2014

***VIA ELECTRONIC FILING***

Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Drive, S.W.  
P.O. Box 47250  
Olympia, Washington 98504-7250

Attn: Steven V. King  
Executive Director and Secretary

**RE: Docket UE-131723, Rulemaking For Energy Independence Act, WAC 480-109**

Dear Mr. King,

In response to the Washington Utilities and Transportation Commission's (Commission) April 9, 2014, Notice of Workshop and Notice of Opportunity to File Written Comments (Notice), Pacific Power & Light Company (Pacific Power or Company) hereby submits written comments responding to the Commission's informal draft changes to WAC 480-109 set forth in the "April 2014 Informal Draft Rule Language—Redline Version" (the Draft Rules) and the questions asked by the Commission in the Notice. In addition to these written comments, Attachment A reflects the Company's proposed redline changes to WAC 480-109.

**I. PROPOSED CHANGES TO WAC 480-109**

Pacific Power appreciates the significant work done by the Commission in developing the informal draft changes to WAC 480-109 and strongly supports the Commission's stated objective of revising the rules to "promote effective, efficient, and practical implementation" of the Energy Independence Act (EIA). Pacific Power is particularly pleased to see several proposals made by the Company reflected in the Draft Rules and looks forward to continuing to work with the Commission and stakeholders to further refine the Draft Rules.

At this time, Pacific Power provides general comments on the Draft Rule language but reserves the right to comment on specific changes to the rules in future workshops or in written comments.

**a. Conservation and Energy Efficiency Resource Standard—WAC 480-109-010**

In general, the Company is concerned with the prescriptive nature of the draft rule revisions relating to the conservation and energy efficiency resource standard rules. For example, proposed WAC 480-109-010(4)(a)(ii)(A) requires the utility to "develop and implement

programs to acquire available conservation from all of the types of measures identified in subsection (b) of this section.”

Similarly, proposed WAC 480-109-010(4)(a)(iii) requires that a utility’s program implementation methods must include eight specific types of implementation approaches. This is in contrast to the current process for development and implementation of conservation, which involves collaboration between the Company and the Company’s conservation advisory group, and allows for flexibility in conservation program planning.

Indeed, the proposed changes to the rules represent a significant departure from the current conservation program planning and implementation process and the Company is not aware of a need for such a significant change. To the extent the Commission or stakeholders feel there is a need for additional clarity regarding conservation program planning and implementation, the Company is interested in addressing those concerns in a way that balances the need for clarity with the utility’s responsibility to operate conservation programs with flexibility and transparency in order to meet Commission-approved targets.

In addition, the Company proposes a change to the provisions relating to excess conservation in WAC 480-109-010(2)(c). The Company notes that sections (i) and (ii) and (iii) use different language to refer to the application of excess conservation to subsequent biennial targets.<sup>1</sup> To the extent the Commission intended each of these rule sections to refer to the same future biennial targets, the Company recommends use of consistent language.

**b. Conservation Advisory Group—WAC 480-109-AAA and Conservation Reporting—WAC 480-109-BBB**

The Company has concerns with the many changes proposed in the Draft Rules. For example, Pacific Power was unable to locate documentation outlining the Commission’s rationale or explanations for incorporation or exclusion of stakeholder comments in the Draft Rules.

It appears that Commission Staff intended to transfer some of the key biennial conditions to the Draft Rules, while omitting others. In doing so, some of the original intent of the conditions—agreed upon in a collaborative process with each utility’s conservation advisory group—was altered. Care should be exercised when considering moving conditions to rules, as doing so reduces the ability of both the utility and its conservation advisory group to adaptively manage in a dynamic conservation environment.

Pacific Power is concerned that the collaborative process, which Pacific Power believes is working well, will be disrupted by moving selected and altered conditions into the Commission’s rules, where they will not only be memorialized beyond the deliverable conditions, but also be outside of the biennial vetting process between the utilities and their conservation advisory groups.

---

<sup>1</sup> Draft WAC 480-109-010(2)(c)(i) and (iii) use the phrase “each of the subsequent two biennial targets,” while draft WAC 480-109-010(2)(c)(ii) uses the phrase “immediate two subsequent biennial conservation targets.”

Furthermore, inefficiencies are introduced because only certain conditions were moved into the Draft Rules. Stakeholders will need to review and update the Commission's rules more often than optimal. For example, in the proposed revision to WAC 480-109-010(1)(b) the reference to the Sixth Northwest Conservation and Electric Power Plan will become outdated as soon as the seventh power plan is released.

Additionally, moving only select conditions will make the biennial condition revision process more complicated for all stakeholders, decreasing efficiency and effectiveness, and hindering the practical execution of utility conservation programs.

Finally, Pacific Power has concerns with use of the conclusion drawn in the March 21, 2014, Memorandum from Steven W. Smith, Assistant Attorney General to Deborah Reynolds and Steve Johnson (the Memo). In the Memo, Mr. Smith opines that "Pursuit of Available Conservation" and "Biennial Target" are mutually exclusive requirements under RCW 19.285.040. Commission Staff appears to have relied on the Memo to introduce several new rules and rule revisions in the Draft Rules.

Staff's proposal to codify the Memo is premature absent a broader stakeholder conversation, and, if necessary, Commission decision. Pacific Power respectfully refers parties to a similar effort to interpret the requirement offered by Mr. Simon ffitich, Senior Assistant Attorney General, Public Counsel Section, in his August 2, 2012, email letter to the Commission, attached to these comments as Attachment B. In his letter, Mr. ffitich provides well-reasoned arguments and rationale suggesting that the requirement under EIA to pursue all available conservation that is cost-effective, reliable and feasible and a utility's biennial target are not mutually exclusive requirements. Given the disagreement on this issue, the Company recommends a more open and transparent process to discuss this issue.

**c. Renewable Portfolio Standard (RPS)—WAC 480-109-020**

At this time, the Company has no specific comments to the proposed changes to WAC 480-109-020, except as discussed below in response to the Commission's questions regarding the appropriate historical period to use for determining river discharge for a facility. The Company is pleased to see that the proposed rules retain the flexibility of the utility to select from one of three methods for purposes of calculating incremental hydro eligible for use towards the RPS.

**d. Alternatives to the Renewable Resource Requirement—WAC 480-109-030**

The Company has no comments on the proposed changes to this section of the rules.

**e. RPS Reporting Requirements—WAC 480-109-040**

The proposed WAC 480-109-040(2)(a) sets forth parameters for the incremental cost calculation. While the proposed rule revision clearly states what a utility *may not* use as the non-eligible resource (spot market purchases), the rule revision does not provide adequate guidance on what a utility *may* use as the non-eligible resource. To the extent the Commission intends for utilities to retain flexibility to determine the appropriate non-eligible resource, the Company recommends

the rules specifically state as much. Similarly, to the extent the Commission intends for uniformity among the utilities with regard to the incremental cost calculation, the Company requests the Commission provide a specific forum, separate from this broad rulemaking, to discuss development of a uniform methodology. The Company is interested in better understanding the Commission's reasoning for both the preclusion of spot market purchases and the appropriate selection of the non-eligible resource and looks forward to further discussions on this issue in future comments and in future workshops.

Finally, the Company notes that the proposed WAC 480-109-040(2)(f) requires utilities to report information related to the sale of renewable energy credits (RECs). Pacific Power requests that the rule specify that the reporting obligation apply only to RECs allocated for use in Washington.

**f. Administrative Penalties—WAC 480-109-050 and Adoption by Reference—  
WAC 480-109-999**

The Company has no comments on the proposed changes to these sections of the rules.

## **II. RESPONSES TO THE SEVEN QUESTIONS**

The Notice included seven specific questions related to the proposed rule revisions. For convenience, the Company reproduces certain questions and provides its responses below. The Company reserves the right to respond to any question not responded to in these comments in future workshops or written comments.

### Incremental hydropower calculation – WAC 480-109-020(7)

1. How should an historic period be selected to best account for climatic variability and cyclical climate patterns? Please provide analysis or documentation to support your recommendation.
2. What is the appropriate number of years of river discharge data a model should use to provide unbiased calculations of incremental hydroelectric production? Please provide analysis or documentation to support your recommendation.
3. How does a normal or average historic river discharge calculated with shorter historic periods compare to one calculated with multiple decades of data? Please provide a narrative explanation of your findings.
4. How does the use of a greater number of years in the data set for determining the normal or average historic water year increase the administrative burden? Please quantify the administrative burden.

Pacific Power provides a consolidated response to the four questions presented above.

Currently, Pacific Power determines the historical inflow or generation based on a minimum of five years or up to the entire available inflow record or generation. The Company is aware of meteorological and hydro meteorological agencies using a 30-year time period. However, the Company participated in numerous and extensive workshops focused on the renewable reporting for the EIA in Docket UE-110523. As a result of the workshops, a number of consensus items were developed, including the use of a minimum of five years of historical data for purposes of calculating incremental hydro eligible as a renewable resource.

Incremental cost calculations – WAC 480-109-040(2)(a)(i)

5. Is it necessary for the Commission to require the use of a specific methodology to calculate integration costs? If so, please describe.

No. Each utility should be allowed to determine a methodology to calculate integration costs that is specific to the utility's integration needs.

Measuring progress across reporting periods

6. On which metrics should the Commission rely to monitor energy and emissions intensity trends in utility service territories?
7. Should the rule require reports to include available energy and emissions intensity metrics?

Pacific Power provides the following consolidated response to questions six and seven presented above: the Company believes that metrics regarding energy and emissions intensity are outside the scope of this rulemaking and that such metrics are not relevant to include in conservation or RPS reporting.

**III. CONCLUSION**

Pacific Power appreciates the opportunity to provide these preliminary comments and looks forward to participating in this rulemaking proceeding. Please direct inquiries to Natasha Soares, Director of Regulatory Affairs & Revenue Requirement, at (503) 813-6583.

Sincerely,



R. Bryce Dalley  
Vice President, Regulation

**Pacific Power & Light Comments**  
**Docket UE-131723, Rulemaking For Energy Independence Act, WAC 480-109**

# **ATTACHMENT A**

**UTC Comment form for Energy Independence Act Rulemaking, WAC 480-109, Docket UE-131723**

Submit this form by 5 PM Friday, May 9, 2014 via the Commission's Web portal at [www.utc.wa.gov/e-filing](http://www.utc.wa.gov/e-filing) or by e-mail to [records@utc.wa.gov](mailto:records@utc.wa.gov).

Comments on behalf of Pacific Power & Light Company

The following tables contain Pacific Power's comments and suggested revisions to the specific WAC sections, along with its rationale for the suggested revision.

Comment 1	Current Text	Proposed Text	Rationale for proposed change
Regarding WAC 480-109-007	Several terms that are defined in RCW 19.285 are repeated in the draft. For instance:  Commission Conservation Customer Department Distributed Generation	Please remove all repetitive definitions	There was no explanation relative to why certain definitions were replicated in the WAC revisions.  As noted in the December 2, 2013 comment summary, it is not efficient or useful to replicate RCW definitions in the WAC.

Comment 2	Current Text	Proposed Text	Rationale for proposed change
Regarding WAC 480-109-007	(6) "Cost-effective" means, consistent with RCW 80.52.030, that a project or resource is forecast: (a) To be reliable and available within the time it is needed; and (b) To meet or reduce the electric power demand of the intended consumers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative project or resource, or any combination thereof.	Remove (a) and (b)	There was no explanation provided as to why the additional language is needed in rules. Pacific Power believes it is unnecessary, as this repeats RCW 80.52.030(7)(a) & (b).

Comment 3	Current Text	Proposed Text	Rationale for proposed change
Regarding WAC 480-109-007	(18) “Pro rata” means the calculation dividing the utility’s projected ten-year conservation potential into five equal proportions to establish the minimum biennial conservation target.	Do not change the existing WAC language.	There was no explanation provided for this change and the calculation is inconsistent with methodologies used by the Council in the development of the 6 <sup>th</sup> Regional Power Plan. The calculation is too simplistic in that it does not recognize the differences in availability of resource potentials within the forecast period (i.e. lost opportunity verses discretionary), the rate at which emerging technologies become available in the market, or the barriers to ramping up in hard-to-reach markets.

Comment 4	Current Text	Proposed Text	Rationale for proposed change
Regarding WAC 480-109-007	(27) “Single large facility conservation savings” means cost-effective conservation savings achieved in a single biennial period at the premises of a single customer of a utility whose recent annual electricity consumption prior to the conservation savings exceeded five average megawatts.	“Single large facility conservation savings” means cost-effective conservation savings achieved in a single biennial period at the premises of a single customer of a utility whose annual electricity consumption prior to the conservation savings exceeded five average megawatts.	Remove “recent”, as it alters the wording of the statute.  The “Proposed Text” restores the wording of the rule to that of HB 1643.



Comment 5	Current Text	Proposed Text	Rationale for proposed change
<p>Regarding WAC 480-109-010 (1)(b)</p>	<p>This projection must be derived from the utility's most recent IRP, including any information learned in its subsequent resource acquisition process, or the utility must document the reasons for any differences. When developing this projection, utilities must use methodologies that are consistent with those used by the council's Sixth Northwest Conservation and Electric Power Plan.</p>	<p>This projection must be derived from the utility's most recent IRP, including any information learned in its subsequent resource acquisition process, or the utility must document the reasons for any differences. When developing this projection, utilities must use methodologies that are consistent with those used by the council's most recent Northwest Conservation and Electric Power Plan, meaning specifically that utilities must utilize the following approach in developing the potential:</p> <ul style="list-style-type: none"> <li>(i) Technical Potential: An estimate of the amount of conservation potential available without regard to market barriers;</li> <li>(ii) Achievable Potential: The subset of Technical Potential the utility could expect to achieve given market barriers;</li> <li>(iii) Economic Potential: The subset of Technical Potential that is cost effective.</li> <li>(iv) Avoided energy portfolio costs must reflect the 10% credit from the Northwest Power Act</li> </ul>	<p>There was no explanation for the revised "Current Text". The proposal does not indicate a gain in efficiency or practical application of the rule.</p> <p>The Current Text supports Pacific Power's assertion that conditions, developed collaboratively on a biennial basis, rather than permanent rules, be maintained.</p> <p>As presented, the WAC will need to be updated every time the Council updates the power plan.</p> <p>If needed, the "Proposed Text" clarifies the Council methodology and eliminates the inefficiencies of requiring regular rulemaking procedures.</p>

Comment 6	Current Text	Proposed Text	Rationale for proposed change
Regarding WAC 480-109-010(1)(c)	The projection must include a list of each measure used in the potential, its unit energy savings value, and the source of that value.	The projection must include a list of each measure category used in the potential.	<p>There is no explanation for how this rule change would be effective in improving the practical implementation of the EIA, nor does it explain the rationale for the revision.</p> <p>Currently the company provides extensive detail on end uses, unit energy consumption, unit energy savings and data sources in the CPA (Appendices B&amp;C). Appendix C-6 provides a Washington specific explicit comparison between CPA and regional savings values. The BCP filing includes the CPA as an Appendix.</p> <p>In addition, the company provides an Appendix in our BCP that shows which measures were selected by the IRP for the current biennial period.</p> <p>The information provided in the BCP and CPA illustrates that a robust all sector CPA utilizes more than UES values (contextually described in the proposed rules as savings per piece of equipment). CPA's also incorporate energy savings per building, per sq. ft., per linear foot of refrigerated case, as a percent of end use by industry, etc.</p> <p>While the proposed obligation generated by the new rules may be able to be satisfied by re-configuring or re-arranging the existing work, it may also require additional detail in the form of access to third party models or work papers which could increase costs.</p> <p>If needed, the "Proposed Text" is more practical.</p>

Comment 7	Current Text	Proposed Text	Rationale for proposed change
Regarding WAC 480-109-010 (2)(b)	The biennial conservation target must be no lower than a pro rata share of the utility's ten-year cumulative achievable conservation potential.	The biennial conservation target must be no lower than a pro rata share of the utility's ten-year cumulative achievable conservation potential. Each utility must fully document how it prorated its ten-year cumulative conservation potential to determine the minimum level for its biennial conservation target.	See Pacific Power's rationale for proposed change – Comment 3. The full description in the Proposed text here is needed if no change is made to the Pro rata definition.

Comment 8	Current Text	Proposed Text	Rationale for proposed change
Regarding WAC 480-109-010 (3)(b)	The plan must outline the extent of public participation in the development of the ten-year conservation potential and the biennial conservation target	Do not change the existing WAC language.	There is no explanation of how the revision of this rule is necessary to maximize the efficiency and practical implementation of the EIA.

Comment 9	Current Text	Proposed Text	Rationale for proposed change
<p>Regarding WAC 480-109-010(4)(a)(ii)</p> <p>and</p> <p>WAC 480-109-(4)(a)(iii)</p> <p>And their associated sub-parts</p>	<p>Develop a conservation portfolio that includes all available, cost-effective, reliable, and feasible potential, as well as pilot programs that are not yet proven to be cost-effective.</p> <p>and</p> <p>Implement conservation programs identified in the portfolio to the extent that programs remain cost-effective, reliable, and feasible.</p>	<p>Delete parts (ii) and (iii) of Section 4, as they are not needed to enhance the practical implementation of the EIA.</p>	<p>There is no explanation as to the reason for the additional language and the additions are not necessary to maximize the efficiency and practical implementation of EIA.</p> <p>Aspects of the language in the subparts are confusing and possibly contradictory, such as in (4)(ii)(B): “A utility’s conservation portfolio must contain programs that are not included in the biennial conservation target and are available, cost-effective, reliable, and feasible”.</p> <p>Pacific Power is concerned that the added language crosses over the line from the requirement under RCW 19.285.040 and 19.285.070 for a utility to identify its achievable ten-year cost-effective conservation potential and establishment of a biennial target to stating how a utility must acquire those resources. By indicating that a utility “must develop” and “must implement” the specifics outlined in (4)(ii) and (iii), the rule would remove an essential element of a utility’s advisory group engaged in the collaboratively-developed and vetted condition that indicates that a utility has the authority and sole responsibility to run its conservation programs with the necessary flexibility and transparency in order to meet the Commission-approved target. If enacted, the utility would run programs required by the Commission however it’s unclear whether it would remove a utility’s responsibility for prudent spending of ratepayers’ funding.</p> <p>There are also new terms introduced throughout the subparts that are undefined; for instance, “practical uptake”, “collaborative technical activities”, and “collaborative promotional activities”. It is not apparent how such subjective language leads to a more efficient and effective implementation of EIA.</p> <p>Lastly, there should not be a requirement to include pilot programs in the portfolio. Pilot programs should only be pursued if there is a chance for cost-effectiveness or to provide the market viability of a new technology. If there’s a new technology that is proven and feasible, it may be added to the portfolio without needing to go through a pilot phase. It is unclear how this requirement would increase efficiencies and the practical implementation of the EIA.</p>

Comment 10	Current Text	Proposed Text	Rationale for proposed change
Regarding WAC 480-109-010 (4)(b)(iii)	code enforcement	None-delete subpart (b) list	<p data-bbox="1314 139 1881 277">It is not clear why this language was added to the WAC proposed revision, relative to how it will increase the effectiveness of EIA implementation.</p> <p data-bbox="1314 321 1864 423">Since code enforcement is a function of government entities, this subpart should be stricken from the revision.</p>

Comment 11	Current Text	Proposed Text	Rationale for proposed change
Regarding WAC 480-109-010 (5)	A utility retains the responsibility to demonstrate the prudence of all conservation expenditures, as required by RCW 19.285.050(2).	A utility retains the operational authority and ultimate responsibility for meeting the biennial conservation target. A utility must demonstrate the prudence and cost-effectiveness of its conservation programs to the Commission after the savings are achieved, as required by RCW 19.285.040(1)(d) and RCW 19.285.050(2).	<p data-bbox="1314 748 1871 850">No rationale was provided on how the “Current Text” will maximize the practical application of the EIA.</p> <p data-bbox="1314 894 1877 1068">The “Proposed Text” reinstates the concept of a utility’s operational authority and emphasizes why the prescriptively-oriented terms in the proposed revisions to 480-109-010(4)(a)(ii) and (iii) are inappropriate.</p>

Comment 12	Current Text	Proposed Text	Rationale for proposed change
Regarding WAC 480-109-010 (8)	<p>A utility must evaluate all types of conservation using cost-effectiveness tests consistent with those used by the council, except low-income conservation programs.</p> <p>(a) Low-income conservation programs should be evaluated for cost-effectiveness using the Savings-to-Investment Ratio, as described in the department's Weatherization Manual For Managing the Low-Income Weatherization Program.</p> <p>(b) Low-income conservation programs may be excluded from portfolio-level cost-effectiveness calculations.</p>	A utility must evaluate all types of conservation using the TRC test as modified by the Council.	<p>There is no explanation of how the revision of this rule is necessary to maximize the efficiency and practical implementation of the EIA.</p> <p>The company understands the challenges in delivering low income conservation under the current cost-effectiveness evaluation criteria however until a review of the possible ramifications of this change can be conducted and addressed the company believes its prudent to continue to apply the same cost-effectiveness tests to all programs to ensure compliance with RCW 19.285.</p>

Comment 13	Current Text	Proposed Text	Rationale for proposed change
Regarding WAC 480-109-AAA  All sections and subparts	Conservation advisory group	None-not needed	<p>There is no explanation as to how the "Current Text" will increase the efficiency of the EIA implementation.</p> <p>This section is partly transferred from the biennial conditions, with new conditions added.</p> <p>It is recommended that this section be deleted, allowing the requirement to reside in the biennial conditions, thus allowing maximum flexibility for all stakeholders and the ability for further modifications, as needed, to be made over time.</p>

Comment 14	Current Text	Proposed Text	Rationale for proposed change
<p data-bbox="92 173 319 240">Regarding WAC 480-109-BBB</p> <p data-bbox="92 285 302 352">All sections and subparts</p>	<p data-bbox="344 173 642 207">Conservation reporting</p>	<p data-bbox="812 173 995 207">Delete section</p>	<p data-bbox="1312 173 1871 277">It is unclear as to how this new section will increase the efficiency of EIA implementation.</p> <p data-bbox="1312 323 1877 532">This transfer and modification of selected biennial conditions is duplicative in some cases, mixes the reporting requirements and intent of separate reports, and introduces some timeframes that conflict with established filing requirements.</p> <p data-bbox="1312 578 1871 787">Memorializing conditions that are collaboratively developed and vetted by the advisory groups into rigid rules is inadvisable as it removes the ability to adaptively manage these conditions over time as the need arises.</p> <p data-bbox="1312 833 1808 899">It is recommended that the entire BBB section be stricken.</p>

## Additional Utility Comments

Regarding the question posed in the UTC's April 9, 2014 Notice of Opportunity to File Written Comments memo:

### Measuring progress across reporting periods

*The Commission's rules require the reporting of biennial conservation achievement and annual renewables achievement relative to targets, but do not assess the utilities' broader progress in meeting the EIA's policy to "increas[e] energy conservation" and "protect clean air and water."<sup>1</sup> The reports could be enhanced to reflect the statutory policy by including basic metrics that monitor reductions of load or emissions in utility service territories across reporting periods.*

Pacific Power believes that these metrics are unnecessary, as the metrics required of the utilities are already enumerated in RCW 19.285. Additionally, the metrics mentioned in the question omit other key items noted in RCW 19.285.020. Lastly, any statewide metrics should be performed by the Department of Commerce, rather than the UTC. If enacted, such metrics would place unnecessary and burdensome requirements on the utilities.

---

<sup>1</sup> RCW 19.285.020.



**Pacific Power & Light Comments**  
**Docket UE-131723, Rulemaking For Energy Independence Act, WAC 480-109**

# **ATTACHMENT B**



Rob McKenna

# ATTORNEY GENERAL OF WASHINGTON

800 Fifth Avenue #2000 • Seattle WA 98104-3188

August 2, 2012

## **SENT VIA E-MAIL**

David Danner  
Executive Director and Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Pk. Dr. S.W.  
PO Box 47250  
Olympia, WA 98504-7250

**Re: Pacific Power & Light Company, Report concerning its progress in meeting its conservation target during the preceding biennium, Docket No. UE-100170**

**Avista Corporation, Report concerning its progress in meeting its conservation target during the preceding biennium, Docket No. UE-100176**

**Puget Sound Energy, Report concerning its progress in meeting its conservation target during the preceding biennium, Docket No. UE-100177**

Dear Mr. Danner:

## **I. Introduction**

Public Counsel respectfully submits these comments pursuant to the discussion at the July 27, 2012 Open Meeting. Our comments will address two broad areas pertaining to the conservation requirements of the Energy Independence Act (EIA). First, we will discuss issues that Public Counsel recommends be addressed in the Commission's Orders in the EIA conservation dockets, including findings of utility conservation achievement and clarification of statutory requirements. Second, we will briefly discuss issues that we believe are better addressed in a subsequent proceeding. These are policy and regulatory issues that, once addressed, would provide for a greater degree of consistency in reported conservation achievement, as well as reporting and documentation provided to the Commission. While it is likely that the Commission does not have a sufficient record at this time to make a determination on these issues in the current dockets, Public Counsel believes the issues should be resolved in an expedient manner through a policy proceeding that may result in an Interpretive and Policy Statement.

Public Counsel's recommendations on timing and resolution of these issues are also summarized in the attached matrix, which was provided by Commission Staff.

## **II. Immediate Issues To Be Resolved In Orders For Pending Dockets**

There are several issues Public Counsel believes can be resolved immediately in the Commission's Orders in the pending dockets for the 2010-2011 biennium. Our recommendations are described in further detail below. First, we briefly restate Public Counsel's recommended

ATTORNEY GENERAL OF WASHINGTON

To: David Danner  
Re: Docket Nos. UE-100170, UE-100176, and UE-100177  
August 2, 2012  
Page 2

revisions to reported conservation achievement. Second, we provide a response to Commission Staff's request for clarification of statutory requirements of the EIA. Lastly, we briefly discuss our request that the Commission's Orders regarding conservation achievement provide guidance on the need for greater consistency in reporting of conservation savings achievement.

**A. Recommendations for 2010-2011 Biennial Conservation Achievement.**

Public Counsel recommends certain adjustments to utility-reported conservation achievement toward the biennial conservation target for 2010-2011, as discussed more fully in our July 16, 2012, written comments. Specifically, we recommend the following:

- In Docket UE-100176, we recommend Avista reduce their reported conservation savings achievement by 3,961,851 kwh for the *Simple Steps, Smart Savings*<sup>TM</sup> retail CFL program, so that reported savings are consistent with Commission conditions 6(b) and 6(c) of Order 01. We support an overall biennial conservation achievement of 165,505 megawatt-hours.<sup>1</sup>
- In Docket UE-100177, we recommend PSE reduce their reported conservation savings achievement by 7,938 MWh to incorporate the adjustment recommended by SBW in their review of PSE's reported savings, conducted pursuant to Condition (K)(6)(g) of the Settlement Agreement approved and adopted by the Commission in Amended Order 05. We support an overall biennial conservation achievement of 636,464 megawatt-hours.<sup>2</sup>
- In Docket UE-100170, we recommend PacifiCorp reduce their reported conservation savings achievement by 5,058,749 kwh to remove savings for the Energy Education in Schools program, so that reported savings are consistent with Commission conditions 6(b) and 6(c) of Order 02. We support an overall biennial conservation achievement of 87,611 megawatt-hours.

With these revisions, each of the companies would still exceed their biennial conservation target for 2010-2011. WAC 480-109-040(3) contemplates that a utility report of conservation may be revised as a result of Commission review, and if so, such a revised report must be submitted to the Commission and the Department of Commerce. Accordingly, we respectfully request the Commission order Avista, PSE, and PacifiCorp to file revised reports of conservation achievement, incorporating the revisions outlined above.

---

<sup>1</sup> This recommendation is consistent with the Staff recommendation. Docket Nos. UE-100170, UE100176, and UE-100177, Comments of Commission Staff, July 16, 2012, p. 25.

<sup>2</sup> This recommendation is consistent with the Staff recommendation. *Id.*

ATTORNEY GENERAL OF WASHINGTON

To: David Danner  
Re: Docket Nos. UE-100170, UE-100176, and UE-100177  
August 2, 2012  
Page 3

**B. Response to Staff Request for Clarification Regarding Pursuing “All” Conservation Under the EIA.**

In its July 16 Comments, Staff asked the Commission to provide a clarification on whether the EIA creates two different and distinct statutory standard regarding conservation achievement: (1) the conservation designed to meet the EIA targets; and (2) a separate level of conservation described by Staff as “all required conservation.”<sup>3</sup> Specifically Staff requested that:

[T]he Commission clarify what is meant by “pursuing all,” *how “pursuing all” is distinct from simply meeting the target*, and what information would be sufficient for determining whether the companies have indeed pursued all cost-effective, reliable and feasible conservation.<sup>4</sup>

Public Counsel agrees that utilities need to be engaged in the type of “adaptive management” practices that Staff identifies.<sup>5</sup> Adaptive management is a critical part of utility conservation program administration and regulation. It is reflected, *inter alia*, in ongoing utility program work, advisory group consultation, and EM&V processes. The Commission has the opportunity to review how the utilities are managing their programs when required plans and reports are filed with the Commission, including the biennial conservation plans (BCP), biennial conservation reports (BCR), and cost recovery tariffs. However, Public Counsel does not agree that there is a second or additional statutory requirement in the EIA that must be interpreted and implemented, for the following reasons.

Staff’s interpretation appears to isolate the first sentence of RCW 19.285.040 as a separate requirement distinct from the remainder of the statute.<sup>6</sup> Basic principles of statutory construction, however, require that a statute be read as whole to give full effect to every part.<sup>7</sup> If RCW 19.285.040(1) is read as a whole, it is plain that the immediately following subsections (1)(a)-(1)(e) explain and expand on the manner in which a utility “shall pursue all available conservation,” i.e., by identifying “*achievable* cost-effective conservation potential” in ten-year forecasts, and establishing a biennial target for “cost-effective conservation” based on the longer term “achievable” opportunities.<sup>8</sup>

The other aspects of the statutory scheme support the conclusion that the law contains a single standard. The EIA’s specific accountability and enforcement provisions in RCW 19.285.060, as

---

<sup>3</sup> Staff Comments, p. 7

<sup>4</sup> Staff Comments, p. 6 (emphasis added).

<sup>5</sup> Staff Comments, p. 7.

<sup>6</sup> RCW 19.285.040(1), states the basic conservation requirement, “Each qualifying utility shall pursue all available conservation that is cost-effective, reliable, and feasible.”

<sup>7</sup> *King County v. Central Puget Sound Growth Management Board*, 142 Wn. 2d. 543, 560 (2000)(intent determined from more than a single sentence).

<sup>8</sup> Section (1)(c) allows a utility to use high-efficiency cogeneration to meet conservation its targets.

ATTORNEY GENERAL OF WASHINGTON

To: David Danner  
Re: Docket Nos. UE-100170, UE-100176, and UE-100177  
August 2, 2012  
Page 4

well as the detailed reporting and public disclosure provisions of RCW 19.285.070, are tied to progress on meeting the statutory conservation targets established in RCW 19.285.040. There is no reference to the additional standard hypothesized by Staff. Under principles of statutory construction, the expression of one statutory requirement mandates the exclusion of omitted requirements.<sup>9</sup> As a matter of statutory construction, the EIA's inclusion of the enumerated target-setting, reporting, accountability, and enforcement provisions, implies the exclusion of other requirements not stated.<sup>10</sup>

Staff's theory likewise finds no support in the WAC EIA rules. The General Order adopting the Commission's EIA rules states:

The Commission's responsibility in this matter is to develop rules that 'ensure the proper implementation and enforcement of [the act] as it applies to investor owned utilities. RCW 19.285.080(1). *Most sections of the act are specific and provide the Commission little discretion in determining the optimal implementation path.* [.]<sup>11</sup>

The Commission's EIA rules do not contain requirements, standards, reporting requirements or penalties related to Staff's additional standard. As the Commission noted, the EIA is quite specific, and does not afford significant discretion to the Commission to elaborate on or add to the statutory requirements.

As stated above, Public Counsel believes that companies should be utilizing adaptive management approaches in acquiring conservation resources. However, we do not believe these requirements are enumerated in the EIA. Expanding the requirements of the EIA would introduce a number of practical problems. Staff's theory clearly contemplates that a company could be in compliance with the target requirements of the EIA, and still be in violation of the statute. The existence of such a dual standard, however, would introduce significant uncertainty, complexity and regulatory burden into EIA compliance and enforcement process. As currently crafted, the target setting process creates a clear measure of the utility's efforts to achieve conservation goals. By contrast, Staff's interpretation could potentially result in a confusing scenario whereby a utility could meet its target, but nevertheless could be found out of compliance with the EIA, for example, because it failed to explore or adopt a new program or

---

<sup>9</sup> *General Telephone of the Northwest, Inc. v. Washington Utilities & Transportation Commission*, 104 Wn. 460, 470 (1985) This is sometimes stated as the maxim *expressio unius est exclusio alterius*.

<sup>10</sup> For example, RCW 19.285.060(4), allows the Commission to consider adopting incentives for a utility to exceed its targets. This provision does not, however, allow the Commission to *require* a utility to exceed the statutory target, or penalize the company for failure to do so.

<sup>11</sup> *In the Matter of Adopting Rules to Implement The Energy Independence Act*, Docket UE-061985, General Order R-546, ¶23 (emphasis added).

ATTORNEY GENERAL OF WASHINGTON

To: David Danner  
Re: Docket Nos. UE-100170, UE-100176, and UE-100177  
August 2, 2012  
Page 5

technology which in the view of Staff or another party should have been pursued.<sup>12</sup> Staff's comments acknowledge "the complexity involved in designing and implementing conservation programs," and that "the spectrum of 'all' cost-effective, feasible and reliable conservation is continuously evolving."<sup>13</sup>

For all the foregoing reasons, Public Counsel asks that the Commission clarify that there is not an additional statutory standard under the EIA for "all required conservation" distinct from the express standard for targets and potential.

**C. Commission Guidance Regarding Desire for Greater Consistency.**

One of the common themes that emerged in the written comments filed July 16, 2012, and also at the July 27, 2012 Open Meeting, is that in the initial biennium of EIA implementation, the three electric IOUs used different methodologies and approaches to counting the reported conservation savings achievement. Public Counsel recognizes that for this initial biennium, consistency in reported savings is simply not feasible, and we acknowledge that there is a learning curve for all stakeholders associated with EIA implementation. However, we believe that, going forward, there should be greater consistency, so that all three of the electric utilities are reporting conservation savings in the same manner, or at the very least, substantially the same manner. Accordingly, we respectfully request that the Commission's Orders regarding compliance with EIA conservation requirements provide guidance as to whether consistency in approaches to reporting conservation savings is a principle that should be honored to the fullest extent possible.

Public Counsel recognizes that it may not be reasonable to expect absolute uniformity on all areas, and we acknowledge that as a result of EM&V there will be variations in savings based on factors such as weather and local conditions. However, there is a need for considerable improvement. Thus, we recommend that the Commission provide guidance in these orders that greater consistency on certain key issues, such as those discussed in the next section of our comments, is important, valuable, and furthers public interest in conservation. Accordingly, we recommend the Commission open a policy docket to resolve the issues described below, in an expeditious manner. We favor this approach because we believe the issues can be resolved more efficiently and flexibly than in a rulemaking, which may take a significant amount of time and add more complexity than is needed.

Given the significant variation in approaches taken by the companies in the 2010-2011 biennium, as reflected in the BCRs, we do not anticipate that reaching consensus on the issues discussed in the next section is very likely. In most cases, these issues did not arise overnight. Many issues

---

<sup>12</sup> Staff does not address whether a utility would be subject to penalties for failure to meet this added standard, even though it had met the statutory targets.

<sup>13</sup> Staff Comments, p. 6.

# ATTORNEY GENERAL OF WASHINGTON

To: David Danner  
Re: Docket Nos. UE-100170, UE-100176, and UE-100177  
August 2, 2012  
Page 6

have been discussed for months, if not years, either in the Conservation Working Group, or utility advisory groups. Despite this ongoing dialogue, resolution has not been reached. We believe that at this time, parties are in a position to make recommendations, or possibly joint positions, in comments filed with the Commission. The Commission can then make a final determination based on the record. We should have resolution by March, 2013, because beginning in April and July, 2013, companies will begin extensive work with the advisory groups to determine biennial targets for 2014-2015.<sup>14</sup>

### **III. Issues To Be Resolved In A Policy Proceeding**

As stated above, there are a number of issues raised by parties in this proceeding that Public Counsel believes would benefit from additional stakeholder discussion and comment. We therefore recommend that these issues be addressed in a separate policy proceeding. These issues can be separated into two general categories—conservation savings issues and regulatory issues. The section below describes these issues briefly and, in some instances, Public Counsel has included what is our preferred approach at this stage. However, we have only provided limited discussion here, rather than our final recommendations, as we suggest a separate process to thoroughly address these issues.

#### **A. Conservation Savings Issues.**

Within this topic there are three different sub-issues that we believe need to be addressed, including: (1) NEEA savings, (2) when changes to unit energy savings (UES) estimates are appropriate, and (3) a common definition for critical terms, including ‘baseline.’ Through the course of reviewing the three electric utilities’ biennial conservation reports, it became clear that the utilities approach these issues in different ways. This impacts how each company reports savings toward its conservation target. These inconsistencies in approach make it impossible to make a direct, “apples-to-apples” comparison of the conservation achievement of one utility to another.

On all of these issues, Public Counsel strongly believes that we should strive for greater consistency, so that all three electric utilities are reporting savings in substantially the same manner.

---

<sup>14</sup> The Commission’s conditions approving targets for 2012-2013 require PSE to begin working with the CRAG in April, 2013, while Avista and PacifiCorp must begin working with their advisory groups in July, 2013, on the development of conservation targets for the 2014-2015 biennium. UE-111881 (PSE), Order 01, June 14, 2012, condition (9)(b); UE-111882 (Avista), Order 01, February 12, 2012, condition (9)(b); UE-111880 (PacifiCorp), Order 01, April 26, 2012, condition (9)(b).

To: David Danner  
Re: Docket Nos. UE-100170, UE-100176, and UE-100177  
August 2, 2012  
Page 7

**1. NEEA savings.**

For NEEA savings the challenge is whether utilities should be held accountable for potentially large fluctuations in savings achievement as more up-to-date information becomes available, whether saving should be “deemed,” or some combination of the two approaches. In addition, NEEA savings may be calculated using different methodologies. Public Counsel’s preference at this point is to for all three utilities to utilize the approach PSE has taken in the past several years, which is more conservative, and allows for the utility to focus on its efforts on the areas in its conservation portfolio over which it has more direct control.

**2. Changes to Unit Energy Savings.**

A second sub-issue that emerged related to counting savings is whether an IOU can and/or should hold constant the assumed UES used in preparing its conservation potential assessment and setting its target, and what point in time a utility should incorporate UES modifications. As to when changes to savings estimates should be made, the challenge is how to balance a potential utility interest in having greater certainty at the front-end when targets are set, with a public interest to treat conservation as a resource and have reported savings most closely match actual savings delivered at the meter. Our preference is to make annual adjustments to savings estimates, even if those changes are mid-biennium, and report against the updated savings estimates. This is the approach PSE has historically taken to reporting savings. Also, we support independent third-party verification of reported savings, consistent with Avista’s approach for this biennium. This approach encourages adaptive management to evolve and improve programs over time.

**3. Common definition of critical terms such as “baseline.”**

The third issue related to how conservation savings are calculated is whether there should be common definitions of critical terms, such as ‘baseline conditions.’ This is another example of where the IOU’s are taking different approaches to estimating and counting savings. For example, in this biennium Cadmus, on behalf of Avista, modified RTF savings estimates for the Energy Star Appliances and Refrigerator and Freezer Recycling Programs to remove what it considered to be a “net-to-gross” adjustments. In Public Counsel’s views, however, the RTF approach is not a “net-to-gross” adjustment, but instead reflects the development of baseline conditions in a manner consistent with the Council’s methodology.

To the extent companies continue to rely on very divergent assumptions regarding baseline conditions, the risk is an erosion of public confidence in conservation as a resource. We believe the RTF approach, which PSE has followed, is most appropriate and consistent with Council guidelines.



To: David Danner  
Re: Docket Nos. UE-100170, UE-100176, and UE-100177  
August 2, 2012  
Page 8

**B. Regulatory Issues.**

A number of these issues are largely associated with developing consistency in the regulatory practices and procedures for each of the utilities. Particularly, we believe there should be greater consistency in (1) utility reporting of conservation achievement, (2) verification of savings through a third-party portfolio review for each utility,<sup>15</sup> and (3) the assessment of DSM prudence. Additionally, the issue of confidentiality was raised in this process, which we will address alongside these other regulatory issues below.

**1. Reporting of Conservation Achievement**

As discussed in Public Counsel's July 16, 2012 Comments, the biennial conservation reports filed by Avista, PacifiCorp, and PSE are quite different in terms of the volume of material provided, as well as the organization and structure of the report. We believe that, going forward, a common template should be developed, in order to provide for greater consistency in the reporting of conservation achievement and facilitate Commission and stakeholder review of the biennial conservation reports.

Of the Biennial Conservation Reports filed with the Commission, Public Counsel found PSE's to be the most useful in terms of layout and content, and is a useful model as a starting point for any specific requirements going forward. However, we recognize that there may be some elements that need to be added or excluded from any specific template in order to meet the needs of all three companies, which could be addressed in a policy docket.

**2. EM&V Consistency - Third-party Portfolio Verification.**

In the 2010-2011 biennium, both PSE and Avista were required to retain an independent, third-party to review reported conservation savings. However, the specific wording of the requirements, as well as the methodologies of the third-party evaluations differed. The review of Avista's electric conservation programs was completed in a way that resulted in an overall realization rate comparing reported savings to gross verified savings.<sup>16</sup> PSE's review took a different approach; the methodology for PSE's portfolio savings review included a high-level portfolio review, a project-level review, targeted on-site verification, and a specific program review of two programs. The scope did not incorporate statistically significant sampling. While SBW, as third-party reviewer, found few areas of concern, the review team noted "this scope of

---

<sup>15</sup> In the matrix sent by Staff on July 27, 2012, this issue was labeled as "Consistency of EM&V Frameworks." Public Counsel believes that each company should have an EM&V framework that reflects the specific EM&V needs of its portfolio, programs, and operations, which means that they will not be absolutely identical across the three companies. The issue we discuss here is specifically related to the scope and methodology of the third-party portfolio verification.

<sup>16</sup> Public Counsel Comments, July 16, 2012, p. 24.

To: David Danner  
Re: Docket Nos. UE-100170, UE-100176, and UE-100177  
August 2, 2012  
Page 9

work [became] more problematic when it is called upon to deliver justification for defensible quantified adjustments to the program claims.”<sup>17</sup>

For the 2012-2013 biennium, each company has a condition requiring evaluation of the company’s reported savings. However, again, the wording varies slightly for each company and each is subject to interpretation. Thus, there is a possibility that even though each company has a similar requirement for review, the methodology of the portfolio verification, and how those results are treated, could differ. In a policy docket, parties can consider whether the portfolio verification should include statistically significant sampling for measures with savings that are large and/or have greater uncertainty. We appreciate that PSE and Avista have begun discussions with their advisory groups regarding the scope of the 2012-2013 portfolio verification.

### **3. Assessment of DSM Prudence.**

While Public Counsel agrees with much of Staff’s discussion regarding the criteria for analyzing prudence of conservation programs, and also that a prudence assessment could be incorporated into the current cycle of review, we also have a number of concerns with this proposal, two of which are discussed here.

Specifically, Public Counsel does not agree with Staff’s position that “the conservation advisory groups have been developed to substitute for the board of directors.”<sup>18</sup> The role of the board of directors cannot be replaced by the advisory committee. Prudent management decision-making remains the responsibility of the utility and its board, and cannot be delegated to an outside group. The Commission approved conditions for each company that clearly reflect these roles for the companies and the advisory groups.<sup>19</sup> While the advisory groups do important work, they do not play a role on par with that of the board of directors, and it is ultimately the company’s responsibility to ensure its programs are performing prudently.

Additionally, Public Counsel has concerns with Staff’s statement that “the ongoing review process that has developed for each utility’s portfolio is effectively a prudence review.”<sup>20</sup> This

---

<sup>17</sup> SBW Independent Third Party Review of PSE’s 2010-2011 Electric Conservation Energy Savings, Appendix B, p. B-4.

<sup>18</sup> Staff Comments, p. 9.

<sup>19</sup> According to the conditions, the companies have “the sole responsibility for complying with RCW 19.285 and WAC 480-109” and that “the conditions regarding the need for a high degree of transparency, and communication and consultation with external stakeholders, diminish neither [the company’s] operational authority nor its ultimate responsibility for meeting the biennial conservation target approved herein.” Additionally, the conditions state that each company “must demonstrate the prudence and cost-effectiveness of its conservation programs to the Commission after the savings are achieved.”

<sup>20</sup> Staff Comments, p. 10.

# ATTORNEY GENERAL OF WASHINGTON

To: David Danner  
Re: Docket Nos. UE-100170, UE-100176, and UE-100177  
August 2, 2012  
Page 10

process<sup>21</sup> can certainly provide some context and a framework to encourage prudent decision-making. However, Public Counsel believes there must be an opportunity for parties to challenge prudence in an adjudicatory setting, if necessary. If no party requests an adjudication, the Commission, in its discretion, can base a finding on the review process, or on other information it may receive or request.

We believe the importance of the prudence issue, and the number of complicating factors make this a subject that should be addressed in further detail in a policy docket.

#### **4. Confidentiality.**

In general, Public Counsel believes that utility reporting and supporting documentation provided to the UTC regarding its conservation programs should not be considered confidential. Consequently, we do not believe a protective order would typically be necessary. In the unlikely event that a utility anticipates its biennial conservation plan (BCP), or biennial conservation report (BCR), or other regulatory filings, will contain confidential information, the utility should inform its conservation advisory group of this in a timely manner, and should also request that a protective order be issued in the docket so that parties may appropriately review any documents the utility is seeking to designate as confidential.

#### **IV. Conclusion**

Public Counsel appreciates the opportunity to provide comments on issues pending in EIA conservation dockets for the 2010-2011 biennium. In summary, we recommend that the Commission address the following in its Orders in the EIA conservation dockets:

- Approve the biennial conservation achievement for all three utilities based on Public Counsel's recommended adjustments discussed in our July 16, 2012 Comments, and require that the companies file revised reports of conservation achievement;
- Clarify that there is not an additional statutory standard under the EIA for "all required conservation" distinct from the express standard for targets and potential; and,
- Provide guidance on the need for greater consistency in reporting of conservation savings achievement.

---

<sup>21</sup> See, Staff Comment, p. 5, for a visual representation for the planning and reporting process, as laid out in the commission's orders approving the companies' 2012-2013 biennial conservation targets.

ATTORNEY GENERAL OF WASHINGTON

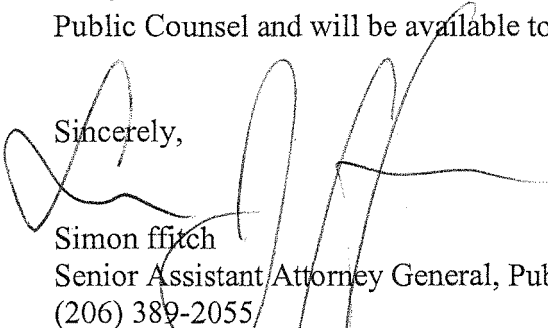
To: David Danner  
Re: Docket Nos. UE-100170, UE-100176, and UE-100177  
August 2, 2012  
Page 11

We recommend that the Commission address the following issues in a subsequent policy proceeding:

- Issues related to counting conservation savings, including specifically, NEEA savings, when changes to savings estimates are appropriate, and a common definition for critical terms such as “baseline.”
- Regulatory issues including, content and structure of biennial conservation reports, scope of third-party portfolio verifications, DSM prudence, and confidentiality of information in conservation filings with the UTC.

Mary Kimball and Stefanie Johnson will attend the August 9, 2012, Open Meeting on behalf of Public Counsel and will be available to respond to any questions regarding these comments.

Sincerely,



Simon Ffitch  
Senior Assistant Attorney General, Public Counsel Section  
(206) 389-2055

cc: Mark Vasconi (E-mail)  
Deborah Reynolds (E-mail)  
Bob Stolarski (E-mail)  
Bruce Folsom (E-mail)  
Carla Bird (E-mail)