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May 9, 2014

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Steven V. King
Executive Director
Washington Utilities & Transportation Commission
1300 S. Evergreen Pk. Dr. S.W.
P.O. Box 47250
Olympia, WA 98504-7250

Re: *Rulemaking for Energy Independence Act, WAC 480-109*
Docket UE-131723

Dear Mr. King:

Enclosed please find Public Counsel's Comments for filing in the above referenced docket. Public Counsel looks forward to further participation in this Rulemaking proceeding.

Sincerely,

Mary Kimball
Senior Analyst
Public Counsel Division
(206) 389-2529

MK:cjb

UTC Comment form for Energy Independence Act Rulemaking, Informal Draft 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 or by e-mail to records@utc.wa.gov.

Comments on behalf of: Public Counsel, WA Attorney General's Office Commenter: Mary Kimball, Lea Fisher, Stefanie Johnson
 E-mail: maryk2@atg.wa.gov Phone: (206) 389-2529 (M. Kimball)

Name of Organization or "self"

In the first column, fill in the section or subsection of interest in the rule. In the next columns provide the specific text, proposal for change, and rationale.

Comment 1	Current Text	Proposed Text	Rationale for proposed change
Regarding Informal Draft WAC 480-109-007(20)	<p>"Pursue all" means an ongoing process of researching and evaluating the range of possible conservation technologies and programs, and implementing all programs which are cost-effective, reliable, and feasible.</p>	<p>"Pursue-all" "<u>Adaptive management</u>" means an ongoing process of researching and evaluating the range of possible available conservation technologies and programs, and implementing all programs which are cost-effective, reliable, and feasible.</p>	<p>Public Counsel generally agrees that utilities are required to continually research and evaluate possible conservation programs and technologies, and to implement those that are cost-effective, reliable and feasible. However, we do not believe it is appropriate to seek a definition for the two words "pursue all" from RCW 19.285.040(1). Those two words are not separately defined in statute (including HB 1643)</p> <p>As Public Counsel described in comments filed August 2, 2012 in dockets UE-100170, UE-100176, and UE-100177, we believe the statute should be read as a whole, to give full effect to every part. (See pp. 3-5) Reading RCW 19.285.040(1) as a whole, it is plain that the immediately following subsections (1)(a)-(1)(e) explain and expand upon the manner in which a utility "shall pursue all available conservation."</p> <p>Public Counsel would also have a concern that if there are two separate and distinct statutory requirements, this might lead to an unintended consequence of encouraging the utilities to have more programs outside of the biennial conservation target. In addition, as we discuss further below regarding Informal Draft WAC 480-109-010(3) and (4), we are concerned that having two separate rule sections regarding the biennial conservation plan (3) and what has been termed "pursue all," (4) may lead to confusion regarding key activities such as the identification of potential, development of portfolio, and implementation of conservation programs.</p>

			<p>The "ongoing process" described in the proposed draft rule is more appropriate as a definition for "adaptive management" as used in draft rule WAC 480-109-040(4)(a)(iv)</p> <p>Our proposed language includes "available" as set forth in RCW 19.285.040(1)</p>
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Comment 2	Current Text	Proposed Text	Rationale for proposed change
<p>Regarding Informal Draft WAC 480-109-010(1)(b)</p>	<p>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>We observe that the draft rules specify use of methodologies in the council's Sixth Plan. Recent practice has been that methodologies should be consistent with the council's most recent plan. Public Counsel requests clarification that the Commission intends to update the rules as needed to reference the council's most recently published Plan. We understand this proposed modification may pertain to language adopted in HB 1643. However, our preference is for the rule to specify reliance on the most recent council Plan available at the time the potential is developed.</p>

Comment 3	Current Text	Proposed Text	Rationale for proposed change
<p>Regarding Informal Draft WAC 480-109-010(2)(c)</p>	<p>The biennial conservation target may be a range rather than a point target.</p>		<p>Public Counsel supports the removal of rule language allowing utilities to file a target range.</p>

<p>Comment 4 Regarding Informal Draft WAC 480-109-010(3)</p>	<p>Current Text On or before January 31, 2010, and November 1 of every two years thereafter, each odd-numbered year, a utility must file with the commission a report identifying biennial conservation plan.</p>	<p>Proposed Text</p>	<p>Rationale for proposed change Public Counsel supports this requirement to file the BCP November 1st, allowing the Commission and stakeholders additional time for review before the beginning of the next biennium.</p>
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<p>Comment 5 Regarding Informal Draft WAC 480-109-010(3)(b)</p>	<p>Current Text Participation by the commission staff and the public in the development of the ten-year conservation potential and the two-year conservation target is essential. The report. The Plan must outline the extent of public and commission staff participation in the development of these the ten-year conservation metrics potential and the biennial conservation target.</p>	<p>Proposed Text <u>Participation by the advisory group and the public in the development of the ten-year conservation potential and the biennial conservation target is essential. The Plan must outline the extent of advisory group and public participation in the development of the ten-year conservation potential and the biennial conservation target.</u></p>	<p>Rationale for proposed change Public Counsel recommends retaining some of the existing language to continue to underscore the importance of public participation, updated to reflect advisory group participation in development of the Plan.</p>
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<p>Comment 6 Regarding Informal Draft WAC 480-109- 010(3)(c)</p>	<p>Current Text The plan must include, at a minimum, the ten-year conservation potential, the biennial conservation target, program details, program budgets, and cost-effectiveness calculations.</p>	<p>Proposed Text The plan must include, at a minimum, the ten-year conservation potential, the biennial conservation target, program details, program budgets, an <u>evaluation plan for the biennium</u>, and cost-effectiveness calculations.</p>	<p>Rationale for proposed change Public Counsel recommends the BCP should also include an evaluation plan for the biennium, identifying the programs scheduled for evaluation during the biennium, type of evaluation, and budget. (See, e.g. PSE 2014-2015 Biennial Conservation Plan, Exhibit 6: Program Evaluation Plan, UJE-132043)</p>
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<p>Comment 7 Regarding Informal Draft WAC 480-109- 010(3)</p>	<p>Current Text</p>	<p>Proposed Text (f) If a utility identifies additional programs or technologies during the biennium, it shall file an update to the BCP, including program details, program budgets, and evaluation plan.</p>	<p>Rationale for proposed change Public Counsel recommends that if a utility identifies additional programs or technologies during the biennium, it shall file an update to the BCP. This is necessary so that any new programs identified and implemented subsequent to filing the BCP, are appropriately reviewed by the advisory group, and the minimum information required to be filed with the commission for programs in the BCP should also be required of any new programs implemented mid-biennium.</p>
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Comment 8	Current Text	Proposed Text	Rationale for proposed change
<p>Regarding Informal Draft WAC 480-109-010(4)(a)(i) and (ii)</p>	<p>(4) Pursue all conservation. (a) A utility's obligation to pursue all available conservation that is cost-effective, reliable, and feasible includes, but is not limited to the following process:</p> <p>(i) Identify potential. Identify the cost-effective, reliable, and feasible potential of possible technologies and conservation programs and measures in the utility's service territory.</p> <p>(ii) Develop portfolio. 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>(A) A utility must develop and implement programs to acquire available conservation from all of the types of measures identified in subsection (b) of this section.</p> <p>(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>(C) A utility may spend up to 10 percent of its biennial conservation budget on pilots and information-only services or programs.</p>	<p>(4) Pursue all <u>Develop and implement conservation portfolio.</u> (a) A utility's obligation to pursue all available conservation that is cost-effective, reliable, and feasible includes, but is not limited to the following process:</p> <p>(i) <u>Identify potential.</u> Identify the cost-effective, reliable, and feasible potential of possible technologies and conservation programs and measures in the utility's service territory.</p> <p>(ii) <u>Develop portfolio.</u> Develop a conservation portfolio that <u>shall</u> include all available, cost-effective, reliable, and feasible potential, as well as and may also include pilot programs that are not yet proven to be cost-effective. <u>The conservation portfolio includes but is not limited to the following:</u></p> <p>(i) <u>All programs shall be discussed in the Biennial Conservation Plan, or identified in an update to the Plan pursuant to WAC 480-109-101(3)(f).</u></p> <p>(A) <u>A utility must develop and implement programs to acquire available conservation from all of the types of measures identified in subsection (b) of this section.</u></p> <p>(B) (ii) A utility's conservation portfolio <u>must</u> contain new programs that are not included in the biennial conservation target and are available, cost-effective, reliable, and feasible. <u>Any such program shall be identified in an update to the Plan pursuant to WAC 480-109-101(3)(f).</u></p> <p>(C) A utility may spend up to 10 percent of its biennial conservation budget on pilots and information-only services or programs.</p>	<p>Public Counsel recommends deletion of subsection (4)(a)(i) because identification of potential is addressed above in subsection (1). We observe there are some slight wording differences between the two proposed draft subsections and recommend any modifications be addressed in subsection (1), so that for clarity purposes, only one subsection of the rule addresses identification of potential.</p> <p>Public Counsel recognizes that new programs may emerge and become cost-effective, reliable, and feasible during the biennium, subsequent to approval of the biennial target. In those circumstances, the utility should file an update to the BCP so that the advisory group has a similar ability to advise in the development of new programs.</p> <p>We recommend deletion draft subsection (4)(a)(ii)(C) for a few reasons. We recognize this has been incorporated in conditions to biennial target approval, and we prefer retaining this in the conditions rather than in rule. That provides flexibility if advisory group and Commission review determine it should be adjusted to reflect changing budgets or conditions, for some or all utilities.</p> <p>If the proposed draft language is retained, "information-only" would need to be defined.</p>

<p>Comment 9</p>	<p>Regarding Informal Draft WAC 480-109-010(4)(a)(iii) and (iv)</p>	<p>Current Text</p> <p>(iii) Implement programs. Implement conservation programs identified in the portfolio to the extent the programs remain cost-effective, reliable, and feasible. Implementation methods shall not unnecessarily restrict the uptake of conservation and shall be designed to maximize the practical uptake of conservation. Program implementation methods must include, but are not limited to:</p> <p>(A) providing market-moving incentives and rebates,</p> <p>(B) evaluating the effectiveness of conservation program advertising,</p> <p>(C) pursuing multi-channel implementation,</p> <p>(D) implementing pilot projects,</p> <p>(E) performing research regarding emerging conservation technologies,</p> <p>(F) funding regional conservation programs,</p> <p>(G) conducting collaborative technical activities, and</p> <p>(H) conducting collaborative promotional activities.</p> <p>(iv) Adaptive management. Continuously manage the conservation portfolio to adapt to changing market conditions and developing technologies, as well as, performing research regarding emerging conservation technologies.</p>	<p>Proposed Text</p> <p>(iii) Implement programs. Implement conservation programs identified in the portfolio to the extent the programs remain cost-effective, reliable, and feasible. Implementation methods shall not unnecessarily restrict the uptake of conservation and shall be designed to maximize the practical uptake of conservation. Program implementation methods must <u>may</u> include, but are not limited to:</p> <p>(A) providing market-moving incentives and rebates,</p> <p>(B) evaluating the effectiveness of conservation program advertising,</p> <p>(C) pursuing multi-channel implementation,</p> <p>(D) implementing pilot projects,</p> <p>(E) performing research regarding emerging conservation technologies,</p> <p>(F) funding regional conservation programs,</p> <p>(G) conducting collaborative technical activities, and</p> <p>(H) conducting collaborative promotional activities.</p> <p>(iv) Adaptive management. Continuously manage the conservation portfolio to adapt to changing market conditions and developing technologies, as well as, performing research regarding emerging conservation technologies.</p>	<p>Rationale for proposed change</p> <p>Public Counsel recommends referencing the BCP in this subsection, consistent with our recommendation above that all programs shall be identified in the BCP, or as an update to the BCP if developed subsequent to the approval of the biennial target. Otherwise there may be confusion as to whether two separate requirements exist, with some programs in the BCP, and others outside the BCP but in the 'portfolio.' The latter framework would create implementation complications for the utility, stakeholders, and the Commission.</p> <p>In addition, we recommend removing 'must' from subsection (iii) so that the rules are not unnecessarily inflexible as to what should be included in a conservation portfolio.</p>
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Comment 10	Current Text	Proposed Text	Rationale for proposed change
<p>Regarding Informal Draft WAC 480-109-010(4)(b)</p>	<p>(b) Types of conservation include, but are not limited to:</p> <ul style="list-style-type: none"> (i) end-use efficiency, (ii) behavioral programs, (iii) code enforcement, (iv) high-efficiency cogeneration, <p>(A) A utility may count as conservation savings a portion of the electricity output of a high-efficiency cogeneration facility that commences operation in its service territory.</p> <p>(B) The high-efficiency cogeneration facility must be owned by a retail electric customer and used by that customer to meet its heat and electricity needs. Heat and electricity output provided to anyone other than the facility owner may not be considered in determining conservation savings.</p> <p>(C) The utility's documentation of a cogeneration facility's compliance with the definition of "high-efficiency cogeneration" and the conditions for counting as conservation in this subsection must be certified by a registered professional engineer licensed by the Washington department of licensing.</p> <ul style="list-style-type: none"> (v) production efficiency, (vi) distribution efficiency, and (vii) market transformation. 	<p>(b) Types of conservation include, but are not limited to:</p> <ul style="list-style-type: none"> (i) end-use efficiency; (ii) behavioral programs; (iii) code enforcement; (iv) high-efficiency cogeneration; <p>(A) A utility may count as conservation savings a portion of the electricity output of a high-efficiency cogeneration facility that commences operation in its service territory.</p> <p>(B) The high-efficiency cogeneration facility must be owned by a retail electric customer and used by that customer to meet its heat and electricity needs. Heat and electricity output provided to anyone other than the facility owner may not be considered in determining conservation savings.</p> <p>(C) The utility's documentation of a cogeneration facility's compliance with the definition of "high-efficiency cogeneration" and the conditions for counting as conservation in this subsection must be certified by a registered professional engineer licensed by the Washington department of licensing;</p> <ul style="list-style-type: none"> (v) production efficiency; (vi) distribution efficiency; and (vii) market transformation. 	<p>Public Counsel believes the existing statutes and rules provide sufficient foundation and flexibility to develop and implement a diverse range of conservation programs to meet EIA requirements.</p> <p>We are concerned with the proposed draft language in subsection (4)(a)(ii)(A) that would mandate utilities offer programs in all the areas identified in subsection (b). At this time, for example, none of the utilities have code enforcement programs. Moreover, such a program would pose complexities, for example, related to the basis for savings, whether they are already incorporated in the CPA and/or load forecasting, and other issues. Program development questions are more appropriately addressed with the utility and advisory group, and should allow for flexibility in whether to design such a program as an effective and appropriate use of ratepayer funds.</p>

Comment 11	Current Text	Proposed Text	Rationale for proposed change
<p>Regarding Informal Draft WAC 480-109-010(6)</p>	<p>(6) Energy savings. A utility must use unit energy savings values and protocols approved by the Regional Technical Forum, unless the utility documents that a specific unit energy savings value or protocol is more appropriate for its service territory.</p>		<p>Public Counsel observes the language in this proposed draft subsection is slightly different from the current language in BCP conditions. The conditions generally specify the type of information that can be relied upon if RTF savings are not utilized. For example, condition (6)(c) in UE-111882 is as follows: "If Avista Corporation uses savings estimates that differ from the RTF, such estimates must be based on generally accepted impact evaluation data and/or other reliable and relevant source data that as verified savings levels, and be presented to the Advisory Group for comment." (Order 01, ¶28). We agree with the draft rule language that any alternative value should be "more appropriate for [a utility's] service territory," but we would also expect utilities to continue following the protocol outlined in the condition.</p> <p>We recognize the level of detail in the condition may not be necessary in a rule, particularly if the intent is to continue to address this issue within the conditions. We look forward to discussing this issue with stakeholders at the May 15 workshop.</p>

<p>Comment 12 Regarding Informal Draft WAC 480-109-010(8)</p>	<p>Current Text (8) Cost-effectiveness evaluation. A utility must evaluate all types of conservation using cost-effectiveness tests consistent with those used by the council, except low-income conservation programs. (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. (b) Low-income conservation programs may be excluded from portfolio-level cost-effectiveness calculations.</p>	<p>Proposed Text</p>	<p>Rationale for proposed change Public Counsel supports excluding low income weatherization programs from the portfolio level cost effectiveness analysis. We are interested in gaining an understanding as to how utilization of the Savings-to-Investment Ratio may modify or in any way affect the design or implementation of low income weatherization programs, from stakeholder comments and workshop discussions.</p>
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<p>Comment 13 Regarding Informal Draft WAC 480-109-AAA (3)</p>	<p>Current Text (3) Advance notification of filings. A utility must provide its conservation advisory group an electronic copy of all conservation filings that the utility intends to submit to the commission at least 30 days in advance of the filing. The filing cover letter must document the amount of advance notice provided to the conservation advisory group.</p>	<p>Proposed Text</p>	<p>Rationale for proposed change Public Counsel supports this proposed language. This has been standard practice for PSE, for example, and has greatly facilitated advisory group engagement, review, and consultation on conservation filings, and provides stakeholders an opportunity to craft consensus on issues in advance of filing at the Commission.</p>
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Comment 14	Current Text	Proposed Text	Rationale for proposed change
Regarding Informal Draft WAC 480-109- BBB	Conservation Reporting	Add subsection pertaining to BCP.	We note the current draft rule does not have a subsection regarding the biennial conservation plan. If the desire is for this reporting rule to comprehensively identify all required conservation filings with the Commission, we recommend a subsection be added regarding the BCP.

Comment 15	Current Text	Proposed Text	Rationale for proposed change
Regarding Informal Draft WAC 480-109- BBB(3)(a)(v)	(a) The biennial conservation report must include: *** (v) An independent third-party evaluation of portfolio-level biennial conservation savings achievement.		Public Counsel supports this proposed subsection. In our view this is a good example of a standard practice that has been included in the conditions to biennial target approval, and is now appropriate for inclusion in rule.

Comment 16	Current Text	Proposed Text	Rationale for proposed change
<p>Regarding Informal Draft WAC 480-109-BBB(4)(a) and (b)</p>	<p>(4) Plan and report review. (a) Interested persons may file written comments regarding the biennial conservation plan, annual conservation plan, and biennial conservation report within thirty days of the utility's filing. (b) Upon conclusion of the commission review of the utility's report or plan, the commission will issue a decision accepting or rejecting the calculation of the utility's conservation target; or determining whether the utility has acquired enough conservation resources to comply with its conservation target. If the utility does not meet its biennial conservation target described in WAC 480-109-010(2), the commission will determine the amount in megawatt-hours by which the utility was deficient.</p>		<p>Public Counsel seeks clarification as to the removal of rule language that the Commission may "approve with conditions" a utility's biennial conservation target. If the intent is to remove that language because it is redundant of the Commission's existing authority, we request that be noted in the Order adopting the revised rules, to clarify and confirm the Commission retains authority to approve biennial conservation targets subject to certain conditions.</p>

<p>Comment 17</p> <p>Regarding questions pertaining to possible statewide reporting metrics.</p>	<p>Measuring Progress Across Reporting Periods</p> <ol style="list-style-type: none"> 1. On which metrics should the Commission rely on to monitor energy and emissions intensity trends in utility service territories? 2. Should the rule require reports to include available energy and emissions intensity metrics? <p>Public Counsel does not recommend any specific metrics for the Commission to rely on at this time.</p> <p>To the extent the Commission would like to monitor energy and emissions intensity trends in utility service territories it may be more appropriate to obtain such data from utilities during the stakeholder review process following filing of the BCP and/or BCR, rather than requiring specific reporting metrics by rule. This would allow for greater flexibility to the extent improved metrics or data become available. In addition, we are also mindful that all utilities report to the Department of Commerce, and thus to the extent any statewide rules or other requirements are pursued on these topics, it might be most appropriate for Commerce to undertake such a statewide reporting effort.</p>
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