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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Washington Utilities and Transportation Commission's Inquiry on Regulatory Treatment for Renewable Energy Resources.	)	DOCKET UE-100849
	)	REPORT AND POLICY STATEMENT CONCERNING ACQUISITION OF RENEWABLE RESOURCES BY INVESTOR-OWNED UTILITIES
. . . . .	)	

1 **Summary.** In this Report and Policy Statement, the Washington Utilities and Transportation Commission (Commission) describes the issues addressed and stakeholder comments received during the inquiry on appropriate regulatory treatment for acquisition of renewable energy resources. The report explains the Commission's process during the inquiry, the Commission's statutory authority governing renewable resources and utility resource acquisitions, and how the Commission has applied this authority to prior resource acquisitions. Through a policy statement, the Commission discusses the criteria by which it will review the prudence of acquisitions of renewable resources or Renewable Energy Credits (REC) in three scenarios: (1) when the acquisition is to meet Washington's renewable portfolio standards (RPS) contained in the Energy Independence Act (EIA, also known as Initiative 937 or I-937); (2) when the acquisition is to meet the RPS, but the acquisition is in advance of the RPS deadline; and (3) when the acquisition is to meet an energy demand and the utility has already acquired other resources to meet the RPS. The Commission also discusses the conditions it will use to pre-approve utility acquisition of such renewable energy resources.

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I. INTRODUCTION

A. Background – Renewable Portfolio Standards

2 Over the last decade, policy makers have debated how the United States should generate the electricity it consumes, while considering how to increase the diversity of energy sources, reduce air pollution including greenhouse gases, and maintain a reliable and affordable electricity supply. Renewable Portfolio Standards, which require that electric power producers obtain a certain percentage of their power from renewable resources, such as wind, solar, or geothermal resources, are one approach to diversify energy sources and mitigate the effects of greenhouse gases. While a federal Renewable Portfolio Standard has been proposed, but not enacted, 29 states, including Washington, have adopted Renewable Portfolio Standards.

3 In the 2006 general election, Washington voters approved Initiative 937, the Energy Independence Act (EIA), now codified in Chapter 19.285 of the Revised Code of Washington (RCW). Among other measures, the EIA established an RPS for electric utilities in the state of Washington serving more than 25,000 customers. The law states:

> Each qualifying utility shall use eligible renewable resources or acquire equivalent renewable energy credits, or a combination of both, to meet the following annual targets:
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> (i) At least three percent of its load by January 1, 2012, and each year thereafter through December 31, 2015;
> (ii) At least nine percent of its load by January 1, 2016, and each year thereafter through December 31, 2019; and
> (iii) At least fifteen percent of its load by January 1, 2020, and each year thereafter.[1]

[1] RCW 19.285.040(2)(a).

4 RCW 19.285.030(18) lists nine types of "renewable resources," including wind, solar, and geothermal energy.[2] A renewable resource is "eligible" if the generation facility started operating after March 31, 1999, and certain types of facilities, such as distributed generation, earn a multiplier for the purposes of compliance. The EIA also authorized the use of "renewable energy credits (RECs)," sometimes referred to by the broad categorical term "green tags." A REC is a tradable certificate of proof of at least one megawatt-hour of an eligible renewable resource, which can be bought and sold with or separately from the electric power generated from the eligible renewable resource.[3]

5 The statute provides utilities with four alternative means of RPS compliance.[4] A utility may:

- Meet the targets by using eligible renewable resources, purchasing renewable energy credits, or some combination of those two;[5]
- Invest at least four percent of its total annual retail revenue requirement on the incremental costs of eligible renewable resources, renewable energy credits, or a combination of both;[6]
- Show that 1) its weather-adjusted load for the previous three years on average did not increase over that time period; 2) all new or renewed ownership or electricity purchases from non-renewable sources (other than daily spot purchases) were offset by equivalent renewable energy credits; and 3) the utility invested at least one percent of its total annual retail revenue requirement that year on eligible renewable

[2] As of 2009, 64 percent of the electricity sold to consumers in Washington was generated by fresh water hydroelectric dams, which, with limited exceptions, are not "eligible" resources under the EIA. *See* Washington Department of Commerce, *2009 Washington State Electric Utility Fuel Mix*, available at http://www.commerce.wa.gov/site/539/default.aspx.

[3] RCW 19.285.030(17).

[4] RCW 19.285.040 -.050; *see also* WAC 480-109-030.

[5] A utility's acquisition of "green power" under RCW 19.29A.090 does not count toward meetings its RPS. RCW 19.285.040(2)(f)(ii).

[6] RCW 19.285.040(1)(a). The incremental cost of an eligible renewable resource is the difference between the levelized delivered system cost of the eligible renewable resource and the levelized delivered cost of an equivalent amount of reasonably available nonrenewable resource. RCW 19.285.050(1)(b). The system analysis used will be reasonably consistent with principles used in the utility's resource planning and acquisition analyses.

resources, renewable energy credits, or a combination of both; or

- Show that events beyond the utility's reasonable control prevented it from meeting the target (such as weather-related damage, mechanical failure, or other such events).

6 Beginning in 2012, the EIA requires investor-owned utilities (IOUs) to report to the Commission on their progress in meeting the statutory renewable portfolio targets.[7] For a qualifying IOU, the Commission must determine compliance with the targets and assess penalties for noncompliance.[8] A utility that fails to meet the targets must pay a penalty of $50 for each megawatt-hour of shortfall.[9]

B. Renewable Resources Inquiry

7 In early 2010, with the concurrence of the Governor's Office, a number of legislators, and many stakeholders, the Commission undertook a review of existing policies, and possible future policies, relating to incentives of IOUs to acquire renewable electric energy and identify regulatory barriers or disincentives, if any, to obtaining renewable resources.[10] Specifically, the Commission focused its review on the existence of statutory or regulatory barriers, perceived or actual, to IOUs meeting their RPS requirements along with the examination of the application of the statutory "used and useful" requirement.[11]

8 On May 19, 2010, the Commission filed a Preproposal Statement of Inquiry (CR-101) with the Office of the Code Reviser to provide public notice that the Commission was beginning this inquiry. The Commission stated in the CR-101 that, with the input of utilities and other stakeholders, it would review and discuss:

- The progress of investor-owned utilities in meeting the renewable portfolio standards (RPS);

- Whether the existing statutory and regulatory frameworks impede compliance with RPS requirements;

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[7] RCW 19.285.070(1).

[8] RCW 19.285.060(6).

[9] RCW 19.285.060(1).

[10] March 31, 2010, letter from Jeffrey D. Goltz, Chairman, Washington Utilities and Transportation Commission, to Senator Phil Rockefeller and Representative John McCoy. A copy of this letter is attached as Appendix 1.

[11] *See* RCW 80.28.250.

- Whether the statutory and regulatory frameworks should encourage acquisition of renewable resources in excess of that required by the RPS;

- Whether the Commission should consider adopting rules or new regulatory practices that would provide incentives for utilities and customers to acquire renewable resources; and,

- Whether the Commission should propose any legislative changes relative to incentives for acquisition of renewable resources by utilities and customers.

9 Subsequent to its CR-101 filing, the Commission issued a Notice of Opportunity to File Statements of Issues and Written Comments, emphasizing that the inquiry was open-ended and that stakeholders were not limited in the issues they may wish to raise or comments they might make. The notice also scheduled two work sessions and set the submission deadlines for each round of comments.

10 Stakeholders representing Washington's investor owned electric utilities, industry and consumer groups, and energy efficiency and renewable energy advocates submitted statements by the comment deadline of June 11, 2010.[12] At the first work session held on June 22, 2010, stakeholders presented their positions and supporting arguments, sparking productive debate among the participants.[13]

11 On July 1, 2010, the Commission provided stakeholders with a consolidated list of issues to aid them in structuring additional responses for the Commission's review. The list did not include all issues raised by stakeholders, but instead focused on those issues the Commission deemed central to its inquiry. Finally, on August 18, 2010, the Commission held its second work session to discuss the topics on the consolidated list of issues and the responses provided by stakeholders. The five primary issues of discussion during the workshops included:

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[12] A list of all commenters in this inquiry is included as Appendix 2. Comments submitted by all participants in this inquiry are available at www.utc.wa.gov/100849. This policy statement addresses, in our view, the most urgent issues raised over the course of this inquiry. A number of stakeholders raised several issues that would require legislative changes. Though it is beyond the scope of the Policy Statement to address those issues, we will transmit those suggestions to the relevant legislative committees for their use.

[13] A list of all work session participants is included as Appendix 3.

1. Recovery of costs and demonstration of need;
2. Early compliance with renewable portfolio standard compliance;
3. Renewable energy credits (RECs);
4. Commission use of regulatory incentives; and
5. Commission consideration of "other issues"[14]

12 After providing some background on the Commission's statutory authority governing renewable resources and utility cost recovery, this Report and Policy Statement focuses on the first, second, and fourth topics. It specifically addresses uncertainty concerning demonstration of need for a resource under the EIA and creating incentives for early RPS compliance through preapproval of renewable resource acquisition.

II. STATUTORY AUTHORITY GOVERNING RENEWABLE RESOURCES AND UTILITY COST RECOVERY

A. General Commission Authority to Recover Costs of New Resources

13 The Commission is charged with "regulating in the public interest, as provided in the public service laws, the rates, services, facilities, and practices" of electric utilities.[15] As part of this obligation, the Commission must ensure that rates charged are "just, fair, reasonable, and sufficient."[16] The Commission has described its ratemaking responsibilities as follows:

> The Commission's duty under statute in the context of a general rate case proceeding is to determine an appropriate balance between the needs of the public to have safe and reliable electric and natural gas services at reasonable rates and the financial ability of the utility to provide such services on an ongoing basis. Thus, the end results of our orders in proceedings . . . must be to establish rates that are, in the words of our governing statutes, "fair, just, reasonable and sufficient" [citing RCW 80.28.010(1) and RCW 80.28.020] – fair to customers and

[14] Other issues included consideration of the environmental attributes of resources identified under the Public Utility Regulatory Policies Act, the risks associated with beginning construction on renewable projects that do not reach fruition ("dry hole risk"), changes to the RPS to include more resource types, and potential changes to the RFP process.

[15] RCW 80.01.040(2).

[16] RCW 80.28.010; *see* RCW 80.28.020.

> to the Company's owners; just in the sense of being based solely on the record developed in the proceeding following principles of due process of law; reasonable in light of the range of possible outcomes supported by the evidence and; sufficient to meet the needs of the Company to cover its expenses and attract necessary capital on reasonable terms.[17]

14 As part of the ratemaking process, the Commission considers whether and to what extent a utility should recover costs of its resource acquisitions. Before such costs are recovered in rates, a utility must demonstrate that resource acquisitions are "used and useful for service in this state,"[18] and "prudent." The question of prudency requires a utility to demonstrate that its acquisition costs were reasonable and in line with other available resources. These requirements are discussed in more detail in Sections III (A) and (B), below.

B. Integrated Resource Plans – Chapter 19.280 RCW

15 Washington utilities with at least 25,000 customers must prepare or update every two years an integrated resource plan (IRP).[19] The plan must include:

> (a) A range of forecasts, for at least the next ten years, of projected customer demand . . .;
> (b) An assessment of commercially available conservation and efficiency resources . . . ;
> (c) *An assessment of commercially available, utility scale renewable and nonrenewable generating technologi*es;
> (d) *A comparative evaluation of renewable and nonrenewable generating resources,* including transmission and distribution delivery costs, and conservation and efficiency resources using "lowest reasonable cost" as a criterion;
> (e) The integration of the demand forecasts and resource evaluations into a long-range assessment describing the mix of supply side generating resources and conservation and efficiency resources that will meet current and projected needs at the lowest reasonable cost and risk to the utility and its ratepayers; and

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[17] *Washington Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.,* Dockets UE-090704; UG-090705 (*consolidated*), Order 11, ¶ 18 (April 2, 2010), *citing Federal Power Comm'n v. Hope Natural Gas Co.,* 320 U.S. 591 (1944); *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679 (1923).

[18] RCW 80.04.250.

[19] RCW 19.280.030.

> (f) A short-term plan identifying the specific actions to be taken by the utility consistent with the long-range integrated resource plan.[20]

16 The purpose of such a plan is "to encourage the development of new safe, clean, and reliable energy sources to meet demand in Washington for affordable and reliable electricity."[21] Upon submittal, the Commission reviews and analyzes the IRPs,[22] and ensures that utility planning remains consistent with state law and Commission rules and practice.[23]

17 Important to this discussion, the Commission ensures that utility decisions conform to "public policies regarding resource preference adopted by Washington state or the federal government and the cost of risks associated with environmental effects including emissions of carbon dioxide."[24] The Commission has interpreted its rule as requiring utilities to include renewable technologies in their planning,[25] and it considers the information reported in a utility's IRP "when it evaluates the performance of the utility in rate and other proceedings."[26]

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[20] RCW 19.280.030(1) (emphasis added). Prior to the enactment of the IRP statute, the Commission had adopted under its general rule-making authority a rule requiring least-cost planning to accomplish much of what the legislation ultimately required with respect to investor-owned utilities.

[21] RCW 19.280.010. It is interesting to note that the legislation as introduced stated a somewhat more ambitious intent: "It is the intent of the legislature to establish a goal of encouraging the construction and development of renewable energy in the state of Washington to meet increasing demands for affordable and reliable energy." H.B. 1010, 59th Leg., §1 (2005).

[22] RCW 19.280.040(1). The statute does not authorize the Commission to "approve" the plans. In Docket UE-030311, Commission staff surveyed the practices of other states, and determined that most public utility commissions do not approve or reject integrated resource plans. The analysis is available at www.utc.wa.gov/030311.

[23] RCW 19.280.040 states: "The commission may adopt additional rules as necessary to clarify the requirements of RCW 19.280.030 ['Development of a resource plan – Requirements of a resource plan'] as they apply to investor-owned utilities."

[24] WAC 480-100-238(2)(b); *see also* RCW19.280.020(11).

[25] *In the Matter of the Commission's Investigation of Public Utility Regulatory Policies Act Standards Pertaining to Smart Metering and Time of Use Rate*, Docket UE-060649, Interpretive and Policy Statement Regarding Energy Policy Act of 2005 Standards for Net-Metering, Fuel Sources, Fossil Fuel Generation Efficiency and Time-Based Metering, ¶ 12 (August 23, 2005).

[26] WAC 480-100-238(6); *see* WAC 480-100-415(1)(a); WAC 480-108-040(13); WAC 480-108-090(2)(d).

C. Specific Provisions Relating to Acquisition of Resources

18 A number of statutes relate to a utility's acquisition of renewable resources. As discussed in the Policy Statement that follows, these have a significant role in defining the Commission's process and standards for reviewing a utility's acquisition of such resources.

1. Energy Independence Act (Initiative 937)

19 The Commission is responsible for determining "compliance with the provisions of [I-937]" and has adopted rules requiring the utilities to report on their conservation and renewable energy performance.[27] The utilities' first renewable energy performance filings are expected on June 1, 2012.[28] The EIA also directs the Commission to "address cost recovery issues" in a utility's acquisition of renewable resources to meet its RPS:

> An investor-owned utility is entitled to recover all prudently incurred costs associated with compliance with this chapter. The commission shall address cost recovery issues of qualifying utilities that are investor-owned utilities that serve both in Washington and in other states in complying with this chapter.[29]

20 The Commission did not address this statutory provision in adopting rules to implement the EIA. In its rulemaking order, the Commission observed that the

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[27] WAC 480-109-040(1) states that: "each utility must file a report with the commission and the department regarding its progress in meeting its conservation and renewable resource targets during the preceding year," and "[t]he report must include the utility's annual load for the prior two years, the total number of megawatt-hours from eligible renewable resources and/or renewable resource credits the utility needed to meet its annual renewable energy target by January 1 of the target year, the amount (in megawatt-hours) and cost of each type of eligible renewable resource used, the amount (in megawatt-hours) and cost of renewable energy credits acquired, the type and cost (per megawatt-hour) of the least-cost substitute resources available to the utility that do not qualify as eligible renewable resources, the incremental cost of eligible renewable resources and renewable energy credits, and the ratio of this investment relative to the utility's total annual retail revenue requirement."

I-937 also provides for assessment of penalties against those utilities that do not meet their RPS obligations (RCW 19.285.060(6)) and authorizes the Commission to determine if any penalties should be recovered in rates. *Id.* (4).

[28] At this time, it appears that utilities are meeting the requirements of the first RPS deadline. A chart showing IOU progress in meeting renewable portfolio standards is attached as Appendix 4. The information was gathered through Commission staff research and discussion with the IOUs.

[29] RCW 19.285.050(2).

statute "reiterates the Commission's longstanding practice concerning cost recovery of any investment" and that there was no need for rule language on this issue.[30]

21 In contrast to the directive that the Commission must allow a utility to recover all prudently-incurred costs when meeting its RPS obligation, the statute gives the Commission discretion on how to treat acquisition of renewable resources that exceed the RPS. It states that the Commission "may consider providing positive incentives for an investor-owned utility to exceed the targets established in RCW 19.285.040."[31] The statute does not specify a process for providing incentives. In its rule-making order, the Commission suggested, "Any utility may propose incentives and the Commission will consider them on a case-by-case basis."[32] Thus far, no utility has requested incentives for exceeding RPS targets.

2. Greenhouse Gas Emissions – Chapter 80.80 RCW

22 In 2007, the Legislature enacted a law designed to mitigate the impacts of climate change by reducing greenhouse gas emissions.[33] It established a greenhouse gas emission performance standard for baseload electric generation,[34] and stated that electric utilities may not enter into long-term financial commitments for baseload electric generation unless the generation complies with the performance standard.[35] Electric generation facilities powered exclusively by renewable resources, including hydroelectric dams, are deemed to be in compliance.[36]

23 With respect to investor-owned utilities, the Commission must enforce the performance standard "in a general rate case"[37] and address cost recovery issues in "a

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[30] *In the Matter of Adopting Rules to Implement the Energy Independence Act RCW 19.285 WAC 480-109 Relating to Electric Companies Acquisition of Minimum Quantities of Conservation and Renewable Energy*, Docket UE-061895, General Order R-546, Order Adopting Rules Permanently, ¶ 45 (Nov. 30, 2007), published at Wash. St. Reg. 07-24-012.

[31] RCW 19.285.060(6).

[32] Docket UE-061895, General Order R-546, ¶ 44.

[33] 2007 Wash. Laws Ch. 307, *codified as amended at* RCW 80.80.

[34] RCW 80.80.040(1).

[35] RCW 80.80.060(1).

[36] RCW 80.80.040(4); *see* RCW 19.280.020(13); WAC 173-407-110.

[37] RCW 80.80.060(2).

general rate case or other proceeding for the recovery of" costs.[38] A utility may apply to the Commission for a determination of whether a proposed transaction complies with the performance standard.[39] The Commission also has adopted rules in accordance with RCW 80.80.060(8).[40]

D. Other Laws Relating to Acquisition of Renewable Energy

1. Net Metering – Chapter 80.60 RCW

24 In 1998, in order to "[e]ncourage investment in renewable energy resources," the Legislature required electric utilities to allow customers with their own generating facilities (such as solar panels) to interconnect with the electric grid.[41] The legislation specifies that, by January 1, 2014, a utility must make available to such customers 0.5 percent of the utility's 1996 peak demand, reserving at least half of that for "net metering systems that generate renewable energy."[42] The customer's utility bill for a given period is based on the difference between the electricity supplied by the electric utility and the electricity generated by the customer and supplied to the grid.[43]

2. Green Power – RCW 19.29A.090(5)

25 Electric utilities must offer their customers a voluntary option to purchase electricity generated by certain renewable resources, commonly referred to as "Green Power."[44] The Commission has authority to approve the "rates, terms, conditions, and customer notification" of each investor-owned utility's Green Power options.[45] Green Power is

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[38] RCW 80.80.060(5), (6).

[39] RCW 80.80.060(5). Such an application could be in the context of a petition for a declaratory order under the Administrative Procedure Act, RCW 34.05.240. *See* WAC 480-07-930.

[40] WAC 480-100-405,WAC 480-100-415, WAC 480-100-425, WAC 480-100-435; *see In the Matter of Adopting WAC 480-100-405, WAC 480-100-415, WAC 480-100-425, and WAC 480-100-435Relating to Greenhouse Gas Emissions*, Docket UE-080111, General Order R-553, Order Adopting Rules Permanently (Nov. 14, 2008); published at Wash. St. Reg. 08-23-047.

[41] 1998 Wash. Laws Ch. 318, *codified as amended at* RCW 80.60.

[42] RCW 80.60.020(1)(a). "Renewable energy" sources include water, wind, solar, and animal waste sources, but not plant biomass. RCW 80.60.010(14).

[43] RCW 80.60.010(9); RCW 80.60.030; *see* Final Bill Report SHB 2773, *available at* http://apps.leg.wa.gov/documents/billdocs/1997-98/Pdf/Bill%20Reports/House/2773-S.FBR.pdf.

[44] 2001 Wash. Laws Ch. 214, § 28, *codified as amended at* RCW 19.29A.090.

[45] RCW 19.29A.090(5). The most recent updates to Washington investor-owned utilities' Green Power programs took effect pursuant to the Commission's open meeting no action agenda *See* Dockets UE-100107 (PacifiCorp), UE-070422 (Puget Sound Energy), UE-041067 (Avista).

separate from and in addition to the Energy Independence Act. Qualifying electricity or renewable energy credits obtained for and used in the Green Power program cannot be used to meet the Renewable Portfolio Standards of Chapter 19.285 RCW.[46]

III. COMMISSION CRITERIA FOR APPROVING ACQUISITION OF RESOURCES

26 In reviewing utility resource acquisitions, the Commission must make two determinations: first, whether the acquisition was "prudent," and second, whether the resource was "used and useful" as required by RCW 80.04.250.[47] Both of these determinations are made when the utility presents the resource acquisition to the Commission for approval and inclusion in rates. This section summarizes the criteria and standards the Commission has used in making prudence and "use and useful" determinations.

A. Prudence

27 In a 1992 case involving Puget Sound Energy's (PSE's) predecessor company, Puget Sound Power & Light Company, the Commission articulated the standard it would apply in determining prudence:

> The company must establish that it adequately studied the question of whether to purchase these resources and made a reasonable decision, using the data and methods that a reasonable management would have used at the time the decisions were made.[48]

28 The Commission continued:

> The prudence standard adopted in prior Commission orders is easily applied to any resource decision, whether it is to build or to purchase. The utility must first determine whether new resources are necessary. Once a need has been identified, the utility must determine how to fill that need in a cost effective manner. When a utility is considering purchase of a resource, it must evaluate that resource against the

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[46] RCW 19.285.040(2)(f)(ii).

[47] RCW 80.04.250 states in part: "The commission shall have the power upon complaint or upon its own motion to ascertain and determine the fair value for rate making purposes of the property of any public service company *used and useful* for service in this state . . ." (emphasis added).

[48] *WUTC v. Puget Sound Power & Light*, Dockets UE-920433, UE-920499, UE-921262, (consolidated), Nineteenth Supplemental Order at 10 (Sept. 27, 1994) [*Puget Prudence Case*].

> standards of what other purchases are available, and against the standard of what it would cost to build the resource itself.[49]

29 In other words, the utility (and, on review, the Commission) must first determine whether the resource is needed and, second, evaluate various alternatives available to meet that need. The "data and methods" used by the utility decision-makers must be reasonable. As part of that requirement of a reasoned process, the Commission has also required the company to maintain adequate contemporaneous records that will allow the Commission to evaluate its actions with respect to the decision-making process and to demonstrate that utility management kept its board of directors informed and involved the board in the decision process.[50]

B. Used and Useful

30 Whether the Commission will allow into rates the costs associated with a resource acquisition requires utilities to demonstrate that the acquisition is "used and useful" in the service of providing electricity to customers.[51] Neither the Commission nor Washington's courts have taken an overly strict approach to the construction of this statutory term. For example, where a telephone company installed conduit before it was needed because there was an opportunity to install it when streets were torn up for other purposes, the Washington Supreme Court determined that such plant is "used and useful."[52] The Court distinguished such plant held for future use from plant that has been abandoned.

31 The Commission has articulated the view that whether an asset is "used and useful" can be viewed by whether it provides a benefit to ratepayers in Washington, either directly or indirectly. In a 2005 general rate case with PacifiCorp, the Commission determined that plant in PacifiCorp's territory, but in a different control area, was not

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[49] *Id.* at 11.

[50] *WUTC v. Puget Sound Energy*, Dockets UE-090704 and UG-090705 (consolidated), Order 11, ¶ 320 (April 2, 2010).

[51] RCW 80.04.250; *see* Leonard S. Goodman, *The Process of Ratemaking* 799 (1998).

[52] *State ex rel. Pacific Telephone and Telegraph Co., v. Department of Public Service*, 19 Wn.2d 200, 230, 142 P.2d 498 (1943) [*Pacific Telephone*]. The court found the company had completed the work at a time when the Pacific Highway between Seattle and Tacoma would be paved, and that the company could lay the conduit at less cost before the roadway was paved. The court found this expense prudent and that it should be included in rate base.

used and useful in Washington.[53] We reiterated the flexible approach to construction of the statute, stating:

> Both common sense and hornbook utility law support our conclusion that RCW 80.04.250 requires a resource to be "employed in accomplishing something … beneficial" for Washington ratepayers ("in this state"), before they can be required to pay for it. Our Order allows these benefits to be direct or indirect, tangible or intangible, as long as they are reasonably quantifiable and commensurate with their costs.[54]

As stated by the state Supreme Court in the *POWER* case: "'Used' is defined as 'employed in accomplishing something'; 'useful' is defined as 'capable of being put to use: having utility: advantageous: producing or having the power to produce good: serviceable for a beneficial end or object.'"[55]

C. Commission Application of the Prudency and Used and Useful Standards

32 Over the past decade, the Commission has approved many facilities for inclusion in rates. These facilities are predominantly natural gas fired generators. However, PSE's sought and received approval for its Hopkins Ridge and Wild Horse wind generation facilities during this period.[56] In each circumstance, the questions of whether the acquisition was prudent and whether it was "used and useful" were

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[53] *WUTC v. PacifiCorp d/b/a Pacific Power & Light Company, In the Matter of the Petition of PacifiCorp for an Order Approving Deferral of Costs Related to Declining Hydro Generation*, Order 04, Docket UE-050684, Order 03, Docket UE-050412 at 11 (April 27, 2006). The Commission stated:

> We interpret the phrase "used and useful for service in this state" to mean benefits to ratepayers in Washington, either directly (e.g., flow of power from a resource to customers) and/or indirectly (e.g., reduction of cost to Washington customers through exchange contracts or other tangible or intangible benefits)

Id. at 21-22.

[54] *WUTC v. PacifiCorp d/b/a Pacific Power & Light Company*, *In the Matter of the Petition of PacifiCorp for an Order Approving Deferral of Costs Related to Declining Hydro Generation*, Order 06, Docket UE-050684, Order 05, Docket UE-050412, Order 02, Docket UE-060669, ¶ 27 (July 14, 2006) (footnote omitted).

[55] *People's Organization for Washington Energy Resources v Washington Utilities & Transp. Comm'n*, 101 Wash 2d 425, 430, 649 P2d 425 (1984) [*POWER*], *citing Webster's Third New International Dictionary* 2524 (1976).

[56] Furthermore, Avista has made significant efficiency improvements to its Noxon facility and Spokane River hydroelectric plants, which have contributed to its compliance with the RPS.

reviewed and tested against the utility's need for capacity and energy, the availability and cost of other generators in the market at the time of the acquisition, and the overall impact of the selected generator on the utility's resource portfolio. The Commissions consideration of these questions, often conflated somewhat in analysis, are reviewed in more detail below.

33 The utility's need for capacity and energy is fundamental to the decision to acquire or approve an electric generator. The link between prudency and "used and useful" is most prominent here. Not only do we examine the actual need for the facility to determine the prudency of the utility's decision, but we also examine the actual use of the proposed acquisition in light of the "used and useful" standard. Thus, to determine prudency, we look to the utility's future need from a more abstract, planning-based position and compare forecasted need with the benefits sought from the facility in question. We then examine the forecasted actual use of the facility to provide benefits to ratepayers and the company. The latter examination provides the foundation for concluding that the acquisition complies with the statutory requirement that facilities be "used and useful … in this state."[57]

34 In the context of our review, we recognize that a generator's useful life can span decades and will provide benefits over that same period. Therefore, we have not rigidly applied either standard to disapprove a generation facility that is too large for the immediate forecasted need.[58] Instead, we have recognized future power needs as a basis for determining compliance with both prudency and the used and useful tests.[59] In short, we have applied the "need" test very flexibly to consider future power requirements.

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[57] *See WUTC v. PacifiCorp d/b/a Pacific Power & Light Company, In the Matter of the Petition of PacifiCorp for an Order Approving Deferral of Costs Related to Declining Hydro Generation*, Order 04, Docket UE-050684, Order 03, Docket UE-050412 at 21 (April 27, 2006).

[58] *See WUTC v. Puget Sound Energy, Inc.*, Dockets UE-090704 and UG-090705 (consolidated), Order 11 (April 2, 2010); and *WUTC v. Avista Corporation, d/b/a Avista Utilities, In the Matter of the Petition for an Order Authorizing Implementation of a Natural Gas Decoupling Mechanism and to Record Accounting Entries Associated with the Mechanism*, Dockets UE-090134 and UG-090135 (consolidated) Order 10, at 73 (December 22, 2009).

[59] *See WUTC v. Avista Corporation*, Dockets UE-050482 and UG-050483 (consolidated), Order 05, at 46 (December 21, 2005); and *WUTC v. Puget Sound Energy, Inc.*, Dockets UE-090704 and UG-090705 (consolidated), Order 11, (April 2, 2010).

35 We have also recognized market availability as a basis for approving generation resources that may exceed the size necessary to meet contemporary demands. In this circumstance, regulated utilities were negotiating with independent power entities to acquire operating generators or generators that were near completion. The utilities were able to acquire these facilities at a price much lower than they could have self-built.[60] Here, the timing of the acquisition was not driven by immediate need, but by market availability. We were convinced, based upon the evidence presented, that when need could be more fully demonstrated, the cost to meet that need would be significantly higher than the purchase then before us. Thus, the economics of the acquisition decision played a dominant role in our decision-making – as it should.

36 Both need and market availability figure prominently in our policy statement below. As the RPS requirements are inflexible and deadline driven, we place less significance on demonstrated need for power and focus instead on the renewable energy necessary to meet the EIA requirements. We do this for two reasons: first, the EIA does not provide an off-ramp based upon capacity needs in the decision to acquire renewable resources. Rather, the law dictates the acquisition of renewable resources even if all capacity and energy needs have been met with other generation resources. Second, and related to the first, we know that generation acquisitions are lumpy[61] and, in a growing economy, electricity use increases, which increases the opportunity to use the acquired resource to meet demand. We also recognize other benefits from renewable resources, such as off-system and REC sales, that provide more immediate benefits to ratepayers and the company. Thus, we provide the flexibility to meet both the prudency and used and useful standards for resource acquisitions needed to comply with the EIA.

37 On the question of market availability, we have seen wind resources become the predominant resource option used and planned to meet the EIA's requirements. Evidence and research show that the economics of wind generators is almost entirely dependent upon the location of the facilities. As there are a finite number of reasonably economic wind sites in Washington, the competition for the best sites can

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[60] *See WUTC v. Avista Corporation*, Dockets UE-050482 and UG-050483 (*consolidated*), Order 05 (December 21, 2005).

[61] The word "lumpy" has become a "term of art" in recent Commission proceedings. While generally undefined, we define it here as the sometimes ambiguous relationship between the immediate need for capacity and the availability of generation resources. The term is usually used to describe the inability of a utility to precisely match a generation facility's acquisition with an immediate need for its capacity.

be fierce. All public utilities and independent power producers compete for the most economic sites available in the market. For this reason, we encourage regulated utilities to seek out and develop the best sites because both the company and ratepayer will benefit from such early movement in the wind marketplace. This could be true as well for solar, tidal and geo-thermal facility placement, but we have not seen this question presented in our proceedings to date.

38 Finally, any resource acquisition is "tested" by the utility to determine its benefits to existing resources used to meet demand. Stated in the form of a question: does the contemplated resource complement the utility's resource stack, including transmission? In all resource decisions, the utilities will perform this analysis as one means of determining the resource's costs and benefits. For example, PSE's Wild Horse wind facility is beneficially located close to its existing transmission system, which avoids transmission costs charged by the Bonneville Power Administration or other system owners. This type of analysis is presented to the Commission to support the utility's decision to add new generation to its existing portfolio. The EIA has not changed the utility's reliance on such analyses, and we do not expect this to change in the future.

39 In conclusion, the Commission has shown much flexibility in interpreting state law, rules, and policy, with the objective of supporting the acquisition of renewable resources and thermal resources made available in the marketplace. Our decisions were based, in part, on the understanding that these acquisitions were less expensive at the time of acquisition than they would have been if the utility had waited for need to "catch up" to availability. While a demonstration of need is still a component of the utility's analysis, we have relied less upon this evidence in making recent resource decisions.

40 The utilities and some other parties have encouraged us to clarify our practice regarding the acquisition of renewable resources. Apparently, despite the guidance provided in our recent decisions, these parties have expressed desire for other assurances of our intent with regard to such resources. Given our past support for renewable resources, we do not fully understand these concerns. That said, the Policy Statement below clearly expresses our continued support for renewable resources and the utilities that acquire them. Simply said, a resource acquired to comply with the EIA can be acquired in advance of need but must still be prudently acquired. No party suggested we alter the latter element of our prudency test. As to the "used and

useful" standard, renewable resources will not be held to a rigid test, but will still be examined for beneficial use in its operation. Should any question as to our intent remain, we will entertain them on a case-by-case basis.

IV POLICY STATEMENT

41 Based on the record in this proceeding, consideration of past practice and decisions, and additional research, and pursuant to RCW 34.05.230, the Commission sets forth the criteria the agency will use to approve the acquisition of renewable resources as prudent and "used and useful." Based on our experience and the participants' comments and discussion, we have organized the Policy Statement into the three scenarios we believe most likely to occur. These scenarios are as follows:

1. When the acquisition is required to meet the RPS and the acquisition is at or near the time of the statutory RPS deadlines;

2. When the acquisition is required to meet RPS and the acquisition is in advance of the statutory RPS deadlines; and

3. When the acquisition is in excess of the RPS.

In addition, we articulate our receptiveness, in limited situations, to a process for approval of renewable resources prior to their acquisition. The process we envision would reflect contemporary rules and practices for approval of generation resources, but would articulate, at least tentatively, a process for seeking such approval prior to acquisition.

A. Acquisition of Renewables to Meet RPS, at or Near the Time of the RPS Deadlines

1. Prudency: Determination of Need

42 As noted above, the EIA mandates electric utilities to acquire renewable generation whether or not the utilities "need" the resource to meet demand. Therefore, when a utility acquires a resource to meet the relevant RPS, the prudency standard's requirement to demonstrate "need" has been satisfied by the statute. The Commission must abide by that legislative determination. This does not relieve the utility of its obligation to show in its request to include a renewable resources in rates its capacity

and energy demands relative to its renewable resource acquisition. This remains important information that explains for utility's long-term plan for the facility and why it selected the resource as its preferred option. However, we will not disallow a renewable resource because the utility cannot demonstrate that a capacity or energy shortage exists.

2. Prudency: Evaluation of Alternatives to Meet Need

a. General Principles

43 A conventional prudency examination would compare the benefits and costs of a proposed resource acquisition with other resources available to the utility at the time of its decision. The principles of regulation dictate the utility to acquire the least-cost resource, so long as all other factors are equal. In this way, regulation strives to mimic the marketplace by seeking out the most economically efficient means of meeting a resource need. With regard to renewable resources, we employ the same regulatory principle with the following significant exception: When evaluating alternatives, the question for the utility, and for the Commission, is not whether the utility made the appropriate decision by comparing the cost of renewables with the cost of conventional resources. Rather, the question for the utility, and for the Commission, is whether the utility made a prudent decision in choosing among available renewable options.[62] Therefore, we will not expect a utility to present evidence comparing a renewable generator with a non-renewable alternative.

b. Prudency: Efficiency and Economics of Chosen Technology

44 A utility's decision to invest in a particular renewable technology appears far more complex than decisions regarding the acquisition of conventional resources. Unlike more common thermal generation options, renewable resources generally involve newer and relatively unproven technologies that may present operational challenges not present with thermal resources. For example, even though wind generators have been used for many years, they still require longer-term study to better determine

[62] There appeared to be some concern expressed by utility representatives that the Commission would judge the prudence of acquisition of renewable resources to meet RPS based on the price of competing conventional resources. That concern is unfounded. Because of EIA, a utility must acquire renewable resources even if the price of conventional resources is substantially less expensive. Comments of Puget Sound Energy, Inc., June 22, 2010, Work Session Audio Recording, 00:17:05.

wind patterns and strengths in order to project actual output with enough accuracy to rely upon for system planning. With few exceptions,[63] the ultimate output of a renewable plant is less predictable than the output from conventional plants, thereby making economic analysis more difficult to model and less certain as to its conclusions.

45 In addition, a utility's specific resource needs will dictate the selection of one renewable resource over another, even if the dollar per kWh of energy produced by each is the same. For example, some renewables may contribute more to baseload needs than others contribute, or have a higher peak capacity factor than others. Some may be further away from load centers, thereby requiring more transmission expense and possibly raising congestion issues.

46 Finally, we recognize how quickly technologies can rise to prominence in utility planning and development. As noted, wind is the technology experiencing the fastest growth in this region. However, solar and tidal technologies show great potential for development. We expect the costs of solar generators to decrease substantially in the years in which utilities must meet the RPS. Although still a nascent technology, tidal power has the potential to compete with wind and solar power for future investment capital. We view this "competition" as healthy and necessary to achieve the state's climate objectives in a cost-effective manner. The RPS should not determine winners or losers in the renewable technology race. Instead, the better policy for the Commission is to remain neutral and allow the market to determine which technology provides the greatest benefits at the least cost.

47 Given these uncertainties, we will continue to require a utility to submit studies and analyses explaining a selected technology's costs, benefits and impact on system operations. Specifically, we expect a utility to present the renewable options available to meet its need[64] and to explain its choice of a particular technology and the physical location of the facility. There is no bright line between the economic analyses we expect here and our expectations with regard to a utility's evaluation of renewable alternatives. Like Section IV (A) (2) (a) above, we wish to make clear that our expectation here is a comparison of available renewable technologies at the time

[63] Examples include hydroelectric turbine upgrades and bio-fuel facilities.

[64] Here, "need" can mean the capacity necessary to comply with the RPS or, in its more conventional sense, the capacity necessary to meet expected demand.

of acquisition. We do not expect a utility to compare a renewable technology with a conventional generator when acquiring to meet the RPS.

c. Prudency: Using RECs to Meet the RPS

48 A utility may comply with the EIA by purchasing renewable energy credits (RECs). We do not know whether this option is a viable strategy to meet a utility's long-term need to acquire renewable resources. Currently, RECs are sold primarily through private bi-lateral transactions, as there is no central and liquid market for their exchange. While we can foresee the development of a more vibrant and liquid market for RECs, that market does not exist today. Should one develop in the future, it may provide an option for a utility seeking to avoid investment in an evolving renewable market. In the near term, we see this option as best used to supplement self-generated RECs when necessary to comply with the EIA's annual targets. As with the comparative analyses required under Sections IV (A) (2) (a) and (b) above, should a utility select REC purchase as its primary means of meeting its RPS, then it must demonstrate how this option provides more economic benefits than acquiring a renewable resource.

3. Determination of Whether Resource Is "Used and Useful"

49 Once a renewable resource is placed in service to comply with the RPS, we will deem it "used and useful." Like the determination of "need" set forth in Section IV (A) (1) above, we view this conclusion to be dictated by the EIA.

4. Summary

50 The Commission remains fully supportive of the EIA's mandates and intent, and will continue to provide the flexibility necessary to allow a utility to invest in renewable resources without fearing disallowance because of lack of physical need and without having to compare the cost of a renewable with conventional generation. However, as is the case with Commission review of acquisition of conventional resources, we will ensure that the utility's decision-making process is thorough and prudent, and considers all relevant alternatives for acquisition of renewables, considering the costs of other renewable options, as well as the cost of RECs. We expect the utility to exercise reasonable business judgment in assessing these alternatives, including the size of the resource to be acquired and the timing of its acquisition.

B. Acquisition of Renewables to Meet RPS, but in Advance of the RPS Deadlines

51 In the two workshops, and in various written comments, certain parties expressed concern about the risk a utility may take if it acquires renewable resources to meet RPS, but in advance of the actual RPS deadline.[65] The concern articulated was that the Commission could disallow all or part of such acquisition either because it was not needed at the time it was acquired or because it was not "used and useful" when acquired.[66] We believe this concern is unfounded; we stated as much in the workshops and further articulate our position here. First, we point to our past practice described in Section III (C), wherein the Commission has allowed recovery of costs of conventional resources acquired in advance of need. As discussed in more detail below, we see no reason why we would not approve the acquisition of renewable resources under similar conditions. In addition, we have described in Section IV (A) our support for the acquisition of renewable resources to meet the RPS and our willingness to treat these resources with the flexibility necessary to carry out the intent of the EIA. We express here similar support for those resources acquired in advance of an RPS deadline.

1. Prudency: Determination of Need

52 While the EIA does not, by itself, determine whether such an acquisition before the RPS deadline is prudent, it points to such a decision. To give the utilities sufficient incentive and flexibility to achieve the EIA's goals, we would support the acquisition of renewable resources in advance of RPS deadlines if the early acquisition can be cost-justified. Conceptually, this is no different from a telephone company's installation of conduit under a road in advance of need because it had an opportunity to install the conduit when the streets were torn up for another purpose. The Washington Supreme Court recognized the economic rationality of such a utility decision,[67] as have we in our more recent decisions.[68]

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[65] *See* Comments of Avista Corporation at 2 (June 11, 2010); June 22, 2010, Work Session Audio Recording, 00:39:00 and 00:50:00; and August 18, 2010, Work Session Audio Recording, 00:53:15.

[66] *See* Section III B.

[67] *State ex rel. Pacific Telephone & Telegraph Co. v. Department of Public Service*, 19 Wn.2d 200, 230, 142 P.2d 498 (1943).

[68] *See* Section III C.

53 Among the factors to be considered are the relative cost of acquiring the resource earlier rather than later, the risk of a higher price if the resource is acquired nearer the RPS deadline, the anticipated ability of the utility to use or sell the power generated, the potential for sales of RECs until the output of the facility is needed to meet the RPS,[69] whether there are federal or state tax benefits that are available in the near term,[70] and the length of time between acquisition and the RPS deadline. In addition, because the productivity of renewable facilities can depend in substantial part on the location of the facility, acquiring a renewable facility earlier may secure a more productive (and therefore more cost-effective) facility. We again express our support for seeking out the least cost options and believe our expressed intent here will lead to this result.

2. Prudency: Evaluation of Alternatives and the Efficiency and Economics of Chosen Technology

54 The utility should evaluate alternatives and conduct the necessary technical and economic analyses in the same manner it does when considering alternatives to meet RPS, as described in Section IV (A) (2) (b) above.

3. Determination of Whether a Resource Is "Used and Useful"

55 The main concern expressed during the workshops when discussing acquiring renewable resources before the RPS deadline was that the Commission might, at the suggestion of a party, determine that the facility would not be "used and useful," and therefore not eligible to be included in rate base under RCW 80.04.250. We are convinced that the "used and useful" statute does not prevent acquisition of a renewable resource in advance of the RPS deadline. Indeed, in the context of conventional resources, we have allowed resources into rate base before they were needed to meet load.

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[69] PSE and PacifiCorp have earned revenue from the sale of RECs. *See*, e.g., *In the Matter of the Amended Petition of Puget Sound Energy, Inc., for an Order Authorizing the Use of the Proceeds from the Sale of Renewable Energy Credits and Carbon Financial Instruments*, Docket UE-070725, Order 03, ¶ 16 (May 20, 2010).

[70] Comments of Puget Sound Energy, Inc., June 22, 2010, Work Session Audio Recording 00:28:15; August 18, 2010, Work Session Audio Recording, 00:30:32; Comments of Avista Corporation, June 22, 2010, Work Session Audio Recording, 00:39:00; and August 18, 2010, Work Session Audio Recording, 00:53:57.

56 This conclusion is not driven entirely by the EIA. However, like the determination of prudency, the enactment of the EIA assists us in reaching this conclusion. Early acquisition of a renewable resource is "useful" in that it will meet the RPS at some point in the future. It also needs to be "used." Therefore, the utility must show that the resource produces benefits that offset the cost of early acquisition. This could include sale of energy generated from the plant, sale of RECs from the plant, or other value to the company attributable to the acquisition.

4. Summary

57 In sum, the Commission will consider utility acquisition of resources to meet RPS, but in advance of need, using the same criteria as when the utility acquires such resources at or near the RPS deadline, though there will be additional consideration relating to the timing of the acquisition. Again, because these are complex economic decisions, the Commission expects utility management to present a cogent and detailed analysis of the renewable resource's costs and benefits, and to demonstrate the utility engaged in a reasoned process involving a thorough and careful evaluation of its technical and economic options.

C. Acquisition of Renewables that Exceed the RPS

58 In the workshops, the Commission posed the question of how a utility should judge, and the Commission review, utility decisions to acquire renewable resources that would exceed their RPS. There was agreement by all who participated in that discussion that the decision between a renewable and a conventional resource in that context should be one made on economics. In other words, the renewable resource would have to compete favorably on costs with the conventional resource.[71]

1. Determination of Need

59 Consistent with the discussion at the workshops, the determination of need for the resource would be based on the same criteria as the acquisition of any conventional resource. The EIA does not play a factor in this determination.

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[71] Comments of Puget Sound Energy, Inc., June 22, 2010, Work Session Audio Recording, 00:22:30. Of course, included in the economic analysis should be the potential for off-system sales of any excess energy as well the sale of any available RECs attributable to the renewable acquisition, given that the green energy would not be needed by the utility to meet its RPS.

2. Evaluation of Alternatives

60 In evaluation of alternatives, there was some disagreement about what should be included in the economic analysis. Advocates for renewables were clear that that some cost of carbon should be considered in the economic evaluation.[72] On the other hand, representatives of industrial customers argued that speculative costs of carbon should not be assumed.[73]

61 We believe it appropriate that utilities may assume some cost of carbon in making their resource acquisition decisions. Washington law requires utilities to make some assumptions in this regard in the preparation of their integrated resource plans.[74] Further, the EIA gives the Commission authority to provide incentives for utilities to exceed their RPS.[75] Presumably, that would not have been necessary if the drafters of the Initiative had thought that economics alone would drive utilities to acquire renewable above their RPS.

62 Because Washington's IOUs do consider possible costs of carbon in their resource planning, it would seem incongruous if they did not also consider such costs in making resource decisions. Therefore, if a utility seeks to acquire resources to meet loads, and it has already acquired renewable resources to meet its RPS, it may assume in its economic analysis a cost of carbon consistent with the range of assumptions in its IRP.[76] The Commission will not second-guess adding such carbon cost assumptions. Indeed, we read state law as permitting us to encourage evaluation of environmental impacts of resource acquisition in our approval process.[77] However,

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[72] Comments of the Joint Coalition, August 18, 2010, Work Session Audio Recording, 02:28:40.

[73] Comments of Industrial Customers of Northwest Utilities at 10 (July 22, 2010).

[74] In preparing their IRPs, utilities must consider in the least cost mix of resources "public policies regarding resource preference adopted by Washington state or the federal government and the cost of risks associated with environmental effects including emissions of carbon dioxide." RCW 19.280.020(11); *see also* WAC 480-100-238(2)(b).

[75] RCW 19.285.060(4).

[76] While we discuss the analysis of carbon costs here in the context of renewable acquisition in excess of the RPS, we expect the costs of carbon to be considered and demonstrated by a utility in any circumstance involving the acquisition of resources.

[77] *See* RCW 43.21C.020(2) ("[I]t is the continuing responsibility of the state of Washington and all agencies of the state to use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may: . . . (g) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources).

we will not impose, at least at this time, any mandatory consideration of a cost of carbon for resource acquisition beyond the RPS. That issue was not raised in any detail in the proceeding and would take more time and more process to determine. On that issue, it may be more appropriate to await clearer direction from the Legislature or the Congress.

3. Determination of Whether Resource Is "Used and Useful"

63 The evaluation of whether a new renewable resource acquired to serve load, but not to meet RPS, will be done by the same standard as any other resource acquisition.

4. Summary

64 In sum, an IOU considering the acquisition of a renewable resource in excess of the RPS requirements would be required to demonstrate first that the resource fills a power or capacity need. The utility would also be required to demonstrate that the proposed renewable resource would compete favorably in an economic comparison with all other resource options, both renewable and conventional.

D. Assurance of Cost Recovery

65 As discussed in Part III above, the Commission has rarely disallowed on either prudency or "used and useful" grounds a utility's resource acquisition. In those rare instances where there was disallowance, it was minimal and, frankly, warranted. Accordingly, we believe that, in general, utilities can proceed with resource acquisitions under the historic practice, and with the guidance of this Policy Statement, without fear of any arbitrary post-acquisition disallowance.[78]

66 Notwithstanding our view that post-acquisition prudence review should not be discomforting to utilities, we understand that perception is sometimes as important as reality, and understand that fear of disallowance can add to the risk that investors perceive when considering investments in utilities with obligations to acquire renewable resources. This can be particularly true given the uncertain economics surrounding renewable acquisition decisions and the lack of a lengthy track record of

[78] In addition, utilities should take some solace in the fact that their acquisition strategies to meet I-937 requirements have been included in their integrated resource plans (IRPs), and those plans have been vetted by the Commission. In review of the Commission's IRP processes in the preparation of this Policy Statement, we believe that the Commission's review can be even more thorough, and we intend to augment our review process of utility IRPs in the future.

post-acquisition review by state commissions in general and this Commission in particular.[79]

67 Accordingly, we are receptive to petitions to approve as prudent the acquisition of renewable resources in limited contexts and with conditions, and also to determine, in advance of acquisition, that the facilities once placed into service will be "used and useful" within the meaning of RCW 80.04.250.

68 This receptiveness is not without some procedural trepidation. At the workshops, utility proponents of pre-approval of renewable resource acquisitions offered no details as to the pre-approval process they envisioned. They expressed their intended objective of cost-recovery, without explaining the process by which such decisions would be made.[80] One can envision an elaborate process with intervenors, lengthy hearings, and perhaps even judicial appeals.[81] Despite these procedural uncertainties, the utilities expressed a desire for some sort of process that is optional with the company so that small acquisitions, or those that may come on the market for a limited time, need not await consideration.[82]

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[79] We are confining our statement of receptiveness to a pre-approval process to acquisition of renewable resources. We are not stating any receptiveness to any change in procedure for acquisition of conventional resources.

[80] PSE commented that a pre-approval process would not be desirable to the company if it were attempting to quickly acquire a resource, but when making a decision to acquire a large resource with extensive lead time, the company suggested that the Commission could approve the type and size of a potential acquisition, but not address other issues of prudence until a general rate case. (Comments of Puget Sound Energy, Inc., August 18, 2010, Work Session Audio Recording, 00:32:44). PacifiCorp offered two approaches for cost-recovery mechanisms specific to renewable resource acquisitions from other states in its service territory, including a "renewable adjustment clause" from Oregon, which is an annual adjustment wherein the Oregon Commission reviews the costs of renewable resources and associated transmission while the resource is under construction, and then allows the acquisition to be added to rates when the resource comes online. PacifiCorp also cited a "post-test-year adjustment" from California, which is an accelerated, 120-day process allowing the company to recover the costs of its large capital additions outside of general rate cases (Comments of PacifiCorp, August 18, 2010, Work Session Audio Recording, 00:42:36).

[81] A petition for preapproval would likely be considered a request to commence an adjudication under the State Administrative Procedure Act (RCW 34.05), requiring an opportunity for interested persons to participate, and the availability of judicial review, should an intervenor or company disagree with the Commission's decision.

[82] Comments of Puget Sound Energy, Inc., August 18, 2010, Work Session Audio Recording, 00:30:47 and 00:33:37.

69 We envision one type of process for petitions to approve resources to be acquired to meet RPS and a slightly more elaborate process where the acquisition of renewables is not required by the RPS. There are more difficult comparisons for the utility to make in the latter context, and, given the uncertainty of the economics of the externalities of non-renewable resources, the decision-making may be more complex.[83]

1. Approval before Acquisition of Renewables to Meet RPS

70 The Commission would be receptive to a petition for approval of the resource selection, not the ultimate cost, in advance of acquisition of a renewable resource to meet RPS. This would ensure that utilities have incentives to acquire or construct the least cost resource and to efficiently manage their costs, which will benefit both ratepayers and shareholders. The details of the petition would provide the same information we now require for the inclusion of resources in rates, as clarified by this Policy Statement.

71 The Commission would set the petition for hearing under the Administrative Procedure Act and allow other interested persons to intervene and present evidence, both on the issue of need for the resource and the prudence of the decision-making process. The Commission would strive to conclude the proceeding in an expeditious manner.[84]

72 The Commission may approve the acquisition, condition the approval, deny the acquisition, or decline to rule. Any Commission approval is limited to the scope of the facility as presented in the petition. After the acquisition is completed and placed into service, the Commission will review its costs to determine if they were prudently incurred. If, subsequent to the approval but prior to acquisition, circumstances change such that the utility's decision or the Commission's approval would warrant

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[83] The complexity of evaluating acquisition of renewables with acquisition of conventional resources makes a preapproval process more compelling in that context. We have sympathy with the utility decision-maker who, perhaps trying to do the right thing, recommends acquisition of a renewable resource in the face of uncertain economics without a good understanding of whether it would survive a prudence review by the Commission.

[84] The utilities should recognize that, while the Commission can control the pace of the proceeding to some extent, we cannot anticipate all factors that could contribute to delay. Accordingly, if a utility wishes to exercise the option for such a pre-approval process, it should do so with the knowledge that it may take at least several months, if not longer, depending on the complexity of the acquisition and the number of interested parties.

reevaluation, the utility must immediately inform the Commission of the new information with a recommendation on whether the acquisition should proceed.[85] Upon receipt of such information, or other relevant information, the Commission may modify its decision before acquisition.

2. Approval of Acquisition of Renewables in Excess of RPS

73 The Commission would be receptive to a petition for approval in advance of acquisition of a renewable resource to meet load but not required by RPS. This petition would be subject to the same conditions described in Section IV (C) above, and to additional conditions. The utility must present evidence of its rationale for acquiring a renewable resource instead of a conventional resource, including evidence of the price associated with any externalities attributed to the conventional resource and the impact on ratepayers of the alternative resource options.

V. CONCLUSION

74 In our view, this policy statement is an appropriate means to express our current thinking on utility acquisition of renewable resources to comply with the RPS requirements of the EIA. A policy statement allows the Commission to evaluate, as we did here, the many facets of the issue of approval of acquisitions to meet RPS deadlines in the near term and in advance of those deadlines to ensure that utilities achieve the targets set by voters in I-937.

75 The Commission will continue to evaluate utility petitions on a case-by-case basis, but this policy statement is intended to provide reassurance to utilities that while the familiar standards for approving any resource acquisition, as clarified above, will apply to acquisitions of renewable resources. As noted herein, we will consider the "prudency" and "used and useful" requirements to be met for renewable resources

[85] For example, assume that in the early 2000's, a utility sought to undertake the construction of a coal-fired generating project. However, before planning of the facility was complete and before construction had begun, circumstances changed due to the emphasis on climate change, renewable energy resources, and the possibility of federal cap-and-trade legislation. In that case, it would be understandable and prudent for the utility to discontinue its work on the project. If we further assume that in the early 2000s, the Commission had implemented a pre-approval process of the type we describe in this Policy Statement, such that the utility would have received pre-approval before commencement of construction, but before the changed environmental context of coal-fired plants, we would hope that the utility would have come back to the Commission to request reevaluation of whether the project should proceed. That is the sort of reevaluation we would expect under our policy stated here.

acquired to meet RPS deadlines. Further, it offers the conditions under which the Commission would be receptive to a petition for preapproval in advance of an acquisition. In those proceedings, we encourage the companies, Commission Staff, Public Counsel, and other parties to test, and help us improve, the policy we here describe and adopt.

DATED at Olympia, Washington, and effective December 30, 2010.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner