



**PUBLIC UTILITY DISTRICT NO. 1 of CHELAN COUNTY**  
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August 15, 2007

Liz Klumpp  
Washington Department of Community,  
Trade and Economic Development  
PO Box 43173  
Olympia, WA 98504-3173

Re: Chelan PUD's response and comments to CTED proposed rules for the Energy  
Independence Act dated July 17, 2007 (Draft)  
E-filed to [elizabethk@cted.wa.gov](mailto:elizabethk@cted.wa.gov)

Dear Liz:

Thank you for the opportunity to comment on Washington State Department of Community, Trade and Economic Development's (CTED) proposed rules for implementing the Energy Independence Act. We appreciate all of the efforts being made by CTED to solicit, collect and compile input from interested parties with many different viewpoints. Chelan PUD has reviewed the July 17 draft rule, focusing on potential discrepancies between it and the initiative, and we have suggested ways that the draft rule could be brought into conformance with the statute. Our primary purpose for doing so is to protect our customers from regulatory requirements and constraints that are not based upon the language of the initiative and either do not add value or restrict the flexibility afforded utilities by the initiative.

A redline of the July 17 proposed draft rules is enclosed. We appreciate your consideration of the comments in this letter as well as the edits made in the redline of the draft rules. Not all suggested edits to the draft rules are addressed in this letter.

As you know, the initiative is divided into two sections, requiring utilities to:

- pursue all available conservation that is cost-effective, reliable, and feasible; and
- meet annual targets for the use of eligible renewable resources.

Our comments cover each of these areas.

## **A. Conservation-Related Issues**

- 1. CTED should clarify that a utility is only required to document that it has identified its conservation potential consistent with the methodology used by the NWPPC in its Fifth Power Plan. CTED should also remove all provisions requiring a specific methodology or result in a specific numeric outcome or target.**

The initiative provides that it is the responsibility of each utility to identify its achievable, cost-effective conservation potential through 2019. The only limitation is that the utility must do so using methodologies consistent with those found in the Council's most recently published regional power plan. Specifically, the initiative provides that:

By January 1, 2010, using **methodologies consistent** with those used by the Pacific Northwest electric power and conservation planning council in its **most recently published** regional power plan, each qualifying utility shall identify its achievable cost-effective conservation potential through 2019. At least every two years thereafter, the qualifying utility shall review and update this assessment for the subsequent ten-year period. RCW 19.285.040(1)(a)(emphasis added).

The utility is then to establish and meet biennial targets for achieving that potential. RCW 19.285.040(1)(b).

CTED initially interpreted "most recently published" NWPPC plan to include plans adopted after enactment of the initiative. The District pointed out in its May 29, 2007 comments that inclusion of future power plans would violate the Washington State Constitution because it would effectively delegate legislative power to the NWPPC. Therefore, we suggested that "most recently published" be defined to mean the NWPPC's Fifth Power Plan, which was the most recently published plan before the initiative became law, and to not include the most recently published versions at any point in the future.

Our understanding is that CTED agrees that mandatory implementation of methodologies contained in future NWPPC power plans would violate the State constitution, but believes that this problem can be obviated by making the application of future power plans optional. Consequently, CTED revised WAC 194-37-050(1) to specify that a utility shall use methodologies consistent with the NWPPC's Fifth Power Plan. However, the draft goes on to provide three specific methodologies to be used by utilities, a "Conservation Calculator," a "Modified Conservation Calculator," and a "Utility Specific Analysis." WAC 194-37-050(2)(A).

The District has two concerns with these three methodologies. First, their overly-prescriptive nature contravenes the initiative. The initiative specifically avoids dictating specific targets/goals

regarding conservation; instead, it only requires the use of a consistent methodology. The initiative recognized that individual utility conservation targets/goals are best established through the integrated resource planning process, which can better reflect local conditions and situations. CTED's proposed rule greatly reduces this flexibility to make sound decisions based upon local conditions by mandating prescriptive methodologies. Several examples of the overly prescriptive nature of the three methodologies are described below.

As one example, the "Modified Conservation Calculator" has a fixed list of adjustments that can be made to it. WAC 194-37-050(2)F. Specifically, it provides that a utility can document consistency "by making the following adjustments" to the NWPPC analysis. Any adjustment not on the list is at least implicitly barred, even if a utility made such an adjustment as part of a methodology consistent with those used by the NWPPC.

As another example, the "Utility Specific Analysis" requires the utility to analyze multiple conservation scenarios, including a scenario under which the utility would accelerate conservation acquisition in the earlier years, and then select the scenario that "has the higher net present value or lower risk." WAC 194-37-050(2)G. Prescribing how a utility will select a certain conservation scenario exceeds CTED's authority under the initiative by dictating a particular outcome rather than a consistent methodology. Similarly, the "Utility Specific Analysis" requires that the utility use "NWPPC's twenty-year achievable conservation penetration rates of 85% for retrofit measures and 60% for new construction or long-lived product measures." WAC 194-37-050(2)Gi.h. This, too, exceeds CTED's authority.

Our second concern is that the proposed rule does not clearly provide that the application of these three methodologies by qualifying utilities is truly optional.

Therefore, the District recommends that CTED strike all references to "Conservation Calculator," a "Modified Conservation Calculator," and the "Utility Specific Analysis." It is worth noting the WUTC's pending draft rules avoids this problem by simply providing as follows: "When developing this projection, utilities must use methodologies that are consistent with those used by the Council in its most recent regional power plan. A utility may, with full documentation on the rationale for any modification, alter the Council's methodologies to better fit the attributes and characteristics of its service territory." WAC 480-109-010(i). CTED should take this same approach.

## **2. CTED cannot amend the definition of "conservation" contained in the statute.**

The initiative defines "conservation" to mean "any reduction in electric power consumption resulting from increases in the efficiency of energy use, production, or distribution." RCW 19.285.030 (4). However, CTED redefines "conservation" in the draft regulations:

A measure or program can be reported as "conservation" if it demonstrates the following:

The measure and the estimate of its savings, was included in the utility's ten-year resource potential and its biennial conservation target, and

The conservation has a measure life of at least two years, or, if the measure life is less than two years the utility can verify that it has acquired the conservation twice over the biennium, and

Meets the definitions of conservation and cost effective as contained in WAC 194-37-030, and

The NWPPC includes the measure or program in its power plan, or the measure or program is not identified by the NWPPC, but it meets the definitions in RCW 19.285.030, and

The utility included the conservation resource in the analysis and results of integrated resource plan pursuant to RCW 19.280.030 and its conservation targets pursuant to RCW 19.285.040. WAC 194-37-060(2).

As noted above, an agency cannot simply rewrite a statutory definition in its regulations. In fact, the WUTC draft regulations simply repeat the statutory definition, adding no additional qualifications. CTED should do the same.

**3. CTED is not authorized to change the plain English meaning of “feasible,” and should defer to decisions made by utilities in determining what conservation measures are cost-effective, reliable and feasible.**

RCW 19.285.040 requires that “**Each qualifying utility shall pursue all available conservation that is cost-effective, reliable, and feasible.**” (Emphasis added.) The statute, however, does not define “feasible.” Therefore, the plain English definition applies. Webster’s defines “feasible” as “capable of being done or carried out.” CTED is within its authority to include a definition in its regulations, but it must generally comport with the plain English definition.

The July 2 CTED draft contained the following definition: “‘Feasible’ means that a resource would be expected to be offered for acquisition by the entity able to make that offer in response to an offer by a qualifying utility to pay up to the utility’s full avoided cost, minus program administration costs, for the savings over the life of the measure.”

Stakeholders at the July 10 meeting with CTED suggested that this definition is very confusing, and does not comport with the dictionary definition of feasible. CTED indicated that it would be dropping this definition because it competes with the draft language in WAC 194-37-060, which now provides that:

A public utility may document shortfalls in meeting its conservation target that result from any conservation measures that prove not to be feasible. For purposes of assessing achievement of conservation targets, a utility may retrospectively reduce its target by such documented shortfalls. Documentation that a conservation measure is not feasible should include, at a minimum, evidence that: (i) such conservation measure was offered

for at least twenty-four months to customers likely to achieve savings from installing the conservation measure; (ii) that the offer(s) were made directly to the customers; (iii) that the utility made a good faith effort to persuade the customer(s) to install the conservation measure; and that the utility offered to pay the customer an incentive in an amount equal to the utility's full avoided cost minus administrative costs over the lifetime of the measure, up to one hundred percent of the incremental cost of the measure. The utility may deduct this conservation potential from the conservation target in any subsequent biennium during which such offer is repeated and outstanding. WAC 194-37-060(10).

This is another instance where the proposed rules reduce the flexibility provided for in the initiative. The initiative places on utilities the responsibility to "pursue all available conservation that is cost-effective, reliable, and feasible." It defines "cost-effective," but not "reliable" or "feasible." Presumably, that reflected a decision to leave the definition of the latter two terms to the discretion of each utility.

Instead, the proposed rules define "feasible" to mean that utilities must offer their customers a specific type of contract, one that offers them "an incentive in an amount equal to the utility's full avoided cost minus administrative costs over the lifetime of the measure, up to one hundred percent of the incremental cost of the measure." Moreover, the contract must be made available for two years, during which time the utility must make a "good faith effort to persuade the customer(s) to install the conservation measure." This level of specificity has no relationship to whether a conservation measure is feasible, i.e., "capable of being done or carried out." Except for the first two sentences, this section should be stricken.

Further, as noted in our prior comments and as addressed above, decisions related to cost effectiveness, reliability and feasibility are best assessed by each qualifying utility, based on its particular circumstances.

#### **4. CTED cannot require that publicly-owned utilities hold a public hearing regarding their conservation measures.**

The initiative requires that utilities make their conservation targets "publicly available." RCW 19.285.040(1)(b). It also requires that a utility's annual reports to CTED regarding its progress in meeting conservation targets be made "available to its customers." RCW 19.285.070(3).

However, CTED has included a provision requiring utilities to hold a public hearing:

A utility will hold a properly noticed public hearing regarding their assessment of conservation potential, and adopt the ten-year conservation potential and the two-year conservation targets by action of the utility's governing board in a public meeting. Such public hearing may be conducted separately, or as part of public hearings conducted for resource planning, budget setting, or other related processes. The public notice will indicate that the hearing agenda includes the establishment of the utility's ten-year conservation resource potential and two-year conservation targets. 194-37-050(2)C.

If the drafters of the initiative had intended to require public hearings, they easily could have so provided. Having chosen instead to require only public availability, CTED has no authority to override that judgment. This provision should be stricken and replaced with the following: “A utility shall make its biennial acquisition target publicly available.”

**5. CTED has no authority to mandate that conservation targets be based on a utility’s share of regional load.**

As already noted, the initiative directs utilities to “pursue all available conservation that is cost-effective, reliable, and feasible.” RCW 19.285.040(1). In doing so, utilities must use methodologies consistent with those of the NWPPC. RCW 19.285.040(1)(a).

Now, when using the NWPPC Conservation Calculator, CTED is requiring that the utility also calculate its conservation targets based on its pro rata share of regional load: “Per the conservation calculator, the public utility will document its calculation of its pro rata conservation targets for compliance based on its share of regional load using the NWPPC’s conservation calculator.” WAC 194-37-050(2)E.i. In addition to being circular, this provision mandates a specific methodology, in violation of the initiative’s language providing simply for use of a consistent methodology. Also, nothing authorizes CTED to require a utility to calculate its pro rata conservation targets based on its pro rata share of regional load. This provision should be stricken.

**6. CTED cannot amend the definition of conservation by limiting it to “discrete” distribution system upgrades.**

As noted earlier, the initiative defines conservation to mean “any reduction in electric power consumption resulting from increases in the efficiency of energy use, production, or distribution.” RCW 19.285.030(4). As to conservation resulting from efficiency achieved in the distribution system, CTED has amended this definition as follows: “To the extent that a utility can demonstrate that a **discrete** distribution system upgrade or management practice results in lower line losses and/or transformation losses, the avoided energy supply requirement to serve customers may be included in the utility’s calculation of compliance with the requirements of RCW 19.285.040.” WAC 194-37-070(1) (emphasis added).

There is no statutory basis upon which to limit distribution efficiencies to “discrete” distribution system upgrades. In fact, such a limitation is directly contrary to this provision’s use of the broadest possible term, “any.” Any reduction in power consumption resulting from distribution system upgrades, whether “discrete” or not, falls squarely within the definition of “conservation.” CTED should delete this limitation.

**7. CTED cannot bar a utility from counting conservation measures identified after the conservation targets were established.**

The initiative requires utilities to establish a biennial acquisition target for cost-effective conservation, and then meet that target within the subsequent two-year period. RCW 19.285.040(1)(b). Nothing in the language suggests that a utility can only meet the target by

implementing measures that were identified at the time the biennial target was established. Nevertheless, CTED's draft attempts to add that limitation: "Only those programs and measures included in the utility's conservation target shall be included in measurement of conservation achievement." WAC 194-37-070(1). Not only does this limitation lack a statutory basis, but it frustrates the purposes of the statute by "freezing" the list of measures available to a utility to meet its target. This limitation should be stricken.

## **B. Renewables-Related Issues**

### **1. When must utilities demonstrate compliance with the RPS percentage requirements?**

We are aware that there has been considerable controversy regarding the interpretation of RCW 19.285.040(2)(a), particularly regarding the phrase "by January 1, 2012." (Emphasis added.) Renewable advocates have argued that this means that utilities must have signed contracts in place on January 1, 2012, sufficient to meet the three percent requirement for 2012. Some utilities have instead pointed to RCW 19.285.040(2)(e), which provides that a utility's requirements may be satisfied "for any given year with renewable energy credits produced during that year, the preceding year, **or the subsequent year,**" arguing that a utility has until December 31, 2013 to satisfy the three percent requirement for 2012, and need not have any contracts in place on January 1, 2012.

The District finds these interpretations neither workable nor compelled by the language of the statute. The first interpretation requires the utility to anticipate the number of credits it will need for 2012 on January 1 of that year. This is particularly problematic in the case of a utility, such as the District, that will be using incremental hydro to satisfy at least a portion of its renewable requirements. Obviously, it is impossible to foresee on January 1 what type of water year or weather patterns will unfold for the remainder of that year. Utilities should not be forced to guess regarding such an important matter, particularly when faced with potential liability for monetary penalties.

At the same time, the District appreciates the concern created by the prospect of a utility waiting until December 31, 2013 to satisfy its renewable requirement for 2012. Therefore, we propose a third, "middle ground" approach that may resolve this matter to the satisfaction of all involved. It would require that, as of January 1 of each year, each qualifying utility would be required to meet its renewable requirement for the preceding year, using credits produced during the preceding two years. In the event that enough credits were not produced during the preceding two years to meet the requirement of the preceding year, the utility would be required to make up the shortfall in the third year (either contractually or through its own generation).

For example, by January 1, 2012, a utility would be required to have produced enough credits in 2010 and 2011 to reach three percent for 2011. If an insufficient number of credits were produced, the utility would be required to be in a position to make up the shortfall in 2012. This would certainly meet both the letter and spirit of the requirement that the three percent level be reached "by" January 1, 2012. Equally important, it would establish a procedure for future years

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that would allow utilities the flexibility to use credits produced over a historical two-year period, rather than only a one-year period.

This approach is completely consistent with the language of the initiative and allows utilities to know what will be needed to meet the renewable requirements. RCW 19.285.040(1)(e) provides that a renewables requirement “may” be met for any given year with renewable energy credits produced during that year, the preceding year, or the subsequent year. Because the initiative uses “may” instead of “must,” CTED would certainly be within its authority to allow utilities to use credits accumulated over a historical two-year period.

Again, we appreciate your hard work on these regulations, and look forward to continuing to work closely with you on bringing them to a successful conclusion.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregg Carrington", with a long horizontal flourish extending to the right.

Gregg Carrington  
Director of External Affairs

Attachment: Redline version of proposed rules