COMMENTS OF CLARK PUBLIC UTILITIES ON DRAFT THE RULES FOR IMPLEMENTING THE ENERGY INDEPENDENCE ACT

Introduction

These comments are submitted on behalf of Clark Public Utilities in response draft rules ("Draft Rules") published in the Washington State Register (WSR 07-20-126, PROPOSED RULES, DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT) for the implementation of the Energy Independence Act, RCW 19.285.010, *et seq.* ("Act").

CPU would like to compliment the Department of Community Trade and Economic Development (CTED) on the thorough and inclusive nature of the public process it conducted. Participants in this process were given ample opportunity to provide their comments on all aspects of the draft rules as they were developed over the course of the process.

These comments are organized based on the provisions of the draft rules, and are presented in sequence in which they appear in the Draft Rules.

Section by Section Comments

WAC 194-37-040(13)(a)(ii) – The electricity from the facility is delivered into Washington state on a real-time basis without shaping, storage, or integration services (an eligible renewable resource within the Pacific Northwest may receive integration, shaping, storage or other services from sources outside the Pacific Northwest and remain eligible to count towards a utility's renewable resource target);

Comment – The proposed language creates an ambiguity. While it is clear that an eligible resource within the Pacific Northwest can receive shaping, storage and other services from outside the Pacific Northwest, it is unclear whether a renewable resource from outside the Pacific Northwest can receive such service from within or without Washington once it has been delivered into Washington. The ambiguity will likely discourage the importation of renewable resources from outside Washington. The following language is proposed to eliminate this ambiguity:

> "The electricity from the facility is delivered into Washington state on a real-time basis without shaping, storage, or integration services *being provided simultaneously from outside Washington state* (an eligible renewable resource within the Pacific Northwest may receive integration, shaping, storage or other services from sources outside the Pacific Northwest and remain eligible to count towards a utility's renewable resource target);"

WAC 194-37-060(5) – The most recent final audit report(s), if any, that evaluate(s) the utility's compliance with chapter 19.285 RCW and the information the utility reported per this chapter.

Comment – This section formerly required the auditor to opine on the accuracy of the reports made by the utility to substantiate its compliance with the Act. This requirement has been eliminated in the draft regulations, and its elimination is beneficial to both the auditor and to the utilities that will be subject to these rules. Asking the auditor to assess the veracity of materials provided by the utility would have been unduly burdensome and would have put the auditor in an untenable situation. Further, it would have placed on the utilities the impossible burden of proving a negative proposition, that their materials were not false. The verification process will operate better without such a requirement.

WAC 194-37-070(6)(a)(xiii) – Include a ten percent bonus for conservation measures as defined in 16 U.S.C. § 839a of the Pacific Northwest Electric Power Planning and Conservation Act;

Comment – The ten percent bonus cited in the rule is, by statute, applicable only to evaluate resources to be acquired by the Bonneville Power Administration (BPA). There is no basis for applying to public utilities located in Washington state a federal statutory provision that is by its own terms only applicable to resource acquisition by a federal power marketing agency. This section of the draft rules should be deleted in its entirety.

WAC 194-37-080(3) – The utility shall count the total first year savings of a conservation measure in the year during which either the measure was installed or the utility paid for it.

Comment – This is a helpful and practical provision. It gives the utility the flexibility to recognize savings based on the year of installation or the year of payment. It is helpful because it provides the utility the flexibility to use one of two indicia for calculating savings, making it possible to recognize conservation saving when it is needed for compliance. And it is practical because it recognizes that the installation of conservation does not in reality always follow the plan laid out by the utility when the year began, and to adjust the savings calculations to take such variations between planning and executing conservation programs into account.

WAC 194-37-080(6) – **(New Proposed Section)** The utility may deduct from its conservation target savings potential included in the conservation target those savings that are attributable to conservation measures that have been demonstrated to be not cost effective. The utility may make such demonstration by documenting that customers declined to implement the measure after the utility offered to pay the customer an incentive equal to the full avoided cost of the measure.

Comment – The draft regulations fail to provide any means for the utility to demonstrate that a measure it has relied upon to set its conservation target is not cost effective because the customers will not implement it even when offered a incentive equal to full avoided cost. An example of such a situation is an industrial conservation measure that customer are unwilling to

implement, even at full avoided cost, because installation would require a shut down of the industrial process, and the lost production would cost the customer more than it would save by installing the conservation measure.

The final regulations must provide the utility with a means of adjusting its conservation target to take reflect the fact that measures that may appear to be cost effective at the planning level but proves to not be cost effective based on the lack of response by the end-use customers. Otherwise, the utility will be held to a performance standard that is demonstrably impossible to achieve. Surely the Act did not intend such a result.

WAC 194-37-080(5) – Utilities may count savings from more stringent local building and/or local equipment codes and standards, including utility new service or connection standards, towards meeting their biennial conservation target in the biennium in which they become effective and in each biennium the local standards continue to be effective and enforced and achieve incremental savings above minimum state energy codes or minimum federal energy standards.

Comment – This provision will encourage local initiatives in codes and equipment standards at the local level, which will be beneficial in the long run. It does so by permitting the recognition of conservation savings that are attributable to local codes and standards that exceed state or federal requirements. Not only will this provision encourage local initiatives in these areas, the more aggressive local codes and standards will serve as an impetus to make state and federal codes more stringent by demonstrating the practicality of more aggressive codes and standards. This is a very worthwhile provision and should be retained in its current form.

WAC 194-37-110(1)(c) – The names of the eligible renewable resource facilities and/or the vintage (year in which associated power was generated) of renewable energy credits by generator that the utility owns or with which the utility has a contract dated no later than January of the target year; and the estimated annual quantity (megawatt-hours) of eligible renewable resources or REC that will be produced, or has been produced, through these resources or contracts to meet its annual targets.

Comment – This section is unduly restrictive and conflicts with the timing of the reporting required under WAC 194-37-110. In particular, WAC 194-37-110 only requires that a report be provided to CTED by June of each calendar year. However, WAC 194-370110(1)(b) limits contracts that can be reported to those signed in January of the target year. By choosing the first month of the target year, this provision deprives the utility of nearly one-half of the target year to sign contracts for renewable generation to ensure compliance. Under this approach, a contract for renewable generation output signed on February 1st could not be reported for the target year, while the same contract signed on January 31st could be reported for the entire target year. Such an arbitrary distinction makes no sense.

This overly restrictive rule also deprives utilities striving to comply of another tool in their effort to achieve compliance. If a utility owns renewable generation which it expects to generate sufficient output (and associated renewable energy credits or RECs) but through weather variations falls short of expected generation, this rule deprives the utility of the ability to acquire during the target year other renewable generation to cover such a shortfall. And while WAC 194-37-110(2)(a)(i)(C) permits such shortfalls to be covered by the purchase of RECs in subsequent year, there is no substantial policy reason to prohibit the utility from acting in the target year to cover a shortfall by the purchase of additional renewable generation output.

To correct this deficiency in this provision, the following revised language is suggested:

> "The names of the eligible renewable resource facilities and/or the vintage (year in which associated power was generated) of renewable energy credits by generators that the utility owns or with which the utility has a contract dated no later than *the last day of May* of the target year; and the estimated annual quantity (megawatt-hours) of eligible renewable resources or REC that will be produced, or has been produced, through these resources or contracts to meet its annual targets."

WAC 194-37-110(2)(a)(i)(C) – Any combination of (a)i(A) and (B) of this subsection, in amounts sufficient to meet the percent of load target for the calendar year two years prior. The utility may demonstrate that it acquired RECs in the subsequent year to make up for any performance deficiency and for nonmaterial under-estimates in load projections.

Comment – The approach taken in the last clause of this section, which limits the ability to cover a shortfall due to actual load outstripping the utility projection, severely restricts the usefulness of this section. The ability to cover unexpected load excursions with RECs purchased in subsequent years is of maximum benefit when there has been a *material* variation between actual loads and forecasts. By restricting the application of this section to nonmaterial variations between actual and forecast loads, the utility will be deprived of the ability to cover when it is most needed. There is no sound reason for such a restriction.

This provision is also contrary to sound public policy. As drafted, this provision would force a utility with an unexpected, material variation between actual and forecast loads to pay a penalty for any resulting shortfall, when the utility was willing and able to purchase RECs to cover this variation. The underlying public policy of the Act is to encourage utilities to acquire renewable generation or RECs. This provision has just the opposite affect by unnecessarily forcing utilities to pay the penalty charge when they would prefer to purchase RECs.

The following revision to this provision is offered to cure this deficiency:

> "Any combination of (a)i(A) and (B) of this subsection, in amounts sufficient to meet the percent of load target for the calendar year two years prior. The utility may demonstrate

that it acquired RECs in the subsequent year to make up for any performance deficiency and for *unexpected variations between actual and projected loads* ."

WAC 194-37-110(1)(c)(i)(A) and (B) – Electricity from BPA that are generated by eligible renewable resources, for which no RECs have been created or, if RECs have been created, for which the RECs have been or will be retired by BPA on behalf of the utility or

RECs from the BPA generated by eligible renewable resources to meet all or any portion of its annual eligible renewable resource target.

Comment – These provisions permit a utility to count against its renewable resource target energy that it purchases from BPA that is generated by eligible renewable resources. This is a very useful provision, and should be retained. BPA intends to tier its rates, making it likely that in the future BPA customers will be able to buy power from BPA for their load growth that is sourced exclusively from eligible renewable resources. Allowing utility customers of BPA to count such power purchases against their renewable resource targets will advance the purposes of the Act, which is to increase the use of renewable resources to serve utility load in Washington.