



November 16, 2007

Community, Trade, and Economic Development
PO Box 43173
Olympia, WA 98504

Re: Comments on CR-102 Rules pursuant to Energy Independence Act

The Northwest Energy Efficiency Council appreciates the opportunity to provide comment on the CR-102 rules published pursuant to the Energy Independence Act (I-937). We provided oral comments at public testimony in Olympia, Washington and these written comments provide additional detail.

NEEC appreciates the stakeholder process that CTED implemented over the Summer of 2007. We actively participated in that process and hope that our comments were constructive to the process of formulating these rules. We want to acknowledge the good and professional work of Tony Usibelli, Howard Schwartz, and especially Elizabeth Klumpp throughout this stakeholder process. The voters of the state sent a clear signal that clean energy is their preference for the future of Washington and that the effected utilities by this Act must acquire all the cost effective energy efficiency (conservation) that is available and achievable (as well as meet a portfolio standard for renewable energy production). Our comments here focus specifically on the rules that relate to conservation.

NEEC believes that the CR-102 rule draft is deficient in at least three key areas. We encourage CTED to adopt improved language in these areas for final rulemaking.

Section 194-37-070

Of greatest concern to NEEC is the treatment of “achievable” conservation in this section. During the stakeholder process, this aspect of the Northwest Power and Conservation Council’s methodology received much discussion. Throughout the drafts issued during this process, the achievable fraction of retrofit and lost opportunity resources was described as 85% and 65% respectively. NEEC strongly supported these fractions as they are consistent with the methodology of the Power Council and thus, as specified in statute, must be used by utilities in calculating their biennial targets. During the stakeholder process, a parallel conversation engaged the question of cost effective technical potential. Given that the Power Council’s planning process envisions a 20 year planning period and the Energy Independence Act specifies a 10 year timeframe, the question arose as to how much technical potential identified in a 20 year plan would be included in a 10 year plan.

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When considering this question, it is important to understand the assumptions in the Power Council process. Cost effective technically available conservation is, by and large, either there or not. When the Council analyzes this potential it makes the practical assumption that all of that potential cannot be garnered in an arbitrarily short timeframe. Though it would be an economic advantage to do so, all the conservation cannot be acquired immediately. Instead, the Council factors a “capacity throughput” to achieve this conservation over 20 years. It’s “achievability fraction” (a number that is less than the total that is cost effective and technically available), takes this into account.

While the stakeholder process acknowledged in informal discussion that a 10 year technical potential might be roughly 50% of a 20 year plan (with some small changes due to both accelerated rates of acquisition and the fact that lost opportunity resources have a time element associated with them), that assumed that the achievable fractions remained at 85%/65%. The final CR-102 rules specified new achievable fractions based on a 10 year planning horizon (now 64%/23%). However, the rules did not clarify that if this change is made, the 10 year technical potential must be largely the same as that found in the Power Council’s 20 year forecast.

A simplified example will help illustrate this point. If the entirety of a utility’s cost effective technical potential was in 1,000 incandescent light sockets, the Power Council would assume a 20 year acquisition timeframe to retrofit 850 of those sockets ($1,000 \times .85 = 850$). Acquired in roughly equally increments this would net 425 sockets in the first ten years. Conversely, if the utility assumed that its 10 year technical potential was roughly half of the 1,000 sockets (500) and applied the achievable fraction of 64%, it would acquire only 320 sockets. This is only 75% of the conservation specified by the Power Council methodology.

The final rules must clarify that if an achievable fraction of 64/23 is to be used, then a utility’s cost effective technical potential must reflect all the potential in their service territory unconstrained by acquisition throughput assumptions. If utilities arbitrarily reduce technical potential due to the differences in planning timeframes and apply the achievable fractions currently specified in the rules, the rules will not faithfully execute the requirements of the Act to acquire all the cost effective technically available and achievable conservation resources.

Section 194-37-060

Despite clear and compelling comments from the authors of this statute, these rules have chosen to provide credits for conservation by utilities in the area of production and distribution system efficiencies to meet conservation goals. Production and distribution conservation is mentioned in one place in the entire statute – the definition section - which contains a specific caveat about that definition – “unless the context clearly requires otherwise”. The 5th Power Plan – the Plan upon which the first conservation goals are contemplated – does not anticipate production and distribution conservation. Thus the context, at least as contemplated under the current 5th Power Plan, requires that production and distribution efficiencies (which we support and encourage utilities to

achieve in their own economic self interest) not count toward biennial conservation targets.

Section 194-37-080

The rule section on co-generation could benefit from additional clarifying language. The statute does provide for co-generation counting toward conservation goals, but only that portion of a qualifying co-generation facility that displaces the utility customer's own needs. The current rule language seems somewhat ambiguous as to whether additional resources generated by a customer's co-generation facility, beyond that used by that customer, might be counted toward conservation targets. This would clearly not be consistent with the clear language of the statute.

In closing, the CR-102 rules need modifications to meet the clear and common sense interpretation of the wording of the statute. The quality of these rules will ultimately be judged by their results. The people of the State of Washington voted to require utilities to acquire all cost effective and achievable conservation as defined by methodologies developed by the Power Council. The people have the right to expect that these rules will produce conservation targets that, in sum across the 13 public utilities currently affected by this rule, mirror the detailed and exhaustive work of the 5th Power Plan and succeeding versions of that Plan. If the sum of the conservation targets developed under these rules fails to do so, then these rules will not have met the litmus test of acceptability and will be unfaithful to the statutory obligations established by the Energy Independence Act.

Thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stan Price', with a stylized, cursive script.

Stan Price, Executive Director