



November 16, 2007

Howard Schwartz  
Washington Department of Community,  
Trade & Economic Development  
PO Box 43173  
906 Columbia Street SW  
Olympia WA 98504-3173  
[HowardS@cted.wa.gov](mailto:HowardS@cted.wa.gov)

Delivered by Electronic Mail

RE: Comments on October 4, 2007 Notice of Proposed Rule Making Re: RCW 19.285  
– The Energy Independence Act (Initiative 937)

Dear Mr. Schwartz:

The following comments are in response to CTED's October 4, 2007 Notice of Opportunity to Submit Written Comments on Proposed Rules regarding RCW 19.285 – The Energy Independence Act (I-937). The comments are submitted on behalf of the Washington Public Utility Districts Association.

We have many concerns with the CR 102 rules as drafted and hereby affirm our support for Appendix A to the November 16, 2007 letter from various parties submitted by Don Cohen. In addition we are offering 5 additional specific items of concern in the draft rules below. On some items we offer suggested language that would clarify the intent and the issue for all parties. We do not have suggested language amendments for the other items, and are entering them into the record and await the response forthcoming in this process.

**1. WAC 194-37-160 Documentation of financial cost cap--Current information and timeline.**

*“By January 1 of the first target year that a utility fulfills its renewable energy requirements under RCW 19.285.050, the utility shall select one of the following methodologies for calculating the incremental cost of all eligible renewable resources acquired thereafter by that utility:”*

This language requires a utility to play the lottery, by choosing a cost cap methodology by January 1, 2012, years before they purchase up to 80% of their renewable resource requirements under this act. To force a utility to choose an option with up top 80% of the resource acquisitions required by RCW 19.285 still in the future seems arbitrary and potentially punitive to their ratepayers.

We suggest amending this subsection to read:

*Prior to exercising the cost cap provisions of RCW 19.285.050 for the first time a utility shall select one of the following methodologies, for the purpose of exercising RCW 19.285.050 at any time in the future, to calculate the incremental cost of all eligible renewable resources acquired by that utility:*

If CTED determines to keep the current language we request justification.

**2. WAC 194-37-160 Documentation of financial cost cap—Current information and timeline.**

*“(2) Permanent one-time methodology. For each specific renewable resource investment, a utility shall perform a one-time calculation of the levelized incremental cost pursuant to WAC 194- 37-170 through 194-37-190. The levelized incremental cost may be a single annual value or a stream of annual values. However, the levelized incremental cost, identified through this one-time analysis, shall remain unchanged over the life of the renewable resource after the initial calculation.”*

Specifically our comment on this subsection goes to the underlined last sentence in subsection 2. We believe that “freezing” the levelized incremental cost (the numerator) in that year’s dollars would give an inaccurate calculation for purposes of implementing the cost cap in future year scenarios. When the incremental cost, the numerator, calculated in an earlier year is divided by the revenue requirement (the denominator) of a future year that has increased due to both load growth and inflationary pressures, an inequity has arisen. All else being equal the numerator is frozen in time while the denominator is not, even absent load growth.

First we note WAC 194-37-170 Step 3 subsections (3), (4), and (5), which describe the suggested process for calculating the levelized costs of the acquired renewable resource and the substitute resource.

*“(3) Utilities must document the basis for the discount rate used in its levelized cost calculations.*

*(4) Utilities must document how the discount rate used to perform the levelized cost calculations is consistent with the inflationary assumptions incorporated into the delivered cost projections for the eligible renewable resource and substitute resource.*

*(5) Utilities must document how the method and assumptions used to levelize delivered costs for the eligible renewable resource are consistent with those used to levelize the delivered cost of the associated substitute resource.*

Note that subsections (3) and (4) require documentation that the basis for the discount rate that is used in levelized cost calculations for both resources is consistent with inflationary assumptions for both resources and (5) requires demonstrating consistency between the assumptions for both resources.

So let’s say that in 2008 a utility acquires a resource to meet the 3% target for 2012 and performs the calculations above. Let’s assume that the levelized incremental cost is calculated at

\$1,000,000 per year. For a utility with a 2008 revenue requirement of \$100,000,000, the incremental cost from that project acquisition is \$1,000,000/\$100,000,000, or 1% *in 2008*. Since the cost cap of 4% has not been reached, the utility would continue to acquire resources towards future targets. Let's assume for this discussion, that the utility accumulated additional incremental costs from project acquisitions, and in 2020 the initial incremental cost incurred in 2008 is now 12 years old and, if not allowed to increase with inflation, has lost more than 30% of its value when compared to 2020 dollars, while the revenue requirement that it is being compared to (or divided by) is allowed to increase with inflationary pressures in addition to load growth.

But let's go back to the original 2008 \$1,000,000 incremental cost. If that utility's revenue requirement that year was \$25,000,000, then the 4% cost cap would be triggered in 2008, but not in 2012, the first target year. So the utility's ratepayers will have seen a 4% rate increase due to the Act, but as the incremental cost shrinks over the next 4 years, relative to future year's dollars, when 2012 arrives the ratepayers will have to pay not only the legitimate 4% of the increase in revenue requirement due to load growth, but also the 4% due to the shrinking of 2008 dollars by 2012, and every year thereafter.

To remedy this inequity we would request that the underlined sentence in WAC 194-37-160(2) above be amended to read:

*The levelized incremental cost for each eligible renewable resource project or purchase, calculated through this one-time analysis in the year of acquisition, shall be allowed to inflate utilizing the Producer Price Index over the life of the renewable resource after the initial calculation."*

**3. We would like clarification on how the target dates and the utilization of eligible Renewable Energy Credits are interpreted in this draft rule.**

Our concern is that WAC 194-37-110(1)(c)

*"(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 1 of the target year; and the estimated annual quantity (megawatt hours) of eligible renewable resources or RECs that will be produced, or has been produced, through these resources or contracts to meet its annual targets"*

has interpreted the plain and simple language of **RCW 19.285.040(2)(a)**:

*"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:"*

and **RCW 19.285.040(2)(e)**:

*“The requirements of this section may be met for any given year with renewable energy credits produced during that year, the preceding year, or the subsequent year.”*

into the proposed rule language incorrectly to require a contract for RECs well prior to the “subsequent year”

The statute states that the target date is January 1 of the target year, but those targets can be met with RECs *produced* (19.285.040(2)(e)) in the year subsequent to the target year. The statute says nothing about having to have the RECs under contract by the target date, only to “acquire” eligible RECs to meet the target, and subsequent year RECs, by statute, are eligible to be acquired - when they are produced.

We believe that if we did not have RECs under contract on January 1 of the target year, but subsequently acquired and documented eligible RECs produced in the year subsequent to the target year, we would be in compliance with RCW 19.285.040. To clarify this, we request that the language be amended to read:

*“(c) The names of, and megawatt hours produced by, the eligible renewable resource facilities by generator, that the utility owns or purchases the eligible renewable resource from; and the known and estimated annual quantity (megawatt hours) of eligible RECs that have been or will be produced and acquired to meet its annual targets”.*

We believe the statute clearly states, and rules should also clearly state, that if the qualifying utility purchases RECs at any time through the year subsequent to the target year - the utility is in, and the Auditor should find, compliance with the statute. Does CTED agree that these rules provide for this interpretation?

4. We believe that 194-37-070(6) Utility Analysis Option is intended to provide the flexibility for a utility to modify the council’s methodology, and certainly its assumptions, when it develops the 10 year conservation potential and biennial targets based upon its unique service territory, customer and power supply characteristics, provided the utility provides full documentation and explanation on its rationale for the modifications. And if the utility provided that rationale and documentation, the Auditor would be compelled to find compliance.

RCW 19.285 stipulates that the utility’s identification of all available, cost-effective conservation should follow a process “*consistent with the methodology used by the Northwest Power Council.*” In its rulemaking, CTED has mandated that specific assumptions made by the Council in implementing its methodology are to be used by each individual utility, regardless of whether or not the assumptions reflect the particular circumstances of said utility. Two examples follow.

EXAMPLE 1: As part of determining the cost-effectiveness of a conservation measure, the Council compares the cost of the measure with the “avoided cost” of energy the utility would have purchased had that energy not been conserved. In its determination of the avoided cost, the Council makes the assumption that, for the Northwest Region, the avoided cost of power is equal to the forecasted market price of power in the region.

On a region-wide basis, this is a reasonable assumption. However, for an individual utility, this may or may not be an accurate representation of avoided cost. For example, certain utilities with generation resources have contracts for the sale of excess energy from their resource. The contract calls for all energy not needed by the owner utility to be sold, at cost, to the purchasing utility.

In this case, energy saved through conservation is worth only as much as it costs to produce it, and its value is unaffected by the market price of power which, on average, is much higher. Requiring a utility in this situation to assume that avoided cost is equal to market price will likely result in a determination that certain conservation measures are cost-effective when in fact they are not.

Comparing the cost of a measure to the utility's avoided cost is part of the Council's methodology. Setting avoided cost equal to market price is an assumption that is probably reasonably accurate on a region-wide basis, but may not be accurate for an individual utility. The determination of avoided cost should be left to each utility.

**EXAMPLE 2:** Another part of the Council's methodology is an assumed "penetration rate" for conservation measures. The penetration rate is an estimate of the potential measures that could be implemented in a given population. The Council assumes that on a region-wide basis, the penetration rate is 85%, meaning 85% of the measures can expect to be implemented. This estimate is based upon a single dated study using a limited sample.

CTED has determined that the assumed penetration rate of 85% is a part of the Council's methodology, rather than an assumption made by the Council. The rules require each utility to use this penetration rate for each conservation measure. For individual utilities, relying on the willingness of each individual customer to implement conservation measures, this assumption may not be accurate. It may be too high for some measures and too low for others.

If CTED agrees that the intent of the Utility Analysis Option is to provide the utility with the flexibility to acquire all cost effective conservation according to the law and based upon its unique characteristics, we would request addition of the following underlined sentence in **WAC 194-37-070**

*(6) Utility analysis option.*

*(a) The NWPCCC's analytical methodology for establishing the conservation resource potential and conservation targets for the Northwest power system is outlined in procedures (a)(i) through (xv) of this subsection. A utility that chooses this option will document that it established a ten-year potential using an analytical methodology consistent with these NWPCCC procedures (a)(i) through (xv) of this subsection. A utility may, with full documentation on the rationale for any modification, modify the assumptions used by the Council in implementing their methodology to better fit the attributes and characteristics of its power supply, customers and area of service.*

## **5. Cost-effective language reinterpretation**

We believe that these rules have reinterpreted the definition of cost-effective from the statute and have conflicting language even within the rules themselves.

From RCW 19.285.030(5)

*"Cost-effective" has the same meaning as defined in RCW 80.52.030.*

From RCW 80.52.030 (Bold added)

(7) *"Cost-effective" means that a project or resource is forecast:*  
(a) *To be reliable and available within the time it is needed; and*  
(b) *To meet or reduce the electric power demand of the intended consumers at an estimated incremental system cost **no greater than that of the least-cost similarly reliable and available alternative project or resource**, or any combination thereof.*

(8) *"System cost" means an estimate of all direct costs of a project or resource over its effective life, including, if applicable, the costs of distribution to the consumer, and, among other factors, waste disposal costs, end-of-cycle costs, and fuel costs (including projected increases), and such quantifiable environmental costs and benefits as are directly attributable to the project or resource.*

From the Rules: **WAC 194-37-070 (Bold added)**

(6)(iii) *Set avoided costs equal to a **forecast of market prices, which represents the cost of the next increment of available and reliable power supply** available to the utility **for the life of the energy efficiency measures to which it is compared**;*

We cannot reconcile how these rules can take the plain meaning and language of the definition of cost effective in both the statute and the rule itself and then in the text of the rule redefine cost effective to state that a *"forecast of market prices, which represents the cost of the next increment of available and reliable power supply"* is equal in any way to the statutory definition of *"least-cost similarly reliable and available alternative project or resource"*. (underline added)

We are requesting an explanation of how CTED arrived at the conclusion that a *forecast market price* (not even an actual market price-) is equal, at all times, to the *least cost . . . resource*, to an *available* power supply, or to *reliable* power supply, let alone the only *available and reliable power supply* that is the least cost incremental resource. We further request that CTED explain the legal basis to reinterpret the plain language of the statute in this rule.

Again, we appreciate the opportunity to provide these comments.

Respectfully submitted November 16, 2007

s/ \_\_\_\_\_  
Dave Warren  
Energy Services Director  
Washington Public Utility Districts Association