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Via Electronic Mail

Howard Schwartz
Washington Department of Community,
Trade, and Economic Development
PO Box 43173
906 Columbia St. SW
Olympia, WA 98504-3173

Re: Rulemaking to Implement Chapter 19.285 RCW, the Energy
Independence Act

Dear Mr. Schwartz:

The Industrial Customers of Northwest Utilities (“ICNU”) appreciates the opportunity to submit comments regarding the Department of Community, Trade, and Economic Development’s (“CTED” or the “Department”) proposed rules implementing Initiative 937 (“I-937”). These comments are in response to CTED’s October 4, 2007 Notice of Opportunity to Submit Written Comments. ICNU has previously submitted written comments to CTED on March 20, 2007, and May 29, 2007.

In those comments, ICNU cautioned CTED that I-937 only granted to the Department the authority to “adopt rules concerning only process, timelines, and documentation”^{1/} and that CTED’s proposed rules strayed far beyond its authority. While ICNU will not repeat its argument regarding CTED’s legal authority, ICNU reiterates its position that CTED’s proposed rules filed with the CR 102 exceed the Department’s delegated authority.

ICNU also submits additional comments on CTED’s proposed rules as follows.

^{1/} RCW § 19.285.080(2).

1. WAC § 194-37-070 Fails to Recognize the Different Circumstances that Utilities Face

For the calculation of a utility's ten-year conservation potential, CTED's proposed rules require three methods of demonstrating consistency with the Pacific Northwest Electric Power and Conservation Planning Council's ("NWPPCC") methodologies. A utility may use either: 1) the conservation calculator option; 2) the modified conservation calculator option; or 3) the utility analysis option.

Uses of the conservation calculator or the modified conservation calculator are prescriptive, *i.e.*, those options mandate what a utility must do to satisfy those options. Subsection (6) purports to allow utilities flexibility in modifying the NWPPCC's methodology to calculate conservation potential; however, because this section mandates the use of certain NWPPCC methodologies, it too is prescriptive. Subsection (6) simply fails to allow utilities the flexibility to alter certain methodologies to better fit a utility's circumstances. For example, Subsection (6)(iii) requires a utility to "[s]et avoided costs equal to a forecast of market prices." This assumption will not always represent the next increment of available power, and the utility should be allowed the flexibility to modify this assumption with supporting documentation.^{2/}

ICNU recommends that CTED make clear that a utility may alter the NWPPCC's methodologies to better fit its service territory and circumstances in using the utility analysis option. Not only will this change provide the utilities with the flexibility needed to meet the requirements of I-937, but also keep CTED within the scope of the Department's legal authority.

2. WAC § 194-37-160 Should Not Require Utilities to Choose a Cost Cap Methodology by the First Compliance Year

It is virtually impossible to accurately predict the state of the energy market in the future. State and federal legislation mandating the use of renewable energy, such as I-937, may drive the costs of renewable energy to unanticipated levels. In addition, it is possible that the prices of substitute resources, such as natural gas, may fall, creating an even greater levelized cost. Requiring a utility to choose whether to use the annual update methodology or the permanent one-time methodology at such an early stage of I-937 is inconsistent with the intent of the cost cap to act as a protection for customers.

CTED should not lock utilities into choosing one method or the other, but instead should allow utilities to choose between methods anytime the cost cap is relied upon. Such flexibility will insulate customers from extreme rate increases, while still fulfilling the intent of I-937. If CTED insists on requiring a utility to make a one-time

^{2/} It is worth noting that the definition of "cost effective" in RCW § 80.52.030(7) and OAR § 197-37-040(8) allows such flexibility, as avoided costs are set at "no greater than that of the least-cost similarly reliable and available alternative project or resource, or any combination thereof."

choice in methodology, however, it should not require a utility to make such a choice until the year that the utility chooses to invoke the cost cap.

3. WAC 194-37-110 Should Not Restrict the Use of Renewable Energy Credits (“RECs”) Produced in a Subsequent Year

WAC § 194-37-110 requires RECs to be contracted for not later than January 1 of the target year. I-937, however, expressly authorizes the use of RECs produced in a subsequent year and does not place any limitations on when those RECs were contracted for. Allowing utilities to use RECs produced in a subsequent year regardless of whether the RECs were contracted for by January 1 of the target year is the correct interpretation of the statutory language and furthers the goals of I-937.

The goal of I-937 is to foster the development of renewable resources, not to create such strict, unworkable standards that will be impossible to meet, especially with the prospect of penalties. For consumer-owned utilities, penalties for non-compliance will be ultimately paid for by customers and placed in a special account from which customers will see no benefit.^{3/} Utilities will be forced to either pay these penalties or overcomply regardless of whether it is cost-effective to do so. Such a result is inconsistent with I-937’s policy of “stabiliz[ing] electricity prices for Washington residents” and the public interest, as renewable energy developers will be the only ones that see any benefit.

ICNU urges CTED to adopt these changes to the proposed rules. Meeting the goals of I-937 will be both challenging and costly. Affording utilities sufficient flexibility in complying with I-937 will protect customers from dramatic rate increases and foster the intent of I-937.

Sincerely Yours,

/s/ Allen C. Chan

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^{3/} RCW § 19.285.060(5).