



Via E-Mail and US Mail

February 5, 2008

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

RE: Comments on CTED's January 16, 2008 Revised Draft Rules regarding RCW 19.285 – The Energy Independence Act (Initiative 937) and related Concise Explanatory Statement

Dear Mr. Schwartz:

This comment letter is submitted by Cowlitz PUD in response to CTED's January 16, 2008 revised draft rules regarding RCW 19.285 (I-937) and the related draft Concise Explanatory Statement (CES).

We again appreciate that opportunity to provide comments on a subject critically important to Cowlitz and other Washington consumer-owned utilities. Cowlitz PUD appreciates CTED's listening to our concerns regarding its rules and the effort to modify the draft rules. While we are supportive of a number of changes to the draft rules, we continue to believe in many respects the proposed rules exceed CTED's statutory authority under RCW 19.285, and we reaffirm and incorporate by this reference the comments in our letter of August 15, 2007 submitted on behalf of Cowlitz PUD by Donald Cohen.

We also appreciate CTED providing a draft of its Concise Explanatory Statement (CES) regarding its rules for 19.285. Adequate information on CTED's interpretation and understanding of the provisions of 19.285 will be useful to all parties. Cowlitz will also provide comment on the CES in this letter as well.

WAC 194-37-070 (5) Modified conservation calculator option.

We agree with the addition under Section (5) (h) "How production and distribution efficiencies cost-effectively replaces end-use conservation."

WAC 194-37-070 (6) Documenting development of conservation targets.

Cowlitz PUD believes I-937 recognizes that PUD commissioners, elected by the customers of the system, are the ultimate policy makers and regulators of their utility system. These policy and regulatory prerogatives should include determining what best fits the conservation needs of customers specific to our service territory. A publicly owned utility that makes reasoned policy or analytical determinations applicable to its specific knowledge of its own service territory while still using an approach consistent with the Council's methodology and analytical approach, applied to its specific area, should not be deemed in violation of RCW 19.285.

WAC 194-37-070 (6) (a) should have the following clarifying language added, which maintains the I-937 concept of local control in conservation planning.

“A utility may, with full documentation on the rationale for any modification, modify the conservation council's methodologies to better fit the attributes and characteristics of its power supply, customers and area of service.”

WAC 194-37-080 (11)

This section allows utility documentation of shortfalls in conservation target.

“(11) A utility may document shortfalls in meeting its conservation target due to lack of customer participation. Documentation of such shortfalls include a demonstration that: (i) a broad array of marketing and program options were provided to customers; and (ii) the utility offered to pay customers an incentive in an amount equal to the utilities full avoided cost over the lifetime of measures, up to one hundred percent of the incremental cost of measures.”

Cowlitz PUD strongly supports this change to the rules. We believe it needs additional language to clarify the qualifying utility may deduct this conservation potential from the conservation target and not be penalized for not meeting their target, which we believe is CTED's intent.

WAC 194-37-110 Renewable resource energy reporting.

Cowlitz maintain that 19.285.040 does not require a utility to own a resource or have a contract dated no later than January 1 of the target year to be in compliance regarding eligible renewable resources or renewable energy credits (RECs).

The test for compliance with 19.285.040(2) is a qualifying utility's actual annual use of electricity from eligible renewable resources or RECs during the target year. There is no requirement in RCW 19.285 consistent with CTED's WAC 194-37-110(1)(c) and such proposed rule provision should be deleted or modified. Performance during the target year with respect to energy from an eligible renewable resource(s) or RECs is the relevant standard, not a contract in place at the beginning of the target year.

WAC 194-37-160 (2)

This section outlines a one-time methodology for calculating the incremental cost of all eligible renewable resources acquired thereafter by that utility. This language continues to have problems regarding both clarity and substance. CTED should recognize that most, if not all utilities, are not likely to be in a position to use the cost cap during the initial years of I-937. The rules should recognize that a utility cannot be expected to select a particular cost cap methodology until such time as it reaches that situation. We believe the proposed language still results in ambiguity as to how a utility would calculate the cost cap. We would suggest the CES provide examples or guidance in this regard.

Concise Explanatory Statement – Cowlitz appreciates the intent behind the CES. As noted above, we believe that the CES provides a mechanism to provide guidance to both utilities and the State Auditor’s office, which will hopefully reduce the inevitable complications associated with implementation of the initiative and associated rules.

Conflict of Interest – Cowlitz sees no use at this juncture to further debate the selection of consultants or possible issues with CTED employees involved in the rulemaking process. Cowlitz would, however, remind CTED that I-937 only passed by a 51.7% - 48.3% vote, passing in just 14 of 39 counties. CTED staff must be aware that public power’s perception of the initiatives usurpation of local control, coupled with the closeness of the vote, exacerbated by the fact that most of the support was concentrated in the Puget Sound area causes certain sensitivities in the non Puget Sound area. Thus it should have made every effort to assure that its rulemaking did not just comply with the letter of the law, but gave the appearance of being fully objective, favoring neither initiative proponents nor opponents.

CTED vs. WUTC Rulemaking – Cowlitz took great interest in the comments on page 4 of the draft CES regarding the relationship between non IOU utilities and CTED and how that is different than the relationship between IOUs and the WUTC. This difference causes CTED to conclude “There is not ongoing regulatory relationship so the entire I-937 relationship has to be spelled out in the rules.” While CTED claims elsewhere in the CES that the lack of legal authority precludes it from doing something that might make sense (such as altering or modifying the Council methodology as discussed in immediate successive section of the CES), it seems to have no problem construing a legal basis for this rather extensive rulemaking that is well beyond the timelines, process and documentation clearly provided for in the plain language of the initiative. While Cowlitz PUD understands the practical problem CTED is trying to solve, we continue to believe that CTED’s solution is not well supported in the language of the law.

Cowlitz PUD recognizes that this rulemaking has been a difficult, and probably less than pleasant endeavor for CTED staff. It has been for us as well. We appreciate this last iteration of rule amendments as a positive final effort to address concerns that we and others have tried to express throughout the process. Often times we believed that our concerns did not receive a fair hearing. CTED’s willingness to issue one more draft,

which addresses some of our historic concerns, goes a significant way to finishing this rulemaking on a more positive effort.

Cowlitz PUD long believed that a legislative approach to the matter of renewable portfolio standards was appropriate, and we constructively, but unsuccessfully argued that case in various venues over the years. We continue to believe there are problems with the rules, but more importantly fundamental flaws with the law, such as requiring development or procurement of resources well in advance of need, and the exclusion of certain renewable resources, that need to be addressed. We believe that the legislative process in future legislative sessions is the appropriate venue to address these concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian L. Skeahan". The signature is fluid and cursive, with a large initial "B" and "S".

Brian L. Skeahan
General Manager

scw.I-937