

**Comments of the Renewable Northwest Project  
on CTED's Revised Proposed Rules (CR 102)  
for the Energy Independence Act**

Submitted by:  
Ann English Gravatt  
Policy Director  
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The Renewable Northwest Project (RNP) submits these comments in response to the revised Proposed Rules to implement the Energy Independence Act, RCW 19.285 et. seq., released by the Code Reviser on January 16, 2008.

As requested by the Department of Community, Trade and Economic Development (CTED) in their January 10 letter, RNP has limited these comments to the changes made by the Agency to the original Proposed Rules released on October 3, 2007. RNP also responds to some comments in the draft Concise Explanatory Statement (CES).

**WAC 194-37-110 Renewable resource energy reporting**

The revised Proposed Rules make changes to the rules related to reporting on compliance with the renewable energy targets. Specifically, WAC 194-37-110 (2) (a)(i)(C) and (D) were changed as follows:

- A sentence was deleted from (C) that read: “The utility may demonstrate that it acquired RECs in the subsequent year to make up for any underperformance deficiency and for nonmaterial underestimates in load projections.”
- A new subsection (D) was added that reads: “In lieu of reporting per subsection (5) of this section, utilities may report any additional purchases of RECs or renewable energy that made up for any shortfalls caused by uncontrollable events.”<sup>1</sup>.

It appears that with these changes, CTED is providing that utilities may purchase additional renewable energy or RECs for situations that would be covered by the statute’s “force majeure clause.” RNP has several preliminary concerns with this change.

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<sup>1</sup> Subsection 5 of the rule referenced in this sentence deals specifically with the “force majeure” clause of the Act, RCW 19.285.040(2)(i). It reads: “A qualifying utility shall be considered in compliance with an annual target in (a) of this subsection if events beyond the reasonable control of the utility that could not have been reasonably anticipated or ameliorated prevented it from meeting the renewable energy target. Such events include weather-related damage, mechanical failure, strikes, lockouts, and actions of a governmental authority that adversely affect the generation, transmission, or distribution of an eligible renewable resource under contract to a qualifying utility.”

The force majeure clause of the Act excuses a utility from complying with the Act only where the uncontrollable event could not have been “reasonably anticipated or ameliorated”. RCW 19.285.040(2)(i). If a utility fails to meet its renewable target due to a “force majeure” event that meets the criteria of RCW 19.285.040 (2)(i), the utility is not required to make up for any underperformance (although of course, the utility could buy more renewable energy to ensure that it met the target, notwithstanding the occurrence of an unexpected event). Subsection (5) rightly requires the utility to simply report on the event in its next June 1 report. New section (D) is unnecessary in creating a mechanism for allowing a utility to make up for shortfalls as a result of these events, and therefore, creates confusion.

RNP is concerned however because CTED has also included a statement in the draft CES that it recognizes that “circumstances may occur such that a utility does not complete its acquisitions of qualifying resources until later in the target year . . .” CES, pg. 7. Put simply, failing to complete an acquisition before January 1 of the target year is non-compliance, not a force majeure. However, to the extent that CTED means with the revised rules that a utility is obligated to ensure that its resources performed as expected, the rules need to be more specific. It is feasible that an eligible renewable resource or renewable energy credit (REC) upon which the utility relied to demonstrate compliance could fail to perform due to some unexpected event during the compliance year, such as underperformance of a generating resource. The utility would need to acquire additional eligible renewables during the compliance year or purchase more RECs in the compliance year or subsequent year in order to be in compliance. This is consistent with the rules in (A) of the same section that require the utility to demonstrate that the resources it acquired were actually generated “by December 31 of the target year.” WAC 194-37-110 (2) (a)(i)(A).

Finally, subsection (D) does not expressly refer to “eligible” renewable energy or to the fact that the Act contains limitations on when energy and/or RECs can be produced and used to satisfy the requirements of the Act. A utility can only rely on eligible renewable generation in the compliance year and/or RECs in the compliance year or subsequent year to address shortfalls.

RNP believes that notwithstanding the lack of clarity in this section, the rule cannot be read to undermine the unambiguous requirements of the Act. However, RNP requests that CTED clarify these provisions in the CR-103, along with providing a thorough explanation of these rules in the final Concise Explanatory Statement.

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

As noted in November 16 comments, RNP supported the change in the Proposed Rules that offered a utility a choice in how to calculate the incremental cost – an annual update methodology and a permanent one-time methodology. In the first year that a utility relies on the cost cap to comply with the law, it must chose one method to

calculate the incremental costs and then rely on that method in any future year it relies on the cost cap.

In the revised Proposed Rules, CTED included changes in the calculation of the second option, the permanent one-time methodology. RNP now recommends additional changes to this section to prevent confusion between “real” and “nominal” dollars. RNP believes the utility should rely on a single value expressed by real, constant dollars, instead of the option for a stream of values. RNP has discussed these changes with the Washington PUD Association, the original proponents of edits to this section, as noted in the draft CES on page 9.

(2) Permanent one-time methodology. For each new investment in an eligible 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 ~~shall~~ may be a single annual value expressed in real, constant-year dollars ~~or a stream of annual values. If a single annual value is used,~~ €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 eligible renewable resource after the initial calculation. ~~If a stream of annual values is used, the inflated values contained within the stream shall be used to calculate the incremental cost at future points in time.~~ The utility will include a determination of incremental cost for each new investment in an eligible renewable resource investment and inflation-adjusted incremental costs for previous eligible renewable resource investments in its June 1 report submitted pursuant to RCW 19.285.070, beginning in the year the utility complies with the cost cap identified in RCW 19.285.050.

### **WAC 194-37-190 Documentation of financial path -- Substitute Resource and resource equivalence**

In the November 16 comments, RNP requested that subsections (1)(a) and (d) in WAC 194-37-190 be deleted because both provisions permitted a utility to rely on either a forward price curve or other speculative estimates of future prices. CTED retained these provisions in the revised Proposed Rules and responded to this issue in its draft CES. RNP does not believe the CES adequately described RNP’s concerns about this section.

CTED states that for utilities that are in surplus, “it makes no sense to unnecessarily forgo one source of renewable energy for another.” CES, page 10. RNP

has not suggested swapping renewables as a means to meet the Act. Instead, RNP has repeatedly stated that a rule is not necessary because the Act itself provides for the circumstance when a utility has sufficient power to serve its load but must also be in compliance with the Act. Utilities not needing power can instead purchase RECs to meet the standard. All of the costs associated with such purchases are accepted as incremental costs that apply toward the cost cap. WAC 194-37-200. The purchase of RECs supports the development of additional eligible renewable energy and helps to meet one of the intents of the Act: to diversify Washington's energy mix.

CTED goes on to say that a forward price curve is "no less fuzzy than a ten or fifteen year 'strip purchase.'" RNP doesn't recall referring to the "fuzziness" of a price curve. Instead, RNP has distinguished a forward price curve from a ten or fifteen year energy purchase -- or strip purchase -- based on the fact that a long term energy purchase is negotiated between parties and takes into account market volatility and uncertainty that are not reflected in a forward price curve. A long dated strip purchase would likely entail a substantial risk premium taking into account, among other things, uncertainty in carbon risk. We reiterate that the best resolution is to delete these sections, given the ability of a utility, instead, to rely on a REC purchase to comply with the law.

## **Conclusion**

Thank you for the opportunity to provide these additional comments on CTED's Proposed Rules implementing Initiative 937.