

Concise Explanatory Statement
Chapter 194-37 WAC (Energy Independence Act, RCW 19.285)

Part I: Response to legal issues applicable to Chapter 194-37 WAC as a whole

Rule-making authority.

Several stakeholders have provided general comments that the rules exceed the scope of the Washington State Department of Community, Trade, and Economic Development's (CTED) authority to adopt rules "concerning only process, timelines, and documentation" under RCW 19.285.080(2). CTED disagrees. RCW 19.285.080(2) provides, in part:

The department shall adopt rules concerning only process, timelines, and documentation to ensure the proper implementation of this chapter as it applies to qualifying utilities that are not investor-owned utilities. Those rules include, but are not limited to, rules associated with the qualifying utilities development of conservation targets under RCW 19.284.040(1); a qualifying utility's decision to pursue alternative compliance in RCW 19.285.040(2)(d) or (i) or 19.285.050(1); and the format and content of reports required in RCW 19.285.070.

CTED believes the rules pertain to the general topics of timelines, process, and documentation, including the development of conservation targets, a utilities decision to pursue alternative compliance, and the format and content of reports, as described in RCW 19.285.080(2).

CTED acknowledges that it is not responsible for determining compliance with the Act. The Washington State Auditor is responsible for auditing for compliance of the utilities under its jurisdiction that are not investor-owned, such as the public utilities. Cooperatives and electric mutual associations or corporations fall outside the State Auditor's jurisdiction and are audited for compliance by independent auditors. Unlike the Utilities and Transportation Commission, which is responsible for compliance of investor-owned utilities, the State Auditor and independent auditors are unlikely to have expertise in the analyses and methodologies utilities will use to comply with the Act. For this reason, the draft rules contain detailed documentation provisions designed to give the auditors the information they will need to evaluate a utility's compliance. The rules do not impose substantive requirements that are not already mandated by the Act.

To the extent the rules interpret the Act's substantive requirements for the purpose of documenting information the auditors will need to evaluate a utility's compliance. CTED understands such interpretations will not be binding on the auditors when auditing a utility for compliance, or on the Attorney General when exercising enforcement authority. The rules do not, and are not intended to, overstep the independent authority of the auditors or the Attorney General to determine a utility's compliance with the substantive requirements of the Act.

Conflict of Interest.

Cowlitz County Public Utility District (PUD) raised concerns about CTED's decision to retain a certain consultant to assist in rule development where the consultant has articulated views this person finds objectionable. CTED used a number of consultants to assist in the drafting of these rules. All of the consultants were retained through a competitive selection process and the personal views of any or all of the consultants did not compromise CTED's rule-making process.

The same PUD raised a concern that a Department employee involved in the rule-making process may have violated state laws by accepting employment with the Bonneville Power Administration. CTED has looked into this allegation and finds it to be without merit.

Unlawful Delegation.

Chelan County PUD contends that the requirement in RCW 19.285.040 (1) (a) that utilities use methodologies consistent with the Pacific Northwest Electric Power and Planning Council's (NWPCC) "most recently published regional plan" should be interpreted in the rules to mean the Council's Fifth Power Plan, which existed when the initiative passed. Chelan PUD argues that to rely on methodologies contained in the Council's subsequent regional power plans would result in an unconstitutional delegation of legislative authority. CTED believes this potential issue has been addressed by WAC 194-37-070 (3), which refers to the documentation necessary to show a utility established its ten-year potential and biennial target consistent with those in the fifth power plan. CTED will consider updating the rules if the Council adopts a new power plan.

Part II: Response to issues raised regarding specific sections of Chapter 194-37 WAC**Proposed WAC - NEW SECTION - WAC 194-37-040 - (Definitions)**

Comments Received From: Hydropower Reform Coalition, Clark PUD, Inland Power, and Northwest Combined Heat and Power (CHP) Application Center – Washington State University (WSU) Extension Energy Program

Summary of Comments: All of the commenter's suggested changes to definitions in the WAC

CTED Response: All of the requested changes were to definitions that were copied directly from RCW 19.285.030 and, therefore, cannot be changed by rule.

In some cases, such as the request by WSU for other environmental attributes of bio-digesters to be assessed when Renewable Energy Credits (RECs) are created, there may be other administrative procedures, other than in these rules, for dealing with the issue.

Comments Received from: Northwest(NW) Energy Coalition

Summary of Comments: They suggest adding the phrase "or any action that has a detrimental impact on statutory fish and wildlife protection obligations" at the end of the definition of "qualified incremental hydropower efficiency improvements" in -040 (21).

CTED Response: The requested addition is redundant since all relevant statutes and regulations apply as a matter of law. However, we have no objection to stating this expressly. Appropriate language has been added to the definition.

Comments Received From: Seattle City Light

Summary of Comments: Requests clarification that the definition of “qualified incremental hydropower efficiency improvements” includes “investments in software and systems that are designed to optimize electricity production at hydroelectric plants.”

CTED Response: No change in the definition is needed since “changing control systems to optimize electricity generation” is already included in the definition and encompasses “investments in software and systems.”

Additional Comments Received from: Inland Power

Summary of Comments: Inland Power would like the definition of “eligible renewable resource” in WAC 194-37-040(a)(ii) to be clarified to allow delivery of eligible renewable power from outside of the Pacific Northwest.

CTED Response: The definition in the rule is identical to the definition in RCW 19.285.030(10)(a)(ii), which states that electricity from a facility may be considered an eligible renewable resource if it is delivered into Washington state from outside the Pacific Northwest “on a real-time basis without shaping, storage or integration services.” During the rule-making process, CTED staff and stakeholders were unable to provide a coherent meaning for the quoted section and thus CTED was unable to provide any documentation in the rules for such electricity deliveries. CTED believes that this section of the law should be clarified by the legislature.

Comments Received From: Chelan PUD

Summary of Comments: Delete definitions of, and further references to, Conservation Calculator, Regional Technical Forum (RTF) and Fifth Power Plan because their use implies an unconstitutional delegation of authority to a future action of non-state entity.

CTED Response: See CTED’s response to the broad question of delegation of authority in Part I, above. In the specific instances mentioned by Chelan PUD, the definitions (and associated rules) refer to optional paths for utilities to follow in developing conservation targets and thus impose no requirements beyond those already imposed by RCW 19.235 itself. Because these compliance paths are optional there is no delegation of authority. CTED is specifically granted the authority to develop reporting requirements and formats.

Proposed WAC: NEW SECTION - WAC 194-37-050**Comments Received From:** NW Energy Coalition**Summary of Comments:** Add language regarding retention and availability of reports.**CTED Response:** CTED agrees. The suggested language has been added.**Proposed WAC: NEW SECTION - WAC 194-37-060****Comments Received From:** Clark PUD, Northwest Energy Efficiency Council (NEEC)**Summary of Comments:** Clark supports the language in -060 (5) now that reference to the auditor opining on accuracy of utility reports has been deleted from earlier drafts.

NEEC objects to the treatment of efficiency improvements in production and distribution systems.

CTED Response: The question of how efficiency from production and distribution improvements is treated is addressed under -070 (3) (a), below.**Comments Received From:** Chelan PUD**Summary of Comments:** Objects to reporting requirements (See full discussion under WAC 194-37-080, below).**CTED Response:** See response under WAC 194-37-080, below.**Proposed WAC: NEW SECTION - WAC 194-37-070****Comments Received From:** Clark PUD**Summary of Comments:** The ten percent bonus in WAC 194-37-070(6)(a)(xiii) should not apply.**CTED Response:** This factor must be included in the calculation because it is part of the Council's methodology.**Comments Received From:** Benton PUD, Washington Public Utility District Association (WPUA), Chelan PUD, Industrial Customers of Northwest Utilities (ICNU), NW Energy Coalition (NWEC), and NW Energy Efficiency Council**Summary of Comments:** The concerns of the PUDs and ICNU can be grouped under four categories:

1. Major concerns about what they consider to be overly detailed and prescriptive language in the options about how to develop conservation targets.

2. Questions about why the CTED rules are longer and seem more complex than the Utilities and Transportation Commission (UTC) rules.
3. Suggestions to allow utilities to “alter” or “modify” the Council methodology.
4. Questions about differing interpretations of “cost-effective.” The statutory citations for cost-effectiveness in I-937 are at odds with the way the Council uses “cost-effective” in its methodology.

NWEC and NEEC generally took a position supporting CTEDs authority, but expressed some concern that the rules allowed loopholes that would make it less likely that all cost-effective conservation would be pursued.

CTED Response:

1. The language is not inflexible. It provides guidance to the utilities about the Council’s methodology. According to RCW 19.285.040(1)(a), when developing their conservation targets, utilities must use methodologies consistent with the Council’s. By summarizing the Council’s methodology in WAC 194-37-070 (6), the rule provides a benchmark against which utilities, the auditor, stakeholders and the public can assess whether a utility developed its conservation target consistent with the Council’s methodology. CTED believes that the Conservation Calculator Option in subsection (5) and the Utility Specific Option in subsection (6) provide ample opportunities for a utility to customize its inputs to the Council’s methodology to reflect the utility’s individual circumstances.

2. The relationship of the non-Investor Owned Utilities (IOUs) to CTED under I-937 is different than the relationship between the IOUs and the UTC. The IOUs have an ongoing regulatory relationship with the UTC which includes many standards and procedures as documented in the UTC I-937 rules, WAC 480.109. WAC 280.109 follows RCW 19.285.040 (1) (e), which states that “The Commission may rely on its standard practice for review and approval of investor-owned utility conservation targets.” Unlike the UTC’s responsibility over the investor-owned utilities, CTED will have no regulatory authority over the non-IOUs. CTED’s only responsibility after adoption of these rules will be to gather data from them under RCW 19.285.070 regarding their progress in meeting their conservation and renewable energy targets. Because CTED will have no ongoing regulatory relationship with the non-IOUs, the rules are intended to contain sufficient detail to assist the non-IOUs in complying with the Act.

Under the Commission’s rules, the regulatory process starts when a utility files its conservation target. Once the target is filed the Commission begins a potentially long and potentially contested review of the target. With CTED, on the other hand, the responsibility to evaluate the target rests with the Auditor (and possibly to the Attorney General). The detail in WAC 194-37-070 is intended to provide the

Auditor and Attorney General with guidance about the content of the Council's methodology.

3. CTED does not believe it has the legal authority to adopt rules that allow utilities to "alter" or "modify" the Council's methodology. CTED understands that a utility may believe that if it modifies the Council's methodology but remains consistent with the principles that underlie the Council's methodology it should be considered to have used a methodology consistent with the Council's. We believe that this is a compliance and enforcement question that will need to be addressed by the auditor and possibly the Attorney General. We understand that the auditor will look first to the CTED rules for guidance but may also take other factors into consideration when evaluating compliance with the statute.

4. The definitions in the Act and in the Council methodology all track back to the definition in the NW Power Act of 1980. The difference is the Council takes a regional perspective while some commenters think a utility perspective is more appropriate. Since the RCW 19.285.040(1)(a) says utilities must use methodology consistent with the Council's, we believe we have no alternative but to use the regional perspective as well. This means utilities that displace generation with conservation can sell the displaced energy to recoup their conservation expenses. Therefore, the regional avoided cost is also their avoided cost. If there are unique circumstances not covered by the law, a utility can document them and let the auditor decide if they are in compliance.

If, at some future date, the Council revises its definition of "avoided cost," these Rules can be amended to reflect those changes.

Comments Received From: Inland Power

Summary of Comments: Inland makes a further argument that a "utility that makes reasoned policy determinations applicable to its service territory would still be using an approach consistent with the Council's methodology" and that subsection 6 does not contain all of the Council's "policy determinations."

CTED Response: This may be true. WAC 194-37-070 allows a utility to document consistency using one of the three pathways set forth in the rule. Although subsection 6 does not contain all of the relevant information, to do so would require inserting the entire Fifth Northwest Power Plan into the rule. The rules allow utilities to develop conservation targets based on data and methods contained in the plan that are relevant to their individual circumstances.

Comments Received From: Chelan PUD

Summary of Comments: Consumer-owned utilities must be careful to ensure that money expended in helping their customers conserve energy does not constitute an unconstitutional gift of public funds prohibited by article 8, section 7 of the Washington State Constitution. The PUD argues that consumer-owned utilities should therefore be

accorded flexibility to enable them to exercise their own judgments as to how they may comply with the Act consistent with the limitations of the article 8, section 7. The PUD argues that to provide this flexibility CTED should adopt the following language contained in WAC 480-109-010 (1) (b) (i) adopted by the Washington Utilities and Transportation Commission: “A utility may, with full documentation, alter the Council’s methodologies to better fit the attributes and characteristics of its service territory.”

CTED Response: The rules are consistent with the language in RCW 19.285.040 (1) (a), which provides that each utility shall identify its achievable cost-effective conservation potential “using methodologies consistent with those used by the Pacific Northwest electric power and conservation planning council[.]” CTED believes the language in WAC 194-37-070 will give the consumer-owned utilities sufficient flexibility to allow them to implement conservation measures consistent with article 8, section 7 of the Washington State Constitution. Reasons for not adopting the WUTC language are given in the previous response, above.

Comments Received From: Mason County PUD #3, E-mail from Tom Eckman of the Northwest Power and Conservation Council, NW Energy Coalition, and NEEC

Summary of Comments: Regarding -070 (3) (a), Mason County PUD argues that production and distribution efficiencies should not be additive (to the end use targets) but should be included with them as one target that can be arrived using the conservation calculator. Tom Eckman notes that the Council’s regional goal includes an estimate of potential savings from production and distribution efficiencies and therefore, a percentage of the regional goal, which is what the Calculator calculates would automatically include some amount of production and distribution efficiencies.

The Coalition (with substantial agreement from NEEC in its comments at the Feb. 5 public hearing) argues that this change would substantially undermine the requirement that utilities pursue all cost effective conservation since the Council’s regional target does not include all cost-effective conservation from production and distribution efficiencies. They go on to say that “CTED must modify the rules in WAC 194-37-070 in one of three ways to uphold the law:

- 1) Eliminate the options for a utility to use the conservation calculator and the modified conservation calculator; or
- 2) Add language that states a utility can only use the conservation calculator or the modified conservation calculator when the Council is fully assessing distribution and production efficiencies in its regional plan and including those savings in the conservation calculator; or
- 3) Include language in the final rules that clearly requires utilities to assess the potential for and acquire cost-effective distribution and production efficiencies in addition to end-use conservation.”

CTED Response: In the light of the comments by Tom Eckman, the Conservation Manager for the NWPCC, CTED sees no alternative but to defer to Council staff in matters regarding Council methodology. Therefore the rules have been amended to

reflect that when using the conservation calculator, the target shall be assumed to include some amount of production and distribution efficiencies. The exact amount should be documented by the utility. The rule language has been changed to reflect this new information.

In regard to the NWECC's argument that this change undermines the ability of utilities in Washington to pursue all cost effective conservation, CTED believes that whether or not some utilities include more distribution and production efficiencies and less end-use efficiencies in their targets and achievements will not materially affect the total amount of conservation achieved. All of the largest utilities in the state that are covered by these rules are likely to use the Utility Analysis Option (subsection 6) which requires that production and distribution be added to end-use conservation. The calculator was proposed to make it easier for mid-sized utilities with limited conservation staff and analytic capability to comply with the Energy Independence Act. This is still an important goal and it must be weighed against any risk that they may under-perform. Since the Council sets a regional target for available cost-effective conservation, any utility using the calculator will approximate its share of the regional target. Any shortfall from the requirement that they achieve all cost-effective conservation is likely to be small, if there is any at all. In addition, all but one of the consumer owned utilities is a customer of Bonneville Power Administration (BPA) and thus has the additional incentive to do more conservation rather than less in order to avoid facing BPA's Tier 2 prices. CTED also believes that this concern is very likely to be eliminated when a new calculator is developed to reflect the 6th Power Plan. The 6th Plan is intended to include higher levels of production and distribution efficiency in the regional conservation target and thus the problem of "swapping" will disappear. In short, the risk of a small loss of conservation in the first year or two of implementation of I-937 is offset by making it permanently easy to fully comply with the law in the long run. These rules can always be amended if the fears of the commenters are realized.

Comments received from: Mason PUD #3

Summary of Comments: Mason #3 believes that CTED is being too rigorous by requiring a ground up assessment of conservation potential from production and distribution if a utility wants to include in assessment when using the modified calculator. Instead, it should be able to use those measures that have deemed values per the RTF.

CTED Response: Good point. We have changed the language in -070 (3)(a), -090(2)(a) and -100 (3) to allow deemed RTF measures to automatically count without the detailed procedures otherwise required.

Comments received from: NWECC and Tacoma Power

Summary of Comments: NWECC Wants to clarify avoided cost in subsection -070(6) (a) (iii), by adding: "Avoided cost shall not be based upon the cost of a utility's own embedded resources or a Bonneville Power Administration rate of general application

that includes the hydroelectric resources of the federal base system as defined by 16 USC 839a;” Tacoma Power requests clarification that the avoided cost is for the next increment of power available “to the utility.”

CTED Response: CTED thinks that both concerns are adequately addressed in the language in the draft rules, but will insert “regional” in front of “market prices” to make it clear that utilities must use a regional market price as their avoided cost, but not necessarily the one the Council calculated.

Comments received from: NWEC and NEEC

Summary of Comments: NWEC, in its written comments, and NEEC, in its oral comments, suggest language to clarify “achievable penetration rate” language in -070 (6)(a)(xii).

CTED Response: We have made clarifications along the lines suggested but did not add the language suggested by NWEC about not halving a 20 year potential to calculate a 10 year potential because we think it is well understood that the two are not linear and need to be calculated separately.

Proposed WAC: NEW SECTION - WAC 194-37-080

Comments Received From: Clark PUD

Summary of Comments: CTED should restore some language to deal with what happens when a utility makes a good faith attempt to get customers (especially large industrials) to conserve, but they fail to cooperate.

CTED Response: We agree that this is a gap in the rules that ought to be addressed. We have modified the language that was in an earlier draft –and found to be unsatisfactory by most stakeholders—by noting that utilities may document lack of customer participation in utility conservation programs. It is then up to the auditor to evaluate the utility’s efforts to reach out to its customers when it assesses compliance with the statute.

This new language is now in WAC 194-37-080 (11).

Further Comments Received from: Benton PUD, Cowlitz PUD, Inland, and NWEC

Summary of Comments: In subsequent comments on the revised language, these utilities supported the ability to document conservation shortfalls. Cowlitz also proposed language that would allow a utility to deduct eligible shortfalls from their conservation target and not be penalized for it.

NWEC did not like the new language, would like it deleted, but would agree to changes that specifically disallow using shortfalls to automatically lower future targets.

CTED Response: We believe that the Cowlitz request goes too far because it would have CTED explicitly adopt a “force majeure” exception to the conservation achievements. We have been reminded by other commenters that we do not have the authority to do that. We have gone as far as we can by suggesting that utilities document shortfalls beyond their control, but cannot guarantee that they will not be penalized for those shortfalls. We think the NVEC suggestions are good ones and have incorporated them in the final rule.

Comments Received From: Northwest Energy Efficiency Council and NW Energy Coalition

Summary of Comments: The commenters were concerned that the language regarding accounting for co-generation was ambiguous. They provided language that they thought would clarify how co-generation should be documented.

CTED Response: Agree. We have added the suggested language.

Comments Received From: Chelan PUD

Summary of Comments:

1. Council’s methodologies should have no role in the reporting of conservation achievements.
2. Utilities shouldn’t have to use the BPA/RTF reporting system. Although the rule states that a utility may develop an alternative reporting format, Chelan doubts whether it would be approved.

CTED Response:

1. RCW 19.285.080 gives CTED authority to adopt rules regarding documentation and the “format and content of reports.” CTED chose to use the regional methodologies that are already available and used by almost all Washington utilities.
2. CTED acknowledges that Chelan County PUD is in a unique position as the only qualifying non-IOU that is not a customer of BPA and thus not already using the BPA/RTF reporting format. CTED believes that the rule provides the flexibility that Chelan seems to need, but Chelan must understand that for data collection and report writing purposes and for the auditor some degree of consistency across the state is necessary.

Proposed WAC: NEW SECTION - WAC 194-37-100

Comments Received From: Inland Power

Summary of Comments: Efficiency improvements to the Federal Columbia River Power System (FCRPS) should be eligible to be counted by Washington utilities to the extent they share in paying for them.

CTED Response: The law simply does not allow this. The reason is found in the definition of an eligible renewable resource in RCW 19.285.030(10)(b), which says that to be counted as an eligible renewable resource, the incremental electricity produced as a result of efficiency improvements must be to a hydroelectric project owned by a qualifying utility and located in the Pacific Northwest. The FCRPS is not owned by customers of the Bonneville Power Administration, but by Federal government agencies such as the Army Corps of Engineers and the Bureau of Recreation and thus is not a “qualified utility.”

Proposed WAC: NEW SECTION - WAC 194-37-110

Comments Received From: Clark PUD, Renewable NW, WPUA, NW Energy Coalition, Inland Power, Industrial Customers of NW Utilities, and Chelan PUD

Summary of Comments: Clarify dates for meeting renewable energy targets. Many of the utilities, such as Inland Power, assert that RCW 19.285.040 (2) (a) does not require a utility to own a resource or have a contract in place dated no later than January 1 of the target year to be in compliance with the eligible renewable resources targets established in that section. They contend that the test for compliance with RCW 19.285.040(2) is a qualifying utility’s actual annual use of electricity from eligible renewable resources or RECs during the target year.

CTED Response: There has been some confusion about when utilities must meet the target for renewable energy and the fact that they can use RECs from the prior, current and next year to meet that target.

In regard to the target dates, it has been CTED’s understanding from the start of the rule development process that a utility must have in hand by January 1 of the target year contracts or other proof that demonstrate that it met the renewable energy targets for that year if it is to be considered to be in compliance with the law. This is because CTED believes that there is no other way to read the statutory language which says that each qualifying utility shall meet the annual target “by January 1” of the target year. Utilities are right that, in some way, performance during the target year also must meet the test, but this is because circumstances may occur such that the resources a utility acquires by January 1 may fail to perform as expected or parties that a utility contracted with fail to perform. WAC 194-37-110 (2) (a) (i) provides that the utility should document these occurrences and report how they made up any shortfalls in meeting its targets, if it has. Determinations of compliance in such circumstances are to be made, as in all cases, by the Auditor and Attorney General.

RECs are created and registered based on the annual output of a specific generation unit. Utilities purchase RECs of specific vintages—i.e. - from specific years and generators. They can purchase RECs from future years in advance and from past years if they are still available. The rule asks the utility to document that the RECs were acquired by January 1 of the target year, but recognizes that the RECs may have been produced during the target year, the previous year or the subsequent year, as permitted under RCW 19.285.040 (2) (e).

We have edited the rules to provide greater clarity about these issues.

Further Comments Received From: Renewable Northwest Project (RNP)

Summary of Comments: RNP is concerned that in revising subsections -110 (2)(a)(i)(C)&(D), the concepts of “force majeure” and “making up for underperformance” got intermingled. They suggest that there should be separate language and subsections for “uncontrollable events” (force majeure) and for making up for underperformance.

CTED Response: We agree and have made the appropriate changes.

Comments Received From: Benton PUD and Snohomish PUD

Summary of Comments: Both PUDs raise objections to the terms of Western Region Electricity Generation Information System (WREGIS) contracts, especially regarding liability issues.

CTED Response: We acknowledge that several utilities have concerns about liability issues associated with WREGIS’s contract provisions. CTED will continue to press WREGIS for a resolution of these issues. CTED believes that WREGIS, since it was designed by the Western Electricity Coordinating Council (WECC) members to be the single renewable tracking system for the Western Interconnection, remains the best, if not the only, option for a tracking system. However, if it turns out that WREGIS does have problems that can’t be fixed, CTED will need to consider the designation of another tracking system if one is available.

A new section, WAC 194-37-210, has been added to address this situation:

“Pursuant to RCW 19.285.030(17), the department selects WREGIS as the renewable energy credit tracking system. If WREGIS proves to be unworkable and if there are alternative tracking systems, the department may re-open these rules and solicit, through an open process, proposals from other tracking systems to allow it to verify renewable energy credits for compliance with chapter 19.285 RCW.”

Proposed WAC: NEW SECTION - WAC 194-37-130

Comments Received From: Renewable NWP, NW Energy Coalition

Summary of Comments: RNP and NWECC continue to object that there is no statutory authority to allow qualified utilities that generate incremental hydropower to sell that power to other utilities as an eligible renewable resource.

CTED Response: CTED holds that although the statute is clear that RECs cannot be created from incremental hydropower, the statute is silent about selling incremental hydropower when no RECs are created or registered. Therefore, we believe that incremental hydropower, when sold with its environmental attributes, should be treated in exactly the same manner as when one utility sells another utility wind power when no RECs are created or registered. In both cases, eligible energy is generated and sold without RECs entering the picture at all. We believe that the overall intent of I-937 is to

encourage the squeezing of more power out of the existing hydropower system. The rule, as written, does that.

Proposed WAC: NEW SECTION - WAC 194-37-140

Comments Received From: Inland Power and Light

Summary of Comments: This rule is neither needed nor required and there are other ways of demonstrating no load growth consistent with the statute. The plain language of the statute regarding “average” should suffice.

CTED Response: The issue is the language in WAC 194-37-140(2) which asks the utility to document that its weather-adjusted load for the most recent prior year is lower than the third prior year when calculating “no load growth.” CTED included this language because the stakeholders generally agreed that the statutory language was confusing in that the term “average” in RCW 19.285.040 (2) (d) (i) did not refer back to any base year for comparison. There was agreement that the current language seemed to best fit the intent of RCW 19.285.040 (2) (d).

Proposed WAC: NEW SECTION - WAC 194-37-160

Comments Received From: Renewable NWP, WPUDA, and Industrial Customers of NW Utilities

Summary of Comments: Renewable NWP likes the language as is.

WPUDA would like to change the point in time at which a utility exercises its choice of methodology. It also suggests some changes in the calculation of the levelized cost of the alternative resources when the one-time only election is made.

ICNU wants to delete the one-time choice and allow utilities to use either method as they please.

CTED Response: The overwhelming consensus of stakeholders was to allow the choice between the two methods. This reduced the possibility of “gaming” while allowing utilities to use a method they felt most comfortable with. We have kept the language mostly as is but agree with WPUDA that some clarification of the calculation in the “permanent one-time only methodology” is needed and have made the appropriate changes in the rule.

Further Comments Received From: RNP, NWEAC, and WPUDA

Summary of Comments: During the extended comment period RNP, NWEAC and WPUDA jointly submitted a set of further technical corrections to 160 (2)

CTED Response: CTED has accepted the technical corrections.

Comments Received from: Cowlitz PUD

Summary of Comments: Utilities should make one time selection of cost cap methodologies when they first exercise their option to use the cost cap.

CTED Response: We believe this is what the first paragraph of WAC 194-37-160 provides.

Proposed WAC: NEW SECTION - WAC 194-37-190

Comments Received From: Renewable NW, Tacoma Power, Chelan PUD, and Inland Power

Summary of Comments: Renewables Northwest objects to WAC 194-37-190 (1)(d), which allows a utility that would have surplus resources as a result of its acquisitions of renewable resources required by I-937 to use a “forward price curve” as the reference alternative resource when computing the price cap. They argue that there is a risk of such utilities not meeting their renewable targets because the cost cap will be set too low. Utilities that are in surplus can always buy RECs to meet their renewable targets.

Tacoma Power and Chelan PUD defend this section saying it complies with the law and makes sense for utilities in their situation.

Inland Power argues that demand-side resources should be included as a possible alternative resource when computing the cost cap. In effect, they argue, a utility should be able to substitute conservation for renewables when it is cost-effective.

CTED Response: There are good arguments on both sides of this dispute, but in trying to interpret the Act as whole to determine what information utilities should document, CTED believes that for utilities that are in surplus because of an abundance of hydropower, the Act does not require them to forgo one source of renewable energy for another. By allowing those few utilities to report their use of a forward price curve, providing they fully document its equivalence to an eligible renewable resource, they will have a price for an alternative supply side resource that makes sense for their circumstances. In addition, the rule as written, will add further incentive to make their existing hydro generation more efficient and productive.

In response to Inland, CTED believes that while they make an interesting policy case for allowing conservation to be used as a substitute resource in calculating the cost cap, the law seems quite clear in requiring that a supply-side resource be the “reasonably available substitute resource” specified in RCW 19.285.050 (1)(b).

Proposed WAC: New Section WAC 194-37-210

Comments Received From: Benton PUD

Summary of Comments: Would prefer rules that would allow CTED to choose new tracking system as needed rather than, as proposed, by re-opening the rules.

CTED Response: CTED believes that the need for an open process is more important than making it easy to switch tracking systems.