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OPEN PUBLIC HEARING

IN RE: I-937

FEBRUARY 5, 2008

9:00 - 11:00 A.M.

1 MR. NOTHSTEIN: Good morning. My name is Greg
2 Nothstein, and I am an energy policy specialist in the
3 Energy policy division at the Department of Community Trade
4 & Economic Development. I will be the presiding officer at
5 this hearing.

6 I call this hearing to order on February 5, 2008
7 at 9 a.m. This public hearing is being held pursuant to the
8 Administrative Procedure Act Chapter 34.05 R.C.W.; the Open
9 and Public Meetings Act Chapter 42.30 R.C.W.; and CTED's
10 chapter enabling the adoption of these rules pursuant to
11 Second Substitute Senate Bill 6558, Chapter 247, Laws of
12 2006.

13 The purpose of this hearing is to take public
14 comments on the adoption of proposed rules creating a new
15 Washington administrative code under Chapter 194-37.

16 The Preproposal Statement of inquiry, CR-101, was
17 filed on January 24, 2007, and published in the Washington
18 State Register, Issue 07-03.

19 The notice of Proposed Rule Making CR-102 was
20 filed on October 3, 2007, and published in the Washington
21 State Register, Issue 07-20, on October 17, 2007.

22 A Supplemental Notice of Proposed Rule Making
23 CR-102 was filed on December 27, 2007, and published in the
24 Washington State Register, Issue 08-02, on January 16, 2008.

25 It is the Department's intention to review and

1 consider all the comments received prior to February 8,
2 2008, and to adopt rules on March 4, 2008.

3 This hearing will consist of two parts. First, we
4 will provide a brief explanation of the proposal. Second,
5 we will receive oral testimony. There's a sign-in sheet in
6 the back. Anyone who's not signed in, please take this
7 opportunity. If you wish to testify, please indicate on the
8 sign-in sheet, and I will call on these individuals later
9 on.

10 This hearing is being recorded and the transcript
11 will become part of the official rule-making file. I will
12 ask you to keep your comments to two minutes or less. Also,
13 I will note the hearing is intended to provide an
14 opportunity to receive your comments, and it is not intended
15 to act as an interactive question and answer session. We
16 will summarize our responses to the comments in the Concise
17 Statement required at adoption.

18 I would like to introduce Howard Schwartz, who's
19 with me here today. He will provide a brief summary of the
20 proposed rules at this time.

21 MR. SCHWARTZ: The proposed rules are pretty much
22 the same as the previous versions, so first I'll summarize
23 the overall content of the rules and this will be basically
24 what we've said at the last hearing and I'll just briefly
25 note some of the changes.

1 The rules are essentially divided into three
2 parts. The first part consists of definitions. The second
3 part, the rules governing the documentation and reporting of
4 conservation targets and achievements. And third deals with
5 reporting and documentation of renewable acquisitions.

6 The definition section pretty much takes the
7 definitions from the statute but then adds others that are
8 included in the rules but were not in the statute.

9 The conservation sections can be found in sections
10 basically .060 through .100. The first section is
11 conservation reporting requirements where it is explained
12 how utilities reports on these conservation achievements.

13 The rest of the conservation section has to do
14 with how you feel these will document their compliance with
15 the methodology using a methodology consistent with the 5th
16 power plan of Northwest Power and Conservation Council.

17 Section 080 provides guidance for the
18 documentation of the actual conservation savings. And
19 sections 090 and 100 deal with the documentation of improved
20 efficiency from the distribution system and production.

21 Renewables are contained in the later sections.
22 Section 110 deals with the overall reporting requirements
23 for renewable acquisitions, as does Section 120, which talks
24 about how to do document renewable achievements or renewable
25 energy credits.

1 Section 130 talks about the specifics of
2 documentation of renewables for incremental hydropower. And
3 the rest of the conservation of the renewables part, Section
4 140 through 200 deal with reporting and documentation which
5 comply with the statute using a financial path rather than a
6 strictly renewable acquisition path. This is the part that
7 deals with cost cap as provided in the statute.

8 Section 140 deals with how to document compliance
9 of the utility. 150 establishes how to document the annual
10 revenue requirement, which is an integral part of the cost
11 cap calculation.

12 Section 160 through 190 talk about the details of
13 how to report the compliance via the cost cap. And Section
14 200 details compliance of how to report and document the use
15 of renewable energy credits.

16 So this version also includes a new section 210
17 which specifically deals with the naming of WREGIS with the
18 selection of renewable energy tracking system previous
19 version had this in the definition sections. This is now
20 moved to section 110 WREGIS's name as the renewable tracking
21 system but an opportunity is offered if there are problems
22 with WREGIS to reopen the rules and choose an alternative
23 tracking system.

24 The changes in the rules can be found in the Red
25 Line version changes rather than from the last version can

1 be found in the Red-Line version and mostly technical in
2 nature. We also published a draft at our concise clan tore
3 statements and published that on the web in order to as a
4 courtesy to stakeholders in this process. So everyone will
5 understand the reason behind the decisions we have made.
6 And feel free to comment on those as well. Greg.

7 MR. NOTHSTEIN: Now we'll take comments. First
8 person electing to make comments is Stan Price.

9 MR. PRICE: My name is Stan Price. I'm the
10 executive director of the Northwest Energy Efficiency
11 Council. The Northwest Energy Efficiency Council finds this
12 version of the Department's final rules equally lacking as
13 per our comments on the earlier draft of final rules.

14 We reiterate our previous comments without
15 recounting them here other than to say parenthetically that
16 we are distressed that section 194-37-070(6)(XII) still
17 lacks specific guidance on the utilities conservation
18 assessment for the 10-year period versus the 20-year period
19 with the diminution of the achievable fractions moving from
20 the power council's 20-year figures to the 10-year figures.
21 That's a weighted average of 46 percent.

22 Without that additional guidance, there's a
23 potential that the conservation achieved under this statute
24 will be significantly lower than that which was intended by
25 the language of the law.

1 The new language added in the current proposed
2 final rules in at least two areas is either inconsistent
3 with the plain intent of the statute or completely
4 unsupported by the language in the law.

5 First, with regard to WAC 194-37-070(5)(h), the
6 Department's treatment of production and distribution
7 efficiency suffers from fuzzy logic. The Department has
8 based its approach in this area based on an e-mail
9 communication from Mr. Tom Eckman of the Northwest Power and
10 Conservation Council.

11 Mr. Eckman's e-mail states, "Just 'cause we didn't
12 include some measure" in this case, production and
13 distribution of inefficiency "in the plan, doesn't mean that
14 folks can't use it to meet the plan's targets." Mr. Eckman
15 is clearly referring in this instance to the Fifth Power
16 Plan's targets.

17 The statute does not obligate the public utilities
18 to meet the targets of the Fifth Power Plan or any
19 subsequent plan. The central tenet of this section of the
20 law requires the utilities to acquire all cost effective
21 conservation.

22 While the law does specify that utilities use
23 methodologies consistent with those of the council, they are
24 different targets and obligate different results.

25 It is inherently self-contradictory to write a

1 rule that allows the replacement of one form of cost
2 effective conservation with another when the clear language
3 and the intent of that law is for all cost effective
4 conservation to be acquired.

5 With regard to WAC 194-37-080(11), this section is
6 completely unsupported by any language in the statute. If
7 the law had contemplated some special relief from meeting
8 conservation targets, it would have done so in exactly the
9 same way it was done for the renewable targets.

10 Given the absence of any language in the statute,
11 for relief from missing conservation targets, the Department
12 has apparently written a rule for the way they wish the
13 statute was written as opposed to the one that was passed by
14 the citizens of Washington State.

15 Thank you for the opportunity to provide comments.

16 MR. NOTHSTEIN: Next person on the list is Ann
17 Grauatt.

18 MS. GRAUATT: Thank you. I am Ann Grauatt, policy
19 director of the Renewable Northwest Project. I can't resist
20 but to start with a process question. I do have three
21 substantive points to make. But today is my daughter's
22 second birthday, and so I think it's appropriate to point
23 out that my new parental philosophy is, do as I say, not as
24 I do. It's okay for me to tell the dogs to shut up, but
25 it's not okay for her to use that term.

1 So I think that CTED has adopted a similar
2 parental philosophy, which I support their decision to
3 extend the rule making until 2008, but I will not be
4 sympathetic with the utilities should they miss their
5 January 1 deadline.

6 So my substantive points are, starting with I'm
7 just going to go in order as they show up in the renewable
8 rules. 194-37-110 that falls under the long section related
9 to renewable energy reporting. I note that the agency has
10 made an updated change to the provision that allow utility
11 to make up for shortfalls for under performance or non
12 material underestimates of load projections, but we don't
13 think that that's entirely clear.

14 So, potentially some additional clarity in the
15 final concise of explanatory statement if that was the
16 intent to allow for it to make up for shortfalls that are
17 tied to that provision of the law. And I only note that
18 that provision in the law is a very narrow provision related
19 to uncontrollable events.

20 So my second point relates to section 194-37-160,
21 which is the documentation of the cost cap. This is the
22 provision that allows the utility to either choose an annual
23 update of their cost cap analysis or the permanent one-time
24 methodology.

25 As we said in our earlier comments, we are

1 comfortable with this change that was made in the final
2 draft rules. We do think the language still needs a little
3 technical editing, in particular, related to making a clear
4 distinction between constant year rule dollars versus a
5 stream of annual values. I'll submit written comments on
6 Friday and I'll provide some suggested edits to that.

7 Finally, related to the substitute resource. I
8 was in the capitol last week talking to legislators about
9 937, and one of the points I made was that we like some of
10 rules that the agencies issued and we don't like other
11 rules.

12 The substitute resource has been consistent in
13 rules that I don't like that R&P does have concerns with.
14 But you win some, you lose some.

15 For the record, we will say we continue to object
16 to the ability to having the utilities rely on a forward
17 price curve. We think the explanation in the draft concise
18 explanatory statement may have missed our point.

19 I will reiterate that in written comments just
20 briefly. We don't think that a forward price curve includes
21 a risk premium that would be seen in an otherwise long-term
22 energy purchase. It wasn't an issue of having them swap a
23 renewable versus a renewable if you have to give up chief
24 low cost hydro for other renewables. We think the law deals
25 with this situation where if you don't need power, you may

1 purchase renewable energy credits, you will still hit the
2 cost gap, if the cost cap is still there. But it would
3 otherwise allow the development of other non hydro renewable
4 resources to go forward.

5 And so that concludes my comments. Thanks again
6 for the opportunity.

7 MR. NOTHSTEIN: Next on the list wishing to
8 testify is Danielle Dixon.

9 MS. DIXON: For the record, my name is Danielle
10 Dixon. I'm a senior policy associate with the Northwest
11 Energy Coalition. Thank you for the opportunity to comment.

12 CTED's detailed rules will help ensure consistent
13 interpretation of the statute for utilities for the auditor
14 and for the attorney general. While we don't agree with
15 CTED's interpretations of some aspects of the statute, we do
16 believe it's important to adhere to a single comprehensive
17 brain work.

18 In terms of substantive comments, the revised
19 rules add language that allows the utilities to complete any
20 conservation, production and distribution efficiency. And
21 we believe that this interpretation of the law misses the
22 fundamental underpinnings of the statute, which requires all
23 utilities to acquire all cost effective conservation.

24 While utilities may be able to swap resources in
25 meeting its share of the Fifth Plan's target, this law does

1 not allow for that. Therefore, we believe the additionality
2 concept should remain per the original CR-102.

3 The current rules also require a utility to set up
4 winning (phonetic) costs equal to a forecast of market
5 prices. The Concise Explanatory Statement correctly states
6 that a utility must use the regional avoided cost in
7 determining its avoided cost for conservation.

8 We again recommend further specificity in the
9 rules. Avoided costs cannot be based on the utilities own
10 embedded resources or on the power administration rate of
11 general application that includes the federal hydro system.

12 The revised rules as Stan was saying, establish in
13 essence a (inaudible) clause for conservation. The statute
14 explicitly includes a for (inaudible) clause for the
15 renewable standard, but no such language for conservation.
16 And we believe this language should be deleted.

17 The Concise Explanatory incorrectly states that
18 all requested changes to definitions could not be addressed
19 because the terms were defined in the statute. The term
20 qualified incremental hydropower efficiency improvements is
21 not defined in the law.

22 The coalition reiterates its suggestion that this
23 definition clarify that any action to improve efficiency in
24 a hydro facility cannot have a detrimental impact on fish
25 and wildlife obligations.

1 Also, with the Concise Explanatory Statement, we
2 take exception with the discussion of using a forward price
3 curve in the cost cap analysis. The CES states that CTED
4 believes that for utilities that are surplus because of an
5 abundance of hydropower, it makes no sense to unnecessarily
6 forgo one source of renewable energy for another.

7 The intent of I937 is to diversify our energy
8 resources and make us less vulnerable to fossil fuel price
9 volatility and also to droughts.

10 The law specifically allows utilities to purchase
11 REC's rather than sell any existing resources. So there
12 really should be no need to replace one renewable resource
13 with another.

14 In conclusion, we do plan to also submit comments
15 by the Friday deadline, and those will include very
16 suggestive clarifying grammatical, edits as well. I didn't
17 want to take up your time here with those.

18 MR. NOTHSTEIN: That's the end of people wishing
19 to testify, except perhaps for...

20 MR. WARREN: We appreciate the T&D change. And I
21 heard Mr. Price's discussion on it and I see his
22 perspective. The other side of that is that we believe the
23 law is contradictory in that it talks about consistent with
24 a council methodology, the utilities sets its 10-year
25 target. And the council methodology, and I think

1 Mr. Eckman's e-mail pointed out, doesn't include T&D
2 upgrades or production efficiencies.

3 So it's difficult to say you should use the
4 counsel methodology to set a target using only those
5 measures included in the methodology. And the previous
6 approach would, in essence, it would be a disincentive to go
7 get any transmission distribution upgrades.

8 The concern I had with the way it's worded now is
9 it said cost effective T&D upgrades would count. And we'd
10 like you to consider that some T&D upgrades with the
11 utilities of limited capital sets the conservation target
12 using council methodologies and then sees over the long-term
13 that that capital could upgrade T&D or perhaps a generator
14 using -- perhaps it wouldn't be a cost effective test, but
15 nonetheless on a long-term basis, it might acquire more
16 conservation savings or efficiency savings. That utility
17 ought to be able to use that.

18 So when you add T&D -- when you say cost effective
19 T&D in the new draft, I think you sort of limited and may
20 continue the disincentive to invest in T&D upgrades. But,
21 nonetheless, we do support the change there.

22 We would, I think, second R&P's request for
23 clarification on the nominal and the annual streams, and
24 we'll submit some written comments on that, I think, too.
25 But I'm still trying to work my way through how that flows.

1 We would support that clarification.

2 And then in the 070 in the section on the cost cap
3 choices, the one, I guess, is what R&D and NWC ar referring
4 to the forward price curve. Two is sort of the more simple
5 approach.

6 Within sub 2, there's two choices. And we're also
7 trying to work through the difference between the
8 incremental inflated cost versus the annual revenue streams.
9 So we'll submit written comments and we'll seek to work with
10 other parties to see if we can come up with a comment
11 interpretation.

12 MR. NOTHSTEIN: Thank you. No one else on the
13 sign-up sheet has indicated that they want to testify. But
14 Nicholas is a possibility.

15 MR. GARCIA: I was late, so I did not see the
16 checkmark that I was supposed to make. I'm Nicholas Garcia.
17 I'm with Tacoma Power. And we wish to say simply that we
18 support CTED's collusion or allowance of these price curves
19 when determining the cost cap. We believe that is
20 consistent with the law and with good public policy.

21 Thank you.

22 MR. NOTHSTEIN: Well, that's all we have unless
23 someone else shows up and wishes to testify.

24 (At 11:00 a.m., the hearing was concluded.)

25