



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (October 2017)
(Implements RCW 34.05.310)
Do **NOT** use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: November 22, 2017

TIME: 9:41 AM

WSR 17-23-185

Agency: Washington State Department of Commerce

Subject of possible rule making: Consideration of potential changes to the method in WAC 194-37-140(2) of determining whether a utility's weather-adjusted load is growing.

Statutes authorizing the agency to adopt rules on this subject: RCW 19.285.080(2)

Reasons why rules on this subject may be needed and what they might accomplish: The Department of Commerce received a request from the State Auditor for an interpretation of the "no-growth" provision in WAC 194-37-140(2) and the associated statute, RCW 19.285.040(2)(d)(i). The Auditor's letter identifies an alternative calculation proposed by a utility during the course of an audit. After reviewing this request, Commerce believes that it would be appropriate to consider the existing rule provision along with a number of other possible calculation methods. The inquiry will allow Commerce to identify a calculation method that is a reasonable and permissible construction of the statutory provision and furthers the overall purpose of the Energy Independence Act (Chapter 19.285 RCW).

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: The State Auditor reviews compliance by municipal utilities and public utility districts that are subject to RCW 19.285.040. The Utilities and Transportation Commission oversees compliance with RCW 19.285.040 by investor-owned utilities. Commerce will consult with the UTC and the State Auditor during the rulemaking process.


Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe) standard rule making

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

	(If necessary)
Name: Glenn Blackmon	Name:
Address: Department of Commerce, PO Box 42525, Olympia, WA 98504	Address:
Phone: 360 725-3115	Phone:
Fax:	Fax:
TTY:	TTY:
Email: glenn.blackmon@commerce.wa.gov	Email:
Web site: commerce.wa.gov/eia	Web site:
Other:	Other:

Additional comments: Commerce intends to limit this rule making inquiry to WAC 194-47-140(2).

Date: November 22, 2017	Signature: 
Name: Jaime Rossman	
Title: Rules Coordinator	



STATE OF WASHINGTON
DEPARTMENT OF COMMERCE
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November 21, 2017

Pat McCarthy
Office of the Washington State Auditor
PO Box 40021
Olympia WA 98504-0021

Re: Energy Independence Act - Interpretation of WAC 194-37-140(2)

Dear Ms. McCarthy:

This letter is in response to your request on October 2, 2017, that the Department of Commerce provide assistance in interpreting WAC 194-37-140(2).

The rule in question requires that a utility using the no-growth compliance approach demonstrate that "its weather-adjusted load for the most recent prior year is lower than the third year prior." Your request also concerns the underlying statutory provision, which requires that a utility show its "weather-adjusted load for the previous three years on average did not increase over that time period." RCW 19.285.040(2)(d)(i).

The rule, which Commerce adopted in 2008, is clear in its requirements, but your audit experience suggests to us that a fresh look at this provision would be appropriate. We are opening a rule making inquiry under the Administrative Procedure Act and will solicit suggestions from stakeholders regarding possible amendment or clarification of the calculation method in WAC 194-37-140(2).

We look forward to your input in this inquiry.

Sincerely,


Brian Bonlender
Director



100517a
Michael Furze -
RECEIVED Response

OCT 05 2017

COMMERCE DIRECTOR'S OFFICE

**Office of the Washington State Auditor
Pat McCarthy**

October 2, 2017

Brian Bonlender, Director
Washington State Department of Commerce
1011 Plum St. S.E.
Olympia, WA 98504-2525

Subject: Determining if a qualifying utility is a no-load growth utility under the Energy Independence Act ("EIA")

Dear Director Bonlender:

The Office of the State Auditor's Office is requesting the Department to provide its official interpretation of how a qualifying utility is to determine it is a no-load-growth utility under the Energy Independence Act. Specifically, I seek the Department's interpretation as to how a qualifying utility is to apply the Department's administrative rule under WAC 194-37-140 (2) to comply with the Act's requirement to demonstrate that its weather-adjusted load for the previous three years on average did not increase over that time period, as required by RCW 19.285.040 (2)(d).

Issue

The State Auditor's Office is currently reviewing a utility's assertion it is eligible to use the 1 percent financial cost cap to comply with its renewable energy target as a no-load-growth utility under the EIA. The utility has indicated the WAC rule and the related RCW are in conflict. Specifically, our Office has been unable to determine how a comparison of its weather-adjusted load values between two years satisfies the RCW requirement to demonstrate its weather-adjusted load for the previous three years on average did not increase over that time period.

Background

The State Auditor's Office opines on utility compliance with the Energy Independence Act. In these engagements, the auditor evaluates a utility's compliance against existing laws and

administrative rules of the Act. In doing so, the auditor applies professional judgement in developing expectations as to how the words of the law and administrative rule are to be applied.

In addition to personnel directly involved in the examination, professional judgment may involve collaboration with other stakeholders, external specialists and management in the audit organization¹.

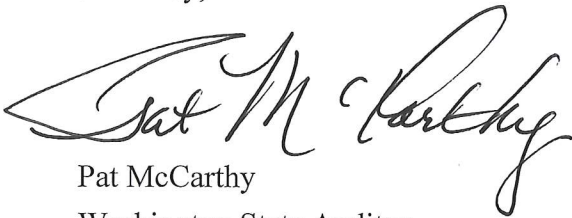
Our Office understands the Department originally proposed and adopted the language under WAC 194-37-140(2) “because the stakeholders generally agreed that the statutory language was confusing in that the term ‘average’ in RCW 19.285.040(2)(d)(i) did not refer back to any base year for comparison.”²

Our Office provided Glenn Blackmon, Senior Energy Policy Specialist, the utility’s interpretation based on a reading of both the RCW and WAC rule. We appreciate the calculation examples Mr. Blackman has provided with the intent of reconciling the aforementioned WAC rule with the corresponding RCW requirements.

In each case, the interpretations result in a comparison of the weather-adjusted load values of the first and last years prior to the target year, consistent with the WAC. However, the examples do not provide explanation sufficient to show the utility erred with respect to the RCW requirements by comparing its average weather-adjusted load values for 2014, 2013, and 2012 to its weather-adjusted load for 2011 to support its assertion no load growth occurred.

I thank you for your consideration of this request for clarifying interpretation.

Sincerely,

A handwritten signature in black ink, appearing to read "Pat M. McCarthy". The signature is fluid and cursive, with a large initial "P" and "M".

Pat McCarthy

Washington State Auditor

Cc: Reed Schuler, Senior Policy Advisor, Climate & Sustainability

¹ Government Auditing Standards, 2011 Revision, Chapter 3 – General Standards, § .63

² Chapter 194-37 WAC Concise Explanatory Statement – March 2008