



# PROPOSED RULE MAKING

## CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: March 28, 2018

TIME: 10:55 AM

WSR 18-08-039

**Agency:** Washington State Department of Commerce

**Original Notice**

**Supplemental Notice to WSR** \_\_\_\_\_

**Continuance of WSR** \_\_\_\_\_

**Preproposal Statement of Inquiry was filed as WSR 17-23-185 ; or**

**Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or**

**Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**

**Proposal is exempt under RCW \_\_\_\_\_.**

**Title of rule and other identifying information:** (describe subject) WAC 194-37-140(2) Documentation of renewable resource financial path for no-load growth utilities

**Hearing location(s):**

**Date:**                      **Time:**                      **Location:** (be specific)                      **Comment:**

May 17, 2018	11:00 AM	Washington Department of Commerce 1011 Plum Street SE Olympia, WA 98504	
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**Date of intended adoption:** May 18, 2018 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: Glenn Blackmon

Address: Washington Department of Commerce, PO Box 42525, Olympia, WA 98504

Email: eia@commerce.wa.gov

Fax:

Other:

By (date) May 17, 2018

**Assistance for persons with disabilities:**

Contact Carolee Sharp

Phone: 260 725-3118

Fax:

TTY: 360 586-0772

Email: carolee.sharp@commerce.wa.gov

Other:

By (date) May 10, 2018

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The proposed rule revises the method of determining whether a qualifying utility is eligible to use the no-growth compliance method under RCW 19.285.040(2)(d) of the Energy Independence Act. The revision is proposed in response to a request from the State Auditor for an interpretation of the existing calculation rule. The proposed method more closely tracks the language in the statute. The proposed method supports the policy objectives of the Energy Independence Act by clarifying and limiting the application of the no-growth cost cap provision.

**Reasons supporting proposal:** The proposed amendment will improve clarity by identifying the baseline year. The statute is ambiguous in that it specifies that a utility's weather-adjusted load "for the previous three years on average did not increase over that time period" without stating the baseline to which the three-year average must be compared. The proposed rule specifies that the baseline period is the year prior to the three-year period. The proposed rule will maintain consistency and fairness by establishing a single calculation method applicable to all qualifying utilities in all compliance years. The proposed rule will support the ability of qualifying utilities to make plans based on expected eligibility or ineligibility to use the no-growth method.

**Statutory authority for adoption:** RCW 19.285.080(2)

**Statute being implemented:** RCW 19.285.040(2)(d)

**Is rule necessary because of a:**

- Federal Law?  Yes  No  
Federal Court Decision?  Yes  No  
State Court Decision?  Yes  No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** None

**Name of proponent:** (person or organization) Washington State Department of Commerce

- Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting: Commerce	Glenn Blackmon, Department of	1011 Plum Street SE PO Box 42525 Olympia, WA 98504-2525	360 725-3115
Implementation: Commerce	Washington State Department of	1011 Plum Street SE PO Box 42525 Olympia, WA 98504-2525	360 407-6000
Enforcement:	Attorney General of Washington	1125 Washington Street SE PO Box 40100 Olympia, WA 98504-0100	360 753-6200

**Is a school district fiscal impact statement required under RCW 28A.305.135?**

- Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Is a cost-benefit analysis required under RCW 34.05.328?**

- Yes: A preliminary cost-benefit analysis may be obtained by contacting:

- Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:

Other:

No: Please explain: RCW 34.05.328 does not apply to the Department of Commerce.

**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

RCW 34.05.310 (4)(b)  
(Internal government operations)

RCW 34.05.310 (4)(e)  
(Dictated by statute)

RCW 34.05.310 (4)(c)  
(Incorporation by reference)

RCW 34.05.310 (4)(f)  
(Set or adjust fees)

RCW 34.05.310 (4)(d)  
(Correct or clarify language)

RCW 34.05.310 (4)(g)  
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW .

Explanation of exemptions, if necessary:

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. The rule applies to 14 entities, none of whom is a small business. The rule does not impose any additional cost on any entity.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Date:** March 28, 2018

**Name:** Jaime Rossman

**Title:** Rules Coordinator

**Signature:**



**WAC 194-37-140 Documentation of renewable resource financial path for no-load growth utilities.** For each year that a utility meets the renewable energy financial cost cap, associated with no load growth, identified in RCW 19.285.040 (2)(d), the utility must document the following by January 1:

(1) That it used a consistent methodology from year to year to weather-adjust its retail load;

(2) That ~~((its weather-adjusted load for the most recent prior year is lower than the third year prior))~~ the average of weather-adjusted loads over the three previous years did not increase over the weather-adjusted load in the year immediately prior to the three-year period;

(3) That it invested at least one-percent of its total annual revenue requirement in each target year on eligible renewable resources, RECs, or a combination of both;

(4) That it executed contracts, dated no later than January 1 of the target year, for power purchases of sufficient eligible renewable resources and/or RECs;

(5) The quantity of megawatt-hours for each target year for which the utility:

(a) Commenced or renewed ownership of nonrenewable resources, other than coal transition power, after December 7, 2006; or

(b) Made electricity purchases from nonrenewable energy resources, other than coal transition power, incremental to its annual electricity purchases made or contracted for before December 7, 2006.

Sources of power for daily spot market purchases are not included in this calculation;

(6) The RECs the utility acquired, in addition to any RECs acquired for subsection (3) of this section, to offset power purchases listed in subsection (5) of this section; and

(7) Annual revenue requirement for the target year.

March 20, 2018

TO: Energy Independence Act Stakeholders  
FROM: Glenn Blackmon, Senior Energy Policy Specialist  
RE: Rulemaking inquiry – possible clarification or amendment of the method for determining whether a utility’s weather-adjusted load is growing

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## **Background**

Commerce is considering potential alternatives to the calculation method in WAC 194-37-140(2) for determining whether a utility, for purposes of Energy Independence Act compliance, is eligible to use the no-growth cost cap method in RCW 19.285.040(2)(d). The statute allows a utility to use the no-growth cost cap method only if “the utility's weather-adjusted load for the previous three years on average did not increase over that time period.” Commerce adopted the current rule in 2008 because the statutory provision is ambiguous.

## **Next Step**

Commerce is issuing a proposed rule (CR-102) to remove the existing method for calculating growth and adopt instead “Option A,” which compares a three-year average to the year prior to the three-year period. This method received broad support among stakeholders and was recently accepted by the State Auditor.

Stakeholders may submit written comments or testify at a public hearing on May 17, 2018. Commerce will decide whether to adopt the proposed rule after considering those comments and testimony.

## **Stakeholder Input**

Commerce solicited written comment from stakeholders in December 2017 and held an informal workshop on January 30, 2018.

Commerce initially identified seven alternatives to the current calculation method and sought stakeholder input on those methods and the option of retaining the current approach. Based on written comments, Commerce added four other methods to the list of options. While the initial comments were very diverse in their recommendations, the views expressed at the workshop reflected greater consensus among stakeholders.

### **1. Consistency of any four-year method with the statute**

The initial discussion focused on a foundational question of whether the statute allows a comparison to the utility’s load prior to the most recent three-year period. Most stakeholders concluded that this was not prohibited by the statute. Renewable Northwest and NW Energy Coalition had expressed skepticism in their written comments about the legal validity of a

method that used four years, but at the workshop they each said that such a method was not prohibited by the statute. Seattle City Light was the only stakeholder who interpreted the statute to prohibit use of a fourth year of information.

This concern about proper interpretation of the statute has been addressed through stakeholder discussions. The statute is ambiguous, and what is missing from the statute is the baseline to which the three-year average must be compared. It is reasonable for Commerce, as the agency authorized to adopt rules interpreting the statute, to conclude that the implied baseline is the utility's load immediately before the three-year period.

Another relevant factor is that the State Auditor has accepted the use of a four-year method (specifically, Option A) by a utility using the no-growth compliance approach. The staff of the Utilities and Transportation Commission, which oversees compliance with the EIA by investor-owned utilities, also found Option A to be the most reasonable interpretation of the statute.

## 2. Specific calculation methods

The workshop also included discussion of specific calculation methods. There were no objections, other than Seattle City Light's understanding of the legal issue, expressed to using the option identified as Option A. This method takes an average of weather-adjusted load over the most recent three years and compares the result to weather-adjusted load in the year immediately before the three-year period. For example, when applied to 2018 as the compliance year, the test would be whether:

$$\frac{(2017 + 2016 + 2015)}{3} \leq 2014$$

A number of stakeholders suggested that using four years of information, rather than restricting the calculation to a three-year period, would result in a more reliable measure of whether load was trending in a positive or negative direction.

Some stakeholders preferred other methods but indicated Option A was acceptable. Others said that any method was okay if it included an average of three years.

No stakeholder expressed support for maintaining the approach currently in rule.

## 3. Specification versus flexibility

The final topic of discussion was whether the rule should prescribe a single method to be used by all utilities. There were diverse views on this topic. One view was that any method permitted by the statute should be acceptable and that Commerce should not narrow the options. Others suggested that each utility could select a single method, perhaps at the time it first used the no-growth method. Some stakeholders argued that prescribing a single method would promote consistency, facilitate audits, and limit the opportunity for unfair advantage. It was noted that a utility qualifying for the no-growth compliance method has a significantly smaller renewable resource obligation than a utility that complies by meeting the percentage targets.

The recommended approach requires a single calculation method. A multiple-option approach would allow for self-selection among utilities, and it could result in more utilities using the no-growth method than would be permitted under any single method. A single method applied consistently by all utilities will provide the alternative compliance option contemplated by the statute without enabling opportunistic behavior.

One argument advanced in support of the menu approach is that since the statute is ambiguous, any utility is entitled to use any method not explicitly prohibited by that statute. This rationale should not be accepted. This is no more reasonable than the reverse argument – that a utility may use the no-growth compliance approach only if it satisfied every possible interpretation of the no-growth statute. However, neither approach should be adopted, because there is no basis to conclude that the ambiguity of the statute was intended. The statute lays out a specific calculation that relies on an unstated but implied baseline. The best course is for Commerce to resolve that ambiguity and provide a single, specific method for all utilities to use in a no-growth compliance approach.