



# RULE-MAKING ORDER PERMANENT RULE ONLY

## CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: June 06, 2018

TIME: 10:00 AM

WSR 18-12-114

**Agency:** Washington State Department of Commerce

**Effective date of rule:**

**Permanent Rules**

- 31 days after filing.  
 Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

- Yes  No If Yes, explain:

**Purpose:** The 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.

**Citation of rules affected by this order:**

New: None  
Repealed: None  
Amended: WAC 194-37-140  
Suspended: None

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

**Other authority:**

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 18-08-039 on March 28, 2018 (date).  
Describe any changes other than editing from proposed to adopted version: None

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

**The number of sections adopted at the request of a nongovernmental entity:**

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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**The number of sections adopted on the agency's own initiative:**

New	<u>0</u>	Amended	<u>1</u>	Repealed	<u>0</u>
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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**The number of sections adopted using:**

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

**Date Adopted:** 6/5/18

**Name:** Brian Bonlender

**Title:** Director

**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.

## **Concise Explanatory Statement**

### **WAC 194-37-140 Energy Independence Act**

#### **Agency Response to Stakeholder Comments on Proposed Rules**

**May 18, 2018**

#### **Reason for Rule Adoption**

The amendment 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.

#### **Difference between the Proposed and Adopted Rule**

There are no changes between the proposed rule and the adopted rule.

#### **Comments Received Regarding the Proposed Rule – Summary and Response**

Commerce received two written comments expressing support for the proposed rule and making no suggestions for changes to the proposed rule. There were no comments received during a public hearing conducted on May 17, 2018.



STATE OF WASHINGTON  
DEPARTMENT OF COMMERCE  
1011 Plum Street SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000  
[www.commerce.wa.gov](http://www.commerce.wa.gov)

May 17, 2018

TO: Brian Bonlender, Director

FROM: Michael Furze, Assistant Director – Energy Division

SUBJECT: Summary of Public Hearing on Proposed Amendments to WAC 194-37-140  
(Energy Independence Act)

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This is a summary of the public hearing on May 17, 2018 concerning Commerce's proposed amendments to Section 194-37-140 Washington Administrative Code.

Michael Furze convened the hearing at 11:00 am in Room 107 of Commerce's headquarters in Olympia. Glenn Blackmon, the lead for the rulemaking project, attended the hearing.

Five members of the public, representing Clark Public Utilities and Seattle City Light, attended but did not wish to offer testimony.

With no one wishing to testify, the presiding officer adjourned the hearing at 11:10 am.

**Energy Independence Act Rulemaking Hearing –  
No-growth cost cap calculation method**

Thursday, May 17, 2018

11:00 am

Washington Department of Commerce, Olympia

Name	Organization (if applicable)	Wish to testify?
1 TERRY MUNDORF	CLARK PUD	
2 MENDY DROKE	Seattle City Light	
3 Yochi Zakai	SCL	
4 Rick Dyer	Clark PUD	
5 Eric Espenhorst	Seattle City Light	
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