



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)

November 6, 2019

MEMO

To: Rulemaking Stakeholders

From: Glenn Blackmon, Manager, Energy Policy Office  
Sarah Vorpahl, Senior Energy Policy Specialist  
Austin Scharff, Rules and Legislative Coordinator

RE: 2019 Clean Energy Transformation Act – Phase 1 Proposed Rules

---

The Washington Department of Commerce today filed the attached proposed rules (CR-102) to implement the Phase 1 changes for the Clean Energy Transformation Act (CETA) and the Energy Independence Act (EIA). These rule changes establish values for the social cost of greenhouse gas emissions and incorporate federal incremental hydro into the EIA rules.

Thank you for your suggestions, questions, and discussion during the development of these rules. We look forward to continued progress in implementing the 2019 legislation.

### **Background**

The notice of inquiry (CR-101) for this rulemaking was published on June 27, 2019 (WSR 19-14-050). In the [implementation plan](#) for this rulemaking project, Commerce identified two issues for which rules would be adopted by the end of 2019. These are the Phase 1 issues addressed in this filing. The rulemaking project will continue with other rules being proposed and adopted in 2020.

### **Statutory changes to the Energy Independence Act**

The 2019 legislation amended Washington's existing clean energy law, the Energy Independence Act (EIA), to expand the eligibility of hydroelectric resources and to clarify the definition of renewable energy credits (REC). With the expansion, additional generation due to efficiency improvements at federal hydroelectric projects may be used to meet the EIA renewable energy target. Federal hydro is eligible starting in 2020. The proposed amendments to Chapter 194-37 implement these statutory changes. There was little or no controversy among stakeholders about the proposed rule language.

## **Cost value for the social cost of greenhouse gas emissions**

The 2019 legislation requires that electric utilities include the social cost of greenhouse gas emissions in resource evaluation, planning, and acquisition [RCW 19.280.030(3)]. For investor-owned utilities, the statute establishes a specific set of cost values, which were developed by a federal interagency working group in 2016. The legislation directs Commerce to specify the cost values to be used by consumer-owned utilities.

The proposed new rule in Chapter 194-40 establishes for consumer-owned utilities the same cost values that the Legislature has enacted for investor-owned utilities. The rule also establishes the inflation factor to be used in escalating costs to the base year used in an evaluation, and it allows a utility to adopt a higher cost value if it has a reason to do so. Because this is the first rule in a new chapter of the WAC, the proposed rule includes new sections establishing scope and purpose.

During stakeholder discussion, many parties supported the rule as proposed here. It provides a consistent approach for all utilities in the state. Some commenters suggested that Commerce allow use of lower cost values by individual utilities. Other commenters argued that the values established by the Legislature are unreasonably low.

After considering these comments, we concluded that the suggestion for local cost values should not be accepted. The costs reflected in this value are not specific to individual locations; they represent the global damage costs of greenhouse gas emissions. Regarding the second concern, we concluded that, while there is likely some merit to the concern about the cost values being too low, we believe it best to maintain consistency with the values enacted by the Legislature for investor-owned utilities.

## **Next Steps**

As noted in the CR-102 form, Commerce will conduct a public hearing on the proposed rules at 10:00 a.m., Dec. 16, 2019, at the agency's Olympia office. The deadline for written comments is the same date.



# PROPOSED RULE MAKING

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

Do NOT use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: November 05, 2019

TIME: 2:38 PM

WSR 19-22-074

**Agency:** Washington State Department of Commerce

**Original Notice**

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

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

**Preproposal Statement of Inquiry was filed as WSR** 19-14-050 ; 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) The proposed rules amend Chapter 194-37 (Energy Independence Act) and create a new section in new Chapter 194-40 (Clean Energy Transformation Act).

**Hearing location(s):**

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

Dec. 16, 2019	10:00 AM	Washington Department of Commerce 1011 Plum Street SE Olympia, WA 98501	
---------------	----------	---	--

**Date of intended adoption:** Dec. 18, 2019 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: Austin Scharff

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

Email: ceta@commerce.wa.gov

Fax:

Other:

By (date) Dec. 16, 2019

**Assistance for persons with disabilities:**

Contact Austin Scharff

Phone: 360 764-9632

Fax:

TTY:

Email: austin.scharff@commerce.wa.gov

Other:

By (date) December 9, 2019

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** WAC 194-37: The proposed rules incorporate legislative changes to RCW 19.285.030 and 19.285.040. These changes improve accountability of renewable energy claims by adopting an industry-standard definition of a renewable energy credit and expand the eligibility to hydropower to include federal projects marketed by the Bonneville Power Administration. WAC 194-40: The proposed new rules establish a new chapter for rules related to the Clean Energy Transformation Act (Chapter 19.405 RCW) and utility planning laws (Chapter 19.280 RCW). The new rule sections establish the purpose and scope of the chapter and establish specific cost values for consumer-owned utilities to use when incorporating the social cost of greenhouse gas emissions into planning, evaluation, and resource acquisition.

**Reasons supporting proposal:** The proposed rules implement statutory changes, improve resource decisions by requiring consideration of damages caused by greenhouse gas pollution, and maintain consistent approaches to cost evaluation by between consumer-owned utilities and investor-owned utilities.

**Statutory authority for adoption:** RCW 19.405.010, RCW 19.285.080

**Statute being implemented:** RCW 19.285.030, RCW 19.285 040, RCW 19.280.030, Chapter 19.405 RCW.

**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:** Rulemaking activity will continue under WSR 19-14-050 as the agency develops rules to implement the Clean Energy Transformation Act.

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

- Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Glenn Blackmon, Ph.D.	1011 Plum Street SE PO Box 42525 Olympia, WA 98504-2525	360 339-5619
Implementation:	Washington Department of Commerce	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	360 725-6200

**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 proposed rules do not impose any additional cost on any person. Electric utilities have greater flexibility by meeting renewable energy targets under the Energy Independence Act and have greater certainty concerning the cost values to be used in resource planning and evaluation.

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:

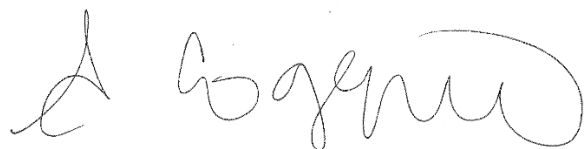
Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Date:** November 5, 2019

**Name:** Sarah Coggins

**Title:** Legislative Coordinator

**Signature:**



**Chapter 194-40 WAC  
CLEAN ENERGY TRANSFORMATION ACT**

NEW SECTION

**WAC 194-40-010 Purpose and scope.** The purpose of this chapter is to implement the requirements of chapter 19.405 RCW, Clean Energy Transformation Act, and chapter 19.280 RCW.

NEW SECTION

**WAC 194-40-020 Applicability.** Unless specifically provided otherwise, the provisions of this chapter apply to consumer-owned electric utilities that provide electrical service to retail customers in the state of Washington.

NEW SECTION

**WAC 194-40-100 Social cost of greenhouse gas emissions.** (1) The social cost of greenhouse gas emissions to be included by utilities in resource planning, evaluation, and selection, in compliance with RCW 19.280.030(3), is equal to the cost per metric ton of carbon dioxide equivalent emissions, using the 2.5 percent discount rate, listed in table 2, technical support document: Technical update of the social cost of carbon for regulatory impact analysis under Executive Order No. 12866, published by the interagency working group on social cost of greenhouse gases of the United States government, August 2016, referred to in this rule as the "technical support document."

(2) The social cost values for intermediate years are calculated by linear interpolation and provided in Appendix A of the technical support document. Social cost values for years after 2050 must be determined by applying an escalation factor of 1.3 percent, consistent with Table 3 of the technical support document. Social cost values must be adjusted for inflation, using the implicit price deflator for gross domestic product published by the United States Department of Commerce, from the 2007 dollars to the base year used for other cost and benefit values in the utility's analysis.

(3) As a convenience and illustration, the cost values established in subsection (1) of this section and adjusted as provided for in subsection (2) of this section for inflation to 2018 dollars are re-stated here:

Year in Which Emissions Occur or Are Avoided	Social Cost of Carbon Dioxide (in 2007 dollars per metric ton)	Social Cost of Carbon Dioxide (in 2018 dollars per metric ton)
2010	\$50	\$60
2015	\$56	\$67

<b>Year in Which Emissions Occur or Are Avoided</b>	<b>Social Cost of Carbon Dioxide (in 2007 dollars per metric ton)</b>	<b>Social Cost of Carbon Dioxide (in 2018 dollars per metric ton)</b>
2020	\$62	\$74
2025	\$68	\$81
2030	\$73	\$87
2035	\$78	\$93
2040	\$84	\$100
2045	\$89	\$106
2050	\$95	\$113

(4) The social cost values established in this rule are minimum values. A utility may apply a greater value if it has a reasonable basis to do so.

**WAC 194-37-040 Definitions.** The definitions in chapter 19.285 RCW apply throughout this chapter.

(1) "Annual revenue requirement" and "total annual revenue requirement" mean that portion of a utility's annual budget approved by its governing body for the target year that is intended to be recovered through retail electricity sales in the state of Washington in the target year, or as otherwise documented by the utility pursuant to WAC 194-37-150.

(2) "Biennial target" means a utility's biennial conservation target.

(3) "BPA" means the Bonneville Power Administration.

(4) "Measurement protocol" means a procedure or method used, consistent with industry standards, to establish with reasonable certainty the amount of energy savings that will result from the installation of a conservation measure. Industry standards include a range of appropriate protocols reflecting a balancing of cost and accuracy, such as the application of a deemed savings value established through industry processes for a measure that has broad application and uniform characteristics and the use of engineering calculations, metering, utility billing analysis, and computer simulation for a measure installed as part of a customer-specific project.

(5) "Multifuel generating facility" means a generating facility that is capable of producing energy from more than one nonrenewable fuel, renewable fuel, or nonfuel energy source, either simultaneously or as alternatives, provided that at least one fuel source (energy source) is a renewable resource and the relative quantities of electricity production can be measured or calculated, and verified.

(6) "NWPCC" means Pacific Northwest Electric Power and Conservation Planning Council also known as the Northwest Power and Conservation Council. Its calculation of avoided costs and publications are available at [www.nwcouncil.org](http://www.nwcouncil.org).

(7) "REC" means renewable energy credit.

(8) "Regional technical forum" or "RTF" means a voluntary advisory committee that reports to the executive director of the NWPCC and whose members are appointed by the NWPCC's chair.

(9) "Renewable energy target" means the amount, in megawatt-hours or RECs, necessary for a utility to satisfy the requirements of RCW 19.285.040 (2)(a) in a specific target year.

(10) "Substitute resource" means reasonably available electricity or generating facilities, of the same contract length or facility life as the eligible renewable resource the utility invested in to comply with chapter 19.285 RCW requirements, that otherwise would have been used to serve a utility's retail load in the absence of chapter 19.285 RCW requirements to serve that retail load with eligible renewable resources.

(11) "Target year" means a specific year in which a utility must comply with the renewable energy requirements of chapter 19.285 RCW.

(12) "Ten-year potential" means the ten-year cost effective conservation resource potential.

(13) "Utility" means a consumer-owned electric utility, as the term consumer-owned utility is defined in RCW 19.29A.010, that is a qualifying utility.



(14) "Verification protocol" means a procedure or method used, consistent with industry standards, to establish with reasonable certainty that a conservation measure was installed and is in service. Industry standards include a range of appropriate protocols reflecting a balance of cost and accuracy, such as tracking installation of measures through incentive payments and the use of on-site inspection of measures installed as part of a customer-specific project.

(15) "Vintage" means the year in which electricity is generated.

(16) "Weather-adjusted load" means load calculated after variations in peak and average temperatures from year to year are taken into account.

~~((16))~~ (17) "WREGIS" means the Western Renewable Energy Generation Information System. WREGIS is an independent, renewable energy registry and tracking system for the region covered by the Western Interconnection. WREGIS creates renewable energy certificates, WREGIS certificates, for verifiable renewable generation from units that register in the registry and tracking system.

AMENDATORY SECTION (Amending WSR 15-07-002, filed 3/6/15, effective 4/6/15)

**WAC 194-37-120 Documentation of use of eligible renewable resources and RECs for compliance.** A utility using an eligible renewable resource or REC for compliance with a requirement of chapter 19.285 RCW must document that use by following the procedures in this section.

(1) **Documentation of energy from eligible renewable resources.** Each utility using an eligible renewable resource for compliance must document the following for each resource:

(a) The electricity was generated by a generating facility that is an eligible renewable resource;

(b) The electricity was generated during the target year;

(c) If the utility sold, exchanged, or otherwise transferred the electricity to any person other than its retail customer, the utility retained ownership of the nonpower attributes; and

(d) The utility retired, consistent with the requirements of subsection (2) of this section, any RECs representing the nonpower attributes associated with the electricity or, if no RECs have been created, the utility has committed to use the nonpower attributes exclusively for the compliance purpose stated in its documentation.

(2) **Documentation of renewable energy certificates.** Each utility using a REC for compliance must document the following:

(a) The REC represents the output of an eligible renewable resource;

(b) For a REC from electricity generated by a resource other than freshwater, the vintage of the REC is the year immediately prior to the target year, the year of the target year, or the year immediately after the target year; and

(c) For a REC from electricity generated by freshwater:

(i) The vintage of the REC is the target year;

(ii) The REC was acquired by the utility through ownership of the generation facility or through a transaction that conveyed both the electricity and the nonpower attributes of the electricity; and

(iii) For RECs from projects marketed by the Bonneville Power Administration, the utility received the REC through a transaction with the Bonneville Power Administration that conveyed both the electricity and the nonpower attributes of the electricity.

(d) The utility has (~~removed the REC from circulation by transferring~~) retired the REC to a retirement subaccount of the utility within WREGIS using the following values in the certificate transfer:

(i) Retirement type: Used by the account holder for a state-regulated renewable portfolio standard/provincial utility portfolio standard;

(ii) State/province: Washington; and

(iii) Compliance year: Applicable target year.

AMENDATORY SECTION (Amending WSR 15-07-002, filed 3/6/15, effective 4/6/15)

**WAC 194-37-130 Documentation of incremental hydropower. (1) Projects owned by qualifying utilities.** Each utility using electricity produced as a result of a hydropower efficiency improvement, as defined in RCW 19.285.030 (12)(b), to meet a renewable energy target must provide documentation that:

(a) The hydroelectric generation project is owned by a qualifying utility and is located in the Pacific Northwest;

(b) The hydropower efficiency improvement was completed after March 31, 1999; and

(c) The additional generation does not result in new water diversions or impoundments.

(2) **Federal projects.** Each utility using electricity produced as a result of a hydropower efficiency improvement, as defined in RCW 19.285.030 (12)(g), to meet a renewable energy target must provide documentation that:

(a) The output of the hydroelectric generation project is marketed by the Bonneville Power Administration;

(b) The utility received the electricity through a transaction with the Bonneville Power Administration that conveyed both the electricity and the nonpower attributes of that electricity;

(c) The hydropower efficiency improvement was completed after March 31, 1999; and

(d) The additional generation does not result in new water diversions or impoundments.

(3) If the amount of electricity generated as a result of the hydropower efficiency improvement is directly measurable, the utility must use the measured output of the hydropower efficiency improvement as documentation of the amount of additional generation.

~~((3))~~ (4) (a) If the amount of electricity generated as a result of the hydropower efficiency improvements is not directly measurable, the utility must document the amount of electricity generated as a result of the hydropower efficiency improvement using an engineering analysis comparing the output in megawatt-hours of the hydroelectric generation project with the efficiency improvement to the output in megawatt-hours of the hydroelectric generation project without the efficiency improvement. Multiple efficiency improvements to a single hydroelectric generation project may be combined for purposes of the engineering analysis.

(b) The engineering analysis required by (a) of this subsection must be performed using an engineering model of the hydroelectric generation project that quantifies the relationship of stream flows, reservoir elevation, and other relevant factors to the electric output of the generating facility. The engineering model must accurately reflect the physical characteristics and operating requirements of the hydroelectric generation project during the target year and must accurately estimate the electric generation of the hydroelectric generation project without and with the hydropower efficiency improvement.

(c) A utility using the engineering analysis method to determine incremental generation must adopt and consistently apply in each target year one of the following methods:

(i) **Method one - Actual incremental generation.** A utility using this method must prepare an analysis using actual stream flows and the engineering model described in (b) of this subsection during each target year to determine incremental generation in the target year. A utility using this method must perform an updated calculation each year to determine the incremental generation amount for that target year.

(ii) **Method two - Percentage generation.**

(A) A utility using method two must prepare an analysis establishing the expected amount of incremental generation based on stream flows available to the hydroelectric generation project, adjusted for any known and measurable changes to stream flows due to environmental regulations or other factors, during a historical study period.

(B) The historical study period used in method two must be reasonably representative of the stream flows that would have been available to the hydroelectric project over the period of time for which stream flow records are readily available. A historical study period meets the requirements of this subsection if it includes the most recent readily available stream flow records and consists of a consecutive record of stream flow records at least five years in length.

(C) The amount of incremental generation using method two is calculated by multiplying the actual generation in megawatt-hours in the target year by a percentage amount equal to the difference between the calculated average generation over the historical study period with the hydropower efficiency improvement and the calculated average generation over the historical study period without the hydropower efficiency improvement, divided by the calculated average generation over the historical study period without the hydropower efficiency improvement.

(iii) **Method three - Fixed amount of generation.**

(A) A utility using method three must prepare an analysis establishing the expected amount of incremental generation based on stream flows available to the hydroelectric generation project, adjusted for any known and measurable changes to stream flows due to environmental regulations or other factors during a historical study period.

(B) The historical study period used in method three must be reasonably representative of the stream flows that would have been available to the hydroelectric project over the period of time for which stream flow records are readily available. A historical study period meets the requirements of this subsection if it includes the most recent readily available stream flow records and consists of a consecutive record of stream flow records at least ten years in length.

(C) The amount of incremental generation using method three is calculated as an amount in megawatt-hours equal to the difference between the calculated average generation over the historical study pe-

riod with the hydropower efficiency improvement and the calculated average generation over the historical study period without the hydro-power efficiency improvement. The amount must be adjusted in each target year for any reduction in availability of the hydroelectric generation project's generating capacity during the target year that is not accounted for in the analysis used to calculate the incremental generation amount.

((+4)) (5) The requirements of this section are in addition to the documentation requirements specified in WAC 194-37-120(1).