



# RULE-MAKING ORDER PERMANENT RULE ONLY

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

CODE REVISER USE ONLY

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STATE OF WASHINGTON  
FILED

DATE: December 30, 2019

TIME: 10:20 AM

WSR 20-02-089

**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:** Commerce amended rules concerning the Energy Independence Act to reflect changes in renewable resource eligibility enacted by the Legislature in 2019. Commerce adopted new rules to establish cost values to be used by consumer-owned utilities when they incorporate greenhouse gas emission damage costs in resource evaluation, planning, and acquisition, as required by RCW 19.280.030(3).

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

New: WAC 194-40-010, WAC 194-40-020, WAC 194-40-100  
 Repealed:  
 Amended: WAC 194-37-040, WAC 194-37-120, WAC 194-37-130  
 Suspended:

**Statutory authority for adoption:** RCW 19.405.100, RCW 19.285.080

**Other authority:**

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

Adopted under notice filed as WSR 19-22-074 on November 5, 2019 (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	Repealed	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	Repealed	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>3</u>	Amended	<u>3</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	Repealed	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	Repealed	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:**

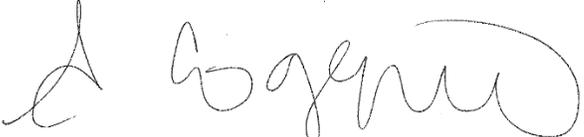
New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

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>

<b>Date Adopted: December 30, 2019</b>	<b>Signature:</b> 
<b>Name: Sarah Coggins</b>	
<b>Title: Rules Coordinator</b>	

**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).

**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.

**Concise Explanatory Statement – Clean Energy Transformation Act Phase 1 Rulemaking**

**WAC 194-37 and WAC 194-40**

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

**December 17, 2019**

**Reason for Rule Adoption**

Commerce amended rules concerning the Energy Independence Act to reflect changes in renewable resource eligibility enacted by the Legislature in 2019. Commerce adopted new rules to establish cost values to be used by consumer-owned utilities when they incorporate greenhouse gas emission damage costs in resource evaluation, planning, and acquisition, as required by RCW 19.280.030(3).

**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**

<b>Rule or Topic</b>	<b>Comment</b>	<b>Agency Response</b>
Incremental hydro by federal projects	Supports proposed rule	Thank you for your comment.
Documentation using renewable energy credits	Supports proposed rule	Thank you for your comment.
Cost value for greenhouse gas emissions	Supports proposed rule. Urges Commerce to ensure costs are applied in a transparent and consistent way. Urges Commerce to evaluate and update cost values in the future.	Thank you for your comment.



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December 16, 2019

TO: Director Lisa Brown

FROM: Rules Coordinator Sarah Coggins

SUBJECT: Summary of December 16, 2019 Public Hearing on Proposed Rules Concerning the Energy Independence Act and the Clean Energy Transformation Act

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This is a summary of the public hearing on December 16, 2019, concerning the department's proposed rules for the Energy Independence Act and the Clean Energy Transformation Act. Commerce proposed these rules in WSR 19-22-074.

As delegated presiding officer, I convened the hearing at 10:10 am in Room 407 of the department's headquarters in Olympia. Glenn Blackmon, Sarah Vorpahl, and Austin Scharff from the rulemaking team attended the hearing.

Seven people attended in person, and 12 people participated remotely using a Webex service. With no one wishing to testify, I adjourned the hearing at 10:15 am.

Please contact Glenn Blackmon or myself if you have any questions regarding this public hearing.

Cc: Legislative Director Jasmine Vasavada