



**ENERGY—DISTRICT, PUBLIC UTILITY—UTILITIES—CITIES AND TOWNS—
CONSERVATION—ELECTRICAL—STATE AUDITOR—Identification Of Cost-
Effective Energy Conservation Potential By Consumer-Owned Utilities**

1. The reference to the “most recently published regional power plan” in RCW 19.285.040(1)(a), which was enacted as part of Initiative Measure 937, refers to the Pacific Northwest Electric Power And Conservation Planning Council power plan in existence at the time the statute was enacted.
2. The term “methodologies” in RCW 19.285.040(1)(a) means a set of methods or procedures employed in the solution of a problem.
3. The phrase “conservation calculator” in WAC 194-37-070 refers not only to the calculator employed in the power plan in existence at the time RCW 19.285.040 was enacted, but also refers to calculators based on the most recently published power plan.
4. RCW 19.285.040(1)(b) requires a consumer-owned utility to review and update its achievable cost-effective conservation potential every two years, including any necessary update to biennial targets based on new information.

December 3, 2013

The Honorable Troy Kelley
Washington State Auditor
PO Box 40021
Olympia, WA 98504-0021

Cite As:
AGO 2013 No. 6

Dear Auditor Kelley:

By letter previously acknowledged, you have requested our opinion on the following questions:

1. Does the phrase “most recently published regional power plan” in RCW 19.285.040(1)(a) mean the power plan that was in place when the law was enacted, i.e., the Fifth Power Plan, or does it refer to subsequent power plans as they are adopted by the Pacific Northwest Electric Power And Conservation Planning Council?
2. In RCW 19.285.040(1)(a), is the term “methodologies” in the phrase “methodologies consistent with those used by the Pacific Northwest

electric power and conservation planning council in its most recently published regional power plan” limited to the analytical steps used to calculate a conservation target? Or, alternatively, does the term include both the application of such analytical steps as well as a unique combination of conservation measures, savings values, and assumptions, i.e., does the term “methodology” refer to a calculation that results in a specific target?

- 3. Does the phrase “conservation calculator” in subsections (4) and (5) of WAC 194-37-070 mean only the Fifth Power Plan calculator, or does it also refer to calculators based on the most recently issued power plan, for time periods subsequent to the effective date of the Sixth Power Plan in February 2010? For example, for targets required to be set by January 1, 2012, does the phrase refer to the Fifth or Sixth Power Plan calculator?**
- 4. Based on RCW 19.285.040 and WAC 194-37-070, and the statement in RCW 19.285.040(1) that utilities shall pursue all available conservation that is cost-effective, reliable, and feasible, is a utility authorized to set its biennial targets by January 1, 2012, and every two years thereafter based solely on the conservation measures, values, and assumptions used in the Fifth Power Plan?**

BRIEF ANSWERS

1. The phrase “most recently published regional power plan” in RCW 19.285.040(1)(a) refers to the Pacific Northwest Electric Power And Conservation Planning Council (NWPCC) power plan in existence at the time of adoption of the statute, which is the Fifth Power Plan.

2. The term “methodologies” should be given its ordinary meaning, which is a set of methods or procedures employed in the solution of a problem. “Methodology” would include neither a specific target or calculation, nor the data input into the methodology to arrive at the specific target or calculation.

3. The phrase “conservation calculator” in WAC 194-37-070 does not mean only the Fifth Power Plan calculator, but also refers to calculators based on the most recently published power plan. For targets required to be set by January 1, 2012, the phrase as used in WAC 194-37-070(4) and (5) refers to the Sixth Power Plan calculator.

4. Pursuant to RCW 19.285.040(1)(b), a consumer-owned utility must review and update its achievable cost-effective conservation potential every two years. Thus, to the extent that the conservation measures, values, and assumptions used in the Fifth Power Plan have changed, a utility must update its biennial targets based on new information.

BACKGROUND

In 2006, Washington voters approved Initiative Measure 937, known as the Energy Independence Act. The measure, which was codified at RCW 19.285, requires electric utilities with more than 25,000 customers to take certain measures to conserve energy and to obtain electricity from renewable resources.¹ RCW 19.285.040. Specifically, utilities must identify for a ten-year period achievable cost-effective conservation potential and update this assessment every two years. RCW 19.285.040(1)(a). Conservation potential means achievable, cost-effective, and feasible reductions in electric power consumption. *See* RCW 19.285.010(5), (6), .040(1). Based on these assessments, utilities must set and meet biennial targets for cost-effective conservation. RCW 19.285.040(1)(b). The Act provides administrative penalties for utilities that fail to meet targets established in the Act or in the utilities' ten-year or two-year conservation plans. RCW 19.285.060.²

The Act requires that utilities identify their ten-year conservation potential noted above by January 1, 2010, "using methodologies consistent with those used by the Pacific Northwest electric power and conservation planning council in its most recently published regional power plan[.]" RCW 19.285.040(1)(a). The planning council referred to is known as the Northwest Power and Conservation Council (NWPCC) and is a regional planning council established through federal law and made up of members appointed by the governors of Washington, Montana, Idaho, and Oregon. *See* www.nwcouncil.org (last visited Nov. 21, 2013); 16 U.S.C. § 839b. The NWPCC issued its first regional power plan in 1983. At the time Washington voters adopted the Act, the NWPCC Fifth Power Plan was in place. *See* NWPCC, *Fifth Northwest Electric Power and Conservation Plan* (May 1, 2005), available at <http://www.nwcouncil.org/energy/powerplan/5/plan/> (last visited Nov. 21, 2013). The NWPCC has since issued a sixth power plan (in February 2010), and plans to continue updating its plans every five years. *See* NWPCC, *Sixth Northwest Conservation and Electric Power Plan*, available at <http://nwcouncil.org/energy/powerplan/6/plan/> (last visited Nov. 21, 2013).

The Act applies to both investor-owned utilities and consumer-owned utilities. RCW 19.285.010(18); RCW 19.29A.010(12). Investor-owned utilities are regulated by the Utilities And Transportation Commission. *See generally* RCW 80.01.040(3). Thus, the Act provides that the Commission may determine if an investor-owned utility is in compliance with the Act in accordance with its normal procedures, and the Commission is specifically authorized to adopt rules to ensure proper implementation of the Act. *E.g.*, RCW 19.285.040(1)(d), .060(6),

¹ For ease of reading, the remainder of this opinion will refer to electric utilities with more than 25,000 customers simply as "utilities." Notwithstanding the abbreviated reference to "utilities," the opinion, like the Energy Independence Act, is only applicable to electric utilities with more than 25,000 customers.

² The Act includes other provisions, notably including a requirement that utilities must also use eligible renewable resources (or acquire equivalent renewable energy credits) to meet certain percentages of their overall load. Your questions relate solely to the requirements for assessing and meeting cost-effective conservation targets. Accordingly, this opinion does not address the renewable-resources requirement, and nothing in this opinion should be considered applicable to those requirements.

.080(1). Because of the authority provided to the Commission in the Act and its general authority under RCW 80.01, our analysis of the requirements of the Act with respect to consumer-owned utilities may not apply to investor-owned utilities.

Consumer-owned utilities are not regulated by the Commission, but rather are public utility districts governed by commissioners elected by the voters in their districts (RCW 54.12.010) or city utilities governed by the city's municipal charter or code. *See* RCW 35.92.050 (authorizing city or town to operate utilities). The elected commissioners or city council members have authority over these utilities' rates, services, and policies. *See generally* RCW 54.12.010; RCW 54.04. *See also* RCW 54.16 (describing powers of elected commissioners of public utility districts); RCW 35.92.050 (authorizing a city or town to operate utility and to regulate its use and price). With respect to consumer-owned utilities, the state auditor is "responsible for auditing compliance with this chapter and the rules adopted under this chapter . . . and the attorney general is responsible for enforcing that compliance." RCW 19.285.060(7).

In addition, the Department of Commerce is authorized to adopt rules in two areas. First, the Department may adopt rules to implement its authority to provide advisory opinions to consumer-owned utilities regarding whether a proposed electric generation project or conservation resource qualifies to meet a target under the Act. RCW 19.285.045. Second, the Department may adopt rules concerning

only process, timelines, and documentation to ensure the proper implementation of this chapter as it applies to qualifying utilities that are not investor-owned utilities. Those rules include, but are not limited to, rules associated with a qualifying utility's development of conservation targets under RCW 19.285.040(1)[.]

RCW 19.285.080(2).

Pursuant to this authority, the Department promulgated WAC 194-37, which became effective April 18, 2008. In adopting these rules, the Department acknowledged that the rules do not impose substantive requirements that are not already mandated by the Act, but rather were designed to ensure that auditors have the information needed to evaluate a utility's compliance. *Concise Explanatory Statement, Chapter 194-37 WAC, available at* <http://www.commerce.wa.gov/Documents/Final-Concise-Explanatory-Statement.pdf> (last visited Nov. 21, 2013).

The Department rules require consumer-owned utilities to submit annual conservation reports documenting the utility's progress in meeting the conservation targets required by the Act. WAC 194-37-060. The rules also require that utilities document their methodologies for the ten-year conservation potential assessment, the two-year updates, and the biennial targets required under the Act. WAC 194-37-070(1) to (3). The rules provide three options for doing so. First, subject to certain conditions, a utility may use the NWPCCC conservation calculator, which is a tool that allows utilities to determine their share of the regional conservation target

established by NWPCC. WAC 194-37-070(4); Fifth Plan Target Calculator link *at* <http://www.nwcouncil.org/energy/powerplan/6/assessmentmethodology/> (last visited Nov. 21, 2013). Second, a utility may use the NWPCC conservation calculator, but with certain adjustments to reflect data specific to the utility, such as specific program costs or conservation measures not considered by the NWPCC but applicable to the utility. WAC 194-37-070(5). Third, a utility may develop its own analysis using the NWPCC analytical methodology as outlined in fifteen procedures set forth in the administrative rule. WAC 194-37-070(6).

With this background in mind, we turn to your questions.

ANALYSIS

- 1. Does the phrase “most recently published regional power plan” in RCW 19.285.040(1)(a) mean the power plan that was in place when the law was enacted, i.e., the Fifth Power Plan, or does it refer to subsequent power plans as they are adopted by the Pacific Northwest Electric Power And Conservation Planning Council?**

Your question regarding the meaning of “most recently published regional power plan” is one of statutory construction, and is thus governed by rules that courts apply in construing statutes. The fundamental object of statutory construction is to ascertain and carry out legislative intent. *Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). Although the Act was enacted by initiative, the same rules regarding discerning legislative intent apply. *E.g., Dep’t of Revenue v. Hoppe*, 82 Wn.2d 549, 552, 512 P.2d 1094 (1973). If a statute’s meaning is plain from the face of the statute, then courts give effect to its “plain meaning” as expressing legislative intent. *Campbell & Gwinn, L.L.C.*, 146 Wn.2d at 9-10. To determine whether the meaning of a statute is plain, courts consider the statutory scheme as a whole, including related statutes. *Id.* In addition, wherever possible, courts construe a statute in a way that upholds its constitutionality. *E.g., In re Personal Restraint of Matteson*, 142 Wn.2d 298, 307, 12 P.3d 585 (2000).

Your question relates to the phrase “most recently published regional power plan.” As explained below, we conclude that the phrase refers to the most recently published regional power plan at the time the Act was adopted rather than subsequent power plans that may be in place when the utility is updating its assessment. The phrase is used only once in the Act, in the following provision:

By January 1, 2010, using methodologies consistent with those used by the Pacific Northwest electric power and conservation planning council in its most recently published regional power plan, each qualifying utility shall identify its achievable cost-effective conservation potential through 2019. At least every

two years thereafter, the qualifying utility shall review and update this assessment for the subsequent ten-year period.

RCW 19.285.040(1)(a).

First examining in isolation the sentence in which the phrase appears, we conclude that the most likely construction is that “most recently published regional power plan” refers to a specific power plan rather than a variable reference including subsequent power plans. The sentence includes a specific date, January 1, 2010, by which utilities must act, which supports construing the phrase as a static reference rather than a variable one. Although there may be some ambiguity as to whether the phrase refers to the most recently published regional power plan as of January 1, 2010, or as of the date the Act was adopted, this potential ambiguity makes no difference because the NWPCC Fifth Power Plan was the “most recently published regional power plan” in either case.³

Turning to the remaining text of the statutory provision and the statutory scheme as a whole, we again conclude that the most likely construction is that the phrase refers to a specific power plan rather than being continually updated as new power plans are published. The remaining text of the statutory provision requires utilities to “review and update *this assessment*” every two years. RCW 19.285.040(1)(a) (emphasis added). In contrast to the initial assessment required by January 1, 2010, the “review and update” requirement does not refer to the most recently published regional power plan, but instead refers back to the initial assessment. When different words are used in a statute, a court presumes that the legislative intent was to attach a different meaning. *Simpson Inv. Co. v. Dep’t of Revenue*, 141 Wn.2d 139, 160, 3 P.3d 741 (2000). Thus, the Act’s specific reference to the most recently published regional power plan in requiring an initial assessment, and the absence of such language when requiring utilities to review and update the assessment, suggests that the Act intended the limiting phrase to apply in the first instance but not the latter. Similarly, the requirement that utilities must set biennial targets for meeting their conservation potential does not refer to the most recently published regional power plan, but instead refers back to the initial assessment, as updated and reviewed. RCW 19.285.040(1)(b) (“each qualifying utility shall establish and make publicly available a biennial acquisition target for cost-effective conservation consistent with its identification of achievable opportunities in (a) of this subsection”).

In reaching our conclusion, we are mindful of the overall purpose of the statutory provision, which is to require utilities to “pursue all available conservation that is cost-effective, reliable, and feasible.” RCW 19.285.040(1). Some comments that we have received concerning this Opinion have suggested that the phrase “most recently published regional power plan” must

³ The Act was approved by voters on November 7, 2006, and became effective thirty days later. See RCW 19.285.010 (notes showing initiative approved November 7, 2006); Const. art. II, § 1(d) (laws passed by initiative take effect thirty days after election approving initiative). The NWPCC Fifth Power Plan was published May 1, 2005. See <http://www.nwcouncil.org/energy/powerplan/5/plan/> (last visited Nov. 21, 2013). The Sixth Power Plan was published February 1, 2010. See <http://www.nwcouncil.org/energy/powerplan/6/plan/> (last visited Nov. 21, 2013).

be interpreted to include subsequent power plans in order to effectuate this purpose. However, we conclude that the requirement that a conservation assessment must use methodology consistent with a specific power plan, combined with the requirement to “review and update” the initial conservation assessment, is consistent with the statute’s purpose. As discussed more fully below, using a methodology consistent with a specific power plan does not authorize a utility to ignore changing factual circumstances when reviewing and updating its ten-year and two-year conservation potential assessments.

We are also mindful of the potential constitutional difficulties if the phrase “most recently published regional power plan” is interpreted to include subsequently published power plans. The legislature, or in this case the people exercising legislative power by initiative, has limited power to delegate its legislative functions.⁴ *Diversified Inv. P’ship v. Dep’t of Soc. & Health Servs.*, 113 Wn.2d 19, 24, 775 P.2d 947 (1989). Thus, a statute must be complete when enacted and generally may not incorporate standards that will be adopted in the future by a separate government or organization. *Id.* at 24-25; *see also Woodson v. State*, 95 Wn.2d 257, 623 P.2d 683 (1980) (rejecting interpretation of statute that would allow colleges of osteopathy to determine the statutory definition of osteopathy). The Act here does not adopt wholesale a standard of another body, but does require that utilities use methodologies “consistent with” the NWPPC’s most recently published power plan. RCW 19.285.040(1)(a). We do not express an opinion on whether this statutory language, if interpreted to include reference to subsequently published power plans, would improperly delegate legislative authority. Nevertheless, we note that this principle may impact a court’s interpretation of the statute, and that our conclusion avoids any constitutional conflict. *See Addleman v. Bd. of Prison Terms & Paroles*, 107 Wn.2d 503, 509, 730 P.2d 1327 (1986) (construing statute in part to avoid constitutional infirmity).

2. **In RCW 19.285.040(1)(a), is the term “methodologies” in the phrase “methodologies consistent with those used by the Pacific Northwest electric power and conservation planning council in its most recently published regional power plan” limited to the analytical steps used to calculate a conservation target? Or, alternatively, does the term include both the application of such analytical steps as well as a unique combination of conservation measures, savings values, and assumptions, i.e., does the term “methodology” refer to a calculation that results in a specific target?**

Like your first question, this question is one of statutory construction, involving the meaning of the statutory term “methodology.” In addition to the general rules regarding statutory construction discussed above, courts apply certain rules when construing the meaning of specific words in a statute. When a statutory term is undefined by the statute itself, courts give the term its ordinary meaning, and may look to a dictionary for such meaning. *Burton v. Lehman*, 153 Wn.2d 416, 423-24, 103 P.3d 1230 (2005). Courts may also look to technical

⁴ A statutory delegation of legislative authority must set forth sufficient standards and guidelines to define in general terms what is to be done and who is to do it, as well as sufficient controls against arbitrary exercise of discretionary authority. *See State ex rel. Peninsula Neighborhood Ass’n v. State*, 142 Wn.2d 328, 335-36, 12 P.3d 134 (2000) (citing *Barry & Barry, Inc. v. Dep’t of Motor Vehicles*, 81 Wn.2d 155, 159, 500 P.2d 540 (1972)).

references where a term has a distinct meaning in a particular field or industry. *City of Spokane ex rel. Wastewater Mgmt. Dep't v. Dep't of Revenue*, 145 Wn.2d 445, 454, 38 P.3d 1010 (2002).

The relevant entry in *Webster's* defines "methodology" as:

1 a : a body of methods, procedures, working concepts, rules, and postulates employed by a science, art, or discipline . . . **b** : the processes, techniques, or approaches employed in the solution of a problem or in doing something : a particular procedure or set of procedures

Webster's Third New International Dictionary 1423 (2002). The chapter of the NWPCC Fifth Power Plan titled "Conservation Cost-Effectiveness Determination Methodology" sets forth a series of analyses and factors to consider when determining cost effectiveness. It does not simply describe the numerical inputs or a specific outcome. *Fifth Power Plan*, App. E, available at http://www.nwcouncil.org/media/5826/Appendix_E_Conservation_Cost_Effectiveness_Methodology_.pdf (last visited Nov. 21, 2013). For example, the Fifth Power Plan "methodology" includes a regional benefit-to-cost ratio method, in which costs are the sum of installation, administrative, operation, and maintenance costs (or savings) over the conservation measure's expected life. *Fifth Power Plan* at E-2. A conservation measure's benefit-to-cost ratio is determined by the sum of the present value of the measure's benefits divided by its total cost. *Id.* A benefit-to-cost ratio of 1.0 or greater is deemed to be regionally cost-effective. *Id.* Other references by the NWPCC to "methodology" similarly describe a set of processes or analytical steps rather than a particular calculation. See, e.g., NWPCC, *Methodology for Determining Achievable Conservation Potential – Outline of Major Elements*, available at <http://www.nwcouncil.org/media/112474/Methodology.pdf> (last visited Nov. 21, 2013).

Both the dictionary definition of "methodology" and its use in the NWPCC power plans confirm our understanding of the term's ordinary meaning, which is a set of methods or procedures employed in the solution of a problem. Therefore, in answer to your specific questions, we conclude that "methodology" refers to the series of analytical steps described in the NWPCC Fifth Power Plan and does not refer to a calculation that results in a specific target, nor does it refer to a specific combination of conservation measures, savings values, and assumptions.

3. **Does the phrase "conservation calculator" in subsections (4) and (5) of WAC 194-37-070 mean only the Fifth Power Plan calculator, or does it also refer to calculators based on the most recently issued power plan, for time periods subsequent to the effective date of the Sixth Power Plan in February 2010? For example, for targets required to be set by January 1, 2012, does the phrase refer to the Fifth or Sixth Power Plan calculator?**

In interpreting administrative rules promulgated by an agency, courts apply the same rules of statutory construction that apply to statutes. *Overlake Hosp. Ass'n v. Dep't of Health*, 170 Wn.2d 43, 52, 239 P.3d 1095 (2010). If a rule is ambiguous, courts afford deference to an

agency's interpretation of its own rules. *Id.*; *Dep't of Ecology v. Tiger Oil Corp.*, 166 Wn. App. 720, 754, 271 P.3d 331 (2012). Where a term is defined by a statute or regulation, courts will use that definition. *United States v. Hoffman*, 154 Wn.2d 730, 741, 116 P.3d 999 (2005). Here, the term "conservation calculator" is defined in the administrative rules at issue. Both the definition in the rule and use of the term "conservation calculator" throughout the rules demonstrate that the term does not refer only to the conservation calculator in the Fifth Power Plan but also refers to subsequent calculators.

The administrative rules at issue define "conservation calculator" as:

[A] spreadsheet or piece of software developed and maintained by the NWPCC to approximate a utility's ten-year potential. The conservation calculator will use methodologies consistent with the most recently published *Power Plan*. It is available at www.nwcouncil.org.

WAC 194-37-040(7). The definition itself does not limit the conservation calculator to the NWPCC Fifth Power Plan calculator. Moreover, use of the term in WAC 194-37-070(4) shows that the term is not limited to the Fifth Power Plan calculator. The relevant language of the rule provides:

A utility that chooses this option will document its calculation of its pro rata biennial conservation targets based on its share of regional annual megawatt-hour retail sales using the NWPCC's conservation calculator. If the NWPCC updates its conservation calculator within twelve months of an even-numbered year,^{5]} a utility may choose to use the NWPCC's most recent conservation calculator or the immediately preceding version.

WAC 194-37-070(4)(a). By referencing more than one version of the calculator, this language makes clear that the term "conservation calculator" is not limited to the Fifth Power Plan calculator.

We also conclude that the unambiguous import of this language is that WAC 194-37-070(4) and (5) require utilities seeking to rely on those provisions to use the most recent version of the NWPCC calculator, unless the most recent version was updated within twelve months of an even-numbered year. Although stated permissively, the exception allowing use of a preceding calculator in only some circumstances strongly implies that in cases not involving the exception the most recent calculator must be used. This implication is

⁵ The biennial targets for cost-effective conservation are due by January 1 of the target year, which is an even-numbered year. RCW 19.285.040(1)(b) (requiring biennial acquisition targets for cost-effective conservation beginning January 2010).

strengthened by the rule's definition of "conservation calculator" referring to the NWPCC's most recently published power plan and the Act's requirement that conservation potential assessments must be regularly reviewed and updated. *See* WAC 194-37-040(7); RCW 19.285.040(1).

This interpretation is also consistent with the Department of Commerce's interpretation of its rule. *See* Letter from Tony Usibelli, Assistant Director, Department of Commerce, to Bob Ferguson, Attorney General, State of Washington (Aug. 5, 2013) (submitted as comment to request for Attorney General Opinion). As noted above, agency interpretations of their own rules are accorded deference.

Because we conclude that the term "conservation calculator" as used in WAC 194-37-070(4) and (5) refers to the most recent NWPCC conservation calculator (with the exception noted above), the answer to your specific question regarding targets required to be set by January 1, 2012, is that the rules refer to the Sixth Power Plan conservation calculator for this timeframe rather than the Fifth Power Plan conservation calculator. Our understanding is that the Sixth Power Plan calculator was adopted in 2010, thus the exception for calculators updated within twelve months of 2012 would not apply.

We recognize the possible tension between our conclusion that the statute requires that a utility must set conservation targets using methodologies consistent with the Fifth Power Plan and our conclusion that the administrative rules refer to the calculator in the most recently adopted power plan, which for 2012 would mean using the calculator for the Sixth Power Plan. However, as discussed below, we conclude that the conservation calculator is not itself a methodology but rather a particular application of the methodology given the facts and circumstances used in a particular power plan. In this regard, we note that according to the NWPCC, the Sixth Power Plan uses "essentially the same" methodology as the Fifth Power Plan. NWPCC, *Sixth Power Plan* 4-22, available at http://www.nwcouncil.org/media/6365/SixthPowerPlan_Ch4.pdf (last visited Nov. 21, 2013). Thus, assuming the NWPCC statement is accurate, use of the Sixth Power Plan *calculator* to identify achievable cost-effective conservation would be using a *methodology* consistent with the Fifth Power Plan, and thus would be consistent with the Act's requirements.

As a matter of policy, we do not address in Attorney General Opinions the constitutionality of statutes or regulations, and thus do not analyze whether the rule's reference to future calculators would raise the same concerns discussed above regarding delegation of legislative authority. We do note, however, that any such constitutional concerns with respect to the rules' reference to future calculators would be different than those discussed above with respect to the Act's reference to the most recently adopted NWPCC Power Plan, in part because the rules do not mandate that utilities use the most recently adopted calculator, but instead offer application of the most recent calculator as one way a utility can satisfy its obligations under the Act.

4. **Based on RCW 19.285.040 and WAC 194-37-070, and the statement in RCW 19.285.040(1) that utilities shall pursue all available conservation that is cost-effective, reliable, and feasible, is a utility authorized to set its biennial targets by January 1, 2012, and every two years thereafter based solely on the conservation measures, values, and assumptions used in the Fifth Power Plan?**

As discussed above, the Act requires that utilities set their biennial targets based on methodologies consistent with the NWPCC Fifth Power Plan. Thus, our answer to this question is controlled by our conclusion that “methodologies” does not refer to specific conservation measures, values, and assumption in the Fifth Power Plan, but rather to the series of analytical steps or processes set forth in the Fifth Power Plan. Specifically, we conclude that a utility must set its biennial targets by January 1, 2012, and every two years thereafter, using methodologies consistent with the NWPCC Fifth Power Plan, and may not necessarily rely on the conservation measures, values, and assumptions set forth in the Fifth Power Plan.

A key concept to bear in mind is that, as we concluded in response to your second question, the term “methodology” means a set of methods or procedures, while the “conservation calculator” discussed in response to your third question entails, in contrast, the application of those methods to data and circumstances that apply at a time when the methodology is used. As explained by the NWPCC in its Sixth Power Plan, changes in prices, technology, and other factors can result in higher conservation targets even though the same methodology is used. NWPCC, *Sixth Power Plan* 4-22, available at http://www.nwcouncil.org/media/6365/SixthPowerPlan_Ch4.pdf (last visited Nov. 21, 2013). Thus, use of a Fifth Power Plan calculator would make sense only if the unique combination of conservation measures, savings values, and assumptions set forth in the Fifth Power Plan remain valid, i.e., that they continue to constitute “all available conservation that is cost-effective, reliable, and feasible.” See RCW 19.285.040(1). Alternatively, if the unique combination of conservation measures, savings values, and assumptions set forth in the Fifth Power Plan do not continue to constitute “all available conservation that is cost-effective, reliable, and feasible,” then the use of the Fifth Power Plan calculator would be tantamount to using outdated data and assumptions even if the underlying methodology remains unchanged. This is a factual determination and not a legal one.

We note, however, that both the Act and the rules promulgated by the Department of Commerce provide latitude to utilities in identifying achievable cost-effective conservation potential and thus in setting biennial acquisition targets. The Act requires only that utilities use methodologies consistent with the NWPCC Fifth Power Plan rather than dictating a specific formula. RCW 19.285.040(1)(a). Similarly, the Department’s rules provide several specific options to utilities, two of which allow utilities to account for facts specific to the utility or to identify its own analysis provided that the utility follows analytical steps consistent with the NWPCC Fifth Power Plan methodology. WAC 194-37-070(5), (6).

It is not possible to reach a factual conclusion in this opinion as to whether a utility in 2012, using methodologies consistent with the NWPCC Fifth Power Plan, could reasonably conclude that the same conservation measures, values, and assumptions in the Fifth Power Plan

continue to satisfy the Act's standard of "conservation that is cost-effective, reliable, and feasible." It is beyond the scope of this opinion to declare definitively that such measures, values, and assumptions could never be appropriate in such circumstances. But our legal determination is that a utility may not automatically assume that the conservation measures, values, and assumptions from the Fifth Power Plan continue to apply when setting its biennial targets.

We trust that the foregoing will be useful to you.



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