

# Energy Independence Act Criteria Analysis

## Conservation Targets

CA No. 2011-01

The purpose of this criteria analysis is to interpret certain requirements of the Energy Independence Act (the Act) based on information available at the time of the analysis. This interpretation is for use by the State Auditor's Office. It is not legally binding and the conclusions in this document could change if the law, rules, court opinions, or facts surrounding the conclusion change. An assistant attorney general assigned to advise the State Auditor has reviewed this document and believes state law supports the Auditor's Office conclusions; however, the opinions are the individual attorney's, and are not official opinions of the Attorney General.

The analysis sought to answer the following questions:

1. Can a utility change its original biennial targets during the biennial period?
2. If state law allows biennial target changes, is a public process needed?

After reviewing the requirements of the Act, seeking comment from utilities and discussions with the Attorney General's Office, we believe the answers are:

1. No. Once a biennial target is established it cannot be changed. There is no provision in the Energy Independence Act for changes to biennial targets. At this time, this conclusion does not include an analysis of WAC 194-37-080(6).
2. Not applicable. Biennial targets cannot be changed.

### Criteria Analysis, Summary of Key Information

- The period under audit for conservation is January 1, 2010 through December 31, 2011.
- The Act requires the utilities to set their 10 year and two-year targets by January 1, 2010.
- The Act provides three options to utilities for setting targets that agree with the methodologies noted in the 5<sup>th</sup> power plan.
- The utility's governing body must adopt targets in an open public meeting
- The utility's governing body may adopt general resolutions to carry out duties
- Penalties are calculated based on the gap between actual achievement and targets established in accordance with RCW 19.285.040.

### Background

State law [[RCW 19.285.040\(1\)\(b\)](#)] requires that qualifying utilities "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, and meet that target during the subsequent two-year period.” In addition, WAC 194-37-070(3) states both targets should be assessed using methodologies consistent with those in the 5<sup>th</sup> power plan. WAC 194-37-070(3)(d) further states a utility will have a meeting to take public comment regarding its assessment of conservation potential. The utility’s governing body must adopt the 10-year and two-year targets in a public meeting.

### **Perspective from utilities**

Some utilities have changed their original biennial targets. Utilities that did so felt they were out of compliance with the target-setting process and made the change in order to comply with the Energy Independence Act.

As another example, state law allows utilities to update 10-year assessments “*at least*” every two years. If a utility updates its assessment annually, beginning 2011 through 2020, then the utility will have two different assessments for the year 2011, the one in its original biennial target and the new one. A utility could then update its original biennial target to include the new 2011 information. It is still a 2010-2011 biennial target, but the 2011 information was updated based on the most recent 10-year assessment.

### **Auditor’s Office conclusions:**

Based on correspondence between our Office and the Attorney General’s Office, we do not believe a utility is authorized to change its original biennial target. In the utility example presented above, a utility could not update its 10-year assessment for the ten-years beginning January 1, 2011, then use new 2011 information to update its 2010-2011 biennial target. Instead, it may use the new 10-year assessment for its 2012-2013 biennial target.

### **Selected State law and Rules:**

#### [RCW 19.285.040](#)

(1) Each qualifying utility shall pursue all available conservation that is cost-effective, reliable, and feasible.

(a) 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.

(b) Beginning January 2010, 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, and meet that target during the subsequent two-year period. At a minimum, each biennial target must be no lower than the qualifying utility's pro rata share for that two-year period of its cost-effective conservation potential for the subsequent ten-year period.  
[emphasis added]

#### [WAC 194-37-070](#)

(1) Ten-year potential. By January 1, 2010, each utility shall establish its ten-year cost-effective conservation resource potential. At least every two years thereafter, the public utility shall

review and update this assessment for the subsequent ten-year period.

(2) Biennial target. In January 2010, and each two years thereafter, each utility shall establish **and make public a biennial conservation target**. The utility's biennial target shall be no less than its pro rata share of its ten-year potential.

(3) To document that the utility has established its ten-year potential and biennial target using methodologies consistent with those in the fifth power plan, the utility shall choose one of the documentation procedures set forth in subsection (4), (5), or (6) of this section, subject to the following conditions:

...(d) A utility will hold **a noticed public meeting**, which provides an opportunity for public comment, regarding its assessment of conservation potential. The utility will adopt the ten-year potential and the two-year conservation targets by action of the utility's governing board in a public meeting. Such public meeting may be conducted separately, or as part of public meetings conducted for resource planning, budget setting, or other related processes. The public notice will indicate that the meeting agenda includes the establishment of the utility's ten-year and biennial targets.

[emphasis added]