

# Energy Independence Act Criteria Analysis

## Conservation Target Setting

CA No. 2011-02

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 question:

Are utilities restricted to the NWPCC's 5<sup>th</sup> Power Plan for conservation assessments beginning 2012?

After reviewing the requirements of the Act, selections from the Northwest Electric Power Conservation Planning Council's 6<sup>th</sup> Power Plan, documents submitted to the Department of Commerce during the original rule-making and comments from utilities, the Department of Commerce and the Attorney General's Office, we believe the answer is:

The rule directs that utilities make assessments using the methodology of the 5<sup>th</sup> power plan. This methodology is set forth in the applicable rule as the "utility analysis" option. In addition, utilities may choose to use a calculator methodology. Because the methodology in the 6<sup>th</sup> Power Plan is essentially the same as the methodology in the 5<sup>th</sup> Power Plan, utilities that choose the conservation calculator or the modified calculator options developed under the 6<sup>th</sup> Power Plan will be considered consistent with the methodology of the 5<sup>th</sup> Power Plan.

As long as the methodologies in the "most recently published power plan" (and calculator) stay the same as the 5<sup>th</sup> plan methodology, there is no basis to argue that the calculator options are legally impermissible. Utilities will be able to use the most recent version of the calculator, and be considered consistent with the methodology of the 5<sup>th</sup> Power Plan.

Methodology is distinct from the conservation technologies and the per unit energy savings values that are used in the calculation of conservation savings potential. The statute does not specify the 5<sup>th</sup> plan or any other document as a source for the conservation technologies or per unit energy savings values. This paper uses the word "inputs" as the label for the information (e.g. conservation technologies, per unit energy savings values, and other factors) to which the methodology is applied. When utilities calculate their savings potential, the inputs are not limited to those found in the 5<sup>th</sup> plan. For utilities that choose the conservation calculator or modified calculator options, the inputs will be those used in the most recent version of the calculator available at the time the assessment is prepared.

The following two tables illustrate which power plans apply to 2010-2019 conservation assessments and 2012-2021 conservation assessments.

### 2010-2019 Assessment Period

	Methodology	Inputs
Calculator	5 <sup>th</sup> Plan	5 <sup>th</sup> Plan
Modified Calculator	5 <sup>th</sup> Plan	5 <sup>th</sup> Plan +
Utility Analysis	5 <sup>th</sup> Plan	Utility

### 2012-2021 Assessment Period

	Methodology	Inputs
Calculator	5 <sup>th</sup> Plan*	6 <sup>th</sup> Plan
Modified Calculator	5 <sup>th</sup> Plan*	6 <sup>th</sup> Plan +
Utility Analysis	5 <sup>th</sup> Plan*	Utility

\*The 6<sup>th</sup> Plan methodology is essentially the same as the 5<sup>th</sup> Plan methodology.

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## Background

Utilities are required by state law to establish 10 year conservation potential using methodologies that are consistent with methodologies of the Pacific Northwest Electric Power Conservation Planning Council (NWPPCC) in its most recently published regional power plan. The plan in place at the time the law was enacted and the utilities set their 2010-2019 assessments was the 5<sup>th</sup> Power Plan. When utilities update their plan after two years, the plan in place will be the 6<sup>th</sup> Power Plan. This paper addresses whether the 6<sup>th</sup> plan dictates the methodology for the 2012-2021 assessment.

In practice, the term “methodology” is sometimes used by utilities to reference both the process for identifying conservation potential, and at other times the underlying inputs used to estimate conservation savings potential.

The NWPPCC has developed and maintains the *conservation calculator*. The calculator methodology and inputs to the calculator are based on their regional power plans. The regional plan/calculator identifies conservation activities and programs considered available and cost-effective for the region. They also include detailed estimates of conservation savings related to those activities and programs. The regional power plans are applicable to Washington, Oregon, Idaho, and Montana.

Utilities can choose one of three options for setting their 10-year targets, all are considered to be consistent with the methodologies of the 5<sup>th</sup> plan. Two of the options use the conservation calculator. The third lays out the 5<sup>th</sup> Power Plan methodology, and is what utilities can use to perform their own analysis if they choose.

References to the power plan in both the RCW and the WAC follow:

- Utilities should use the “most recently published regional power plan”
  - RCW 19.285.040(1)(a)
  - WAC 194-37-040(7)
  - WAC 194-37-070(4)(a)
  - WAC 194-37-070(5)
  - WAC 194-37-080(4)(b)
- Two WACs specifically mention and one uses the methodology of the 5<sup>th</sup> power plan

- WAC 194-37-040(14)
- WAC 194-37-070(3)
- WAC 194-37-070(6)(a)

The utilities believe the law must be interpreted as a reference to the 5<sup>th</sup> Power Plan, to avoid an impermissible delegation of legislative power to power plans which had not yet been adopted at the time the law was enacted.

#### **Utilities Perspective:**

State law says: “Each qualifying utility shall pursue all available conservation that is cost-effective, reliable, and feasible.” It then recognizes the methodology of the NWPCC as the standard for target setting. The Department of Commerce has specified methodology options for target setting in the WAC rule under WAC 194-37-070, subsections (4), (5), and (6).

Utilities assert <sup>1</sup> they will be using the 5<sup>th</sup> Power Plan and related programs and savings amounts into perpetuity as it is illegal for state law to adopt standards or authority not in effect at the time of the legislation (not compliant with state constitution). In addition, they assert the conservation savings amounts (assumptions) in the 6<sup>th</sup> power plan are aggressive and unrealistic.

#### **Commerce Perspective:**

Commerce interprets the law as specifying the “methodology” of the most recent power plan. “Methodology” is different than the inputs used when applying the methodology. During the rule making process, utilities brought forward their concerns about administrative rules that mention power plans that were not yet in existence. Commerce consulted its legal counsel and decided that, in order to avoid potential constitutional problems, the rules would provide an option to utilities that represents a methodology consistent with the 5<sup>th</sup> Plan; this is the “utility analysis” option. In addition, there are two other options (calculator options) that reference future plans. Utilities are not required to choose an option that uses methodologies from future power plans. However, if a utility chooses a calculator option, it is the utility’s choice rather than a legal requirement imposed by law.

#### **The NWPCC Perspective:**

The NWPCC asserts the methodology is essentially the same in the 5<sup>th</sup> and 6<sup>th</sup> Power Plans. Further, it states the 5<sup>th</sup> plan methodology is set forth as the “utility analysis” option in the administrative rules [[WAC 194-37-070\(6\)](#)]. Although the methodology is essentially the same between the two plans, the inputs have changed between them.

#### **Auditor’s Office perspective:**

Methodology and inputs are distinct concepts with different meanings. State law specifies the methodology for assessing conservation potential is the one identified in the most recent power plan. However, the law does not refer to a power plan, or any other source document, to identify the inputs to which the methodology will be applied.

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<sup>1</sup> The utilities made a joint effort to describe their position. This criteria analysis includes an SAO summary of the multi-page document submitted by the utilities. The complete document was provided to the Attorney General’s Office and included in the review of the 5<sup>th</sup> vs. 6<sup>th</sup> plan issue.

### Auditor's conclusion on methodology

Utilities are required to select one of the three options set forth in the rule: conservation calculator, modified calculator, or utility analysis. The option specifically utilizing the 5<sup>th</sup> plan methodology is the utility analysis option. As previously stated, the methodologies used in the 6<sup>th</sup> plan calculator are essentially the same as the methodologies in the 5<sup>th</sup> plan, so all options are consistent with the 5<sup>th</sup> plan methodology.

As long as the methodologies in the “most recently published power plan” (and calculator) stay the same as the 5<sup>th</sup> plan methodology, there is no basis to argue that the calculator options are legally impermissible. Utilities will be able to both use the most recent version of the calculator and be considered consistent with the methodology of the 5<sup>th</sup> plan.

### Auditor's conclusion on inputs

The law states that utilities shall pursue all conservation that is cost-effective, reliable, and feasible. When using the “utility analysis” option, utilities must analyze a broad range of energy efficiency measures considered technically feasible and then apply the steps provided in the rule, which represent the 5<sup>th</sup> plan's methodology, to calculate the cost savings potential. When using the conservation calculator options, the calculator inputs are used. For utilities that select a calculator option, utilities would use the most recently published calculator. For the 2012-2021 assessment period, a utility that chooses the calculator will use the inputs from the 6<sup>th</sup> plan in order to use the most recent inputs.

For the modified calculator method, a utility will use inputs from the most recent power plan by using the calculator. Inputs related to the modifications allowed by subsections (a)-(g) will be based on the most recent information, identified by the utility, at the time the assessment is prepared.

For the utility analysis method, a utility will identify and use the most recent input information available at the time the assessment is prepared.

### **Selected Citations:**

#### [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.

[WAC 194-37-070](#) – provides three distinct options a qualifying utility can use in identifying its 10-year conservation potential for setting its biennial acquisition target for cost-effective conservation.

(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...

(4) Conservation calculator option.

(a) 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<sup>2</sup>, a utility may choose to use the NWPCC's most recent conservation calculator or the immediately preceding version...**

(5) Modified conservation calculator option.

A utility that chooses this option will document consistency with the NWPCC's methodologies by modifying its ten-year potential and biennial target as identified through the use of the conservation calculator by making the following adjustments to the NWPCC's analysis in the NWPCC's most recently published power plan:...

(6) Utility analysis option.

(a) The NWPCC's analytical methodology for establishing the conservation resource potential and conservation targets for the Northwest power system is outlined in procedures (a)(i) through (xv) of this subsection. A utility that chooses this option will document that it established a ten-year potential using an analytical methodology consistent with these NWPCC procedures (a)(i) through (xv) of this subsection:...

#### **Definitions:**

methodology

n. – 1. a set or system of methods, principles, and rules for regulating a given discipline, as in the arts or sciences.

Source: <http://dictionary.reference.com/browse/methodology>

method

n. – 1. a procedure, technique, or way of doing something, especially in accordance with a definite plan: *There are three possible methods of repairing this motor.*

Source: <http://dictionary.reference.com/browse/method>

input

n. – 5.a. data to be entered into a computer for processing.

Source: <http://dictionary.reference.com/browse/inputs>

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<sup>2</sup> Qualifying utilities biennial acquisition targets for cost-effective conservation are required by January 1, of the target year, which is an even-numbered year (i.e. 2010, 2012, 2014, etc.)