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CONSERVATION AND RENEWABLE ENERGY IN THE FOUR PACIFIC NORTHWEST STATES: A COMPILATION OF RELEVANT STATE STATUTES

Linda Steinmann*

The Pacific Northwest Electric Power Planning and Conservation Act of 1980¹ (Northwest Power Act) symbolizes a new era for the Northwest electric utility industry. Passage of the Act was motivated by the specter of regional strife over allocation of low-cost power, as demand for inexpensive federal power outstripped supply and new thermal resource² construction programs failed to meet their schedules.³ Early versions of the Act reflected sharp divisions among the congressional delegations from the four Northwest states.⁴ Intense debate and substantial compromise went into the final product.⁵ These compromises created an Act that, on its face, identifies several objectives that are sometimes incompatible: 1) to produce power, 2) at relatively low cost, 3) while protecting fish and wildlife.⁶ The only course of action that satisfies all three objectives is the simultaneous conservation of electricity and development of renewable resources.

The four Northwest states of Idaho, Montana, Oregon and Washington will play an important role in implementing the Northwest Power Act's twin policies. These states can influence the development of cost-effective conservation measures and renewable resources in four primary

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1. Pub. L. No. 96-501, 94 Stat. 2697 (1980) (codified at 16 U.S.C. §§ 839-839h (Supp. V 1981)) [hereinafter cited as Northwest Power Act].

2. The term "thermal resources" refers to fuel-burning power plants, such as those powered by coal, natural gas, nuclear fuel and oil.

3. K. LEE, D. KLEMKA & M. MARTS, *ELECTRIC POWER AND THE FUTURE OF THE PACIFIC NORTHWEST* 131-35 (1980) [hereinafter cited as LEE].

4. *Id.* at 159-60.

5. 126 CONG. REC. S14,690 (daily ed. Nov. 19, 1980) (statement of Sen. Jackson).

6. Northwest Power Act, *supra* note 1, § 4(h), 16 U.S.C. § 839(h) (Supp. V 1981). The fish and wildlife plan, adopted in November 1982, addresses the serious decline of Columbia River fish runs due to hydroelectric development. See NORTHWEST POWER PLANNING COUNCIL, *FISH AND WILDLIFE PROGRAM* (Nov. 15, 1982).

The dilemma of having to provide for both power and fish becomes even more complex when one adds the more inflexible responsibility of protecting the reserved rights of native Americans. See Sanders, *The Northwest Power Act and Reserved Tribal Rights*, 58 WASH. L. REV. 357 (1983).

For a discussion of the various options open to the Northwest Power Planning Council (NPPC) as it copes with this dilemma, see Lee, *The Path Along the Ridge: Regional Planning in the Face of Uncertainty*, 58 WASH. L. REV. 317 (1983) (suggesting that flexibility must be a major component of any NPPC plan).

ways: (1) through programs intended to encourage conservation and renewable resource development;⁷ (2) through their own energy procurement policies;⁸ (3) through regulatory policies;⁹ and (4) through their tax and financing structures.¹⁰

This Comment is limited in scope and purpose. It surveys the laws of the four Northwest states and identifies the problems and programs that are unique to each. By assembling the different ways that each state has addressed conservation and renewable resource development, this Comment hopes to aid policy makers in each of the states to copy the successes, and avoid the failures, of the others.

I. STATE POLICIES AND PROGRAMS THAT FURTHER OR HINDER CONSERVATION AND RENEWABLE RESOURCE DEVELOPMENT

A. *Common Elements*

The four Northwest states employ several common programs to encourage conservation and renewable resource development. These com-

7. The states administer various programs aimed at facilitating the development of conservation measures and renewable resources. Activities range from providing information to consumers, businesses and government to providing energy audits and financing conservation. Programs are funded either by federal agencies, such as the Department of Energy and the Bonneville Power Administration (BPA) or by the states themselves. Unlike other funding sources, BPA requires that its programs reduce its customers' electricity use. Thus, BPA money may not be used to reduce the use of other fuel sources, such as oil and natural gas. See BONNEVILLE POWER ADMINISTRATION, DIVISION OF CONSERVATION, DRAFT CONSERVATION AND DIRECT APPLICATION RENEWABLE RESOURCES PROGRAM STRATEGY 9, 13 (Nov. 1981).

8. The states themselves are energy consumers. Therefore, the states can save money and save power through energy-efficient procurement and construction policies.

9. States influence conservation and development of resources through their regulatory power over investor-owned utilities and other entities. The states' public utility commissions regulate the price of power to the consumers, the utilities' rates of return on investment, and financing. The commissions also determine which costs may be charged to the ratepayers and which must be passed on to shareholders. Despite the prevalence of public power in the region, the investor-owned utilities now serve much of the region's power load and, therefore, the discretionary decisions of state regulatory bodies are key determinants of electric power policy in the Northwest. See LEE, *supra* note 3, at 23-24. Furthermore, the states' inherent regulatory powers over local governments, citizens and businesses indirectly shape energy policy.

10. State tax and finance policies influence the investment decisions of individual users and providers of electricity. Tax incentives encourage the adoption of conservation measures or the development of resources that are regionally cost-effective, but not cost-effective from an individual's standpoint. Once an individual or organization decides to adopt a conservation measure or develop a resource, some means of project financing is necessary. State laws governing such areas as the issuance of tax-exempt bonds, the lending of credit and usury limits can determine consumers' ease of access to capital.

mon programs include public information;¹¹ energy extension services;¹² and building grants to encourage energy conservation in schools, hospitals, and other public buildings.¹³ Three states employ life-cycle cost analysis¹⁴ to evaluate state purchases or building designs for energy conservation over the life of the project.¹⁵ In recognition of the financial limitations faced by low-income energy users, each state administers a low-income weatherization program which assists consumers in the installation and financing of residential energy conservation measures.¹⁶ All four

11. See, e.g., State of Idaho, Dep't of Water Resources, Summary of Idaho Department of Water Resources Federally Funded Energy Programs 2-3 (Apr. 28, 1982) (copy on file with the *Washington Law Review*) [hereinafter cited as Summary of Idaho Energy Programs]; STATE OF MONTANA, DEP'T OF NATURAL RESOURCES AND CONSERVATION, 1980 MONTANA ENERGY ALMANAC 4 (Oct. 1980) (copy on file with the *Washington Law Review*) [hereinafter cited as MONTANA ENERGY ALMANAC]; OR. REV. STAT. § 469.135 (1981); State of Oregon, Dep't of Energy, Overview Briefing (May 20, 1982) (unpublished memorandum of Lynn Frank, Director of the Oregon Department of Energy, to the Energy Policy Review Committee) (copy on file with the *Washington Law Review*) [hereinafter cited as Frank Memorandum]; STATE OF WASHINGTON, 1979-81 BIENNIAL REPORT: NATURAL RESOURCES AND RECREATION AGENCIES 30-31 (copy on file with the *Washington Law Review*) [hereinafter cited as WASHINGTON BIENNIAL REPORT]. The public information programs offered by the states generally include library services, responses to informational inquiries, publication and distribution of newsletters or reports, and seminars and workshops.

12. The energy extension service programs provide classes and workshops in conservation and renewable resources to small energy users. Funding is provided by the federal Department of Energy and the BPA. Summary of Idaho Energy Programs, *supra* note 11, at 3; MONTANA ENERGY ALMANAC, *supra* note 11, at 85; Frank Memorandum, *supra* note 11, at 1; WASHINGTON BIENNIAL REPORT, *supra* note 11, at 32; BONNEVILLE POWER ADMINISTRATION, OFFICE OF CONSERVATION AND DIRECT-APPLICATION RENEWABLE RESOURCES, CONSERVATION SOURCEBOOK 12 (Feb. 1983) [hereinafter cited as CONSERVATION SOURCEBOOK].

13. The institutional building grants programs provide energy audits of certain publicly-owned buildings to determine their conservation efficiency. Operators of the public buildings may subsequently apply for funding to conduct more detailed studies and to implement conservation measures. Programs are funded by the federal Department of Energy and the BPA. Summary of Idaho Energy Programs, *supra* note 11, at 4; MONTANA ENERGY ALMANAC, *supra* note 11, at 85-86; Frank Memorandum, *supra* note 11; WASHINGTON BIENNIAL REPORT, *supra* note 11, at 31; CONSERVATION SOURCEBOOK, *supra* note 12, at 15-16.

14. The term "life-cycle cost analysis" refers to the calculations of the total capital and operations and maintenance costs, including energy costs, incurred over the lifetime of a construction project or equipment purchase.

15. Idaho Exec. Order No. 81-10, 1982 Idaho Sess. Laws 987; MONTANA ENERGY ALMANAC, *supra* note 11, at 69, 82; WASH. REV. CODE ch. 39.35 & § 43.19.1905 (1981). The State of Montana employs life-cycle cost analysis for vehicles and energy-using appliances, but not for facility construction and renovation. See *infra* note 42 and accompanying text.

16. Low-income weatherization programs are federally funded by the U.S. Department of Energy and the U.S. Department of Health and Human Services. Typically, the programs are administered by state community-affairs or social-service agencies, rather than by energy agencies. See Summary of Idaho Energy Programs, *supra* note 11, at 4; MONTANA ENERGY ALMANAC, *supra* note 11, at 49; STATE OF OREGON, GOVERNOR'S ENERGY PROGRAM 1981-83 at 35 (Jan. 1981); WASHINGTON STATE ENERGY OFFICE, BIENNIAL REPORT 1983 at 6-26, -27 (1983).

The BPA is developing a low-income weatherization program for electricity consumers. This program will be administered either by the local utility, or, if a utility chooses not to participate, by the state. See CONSERVATION SOURCEBOOK, *supra* note 12, at 15.

states are offering technical assistance to local governments for conservation and renewal resources under agreements signed with the Bonneville Power Administration (BPA) in 1982.¹⁷

The states also share several regulatory programs in common. For instance, each of the Northwest states either recognizes solar easements or permits solar access ordinances adopted by local governments.¹⁸ Each gives certain tax incentives for conservation and use of alternative energy systems.¹⁹ Finally, certain utilities in three states are participating in the federal Residential Conservation Service Program, which requires the utilities to provide free audits and assistance in the installation and financing of conservation and renewable energy systems.²⁰

Certain state programs and policies, on the other hand, hinder attainment of the Northwest Power Act's goals. Some of these are relatively minor obstacles; others, however, completely block the path to further progress. An obstacle common to all four states is the treatment of privately owned geothermal heating districts as water utilities that are subject to regulation by the Public Utility Commissions. This policy significantly discourages geothermal development.²¹ Another common obstacle is the failure of state building codes to use the most cost-effective thermal

17. Bonneville Power Administration Program Fact Sheet, Technical Assistance to Local Governments and Small Consumers (Sept. 1982) (copy on file with the *Washington Law Review*). See also CONSERVATION SOURCEBOOK, *supra* note 12, at 12 (discussing the technical assistance available to local governments and small users).

18. IDAHO CODE § 55-615 (1979); MONT. CODE ANN. §§ 70-17-301 to -302 (1981); OR REV STAT §§ 92.044, 105.880-.890, 215.044, 215.110, 227.190-.195 (1981); WASH. REV. CODE § 64.04.140 (1982).

19. See, e.g., IDAHO CODE §§ 63.3022B-.3022C (1979) (income tax deductions for residential insulation or installation of alternative energy devices).

See also MONT. CODE ANN. §§ 15.31.114, 15.32.101-.109 (1981) (income tax credit for conservation measures); *id.* §§ 15.32.201-.202 (tax credit for alternative energy systems in residences); *id.* § 15.6.201 (property tax exemption for renewable energy systems).

See also OR. REV. STAT. § 307.175 (1981) (property tax exemption for alternative energy systems); *id.* §§ 469.160-.180 (tax credits for alternative energy devices installed in homes); *id.* §§ 469.185-.225 (tax credits for energy conserving commercial or individual facilities, and for commercial or industrial facilities utilizing renewable energy sources); *id.* §§ 316.069, 317.083 (income tax and corporation excise tax exemptions for energy conservation revenues); *id.* § 317.071 (corporation excise tax credit to lending institutions for financing weatherization services before November 1981).

See also WASH. REV. CODE §§ 82.16.055, 82.35.010-.900, 84.36.485 (1981) (cogeneration tax credit and property tax exemption); *id.* § 82.16.055 (public utility tax deduction for conservation and renewable resources); *id.* § 84.40.030 (lower property tax valuation for buildings with efficient energy systems).

20. Summary of Idaho Energy Programs, *supra* note 11, at 3; MONT. CODE ANN. §§ 90.4.501-.504 (1981); MONTANA ENERGY ALMANAC, *supra* note 11, at 46; Washington Utilities and Transportation Commission, Proposed State Plan, Residential Conservation Service Program, State of Washington (May 1980) (copy on file with the *Washington Law Review*).

21. J. NIMMONS, UTILITY POLICY AND GEOTHERMAL HEATING: TOWARD RATIONAL REGULATION 22-25 (1980) (monograph published by the Geothermal Commercialization Project, the Earl Warren Legal Institute, University of California, Berkeley) (copy on file with the *Washington Law Review*).

and lighting standards.²² Use of these standards would save electricity as well as taxpayer dollars, because it is easier and cheaper to build energy-efficiency into new structures than it is to retrofit existing ones.

B. Unique Programs and Problems

1. Idaho

Of the four Northwest states, Idaho is uniquely blessed with abundant and readily accessible geothermal resources.²³ It shares with the other states a large quantity of dammable rivers. Idaho's statutes and programs therefore emphasize the production of geothermal energy and hydroelectric power while placing less emphasis on conservation measures.

Idaho authorizes local governments to establish and finance geothermal heating systems.²⁴ It has incorporated geothermal energy into its procurement policies by drilling two wells near the state offices in Boise to heat the buildings with hot water.²⁵ Idaho encourages hydroelectric generation by authorizing individuals to lease water rights for up to one year to a private or public utility for that purpose.²⁶

Idaho also administers a number of conservation and renewable resource programs that center on other areas. These programs target com-

22. Energy codes in the Northwest states do not realize all the cost effective conservation savings that they could. Even the relatively strict Oregon energy code requires lower levels of ceiling insulation than BPA finds cost effective for its weatherization program, although both the Oregon code and the BPA weatherization specifications have similar requirements for wall and floor insulation. *Compare* OR. STRUCTURAL SPECIALTY CODE § 5303 (1982) *with* BONNEVILLE POWER ADMINISTRATION, WEATHERIZATION SPECIFICATIONS II, at 8, 16, 20, 22 (1982) (copy on file with the *Washington Law Review*).

Montana's building code does not apply to a number of building types, including most residential structures, unless local jurisdictions adopt the state code by ordinance. MONT. CODE ANN. §§ 50-60-101 to -303 (1981).

In Idaho, the energy code is adopted at the option of local governments. IDAHO CODE §§ 39-4101 to -4128 (1977). Hence, adoption is spotty. IDAHO ENERGY RESOURCE POLICY BOARD, THE IDAHO STATE ENERGY PLAN 44 (Feb. 1982) [hereinafter cited as IDAHO ENERGY PLAN].

Washington is plagued with two different energy codes. The statutory code, WASH. REV. CODE §§ 19.27.030, 19.27.200-905 (1981), has lower standards for the low-rise residential sector than the code adopted by administrative rule by the State Building Code Advisory Council. *See* WASH. REV. CODE § 19.27.075 (1981); WASH. ADMIN. CODE ch. 51-12 (1981).

Adoption of a stricter energy code was proposed in the 1981 and 1982 sessions of the Washington State Legislature. Each time it was considered, the code passed the Senate but died in the House. *See, e.g.*, Wash. Engrossed S. 3310, 47th Leg., 1981 Wash. Reg. Sess.; 1 LEGISLATIVE DIGEST AND HISTORY OF BILLS OF THE SENATE AND HOUSE OF REPRESENTATIVES, FORTY-SEVENTH LEGISLATURE 152 (Apr. 30, 1982) (on Apr. 4, 1982, S. 3310 was returned to the Senate Rules Committee for third reading, and by resolution indefinitely postponed).

23. IDAHO ENERGY PLAN, *supra* note 22, at 27.

24. IDAHO CODE §§ 31-868 [31-869] [sic] (Supp. 1982), 50-323, -1020, -1029, -1030 (1980).

25. IDAHO ENERGY PLAN, *supra* note 22, at 27.

26. IDAHO CODE § 42-108(A-B) (1982).

mercial, industrial,²⁷ and agricultural conservation,²⁸ and vocational training for heating, ventilation, and air conditioning equipment technicians.²⁹

Conservation and renewable resource development in Idaho has suffered two significant setbacks within the last year. The Idaho Supreme Court recently invalidated the state Public Utility Commission's fifty-dollar-per-kilowatt-hour hook-up charge for new electric space heating installations where natural gas is available and cheaper to produce.³⁰ The second setback occurred in the state legislature, which declared a moratorium on inverted electrical rates during 1982, thereby invalidating the Commission's inverted rate orders for two of the investor-owned utilities in the state.³¹ Each of these decisions limited the authority of the Public Utility Commission to adopt effective and innovative policies to conserve electrical power within the state.

2. *Montana*

Montana's approach to power supply is noteworthy, in part, because of one unique funding source. The state severance tax on coal, a nonrenewable energy source, finances Montana's alternative renewable energy sources program.³² Four and one-half percent of all coal severance tax revenues are dedicated to alternative energy research projects.³³ Research and development grants are awarded from these revenues to individuals, businesses and government. As of fiscal year 1980, more than \$2.6 million had been distributed among 159 projects.³⁴

Montana agencies administer a number of programs designed to promote conservation and development of renewable resources. These programs include providing commercial and technical assistance for geothermal energy developers.³⁵ The state also has a program to study the feasibility of developing small-scale hydroelectric facilities at thirty-five

27. Hoppie, *Industry and Commerce Conservation Programs*, in IDAHO OFFICE OF ENERGY PROGRAMS (1980) (summary of Idaho energy programs) (copy on file with the *Washington Law Review*).

28. *Id.*

29. Summary of Idaho Energy Programs, *supra* note 11, at 1-2.

30. Idaho State Homebuilders v. Washington Water Power, and Idaho Public Utilities Commission, No. 13622, 1982 Opinion No. 21 (Idaho), argued on rehearing, Nov. 18, 1982. See also *State Surcharge on Home Hookups Voided by Supreme Court in Idaho*, ENERGY USERS REP. (BNA) 426 (Apr. 29, 1981) (discussing the *Idaho State Homebuilders* decision).

31. 1982 Idaho Sess. Laws ch. 370. Inverted rate structures charge progressively higher rates for higher levels of electricity consumption in order to give customers a price incentive to conserve.

32. MONT. CODE ANN §§ 15-35-101 to -111, 90-4-101 to -108 (1981); MONTANA ENERGY ALMANAC, *supra* note 11, at 46, 51.

33. MONT. CODE ANN § 15-35-108 (1981).

34. MONTANA ENERGY ALMANAC. *supra* note 11, at 90, 92.

35. *Id.* at 92-93.

state-owned water resource projects. The sites may be leased for development to utilities or individuals or developed by the state.³⁶

Several other regulatory programs attempt to promote conservation. The Montana Public Service Commission regulates utility advertising and discourages advertisements that promote wasteful uses of power. The Commission allows advertisements for conservation and development of renewable resources, but forbids those promoting electricity sales.³⁷ The state has also promulgated an energy code for new construction in those cities and counties that enforce the state building code.³⁸

Montana's investment and tax policies also play an important role in promoting the Northwest Power Act's goals. Public utilities and lending institutions may make low-interest loans for residential conservation or nonfossil energy generation sources. The lender may claim the interest rate as a tax credit.³⁹ In addition, the 1981 legislature authorized the use of tax-exempt industrial development financing for small-scale hydroelectric projects.⁴⁰

A significant obstacle to conservation in the Montana state government's energy use is the absence of a life-cycle cost analysis requirement for state facility construction and renovation.⁴¹ The state legislature failed to pass proposed life-cycle cost analysis legislation in 1977.⁴²

3. Oregon

Of the four Northwest states, Oregon has the most comprehensive approach to conservation and renewable resources. In addition, Oregon makes the biggest commitment of its tax revenues and bonding authority to promoting these goals.

Oregon's concern for conservation and renewable resources is demonstrated by its large number of affirmative initiatives. In addition to the programs run by the other three states, Oregon provides technical assistance to renewable resource developers.⁴³

36. MONT. CODE ANN. §§ 77-4-201 to -211 (1981); MONTANA ENERGY ALMANAC, *supra* note 11, at 100-01.

37. See MONTANA ENERGY ALMANAC, *supra* note 11, at 41.

38. MONT. CODE ANN. §§ 50-60-101 to -303 (1981). See also MONTANA ENERGY ALMANAC, *supra* note 11, at 49, 69 (discussing energy conservation standards in the state building code).

39. MONT. CODE ANN. §§ 15-32-107 (1981).

40. See MONT. CODE ANN. ch. 90-5 (1981).

41. See *supra* notes 14-15 and accompanying text.

42. Mont. H.R. 426, 45th Leg., 1977 Mont. State Leg. (killed in Appropriations Committee on Apr. 2, 1977) (copy on file with the *Washington Law Review*).

43. Frank Memorandum, *supra* note 11, at 3. The renewable resource assistance program provides information and seminars on renewable resource development to potential developers.

Several Oregon laws actively promote the development of renewable resources. The 1981 Legislature authorized wind energy easements.⁴⁴ State law permits some water-related special districts, including water and irrigation districts, to generate and sell hydropower.⁴⁵ Hydroelectric development may be financed through revenue bonds.⁴⁶ In some cases, a portion of the district's revenues must be dedicated to weatherization of district-owned buildings.⁴⁷ Communities may form geothermal heating districts. Once created, these districts have the power to set rates, levy taxes and sell bonds.⁴⁸ Finally, state law permits unit operation of geothermal resources.⁴⁹ Unit operation permits economically efficient development of geothermal pools that may be tapped by more than one owner. Under unified management, different wells tapping the same pool are managed as if there were only one owner, thus avoiding wasteful development.

Three other state laws require utilities to promote conservation and foster the development of renewable energy sources. Electric and gas utilities and fuel dealers are required to offer free residential energy audits.⁵⁰ Electric and gas utilities are required to offer audits to their commercial customers as well.⁵¹ The utilities are also required to provide financing for weatherizing residential buildings.⁵² Residential fuel oil and wood-heat customers are eligible for low-interest loans for weatherization.⁵³ A recently enacted law requires utilities to either purchase or transmit electricity from small-scale sources, including cogeneration facilities.⁵⁴

State loan programs also play an important role in fostering the Act's goals. The Oregon Department of Energy administers a loan program for small-scale energy resource development. Loans are financed through the sale of state general obligation bonds.⁵⁵ The State Department of Veterans' Affairs also provides loans for alternative energy systems.⁵⁶ The De-

44. OR. REV. STAT. §§ 105.900-.915 (1981). For a complete discussion of wind energy easements and wind mechanism siting problems, see York & Settle, *Potential Legal Facilitation or Impediment of Wind Energy Conversion System Siting*, 58 WASH. L. REV. 387 (1983).

45. OR. REV. STAT. §§ 543.650-.660, 545.102 (1981).

46. *Id.* §§ 543.665-.670 (1981).

47. *Id.* § 543.685 (1981).

48. *Id.* §§ 523.010-.710 (1981).

49. *Id.* §§ 522.405-.910 (1981).

50. *Id.* §§ 469.631-.687 (1981). See Oregon Department of Energy, 1981 Energy Legislation 3 (May 20, 1982) (copy on file with the *Washington Law Review*) [hereinafter cited as Oregon Energy Legislation].

51. OR. REV. STAT. §§ 469.860-.900 (1981).

52. *Id.* §§ 469.631-.687; Oregon Energy Legislation, *supra* note 50, at 3.

53. OR. REV. STAT. §§ 469.700-.720 (1981).

54. *Id.* §§ 758.500-.550. This statute, however, expires in July 1983. *Id.*

55. *Id.* §§ 470.050-.310.

56. *Id.* §§ 407.010-.090.

partment of Energy is directed to adopt voluntary weatherization standards for existing housing. These standards are mandatory for recipients of energy development loans from either of the state programs.⁵⁷

Conservation efforts are hindered, however, by ambiguities in the state's joint operating laws. These statutes permit the sale of bonds for generating resources and transmission facilities but are silent with regard to conservation measures.⁵⁸ The resulting ambiguity may discourage the use of conservation bonds by Oregon joint operating authorities.

4. Washington

Washington's approach to conservation and renewable resource development places a greater emphasis on assisting the private sector and government than it does on reducing residential energy use. This approach is illustrated by the programs administered by the Washington State Energy Office. In addition to helping other state agencies to perform energy audits of state buildings and review life-cycle cost analyses,⁵⁹ the agency provides technical assistance to small producers of hydroelectric and geothermal energy.⁶⁰

This approach is also exemplified in Washington's laws that encourage utilities to invest in conservation and the development of renewable resources. State law requires the Washington Utilities and Transportation Commission (WUTC) to allow utilities to earn a higher rate of return on conservation and renewable resource investments than on other investments.⁶¹ This law also requires the WUTC to establish rates for its regulated utilities which encourage conservation, cogeneration, and production from renewable resources.⁶² In addition, the Commission does not regulate the generation of power from nonpolluting renewable resources owned by private individuals.⁶³

Washington law permits the use of industrial development revenue bonds for energy resource development.⁶⁴ School districts are authorized to borrow or issue bonds to finance conservation measures or installation

57. *Id.* §§ 407.010, 407.048-.061, 469.155, 470.060-.090.

58. *Id.* §§ 262.005-.115.

59. WASH. REV. CODE §§ 43.19.668-.685 (1981). *See also supra* notes 14-15 (discussing use of life-cycle cost analysis in evaluating building designs for energy conservation).

60. WASHINGTON BIENNIAL REPORT, *supra* note 11, at 33-34.

61. WASH. REV. CODE § 80.28.025 (1981).

62. *Id.*

63. *Id.* § 80.58.10.

64. *Id.* ch. 39.84. Industrial development revenue bonds provide the cost savings of tax exempt financing to the business community. The lower cost of financing energy facility construction makes such projects more attractive to sponsors.

of renewable energy systems in district facilities.⁶⁵ A recently enacted law permits cities and towns to incur debt and borrow funds, secured by the utility's expected revenues, for up to two years for any public utility project.⁶⁶

Irrigation districts are empowered to play a somewhat limited role in the development of hydroelectric power. State law authorizes them to build, own and operate hydroelectric facilities, though this is not intended to be the primary function of irrigation districts.⁶⁷ They may also provide residential energy audits and assist homeowners in financing conservation measures.⁶⁸

Washington law contains several major obstacles, however, that hinder efforts to conserve energy and develop renewable resources. First, Washington's constitution prohibits lending the state's credit.⁶⁹ This prevents publicly-owned utilities from making loans to commercial and industrial customers for conservation. The utilities can, however, make these loans to residential customers.⁷⁰ Second, Washington law does not authorize the use of industrial development revenue bonds for conservation measures.⁷¹ This omission precludes the state from tapping a potentially valuable source of funding. Third, the WUTC lacks the authority to ban hook-ups that involve new electric space heating requirements.⁷² This prevents it from channeling new residential use toward the fuel types that offer the lowest fuel cost over the life of the heating system.

II. CONCLUDING THOUGHTS

All four Northwest states are currently pursuing the development of conservation measures and renewable resources. Although the states' continuing commitment to these goals and programs will be affected by future legislative dynamics, certain observations can be made.

First, legislators must decide who will pay for conservation and the development of renewable resources: the electric ratepayers or the taxpayers. Because these two groups are virtually identical, it should not matter to them whether payments come from the rate pocket or from the

65. *Id.* § 28A.51.010.

66. *Id.* § 35.92.075.

67. *Id.* §§ 87.03.013--015.

68. *Id.* § 87.03.017.

69. WASH. CONST art. VIII, § 7.

70. *Id.* art. VIII, § 10. For implementing legislation, see WASH. REV. CODE §§ 33.92.105, 35.92.355--360, 54.16.200 (1981).

71. WASH. REV. CODE § 39.84.020 (1981). *See supra* note 64 and accompanying text.

72. *Seattle Master Builders Ass'n v. Wash. Utilities and Transportation Comm'n.* No. 80-2-11632-1 (King County Super. Ct., Wash., Sept. 26, 1980) (copy of transcript of court's oral decision on file with the *Washington Law Review*).

tax pocket. Nevertheless, this choice will have an impact on the future revenues of the states and the utilities. Each would rather see the other pay. Recommendations that depend on state legislative action may face rough going if they involve allocating scarce tax dollars for energy.⁷³

Second, decisions by the BPA and the Northwest Power Planning Council may have interesting and unanticipated effects on state legislative proposals. An example of this interaction is provided by BPA's use of billing credits. Under the Act, billing credits are rebates from BPA to utilities that reduce their demand for BPA power through conservation or other means. BPA's proposed regulations exclude state-mandated conservation rates from eligibility. This exclusion provided opponents with a powerful argument against the inverted rates bill that was considered, but not enacted, in Washington's 1982 legislative session.⁷⁴

Finally, to quote a popular political adage, timing is everything. 1983 will be an important year for electricity-related legislation. The draft Northwest Power Plan is scheduled for release in early 1983. The legislature of each Northwest state met in regular sessions in January 1983. Montana and Oregon, whose legislatures meet biennially, may not have another opportunity to consider electric power issues until 1985—two years after the plan is released.

Legislative proposals have a way of recycling themselves, session after session, until finally they are enacted or the problem that originally inspired them disappears into oblivion. Many of the statutory and constitutional barriers to the Northwest Power Plan have been challenged in the legislatures before. Sometimes the third time's the charm. Or the fourth time. Or the fifth.

73. The states of Oregon and Washington have each seen several special legislative sessions as a result of recent substantial declines in tax revenues. However meritorious new conservation and renewable-resource programs may be, legislators are unlikely to fund them and thereby increase the gap between budget requirements and revenue collections.

74. Letter from C. Stanford Olsen, President, Board of Commissioners, Snohomish County Public Utility District, to Senator Sue Gould, Chair, Wash. State Senate Energy and Utilities Committee (Feb. 4, 1982) (copy on file with the *Washington Law Review*).