
HOUSE BILL 2290

State of Washington

55th Legislature

1997 Regular Session

By Representative Morris

Read first time . Referred to Committee on .

1 AN ACT Relating to restructuring Washington state electric
2 utilities and opening the electricity market to retail competition;
3 amending RCW 80.12.020, 80.12.040, 80.24.010, 80.28.020, and 80.28.050;
4 reenacting and amending RCW 42.17.310; adding a new section to chapter
5 41.06 RCW; adding a new chapter to Title 80 RCW; and creating a new
6 section.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. (1) The legislature
9 finds that:

10 (a) The electric utility industry is undergoing fundamental change.
11 This change is in part due to federal legislation and regulatory
12 decisions requiring utilities and other owners of transmission lines to
13 provide nondiscriminatory access to the transmission system, and to
14 legislation and programs in other states to open retail electricity
15 markets to competition.

16 (b) Currently, few Washington citizens can choose their electricity
17 service providers. The interests of citizens will be served by having
18 a choice of electric services and energy providers, if basic safeguards
19 relating to consumer protection and access are met, and if investments

1 that preserve the reliability of the electric system and protect the
2 environment are not undermined.

3 (c) The transition to a competitive retail electricity market will
4 be significant. At a minimum, active oversight is essential:

5 (i) To facilitate and encourage the development of meaningful
6 market access for all consumers and prevent unwarranted cost shifts
7 among consumer classes;

8 (ii) To ensure efficient use and reliable operation of transmission
9 and distribution facilities;

10 (iii) To allow utilities a fair recovery for previously and
11 prudently incurred investments that are both unmitigable and no longer
12 economic as a direct result of implementation of this chapter; and

13 (iv) To ensure minimum investment standards are met for
14 conservation, renewable resources, energy services to low-income
15 citizens, and other public purposes; to ensure such investments are
16 funded in a competitively neutral manner; and to ensure that a viable
17 funding mechanism will provide ongoing adequate investment in public
18 purposes.

19 (2) The legislature intends to restructure the retail market for
20 electricity in the state of Washington. In so doing, the legislature
21 intends to:

22 (a) Provide for three means by which customers can purchase
23 electric service and products: Through a voluntary power pool; through
24 an electric utility, marketer, broker, or aggregator; or directly from
25 an electricity generator;

26 (b) Provide for the creation of a board to oversee the transition
27 to a competitive retail electricity market; and

28 (c) Provide for the creation or designation of an independent
29 operator of the transmission system.

30 NEW SECTION. **Sec. 2.** The definitions in this section apply
31 throughout this chapter unless the context clearly requires otherwise.

32 (1) "Aggregator" means an entity that combines retail electric
33 customers into a group for the purpose of purchasing electricity and
34 related services.

35 (2) "Broker" means an entity that arranges the sale and purchase of
36 electricity or related services between buyers and sellers, but does
37 not take title to any of the electricity sold.

38 (3) "Commission" means the utilities and transportation commission.

1 (4) "Consumer-owned utility" means a municipal electric utility
2 formed under Title 35 RCW, an electric cooperative formed under chapter
3 23.86 RCW, a mutual corporation or association formed under chapter
4 24.06 RCW that sells electricity to retail electric customers, a public
5 utility district formed under Title 54 RCW that sells electricity to
6 retail electric customers, or an irrigation district formed under
7 chapter 87.03 RCW that sells electricity to retail electric customers.

8 (5) "Electrical company" means a company owned by investors that
9 meets the definition of RCW 80.04.010.

10 (6) "Electric utility" means any electrical company or consumer-
11 owned utility that is engaged in the business of distributing
12 electricity to retail electric customers in the state.

13 (7) "Electricity" means electric energy, measured in kilowatt
14 hours, or electric capacity, measured in kilowatts.

15 (8) "Electricity service supplier" means any person or entity that
16 sells electricity to more than one retail electric customer, including
17 but not limited to electric utilities, aggregators, marketers, brokers,
18 generators or holders of contract rights to electricity (other than
19 marketers) that are willing to sell electricity directly to consumers,
20 the Northwest power exchange, independent power producers, or other
21 municipal or state authorities.

22 (9) "Independent system operator" means the independent system
23 operator designated or established by the oversight board, as provided
24 in section 4 of this act.

25 (10) "Marketer" means any entity that buys electricity or related
26 services then resells the electricity or services either at wholesale
27 or to an end-use customer.

28 (11) "Northwest power exchange" or "exchange" means the voluntary
29 power pool created in section 15 of this act.

30 (12) "Oversight board" means the oversight board created in section
31 3 of this act.

32 (13) "Retail electric customer" means any person or entity,
33 including but not limited to a residential, commercial, and industrial
34 consumer, that purchases electricity for ultimate consumption and not
35 for resale.

36 (14) "State" means the state of Washington.

37 (15) "Subscription period" means the time when a retail electric
38 customer is a customer of the Northwest power exchange, between the
39 ballot periods provided for in section 17 of this act.

1 (16) "Transition period" means the period beginning July 1, 1999,
2 and ending no later than June 30, 2009.

3 (17) "Uneconomic utility investment" means generating assets,
4 conservation investments, and contractual obligations to purchase or
5 sell electricity that were entered into in good faith by an electric
6 utility before December 13, 1995, and that were prudent at the time the
7 obligations were assumed, but that are no longer economic as a direct
8 result of implementation of this chapter. "Uneconomic utility
9 investment" does not include costs or expenses disallowed by the
10 commission in a prudence review or other proceeding, but only to the
11 extent of such a disallowance, nor does it include fines or penalties
12 as authorized by this chapter or by another statute.

13 NEW SECTION. **Sec. 3.** OVERSIGHT BOARD CREATED. To ensure that the
14 interests of all Washington citizens are served by the development of
15 a competitive retail electricity market, an oversight board is hereby
16 created.

17 (1) The oversight board shall consist of five members: One
18 appointed by the majority leader of the senate, one appointed by the
19 minority leader of the senate, one appointed by the speaker of the
20 house of representatives, one appointed by the minority leader of the
21 house of representatives, and one appointed by the governor. All board
22 members shall be Washington residents and electricity ratepayers. No
23 member shall be a legislator.

24 (2) Oversight board members shall serve three-year terms with no
25 limit on reappointment. Of the initial board, one member appointed by
26 the senate majority leader and one member appointed by the speaker of
27 the house of representatives shall serve one-year terms; the member
28 appointed by the governor shall serve a two-year term; and the
29 remaining members appointed by the senate majority leader and speaker
30 of the house of representatives shall serve three-year terms.

31 (3) For attending meetings of the board or for attending to other
32 business of the board, members shall be compensated in accordance with
33 RCW 43.03.250 and shall be reimbursed for travel expenses in accordance
34 with RCW 43.03.050 and 43.03.060.

35 (4) The commission shall provide staff and administrative support
36 to the oversight board.

1 NEW SECTION. **Sec. 4.** RESPONSIBILITIES OF OVERSIGHT BOARD. The

2 oversight board shall have the following responsibilities:

3 (1) To designate or establish, and to oversee, the independent
4 system operator, the responsibilities of which are described in
5 sections 7 through 9 of this act;

6 (2) To oversee the Northwest power exchange established in section
7 15 of this act;

8 (3) To establish eligibility criteria for members of the governing
9 boards of the independent system operator and for members of the
10 Northwest power exchange, to determine terms and other conditions for
11 serving on those governing boards, and to appoint the members of both
12 governing boards within six months of the effective date of this act.
13 In fulfilling its obligations under this subsection, the oversight
14 board shall provide for compensation and reimbursement of expenses for
15 members of both governing boards. Once the independent system operator
16 begins collecting charges for transmission, members of the governing
17 board shall be compensated or reimbursed from revenues of the
18 independent system operator. Once the Northwest power exchange begins
19 selling electricity, members of the governing board shall be
20 compensated or reimbursed from revenues of the exchange;

21 (4) To serve as an appeals board for decisions of the independent
22 system operator governing board;

23 (5) To arrange for the preparation and mailing of a ballot to all
24 retail electric customers in the state, as required under section 17 of
25 this act, so that customers may choose their electricity service
26 suppliers. The oversight board shall prescribe the kind of information
27 that may be included with the ballot. In addition, the oversight board
28 shall establish a procedure under which every customer has the
29 opportunity, periodically at an accelerated rate, to choose a different
30 electricity service provider. The oversight board shall determine
31 whether customers of the Northwest power exchange who select
32 alternative electricity service suppliers before the next ballot period
33 will be liable for unmitigable costs incurred by the exchange in
34 anticipation of serving those customers during the time remaining until
35 the next ballot period;

36 (6) To complete its additional responsibilities and report to the
37 legislature as required under section 5 of this act; and

38 (7) To perform other functions necessary to carry out the purposes
39 of chapter . . . , Laws of 1997 (this act).

1 NEW SECTION. **Sec. 5.** DETERMINATIONS AND REPORT BY OVERSIGHT

2 BOARD. (1) With the assistance of the commission, the oversight board
3 shall determine the following:

4 (a) Appropriate jurisdictional boundaries between the independent
5 system operator and owners of distribution facilities; definitions for
6 generation, transmission, and distribution assets, and other relevant
7 terms; and which transmission and distribution facilities are subject
8 to the exclusive jurisdiction of the state;

9 (b) Appropriate standards for communications between an electricity
10 service supplier's regulated and unregulated lines of business
11 including, but not limited to, distribution services and sales of
12 electricity and related services classified as competitive by the
13 commission. The commission shall develop recommendations for such
14 standards and present the recommendations to the oversight board;

15 (c) Appropriate standards for identifying and valuating uneconomic
16 utility investments. In fulfilling its obligations under this
17 subsection (1)(c), the oversight board shall determine whether expenses
18 in mitigating impacts on utility personnel directly and negatively
19 affected by implementation of chapter . . . , Laws of 1997 (this act)
20 should be included in the definition of uneconomic utility investments
21 and shall determine whether and, if so, in what manner, potential
22 uneconomic investments of the Bonneville power administration should be
23 identified, valued, recovered, or otherwise provided for in a
24 restructured electricity industry;

25 (d) Appropriate standards for determining whether an electric
26 utility has made all reasonable efforts to mitigate its uneconomic
27 utility investments. Standards for evaluating an electric utility's
28 efforts to mitigate uneconomic utility investments shall not require
29 the utility to impair the validity or affect the obligation of a
30 contract existing on the effective date of this act;

31 (e) The total sum of costs due to unmitigable, uneconomic utility
32 investments incurred by electric utilities. In fulfilling its
33 obligations under this subsection (1)(e), the oversight board shall
34 include federally mandated expenditures for fish mitigation programs as
35 uneconomic utility investments;

36 (f) The most appropriate nonbypassable mechanism to allow
37 individual electric utilities to recover, during the transition period,
38 fifty percent of the amount of those unmitigable uneconomic utility
39 investments the individual utility incurred. The commission shall make

1 recommendations to the oversight board regarding any legislation
2 necessary to authorize an electric utility, with commission approval,
3 to issue bonds, notes, certificates of beneficial interests in trusts,
4 or other evidences of indebtedness or ownership, that would be secured
5 by the revenues recovered through the nonbypassable mechanism provided
6 for in this subsection (1)(f). The recommendations shall take into
7 account whether some uneconomic utility investments secure existing
8 bonds, whether the value of uneconomic utility investments should be
9 adjusted periodically, and any other matter the commission deems
10 relevant;

11 (g) The specific public purposes that should receive financial
12 support from the electricity system, and the appropriate level of
13 funding for each. Regarding renewable resources, the oversight board
14 shall determine how to allocate funds among new, existing, and emerging
15 technologies, and how to allocate funds for efforts to develop a
16 consumer-driven market for renewable generation as described in section
17 16(2) of this act. The oversight board shall also determine whether
18 the overall level of funding, or allocation of the funding, should
19 change over time and, if so, when and in what manner. In fulfilling
20 its obligations under this subsection (1)(g), the oversight board
21 initially shall presume a minimum investment, and a proportional
22 allocation of that investment, consistent with the recommendations in
23 the final report of the comprehensive review of the Northwest energy
24 system dated December 12, 1996;

25 (h) The most appropriate means of ensuring adequate funding for
26 public purposes through a flat-rate, nonbypassable charge;

27 (i) Any statutory changes, beyond those in chapter . . . , Laws of
28 1997 (this act), that are desirable to protect or educate consumers, or
29 to ensure reliable service at affordable prices to consumers in
30 sparsely populated areas of the state;

31 (j) Any statutory changes, beyond those in chapter . . . , Laws of
32 1997 (this act), that are necessary to carry out the purposes of this
33 act; and

34 (k) Whether action is necessary to encourage the development of a
35 market for futures contracts to allow customers to hedge against
36 fluctuations in electricity prices.

37 (2) The oversight board shall form appropriate advisory committees
38 composed of market and nonmarket participants to assist it in
39 fulfilling its obligations under this section including, but not

1 limited to: (a) Addressing jurisdictional issues regarding
2 transmission and distribution; (b) developing standards for defining,
3 identifying, valuating, and mitigating uneconomic utility investments;
4 (c) developing an appropriate, nonbypassable mechanism to allow
5 recovery for fifty percent of unmitigable uneconomic utility
6 investments during the transition period; (d) defining, identifying,
7 and determining the appropriate funding level for public purposes; and
8 (e) developing an appropriate means of ensuring adequate funding for
9 public purposes through a flat-rate, nonbypassable charge.

10 (3) By November 1, 1998, the oversight board shall report to the
11 governor and legislature concerning its findings and activities. The
12 report shall contain any recommendations the oversight board may have
13 for further action, including legislation, but shall not contain
14 proprietary business information of individual utilities, or
15 information exempt from public disclosure under RCW 42.17.310.

16 NEW SECTION. **Sec. 6.** UNECONOMIC UTILITY INVESTMENTS. (1) Each
17 electric utility shall provide accurate and complete written
18 documentation of the utility's uneconomic utility investments, the
19 value of those investments, and the utility's efforts to mitigate those
20 investments.

21 (2) Using the standards to be developed as provided in section 5 of
22 this act, the commission shall identify and quantify uneconomic utility
23 investments for each electric utility, and determine whether the
24 utility has made all reasonable efforts to mitigate costs attributable
25 to those uneconomic utility investments.

26 (3) Fifty percent of the costs attributable to unmitigable,
27 uneconomic utility investments shall be recovered from all customers on
28 a nonbypassable basis during the transition period. Any costs not
29 recovered during the transition period shall be the sole responsibility
30 of the utility.

31 (4) The commission shall facilitate implementation of the
32 nonbypassable recovery mechanism as determined by the oversight board
33 under section 5 of this act.

34 NEW SECTION. **Sec. 7.** RESPONSIBILITIES OF INDEPENDENT SYSTEM
35 OPERATOR. (1) An independent system operator shall ensure efficient
36 use and reliable operation of the transmission grid consistent with
37 achievement of planning and operating reserve criteria no less

1 stringent than those established by the Western systems coordinating
2 council and the North American electric reliability council. The
3 independent system operator shall be operated on a nonprofit basis.

4 (2) The independent system operator shall participate in all
5 relevant federal energy regulatory commission proceedings. To the
6 extent filings at the federal energy regulatory commission are
7 necessary, the independent system operator shall ensure the filings
8 request confirmation of the relevant provisions of this chapter and
9 seek the authority needed to give the independent system operator the
10 ability to secure generating and transmission resources necessary to
11 guarantee achievement of planning and operating reserve criteria no
12 less stringent than those established by the Western systems
13 coordinating council and the North American electric reliability
14 council.

15 (3) The independent system operator shall adopt inspection,
16 maintenance, repair, and replacement standards for the transmission
17 facilities under its control no later than March 31, 1999. The
18 standards, which shall be performance or prescriptive standards, or
19 both, as appropriate, for each substantial type of transmission
20 equipment or facility, shall provide for high quality, safe, and
21 reliable service. In adopting its standards, the independent system
22 operator shall consider: Cost, local geography and weather, applicable
23 codes, national electric industry practices, sound engineering
24 judgment, and experience. The independent system operator shall also
25 adopt standards for reliability and safety during periods of emergency
26 and disaster. The independent system operator shall require each
27 transmission facility owner or operator to report annually on its
28 compliance with the standards. The report shall be made available to
29 the public.

30 (4) The governing board of the independent system operator may hire
31 staff to carry out its duties under this chapter. The staff shall be
32 exempt from the provisions of chapter 41.06 RCW. The commission shall
33 provide office space for the staff and accounting and administrative
34 support.

35 (5) The governing board of the independent system operator may form
36 appropriate technical advisory committees composed of market and
37 nonmarket participants to advise the independent system operator
38 governing board on issues including, but not limited to, rules,
39 protocols, and operating procedures.

1 NEW SECTION. **Sec. 8.** OUTAGES. The independent system operator
2 shall perform a review following a major outage that affects at least
3 ten percent of the customers of the entity providing the local
4 distribution service. The review shall address the cause of the major
5 outage, the response time and effectiveness, and whether the
6 transmission facility owner or operator's operation and maintenance
7 practices enhanced or undermined the ability to restore service
8 efficiently and in a timely manner. If the independent system operator
9 finds that the operation and maintenance practices of the transmission
10 facility owner or operator prolonged the response time or were
11 responsible for the outage, the independent system operator may order
12 appropriate sanctions, subject to the federal energy regulatory
13 commission approving that authority, if such approval is necessary.

14 NEW SECTION. **Sec. 9.** REPORT BY INDEPENDENT SYSTEM OPERATOR. The
15 independent system operator, in consultation with the Washington State
16 University cooperative extension service, the commission, the Western
17 systems coordinating council, and concerned regulatory agencies in
18 other western states, shall, within six months after the federal energy
19 regulatory commission approval of the independent system operator,
20 provide a report to the governor and appropriate committees of the
21 legislature that does the following:

22 (1) Conducts an independent review and assessment of Western
23 systems coordinating council operating reliability criteria;

24 (2) Quantifies the economic cost of major transmission outages
25 relating to the Pacific intertie and other important high voltage lines
26 that carry power both into and from the state;

27 (3) Identifies the range of cost-effective options that would
28 prevent or mitigate the consequence of major transmission outages;

29 (4) Identifies communication protocols that may be needed to be
30 established to provide advance warning of incipient problems;

31 (5) Identifies the need for additional generation reserves and
32 other voltage support equipment, if any, or other resources that may be
33 necessary to carry out its functions;

34 (6) Identifies transmission capacity additions that may be
35 necessary at certain times of the year or under certain conditions;

36 (7) Assesses the adequacy of current and prospective institutional
37 provisions for the maintenance of reliability;

1 (8) Identifies mechanisms to enforce transmission right of way
2 maintenance; and

3 (9) Contains recommendations regarding cost-effective improvements
4 to the reliability of electric system.

5 NEW SECTION. **Sec. 10.** RELIABILITY OF THE DISTRIBUTION SYSTEM.

6 (1) The commission shall ensure that distribution facilities needed to
7 maintain the reliability of the electric supply remain available and
8 operational, consistent with maintaining open competition and avoiding
9 an over-concentration of market power. To determine whether the
10 facility needs to remain available and operational, the commission
11 shall utilize standards that are no less stringent than the Western
12 systems coordinating council and North American electric reliability
13 council standards for planning reserve criteria.

14 (2) The commission shall adopt inspection, maintenance, repair, and
15 replacement standards for the distribution systems of electric
16 utilities no later than March 31, 1999. The standards, which shall be
17 performance or prescriptive standards, or both, as appropriate, for
18 each substantial type of distribution equipment or facility, shall
19 provide for high quality, safe, and reliable service.

20 (3) In setting its standards, the commission shall consider: Cost,
21 local geography and weather, applicable codes, national electric
22 industry practices, sound engineering judgment, and experience. The
23 commission shall also adopt standards for operation, reliability, and
24 safety during periods of emergency and disaster. The commission shall
25 require each electric utility to report annually on its compliance with
26 the standards. That report shall be made available to the public.

27 (4) The commission shall conduct a review to determine whether the
28 standards prescribed in this section have been met. If the commission
29 finds that the standards have not been met, the commission may order
30 appropriate sanctions, including penalties in the form of rate
31 reductions or monetary fines. The review shall be performed after
32 every major outage. Any money collected pursuant to this subsection
33 shall be used to provide additional funding for the public purposes
34 identified by the oversight board under section 5 of this act.

35 NEW SECTION. **Sec. 11.** NONDISCRIMINATION IN DISTRIBUTION. After
36 July 1, 1999, an electric utility shall: (1) Provide to other
37 electricity service suppliers comparable access to information about

1 its distribution facilities, metering, and aggregate loads, as it would
2 to its own divisions or affiliates; and (2) refrain from granting to
3 its generating or transmission operations any access to or information
4 about its distribution facilities that is not provided to other
5 electricity service suppliers.

6 NEW SECTION. **Sec. 12.** DISTRIBUTION RATES. (1) Every electric
7 utility shall offer unbundled rates, terms, and conditions for the use
8 of its distribution facilities and for ancillary services.

9 (2) Every electric utility shall submit periodic reports to the
10 commission on costs the utility incurred in maintaining, upgrading, or
11 expanding its distribution facilities.

12 (3) The commission shall set rates for the use of distribution
13 facilities and ancillary services. Subject to the limitation set forth
14 in this subsection (3), in setting distribution rates, the commission
15 shall allow a nine percent rate of return to electrical companies, and
16 costs only to consumer-owned utilities. Nothing in this section
17 requires or authorizes the commission to set rates for the use of
18 distribution facilities and ancillary services that would impair the
19 ability of an electric utility to perform fully its covenants with
20 holders from time to time of its bonds, notes, or other evidence of
21 indebtedness, or to perform fully its covenants contained in agreements
22 that secure the payment of bonds, notes, or other evidence of
23 indebtedness of any other municipal corporation or joint operating
24 agency.

25 (4) The commission shall ensure that an electric utility's
26 distribution costs, including but not limited to overhead attributable
27 to distribution facilities and ancillary services, are allocated
28 accurately among the various classes of customers without shifting
29 costs from one class to another.

30 NEW SECTION. **Sec. 13.** SEPARATION OF ASSETS AND OPERATIONS. (1)
31 No later than January 1, 1999, every electric utility shall
32 administratively and functionally separate its generation,
33 transmission, distribution, and other assets and operations to
34 accurately allocate the costs of utility functions, and to allow for
35 fair and accurate pricing of unbundled services. Communications
36 between an electric utility's regulated and unregulated lines of
37 business, including but not limited to distribution services and sales

1 of electricity and related services classified as competitive by the
2 commission, shall comply with the standards developed under section
3 5(1)(b) of this act.

4 (2) After July 1, 1999, the commission shall not set the rates,
5 terms, or conditions for the sale of electricity by electrical
6 utilities. An electricity service supplier that owns no generating
7 assets or distribution facilities in the state shall not be considered
8 an electrical company or a public service company under Title 80 RCW,
9 but shall be subject to the requirements of sections 17 through 21 of
10 this act.

11 NEW SECTION. **Sec. 14.** SEPARATE ACCOUNTS. (1) Any electric
12 utility engaged in selling electricity in the state, or related
13 services that have been classified as competitive by the commission,
14 shall keep separate accounts, as prescribed by the commission, of the
15 utility's capital employed in such business, and of the utility's
16 revenues and operating expenses arising from such business.

17 (2) For the purpose of setting distribution rates: (a) The capital
18 employed in selling electricity or related competitive services shall
19 not constitute a part of the fair value of the electric utility's
20 property; and (b) the revenues from and operating expenses of such
21 business shall not constitute a part of the operating expenses and
22 revenues of the electric utility.

23 NEW SECTION. **Sec. 15.** NORTHWEST POWER EXCHANGE CREATED. An
24 independent, voluntary power pool, to be known as the Northwest power
25 exchange, is hereby created. The exchange shall commence selling
26 electricity on July 1, 1999, and cease selling electricity within six
27 months of the time that less than ten percent of the electricity
28 purchased in the state is purchased from the exchange. The exchange
29 shall be governed by a board meeting the criteria established by the
30 oversight board created under section 3 of this act. The exchange
31 shall not own any electricity-generating resources.

32 NEW SECTION. **Sec. 16.** RESPONSIBILITIES OF THE NORTHWEST POWER
33 EXCHANGE. (1) The Northwest power exchange shall provide an efficient
34 competitive auction, open to all electricity suppliers on a
35 nondiscriminatory basis, through which the exchange shall purchase
36 power for resale to retail electric customers.

1 (2) Initially, one percent of the electricity purchased for resale
2 by the exchange shall be from renewable resource technologies,
3 including, but not limited to, facilities that use the following energy
4 sources to generate electricity: Solar, wind, geothermal, solid fuel
5 biomass, whole waste tire combustion, municipal solid waste that does
6 not consist primarily of products originally manufactured from fossil
7 fuels, gas from anaerobic digestion of biological wastes, and
8 hydropower with a generating capacity of thirty megawatts or less. The
9 proportion of electricity the exchange purchases from renewable
10 resource technologies shall increase over time, at a rate and in
11 amounts to be determined by the Northwest power exchange governing
12 board in consultation with the oversight board created under section 3
13 of this act. Electricity from renewable resource technologies shall be
14 dispatched first.

15 (3) The Northwest power exchange shall provide an efficient
16 competitive auction, open to all providers of metering services on a
17 nondiscriminatory basis, through which the exchange shall purchase
18 metering services on behalf of the retail electric customers of the
19 exchange, including a mechanism for leveling fluctuations in the cost
20 of electricity and related services provided for in subsection (6) of
21 this section.

22 (4) The Northwest power exchange shall provide an efficient
23 competitive auction, open to all electricity suppliers on a
24 nondiscriminatory basis, through which the exchange shall purchase the
25 power necessary to maintain the reliability of the electricity delivery
26 system, as determined by the independent system operator based on the
27 exchange's total retail electricity load.

28 (5) The Northwest power exchange shall sell electricity to retail
29 electric customers at a price sufficient to recover all costs of the
30 exchange, but shall be operated on a nonprofit basis.

31 (6) Prior to July 1, 1999, the exchange shall develop a means of
32 leveling fluctuations in the cost of electricity and related services
33 between ballot periods. The means shall ensure that:

34 (a) During the first year of operation of the exchange, an increase
35 in the cost to exchange customers for electrical service does not
36 exceed ten percent above the average state-wide residential rate for
37 electrical service as of July 1, 1999, adjusted for inflation using the
38 consumer price index for all urban consumers (CPI-U) published by the

1 United States department of labor bureau of labor statistics, United
2 States city average, all items; and

3 (b) During subsequent years, an increase in the cost to exchange
4 customers for electrical service does not exceed ten percent above the
5 rate charged during the preceding year, adjusted for inflation using
6 the consumer price index for all urban consumers (CPI-U) published by
7 the United States department of labor bureau of labor statistics,
8 United States city average, all items.

9 (7) The governing board of the Northwest power exchange may hire
10 staff to carry out its duties under this chapter. The staff shall be
11 exempt from the provisions of chapter 41.06 RCW. The commission shall
12 provide office space for the staff and accounting and administrative
13 support.

14 (8) The governing board of the Northwest power exchange may form
15 appropriate technical advisory committees comprised of market and
16 nonmarket participants to advise the governing board on relevant
17 issues.

18 NEW SECTION. **Sec. 17. BALLOTS.** (1) By January 1, 1999, ballots
19 shall be distributed to all retail electric customers in the state.
20 Ballots must be returned by March 1, 1999. Beginning January 1, 2000,
21 as long as the Northwest power exchange exists, customers shall have
22 the opportunity, periodically at an accelerated rate, to select, in
23 writing, a different electricity service supplier.

24 (2) Different ballots may be prepared for different classes of
25 customers. Options listed on a ballot must include all electricity
26 service suppliers willing to provide the customer's electrical service.

27 (3) Any customer that fails to select an electricity service
28 supplier by March 1, 1999, shall be a customer of the Northwest power
29 pool.

30 (4) No one shall authorize a change in electricity service supplier
31 for any residential or small commercial customer until the consumer has
32 received an information package fully explaining the nature and effect
33 of the change and has authorized, in writing, the change.

34 NEW SECTION. **Sec. 18. AGGREGATION.** (1) Aggregation of customer
35 electrical load is authorized for all customer classes, including, but
36 not limited to, residential or small commercial customers. Aggregation
37 may be accomplished by private market aggregators, cities, counties,

1 special districts, or on any other basis made available by market
2 opportunities and agreed to in writing by individual customers.

3 (2) A public agency that serves as a community aggregator on behalf
4 of residential customers must offer the opportunity to purchase
5 electricity to all residential customers within the agency's
6 jurisdiction.

7 NEW SECTION. **Sec. 19.** CONSUMER INFORMATION. (1) After October 1,
8 1998, any person or entity that sells electricity to a retail electric
9 customer shall disclose each component of an electrical bill as
10 follows:

11 (a) The total charges attributable to the electricity;

12 (b) The total charges attributable to the delivery of the
13 electricity to the customer;

14 (c) The total charges attributable to public purposes as identified
15 in section 5 of this act; and

16 (d) The total charges attributable to uneconomic utility
17 investments identified and quantified as provided under section 6 of
18 this act.

19 (2) Electricity service suppliers shall provide conspicuous notice
20 that if a customer elects to purchase electricity from another
21 supplier, the customer will continue to be liable for payment of the
22 charges for public purposes and uneconomic utility investments. The
23 commission may require additional information.

24 (3) Prior to December 1, 1998, the commission, in conjunction with
25 electric utilities, shall devise and implement a customer education
26 program to inform consumers of the changes to the electric industry.
27 The program shall provide information that will assist consumers in
28 making appropriate choices regarding their electric service. Every
29 electric utility shall cooperate with the commission in devising and
30 implementing the consumer education program.

31 NEW SECTION. **Sec. 20.** REGISTRATION PROCEDURES FOR CERTAIN
32 ELECTRICITY SERVICE SUPPLIERS. (1) Any person or entity that is not an
33 electric utility conducting business in the state as of January 1,
34 1999, and that intends to sell electricity after July 1, 1999, to more
35 than one retail electric customer shall register with the commission
36 prior to delivering electricity to customers in the state.

1 (2) The registration shall be on a form prescribed by the
2 commission and shall contain such information as the commission may by
3 rule require, but must include as a minimum: (a) The name and address
4 of the person or entity; (b) the name and address of its registered
5 agent, if any; (c) the name, address, and title of each officer or
6 director, if any; (d) its most current balance sheet; (e) its latest
7 annual report, if any; and (f) a description of the services it intends
8 to offer. Prior to January 1, 1999, the commission shall create a
9 standard application form for applicants to comply with this section.

10 (3) The commission may require as a precondition to registration
11 the procurement of a performance bond sufficient to cover any advances
12 or deposits the applicant may collect from its retail electric
13 customers, or it may order that such advances or deposits be held in
14 escrow or trust.

15 (4) The commission may deny registration to any applicant that:

16 (a) Does not provide information required by this section or by
17 commission rules;

18 (b) Fails to provide a performance bond, if required;

19 (c) Does not possess adequate financial resources to provide the
20 proposed service;

21 (d) Does not possess adequate technical competency to perform the
22 proposed service;

23 (e) Does not have adequate ability to respond to customer questions
24 and complaints; or

25 (f) Does not otherwise meet the requirements of this section.

26 (5) The commission shall take action to approve or issue a notice
27 of hearing concerning any application for registration within thirty
28 days after receiving the application. The commission may deny an
29 application after a hearing.

30 NEW SECTION. **Sec. 21.** CONSUMER PROTECTION. (1) Any electricity
31 service supplier offering to sell electricity to retail electric
32 customers shall, at the time of the offering, provide the potential
33 customer with a written notice describing the price, terms, and
34 conditions of the service, an explanation of the applicability and
35 amount of the charges for public purposes and uneconomic utility
36 investments, and a notice describing the potential customer's right to
37 rescind the contract. The commission shall assist electricity service
38 suppliers in developing the notice. The commission may require

1 inclusion of additional information that would be useful to the
2 customer.

3 (2) A contract to purchase electric service is effective only if in
4 writing and signed by the customer and electricity service supplier.

5 (3)(a) In addition to any other right to revoke an offer,
6 residential and small commercial customers have the right to cancel a
7 contract for electric service until midnight of the third business day
8 after the day on which the customer signs an agreement or offer to
9 purchase.

10 (b) Cancellation occurs when the customer gives written notice of
11 cancellation to the electricity service supplier at the address
12 specified in the agreement or offer.

13 (c) Notice of cancellation, if given by mail, is effective when
14 deposited in the mail properly addressed with postage prepaid.

15 (d) Notice of cancellation given by the customer need not take the
16 particular form as provided in the contract or offer to purchase and,
17 however expressed in writing, is effective if it indicates the
18 intention of the customer not to be bound by the contract.

19 (4) A consumer damaged by a violation of this section by an
20 electricity service supplier is entitled to recover all of the
21 following: (a) Actual damages; (b) reasonable attorneys' fees and
22 court costs; (c) exemplary damages, in the amount the court deems
23 proper, for intentional or willful violations; and (d) equitable relief
24 as the court deems proper.

25 (5) The rights, remedies, and penalties established by this section
26 are in addition to the rights, remedies, or penalties established under
27 any other law.

28 (6) Nothing in this section abrogates any authority of the attorney
29 general to enforce existing law.

30 **Sec. 22.** RCW 42.17.310 and 1996 c 305 s 2, 1996 c 253 s 302, 1996
31 c 191 s 88, and 1996 c 80 s 1 are each reenacted and amended to read as
32 follows:

33 (1) The following are exempt from public inspection and copying:

34 (a) Personal information in any files maintained for students in
35 public schools, patients or clients of public institutions or public
36 health agencies, or welfare recipients.

1 (b) Personal information in files maintained for employees,
2 appointees, or elected officials of any public agency to the extent
3 that disclosure would violate their right to privacy.

4 (c) Information required of any taxpayer in connection with the
5 assessment or collection of any tax if the disclosure of the
6 information to other persons would (i) be prohibited to such persons by
7 RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result
8 in unfair competitive disadvantage to the taxpayer.

9 (d) Specific intelligence information and specific investigative
10 records compiled by investigative, law enforcement, and penology
11 agencies, and state agencies vested with the responsibility to
12 discipline members of any profession, the nondisclosure of which is
13 essential to effective law enforcement or for the protection of any
14 person's right to privacy.

15 (e) Information revealing the identity of persons who are witnesses
16 to or victims of crime or who file complaints with investigative, law
17 enforcement, or penology agencies, other than the public disclosure
18 commission, if disclosure would endanger any person's life, physical
19 safety, or property. If at the time a complaint is filed the
20 complainant, victim or witness indicates a desire for disclosure or
21 nondisclosure, such desire shall govern. However, all complaints filed
22 with the public disclosure commission about any elected official or
23 candidate for public office must be made in writing and signed by the
24 complainant under oath.

25 (f) Test questions, scoring keys, and other examination data used
26 to administer a license, employment, or academic examination.

27 (g) Except as provided by chapter 8.26 RCW, the contents of real
28 estate appraisals, made for or by any agency relative to the
29 acquisition or sale of property, until the project or prospective sale
30 is abandoned or until such time as all of the property has been
31 acquired or the property to which the sale appraisal relates is sold,
32 but in no event shall disclosure be denied for more than three years
33 after the appraisal.

34 (h) Valuable formulae, designs, drawings, and research data
35 obtained by any agency within five years of the request for disclosure
36 when disclosure would produce private gain and public loss.

37 (i) Preliminary drafts, notes, recommendations, and intra-agency
38 memorandums in which opinions are expressed or policies formulated or

1 recommended except that a specific record shall not be exempt when
2 publicly cited by an agency in connection with any agency action.

3 (j) Records which are relevant to a controversy to which an agency
4 is a party but which records would not be available to another party
5 under the rules of pretrial discovery for causes pending in the
6 superior courts.

7 (k) Records, maps, or other information identifying the location of
8 archaeological sites in order to avoid the looting or depredation of
9 such sites.

10 (l) Any library record, the primary purpose of which is to maintain
11 control of library materials, or to gain access to information, which
12 discloses or could be used to disclose the identity of a library user.

13 (m) Financial information supplied by or on behalf of a person,
14 firm, or corporation for the purpose of qualifying to submit a bid or
15 proposal for (i) a ferry system construction or repair contract as
16 required by RCW 47.60.680 through 47.60.750 or (ii) highway
17 construction or improvement as required by RCW 47.28.070.

18 (n) Railroad company contracts filed prior to July 28, 1991, with
19 the utilities and transportation commission under RCW 81.34.070, except
20 that the summaries of the contracts are open to public inspection and
21 copying as otherwise provided by this chapter.

22 (o) Financial and commercial information and records supplied by
23 private persons pertaining to export services provided pursuant to
24 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to
25 export projects pursuant to RCW 43.23.035.

26 (p) Financial disclosures filed by private vocational schools under
27 chapters 28B.85 and 28C.10 RCW.

28 (q) Records filed with the utilities and transportation commission
29 or attorney general under RCW 80.04.095 that a court has determined are
30 confidential under RCW 80.04.095.

31 (r) Financial and commercial information and records supplied by
32 businesses or individuals during application for loans or program
33 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,
34 or during application for economic development loans or program
35 services provided by any local agency.

36 (s) Membership lists or lists of members or owners of interests of
37 units in timeshare projects, subdivisions, camping resorts,
38 condominiums, land developments, or common-interest communities

1 affiliated with such projects, regulated by the department of
2 licensing, in the files or possession of the department.

3 (t) All applications for public employment, including the names of
4 applicants, resumes, and other related materials submitted with respect
5 to an applicant.

6 (u) The residential addresses and residential telephone numbers of
7 employees or volunteers of a public agency which are held by the agency
8 in personnel records, employment or volunteer rosters, or mailing lists
9 of employees or volunteers.

10 (v) The residential addresses and residential telephone numbers of
11 the customers of a public utility contained in the records or lists
12 held by the public utility of which they are customers.

13 (w)(i) The federal social security number of individuals governed
14 under chapter 18.130 RCW maintained in the files of the department of
15 health, except this exemption does not apply to requests made directly
16 to the department from federal, state, and local agencies of
17 government, and national and state licensing, credentialing,
18 investigatory, disciplinary, and examination organizations; (ii) the
19 current residential address and current residential telephone number of
20 a health care provider governed under chapter 18.130 RCW maintained in
21 the files of the department, if the provider requests that this
22 information be withheld from public inspection and copying, and
23 provides to the department an accurate alternate or business address
24 and business telephone number. On or after January 1, 1995, the
25 current residential address and residential telephone number of a
26 health care provider governed under RCW 18.130.140 maintained in the
27 files of the department shall automatically be withheld from public
28 inspection and copying unless the provider specifically requests the
29 information be released, and except as provided for under RCW
30 42.17.260(9).

31 (x) Information obtained by the board of pharmacy as provided in
32 RCW 69.45.090.

33 (y) Information obtained by the board of pharmacy or the department
34 of health and its representatives as provided in RCW 69.41.044,
35 69.41.280, and 18.64.420.

36 (z) Financial information, business plans, examination reports, and
37 any information produced or obtained in evaluating or examining a
38 business and industrial development corporation organized or seeking
39 certification under chapter 31.24 RCW.

1 (aa) Financial and commercial information supplied to the state
2 investment board by any person when the information relates to the
3 investment of public trust or retirement funds and when disclosure
4 would result in loss to such funds or in private loss to the providers
5 of this information.

6 (bb) Financial and valuable trade information under RCW 51.36.120.

7 (cc) Client records maintained by an agency that is a domestic
8 violence program as defined in RCW 70.123.020 or 70.123.075 or a rape
9 crisis center as defined in RCW 70.125.030.

10 (dd) Information that identifies a person who, while an agency
11 employee: (i) Seeks advice, under an informal process established by
12 the employing agency, in order to ascertain his or her rights in
13 connection with a possible unfair practice under chapter 49.60 RCW
14 against the person; and (ii) requests his or her identity or any
15 identifying information not be disclosed.

16 (ee) Investigative records compiled by an employing agency
17 conducting a current investigation of a possible unfair practice under
18 chapter 49.60 RCW or of a possible violation of other federal, state,
19 or local laws prohibiting discrimination in employment.

20 (ff) Business related information protected from public inspection
21 and copying under RCW 15.86.110.

22 (gg) Financial, commercial, operations, and technical and research
23 information and data submitted to or obtained by the clean Washington
24 center in applications for, or delivery of, program services under
25 chapter 70.95H RCW.

26 (hh) Information and documents created specifically for, and
27 collected and maintained by a quality improvement committee pursuant to
28 RCW 43.70.510, regardless of which agency is in possession of the
29 information and documents.

30 (ii) Personal information in files maintained in a data base
31 created under RCW 43.07.360.

32 (jj) Customer-usage records of an agency that distributes
33 electricity to retail electric consumers.

34 (kk) Financial or commercial information furnished to or developed
35 by an agency as part of a proposal, bid, or negotiation for electricity
36 or related services.

37 (2) Except for information described in subsection (1)(c)(i) of
38 this section and confidential income data exempted from public
39 inspection pursuant to RCW 84.40.020, the exemptions of this section

1 are inapplicable to the extent that information, the disclosure of
2 which would violate personal privacy or vital governmental interests,
3 can be deleted from the specific records sought. No exemption may be
4 construed to permit the nondisclosure of statistical information not
5 descriptive of any readily identifiable person or persons.

6 (3) Inspection or copying of any specific records exempt under the
7 provisions of this section may be permitted if the superior court in
8 the county in which the record is maintained finds, after a hearing
9 with notice thereof to every person in interest and the agency, that
10 the exemption of such records is clearly unnecessary to protect any
11 individual's right of privacy or any vital governmental function.

12 (4) Agency responses refusing, in whole or in part, inspection of
13 any public record shall include a statement of the specific exemption
14 authorizing the withholding of the record (or part) and a brief
15 explanation of how the exemption applies to the record withheld.

16 **Sec. 23.** RCW 80.12.020 and 1981 c 117 s 1 are each amended to read
17 as follows:

18 No public service company shall sell, lease, assign or otherwise
19 dispose of the whole or any part of its franchises, properties or
20 facilities whatsoever, which are necessary or useful in the performance
21 of its duties to the public, and no public service company shall, by
22 any means whatsoever, directly or indirectly, merge or consolidate any
23 of its franchises, properties or facilities with any other public
24 service company, without having secured from the commission an order
25 authorizing it so to do: PROVIDED, That this section shall not apply
26 to any sale, lease, assignment or other disposal of such franchises,
27 properties or facilities to a special purpose district as defined in
28 RCW 36.96.010, city, county, or town.

29 After July 1, 1999, this section does not apply to the generating
30 assets of any electrical company.

31 **Sec. 24.** RCW 80.12.040 and 1961 c 14 s 80.12.040 are each amended
32 to read as follows:

33 No public service company shall, directly or indirectly, purchase,
34 acquire, or become the owner of any of the franchises, properties,
35 facilities, capital stocks or bonds of any other public service company
36 unless authorized so to do by the commission. Nothing contained in
37 this chapter shall prevent the holding of stocks or other securities

1 heretofore lawfully acquired or prohibit, upon the surrender or
2 exchange of said stocks or other securities pursuant to a
3 reorganization plan, the purchase, acquisition, taking or holding by
4 the owner of a proportionate amount of the stocks or other securities
5 of any new corporation organized to take over at foreclosure or other
6 sale, the property of the corporation the stocks or securities of which
7 have been thus surrendered or exchanged. Any contract by any public
8 service company for the purchase, acquisition, assignment or transfer
9 to it of any of the stocks or other securities of any other public
10 service company, directly or indirectly, without the approval of the
11 commission shall be void and of no effect.

12 After July 1, 1999, this section does not apply to the generating
13 assets of any electrical company.

14 **Sec. 25.** RCW 80.24.010 and 1994 c 83 s 1 are each amended to read
15 as follows:

16 Every public service company subject to regulation by the
17 commission shall, on or before the date specified by the commission for
18 filing annual reports under RCW 80.04.080, file with the commission a
19 statement on oath showing its gross operating revenue from intrastate
20 operations for the preceding calendar year or portion thereof and pay
21 to the commission a fee equal to one-tenth of one percent of the first
22 fifty thousand dollars of gross operating revenue, plus two-tenths of
23 one percent of any gross operating revenue in excess of fifty thousand
24 dollars: PROVIDED, That the fee shall in no case be less than one
25 dollar.

26 The percentage rates of gross operating revenue to be paid in any
27 year may be decreased by the commission for any class of companies
28 subject to the payment of such fees, by general order entered before
29 March 1st of such year, and for such purpose such companies shall be
30 classified as follows:

31 Electrical, gas, water, telecommunications, and irrigation
32 companies shall constitute class one. Every other company subject to
33 regulation by the commission, for which regulatory fees are not
34 otherwise fixed by law shall pay fees as herein provided and shall
35 constitute additional classes according to kinds of businesses engaged
36 in.

37 Any payment of the fee imposed by this section made after its due
38 date shall include a late fee of two percent of the amount due.

1 Delinquent fees shall accrue interest at the rate of one percent per
2 month.

3 After July 1, 1999, the regulatory fees of electrical companies
4 shall not be based on revenue from generating assets.

5 **Sec. 26.** RCW 80.28.020 and 1961 c 14 s 80.28.020 are each amended
6 to read as follows:

7 Whenever the commission shall find, after a hearing had upon its
8 own motion, or upon complaint, that the rates or charges demanded,
9 exacted, charged or collected by any gas company, electrical company or
10 water company, for gas, electricity or water, or in connection
11 therewith, or that the rules, regulations, practices or contracts
12 affecting such rates or charges are unjust, unreasonable, unjustly
13 discriminatory or unduly preferential, or in any wise in violation of
14 the provisions of the law, or that such rates or charges are
15 insufficient to yield a reasonable compensation for the service
16 rendered, the commission shall determine the just, reasonable, or
17 sufficient rates, charges, regulations, practices or contracts to be
18 thereafter observed and in force, and shall fix the same by order.

19 After July 1, 1999, this section does not apply to the rates and
20 charges for electricity sold by electrical companies to retail electric
21 customers.

22 **Sec. 27.** RCW 80.28.050 and 1961 c 14 s 80.28.050 are each amended
23 to read as follows:

24 Every gas company, electrical company and water company shall file
25 with the commission and shall print and keep open to public inspection
26 schedules in such form as the commission may prescribe, showing all
27 rates and charges made, established or enforced, or to be charged or
28 enforced, all forms of contract or agreement, all rules and regulations
29 relating to rates, charges or service, used or to be used, and all
30 general privileges and facilities granted or allowed by such gas
31 company, electrical company or water company.

32 After July 1, 1999, this section does not apply to the rates and
33 charges for electricity sold by electrical companies to retail electric
34 customers.

35 NEW SECTION. **Sec. 28.** A new section is added to chapter 41.06 RCW
36 to read as follows:

1 In addition to the exemptions under RCW 41.06.070, the provisions
2 of this chapter do not apply to staff of the independent system
3 operator exempt under section 7(4) of this act or to staff of the
4 Northwest power exchange exempt under section 16(7) of this act.

5 NEW SECTION. **Sec. 29.** CAPTIONS. Captions used in this act do not
6 constitute part of the law.

7 NEW SECTION. **Sec. 30.** Sections 1 through 21 of this act
8 constitute a new chapter in Title 80 RCW.

9 NEW SECTION. **Sec. 31.** SEVERABILITY. If any provision of this act
10 or its application to any person or circumstance is held invalid, the
11 remainder of the act or the application of the provision to other
12 persons or circumstances is not affected.

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