
SUBSTITUTE SENATE BILL 6672

State of Washington

61st Legislature

2010 Regular Session

By Senate Environment, Water & Energy (originally sponsored by Senator Rockefeller)

READ FIRST TIME 02/05/10.

1 AN ACT Relating to modifying the energy independence act; amending
2 RCW 19.285.030, 19.285.040, 19.285.060, 19.285.070, and 19.285.080; and
3 creating a new section.

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

5 **Sec. 1.** RCW 19.285.030 and 2009 c 565 s 20 are each amended to
6 read as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

9 (1) "Attorney general" means the Washington state office of the
10 attorney general.

11 (2) "Auditor" means: (a) The Washington state auditor's office or
12 its designee for qualifying utilities under its jurisdiction that are
13 not investor-owned utilities; or (b) an independent auditor selected by
14 a qualifying utility that is not under the jurisdiction of the state
15 auditor and is not an investor-owned utility.

16 (3) "Commission" means the Washington state utilities and
17 transportation commission.

18 (4) "Conservation" means any reduction in electric power

1 consumption resulting from increases in the efficiency of energy use,
2 production, or distribution.

3 (5) "Cost-effective" has the same meaning as defined in RCW
4 80.52.030.

5 (6) "Council" means the Washington state apprenticeship and
6 training council within the department of labor and industries.

7 (7) "Customer" means a person or entity that purchases electricity
8 for ultimate consumption and not for resale.

9 (8) "Department" means the department of commerce or its successor.

10 (9) "Distributed generation" means an eligible renewable resource
11 where the generation facility or any integrated cluster of such
12 facilities has a generating capacity of not more than five megawatts.

13 (10) "Eligible renewable resource" means:

14 (a) Electricity from a generation facility powered by a renewable
15 resource other than fresh water that commences operation after March
16 31, 1999, where ~~((i))~~ the facility is located ((in the Pacific
17 ~~Northwest; or (ii) the electricity from the facility is delivered into~~
18 ~~Washington state on a real time basis without shaping, storage, or~~
19 ~~integration services))~~ within the geographic boundary of the western
20 electricity coordinating council or its successor entity; ((or))

21 (b) Incremental electricity produced as a result of efficiency
22 improvements completed after March 31, 1999, to hydroelectric
23 generation ~~((projects))~~ facilities owned by a qualifying utility and
24 located in the Pacific Northwest or to hydroelectric generation in
25 irrigation pipes and canals located in the Pacific Northwest, where the
26 additional generation in either case does not result in new water
27 diversions or ~~((impoundments))~~ an increase in the amount of water
28 storage;

29 (c)(i) That portion of incremental electricity produced as a result
30 of equipment efficiency improvements completed after March 31, 1999,
31 attributable to a qualifying utility's share of the electricity output
32 to hydroelectric generation facilities whose energy output is marketed
33 by the Bonneville power administration where the additional generation
34 does not result in new water diversions or an increase in the amount of
35 water storage;

36 (ii) That portion of incremental electricity produced as a result
37 of operational efficiency improvements completed after March 31, 1999,
38 attributable to a qualifying utility's share of the electricity output

1 to hydroelectric generation facilities whose energy output is marketed
2 by the Bonneville power administration where the additional generation
3 does not result in new water diversions or an increase in the amount of
4 water storage. However, no qualifying utility may claim such
5 operational efficiencies until appropriate rule making determines how
6 the efficiencies are apportioned among qualifying utilities; or

7 (d) Electricity from a biomass energy generation facility located
8 in Washington that commenced operation before March 31, 1999, and that
9 has been significantly modified after the effective date of this
10 section. For the purposes of this subsection, "significantly modified"
11 means an investment to increase a generation facility's energy
12 efficiency that is equal to or greater than fifty percent of the
13 generation facility's net book value. For the purposes of this
14 subsection, "net book value" is calculated as the asset ending balance,
15 as established under generally accepted accounting rules, for the year
16 immediately preceding when the investment is made, plus accumulated
17 depreciation that is accounted for as a negative number.

18 (11) "Investor-owned utility" has the same meaning as defined in
19 RCW 19.29A.010.

20 (12) "Load" means the amount of kilowatt-hours of electricity
21 delivered in the most recently completed year by a qualifying utility
22 to its Washington retail customers.

23 (13)(a) "Nonpower attributes" means all environmentally related
24 characteristics, exclusive of energy, capacity reliability, and other
25 electrical power service attributes, that are associated with the
26 generation of electricity from a renewable resource, including but not
27 limited to the facility's fuel type, geographic location, vintage,
28 qualification as an eligible renewable resource, and avoided emissions
29 of pollutants to the air, soil, or water, and avoided emissions of
30 carbon dioxide and other greenhouse gases.

31 (b) "Nonpower attributes" does not include any aspects, claims,
32 characteristics, or benefits associated with the on-site capture and
33 destruction of methane or other greenhouse gases at a facility through
34 a digester system, landfill gas collection system, or other mechanism,
35 which may be separately marketable as greenhouse gas emissions
36 reduction credits, offsets, or similar tradable commodities.

37 (14) "Pacific Northwest" has the same meaning as defined for the

1 Bonneville power administration in section 3 of the Pacific Northwest
2 electric power planning and conservation act (94 Stat. 2698; 16 U.S.C.
3 Sec. 839a).

4 (15) "Public facility" has the same meaning as defined in RCW
5 39.35C.010.

6 (16) "Qualifying utility" means an electric utility, as the term
7 "electric utility" is defined in RCW 19.29A.010, that serves more than
8 twenty-five thousand customers in the state of Washington. The number
9 of customers served may be based on data reported by a utility in form
10 861, "annual electric utility report," filed with the energy
11 information administration, United States department of energy.

12 (17) "Renewable energy credit" means a tradable certificate of
13 proof of at least one megawatt-hour of an eligible renewable resource
14 where the generation facility is not powered by fresh water, the
15 certificate includes all of the nonpower attributes associated with
16 that one megawatt-hour of electricity, and the certificate is verified
17 by a renewable energy credit tracking system selected by the
18 department.

19 (18) "Renewable resource" means: (a) Water; (b) wind; (c) solar
20 energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or
21 tidal power; (g) gas from sewage treatment facilities; (h) biodiesel
22 fuel as defined in RCW 82.29A.135 that is not derived from crops raised
23 on land cleared from old growth (~~(or first growth)~~) forests where the
24 clearing occurred after December 7, 2006; (~~and~~) or (i) biomass energy
25 (~~(based on animal waste or solid organic fuels from wood, forest, or~~
26 ~~field residues, or dedicated energy crops that do not include (i) wood~~
27 ~~pieces that have been treated with chemical preservatives such as~~
28 ~~creosote, pentachlorophenol, or copper chrome arsenic; (ii) black~~
29 ~~liquor by product from paper production; (iii) wood from old growth~~
30 ~~forests; or (iv) municipal solid waste)).~~

31 (19) "Rule" means rules adopted by an agency or other entity of
32 Washington state government to carry out the intent and purposes of
33 this chapter.

34 (20) "Year" means the twelve-month period commencing January 1st
35 and ending December 31st.

36 (21)(a) "Biomass energy" means: (i) By-products of pulping and
37 wood manufacturing process; (ii) animal waste; (iii) solid organic
38 fuels from wood; (iv) forest or field residues; (v) wooden demolition

1 or construction debris; (vi) food waste; (vii) liquors derived from
2 algae and other sources; (viii) dedicated energy crops; (ix) biosolids;
3 and (x) yard waste.

4 (b) "Biomass energy" does not include: (i) Wood pieces that have
5 been treated with chemical preservatives such as creosote,
6 pentachlorophenol, or copper-chrome-arsenic; (ii) wood from old growth
7 forests; or (iii) municipal solid waste.

8 (22) "Greenhouse gases" has the same meaning as defined in RCW
9 80.80.010.

10 **Sec. 2.** RCW 19.285.040 and 2007 c 1 s 4 are each amended to read
11 as follows:

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

14 (a) By January 1, 2010, using methodologies consistent with those
15 used by the Pacific Northwest electric power and conservation planning
16 council in its most recently published regional power plan, each
17 qualifying utility shall identify its achievable cost-effective
18 conservation potential through 2019. At least every two years
19 thereafter, the qualifying utility shall review and update this
20 assessment for the subsequent ten-year period.

21 (b) (~~Beginning~~) By January 1, 2010, each qualifying utility shall
22 establish and make publicly available a biennial acquisition target for
23 cost-effective conservation consistent with its identification of
24 achievable opportunities in (a) of this subsection, and meet that
25 target during the subsequent two-year period. At a minimum, each
26 biennial acquisition target must be no lower than the qualifying
27 utility's pro rata share for that two-year period of its cost-effective
28 conservation potential for the subsequent ten-year period. A
29 qualifying utility may not use incremental electricity produced as a
30 result of efficiency improvements to hydroelectric generation
31 facilities to meet its biennial conservation acquisition target if the
32 improvements were used to meet its targets under subsection (2)(a) of
33 this section.

34 (c) In meeting its conservation targets, a qualifying utility may
35 count high-efficiency cogeneration owned and used by a retail electric
36 customer to meet its own needs. High-efficiency cogeneration is the
37 sequential production of electricity and useful thermal energy from a

1 common fuel source, where, under normal operating conditions, the
2 facility (~~((has a useful thermal energy output of no less than thirty-~~
3 ~~three percent of the total energy output))~~) is designed to have a
4 projected overall thermal conversion efficiency of at least seventy
5 percent. For the purposes of this section, "overall thermal conversion
6 efficiency" means the output of electricity plus usable heat divided by
7 fuel input. The reduction in load due to high-efficiency cogeneration
8 shall be(~~(:—(i) Calculated as the ratio of the fuel chargeable to~~
9 ~~power heat rate of the cogeneration facility compared to the heat rate~~
10 ~~on a new and clean basis of a best commercially available technology~~
11 ~~combined-cycle natural gas-fired combustion turbine; and (ii))~~) counted
12 towards meeting the biennial conservation target in the same manner as
13 other conservation savings.

14 (d) The commission may determine if a conservation program
15 implemented by an investor-owned utility is cost-effective based on the
16 commission's policies and practice.

17 (e) The commission may rely on its standard practice for review and
18 approval of investor-owned utility conservation targets.

19 (2)(a) Each qualifying utility shall use eligible renewable
20 resources or acquire equivalent renewable energy credits, or a
21 combination of both, to meet the following annual targets:

22 (i) At least three percent of its load (~~((by January 1,))~~) for the
23 year 2012, and each year thereafter through December 31, 2015;

24 (ii) At least (~~(nine))~~) ten and twenty-five one-hundredths (10.25%)
25 percent of its load (~~((by January 1,))~~) for the year 2016, and each year
26 thereafter through December 31, 2019; and

27 (iii) At least (~~(fifteen))~~) sixteen and twenty-five one-hundredths
28 (16.25%) percent of its load (~~((by January 1,))~~) for the year 2020, and
29 each year thereafter.

30 (b) On or before January 1, 2012, and each year thereafter, each
31 qualifying utility shall develop an implementation plan for meeting the
32 renewable energy targets in this subsection for that target year. The
33 implementation plan must include the qualifying utility's average of
34 its load for the two years preceding the target year, projected load
35 for the target year based on the utility's most recent load forecast,
36 an estimate of the quantity of eligible renewable resources and
37 renewable energy credits that the qualifying utility will require to
38 meet the target for the target year, and the amount and type of already

1 owned or contracted eligible renewable resources that may be used to
2 meet the target. A qualifying utility that is an investor-owned
3 utility shall submit the implementation plan to the commission. All
4 other utilities shall submit the implementation plan to their governing
5 boards and to the department, and make the implementation plan
6 available to the auditor. The content of the implementation plan may
7 not be the basis for enforcement actions or penalties against the
8 qualifying utility.

9 (c) A qualifying utility may count distributed generation at double
10 the facility's electrical output if the utility: (i) Owns or has
11 contracted for the distributed generation and the associated renewable
12 energy credits; or (ii) has contracted to purchase the associated
13 renewable energy credits.

14 ~~((+e))~~ (d) In meeting the annual targets in (a) of this
15 subsection, a qualifying utility shall calculate its annual load based
16 on the average of the utility's load for the previous two years.

17 ~~((+d))~~ (e) A qualifying utility shall be considered in compliance
18 with an annual target in (a) of this subsection if: (i) The utility's
19 weather-adjusted load for the previous three years on average did not
20 increase over that time period; (ii) after December 7, 2006, the
21 utility did not commence or renew ownership or incremental purchases of
22 electricity from resources other than renewable resources other than on
23 a daily spot price basis and the electricity is not offset by
24 equivalent renewable energy credits; and (iii) the utility invested at
25 least one percent of its total annual retail revenue requirement that
26 year on eligible renewable resources, renewable energy credits, or a
27 combination of both.

28 ~~((+e))~~ (f) The requirements of this section may be met for any
29 given year with renewable energy credits (~~((produced))~~) generated during
30 ~~((that))~~ the target year, the preceding two years, or that may be
31 generated during the first three months of the subsequent year. Each
32 renewable energy credit may be used only once to meet the requirements
33 of this section.

34 ~~((+f))~~ (g) In complying with the targets established in (a) of
35 this subsection, a qualifying utility may not count:

- 36 (i) Eligible renewable resources or distributed generation where
- 37 the associated renewable energy credits are owned by a separate entity;
- 38 or

1 (ii) Eligible renewable resources or renewable energy credits
2 obtained for and used in an optional pricing program such as the
3 program established in RCW 19.29A.090.

4 ~~((g))~~ (h) Where fossil and combustible renewable resources are
5 cofired in one generating unit located in the Pacific Northwest where
6 the cofiring commenced after March 31, 1999, the unit shall be
7 considered to produce eligible renewable resources in direct proportion
8 to the percentage of the total heat value represented by the heat value
9 of the renewable resources.

10 ~~((h))~~ (i)(i) Except as provided in (j)(i) of this subsection, a
11 qualifying utility that acquires an eligible renewable resource or
12 renewable energy credit may ~~((count))~~ apply a multiplier for that
13 acquisition ~~((at))~~ of one and two-tenths times its base value:

14 (A) Where the eligible renewable resource comes from a facility
15 that commenced operation after December 31, 2005; and

16 (B) Where the developer of the facility used apprenticeship
17 programs approved by the council during facility construction.

18 (ii) The council shall establish minimum levels of labor hours to
19 be met through apprenticeship programs to qualify for this extra
20 credit.

21 ~~((i))~~ (j)(i) A qualifying utility that acquires an eligible
22 renewable resource or renewable energy credit may apply a multiplier
23 based on a percentage of apprenticeship labor hours as follows:

<u>Percentage of</u>	<u>Multiplier</u>
<u>apprenticeship</u>	
<u>labor hours</u>	
<u>16</u>	<u>1.2</u>
<u>17</u>	<u>1.3</u>
<u>18</u>	<u>1.4</u>
<u>19</u>	<u>1.5</u>
<u>20 and above</u>	<u>1.6</u>

32 (A) Where the eligible renewable resource comes from a facility
33 that commenced operation after the effective date of this section
34 through December 31, 2013;

1 (B) Where the acquisition is made after the effective date of this
2 section through December 31, 2013; and

3 (C) Where the developer of the facility used apprenticeship
4 programs as specified in (i)(i) of this subsection.

5 (k) A qualifying utility shall be considered in compliance with an
6 annual target in (a) of this subsection if events beyond the reasonable
7 control of the utility that could not have been reasonably anticipated
8 or ameliorated prevented it from meeting the renewable energy target.
9 Such events include weather-related damage, mechanical failure,
10 strikes, lockouts, and actions of a governmental authority that
11 adversely affect the generation, transmission, or distribution of an
12 eligible renewable resource under contract to a qualifying utility.

13 (3) Utilities that become qualifying utilities after December 31,
14 2006, shall meet the requirements in this section on a time frame
15 comparable in length to that provided for qualifying utilities as of
16 December 7, 2006.

17 **Sec. 3.** RCW 19.285.060 and 2007 c 1 s 6 are each amended to read
18 as follows:

19 (1) Except as provided in subsection (2) of this section, a
20 qualifying utility that fails to comply with the energy conservation or
21 renewable energy targets established in RCW 19.285.040 shall pay an
22 administrative penalty to the state of Washington in the amount of
23 fifty dollars for each megawatt-hour of shortfall. Beginning in 2007,
24 this penalty shall be adjusted annually according to the rate of change
25 of the inflation indicator, gross domestic product-implicit price
26 deflator, as published by the bureau of economic analysis of the United
27 States department of commerce or its successor.

28 (2) A qualifying utility that does not meet an annual renewable
29 energy target established in RCW 19.285.040(2) is exempt from the
30 administrative penalty in subsection (1) of this section for that year
31 if the commission for investor-owned utilities or the auditor for all
32 other qualifying utilities determines that the utility complied with
33 RCW 19.285.040(2) (~~((d) or (i))~~) (e) or (k) or 19.285.050(1).

34 (3) A qualifying utility must notify its retail electric customers
35 in published form within three months of incurring a penalty regarding
36 the size of the penalty and the reason it was incurred.

1 (4) The commission shall determine if an investor-owned utility may
2 recover the cost of this administrative penalty in electric rates, and
3 may consider providing positive incentives for an investor-owned
4 utility to exceed the targets established in RCW 19.285.040.

5 (5) Administrative penalties collected under this chapter shall be
6 deposited into the energy independence act special account which is
7 hereby created. All receipts from administrative penalties collected
8 under this chapter must be deposited into the account. Expenditures
9 from the account may be used only for the purchase of renewable energy
10 credits or for energy conservation projects at public facilities, local
11 government facilities, community colleges, or state universities. The
12 state shall own and retire any renewable energy credits purchased using
13 moneys from the account. Only the director of general administration
14 or the director's designee may authorize expenditures from the account.
15 The account is subject to allotment procedures under chapter 43.88 RCW,
16 but an appropriation is not required for expenditures.

17 (6) For a qualifying utility that is an investor-owned utility, the
18 commission shall determine compliance with the provisions of this
19 chapter and assess penalties for noncompliance as provided in
20 subsection (1) of this section.

21 (7) For qualifying utilities that are not investor-owned utilities,
22 the governing board of the utility shall apply the rules adopted by the
23 department under RCW 19.285.080(2) in making its determination of
24 compliance in meeting the targets established in RCW 19.285.040 or
25 alternative compliance under RCW 19.285.040(2) or 19.285.050(1), and
26 rules adopted under this chapter, and may request assistance from the
27 department in doing so.

28 (8) For qualifying utilities that are not investor-owned utilities,
29 the auditor is responsible for auditing compliance with this chapter
30 and rules adopted under this chapter that apply to those utilities and
31 the attorney general is responsible for enforcing that compliance.

32 **Sec. 4.** RCW 19.285.070 and 2007 c 1 s 7 are each amended to read
33 as follows:

34 (1) On or before June 1, 2012, and annually thereafter, each
35 qualifying utility shall report to the department on its progress in
36 the preceding year in meeting the conservation targets established in

1 RCW 19.285.040(1), including expected electricity savings from the
2 biennial conservation target, expenditures on conservation(~~(7)~~) and
3 actual electricity savings results(~~(7)~~).

4 (2) On or before June 1, 2013, and each year thereafter, each
5 qualifying utility shall submit an annual report to the department. In
6 addition to the material required in subsection (1) of this section,
7 the annual report must contain relevant data demonstrating how the
8 renewable energy targets established in RCW 19.285.040(2) were met,
9 including the utility's annual load for the prior two years, the amount
10 of megawatt-hours needed to meet the annual renewable energy target,
11 the amount of megawatt-hours of each type of eligible renewable
12 resource acquired, the type and amount of renewable energy credits
13 acquired, and the percent of its total annual retail revenue
14 requirement invested in the incremental cost of eligible renewable
15 resources and the cost of renewable energy credits. For each year that
16 a qualifying utility elects to demonstrate alternative compliance under
17 RCW 19.285.040(2) (~~(d) or (i)~~) (e) or (k) or 19.285.050(1), it must
18 include in its annual report relevant data to demonstrate that it met
19 the criteria in that section. A qualifying utility may submit its
20 report to the department in conjunction with its annual obligations in
21 chapter 19.29A RCW.

22 ~~((2))~~ (3) A qualifying utility that is an investor-owned utility
23 shall also report all information required in subsection (1) of this
24 section to the commission, and all other qualifying utilities shall
25 also make all information required in subsection (1) of this section
26 available to the auditor, and on or before June 1, 2013, and annually
27 thereafter, make available to the auditor its determination of
28 compliance in meeting the targets established in RCW 19.285.040. For
29 each year that a qualifying utility determines alternative compliance
30 under RCW 19.285.040(2) (e) or (k) or 19.285.050(1), it must include in
31 its annual report, and make available to the auditor, relevant data to
32 demonstrate that the qualifying utility met the criteria for the
33 applicable section.

34 (3) A qualifying utility shall also make reports required in this
35 section available to its customers.

36 **Sec. 5.** RCW 19.285.080 and 2007 c 1 s 8 are each amended to read
37 as follows:

1 (1) The commission may adopt rules to ensure the proper
2 implementation and enforcement of this chapter as it applies to
3 investor-owned utilities.

4 (2) The department shall adopt rules concerning only process,
5 timelines, and documentation to ensure the proper implementation of
6 this chapter as it applies to qualifying utilities that are not
7 investor-owned utilities. Those rules include, but are not limited to,
8 rules associated with a qualifying utility's development of
9 conservation targets under RCW 19.285.040(1); a qualifying utility's
10 decision to pursue alternative compliance in RCW 19.285.040(2) (~~((d) or~~
11 ~~(i))~~) (e) or (k) or 19.285.050(1); and the format and content of
12 reports required in RCW 19.285.070. Nothing in this subsection may be
13 construed to restrict the rate-making authority of the commission or a
14 qualifying utility as otherwise provided by law.

15 (3) The commission and department may coordinate in developing
16 rules related to process, timelines, and documentation that are
17 necessary for implementation of this chapter.

18 (4) Pursuant to the administrative procedure act, chapter 34.05
19 RCW, rules needed for the implementation of this chapter must be
20 adopted by December 31, (~~(2007))~~ 2011. These rules may be revised as
21 needed to carry out the intent and purposes of this chapter.

22 NEW SECTION. Sec. 6. (1) By June 30, 2014, the joint legislative
23 audit and review committee shall conduct a study on the costs and
24 benefits of the renewable and conservation targets under chapter 19.285
25 RCW, including an examination of how the targets affect the following:
26 The cost of electricity for commercial, industrial, and residential
27 customers of each qualifying utility; and the development of renewable
28 energy.

29 (2)(a) The department of commerce shall contract with a mutually
30 acceptable person or entity to study the feasibility of measuring
31 hydroelectric power that is used to integrate an eligible renewable
32 resource and whether classifying such hydroelectric power as an
33 eligible renewable resource will further the purposes of chapter 19.285
34 RCW. The study must be presented to the appropriate committees of the
35 legislature by December 1, 2013.

36 (b) Before selecting the contractor, the department of commerce

1 shall consult the following: Qualifying utilities; large industrial
2 customers; organizations representing environmental interests; and any
3 other directly interested organizations and associations.

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