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HOUSE BILL 1712

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State of Washington                      62nd Legislature                      2011 Regular Session

By Representatives Harris, Crouse, Short, Jacks, and McCune

Read first time 01/31/11. Referred to Committee on Environment.

1            AN ACT Relating to null power; amending RCW 19.29A.010, 19.29A.060,  
2            and 80.80.040; and reenacting and amending RCW 80.80.010.

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

4            **Sec. 1.** RCW 19.29A.010 and 2000 c 213 s 2 are each amended to read  
5            as follows:

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

8            (1) "Biomass generation" means electricity derived from burning  
9            solid organic fuels from wood, forest, or field residue, or dedicated  
10           energy crops that do not include wood pieces that have been treated  
11           with chemical preservatives such as creosote, pentachlorophenol, or  
12           copper-chroma-arsenic.

13           (2) "Bonneville power administration system mix" means a generation  
14           mix sold by the Bonneville power administration that is net of any  
15           resource specific sales and that is net of any electricity sold to  
16           direct service industrial customers, as defined in section 3(8) of the  
17           Pacific Northwest electric power planning and conservation act (16  
18           U.S.C. Sec. 839(a)(8)).

1 (3) "Coal generation" means the electricity produced by a  
2 generating facility that burns coal as the primary fuel source.

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

4 (5) "Conservation" means an increase in efficiency in the use of  
5 energy use that yields a decrease in energy consumption while providing  
6 the same or higher levels of service. Conservation includes low-income  
7 weatherization programs.

8 (6) "Consumer-owned utility" means a municipal electric utility  
9 formed under Title 35 RCW, a public utility district formed under Title  
10 54 RCW, an irrigation district formed under chapter 87.03 RCW, a  
11 cooperative formed under chapter 23.86 RCW, or a mutual corporation or  
12 association formed under chapter 24.06 RCW, that is engaged in the  
13 business of distributing electricity to more than one retail electric  
14 customer in the state.

15 (7) "Declared resource" means an electricity source specifically  
16 identified by a retail supplier to serve retail electric customers. A  
17 declared resource includes a stated quantity of electricity tied  
18 directly to a specified generation facility or set of facilities either  
19 through ownership or contract purchase, or a contractual right to a  
20 stated quantity of electricity from a specified generation facility or  
21 set of facilities.

22 (8) "Department" means the department of (~~community, trade, and~~  
23 ~~economic development~~) commerce.

24 (9) "Electricity information coordinator" means the organization  
25 selected by the department under RCW 19.29A.080 to: (a) Compile  
26 generation data in the Northwest power pool by generating project and  
27 by resource category; (b) compare the quantity of electricity from  
28 declared resources reported by retail suppliers with available  
29 generation from such resources; (c) calculate the net system power mix;  
30 and (d) coordinate with other comparable organizations in the western  
31 interconnection.

32 (10) "Electric meters in service" means those meters that record in  
33 at least nine of twelve calendar months in any calendar year not less  
34 than two hundred fifty kilowatt hours per month.

35 (11) "Electricity product" means the electrical energy produced by  
36 a generating facility or facilities that a retail supplier sells or  
37 offers to sell to retail electric customers in the state of Washington,  
38 provided that nothing in this title shall be construed to mean that

1 electricity is a good or product for the purposes of Title 62A RCW, or  
2 any other purpose. It does not include electrical energy generated on-  
3 site at a retail electric customer's premises.

4 (12) "Electric utility" means a consumer-owned or investor-owned  
5 utility as defined in this section.

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

8 (14) "Fuel mix" means the actual or imputed sources of electricity  
9 sold to retail electric customers, expressed in terms of percentage  
10 contribution by resource category. The total fuel mix included in each  
11 disclosure shall total one hundred percent.

12 (15) "Geothermal generation" means electricity derived from thermal  
13 energy naturally produced within the earth.

14 (16) "Governing body" means the council of a city or town, the  
15 commissioners of an irrigation district, municipal electric utility, or  
16 public utility district, or the board of directors of an electric  
17 cooperative or mutual association that has the authority to set and  
18 approve rates.

19 (17) "High efficiency cogeneration" means electricity produced by  
20 equipment, such as heat or steam used for industrial, commercial,  
21 heating, or cooling purposes, that meets the federal energy regulatory  
22 commission standards for qualifying facilities under the public utility  
23 regulatory policies act of 1978.

24 (18) "Hydroelectric generation" means a power source created when  
25 water flows from a higher elevation to a lower elevation and the flow  
26 is converted to electricity in one or more generators at a single  
27 facility.

28 (19) "Investor-owned utility" means a company owned by investors  
29 that meets the definition of RCW 80.04.010 and is engaged in  
30 distributing electricity to more than one retail electric customer in  
31 the state.

32 (20) "Landfill gas generation" means electricity produced by a  
33 generating facility that uses waste gases produced by the decomposition  
34 of organic materials in landfills.

35 (21) "Natural gas generation" means electricity produced by a  
36 generating facility that burns natural gas as the primary fuel source.

37 (22) "Northwest power pool" means the generating resources included

1 in the United States portion of the Northwest power pool area as  
2 defined by the western systems coordinating council.

3 (23) "Net system power mix" means the fuel mix in the Northwest  
4 power pool, net of: (a) Any declared resources in the Northwest power  
5 pool identified by in-state retail suppliers or out-of-state entities  
6 that offer electricity for sale to retail electric customers; (b) any  
7 electricity sold by the Bonneville power administration to direct  
8 service industrial customers; and (c) any resource specific sales made  
9 by the Bonneville power administration.

10 (24) "Oil generation" means electricity produced by a generating  
11 facility that burns oil as the primary fuel source.

12 (25) "Proprietary customer information" means: (a) Information  
13 that relates to the source and amount of electricity used by a retail  
14 electric customer, a retail electric customer's payment history, and  
15 household data that is made available by the customer solely by virtue  
16 of the utility-customer relationship; and (b) information contained in  
17 a retail electric customer's bill.

18 (26) "Renewable resources" means electricity generation facilities  
19 fueled by: (a) Water; (b) wind; (c) solar energy; (d) geothermal  
20 energy; (e) landfill gas; (~~(f)~~) (f) biomass energy based on solid  
21 organic fuels from wood, forest, or field residues, or dedicated energy  
22 crops that do not include wood pieces that have been treated with  
23 chemical preservatives such as creosote, pentachlorophenol, or copper-  
24 chrome-arsenic; or (g) null power.

25 (27) "Resale" means the purchase and subsequent sale of electricity  
26 for profit, but does not include the purchase and the subsequent sale  
27 of electricity at the same rate at which the electricity was purchased.

28 (28) "Retail electric customer" means a person or entity that  
29 purchases electricity for ultimate consumption and not for resale.

30 (29) "Retail supplier" means an electric utility that offers an  
31 electricity product for sale to retail electric customers in the state.

32 (30) "Small utility" means any consumer-owned utility with twenty-  
33 five thousand or fewer electric meters in service, or that has an  
34 average of seven or fewer customers per mile of distribution line.

35 (31) "Solar generation" means electricity derived from radiation  
36 from the sun that is directly or indirectly converted to electrical  
37 energy.

38 (32) "State" means the state of Washington.

1 (33) "Waste incineration generation" means electricity derived from  
2 burning solid or liquid wastes from businesses, households,  
3 municipalities, or waste treatment operations.

4 (34) "Wind generation" means electricity created by movement of air  
5 that is converted to electrical energy.

6 (35) "Nonpower attributes" has the same meaning as defined under  
7 RCW 19.285.030.

8 (36) "Null power" means energy, capacity, reliability, and other  
9 electrical power service attributes, that are associated with the  
10 generation of electricity from a renewable resource that are separated  
11 from its nonpower attributes by the severing or unbundling of the  
12 associated renewable energy credits.

13 (37) "Renewable energy credit" has the same meaning as defined  
14 under RCW 19.285.030.

15 **Sec. 2.** RCW 19.29A.060 and 2000 c 213 s 4 are each amended to read  
16 as follows:

17 (1) Each retail supplier shall disclose the fuel mix of each  
18 electricity product it offers to retail electric customers as follows:

19 (a) For an electricity product comprised entirely of declared  
20 resources, a retail supplier shall disclose the fuel mix for the  
21 electricity product based on the quantity of electric generation from  
22 those declared resources for the previous calendar year and any  
23 adjustment, if taken, available under subsection (6) of this section.

24 (b) For an electricity product comprised of no declared resources,  
25 a retail supplier shall report the fuel mix for the electricity product  
26 as the fuel mix of net system power for the previous calendar year, as  
27 determined by the electricity information coordinator under RCW  
28 19.29A.080.

29 (c) For an electricity product comprised of a combination of  
30 declared resources and the net system power, a retail supplier shall  
31 disclose the fuel mix for the electricity product as a weighted average  
32 of the megawatt-hours from declared resources and the megawatt-hours  
33 from the net system power mix for the previous calendar year according  
34 to the proportion of declared resources and net system power contained  
35 in the electricity product.

36 (2) The disclosures required by this section shall identify the

1 percentage of the total electricity product sold by a retail supplier  
2 during the previous calendar year from each of the following  
3 categories:

4 (a) Coal generation;

5 (b) Hydroelectric generation;

6 (c) Natural gas generation;

7 (d) Nuclear generation; (~~and~~)

8 (e) Renewable resources, except hydroelectric generation; and

9 (f) Other generation, except that when a component of the other  
10 generation category meets or exceeds two percent of the total  
11 electricity product sold by a retail supplier during the previous  
12 calendar year, the retail supplier shall identify the component or  
13 components and display the fuel mix percentages for these component  
14 sources, which may include, but are not limited to: (i) Biomass  
15 generation; (ii) geothermal generation; (iii) landfill gas generation;  
16 (iv) oil generation; (v) solar generation; (vi) waste incineration;  
17 (~~or~~) (vii) wind generation; or (viii) null power. A retail supplier  
18 may voluntarily identify any component or components within the other  
19 generation category that comprises two percent or less of annual sales.

20 (3) Retail suppliers may separately report a subcategory of natural  
21 gas generation to identify high efficiency cogeneration.

22 (4) Except as provided in subsection (3) of this section, a retail  
23 supplier cannot include in the disclosure label any environmental  
24 quality or environmental impact qualifier related to any of the  
25 generation categories disclosed.

26 (5) For the portion of an electricity product purchased from the  
27 Bonneville power administration, retail suppliers may disclose the  
28 Bonneville power administration system mix.

29 (6) A retail supplier may adjust its reported fuel mix for known  
30 changes in its declared resources for the current year based on any  
31 changes in its sources of electricity supply from either generation or  
32 contracts. If a retail supplier changes its fuel mix during a calendar  
33 year, it shall report those changes to the electricity information  
34 coordinator.

35 (7) Disclosure of the fuel mix information required in this section  
36 shall be made in the following uniform format: A tabular format with  
37 two columns, where the first column shall alphabetically list each  
38 category and the second column shall display the corresponding

1 percentage of the total that each category represents. The percentage  
2 shall be reported as a numeric value rounded to the nearest one  
3 percent. The percentages listed for the categories identified must sum  
4 to one hundred percent with the table displaying such a total.

5 **Sec. 3.** RCW 80.80.010 and 2009 c 565 s 54 and 2009 c 448 s 1 are  
6 each reenacted and amended to 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 consumer-owned utilities under its jurisdiction; or  
13 (b) an independent auditor selected by a consumer-owned utility that is  
14 not under the jurisdiction of the state auditor.

15 (3) "Average available greenhouse gas emissions output" means the  
16 level of greenhouse gas emissions as surveyed and determined by the  
17 energy policy division of the department of commerce under RCW  
18 80.80.050.

19 (4) "Baseload electric generation" means electric generation from  
20 a power plant that is designed and intended to provide electricity at  
21 an annualized plant capacity factor of at least sixty percent.

22 (5) "Cogeneration facility" means a power plant in which the heat  
23 or steam is also used for industrial or commercial heating or cooling  
24 purposes and that meets federal energy regulatory commission standards  
25 for qualifying facilities under the public utility regulatory policies  
26 act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

27 (6) "Combined-cycle natural gas thermal electric generation  
28 facility" means a power plant that employs a combination of one or more  
29 gas turbines and steam turbines in which electricity is produced in the  
30 steam turbine from otherwise lost waste heat exiting from one or more  
31 of the gas turbines.

32 (7) "Commission" means the Washington utilities and transportation  
33 commission.

34 (8) "Consumer-owned utility" means a municipal utility formed under  
35 Title 35 RCW, a public utility district formed under Title 54 RCW, an  
36 irrigation district formed under chapter 87.03 RCW, a cooperative  
37 formed under chapter 23.86 RCW, a mutual corporation or association

1 formed under chapter 24.06 RCW, or port district within which an  
2 industrial district has been established as authorized by Title 53 RCW,  
3 that is engaged in the business of distributing electricity to more  
4 than one retail electric customer in the state.

5 (9) "Department" means the department of ecology.

6 (10) "Distributed generation" means electric generation connected  
7 to the distribution level of the transmission and distribution grid,  
8 which is usually located at or near the intended place of use.

9 (11) "Electric utility" means an electrical company or a consumer-  
10 owned utility.

11 (12) "Electrical company" means a company owned by investors that  
12 meets the definition of RCW 80.04.010.

13 (13) "Governing board" means the board of directors or legislative  
14 authority of a consumer-owned utility.

15 (14) "Greenhouse gases" includes carbon dioxide, methane, nitrous  
16 oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

17 (15) "Long-term financial commitment" means:

18 (a) Either a new ownership interest in baseload electric generation  
19 or an upgrade to a baseload electric generation facility; or

20 (b) A new or renewed contract for baseload electric generation with  
21 a term of five or more years for the provision of retail power or  
22 wholesale power to end-use customers in this state.

23 (16) "Plant capacity factor" means the ratio of the electricity  
24 produced during a given time period, measured in kilowatt-hours, to the  
25 electricity the unit could have produced if it had been operated at its  
26 rated capacity during that period, expressed in kilowatt-hours.

27 (17) "Power plant" means a facility for the generation of  
28 electricity that is permitted as a single plant by a jurisdiction  
29 inside or outside the state.

30 (18) "Upgrade" means any modification made for the primary purpose  
31 of increasing the electric generation capacity of a baseload electric  
32 generation facility. "Upgrade" does not include routine or necessary  
33 maintenance, installation of emission control equipment, installation,  
34 replacement, or modification of equipment that improves the heat rate  
35 of the facility, or installation, replacement, or modification of  
36 equipment for the primary purpose of maintaining reliable generation  
37 output capability that does not increase the heat input or fuel usage



1 as specified in existing generation air quality permits as of July 22,  
2 2007, but may result in incidental increases in generation capacity.

3 (19) "Nonpower attributes" has the same meaning as defined under  
4 RCW 19.285.030.

5 (20) "Null power" means energy, capacity, reliability, and other  
6 electrical power service attributes, that are associated with the  
7 generation of electricity from renewable resources, that are separated  
8 from its nonpower attributes by the severing or unbundling of the  
9 associated renewable energy credits.

10 (21) "Renewable energy credit" has the same meaning as defined  
11 under RCW 19.285.030.

12 **Sec. 4.** RCW 80.80.040 and 2009 c 448 s 2 are each amended to read  
13 as follows:

14 (1) Beginning July 1, 2008, the greenhouse gas emissions  
15 performance standard for all baseload electric generation for which  
16 electric utilities enter into long-term financial commitments on or  
17 after such date is the lower of:

18 (a) One thousand one hundred pounds of greenhouse gases per  
19 megawatt-hour; or

20 (b) The average available greenhouse gas emissions output as  
21 determined under RCW 80.80.050.

22 (2) This chapter does not apply to long-term financial commitments  
23 with the Bonneville power administration.

24 (3) All baseload electric generation facilities in operation as of  
25 June 30, 2008, are deemed to be in compliance with the greenhouse gas  
26 emissions performance standard established under this section until the  
27 facilities are the subject of long-term financial commitments. All  
28 baseload electric generation that commences operation after June 30,  
29 2008, and is located in Washington, must comply with the greenhouse gas  
30 emissions performance standard established in subsection (1) of this  
31 section.

32 (4) Null power and all electric generation facilities or power  
33 plants powered exclusively by renewable resources, as defined in RCW  
34 19.280.020, are deemed to be in compliance with the greenhouse gas  
35 emissions performance standard established under this section.

36 (5) All cogeneration facilities in the state that are fueled by  
37 natural gas or waste gas or a combination of the two fuels, and that

1 are in operation as of June 30, 2008, are deemed to be in compliance  
2 with the greenhouse gas emissions performance standard established  
3 under this section until the facilities are the subject of a new  
4 ownership interest or are upgraded.

5 (6) In determining the rate of emissions of greenhouse gases for  
6 baseload electric generation, the total emissions associated with  
7 producing electricity shall be included.

8 (7) In no case shall a long-term financial commitment be determined  
9 to be in compliance with the greenhouse gas emissions performance  
10 standard if the commitment includes more than twelve percent of  
11 electricity from unspecified sources.

12 (8) For a long-term financial commitment with multiple power  
13 plants, each specified power plant must be treated individually for the  
14 purpose of determining the annualized plant capacity factor and net  
15 emissions, and each power plant must comply with subsection (1) of this  
16 section, except as provided in subsections (3) through (5) of this  
17 section.

18 (9) The department shall establish an output-based methodology to  
19 ensure that the calculation of emissions of greenhouse gases for a  
20 cogeneration facility recognizes the total usable energy output of the  
21 process, and includes all greenhouse gases emitted by the facility in  
22 the production of both electrical and thermal energy. In developing  
23 and implementing the greenhouse gas emissions performance standard, the  
24 department shall consider and act in a manner consistent with any rules  
25 adopted pursuant to the public utilities regulatory policy act of 1978  
26 (16 U.S.C. Sec. 824a-3), as amended.

27 (10) The following greenhouse gas emissions produced by baseload  
28 electric generation owned or contracted through a long-term financial  
29 commitment shall not be counted as emissions of the power plant in  
30 determining compliance with the greenhouse gas emissions performance  
31 standard:

32 (a) Those emissions that are injected permanently in geological  
33 formations;

34 (b) Those emissions that are permanently sequestered by other means  
35 approved by the department; and

36 (c) Those emissions sequestered or mitigated as approved under  
37 subsection (16) of this section.

1 (11) In adopting and implementing the greenhouse gas emissions  
2 performance standard, the department of (~~community, trade, and~~  
3 ~~economic development~~) commerce energy policy division, in consultation  
4 with the commission, the department, the Bonneville power  
5 administration, the western electricity (~~coordination~~ ~~[coordinating]~~)  
6 coordinating council, the energy facility site evaluation council,  
7 electric utilities, public interest representatives, and consumer  
8 representatives, shall consider the effects of the greenhouse gas  
9 emissions performance standard on system reliability and overall costs  
10 to electricity customers.

11 (12) In developing and implementing the greenhouse gas emissions  
12 performance standard, the department shall, with assistance of the  
13 commission, the department of (~~community, trade, and economic~~  
14 ~~development~~) commerce energy policy division, and electric utilities,  
15 and to the extent practicable, address long-term purchases of  
16 electricity from unspecified sources in a manner consistent with this  
17 chapter.

18 (13) The directors of the energy facility site evaluation council  
19 and the department shall each adopt rules under chapter 34.05 RCW in  
20 coordination with each other to implement and enforce the greenhouse  
21 gas emissions performance standard. The rules necessary to implement  
22 this section shall be adopted by June 30, 2008.

23 (14) In adopting the rules for implementing this section, the  
24 energy facility site evaluation council and the department shall  
25 include criteria to be applied in evaluating the carbon sequestration  
26 plan, for baseload electric generation that will rely on subsection  
27 (10) of this section to demonstrate compliance, but that will commence  
28 sequestration after the date that electricity is first produced. The  
29 rules shall include but not be limited to:

30 (a) Provisions for financial assurances, as a condition of plant  
31 operation, sufficient to ensure successful implementation of the carbon  
32 sequestration plan, including construction and operation of necessary  
33 equipment, and any other significant costs;

34 (b) Provisions for geological or other approved sequestration  
35 commencing within five years of plant operation, including full and  
36 sufficient technical documentation to support the planned  
37 sequestration;

1 (c) Provisions for monitoring the effectiveness of the  
2 implementation of the sequestration plan;

3 (d) Penalties for failure to achieve implementation of the plan on  
4 schedule;

5 (e) Provisions for an owner to purchase emissions reductions in the  
6 event of the failure of a sequestration plan under subsection (16) of  
7 this section; and

8 (f) Provisions for public notice and comment on the carbon  
9 sequestration plan.

10 (15)(a) Except as provided in (b) of this subsection, as part of  
11 its role enforcing the greenhouse gas emissions performance standard,  
12 the department shall determine whether sequestration or a plan for  
13 sequestration will provide safe, reliable, and permanent protection  
14 against the greenhouse gases entering the atmosphere from the power  
15 plant and all ancillary facilities.

16 (b) For facilities under its jurisdiction, the energy facility site  
17 evaluation council shall contract for review of sequestration or the  
18 carbon sequestration plan with the department consistent with the  
19 conditions under (a) of this subsection, consider the adequacy of  
20 sequestration or the plan in its adjudicative proceedings conducted  
21 under RCW 80.50.090(3), and incorporate specific findings regarding  
22 adequacy in its recommendation to the governor under RCW 80.50.100.

23 (16) A project under consideration by the energy facility site  
24 evaluation council by July 22, 2007, is required to include all of the  
25 requirements of subsection (14) of this section in its carbon  
26 sequestration plan submitted as part of the energy facility site  
27 evaluation council process. A project under consideration by the  
28 energy facility site evaluation council by July 22, 2007, that receives  
29 final site certification agreement approval under chapter 80.50 RCW  
30 shall make a good faith effort to implement the sequestration plan. If  
31 the project owner determines that implementation is not feasible, the  
32 project owner shall submit documentation of that determination to the  
33 energy facility site evaluation council. The documentation shall  
34 demonstrate the steps taken to implement the sequestration plan and  
35 evidence of the technological and economic barriers to successful  
36 implementation. The project owner shall then provide to the energy  
37 facility site evaluation council notification that they shall implement  
38 the plan that requires the project owner to meet the greenhouse gas

1 emissions performance standard by purchasing verifiable greenhouse gas  
2 emissions reductions from an electric generating facility located  
3 within the western interconnection, where the reduction would not have  
4 occurred otherwise or absent this contractual agreement, such that the  
5 sum of the emissions reductions purchased and the facility's emissions  
6 meets the standard for the life of the facility.

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