
Technology & Economic Development Committee

HB 1097

Brief Description: Concerning policies to promote clean energy job growth by encouraging installation of renewable energy systems.

Sponsors: Representatives Morris, Hudgins and Moeller.

Brief Summary of Bill

- Changes incentive rates, annual payment limits, funding limits on utility participation, and administration of the Renewable Energy Investment Cost Recovery Incentive Program.
- Broadens participation to include certain renewable energy systems owned by a third-party vendor, a utility, or a customer of a consumer-owned utility, and installed on property owned by a utility customer.
- Requires third-party vendors and certain investor-owned utilities offering a leased energy program to register with the Utilities and Transportation Commission as competitive electrical companies.
- Establishes regulatory requirements for entities offering leased energy programs.

Hearing Date: 1/22/15

Staff: Jasmine Vasavada (786-7301).

Background:

Renewable Energy Cost Recovery Incentive Program Eligibility.

In 2005, the Legislature created the Renewable Energy Investment Cost Recovery Incentive Program ("Cost-Recovery Program"). Under the Cost-Recovery Program, an individual, business, or local government that owns and operates an eligible renewable energy system installed on property owned by the applicant may apply to receive an annual incentive payment

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from the applicant's electric utility for each kilowatt-hour (kW-hr) of electricity produced by an eligible renewable energy system. Eligible renewable energy systems are solar energy systems, wind generators, and anaerobic digesters. In addition to providing a base rate of \$0.15 per kW-hr, "economic development" multipliers are available if certain system components are manufactured in Washington. Taking multipliers into account, the highest incentive rate available is \$0.54 per kW-hr, for solar energy systems with modules and inverters manufactured in Washington. The Cost-Recovery Program expires June 30, 2020.

Community Solar Program Eligibility.

In 2009, the Cost-Recovery Program was expanded to provide annual incentive payments electricity generated by "Community Solar" projects. Community Solar projects include: (1) solar energy systems placed on local government property that are owned by local individuals, households, or non-utility businesses; (2) utility-owned solar energy systems voluntarily funded by the utility's ratepayers in exchange for credits on their utility bills; and (3) company-owned solar energy systems, where the owner is a limited liability company, a cooperative, or a mutual corporation or association. The base rate of \$0.30 per kW-hr for Community Solar Projects also may be increased by the "economic development" multipliers, such that the highest rate available under the Community Solar Program is \$1.08 kW-hr.

Cap on Total Public Utility Tax Credits Available.

Utility participation in the Cost-Recovery Program is voluntary. A utility is allowed a credit against its public utility tax (PUT) in return for annual incentive payments made, capped annually at \$100,000 or 0.5 percent of its taxable power sales, whichever is greater.

The amount of the total allowable credit that can be allocated as payments to participants in Community Solar projects is limited, as follows:

- utility-owned Community Solar project payments may only account for up to 25 percent; and
- company-owned Community Solar project payments may only account for up to 5 percent.

Utilities must post on their website progress toward meeting the per-utility cap on allowable PUT credits.

Agencies Administering the Cost-Recovery Program.

The Department of Revenue (DOR), with technical assistance from the Washington State University Energy Program (WSU), administers the Cost-Recovery Program.

Net Metering of Renewable Energy Systems.

Net metering allows electricity customers to offset their consumption of purchased electricity with electricity generated by their own small-scale, renewable systems. Net-metered electricity is valued at the full retail rate. Under current law, a net-metering system must be located on a customer's premises and must generate no more than 100 kilowatts (kW) using cogeneration, fuel cells, water, wind, solar energy, or biogas. Electric utilities must offer to make net metering available to eligible customer-generators on a first-come, first-serve basis until the cumulative generating capacity of net-metering systems equals 0.5 percent of the utility's peak demand during 1996.

Washington Utilities and Transportation Commission.

The Washington Utilities and Transportation Commission (UTC) is a three-member commission that has broad authority to regulate the rates, services, and practices of private or investor-owned utilities, including electrical companies. The UTC regulates rates and services, endeavoring to ensure services are fairly priced, available, reliable, and safe. Consumer protection specialists at the UTC assist utility customers with billing disputes and complaints related to rates, charges, reliability, and quality of service.

Third-party Ownership of Solar Energy Systems and Other Net Metering Systems.

In lieu of purchasing a renewable energy system, a customer can access the electricity produced by such a system hosted on the customer's property but owned by a third party. Third-party vendors (also called third-party owners) own the equipment and enter contractual arrangements with customers. For third-party owned solar energy systems, the contract is most commonly structured as a lease or a power purchase agreement (PPA). In July 2013, the UTC determined that a customer may net meter with a leased system. In July 2014, the UTC issued an interpretive statement finding that a third-party owner providing customer access to a solar energy system through a lease or PPA would generally be subject to UTC regulation as an electric utility, but stating that the Legislature may better positioned to determine the extent of regulation that would be most appropriate for such entities.

Summary of Bill:

Renewable Energy Cost Recovery Incentive Program.

The Renewable Energy Cost Recovery Incentive Program ("Cost-Recovery Program") is closed to new applicants beginning July 1, 2015. Participants who have, prior to that date, received from the Department of Revenue (DOR) notification of eligibility to participate in the Cost-Recovery Program may continue to receive annual incentive payments at the original rates provided, but must submit an application for certification, and any applicable processing fee, to the Washington State University Extension Program. Cost-Recovery Program participants may continue to receive payments for no more than 10 years from the original date of certification under the Cost-Recovery Program.

Production Incentive Program.

A production incentive program ("Production Incentive Program") is created with different eligibility, incentive rates, annual payment limits, funding limits on utility participation, and administration than the Cost-Recovery Program.

Duration of the Production Incentive Program.

No incentive may be paid under the Production Incentive Program for kilowatt-hours (kW-hr) generated by a system that commences operation after December 31, 2019. After a system is certified, the certification is valid for 10 years and may not be retroactively changed. Incentives are payable for a period of 10 years from commencement of operation.

Eligibility.

Any person, entity, or utility may apply to receive the incentive for "eligible electricity" generated by a renewable energy system. "Eligible electricity" means electricity generated by (1) a Community Solar Project (as defined in current law); (2) a leased energy system (described below); (3) a renewable energy system located in Washington, where the customer owns the real

property where the system is installed and does not merely possess a leasehold interest, and the system is provided electricity generated by a utility; or (4) "customer-generated electricity" generated by a renewable energy system for which a person or entity applied for incentive payments prior to July 1, 2015.

Incentive rates.

In 2015, the Cost-Recovery Program base rates are unchanged. Each year thereafter through 2019, base rates for a system commencing operation that year decline by \$0.01 per kW-hr, ending at \$0.11 per kW-hr in 2019. The formula for how base rates interact with economic development multipliers is changed, raising the total incentive rate available for systems with components manufactured in Washington in the initial years of the Production Incentive Program. An additional economic development multiplier is applied for storage systems, defined as systems or technology that can store electricity generated by a renewable energy system or systems at up to 20 percent of the maximum total daily output of the renewable energy systems or systems to which the storage system is coupled.

Annual payment limits.

For renewable energy systems up to 10 kW and for participants in Community Solar projects, the existing \$5,000 annual incentive limit is retained. For systems 11 kilowatts (kW) and larger, annual payment limits are set at \$15,000, \$20,000 or \$25,000, depending on system size.

Community Solar Program.

Community Solar Program eligibility is unchanged. The base incentive rate of \$.30 per kW-hr is unchanged and is not subject to the \$0.01 annual decline in base rate.

Cap on Total Public Utility Tax Credits Available.

The total credit a utility may take against its public utility tax (PUT) in return for annual incentive payments is capped at \$250,000 or 0.5 percent of its taxable power sales, whichever is greater. If the amount of requests for incentive payments exceeds the amount of funds available for PUT credit to the utility, the incentive payments to applicants must be reduced proportionally.

The amount of the total allowable credit that can be allocated as payments to particular kinds of participants is limited, as follows:

- utility-owned Community Solar project payments may only account for up to 25 percent;
- company-owned Community Solar project payments may only account for up to 5 percent;
- leased energy systems may not claim more than 45 percent; and
- renewable energy systems greater than 10 kW may not claim more than 5 percent.

Agencies Administering the Production Incentive Program.

The Washington State University Energy Extension Program (WSU) issues certifications to participate in the Production Incentive Program and establishes a list of eligible solar module components. The DOR calculates annual incentive payments due.

Payment Verification.

Participants must take a digital photo on the last day of each fiscal year of the production meter or inverter reading and must keep and preserve this as a record for 5 years.

Net metering.

No incentive may be paid for a leased energy system beginning operation after December 31, 2016 that is net metered. "Leased energy system" means a renewable energy system that is located in Washington and installed on a person or entity's real property that is not leased, where the situs of the real property is provided electricity by an electric utility, and the renewable energy system is either owned by a third-party vendor or by an electric utility that has a contract with a customer to lease a renewable energy system.

Third-party and Utility Ownership of Renewable Energy Systems.

Special provisions apply to utility-owned leased energy systems and third-party-owned leased energy systems:

- For utility-owned leased energy systems, utilities, not host customers, must apply for the annual incentive payment.
- Utilities offering a leased energy program must maintain a registry of qualified contractors.
- The UTC or governing body of a consumer-owned utility must publish a list of third-party vendor financing models. The effective annual interest rate a customer pays on any contract with a consumer-owned utility for a leased energy system may not exceed 1 percent.
- Annual incentive payments to participants hosting a leased energy system may not be assigned to a financial institution.
- An electric utility is not liable for any harm caused to a third-party vendor or to a customer-generator by disconnection of leased renewable energy system. However, the utility may not develop or apply standards for disconnection of a leased energy system that discriminate on the basis of whether the system is owned by the utility or a third-party vendor.

Responsibilities and limitations are established for the parties to a renewable energy system lease and the buyer and seller of real property, in the event that real property subject to a renewable energy system lease is sold (Section 13). This includes but is not limited to:

- requirement that at the end of the lease term, the utility or third-party vendor is responsible for removal of the leased energy system and may recover costs as specified in the lease and noted in a recorded memorandum reflecting the essential terms of the lease;
- prohibition on renewable energy system leases from granting utilities or third-party vendors any authority to approve or disapprove transfer of real property associated with such a lease; and
- requirement that the lessor must guarantee sufficient funds to properly dispose of the system at the end of the lease, is responsible for identifying hazardous and commercial valuable materials and how these materials will be properly disposed of or reclaimed, and must provide this information the UTC upon request.

Washington Utilities and Transportation Commission's Regulation of Competitive Electrical Companies.

The Legislature states that it intends to provide consumer protection of customers leasing renewable energy systems, and finds that third-party vendors of renewable energy systems are electrical companies subject to the jurisdiction of the UTC. Third-party vendors and electrical companies (investor-owned utilities) offering a leased energy program outside of their regulated

service must register with the UTC as "competitive electrical companies" (CECs). With respect to CECs, the UTC may take a range of actions, including but not limited to requiring:

- procurement of a performance bond to cover any advances or deposits a CEC collects from customers; and
- provision of information on the financing terms of leased energy systems under contract.

In addition, a CEC must at a minimum:

- file financial reports with the UTC;
- keep its accounts according to UTC rules;
- pay regulatory fees to the UTC;
- post its prices on a public web site available to all potential customers;
- cooperate with UTC investigations of consumer complaints; and
- at the request of the UTC, provide information about the materials contained in a leased energy system, including all hazardous wastes and commercially valuable materials used in the system.

The UTC is authorized to approve an electrical company's request for a tariff that includes banded rates for leased energy program services.

Tax Preference Performance Statement.

The Joint Legislative Audit and Review Committee must perform a review in 2019 to determine if the tax preference helped achieve performance milestones, including but not limited to increasing utilization of the PUT credit, increasing the number of solar energy systems installed, growth of solar-related employment, and leveraging of non-state funds.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2015.