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HOUSE BILL 1233

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State of Washington

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By Representatives Morris, Tarleton, and Hudgins

Read first time 01/13/17. Referred to Committee on Technology & Economic Development.

1 AN ACT Relating to enabling electric utilities to prepare for the  
2 distributed energy future; adding a new section to chapter 19.280  
3 RCW; adding new sections to chapter 80.28 RCW; adding a new section  
4 to chapter 80.60 RCW; adding a new chapter to Title 80 RCW; adding a  
5 new chapter to Title 19 RCW; creating a new section; and prescribing  
6 penalties.

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

8 NEW SECTION. **Sec. 1.** It is the intent of the legislature to  
9 establish a mosaic of pathways by which the state's existing and  
10 future electric utilities can accommodate a wide range of new  
11 resources being brought to the retail electric distribution system by  
12 customer investment.

13 The legislature recognizes that in states across the nation, the  
14 unplanned, organic uptake of new resources that both consume and  
15 contribute energy and capacity to the electric distribution system  
16 has led to costly capital expenditures. These expenditures then lead  
17 to higher electricity rates for customers in all rate classes as well  
18 as to less reliability when existing infrastructure is stretched to  
19 its limits.

20 Studies conducted by national laboratories have shown that when  
21 electric utilities are keenly aware of the power flow limits on their

1 distribution system outside of extreme weather events, they can  
2 identify symbiotic relationships between customer investments in  
3 distribution resources. Utilities may then plan around customer  
4 values that are not represented in the volumetric sale of electricity  
5 at least cost and a highly efficient and more reliable electric  
6 distribution system will be achieved.

7 As electric utilities move away from volumetric sales as the  
8 single business model for electric utility financial stability, and  
9 therefore toward less cross-subsidization among electric customer  
10 rate classes, the legislature further recognizes that, with over  
11 sixty-four electric utilities with wide-ranging customer bases and  
12 demographics, a one size fits all solution does not exist for  
13 Washington. It is therefore the intent of the legislature that the  
14 provisions established under this act be voluntary but also flexible,  
15 so that all electric utilities may have tools to accommodate what  
16 their customers want and need while also providing for the system  
17 benefit of efficient, low-cost electricity.

18 NEW SECTION. **Sec. 2.** A new section is added to chapter 19.280  
19 RCW to read as follows:

20 (1) An electric utility may submit to the commission, in the case  
21 of an investor-owned utility, or to the governing body, in the case  
22 of a consumer-owned utility, an annually updated, ten-year  
23 distributed energy resources plan that may inform and be incorporated  
24 within the plan developed pursuant to RCW 19.280.030. The distributed  
25 energy resources plan must:

26 (a) Apply the traditional utility regulatory principles of  
27 efficiency and fairness to achieve fairness among customers,  
28 efficiency in the expenditure of dollars dedicated to providing  
29 reliable utility service, and revenue stability and predictability;  
30 and

31 (b) Establish a methodology by which to assign a locational value  
32 to distributed energy resources that reflects the value of avoided  
33 transmission and distribution costs including, but not limited to:

34 (i) The value of avoided high voltage transmission operations and  
35 maintenance costs and line losses;

36 (ii) The value of avoided or deferred capital expenditure and  
37 operations and maintenance costs to utility-owned baseload and  
38 ancillary power generation assets;

1 (iii) The value of avoided or deferred capital expenditure on the  
2 distribution system, including the avoided or deferred capital  
3 expenditure associated with anticipating and incorporating customer-  
4 side investments and avoiding intradistribution system imbalances  
5 caused by distributed energy resources;

6 (iv) An avoided cost multiplier of ten percent for the nonenergy  
7 economic benefits associated with increased local procurement of  
8 distributed energy resources; and

9 (v) The value of avoided carbon emission costs associated with  
10 high voltage transmission and generation.

11 (2) The commission must review and approve or reject a  
12 distributed energy resources plan submitted by an investor-owned  
13 utility under subsection (1) of this section. The commission shall  
14 establish by rule the requirements for preparation and submission of  
15 distributed energy resources plans. The commission may adopt  
16 additional rules as necessary to clarify the requirements of this  
17 section as they apply to investor-owned utilities.

18 (3) The governing body of a consumer-owned utility that develops  
19 a distributed energy resources plan under subsection (1) of this  
20 section shall encourage participation of its consumers in development  
21 of the plan and may approve the plan after it has provided public  
22 notice and hearing.

23 (4)(a) Following approval of a distributed energy resources plan  
24 under subsection (2) or (3) of this section, an electric utility must  
25 issue a call for distributed energy resources. The call for  
26 distributed energy resources must outline a technology-neutral  
27 request for cost-effective resources that deliver a locational value  
28 to the distribution system, as the locational value of distributed  
29 energy resources is determined under subsection (1)(b) of this  
30 section.

31 (b) A call for distributed energy resources issued under this  
32 subsection may be issued for any increment of years within the ten-  
33 year distributed energy resources planning window.

34 (c) An electric utility must use actual locational costs of  
35 distributed energy resources as reflected in any responses it  
36 receives to the call for resources under this subsection to annually  
37 update the ten-year distributed energy resources plan, such that the  
38 plan:

1 (i) Uses actual locational costs in calculating the value of  
2 distributed energy resources under subsection (1)(b) of this section;  
3 and

4 (ii) Reflects ten years of planning.

5 (5) A distributed energy resources plan developed under  
6 subsection (1) of this section must establish methods to compensate  
7 customer investments in the distribution system that represent the  
8 value of distributed energy resources calculated under subsection  
9 (1)(b) of this section.

10 (6) The definitions in this subsection apply throughout this  
11 section unless the context clearly requires otherwise.

12 (a) "Cost-effective" has the same meaning as provided in RCW  
13 80.52.030;

14 (b) "Distributed energy resource" includes, but is not limited  
15 to, distributed renewable generation resources, energy efficiency,  
16 energy storage, electric vehicles, electric vehicle charging  
17 infrastructure, and demand response technologies; and

18 (c) "Technology-neutral" means criteria for acquiring or  
19 otherwise soliciting distributed energy resources that do not place  
20 an undue preference, value, or system outcome on any particular  
21 distributed energy resource technology.

22 NEW SECTION. **Sec. 3.** (1) Subject to the conditions set forth in  
23 this chapter, the commission may regulate an electrical company  
24 subject to traditional rate of return, rate base regulation by  
25 authorizing an alternative form of regulation. The commission may  
26 determine the manner and extent of any alternative forms of  
27 regulation as may be appropriate in ensuring system benefits  
28 including, but not limited to, authorizing an alternative form of  
29 regulation for all utility services or for individual utility  
30 services.

31 (2)(a) In addition to any considerations raised by the utility,  
32 in determining the appropriateness of any proposed alternative form  
33 of regulation, the commission must at a minimum consider the extent  
34 to which such an alternative regulation is expected to:

35 (i) Promote resiliency and reliability;

36 (ii) Improve service quality, including both the quality of  
37 customer service and of power itself, such as providing more precise  
38 voltage control;

1 (iii) Achieve reduced per capita consumption of energy in the  
2 state;

3 (iv) Encourage economic development within the state, as measured  
4 by creation of local jobs;

5 (v) Help attain statewide carbon reduction goals and compliance  
6 with federal air quality standards; and

7 (vi) Provide clear incentives to achieving least-cost energy  
8 service to customers, in terms of overall efficiency of operations  
9 and maintenance costs per megawatt-hour of energy produced.

10 (b) The commission may establish, by rule or order, requirements  
11 governing the filing of a petition to approve an alternative  
12 regulation plan, as provided in subsection (3) of this section.

13 (3)(a) An electrical company may petition the commission to  
14 establish an alternative form of regulation including, but not  
15 limited to, an alternative form of regulation for all utility  
16 services or for individual utility services.

17 (b) Before petitioning for an alternative form of regulation, the  
18 company must conduct a consultation with customers of all rate  
19 classes in order to determine the customers' preferred performance  
20 metrics and benchmarks.

21 (c) The company must submit with the petition for an alternative  
22 form of regulation a plan. This plan must include, at a minimum, the  
23 following:

24 (i) The performance metrics and benchmarks identified through the  
25 customer consultation required under this section;

26 (ii) A proposal for ensuring adequate service quality;

27 (iii) Data and other inputs relevant to external benchmarking of  
28 costs;

29 (iv) Identification of incentives for achieving performance  
30 targets as well as appropriate enforcement or remedial provisions in  
31 the event the company fails to meet performance measures;

32 (v) Proposed mechanisms, such as reopeners, pass-through,  
33 trigger, or true-up mechanisms, to help provide a reasonable level of  
34 protection from risk, uncertainty, or unforeseeable costs and events;  
35 and

36 (vi) A proposal for transition to the alternative form of  
37 regulation.

38 (d) A plan submitted under this section for an alternative form  
39 of regulation that applies to all utility services must leave current  
40 rates for each customer class unchanged for the first three years of

1 the transition to the alternative form of regulation. Proposed  
2 changes in rates must be phased in over a period of not less than the  
3 following three years.

4 (4) The commission, after notice and hearing, shall issue an  
5 order accepting, modifying, or rejecting the plan within nine months  
6 after the petition or motion is filed, unless extended by the  
7 commission for good cause. The commission shall order implementation  
8 of the alternative plan of regulation unless it finds that, on  
9 balance, an alternative plan as proposed or modified fails to meet  
10 the considerations stated in subsection (3) of this section.

11 (5) No later than sixty days from the entry of the commission's  
12 order, the company or companies affected by the order may file with  
13 the commission an election not to proceed with the alternative form  
14 of regulation as authorized by the commission.

15 (6) The commission may waive those regulatory requirements under  
16 this title for an electrical company subject to any alternative form  
17 of regulation as may be appropriate to facilitate the implementation  
18 of this section. However, the commission may not waive any grant of  
19 legal rights to any person contained in this chapter and chapter  
20 80.04 RCW. The commission may waive different regulatory requirements  
21 for different companies or services if the different treatment is in  
22 the public interest.

23 (7) Upon petition by the company, and after notice and hearing,  
24 the commission may rescind or modify an alternative form of  
25 regulation in the manner requested by the company.

26 (8) The commission or any person may file a complaint under RCW  
27 80.04.110 alleging that an electrical company under an alternative  
28 form of regulation has not complied with the terms and conditions set  
29 forth in the alternative form of regulation. The complainant bears  
30 the burden of proving the allegations in the complaint.

31 NEW SECTION. **Sec. 4.** (1) The definitions in this subsection  
32 apply throughout this section unless the context clearly requires  
33 otherwise.

34 (a) "Consumer-owned utility" includes a municipal electric  
35 utility formed under Title 35 RCW, a public utility district formed  
36 under Title 54 RCW, an irrigation district formed under chapter 87.03  
37 RCW, a cooperative formed under chapter 23.86 RCW, a mutual  
38 corporation or association formed under chapter 24.06 RCW, a port  
39 district formed under Title 53 RCW, or a water-sewer district formed

1 under Title 57 RCW, that is engaged in the business of distributing  
2 electricity to one or more retail electric customers in the state.

3 (b) "Governing body" means the board of directors or legislative  
4 authority of a consumer-owned utility.

5 (2) In addition to any existing authority to engage in the sale  
6 and distribution of electricity, a consumer-owned utility may provide  
7 other energy services and recover the cost of providing these  
8 services directly from its ratepayers if provision of the energy  
9 services by the consumer-owned utility is consistent with helping the  
10 utility and its customers achieve the public policy goals declared in  
11 this chapter.

12 (3) The governing body of a consumer-owned utility may approve  
13 providing energy services beyond the sale and distribution of  
14 electricity if the energy services will:

15 (a) Promote resiliency and reliability of the electric grid;

16 (b) Improve service quality to the utility's customers, including  
17 both the quality of customer service and of power itself, such as  
18 providing more precise voltage control;

19 (c) Achieve reduced per capita consumption of energy in the  
20 state;

21 (d) Encourage economic development within the state, as measured  
22 by the creation of local jobs;

23 (e) Help attain statewide carbon reduction goals and compliance  
24 with federal air quality standards; and

25 (f) Provide clear incentives to achieving least-cost energy  
26 service to customers, in terms of overall efficiency of operations  
27 and maintenance costs per megawatt-hour of energy produced.

28 (4) Any energy services approved by the governing body pursuant  
29 to the authority of this section must also be approved by a majority  
30 of the voters of the consumer-owned utility voting upon the question  
31 at a duly noticed annual or special meeting held for that purpose.

32 (5) Nothing in this section may be construed to decrease existing  
33 authority of any consumer-owned utility to provide energy services.

34 NEW SECTION. **Sec. 5.** The definitions in this section apply  
35 throughout this chapter unless the context clearly requires  
36 otherwise.

37 (1) "Competitive electrical services" means the provision of  
38 electricity generated by a renewable energy system to the customer  
39 and may include other services associated with the use of a renewable

1 energy system under a lease, power purchase agreement, loan, or other  
2 financial transaction. Such other services may include system  
3 monitoring and maintenance, warranty provisions, performance  
4 guarantees, and customer service.

5 (2) "Consumer contract" means the lease, power purchase  
6 agreement, loan, or other financial agreement between a competitive  
7 electrical company and a customer, by which the customer obtains a  
8 beneficial interest in, other than direct ownership of, a renewable  
9 energy system installed on the customer's side of the meter on  
10 property controlled by the customer.

11 (3)(a) Except as specified in (b) of this subsection, "direct  
12 retail to electric consumer company" means an electrical company or  
13 third-party vendor that owns a renewable energy system on property  
14 controlled by a customer and enters into a consumer contract with a  
15 customer to provide competitive electrical services.

16 (b) The following entities are not direct retail to electric  
17 consumer companies:

18 (i) Commercial lending institutions that are regulated by the  
19 department of financial institutions and provide loans for the  
20 purchase of renewable energy systems;

21 (ii) Companies engaged in retail sales of renewable energy  
22 equipment that are not otherwise engaged in business as a direct  
23 retail to an electric consumer company; and

24 (iii) Electric utilities offering competitive electrical services  
25 to their customers or members in conjunction with other utility  
26 services.

27 (4) "Direct retail to electric consumer program" means a program  
28 developed by an electric utility to provide customers of the utility  
29 access to renewable energy systems through a consumer contract.

30 (5) "Electric utility" means a consumer-owned utility or  
31 investor-owned utility as those terms are defined in RCW 19.280.020.

32 (6) "Renewable energy system" means a renewable energy system  
33 that is located in Washington and installed on a utility customer's  
34 premises, where the renewable energy system is:

35 (a) Owned by a direct retail to electric consumer company that  
36 has a consumer contract with a customer of an electric utility for  
37 competitive electrical services; or

38 (b) Owned by an electric utility that has a consumer contract  
39 with a customer of that electric utility to provide competitive  
40 electrical services.



1 (7) "Third-party vendor" means an entity other than an electric  
2 utility that provides a renewable energy system to electric utility  
3 customers through a consumer contract.

4 NEW SECTION. **Sec. 6.** (1) It is the intent of the legislature to  
5 prepare for a distributed energy future by providing consumers  
6 greater access to distributed renewable energy systems.

7 (2) The legislature recognizes the importance of ensuring public  
8 safety and consumer protection with an appropriate level of  
9 regulation that still allows a competitive marketplace to develop,  
10 and for this reason the legislature confers authority to the  
11 Washington utilities and transportation commission to register as  
12 "direct retail to electric consumer companies" third-party vendors  
13 who provide renewable energy systems directly to consumers and  
14 investor-owned utilities who invest company dollars to make these  
15 systems more widely accessible.

16 NEW SECTION. **Sec. 7.** (1) The Washington utilities and  
17 transportation commission shall publish, without disclosing  
18 proprietary information, a list of financing models being offered by  
19 investor-owned utilities or third-party vendors registered as direct  
20 retail to electric consumer companies under section 6 of this act.

21 (2) If a consumer-owned utility opts to provide a direct retail  
22 to electric consumer program or contracts with a third-party vendor  
23 to offer a direct retail to electric consumer program, the governing  
24 body of a consumer-owned utility shall publish, without disclosing  
25 proprietary information, a list of financing models being offered by  
26 the utility or third-party vendor or vendors contracted by the  
27 utility as part of a direct retail to electric consumer program.

28 NEW SECTION. **Sec. 8.** A new section is added to chapter 80.28  
29 RCW to read as follows:

30 (1) No third-party vendor, including an affiliate of an electric  
31 utility, may engage in business as a direct retail to electric  
32 consumer company in this state, except in accordance with the  
33 provisions of this chapter. Engaging in business as a direct retail  
34 to electric consumer company includes advertising, soliciting,  
35 offering, or entering into an agreement to own a renewable energy  
36 system and provide competitive electrical services on property owned  
37 or controlled by a customer.

1           (2) A third-party vendor or an electrical company offering a  
2 direct retail to electric consumer program that is outside of its  
3 regulated service must register with the commission as a direct  
4 retail to electric consumer company before beginning operations in  
5 this state to provide renewable energy systems. The registration must  
6 be on a form prescribed by the commission and contain that  
7 information as the commission may by rule require, but must include  
8 at a minimum: The name and address of the company; the name and  
9 address of the company's registered agent, if any; the name, address,  
10 and title of each officer or director; the company's most current  
11 balance sheet; the company's latest annual report, if any; a  
12 description of the services the company offers or intends to offer,  
13 including financing models; and disclosure of any pending litigation  
14 against it. Registration with the commission as a direct retail to  
15 electric consumer company must occur on an annual basis.

16           (3) As a precondition to registration, the commission may require  
17 the procurement of a performance bond or other mechanism sufficient  
18 to cover any advances or deposits the direct retail to electric  
19 consumer company may collect from its customers or order that the  
20 advances or deposits be held in escrow or trust.

21           (4) The commission may deny registration to any company that:  
22           (a) Does not provide the information required by this section;  
23           (b) Fails to provide a performance bond or other mechanism, if  
24 required;  
25           (c) Does not possess adequate financial resources to provide the  
26 proposed service; or  
27           (d) Does not possess adequate technical competency to provide the  
28 proposed service.

29           (5) The commission shall take action to approve or issue a notice  
30 of hearing concerning any application for registration within thirty  
31 days after receiving the application. The commission may approve an  
32 application with or without a hearing. The commission may deny an  
33 application after a hearing.

34           (6) The commission may charge direct retail to electric consumer  
35 companies a one-time application fee to recover the cost of  
36 processing applications for registration under this section.

37           (7) The commission shall adopt rules that describe the manner by  
38 which it will register direct retail to electric consumer companies,  
39 ensure that consumer contracts comply with commission rules and the  
40 requirements of this act, and establish the companies'

1 responsibilities for responding to customer complaints and disputes.  
2 Pursuant to RCW 80.04.080, 80.24.010, and 80.24.020, the commission  
3 shall adopt annual reporting requirements and the amount of  
4 application and regulatory fees applicable to direct retail to  
5 electric consumer companies.

6 (8) The commission may suspend or revoke a registration upon  
7 complaint by any interested party, or upon the commission's own  
8 motion after notice and opportunity for hearing, when it finds that  
9 the registered direct retail to electric consumer company or its  
10 agent has violated this chapter, the rules of the commission, or the  
11 company or its registered agent has been found by a court or  
12 governmental agency to have violated the laws of a state or the  
13 United States.

14 (9) The definitions in section 4(1) of this act apply throughout  
15 this section unless the context clearly requires otherwise.

16 NEW SECTION. **Sec. 9.** A new section is added to chapter 80.28  
17 RCW to read as follows:

18 In addition to the penalties provided in this title, a violation  
19 by a direct retail to electric consumer company of section 8 of this  
20 act constitutes an unfair or deceptive act in trade or commerce in  
21 violation of chapter 19.86 RCW, the consumer protection act. Acts in  
22 violation of this act are not reasonable in relation to the  
23 development and preservation of business, and constitute matters  
24 vitally affecting the public interest for the purpose of applying the  
25 consumer protection act, chapter 19.86 RCW. The commission may  
26 consult with the office of the attorney general regarding the  
27 administration and enforcement of this chapter as it pertains to  
28 direct retail to electric consumer companies.

29 NEW SECTION. **Sec. 10.** A new section is added to chapter 80.60  
30 RCW to read as follows:

31 (1) Except as provided in subsection (2) of this section, an  
32 electric utility that has reached the cumulative generating capacity  
33 available to net metering under RCW 80.60.020 and develops a ten-year  
34 distributed energy resources plan under section 2 of this act must  
35 compensate customer investments in the distribution system including,  
36 but not limited to, a net metering system, using the methods  
37 established under section 2(3) of this act.

1 (2) A customer-generator with a net metering system that is  
2 interconnected with the electrical facilities of an electric utility  
3 as of the effective date of this section is compensated according to  
4 RCW 80.60.020 and 80.60.030, as those sections existed on the  
5 effective date of this section, until the property on which the net  
6 metering system is located is sold or until the financial  
7 responsibility for the electric meter is transferred to a new  
8 customer.

9 (3) An electric utility that does not develop a ten-year  
10 distributed energy resources plan under section 2 of this act must  
11 compensate a customer-generator according to RCW 80.60.020 and  
12 80.60.030, as those sections existed on the effective date of this  
13 section.

14 (4) For the purposes of this section, "new customer" means an  
15 electric utility customer who is establishing service for the first  
16 time at a meter connected to a utility's distribution system.

17 NEW SECTION. **Sec. 11.** Sections 3 and 4 of this act constitute a  
18 new chapter in Title 80 RCW.

19 NEW SECTION. **Sec. 12.** Sections 5 through 7 of this act  
20 constitute a new chapter in Title 19 RCW.

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