
SUBSTITUTE HOUSE BILL 2402

State of Washington 65th Legislature 2018 Regular Session

By House Appropriations (originally sponsored by Representatives Tarleton, Slatter, Macri, Pollet, and Doglio)

READ FIRST TIME 02/06/18.

1 AN ACT Relating to the energy independence act; amending RCW
2 19.285.030, 19.285.040, 19.285.060, 19.285.070, and 19.285.080;
3 adding a new section to chapter 19.285 RCW; creating a new section;
4 and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that Washington
7 should continue its leadership in conservation, renewable energy, and
8 climate change mitigation by maximizing energy efficiency across the
9 state and avoiding new investments in sources of electricity
10 generation that have a significant negative impact on our air, water,
11 or other natural resources.

12 (2) By building on the state's foundation of renewable
13 hydroelectric generation with additional conservation and renewable
14 energy resources, the legislature declares that Washington can:
15 Promote energy independence; create high-quality jobs in the clean
16 energy sector; maintain stable and affordable rates for all
17 customers, especially low-income customers; and protect clean air and
18 water in the Pacific Northwest.

19 **Sec. 2.** RCW 19.285.030 and 2017 c 315 s 1 are each amended to
20 read as follows:

1 The definitions in this section apply throughout this chapter
2 unless the context clearly requires otherwise.

3 (1) "Attorney general" means the Washington state office of the
4 attorney general.

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

10 (3)(a) "Biomass energy" includes: (i) Organic by-products of
11 pulping and the wood manufacturing process; (ii) animal manure; (iii)
12 solid organic fuels from wood; (iv) forest or field residues; (v)
13 untreated wooden demolition or construction debris; (vi) food waste
14 and food processing residuals; (vii) liquors derived from algae;
15 (viii) dedicated energy crops; and (ix) yard waste.

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

20 (4) "Coal transition power" has the same meaning as defined in
21 RCW 80.80.010.

22 (5) "Commission" means the Washington state utilities and
23 transportation commission.

24 (6) "Conservation" means any reduction in electric power
25 consumption resulting from increases in the efficiency of energy use,
26 production, or distribution.

27 (7) "Cost-effective" has the same meaning as defined in RCW
28 80.52.030.

29 (8) "Council" means the Washington state apprenticeship and
30 training council within the department of labor and industries.

31 (9) "Customer" means a person or entity that purchases
32 electricity or natural gas for ultimate consumption and not for
33 resale.

34 (10) "Department" means the department of commerce or its
35 successor.

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

40 (12) "Eligible renewable resource" means:

1 (a) Electricity from a generation facility powered by a renewable
2 resource other than freshwater that commences operation after March
3 31, 1999, where: (i) The facility is located in the Pacific Northwest
4 or anywhere within the boundary of a state whose territories are
5 partially included in the Pacific Northwest; or (ii) the electricity
6 from the facility is delivered into Washington state on a real-time
7 basis without shaping, storage, or integration services;

8 (b) Incremental electricity produced as a result of efficiency
9 improvements completed after March 31, 1999, to hydroelectric
10 generation projects owned by a qualifying utility and located in the
11 Pacific Northwest where the additional generation does not result in
12 new water diversions or impoundments;

13 (c) Hydroelectric generation from a project completed after March
14 31, 1999, where the generation facility is located in irrigation
15 pipes, irrigation canals, water pipes whose primary purpose is for
16 conveyance of water for municipal use, and wastewater pipes located
17 in Washington where the generation does not result in new water
18 diversions or impoundments;

19 (d) Qualified biomass energy;

20 (e) For a qualifying utility that serves customers in other
21 states, electricity from a generation facility powered by a renewable
22 resource other than freshwater that commences operation after March
23 31, 1999, where: (i) The facility is located within a state in which
24 the qualifying utility serves retail electrical customers; and (ii)
25 the qualifying utility owns the facility in whole or in part or has a
26 long-term contract with the facility of at least twelve months or
27 more; ((~~or~~))

28 (f) Beginning January 1, 2018, the portion of incremental
29 electricity produced as a result of efficiency improvements completed
30 after March 31, 1999, attributable to a qualifying utility's
31 Washington share of electricity output from hydroelectric generation
32 projects whose energy output is marketed by the Bonneville power
33 administration, where the additional generation does not result in
34 water diversions or impoundments; or

35 (g)(i) Incremental electricity produced as a result of a capital
36 investment completed after January 1, 2010, that increases, relative
37 to a baseline level of generation prior to the capital investment,
38 the amount of electricity generated in a facility that generates
39 qualified biomass energy as defined under subsection (18)(c)(ii) of
40 this section and that commenced operation before March 31, 1999.

1 (ii) Beginning January 1, 2007, the facility must demonstrate its
2 baseline level of generation over a three-year period prior to the
3 capital investment in order to calculate the amount of incremental
4 electricity produced.

5 (iii) The facility must demonstrate that the incremental
6 electricity resulted from the capital investment, which does not
7 include expenditures on operation and maintenance in the normal
8 course of business, through direct or calculated measurement.

9 (13) "Investor-owned utility" has the same meaning as defined in
10 RCW 19.29A.010.

11 (14) "Load" means the amount of kilowatt-hours of electricity or
12 therms of natural gas delivered in the most recently completed year
13 by (~~a qualifying~~) an electric utility or natural gas utility to its
14 Washington retail customers.

15 (15)(a) "Nonpower attributes" means all environmentally related
16 characteristics, exclusive of energy, capacity reliability, and other
17 electrical power service attributes, that are associated with the
18 generation of electricity from a renewable resource, including but
19 not limited to the facility's fuel type, geographic location,
20 vintage, qualification as an eligible renewable resource, and avoided
21 emissions of pollutants to the air, soil, or water, and avoided
22 emissions of carbon dioxide and other greenhouse gases.

23 (b) "Nonpower attributes" does not include any aspects, claims,
24 characteristics, and benefits associated with the on-site capture and
25 destruction of methane or other greenhouse gases at a facility
26 through a digester system, landfill gas collection system, or other
27 mechanism, which may be separately marketable as greenhouse gas
28 emission reduction credits, offsets, or similar tradable commodities.
29 However, these separate avoided emissions may not result in or
30 otherwise have the effect of attributing greenhouse gas emissions to
31 the electricity.

32 (16) "Pacific Northwest" has the same meaning as defined for the
33 Bonneville power administration in section 3 of the Pacific Northwest
34 electric power planning and conservation act (94 Stat. 2698; 16
35 U.S.C. Sec. 839a).

36 (17) "Public facility" has the same meaning as defined in RCW
37 39.35C.010.

38 (18) "Qualified biomass energy" means electricity produced from a
39 biomass energy facility that: (a) Commenced operation before March
40 31, 1999; (b) contributes to the qualifying utility's load; and (c)

1 is owned either by: (i) A qualifying utility; or (ii) an industrial
2 facility that is directly interconnected with electricity facilities
3 that are owned by a qualifying utility and capable of carrying
4 electricity at transmission voltage.

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

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

18 (21) "Renewable resource" means: (a) Water; (b) wind; (c) solar
19 energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or
20 tidal power; (g) gas from sewage treatment facilities; (h) biodiesel
21 fuel as defined in RCW 82.29A.135 that is not derived from crops
22 raised on land cleared from old growth or first-growth forests where
23 the clearing occurred after December 7, 2006; or (i) biomass energy.

24 (22) "Rule" means rules adopted by an agency or other entity of
25 Washington state government to carry out the intent and purposes of
26 this chapter.

27 (23) "Year" means the twelve-month period commencing January 1st
28 and ending December 31st.

29 (24) "Consumer-owned utility" has the same meaning as defined in
30 RCW 19.29A.010.

31 (25) "Contract high water mark" means the amount of firm power
32 from tier 1 system resources that each electric utility is eligible
33 to purchase through a power sales contract with the Bonneville power
34 administration.

35 (26) "Low-income" means household incomes as defined by the
36 department or commission, provided that the definition may not exceed
37 the higher of eighty percent of area median household income or two
38 hundred percent of the federal poverty level, adjusted for household
39 size.

1 (27) "Market customer" means a nonresidential customer of a
2 qualifying utility or a small utility that: (a) Purchases electricity
3 from an entity or entities other than the utility with which it is
4 directly interconnected; or (b) generates electricity to meet its own
5 needs.

6 (28) "Natural gas utility" includes: Every corporation, company,
7 association, joint stock association, partnership, and person; their
8 lessees, trustees, or receiver appointed by any court whatsoever; and
9 every city or town, that owns, controls, operates, or manages any gas
10 plant within the state and is engaged in distributing natural gas to
11 more than one retail gas customer in the state.

12 (29) "New energy or capacity need" means any electricity
13 generation needed by a qualifying utility, small utility, or market
14 customer after April 1, 2018, to meet any of the following:

- 15 (a) Electricity load growth;
- 16 (b) Changes in capacity needs;
- 17 (c) Changes in ancillary services needs;
- 18 (d) Changes in reliability needs;
- 19 (e) Changes in flexibility needs;
- 20 (f) Needs arising due to replacing electricity generation; or
- 21 (g) Needs arising due to replacing expiring electricity resource
22 contracts.

23 (30) "Short-term spot market purchase" means: (a) The purchase of
24 energy on the spot market for immediate delivery; or (b) a contract
25 for the purchase of energy on the spot market that is for a term of
26 one month or less.

27 (31) "Small utility" means an electric utility, as the term
28 "electric utility" is defined in RCW 19.29A.010, that serves twenty-
29 five thousand or fewer customers in the state of Washington.

30 (32) "Spot market" means a public financial market where
31 electricity is bought, sold, or traded for immediate delivery.

32 (33) "Tier 1 system" means the specific collection of resources
33 and contract purchases that are designated for contract sales by the
34 Bonneville power administration under the tiered rate methodology.

35 (34) "Washington share" means the portion of the federal Columbia
36 river power system generation attributable to the Washington load of
37 hydroelectric efficiency upgrades that the Bonneville power
38 administration provides to: (a) Each consumer-owned utility serving
39 load located in Washington, pursuant to a contract; (b) each joint
40 operating agency with retail electric utility members serving load

1 located in Washington, pursuant to a contract; and (c) each investor-
2 owned utility participating in the residential exchange program that
3 serves load located in Washington.

4 **Sec. 3.** RCW 19.285.040 and 2017 c 315 s 2 are each amended to
5 read as follows:

6 (1) Each qualifying utility, small utility, and natural gas
7 utility shall pursue all available conservation that is cost-
8 effective, reliable, and feasible.

9 (a) By January 1, 2010, using methodologies consistent with those
10 used by the Pacific Northwest electric power and conservation
11 planning council in the most recently published regional power plan
12 as it existed on June 12, 2014, or a subsequent date as may be
13 provided by the department or the commission by rule, each qualifying
14 utility shall identify its achievable cost-effective conservation
15 potential through 2019. Nothing in the rule adopted under this
16 subsection precludes a qualifying utility from using its utility
17 specific conservation measures, values, and assumptions in
18 identifying its achievable cost-effective conservation potential. At
19 least every two years thereafter, the qualifying utility shall review
20 and update this assessment for the subsequent ten-year period.

21 (b) Beginning January 2010, each qualifying utility shall
22 establish and make publicly available a biennial acquisition target
23 for 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 target must be no lower than the higher of the qualifying
27 utility's pro rata share for that two-year period of its cost-
28 effective conservation potential for the subsequent ten-year period
29 or two percent of the qualifying utility's retail load, as calculated
30 for the biennium.

31 (c) Beginning January 1, 2020, each small utility shall
32 biennially set a target for conservation and meet that target during
33 the subsequent two-year period. This target should be no lower than
34 two percent of the small utility's retail load, as calculated for the
35 biennium.

36 (d) Beginning January 1, 2020, each natural gas utility shall
37 biennially set a target for conservation and meet that target during
38 the subsequent two-year period. This target should be no lower than

1 the following percentages of the natural gas utility's retail load,
2 as calculated for the biennium:

3 (i) At least seven-tenths of a percent of its load by January 1,
4 2020;

5 (ii) At least one percent of its load by January 1, 2022; and

6 (iii) At least one and one-half percent of its load by January 1,
7 2025.

8 (e) Conversions from electricity as an energy source to natural
9 gas do not count toward compliance with the requirements established
10 under this section.

11 (f)(i) Except as provided in ~~((e))~~ (f)(ii) and (iii) of this
12 subsection, beginning on January 1, 2014, ~~((cost-effective))~~ for
13 qualifying utilities or January 1, 2020, for natural gas utilities
14 and small utilities, conservation achieved by a qualifying utility,
15 natural gas utility, or small utility in excess of its biennial
16 acquisition target may be used to help meet the immediately
17 subsequent two biennial acquisition targets, such that no more than
18 twenty percent of any biennial target may be met with excess
19 conservation savings.

20 (ii) Beginning January 1, 2014, for qualifying utilities or
21 January 1, 2020, for natural gas utilities and small utilities, a
22 qualifying utility, natural gas utility, or small utility may use
23 single large facility conservation savings in excess of its biennial
24 target to meet up to an additional five percent of the immediately
25 subsequent two biennial acquisition targets, such that no more than
26 twenty-five percent of any biennial target may be met with excess
27 conservation savings allowed under all of the provisions of this
28 section combined. For the purposes of this subsection ~~((1)(e)(ii))~~
29 (1)(f)(ii), "single large facility conservation savings" means cost-
30 effective conservation savings achieved in a single biennial period
31 at the premises of a single customer of a qualifying utility whose
32 annual electricity consumption prior to the conservation savings
33 exceeded five average megawatts.

34 (iii) Beginning January 1, 2012, and until December 31, 2017, a
35 qualifying utility with an industrial facility located in a county
36 with a population between ninety-five thousand and one hundred
37 fifteen thousand that is directly interconnected with electricity
38 facilities that are capable of carrying electricity at transmission
39 voltage may use cost-effective conservation from that industrial
40 facility in excess of its biennial acquisition target to help meet

1 the immediately subsequent two biennial acquisition targets, such
2 that no more than twenty-five percent of any biennial target may be
3 met with excess conservation savings allowed under all of the
4 provisions of this section combined.

5 ~~((d))~~ (g) In meeting its conservation targets, a qualifying
6 utility or small utility may count high-efficiency cogeneration owned
7 and used by a retail electric customer to meet its own needs. High-
8 efficiency cogeneration is the sequential production of electricity
9 and useful thermal energy from a common fuel source, where, under
10 normal operating conditions, the facility has a useful thermal energy
11 output of no less than thirty-three percent of the total energy
12 output. The reduction in load due to high-efficiency cogeneration
13 shall be: (i) Calculated as the ratio of the fuel chargeable to power
14 heat rate of the cogeneration facility compared to the heat rate on a
15 new and clean basis of a best-commercially available technology
16 combined-cycle natural gas-fired combustion turbine; and (ii) counted
17 towards meeting the biennial conservation target in the same manner
18 as other conservation savings.

19 ~~((e))~~ (h) Each market customer shall pay a per kilowatt-hour
20 delivered charge to the utility with which it is directly
21 interconnected to help fund utility conservation programs under this
22 section. The commission shall determine the appropriate per kilowatt-
23 hour delivered charge for a market customer of an investor-owned
24 utility and the governing board shall determine the appropriate per
25 kilowatt-hour charge for a market customer of a consumer-owned
26 utility. The commission or the governing board shall approve a
27 methodology for allocating conservation costs to market customers
28 that is equitable with regard to other utility customers. This
29 methodology must consider, at a minimum, past contributions made by
30 each market customer toward funding a utility's conservation program.
31 Nothing in this section precludes a market customer from receiving
32 financial or other incentives for conservation acquisition from the
33 utility with which it is directly interconnected.

34 (i) The commission may determine if a conservation program
35 implemented by an investor-owned utility is cost-effective based on
36 the commission's policies and practice.

37 ~~((f))~~ (j) The commission may rely on its standard practice for
38 review and approval of investor-owned utility conservation targets.

1 (k) The commission shall establish a mechanism to incentivize an
2 investor-owned utility whose conservation acquisition exceeds two
3 percent of its electric or natural gas load.

4 (l)(i) The commission and department shall adopt rules requiring
5 qualifying utilities, natural gas utilities, and small utilities to
6 meet biennial conservation targets through programs that serve all
7 customer segments, including programs specifically for low-income
8 residential customers.

9 (ii) Low-income customers must be served by conservation programs
10 proportionate to the percentage of low-income customers in the
11 utility service territory.

12 (iii) For low-income customers, qualifying utilities, natural gas
13 utilities, and small utilities must leverage state and federal
14 dollars so that conservation measures and associated costs are fully
15 funded, in accordance with commission or department guidelines.

16 (2)(a) Except as provided in (j) of this subsection, each
17 consumer-owned qualifying utility shall use eligible renewable
18 resources or acquire equivalent renewable energy credits, or any
19 combination of them, to meet the following annual targets:

20 (i) At least three percent of its load by January 1, 2012, and
21 each year thereafter through December 31, 2015;

22 (ii) At least nine percent of its load by January 1, 2016, and
23 each year thereafter through December 31, 2019; ~~((and))~~

24 (iii) At least fifteen percent of its load by January 1, 2020(~~(~~
25 ~~and each year thereafter))~~); and

26 (iv) Beginning January 1, 2021, and each year thereafter, at
27 least fifteen percent of the average of its 2019 and 2020 loads.

28 (b) Except as provided in (j) of this subsection, each investor-
29 owned qualifying utility shall use eligible renewable resources or
30 acquire equivalent renewable energy credits, or any combination of
31 them, to meet the following annual targets:

32 (i) At least three percent of its load by January 1, 2012, and
33 each year thereafter through December 31, 2015;

34 (ii) At least nine percent of its load by January 1, 2016, and
35 each year thereafter through December 31, 2019;

36 (iii) At least fifteen percent of its load by January 1, 2020,
37 and each year thereafter through December 31, 2024;

38 (iv) At least twenty percent of its load by January 1, 2025, and
39 each year thereafter through December 31, 2029;

1 (v) At least thirty percent of its load by January 1, 2030, and
2 each year thereafter through December 31, 2034;

3 (vi) At least forty percent of its load by January 1, 2035, and
4 each year thereafter through December 31, 2039; and

5 (vii) At least fifty percent of its load by January 1, 2040, and
6 each year thereafter.

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

12 ~~((e))~~ (d) In meeting the annual targets in (a) and (b) of this
13 subsection, except as provided in (a)(iv) of this subsection, a
14 qualifying utility shall calculate its annual load based on the
15 average of the utility's load for the previous two years.

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

27 (e) Any utility acquiring a retail electric customer or customers
28 that were formerly served in the same physical location by a
29 qualifying utility shall comply with (a) of this subsection if the
30 former utility is a consumer-owned utility, or (b) of this subsection
31 if the former utility is an investor-owned utility when serving the
32 entire retail load of the customer or customers.

33 (f) The requirements of this section may be met for any given
34 year with renewable energy credits produced during that year, the
35 preceding year, or the subsequent year. Each renewable energy credit
36 may be used only once to meet the requirements of this section.

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

1 (i) Eligible renewable resources or distributed generation where
2 the associated renewable energy credits are owned by a separate
3 entity; or

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

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

13 ~~((h))~~ (i)(i) A qualifying utility that acquires an eligible
14 renewable resource or renewable energy credit may count that
15 acquisition at one and two-tenths times its base value:

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

18 (B) Where the developer of the facility used apprenticeship
19 programs that include low-income trainees and in which at least
20 thirty percent of the trainees qualify as low-income. The
21 apprenticeship program must be approved by the council during
22 facility construction.

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

26 ~~((i))~~ (iii) A qualifying utility that acquires an eligible
27 renewable resource may count that acquisition at one and one-half
28 times its base value:

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

31 (B) Where one hundred percent of the output of the facility will
32 be used to offset utility bills of low-income customers.

33 (j) A qualifying utility shall be considered in compliance with
34 an annual target in (a) of this subsection if events beyond the
35 reasonable control of the utility that could not have been reasonably
36 anticipated or ameliorated prevented it from meeting the renewable
37 energy target. Such events include weather-related damage, mechanical
38 failure, strikes, lockouts, and actions of a governmental authority
39 that adversely affect the generation, transmission, or distribution

1 of an eligible renewable resource under contract to a qualifying
2 utility.

3 ~~((+j))~~ (k)(i) Beginning January 1, 2016, only a qualifying
4 utility that owns or is directly interconnected to a qualified
5 biomass energy facility may use qualified biomass energy to meet its
6 compliance obligation under this subsection.

7 (ii) A qualifying utility may no longer use electricity and
8 associated renewable energy credits from a qualified biomass energy
9 facility if the associated industrial pulping or wood manufacturing
10 facility ceases operation other than for purposes of maintenance or
11 upgrade.

12 ~~((+k))~~ (l) An industrial facility that hosts a qualified biomass
13 energy facility may only transfer or sell renewable energy credits
14 associated with qualified biomass energy generated at its facility to
15 the qualifying utility with which it is directly interconnected with
16 facilities owned by such a qualifying utility and that are capable of
17 carrying electricity at transmission voltage. The qualifying utility
18 may only use an amount of renewable energy credits associated with
19 qualified biomass energy that are equivalent to the proportionate
20 amount of its annual targets under (a)~~((+ii) and (+iii))~~ and (b) of
21 this subsection that was created by the load of the industrial
22 facility. A qualifying utility that owns a qualified biomass energy
23 facility may not transfer or sell renewable energy credits associated
24 with qualified biomass energy to another person, entity, or
25 qualifying utility.

26 (m) Beginning January 1, 2018, a qualifying utility or small
27 utility may use eligible renewable resources as identified in RCW
28 19.285.030(12)(f) to meet its compliance obligations under this
29 section. A qualifying utility may not transfer or sell these eligible
30 renewable resources to another utility for compliance purposes under
31 this chapter.

32 (3) Utilities that become qualifying utilities after December 31,
33 2006, shall meet the requirements in this section on a time frame
34 comparable in length to that provided for qualifying utilities as of
35 December 7, 2006.

36 NEW SECTION. Sec. 4. A new section is added to chapter 19.285
37 RCW to read as follows:

38 (1) Except as provided in RCW 19.285.040(2)(a) or in subsection
39 (4) of this section, each consumer-owned qualifying utility, small

1 utility, and market customer may not use electricity from any of the
2 following resources to meet any new energy or capacity needs:

3 (a) Coal-fired generation;

4 (b) Hydroelectric generation that requires new diversions, new
5 impoundments, new bypass reaches, or expansion of existing reservoirs
6 unless the diversions, bypass reaches, or reservoir expansions are
7 necessary for the operation of a pumped storage facility that: (i)
8 Does not conflict with existing state or federal fish recovery plans;
9 and (ii) complies with all local, state, and federal laws and
10 regulations;

11 (c) Natural gas-fired generation, except as provided in
12 subsection (4)(i) of this section;

13 (d) Nuclear generation;

14 (e) Oil or diesel generation; or

15 (f) Waste incineration, in which electricity is derived from
16 burning solid or liquid wastes from businesses, households,
17 municipalities, or waste treatment operations.

18 (2)(a) The requirements of subsection (1) of this section apply,
19 at minimum, to any new or increased:

20 (i) Ownership interest after April 1, 2018, in a new or existing
21 electricity generation facility or unit; and

22 (ii) Contractual commitment after April 1, 2018, that obligates
23 or allows a consumer-owned qualifying utility, small utility, or
24 market customer to purchase a specified amount of megawatts or
25 megawatt-hours from an electricity generation facility or unit, or a
26 specified percentage of an electricity generation facility or unit.

27 (b) A consumer-owned qualifying utility, small utility, or market
28 customer may not enter into a contract for electricity generation to
29 meet new energy or capacity needs if the contract does not specify
30 the sources or origins of the electricity generation.

31 (3) Except as provided in RCW 19.285.030(15)(b), any tradable
32 certificate of proof of conservation from energy efficiency
33 improvements or the nonpower attributes of a renewable resource,
34 including but not limited to a renewable energy credit, associated
35 with the portion of any resource or resources used to meet new energy
36 or capacity needs under this section must be retired for the purposes
37 of this section and cannot be sold, transferred, used for compliance
38 with the requirements under this chapter, or used for other purposes.
39 A consumer-owned qualifying utility, small utility, or market
40 customer may not use a tradable certificate of proof of conservation

1 achieved through efficiency improvements or the nonpower attributes
2 of a renewable resource, including but not limited to a renewable
3 energy credit, to meet the requirements of this section if the
4 associated energy or capacity has been sold, transferred, or
5 otherwise used separately.

6 (4) Nothing in this section precludes the use of any of the
7 following resources to meet new energy or capacity needs:

8 (a) A consumer-owned qualifying utility's or small utility's
9 contract high water mark allocation of the Bonneville power
10 administration's tier 1 system as it exists on the effective date of
11 this section;

12 (b) Short-term spot market purchases;

13 (c) Renewal or extension of contracts in effect as of the
14 effective date of this section, where the renewal or extension does
15 not lead to any increase in the energy or capacity provided;

16 (d) Coal transition power through 2025;

17 (e) Generation resources owned as of the effective date of this
18 section by a market customer and used by that market customer to meet
19 its own needs, until the generation resources are at the end of the
20 facility's useful life, are retired, or cease operations;

21 (f) Generation resources owned as of the effective date of this
22 section by a consumer-owned qualifying utility or small utility and
23 used by that utility to meet the needs of its customers, until the
24 generation resources are at the end of the facility's useful life,
25 are retired, or cease operations;

26 (g) Increased megawatt-hours from a generation facility that is
27 owned by a consumer-owned qualifying utility or a small utility as of
28 the effective date of this section, where the consumer-owned
29 qualifying utility or small utility uses the increased megawatt-hours
30 to serve the utility's customers and where the utility's ownership
31 interest in the facility does not increase;

32 (h) Increased megawatt-hours from a generation facility that is
33 owned by a market customer as of the effective date of this section,
34 where the market customer uses the increased megawatt-hours to meet
35 its own needs and where the market customer's ownership interest in
36 the facility does not increase; and

37 (i) Electricity generation from any natural gas-fired generation
38 facility that is in operation as of the effective date of this
39 section where the total amount of natural gas generation acquired

1 from all additions does not exceed five percent of the utility's or
2 market customer's retail load for each year.

3 (5) The requirements of this section do not replace or modify the
4 requirements established under RCW 19.285.040 for a consumer-owned
5 qualifying utility, small utility, or market customer. A consumer-
6 owned qualifying utility, small utility, or market customer must
7 comply with the requirements of this section in addition to the
8 requirements imposed elsewhere in this chapter. As provided in
9 subsection (3) of this section, the portion of any resource or
10 resources used to meet new energy or capacity needs under this
11 section may not be used for compliance with the requirements under
12 RCW 19.285.040.

13 **Sec. 5.** RCW 19.285.060 and 2015 c 225 s 22 are each amended to
14 read as follows:

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

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

30 (3) A small utility that fails to comply with the energy
31 conservation targets established in RCW 19.285.040 shall pay the
32 administrative penalty in subsection (1) of this section.

33 (4) A natural gas utility that fails to comply with the energy
34 conservation targets established in RCW 19.285.040 shall pay an
35 administrative penalty to the state of Washington in the amount of
36 fifty dollars for each dekatherm of shortfall. Beginning January 1,
37 2020, this penalty must be adjusted annually according to the rate of
38 the change of the inflation indicator, gross domestic product-
39 implicit price deflator, as published by the bureau of economic

1 analysis of the United States department of commerce or its
2 successor.

3 (5) A consumer-owned qualifying utility, small utility, or market
4 customer that fails to comply with the requirements regarding new
5 energy or capacity needs established in section 4 of this act shall
6 pay an administrative penalty to the state of Washington of fifty
7 dollars for each megawatt-hour of energy or megawatt of capacity from
8 a generation resource listed in section 4(1) of this act that was
9 used to meet new energy or capacity needs. This penalty must be
10 adjusted annually according to the rate of change of the inflation
11 indicator, gross domestic product-implicit price deflator, as
12 published by the bureau of economic analysis of the United States
13 department of commerce or its successor.

14 (6) A qualifying utility or small utility must notify its retail
15 electric customers in published form within three months of incurring
16 a penalty regarding the size of the penalty and the reason it was
17 incurred.

18 ~~((+4))~~ (7) A natural gas utility must notify its retail natural
19 gas customers in published form within three months of incurring a
20 penalty regarding the size of the penalty and the reason it was
21 incurred.

22 (8) The commission shall determine if an investor-owned utility
23 may recover the cost of this administrative penalty in electric or
24 natural gas rates, and may consider providing positive incentives for
25 an investor-owned utility to exceed the targets established in RCW
26 19.285.040.

27 ~~((+5))~~ (9) Administrative penalties collected under this chapter
28 shall be deposited into the energy independence act special account
29 which is hereby created. All receipts from administrative penalties
30 collected under this chapter must be deposited into the account.
31 Expenditures from the account may be used only for the purchase of
32 renewable energy credits or for energy conservation projects at
33 public facilities, local government facilities, community colleges,
34 or state universities. The state shall own and retire any renewable
35 energy credits purchased using moneys from the account. Only the
36 director of enterprise services or the director's designee may
37 authorize expenditures from the account. The account is subject to
38 allotment procedures under chapter 43.88 RCW, but an appropriation is
39 not required for expenditures.

1 ~~((6))~~ (10) For ~~((a qualifying utility that is))~~ an investor-
2 owned utility, the commission shall determine compliance with the
3 provisions of this chapter and assess penalties for noncompliance as
4 provided in subsection (1) of this section.

5 ~~((7))~~ (11) For ~~((qualifying utilities that are not investor-
6 owned utilities))~~ a consumer-owned utility and a small utility, the
7 auditor is responsible for auditing compliance with this chapter and
8 rules adopted under this chapter that apply to those utilities and
9 the attorney general is responsible for enforcing that compliance.

10 (12) For a market customer, the attorney general is responsible
11 for enforcing compliance with this chapter, except that the
12 commission is responsible for enforcing compliance with RCW
13 19.285.040 for a market customer of an investor-owned utility.

14 **Sec. 6.** RCW 19.285.070 and 2007 c 1 s 7 are each amended to read
15 as follows:

16 (1) On or before June 1, 2012, and annually thereafter, each
17 qualifying utility shall report to the department on its progress in
18 the preceding year in meeting the targets established in RCW
19 19.285.040, including expected electricity savings from the biennial
20 conservation target, expenditures on conservation, actual electricity
21 savings results, market customers' aggregated conservation
22 expenditures and savings if applicable, the utility's annual load for
23 the prior two years, the amount of megawatt-hours needed to meet the
24 annual renewable energy target, the amount of megawatt-hours of each
25 type of eligible renewable resource acquired, the type and amount of
26 renewable energy credits acquired, and the percent of its total
27 annual retail revenue requirement invested in the incremental cost of
28 eligible renewable resources and the cost of renewable energy
29 credits. For each year that a qualifying utility elects to
30 demonstrate alternative compliance under RCW 19.285.040(2) ~~((d) or~~
31 ~~(i))~~ (j) or 19.285.050(1), it must include in its annual report
32 relevant data to demonstrate that it met the criteria in that
33 section. A qualifying utility may submit its report to the department
34 in conjunction with its annual obligations in chapter 19.29A RCW.

35 (2) ~~((A qualifying utility that is an))~~ On or before June 1,
36 2022, and annually thereafter, each small utility shall report to the
37 department on its progress in the preceding year in meeting the
38 conservation targets established in RCW 19.285.040, including
39 biennial retail load calculations, expected electricity savings,

1 expenditures on conservation, actual electricity savings results, and
2 if applicable, market customers' aggregated conservation expenditures
3 and savings.

4 (3) On or before June 1, 2022, and annually thereafter, each
5 natural gas utility shall report to the commission on its progress in
6 the preceding year in meeting the conservation targets established in
7 RCW 19.285.040, including biennial retail load calculations, expected
8 natural gas savings, expenditures on conservation, and actual natural
9 gas savings results. The report must include an assessment of the
10 utility's expected timeline for serving its retail load with fifty
11 percent renewable natural gas, seventy percent renewable natural gas,
12 and ninety percent renewable natural gas. For the purposes of this
13 subsection, "renewable natural gas" means a methane-rich gas derived
14 from organic feedstocks that has been conditioned to meet standards
15 for natural gas derived from fossil fuel sources.

16 (4) On or before June 1, 2019, and each year thereafter, each
17 consumer-owned qualifying utility, small utility, and market customer
18 shall report to the department on the electricity resources used to
19 meet any new energy or capacity needs in accordance with section 4 of
20 this act, including but not limited to the amount of megawatt-hours
21 or megawatts needed, and the amount of megawatt-hours of each type of
22 resource acquired, including those resources exempted from compliance
23 under section 4(4) of this act.

24 (5) Each investor-owned utility shall also report all information
25 required in subsection (1) of this section to the commission, and
26 ((all other qualifying utilities)) each consumer-owned utility shall
27 also make all information required in subsections (1) through (4) of
28 this section available to the auditor.

29 ((3) A) (6) Each qualifying utility, natural gas utility, and
30 small utility shall also make reports required in this section
31 available to its customers.

32 (7) Each market customer shall make all information required in
33 subsection (4) of this section available to the office of the
34 attorney general.

35 **Sec. 7.** RCW 19.285.080 and 2017 c 315 s 3 are each amended to
36 read as follows:

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

1 (2) The department shall adopt rules concerning only process,
2 timelines, and documentation to ensure the proper implementation of
3 this chapter as it applies to (~~qualifying utilities that are not~~
4 ~~investor-owned~~) consumer-owned utilities. Those rules include, but
5 are not limited to, rules associated with a qualifying utility's
6 development of conservation targets under RCW 19.285.040(1); a small
7 utility's conservation acquisition targets under RCW 19.285.040; a
8 qualifying utility's decision to pursue alternative compliance in RCW
9 19.285.040(2) (~~(d) or (i)~~) (j) or 19.285.050(1); the format and
10 content of reports required in RCW 19.285.070; and the development of
11 a methodology for calculating baseline levels of generation under RCW
12 19.285.030(12)(~~(f)~~) (g). Nothing in this subsection may be
13 construed to restrict the rate-making authority of the commission, a
14 qualifying utility, or a (~~qualifying~~) small utility as otherwise
15 provided by law.

16 (3) The department shall adopt rules to ensure proper
17 implementation of this chapter as it applies to market customers. The
18 rules must include, but are not limited to, rules associated with a
19 market customer's acquisition of resources in accordance with section
20 4 of this act and the format and content of reports required under
21 RCW 19.285.070.

22 (4) The commission and department may coordinate in developing
23 rules related to process, timelines, and documentation that are
24 necessary for implementation of this chapter.

25 (~~(4)~~) (5) Pursuant to the administrative procedure act, chapter
26 34.05 RCW, rules needed for the implementation of this chapter must
27 be adopted by December 31, 2007. These rules may be revised as needed
28 to carry out the intent and purposes of this chapter.

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