
HOUSE BILL 2402

State of Washington

65th Legislature

2018 Regular Session

By Representatives Tarleton, Slatter, Macri, Pollet, and Doglio

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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 one and one-half percent of the natural gas utility's retail load, as
2 calculated for the biennium.

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

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

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

29 (iii) Beginning January 1, 2012, and until December 31, 2017, a
30 qualifying utility with an industrial facility located in a county
31 with a population between ninety-five thousand and one hundred
32 fifteen thousand that is directly interconnected with electricity
33 facilities that are capable of carrying electricity at transmission
34 voltage may use cost-effective conservation from that industrial
35 facility in excess of its biennial acquisition target to help meet
36 the immediately subsequent two biennial acquisition targets, such
37 that no more than twenty-five percent of any biennial target may be
38 met with excess conservation savings allowed under all of the
39 provisions of this section combined.

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

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

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

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

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

38 (l)(i) The commission and department shall adopt rules requiring
39 qualifying utilities, natural gas utilities, and small utilities to
40 meet biennial conservation targets through programs that serve all

1 customer segments, including programs specifically for low-income
2 residential customers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (c) A qualifying utility may count distributed generation at
2 double the facility's electrical output if the utility: (i) Owns or
3 has contracted for the distributed generation and the associated
4 renewable energy credits; or (ii) has contracted to purchase the
5 associated renewable energy credits.

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

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

21 (e) Any utility acquiring a retail electric customer or customers
22 that were formerly served in the same physical location by a
23 qualifying utility shall comply with (a) of this subsection if the
24 former utility is a consumer-owned utility, or (b) of this subsection
25 if the former utility is an investor-owned utility when serving the
26 entire retail load of the customer or customers.

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

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

33 (i) Eligible renewable resources or distributed generation where
34 the associated renewable energy credits are owned by a separate
35 entity; or

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

39 ~~((g))~~ (h) Where fossil and combustible renewable resources are
40 cofired in one generating unit located in the Pacific Northwest where

1 the cofiring commenced after March 31, 1999, the unit shall be
2 considered to produce eligible renewable resources in direct
3 proportion to the percentage of the total heat value represented by
4 the heat value of the renewable resources.

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

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

10 (B) Where the developer of the facility used apprenticeship
11 programs that include low-income trainees and in which at least
12 thirty percent of the trainees qualify as low-income. The
13 apprenticeship program must be approved by the council during
14 facility construction.

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

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

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

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

25 (j) A qualifying utility shall be considered in compliance with
26 an annual target in (a) of this subsection if events beyond the
27 reasonable control of the utility that could not have been reasonably
28 anticipated or ameliorated prevented it from meeting the renewable
29 energy target. Such events include weather-related damage, mechanical
30 failure, strikes, lockouts, and actions of a governmental authority
31 that adversely affect the generation, transmission, or distribution
32 of an eligible renewable resource under contract to a qualifying
33 utility.

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

38 (ii) A qualifying utility may no longer use electricity and
39 associated renewable energy credits from a qualified biomass energy
40 facility if the associated industrial pulping or wood manufacturing

1 facility ceases operation other than for purposes of maintenance or
2 upgrade.

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

17 (m) Beginning January 1, 2018, a qualifying utility or small
18 utility may use eligible renewable resources as identified in RCW
19 19.285.030(12)(f) to meet its compliance obligations under this
20 section. A qualifying utility may not transfer or sell these eligible
21 renewable resources to another utility for compliance purposes under
22 this chapter.

23 (3) Utilities that become qualifying utilities after December 31,
24 2006, shall meet the requirements in this section on a time frame
25 comparable in length to that provided for qualifying utilities as of
26 December 7, 2006.

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

29 (1) Except as provided in RCW 19.285.040(2)(a) or in subsection
30 (4) of this section, each consumer-owned qualifying utility, small
31 utility, and market customer may not use electricity from any of the
32 following resources to meet any new energy or capacity needs:

33 (a) Coal-fired generation;

34 (b) Hydroelectric generation that requires new diversions, new
35 impoundments, new bypass reaches, or expansion of existing reservoirs
36 unless the diversions, bypass reaches, or reservoir expansions are
37 necessary for the operation of a pumped storage facility that: (i)
38 Does not conflict with existing state or federal fish recovery plans;

1 and (ii) complies with all local, state, and federal laws and
2 regulations;

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

5 (d) Nuclear generation;

6 (e) Oil or diesel generation; or

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

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

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

14 (ii) Contractual commitment after April 1, 2018, that obligates
15 or allows a consumer-owned qualifying utility, small utility, or
16 market customer to purchase a specified amount of megawatts or
17 megawatt-hours from an electricity generation facility or unit, or a
18 specified percentage of an electricity generation facility or unit.

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

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

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

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

5 (b) Short-term spot market purchases;

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

9 (d) Coal transition power through 2025;

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

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

19 (g) Increased megawatt-hours from a generation facility that is
20 owned by a consumer-owned qualifying utility or a small utility as of
21 the effective date of this section, where the consumer-owned
22 qualifying utility or small utility uses the increased megawatt-hours
23 to serve the utility's customers and where the utility's ownership
24 interest in the facility does not increase;

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

30 (i) Electricity generation from any natural gas-fired generation
31 facility that is in operation as of the effective date of this
32 section where the total amount of natural gas generation acquired
33 from all additions does not exceed five percent of the utility's or
34 market customer's retail load for each year.

35 (5) The requirements of this section do not replace or modify the
36 requirements established under RCW 19.285.040 for a consumer-owned
37 qualifying utility, small utility, or market customer. A consumer-
38 owned qualifying utility, small utility, or market customer must
39 comply with the requirements of this section in addition to the
40 requirements imposed elsewhere in this chapter. As provided in

1 subsection (3) of this section, the portion of any resource or
2 resources used to meet new energy or capacity needs under this
3 section may not be used for compliance with the requirements under
4 RCW 19.285.040.

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

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

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

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

25 (4) A natural gas utility that fails to comply with the energy
26 conservation targets established in RCW 19.285.040 shall pay an
27 administrative penalty to the state of Washington in the amount of
28 fifty dollars for each dekatherm of shortfall. Beginning January 1,
29 2020, this penalty must be adjusted annually according to the rate of
30 the change of the inflation indicator, gross domestic product-
31 implicit price deflator, as published by the bureau of economic
32 analysis of the United States department of commerce or its
33 successor.

34 (5) A consumer-owned qualifying utility, small utility, or market
35 customer that fails to comply with the requirements regarding new
36 energy or capacity needs established in section 4 of this act shall
37 pay an administrative penalty to the state of Washington of fifty
38 dollars for each megawatt-hour of energy or megawatt of capacity from
39 a generation resource listed in section 4(1) of this act that was

1 used to meet new energy or capacity needs. This penalty must be
2 adjusted annually according to the rate of change of the inflation
3 indicator, gross domestic product-implicit price deflator, as
4 published by the bureau of economic analysis of the United States
5 department of commerce or its successor.

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

10 ~~((+4))~~ (7) A natural gas utility must notify its retail natural
11 gas customers in published form within three months of incurring a
12 penalty regarding the size of the penalty and the reason it was
13 incurred.

14 (8) The commission shall determine if an investor-owned utility
15 may recover the cost of this administrative penalty in electric or
16 natural gas rates, and may consider providing positive incentives for
17 an investor-owned utility to exceed the targets established in RCW
18 19.285.040.

19 ~~((+5))~~ (9) Administrative penalties collected under this chapter
20 shall be deposited into the energy independence act special account
21 which is hereby created. All receipts from administrative penalties
22 collected under this chapter must be deposited into the account.
23 Expenditures from the account may be used only for the purchase of
24 renewable energy credits or for energy conservation projects at
25 public facilities, local government facilities, community colleges,
26 or state universities. The state shall own and retire any renewable
27 energy credits purchased using moneys from the account. Only the
28 director of enterprise services or the director's designee may
29 authorize expenditures from the account. The account is subject to
30 allotment procedures under chapter 43.88 RCW, but an appropriation is
31 not required for expenditures.

32 ~~((+6))~~ (10) For ~~((a qualifying utility that is))~~ an investor-
33 owned utility, the commission shall determine compliance with the
34 provisions of this chapter and assess penalties for noncompliance as
35 provided in subsection (1) of this section.

36 ~~((+7))~~ (11) For ~~((qualifying utilities that are not investor-~~
37 owned utilities)) a consumer-owned utility and a small utility, the
38 auditor is responsible for auditing compliance with this chapter and
39 rules adopted under this chapter that apply to those utilities and
40 the attorney general is responsible for enforcing that compliance.

1 (12) For a market customer, the attorney general is responsible
2 for enforcing compliance with this chapter, except that the
3 commission is responsible for enforcing compliance with RCW
4 19.285.040 for a market customer of an investor-owned utility.

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

7 (1) On or before June 1, 2012, and annually thereafter, each
8 qualifying utility shall report to the department on its progress in
9 the preceding year in meeting the targets established in RCW
10 19.285.040, including expected electricity savings from the biennial
11 conservation target, expenditures on conservation, actual electricity
12 savings results, market customers' aggregated conservation
13 expenditures and savings if applicable, the utility's annual load for
14 the prior two years, the amount of megawatt-hours needed to meet the
15 annual renewable energy target, the amount of megawatt-hours of each
16 type of eligible renewable resource acquired, the type and amount of
17 renewable energy credits acquired, and the percent of its total
18 annual retail revenue requirement invested in the incremental cost of
19 eligible renewable resources and the cost of renewable energy
20 credits. For each year that a qualifying utility elects to
21 demonstrate alternative compliance under RCW 19.285.040(2) (~~((d) or~~
22 ~~(i))~~) (j) or 19.285.050(1), it must include in its annual report
23 relevant data to demonstrate that it met the criteria in that
24 section. A qualifying utility may submit its report to the department
25 in conjunction with its annual obligations in chapter 19.29A RCW.

26 (2) (~~A qualifying utility that is an~~) On or before June 1,
27 2022, and annually thereafter, each small utility shall report to the
28 department on its progress in the preceding year in meeting the
29 conservation targets established in RCW 19.285.040, including
30 biennial retail load calculations, expected electricity savings,
31 expenditures on conservation, actual electricity savings results, and
32 if applicable, market customers' aggregated conservation expenditures
33 and savings.

34 (3) On or before June 1, 2022, and annually thereafter, each
35 natural gas utility shall report to the commission on its progress in
36 the preceding year in meeting the conservation targets established in
37 RCW 19.285.040, including biennial retail load calculations, expected
38 natural gas savings, expenditures on conservation, and actual natural
39 gas savings results.

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

9 (5) Each investor-owned utility shall also report all information
10 required in subsection (1) of this section to the commission, and
11 ((all other qualifying utilities)) each consumer-owned utility shall
12 also make all information required in subsections (1) through (4) of
13 this section available to the auditor.

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

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

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

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

25 (2) The department shall adopt rules concerning only process,
26 timelines, and documentation to ensure the proper implementation of
27 this chapter as it applies to ((qualifying utilities that are not
28 investor-owned)) consumer-owned utilities. Those rules include, but
29 are not limited to, rules associated with a qualifying utility's
30 development of conservation targets under RCW 19.285.040(1); a small
31 utility's conservation acquisition targets under RCW 19.285.040; a
32 qualifying utility's decision to pursue alternative compliance in RCW
33 19.285.040(2) ((d) or (i)) (j) or 19.285.050(1); the format and
34 content of reports required in RCW 19.285.070; and the development of
35 a methodology for calculating baseline levels of generation under RCW
36 19.285.030(12) ((f)) (g). Nothing in this subsection may be
37 construed to restrict the rate-making authority of the commission, a
38 qualifying utility, or a ((qualifying)) small utility as otherwise
39 provided by law.

1 (3) The department shall adopt rules to ensure proper
2 implementation of this chapter as it applies to market customers. The
3 rules must include, but are not limited to, rules associated with a
4 market customer's acquisition of resources in accordance with section
5 4 of this act and the format and content of reports required under
6 RCW 19.285.070.

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

10 (~~(4)~~) (5) Pursuant to the administrative procedure act, chapter
11 34.05 RCW, rules needed for the implementation of this chapter must
12 be adopted by December 31, 2007. These rules may be revised as needed
13 to carry out the intent and purposes of this chapter.

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