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HOUSE BILL 2839

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State of Washington

65th Legislature

2018 Regular Session

By Representatives Morris, Slatter, Doglio, and Fitzgibbon

Read first time 01/17/18. Referred to Committee on Technology & Economic Development.

1 AN ACT Relating to authorizing an alternative form of regulation  
2 of electrical and natural gas companies; amending RCW 80.28.005 and  
3 80.28.010; adding a new section to chapter 80.28 RCW; and creating a  
4 new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the electrical  
7 and natural gas utility industry is facing a transformational change  
8 brought on by new technology, rapidly changing costs, and emerging  
9 opportunities for customers. The legislature finds that similar  
10 changes in technology and customer preferences have swiftly altered  
11 other industries and intends for Washington's electrical and natural  
12 gas utility regulatory environment to continue to protect consumers  
13 while enabling regulated utilities to systematically respond to new  
14 technologies and opportunities. The legislature intends to ensure  
15 that consumers receive cost-effective, reliable, and environmentally  
16 responsible services by authorizing the Washington utilities and  
17 transportation commission to employ alternative forms of regulation  
18 to traditional rate-based, rate of return regulation for electrical  
19 and gas companies. The legislature finds that a similar update to the  
20 utility and transportation commission's statutory grant of authority  
21 for telecommunications customers a decade ago serves as a reasonable

1 model. The legislature intends that the utility and transportation  
2 commission will utilize alternative forms of regulation to further  
3 the state's public policy goals by ensuring that electrical and gas  
4 companies are incentivized to invest to meet state policy objectives.

5 The legislature intends that an alternative form of regulation  
6 should: Enable utility services designed to support optimal and  
7 efficient use of the electrical or natural gas system and utility  
8 operations; maintain and enhance overall electrical or natural gas  
9 system reliability and security; allow electrical or natural gas  
10 companies to support and participate in market transformation for  
11 enabling technologies, without harming competition; maximize the  
12 value of new business opportunities to utility customers, especially  
13 low-income customers; protect utility customers from undue risk;  
14 ensure an appropriate level of consumer protection; and support the  
15 achievement of state emissions reduction goals.

16 **Sec. 2.** RCW 80.28.005 and 1994 c 268 s 1 are each amended to  
17 read as follows:

18 (~~Unless the context clearly requires otherwise,~~) The  
19 definitions in this section apply throughout this chapter unless the  
20 context clearly requires otherwise.

21 (1) "Bondable conservation investment" means all expenditures  
22 made by electrical, gas, or water companies with respect to energy or  
23 water conservation measures and services intended to improve the  
24 efficiency of electricity, gas, or water end use, including related  
25 carrying costs if:

26 (a) The conservation measures and services do not produce assets  
27 that would be bondable utility property under the general utility  
28 mortgage of the electrical, gas, or water company;

29 (b) The commission has determined that the expenditures were  
30 incurred in conformance with the terms and conditions of a  
31 conservation service tariff in effect with the commission at the time  
32 the costs were incurred, and at the time of such determination the  
33 commission finds that the company has proven that the costs were  
34 prudent, that the terms and conditions of the financing are  
35 reasonable, and that financing under this chapter is more favorable  
36 to the customer than other reasonably available alternatives;

37 (c) The commission has approved inclusion of the expenditures in  
38 rate base and has not ordered that they be currently expensed; and

1 (d) The commission has not required that the measures demonstrate  
2 that energy savings have persisted at a certain level for a certain  
3 period before approving the cost of these investments as bondable  
4 conservation investment.

5 (2) "Conservation bonds" means bonds, notes, certificates of  
6 beneficial interests in trusts, or other evidences of indebtedness or  
7 ownership that:

8 (a) The commission determines at or before the time of issuance  
9 are issued to finance or refinance bondable conservation investment  
10 by an electrical, gas or water company; and

11 (b) Rely partly or wholly for repayment on conservation  
12 investment assets and revenues arising with respect thereto.

13 (3) "Conservation investment assets" means the statutory right of  
14 an electrical, gas, or water company:

15 (a) To have included in rate base all of its bondable  
16 conservation investment and related carrying costs; and

17 (b) To receive through rates revenues sufficient to recover the  
18 bondable conservation investment and the costs of equity and debt  
19 capital associated with it, including, without limitation, the  
20 payment of principal, premium, if any, and interest on conservation  
21 bonds.

22 (4) "Finance subsidiary" means any corporation, company,  
23 association, joint stock association, or trust that is beneficially  
24 owned, directly or indirectly, by an electrical, gas, or water  
25 company, or in the case of a trust issuing conservation bonds  
26 consisting of beneficial interests, for which an electrical, gas, or  
27 water company or a subsidiary thereof is the grantor, or an  
28 unaffiliated entity formed for the purpose of financing or  
29 refinancing approved conservation investment, and that acquires  
30 conservation investment assets directly or indirectly from such  
31 company in a transaction approved by the commission.

32 (5) "Carbon planning adder" means a calculation of the economic  
33 impacts associated with an incremental increase in carbon dioxide  
34 emissions in a calendar year and must be an amount equal to the  
35 greater of: (a) The minimum annual carbon planning adder for such a  
36 calendar year; or (b) the applicable carbon tax rate, if any, as  
37 expressed in dollars per metric ton of carbon dioxide for such a  
38 calendar year.

39 (6) "Minimum annual carbon planning adder" means, for calendar  
40 year 2018, forty dollars per metric ton of carbon dioxide, which

1 amount must be increased each January 1st by one and one-quarter  
2 percent, rounded to the nearest dollar.

3 **Sec. 3.** RCW 80.28.010 and 2011 c 214 s 11 are each amended to  
4 read as follows:

5 (1) All charges made, demanded or received by any gas company,  
6 electrical company, wastewater company, or water company for gas,  
7 electricity or water, or for any service rendered or to be rendered  
8 in connection therewith, shall be just, fair, reasonable and  
9 sufficient. Reasonable charges necessary to cover the cost of  
10 administering the collection of voluntary donations for the purposes  
11 of supporting the development and implementation of evergreen  
12 community management plans and ordinances under RCW 80.28.300 must be  
13 deemed as prudent and necessary for the operation of a utility.

14 (2) Every gas company, electrical company, wastewater company,  
15 and water company shall furnish and supply such service,  
16 instrumentalities and facilities as shall be safe, adequate and  
17 efficient, and in all respects just and reasonable.

18 (3) All rules and regulations issued by any gas company,  
19 electrical company, wastewater company, or water company, affecting  
20 or pertaining to the sale or distribution of its product or service,  
21 must be just and reasonable.

22 (4) Utility service for residential space heating shall not be  
23 terminated between November 15<sup>th</sup> through March 15<sup>th</sup> if the customer:

24 (a) Notifies the utility of the inability to pay the bill,  
25 including a security deposit. This notice should be provided within  
26 five business days of receiving a payment overdue notice unless there  
27 are extenuating circumstances. If the customer fails to notify the  
28 utility within five business days and service is terminated, the  
29 customer can, by paying reconnection charges, if any, and fulfilling  
30 the requirements of this section, receive the protections of this  
31 chapter;

32 (b) Provides self-certification of household income for the prior  
33 twelve months to a grantee of the department of commerce, which  
34 administers federally funded energy assistance programs. The grantee  
35 shall determine that the household income does not exceed the maximum  
36 allowed for eligibility under the state's plan for low-income energy  
37 assistance under 42 U.S.C. 8624 and shall provide a dollar figure  
38 that is seven percent of household income. The grantee may verify  
39 information provided in the self-certification;

1 (c) Has applied for home heating assistance from applicable  
2 government and private sector organizations and certifies that any  
3 assistance received will be applied to the current bill and future  
4 utility bills;

5 (d) Has applied for low-income weatherization assistance to the  
6 utility or other appropriate agency if such assistance is available  
7 for the dwelling;

8 (e) Agrees to a payment plan and agrees to maintain the payment  
9 plan. The plan will be designed both to pay the past due bill by the  
10 following October 15th and to pay for continued utility service. If  
11 the past due bill is not paid by the following October 15<sup>th</sup>, the  
12 customer is not eligible for protections under this chapter until the  
13 past due bill is paid. The plan may not require monthly payments in  
14 excess of seven percent of the customer's monthly income plus one-  
15 twelfth of any arrearage accrued from the date application is made  
16 and thereafter during November 15<sup>th</sup> through March 15<sup>th</sup>. A customer  
17 may agree to pay a higher percentage during this period, but shall  
18 not be in default unless payment during this period is less than  
19 seven percent of monthly income plus one-twelfth of any arrearage  
20 accrued from the date application is made and thereafter. If  
21 assistance payments are received by the customer subsequent to  
22 implementation of the plan, the customer shall contact the utility to  
23 reformulate the plan; and

24 (f) Agrees to pay the moneys owed even if he or she moves.

25 (5) The utility shall:

26 (a) Include in any notice that an account is delinquent and that  
27 service may be subject to termination, a description of the  
28 customer's duties in this section;

29 (b) Assist the customer in fulfilling the requirements under this  
30 section;

31 (c) Be authorized to transfer an account to a new residence when  
32 a customer who has established a plan under this section moves from  
33 one residence to another within the same utility service area;

34 (d) Be permitted to disconnect service if the customer fails to  
35 honor the payment program. Utilities may continue to disconnect  
36 service for those practices authorized by law other than for  
37 nonpayment as provided for in this subsection. Customers who qualify  
38 for payment plans under this section who default on their payment  
39 plans and are disconnected can be reconnected and maintain the  
40 protections afforded under this chapter by paying reconnection

1 charges, if any, and by paying all amounts that would have been due  
2 and owing under the terms of the applicable payment plan, absent  
3 default, on the date on which service is reconnected; and

4 (e) Advise the customer in writing at the time it disconnects  
5 service that it will restore service if the customer contacts the  
6 utility and fulfills the other requirements of this section.

7 (6) A payment plan implemented under this section is consistent  
8 with RCW 80.28.080.

9 (7) Every gas company and electrical company shall offer  
10 residential customers the option of a budget billing or equal payment  
11 plan. The budget billing or equal payment plan shall be offered low-  
12 income customers eligible under the state's plan for low-income  
13 energy assistance prepared in accordance with 42 U.S.C. 8624(C)(1)  
14 without limiting availability to certain months of the year, without  
15 regard to the length of time the customer has occupied the premises,  
16 and without regard to whether the customer is the tenant or owner of  
17 the premises occupied.

18 (8) Every gas company, electrical company, wastewater company,  
19 and water company shall construct and maintain such facilities in  
20 connection with the manufacture and distribution of its product, or  
21 provision of its services, as will be efficient and safe to its  
22 employees and the public.

23 (9) An agreement between the customer and the utility, whether  
24 oral or written, does not waive the protections afforded under this  
25 chapter.

26 (10) In establishing rates or charges for water service, water  
27 companies as defined in RCW 80.04.010 may consider the achievement of  
28 water conservation goals and the discouragement of wasteful water use  
29 practices.

30 (11)(a) Electrical companies, gas companies, and the commission  
31 shall use the carbon planning adder when evaluating and selecting  
32 conservation policies, programs, and targets.

33 (b) Electrical companies shall use the carbon planning adder in:  
34 (i) Developing and evaluating integrated resource plans pursuant to  
35 chapter 19.280 RCW; and (ii) evaluating and selecting long-term  
36 resource options.

37 (c) For the purposes of this subsection, gas consisting largely  
38 of methane and other hydrocarbons derived from the decomposition of  
39 organic material in landfills, wastewater treatment facilities, and  
40 anaerobic digesters must be considered a nonemitting resource.

1 (d) For the purposes of this subsection, "long-term resource  
2 options" means:

3 (i) Either a new ownership interest in electric plant or an  
4 upgrade to an existing electric plant; or

5 (ii) A new or renewed contract for electricity with a term of  
6 five or more years for the provision of power to retail end-use  
7 customers in this state.

8 NEW SECTION. Sec. 4. A new section is added to chapter 80.28  
9 RCW to read as follows:

10 (1) The legislature declares that changes in technology and the  
11 structure of the energy industry may produce conditions under which  
12 traditional rate of return, rate-based regulation of electrical and  
13 gas companies may not in all cases provide the most efficient and  
14 effective means of achieving the legislature's intent and the public  
15 policy goals of this state as declared in chapters 19.280 and 19.285  
16 RCW and this title. The commission should be authorized to employ an  
17 alternative form of regulation if that alternative is better suited  
18 to achieving those policy goals.

19 (2)(a) Subject to the conditions set forth in this chapter, the  
20 commission may regulate an electrical or gas company by authorizing  
21 an alternative form of regulation. The commission may determine the  
22 manner and extent of any alternative form of regulation as may be  
23 appropriate in the public interest, including, but not limited to,  
24 authorizing an alternative form of regulation for all or individual  
25 utility services.

26 (b) The commission shall consider the extent to which an  
27 alternative form of regulation is expected to:

28 (i) Align utility regulatory incentives with the public interest;

29 (ii) Maintain and enhance the ability of the electrical or gas  
30 company to furnish safe, adequate, and efficient service to its  
31 customers;

32 (iii) Support prudent and efficient use of the electrical or  
33 natural gas system and utility operations;

34 (iv) Maintain and enhance overall electrical or natural gas  
35 system reliability, security, and resilience;

36 (v) Allow an electrical or gas company to support and participate  
37 in market transformation for enabling technologies without harming  
38 competition;

1 (vi) Allow an electrical or gas company to be financially  
2 indifferent as to: (A) The ownership of the property necessary to  
3 furnish utility service to its customers; or (B) the quantity of  
4 electricity or gas sold to its customers;

5 (vii) Protect customers, especially low-income customers, from  
6 undue risk;

7 (viii) Ensure an appropriate level of consumer protection; and

8 (ix) Support the achievement of state emissions reduction goals.

9 (3) An electrical or gas company may petition the commission to  
10 establish an alternative form of regulation. The electrical or gas  
11 company shall submit with the petition a plan for an alternative form  
12 of regulation, which may include provisions establishing a reasonable  
13 range for rate of return on investment. The plan must contain a  
14 proposal for transition to the alternative form of regulation and the  
15 proposed duration of the plan. The plan must also contain a proposal  
16 for ensuring adequate customer service quality, including service  
17 quality standards, and appropriate enforcement or remedial provisions  
18 in the event the company fails to meet service quality standards or  
19 performance measures. The commission also may initiate consideration  
20 of alternative forms of regulation for a company or companies on its  
21 own motion. The commission, after notice and hearing, shall issue an  
22 order accepting, modifying, or rejecting the plan within eleven  
23 months after the petition or motion is filed, unless extended by the  
24 commission for good cause. Nothing in this section may be interpreted  
25 as requiring an electrical or gas company to submit a petition for a  
26 plan for an alternative form of regulation as part of or concurrent  
27 with a general rate case or other proceeding for recovery of costs of  
28 such a company.

29 (4) Not later than sixty days from the entry of the commission's  
30 order, the electrical or gas company affected by the order shall file  
31 with the commission: (a) An election to proceed with the alternative  
32 form of regulation as authorized by the commission; or (b) an  
33 election not to proceed with the alternative form of regulation as  
34 authorized by the commission.

35 (5) The commission may waive such a regulatory requirement under  
36 this title for an electrical or gas company subject to an alternative  
37 form of regulation as may be appropriate to facilitate the  
38 implementation of this section. However, as part of a proceeding to  
39 consider alternative forms of regulation, the commission may not  
40 waive any grant of legal rights to any person contained in this



1 chapter and chapter 80.04 RCW. The commission may waive different  
2 regulatory requirements for different electrical or gas companies or  
3 services if the different treatment is in the public interest.

4 (6) Upon petition by the electrical or gas company, and after  
5 notice and hearing, the commission may rescind or modify an  
6 alternative form of regulation in the manner requested by the  
7 electrical or gas company.

8 (7) The commission or any person may file a complaint under RCW  
9 80.04.110 alleging that an electrical or gas company under an  
10 alternative form of regulation has not complied with the terms and  
11 conditions set forth in the alternative form of regulation. The  
12 complainant bears the burden of proving the allegations in the  
13 complaint.

14 (8) During a state of emergency declared under RCW 43.06.010(12),  
15 the governor may waive or suspend the operation or enforcement of  
16 this section or any portion of this section or under any  
17 administrative rule, and issue any orders to facilitate the operation  
18 of state or local government or to promote and secure the safety and  
19 protection of the civilian population.

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