
SUBSTITUTE SENATE BILL 6424

State of Washington

65th Legislature

2018 Regular Session

By Senate Energy, Environment & Technology (originally sponsored by Senators Carlyle, Fain, Palumbo, and Saldaña)

READ FIRST TIME 02/02/18.

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 utilities and transportation commission's statutory grant of
21 authority for telecommunications customers a decade ago serves as a

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

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

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

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

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

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

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

38 (c) The commission has approved inclusion of the expenditures in
39 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) "Greenhouse gas" and "greenhouse gases" has the same meaning
33 as defined in RCW 70.235.010.

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

1 metric ton of carbon dioxide or greenhouse gas for such a calendar
2 year.

3 (7) "Intermediate-term resource options" means a new or renewed
4 contract for electricity or natural gas with a term of more than
5 three but less than five years for the provision of electricity or
6 natural gas to retail end-use customers in this state.

7 (8) "Long-term resource options" means:

8 (a) Either a new ownership interest in an electric or gas plant
9 or an upgrade to an existing electric plant; or

10 (b) A new or renewed contract for electricity or natural gas with
11 a term of five or more years for the provision of electricity or
12 natural gas to retail end-use customers in this state.

13 (9) "Minimum annual greenhouse gas planning adder" means, for
14 calendar year 2018, forty dollars per metric ton of greenhouse gas,
15 which amount must be increased each January 1st by one and one-fourth
16 percent, rounded to the nearest dollar.

17 (10) "Qualified biomass energy" has the same meaning as defined
18 in RCW 19.285.030.

19 (11) "Upgrade" means any modification made for the primary
20 purpose of increasing the electric generation capacity of an electric
21 generation facility. "Upgrade" does not include routine or necessary
22 maintenance, installation of emission control equipment,
23 installation, replacement, or modification of equipment that improves
24 the heat rate of the facility, or installation, replacement, or
25 modification of equipment for the primary purpose of maintaining
26 reliable generation output capability that does not increase the heat
27 input or fuel usage.

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

30 (1) All charges made, demanded or received by any gas company,
31 electrical company, wastewater company, or water company for gas,
32 electricity or water, or for any service rendered or to be rendered
33 in connection therewith, shall be just, fair, reasonable and
34 sufficient. Reasonable charges necessary to cover the cost of
35 administering the collection of voluntary donations for the purposes
36 of supporting the development and implementation of evergreen
37 community management plans and ordinances under RCW 80.28.300 must be
38 deemed as prudent and necessary for the operation of a utility.

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

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

9 (4) Utility service for residential space heating shall not be
10 terminated between November 15th through March 15th if the customer:

11 (a) Notifies the utility of the inability to pay the bill,
12 including a security deposit. This notice should be provided within
13 five business days of receiving a payment overdue notice unless there
14 are extenuating circumstances. If the customer fails to notify the
15 utility within five business days and service is terminated, the
16 customer can, by paying reconnection charges, if any, and fulfilling
17 the requirements of this section, receive the protections of this
18 chapter;

19 (b) Provides self-certification of household income for the prior
20 twelve months to a grantee of the department of commerce, which
21 administers federally funded energy assistance programs. The grantee
22 shall determine that the household income does not exceed the maximum
23 allowed for eligibility under the state's plan for low-income energy
24 assistance under 42 U.S.C. 8624 and shall provide a dollar figure
25 that is seven percent of household income. The grantee may verify
26 information provided in the self-certification;

27 (c) Has applied for home heating assistance from applicable
28 government and private sector organizations and certifies that any
29 assistance received will be applied to the current bill and future
30 utility bills;

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

34 (e) Agrees to a payment plan and agrees to maintain the payment
35 plan. The plan will be designed both to pay the past due bill by the
36 following October 15th and to pay for continued utility service. If
37 the past due bill is not paid by the following October 15th, the
38 customer is not eligible for protections under this chapter until the
39 past due bill is paid. The plan may not require monthly payments in
40 excess of seven percent of the customer's monthly income plus one-

1 twelfth of any arrearage accrued from the date application is made
2 and thereafter during November 15th through March 15th. A customer
3 may agree to pay a higher percentage during this period, but shall
4 not be in default unless payment during this period is less than
5 seven percent of monthly income plus one-twelfth of any arrearage
6 accrued from the date application is made and thereafter. If
7 assistance payments are received by the customer subsequent to
8 implementation of the plan, the customer shall contact the utility to
9 reformulate the plan; and

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

11 (5) The utility shall:

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

15 (b) Assist the customer in fulfilling the requirements under this
16 section;

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

20 (d) Be permitted to disconnect service if the customer fails to
21 honor the payment program. Utilities may continue to disconnect
22 service for those practices authorized by law other than for
23 nonpayment as provided for in this subsection. Customers who qualify
24 for payment plans under this section who default on their payment
25 plans and are disconnected can be reconnected and maintain the
26 protections afforded under this chapter by paying reconnection
27 charges, if any, and by paying all amounts that would have been due
28 and owing under the terms of the applicable payment plan, absent
29 default, on the date on which service is reconnected; and

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

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

35 (7) Every gas company and electrical company shall offer
36 residential customers the option of a budget billing or equal payment
37 plan. The budget billing or equal payment plan shall be offered low-
38 income customers eligible under the state's plan for low-income
39 energy assistance prepared in accordance with 42 U.S.C. 8624(C)(1)
40 without limiting availability to certain months of the year, without

1 regard to the length of time the customer has occupied the premises,
2 and without regard to whether the customer is the tenant or owner of
3 the premises occupied.

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

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

12 (10) In establishing rates or charges for water service, water
13 companies as defined in RCW 80.04.010 may consider the achievement of
14 water conservation goals and the discouragement of wasteful water use
15 practices.

16 (11)(a) Electrical companies, gas companies, and the commission
17 shall use the greenhouse gas planning adder when evaluating and
18 selecting conservation policies, programs, and targets.

19 (b)(i) Electrical companies shall use the greenhouse gas planning
20 adder in developing and evaluating integrated resource plans pursuant
21 to chapter 19.280 RCW; and

22 (ii) Gas companies shall use the greenhouse gas planning adder in
23 developing integrated resource plans that describe a mix of natural
24 gas, biogas, or synthetic gas and conservation designated to meet
25 current and future needs at the lowest reasonable costs to the gas
26 company and its customers.

27 (c) Electrical companies and gas companies shall use the
28 greenhouse gas planning adder in evaluating and selecting
29 intermediate-term and long-term resource options.

30 (d) The commission shall use the greenhouse gas planning adder in
31 evaluating integrated resource plans and intermediate-term and long-
32 term resource options selected by electrical companies and gas
33 companies under this subsection.

34 (e) For the purposes of this subsection: (i) Gas consisting
35 largely of methane and other hydrocarbons derived from the
36 decomposition of organic material in landfills, wastewater treatment
37 facilities, and anaerobic digesters must be considered a nonemitting
38 resource; and (ii) qualified biomass energy must be considered a
39 nonemitting resource.

1 (f) A multistate electric company with retail customers and
2 generation located outside the state of Washington shall use the
3 greenhouse gas planning adder pursuant to this subsection beginning
4 January 1, 2020.

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

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

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

23 (b) The commission shall consider, to the extent applicable, the
24 extent to which an alternative form of regulation is expected to:

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

26 (ii) Maintain and enhance the ability of the electrical or gas
27 company to furnish safe, adequate, and efficient service to its
28 customers;

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

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

33 (v) Allow an electrical or gas company to support and participate
34 in market transformation for enabling technologies without harming
35 competition;

36 (vi) Allow an electrical or gas company to be financially
37 indifferent as to: (A) The ownership of the property necessary to
38 furnish service to its customers, except where appropriate for
39 facilities furnished to establish a person as a customer of the

1 electrical or gas company; or (B) the quantity of electricity or gas
2 sold to its customers;

3 (vii) Reasonably protect customers, including low-income
4 customers, from associated short and long-term risks;

5 (viii) Ensure an appropriate level of consumer protection;

6 (ix) Support the achievement of state emissions reduction goals;

7 (x) Consider adverse environmental impacts;

8 (xi) Provide the electrical or gas company with the opportunity
9 to earn a reasonable rate of return on investment; and

10 (xii) Provide for broad customer engagement to promote
11 participation by a diversity of customers, particularly underserved
12 communities or segments thereof, in the associated programs to help
13 achieve the criteria identified in this subsection (2)(b).

14 (3) An electrical or gas company may petition the commission to
15 establish an alternative form of regulation. The electrical or gas
16 company shall submit with the petition a plan for an alternative form
17 of regulation, which may include provisions establishing a reasonable
18 range for rate of return on investment. The plan must contain a
19 proposal for transition to the alternative form of regulation and the
20 proposed duration of the plan. The development of a plan, which must
21 include customer and stakeholder input, and must also contain a
22 proposal for appropriate performance metrics that include, but are
23 not limited to, ensuring adequate customer service quality, including
24 service quality standards, and appropriate enforcement or remedial
25 provisions in the event the company fails to meet service quality
26 standards or performance measures. The commission also may initiate
27 consideration of alternative forms of regulation for a company or
28 companies on its own motion. The commission, after notice and
29 hearing, shall issue an order accepting, modifying, or rejecting the
30 plan within eleven months after the petition or motion is filed,
31 unless extended by the commission for good cause. Nothing in this
32 section may be interpreted as requiring an electrical or gas company
33 to submit a petition for a plan for an alternative form of regulation
34 as part of or concurrent with a general rate case or other proceeding
35 for recovery of costs of such a company.

36 (4) Not later than sixty days from the entry of the commission's
37 order, the electrical or gas company affected by the order shall file
38 with the commission: (a) An election to proceed with the alternative
39 form of regulation as authorized by the commission; or (b) an

1 election not to proceed with the alternative form of regulation as
2 authorized by the commission.

3 (5) The commission may waive such a regulatory requirement under
4 this title for an electrical or gas company subject to an alternative
5 form of regulation as may be appropriate to facilitate the
6 implementation of this section. However, as part of a proceeding to
7 consider alternative forms of regulation, the commission may not
8 waive any grant of legal rights to any person contained in this
9 chapter and chapter 80.04 RCW. The commission may waive different
10 regulatory requirements for different electrical or gas companies or
11 services if the different treatment is in the public interest.

12 (6) Upon petition by the electrical or gas company, or on motion
13 by the commission when evaluating the achievement of metrics
14 developed in subsection (3) of this section, and after notice and
15 hearing, the commission may rescind or modify an alternative form of
16 regulation in the manner requested by the electrical or gas company.

17 (7) The commission or any person may file a complaint under RCW
18 80.04.110 alleging that an electrical or gas company under an
19 alternative form of regulation has not complied with the terms and
20 conditions set forth in the alternative form of regulation. The
21 complainant bears the burden of proving the allegations in the
22 complaint.

23 (8) During a state of emergency declared under RCW 43.06.010(12),
24 the governor may waive or suspend the operation or enforcement of
25 this section or any portion of this section or under any
26 administrative rule, and issue any orders to facilitate the operation
27 of state or local government or to promote and secure the safety and
28 protection of the civilian population.

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