
SENATE BILL 5295

State of Washington

67th Legislature

2021 Regular Session

By Senators Carlyle and Short

1 AN ACT Relating to transforming the regulation of gas and
2 electrical companies toward multiyear rate plans and performance-
3 based rate making; amending RCW 80.28.005 and 80.28.068; adding new
4 sections to chapter 80.28 RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that gas and
7 electrical companies face transformational change brought on by new
8 technology, rapidly changing costs, emerging opportunities for
9 customers, and public policy mandates. Policy mandates, such as
10 chapter 19.405 RCW, the clean energy transformation act, mean these
11 companies must find innovative and creative solutions to equitably
12 serve their customers.

13 (2) The legislature finds that the traditional regulatory
14 construct is neither adaptable, nor well suited to adjusting to
15 rapidly changing societal expectations and public policy objectives,
16 and therefore hinders the ability of gas and electrical companies to
17 effectively evolve to meet new challenges and opportunities.

18 (3) In particular, the legislature finds that traditional cost of
19 service regulation may lead to a significant delay in recovery of
20 costs for gas and electrical companies. This regulatory lag creates
21 barriers to companies making the investments necessary to meet public

1 policy objectives and expectations. The traditional regulatory
2 process results in a backward-looking annual cycle of rate cases that
3 may limit the ability of gas and electrical companies and customers
4 in achieving the state's energy policy goals.

5 (4) It is the intent of the legislature that the regulatory
6 construct should require a forward-looking orientation for regulation
7 consistent with state policy objectives that focus on planning,
8 flexibility, and fair allocation of risks, while fostering and
9 supporting a culture that delivers performance and cost control in
10 this new industry environment.

11 (5) It is the intent of the legislature that the regulation of
12 gas and electrical companies transform toward multiyear rate plans
13 and performance-based rate making to provide certainty and stability
14 to customers and gas and electrical companies, with those plans
15 focused on ensuring alignment of public policy objectives,
16 investment, safety, and reliability.

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~~) 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) "Clean alternative fuel" has the same meaning as defined in
6 RCW 82.08.809.

7 (3) "Conservation bonds" means bonds, notes, certificates of
8 beneficial interests in trusts, or other evidences of indebtedness or
9 ownership that:

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

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

15 (~~(3)~~) (4) "Conservation investment assets" means the statutory
16 right of an electrical, gas, or water company:

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

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

24 (~~(4)~~) (5) "Finance subsidiary" means any corporation, company,
25 association, joint stock association, or trust that is beneficially
26 owned, directly or indirectly, by an electrical, gas, or water
27 company, or in the case of a trust issuing conservation bonds
28 consisting of beneficial interests, for which an electrical, gas, or
29 water company or a subsidiary thereof is the grantor, or an
30 unaffiliated entity formed for the purpose of financing or
31 refinancing approved conservation investment, and that acquires
32 conservation investment assets directly or indirectly from such
33 company in a transaction approved by the commission.

34 (6) "Fourth rate year" means the consecutive 12-month period, if
35 any, that commences on the third anniversary of the rate effective
36 date.

37 (7) "Future rate year" means any of an initial rate year, a
38 second rate year, a third rate year, or a fourth rate year.

39 (8) "Highly impacted community" has the same meaning as defined
40 in RCW 19.405.020.

1 (9) "Historic test year" means the 12-month period that reflects
2 the actual results of operations consistent with commission
3 precedent.

4 (10) "Initial rate year" means the consecutive 12-month period
5 that commences on the rate effective date.

6 (11) "Major projects list" means a list of capital expenditures
7 on programs or projects where the Washington-allocated share of the
8 total program is greater than .005 percent of the gas or electrical
9 company's latest year end Washington-allocated net plant in service.
10 The major projects list does not limit the forecasts to be used by a
11 gas or electrical company in developing rates for future rate years.

12 (12) "Multiyear rate plan" means a period of no more than 48
13 months for which a gas or electrical company proposes to develop and
14 apply rates and consists of the initial rate year, the second rate
15 year and, if applicable, a third rate year, and a fourth rate year.

16 (13) "Rate effective date" means the date on which rates approved
17 by the commission pursuant to this chapter first become effective.

18 (14) "Regulatory lag" means the period of time between when a gas
19 or electrical company incurs the costs that form the basis for its
20 commission-approved revenue requirement and when they are
21 subsequently recovered in rates.

22 (15) "Second rate year" means the consecutive 12-month period
23 that commences on the first anniversary of the rate effective date.

24 (16) "Third rate year" means the consecutive 12-month period, if
25 any, that commences on the second anniversary of the rate effective
26 date.

27 NEW SECTION. Sec. 3. A new section is added to chapter 80.28
28 RCW to read as follows:

29 (1) A gas or electrical company shall file a multiyear rate plan
30 as provided in this chapter and the commission shall approve the
31 proposal, with or without conditions, or reject it. The commission
32 shall approve a proposal for a multiyear rate plan if the commission
33 finds that the plan establishes just and reasonable rates for the gas
34 or electrical company, is lawful, is supported by an appropriate
35 record, and is consistent with the public interest in light of all
36 the information available to the commission at the time of the
37 commission's decision.

38 (2) A gas or electric company may propose and the commission may
39 approve any proposal to recover from ratepayers up to five percent of

1 the total approved revenue requirement approved by the commission for
2 the initial rate year for tariffs that expand the affordability of
3 services available to customers including, but not limited to: (a)
4 Bill assistance programs for low-income residential customers; or (b)
5 one or more special rates for low-income residential customers to
6 reduce the energy burden of those customers.

7 (3) Subject to RCW 80.04.130, the commission has the authority,
8 upon its own motion, upon complaint, or upon notice, to enter upon a
9 hearing concerning such a proposal and the reasonableness and
10 justness of the proposal.

11 (4) Unless the commission finds that the multiyear rate plan is
12 not just and reasonable or not in the public interest, the commission
13 shall accept a proposal filed by a gas or electrical company in
14 support of, or an alternative proposal presented by parties in
15 response to, a multiyear rate plan filing that seeks to recover the
16 company's annual revenue requirement in each future rate year on the
17 basis of a budget approved by the company, a forecast, a clean energy
18 implementation plan approved under RCW 19.405.060, a price index, a
19 fixed escalation rate, or another formula, individually or in
20 combination.

21 (5) In considering a multiyear rate plan proposal, the commission
22 shall minimize regulatory lag in each future rate year to the fullest
23 extent possible while maintaining rates that are fair, just,
24 reasonable, and sufficient.

25 (6) The commission shall separately approve rates for each of the
26 initial rate year, the second rate year and, if applicable, the third
27 rate year, and the fourth rate year. Consistent with RCW 80.04.250,
28 the commission shall ascertain and determine the fair value for rate-
29 making purposes of the property of any gas or electrical company that
30 has filed a multiyear rate plan pursuant to this section that is or
31 will be used and useful for service in this state by or during each
32 rate year of the multiyear rate plan. For the initial rate year, the
33 commission shall, at a minimum, ascertain and determine the fair
34 value for rate-making purposes of the property of any gas or
35 electrical company that has filed a multiyear rate plan pursuant to
36 this section that is used and useful for service in this state as of
37 the rate effective date.

38 (7) The commission may, by order, establish terms, conditions,
39 and procedures for a multiyear rate plan and ensure that rates remain

1 just and reasonable during the course of the plan, including terms
2 and procedures for rate adjustment during the term of the plan.

3 (8) (a) The gas or electrical company is bound by the terms of the
4 multiyear rate plan approved by the commission for as long as the
5 actual rate of return of the gas or electrical company remains
6 within .5 percent of the rate of return authorized by the commission
7 in the multiyear rate plan for such a company.

8 (b) If adjusted quarterly financial reports demonstrate that the
9 actual rate of return of a gas or electrical company operating under
10 a multiyear rate plan approved by the commission pursuant to this
11 section remains within .5 percent of the rate of return authorized by
12 the commission in the multiyear rate plan for such a company, the
13 company may not file revised tariffs in the subsequent calendar
14 quarter of the multiyear rate plan, the effect of which is to change
15 rates affected by the multiyear rate plan.

16 (c) If adjusted quarterly financial reports demonstrate that the
17 actual rate of return of a gas or electrical company operating under
18 a multiyear rate plan approved by the commission pursuant to this
19 section is more than .5 percent less than the rate of return
20 authorized by the commission in the multiyear rate plan for such a
21 company, the company may file any of the following in the subsequent
22 calendar quarter of the multiyear rate plan, the effect of which
23 could be to change rates affected by the multiyear rate plan:

24 (i) Proposed modifications to the existing multiyear rate plan
25 for approval or rejection by the commission within four months of the
26 date of filing of such a modification;

27 (ii) A request for deferral of costs of the utility for later
28 determination by the commission;

29 (iii) A general rate case; or

30 (iv) A new multiyear rate plan in accordance with this section.

31 (d) For the purposes of this subsection, a quarterly financial
32 report must depict gas or electric operations of a gas or electrical
33 company, respectively, under normal temperature and power supply
34 conditions during the reporting period. Such a quarterly financial
35 report must follow the methods approved by the commission for
36 reporting financial results of operations.

37 (9) The commission may, in approving a multiyear rate plan,
38 determine a set of reasonable and applicable performance measures
39 that can be used to assess a gas or electrical company operating

1 under a multiyear rate plan. These performance measures may be
2 proposed by the gas or electrical company in its initial application.

3 (10) Nothing in this section precludes any gas or electrical
4 company from making filings required or permitted by the commission.

5 (11) A gas or electrical company may defer, without interest, any
6 new costs, unknown at the time of the approval of any multiyear rate
7 plan then in effect, that are associated with compliance of any
8 governmental policy or plan not in existence as of the rate effective
9 date and implemented during a multiyear rate plan. Recovery of these
10 deferred costs must be addressed in the next applicable rate case or
11 multiyear rate plan of the applicable gas or electrical company.

12 (12) The commission shall align, to the extent practical, the
13 timing of approval of a multiyear rate plan of an electrical company
14 submitted pursuant to this section with the clean energy
15 implementation plan of the electrical company filed pursuant to
16 RCW 19.405.060.

17 NEW SECTION. **Sec. 4.** A new section is added to chapter 80.28
18 RCW to read as follows:

19 The provisions of RCW 80.28.005 and section 3 of this act,
20 inclusive, may not be construed to limit the existing rate-making
21 authority of the commission.

22 **Sec. 5.** RCW 80.28.068 and 2009 c 32 s 1 are each amended to read
23 as follows:

24 (1) Upon request by an electrical or gas company, or other party
25 to a general rate case hearing, the commission may approve rates,
26 charges, services, and/or physical facilities at a discount for low-
27 income senior customers and low-income customers. Expenses and lost
28 revenues as a result of these discounts shall be included in the
29 company's cost of service and recovered in rates to other customers.

30 (2) An electrical company may provide discounts under this
31 section to reduce the energy burden of low-income or vulnerable
32 populations and to ensure that the benefits of the transition to
33 clean energy are equitably distributed, as required under chapter
34 19.405 RCW.

35 (3) Eligibility for the discount rates established in this
36 section must be established upon verification of a low-income
37 customer's receipt of any means tested public benefit, or
38 verification of eligibility for the low-income home energy assistance

1 program, or its successor program, for which eligibility does not
2 exceed 200 percent of the federal poverty level based on a
3 household's gross income. The public benefits may include, but are
4 not limited to, assistance that provides cash, housing, food, or
5 medical care including, but not limited to, temporary assistance for
6 needy families, supplemental security income, emergency assistance to
7 elders, disabled, and children, supplemental nutrition assistance
8 program benefits, public housing, federally subsidized or state-
9 subsidized housing, the low-income home energy assistance program,
10 veterans' benefits, and similar benefits. Each gas or electrical
11 company shall conduct substantial outreach efforts to make the low-
12 income discount available to eligible customers and must provide
13 annual reports to the commission as to the gas or electrical
14 company's outreach activities and results. Outreach may include
15 establishing an automated program of matching customer accounts with
16 lists of recipients of the means tested public benefit programs and,
17 based on the results of the matching program, to presumptively offer
18 a low-income discount rate to eligible customers so identified.
19 However, the gas or electrical company must within 60 days of the
20 presumptive enrollment inform such a low-income customer of the
21 presumptive enrollment and all rights and obligations of a customer
22 under the program, including the right to withdraw from the program
23 without penalty.

24 (4) A residential customer eligible for a low-income discount
25 rate must receive the service on demand. Each gas or electrical
26 company shall periodically notify all customers of the availability
27 and method of obtaining low-income discount rates.

28 (5) The commission shall adopt rules requiring gas or electrical
29 companies to produce information, in the form of a mailing,
30 electronic distribution, or other customary and usual method of
31 distribution, to their customers, to inform them of available
32 rebates, discounts, credits, and other cost-saving mechanisms that
33 can help the customers to lower their monthly bills for gas or
34 electrical service, and send out the information semiannually, unless
35 otherwise provided by this chapter.

36 (6)(a) A residential customer may not be charged for initiating
37 or terminating low-income discount rates when the initiation or
38 termination request is made after a regular meter reading has
39 occurred and the customer is in receipt of the results of the
40 reading.

1 (b) A gas or electrical company may impose a reasonable charge,
2 as set by the commission through regulation, for initiating or
3 terminating low-income discount rates when a customer does not make
4 such an initiation or termination request upon the receipt of the
5 results and prior to the receipt of the next regularly scheduled
6 meter reading.

7 (c) Notwithstanding (b) of this subsection, a residential
8 customer may not be charged when the initiation or termination is
9 involuntary on the part of the customer.

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

12 (a) "Energy burden" has the same meaning as defined in
13 RCW 19.405.020.

14 (b) "Highly impacted communities" has the same meaning as defined
15 in RCW 19.405.020.

16 (c) "Low-income" has the same meaning as defined in
17 RCW 19.405.020.

18 (d) "Physical facilities" includes, but may not be limited to, a
19 community solar project as defined in RCW 82.16.160.

20 (e) "Vulnerable populations" has the same meaning as defined in
21 RCW 19.405.020.

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

24 (1)(a) Gas and electrical companies maintain programs offering
25 incentives for single-family and multifamily housing owners to have
26 conservation and energy efficiency measures financed and installed at
27 their premises. The owners of single-family and multifamily rental
28 housing may be reluctant to participate in these programs when they
29 are required to financially supplement the company's incentive to
30 fully fund cost-effective conservation and energy efficiency
31 measures. By not participating in a gas or electrical company's
32 programs, single-family and multifamily rental housing owners expose
33 tenants to higher energy bills and deny greater reductions in energy
34 consumption by gas and electrical.

35 (b) It is the intent of this section to: Incentivize and enable
36 gas and electrical companies to access conservation and energy
37 efficiency opportunities in single-family and multifamily rental
38 housing in a manner that reduces the energy burden of customers,
39 especially low-income customers, vulnerable populations, and

1 customers in highly impacted communities; benefit the premises owner
2 by enhancing the value of their property, and treat capital
3 investments in conservation and energy efficiency comparably to
4 capital investment in generation resources.

5 (2) The commission shall allow a gas or electrical company to
6 invest in programs that achieve energy conservation and improve the
7 efficiency of energy end use of single-family and multifamily rental
8 housing in lieu of requiring a contribution from the premises owner
9 to finance measures that would be cost-effective. The commission
10 shall allow a gas or electrical company to earn a return on cost-
11 effective investments made under this section over a duration of time
12 that reduces the customer's energy burden and minimizes the
13 investment's impact on the customer's bill, while providing a return
14 on equity that incentivizes the company to make such an investment.

15 (3) A gas or electrical company shall prioritize investments made
16 under this section on single-family and multifamily rental housing to
17 reduce the energy burden of low-income customers, vulnerable
18 populations, and customers in highly impacted communities consistent
19 with RCW 19.405.040(8).

20 (4) An investment by a gas or electrical company made under this
21 section must be secured through the meter and recovered through the
22 regular billing paid by the tenant, including any successor tenant,
23 or premises owner. If the bill is paid by the premises owner, the
24 investment of a gas or electrical company must be recovered pursuant
25 to a site-specific services agreement. The investment of a gas or
26 electrical company must be recovered as any other energy charge,
27 including being subject to collection, until the authorized return on
28 the investment has been fully recovered. An investment made by a gas
29 or electrical company under this section must be designated as an
30 "energy savings charge" as a line item on the regular customer
31 billing.

32 (5) A gas or electrical company shall provide the premises owner
33 with sufficient information for the owner to provide a tenant who is
34 responsible for paying the gas or electric bill as required under
35 this subsection. At least 30 days prior to the commencement of work
36 to install conservation measures at the premises, the premises owner
37 shall notify a tenant of the owner's authorization for a gas or
38 electrical company to install conservation measures at the premises
39 inhabited by the tenant under a financial arrangement provided under

1 this section. The notice must include a description of the work to be
2 performed and the expected benefits of the conservation measures.

3 (6) (a) On or before December 31st, beginning two full calendar
4 years subsequent to the first installation of conservation measures
5 funded under this section and every two years thereafter, a gas or
6 electrical company must complete a measure performance report, using
7 data accessed from advanced meter infrastructure, for conservation
8 measures completed and in service during the previous two years. The
9 report must present the following information in aggregated form:

10 (i) An estimate of the annual energy savings using normalized
11 weather conditions;

12 (ii) An estimate of energy cost savings realized based on the
13 estimate in (a)(i) of this subsection and a comparison between
14 savings to the charges assessed under subsection (4) of this section;

15 (iii) An updated assessment of the payback period for the full
16 cost of the installed conservation measures based on the estimated
17 energy savings in (a)(i) of this subsection; and

18 (iv) Any supporting data verifying energy savings estimates in
19 (a)(i) of this subsection, including measurable data available
20 through deployment of advanced meter infrastructure if available.

21 (b) A gas or electrical company must submit its performance-based
22 report to the commission and the Washington State University energy
23 program.

24 (7) The definitions in this subsection apply throughout this
25 section unless the context clearly requires otherwise.

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

28 (b) "Energy burden" has the same meaning as defined in
29 RCW 19.405.020.

30 (c) "Highly impacted communities" has the same meaning as defined
31 in RCW 19.405.020.

32 (d) "Low-income" has the same meaning as defined in RCW
33 19.405.020.

34 (e) "Vulnerable populations" has the same meaning as defined in
35 RCW 19.405.020.

36 NEW SECTION. **Sec. 7.** A new section is added to chapter 80.28
37 RCW to read as follows:

38 (1) A gas company or electrical company may enter into one or
39 more written agreements with organizations that represent interests

1 of customers belonging to a highly impacted community or vulnerable
2 populations to assist these organizations with the costs of
3 participating in regulatory proceedings conducted by the commission.
4 The agreement must govern the manner in which financial assistance
5 may be provided to the organization representing customer interests
6 of vulnerable populations or a highly impacted community. More than
7 one gas company, electrical company, or organization representing
8 customer interests of vulnerable populations or a highly impacted
9 community may join in a single agreement. Any agreement entered into
10 under this section must be approved by the commission before any
11 financial assistance is provided under the agreement.

12 (2) In administering an agreement entered into under
13 subsection (1) of this section, the commission by rule or order may
14 determine:

15 (a) The amount of financial assistance that may be provided to
16 any organization representing customer interests of vulnerable
17 populations or a highly impacted community;

18 (b) The manner in which the financial assistance is distributed;

19 (c) The manner in which the financial assistance is recovered in
20 the rates of the gas company or electrical company under
21 subsection (3) of this section; and

22 (d) Other matters necessary to administer the agreement.

23 (3) The commission shall allow a gas company or electrical
24 company that provides financial assistance under this section to
25 recover the amounts provided in rates. The commission shall allow a
26 gas company or electrical company to defer inclusion of those amounts
27 in rates if the gas company or electrical company so elects. An
28 agreement under this section may not provide for payment of any
29 amounts to the commission.

30 (4) The definitions in this subsection apply throughout this
31 section unless the context clearly requires otherwise.

32 (a) "Highly impacted community" has the same meaning as defined
33 in RCW 19.405.020.

34 (b) "Vulnerable populations" has the same meaning as defined in
35 RCW 19.405.020.

36 NEW SECTION. **Sec. 8.** If any provision of this act or its
37 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

--- **END** ---