S-0008.1

SENATE BILL 5168

State of Washington 68th Legislature 2023 Regular Session

By Senators Boehnke, Fortunato, and Short

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AN ACT Relating to modernizing the energy independence act to avoid regulatory duplication and overlap with other laws; amending RCW 19.285.010, 19.285.020, 19.285.045, 19.285.050, 19.285.060, 19.285.070, 19.285.080, 19.29A.060, and 19.405.040; reenacting and amending RCW 19.285.040; creating a new section; and providing an effective date.

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

NEW SECTION. **Sec. 1.** The legislature finds that it would be beneficial to harmonize the 2006 energy independence act with the 2019 clean energy transformation act. Both laws govern the types of generation resources that utilities may use to provide electricity to Washington residents. As a result of this overlap, utilities are subject to multiple standards for the same activity. The legislature intends to address this unnecessary duplication by retaining the conservation elements of the energy independence act while ending the generation requirements. This will not create a gap in Washington's energy laws because the requirements of the clean energy transformation act continue to set the policy direction for the state. The legislature intends for this act to create efficiencies and cost savings for utilities, which will provide affordable power to consumers.

Sec. 2. RCW 19.285.010 and 2007 c 1 s 1 are each amended to read as follows:

((~~This chapter concerns requirements for new energy resources.~~)) This chapter requires large utilities to ((~~obtain fifteen percent of their electricity from new renewable resources such as solar and wind by 2020 and~~)) undertake cost-effective energy conservation.

Sec. 3. RCW 19.285.020 and 2007 c 1 s 2 are each amended to read as follows:

Increasing energy conservation ((~~and the use of appropriately sited renewable energy facilities~~)) builds on the strong foundation of low-cost renewable hydroelectric generation in Washington state and will promote energy independence in the state and the Pacific Northwest region. Making the most of our plentiful local resources will stabilize electricity prices for Washington residents, provide economic benefits for Washington counties and farmers, create high quality jobs in Washington, provide opportunities for training apprentice workers in the renewable energy field, protect clean air and water, and position Washington state as a national leader in clean energy technologies.

Sec. 4. RCW 19.285.040 and 2021 c 315 s 17 and 2021 c 79 s 1 are each reenacted and amended to read as follows:

(1) Each qualifying utility shall pursue all available conservation that is cost-effective, reliable, and feasible.

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

(b) Beginning January 2010, each qualifying utility shall establish and make publicly available a biennial acquisition target

for cost-effective conservation consistent with its identification of achievable opportunities in (a) of this subsection, and meet that target during the subsequent two-year period. At a minimum, each biennial target must be no lower than the qualifying utility's pro rata share for that two-year period of its cost-effective conservation potential for the subsequent ((~~ten-year~~)) 10-year period.

(c)(i) Except as provided in (c)(ii) and (iii) of this subsection, beginning on January 1, 2014, cost-effective conservation achieved by a qualifying utility in excess of its biennial acquisition target may be used to help meet the immediately subsequent two biennial acquisition targets, such that no more than ((~~twenty~~)) 20 percent of any biennial target may be met with excess conservation savings.

(ii) Beginning January 1, 2014, a qualifying utility may use single large facility conservation savings in excess of its biennial target to meet up to an additional five percent of the immediately subsequent two biennial acquisition targets, such that no more than ((~~twenty-five~~)) 25 percent of any biennial target may be met with excess conservation savings allowed under all of the provisions of this section combined. For the purposes of this subsection (1)(c)(ii), "single large facility conservation savings" means cost-effective conservation savings achieved in a single biennial period at the premises of a single customer of a qualifying utility whose annual electricity consumption prior to the conservation savings exceeded five average megawatts.

(iii) Beginning January 1, 2012, and until December 31, 2017, a qualifying utility with an industrial facility located in a county with a population between ((~~ninety-five thousand and one hundred fifteen thousand~~)) 95,000 and 115,000 that is directly interconnected with electricity facilities that are capable of carrying electricity at transmission voltage may use cost-effective conservation from that industrial facility in excess of its biennial acquisition target to help meet the immediately subsequent two biennial acquisition targets, such that no more than ((~~twenty-five~~)) 25 percent of any biennial target may be met with excess conservation savings allowed under all of the provisions of this section combined.

(d) In meeting its conservation targets, a qualifying utility may count high-efficiency cogeneration owned and used by a retail electric customer to meet its own needs. High-efficiency cogeneration

is the sequential production of electricity and useful thermal energy from a common fuel source, where, under normal operating conditions, the facility has a useful thermal energy output of no less than ((~~thirty-three~~)) 33 percent of the total energy output. The reduction in load due to high-efficiency cogeneration shall be: (i) Calculated as the ratio of the fuel chargeable to power heat rate of the cogeneration facility compared to the heat rate on a new and clean basis of a best-commercially available technology combined-cycle natural gas-fired combustion turbine; and (ii) counted towards meeting the biennial conservation target in the same manner as other conservation savings.

(e) A qualifying utility is considered in compliance with its biennial acquisition target for cost-effective conservation in (b) of this subsection if events beyond the reasonable control of the utility that could not have been reasonably anticipated or ameliorated prevented it from meeting the conservation target. Events that a qualifying utility may demonstrate were beyond its reasonable control, that could not have reasonably been anticipated or ameliorated, and that prevented it from meeting the conservation target include: (i) Natural disasters resulting in the issuance of extended emergency declarations; (ii) the cancellation of significant conservation projects; and (iii) actions of a governmental authority that adversely affects the acquisition of cost-effective conservation by the qualifying utility.

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

(g) In addition to the requirements of RCW 19.280.030(3), in assessing the cost-effective conservation required under this section, a qualifying utility is encouraged to promote the adoption of air conditioning, as defined in RCW 70A.60.010, with refrigerants not exceeding a global warming potential of 750 and the replacement of stationary refrigeration systems that contain ozone-depleting substances or hydrofluorocarbon refrigerants with a high global warming potential.

(h) The commission may rely on its standard practice for review and approval of investor-owned utility conservation targets.

(2)((~~(a) Except as provided in (j) of this subsection, each qualifying utility shall use eligible renewable resources or acquire~~

~~equivalent renewable energy credits, or any combination of them, to meet the following annual targets:~~

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

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

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

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

~~(c) In meeting the annual targets in (a) of this subsection, a qualifying utility shall calculate its annual load based on the average of the utility's load for the previous two years.~~

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

~~(e) A qualifying utility may use renewable energy credits to meet the requirements of this section, subject to the limitations of this subsection.~~

~~(i) A renewable energy credit from electricity generated by a resource other than freshwater may be used to meet a requirement applicable to the year in which the credit was created, the year before the year in which the credit was created, or the year after the year in which the credit was created.~~

~~(ii) A renewable energy credit from electricity generated by freshwater:~~

~~(A) May only be used to meet a requirement applicable to the year in which the credit was created; and~~

~~(B) Must be acquired by the qualifying utility through ownership of the generation facility or through a transaction that conveyed both the electricity and the nonpower attributes of the electricity.~~

~~(iii) A renewable energy credit transferred to an investor-owned utility pursuant to the Bonneville power administration's residential exchange program may not be used by any utility other than the utility receiving the credit from the Bonneville power administration.~~

~~(iv) Each renewable energy credit may only be used once to meet the requirements of this section and must be retired using procedures of the renewable energy credit tracking system.~~

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

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

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

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

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

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

~~(B) Where the developer of the facility used apprenticeship programs approved by the council during facility construction.~~

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

~~(i) A qualifying utility shall be considered in compliance with an annual target in (a) of this subsection if events beyond the reasonable control of the utility that could not have been reasonably anticipated or ameliorated prevented it from meeting the renewable energy target. Such events include weather-related damage, mechanical~~

~~failure, strikes, lockouts, and actions of a governmental authority that adversely affect the generation, transmission, or distribution of an eligible renewable resource under contract to a qualifying utility.~~

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

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

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

~~(l) Beginning January 1, 2020, a qualifying utility may use eligible renewable resources as identified under RCW 19.285.030(12)(g) and (h) to meet its compliance obligation under this subsection (2). A qualifying utility may not transfer or sell these eligible renewable resources to another utility for compliance purposes under this chapter.~~

~~(m) Beginning January 1, 2030, a qualifying utility is considered to be in compliance with an annual target in (a) of this subsection if the utility uses electricity from: (i) Renewable resources and renewable energy credits as defined in RCW 19.285.030; and (ii) nonemitting electric generation as defined in RCW 19.405.020, in an amount equal to one hundred percent of the utility's average annual retail electric load. Nothing in this subsection relieves the~~

~~requirements of a qualifying utility to comply with subsection (1) of this section.~~

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

Sec. 5. RCW 19.285.045 and 2012 c 254 s 1 are each amended to read as follows:

(1) When requested by a consumer-owned qualifying utility or by a person proposing ((~~an electric generation project or~~)) a conservation resource, the department is authorized to and shall provide analysis and an advisory opinion on whether a proposed ((~~electric generation project or~~)) conservation resource qualifies to meet a target under RCW 19.285.040. The advisory opinion must include a legal analysis. When forming its advisory opinion, the department must: (a) Consider, and may rely on, previous opinions issued by the I-937 technical working group established by the commission and the department; and (b) solicit and consider comments from interested parties, including staff of the requesting utility. The department must give priority to any application regarding ((~~an electric generation project or~~)) a conservation resource that previously received an affirmative advisory opinion from the I-937 technical working group.

(2) Consumer-owned qualifying utilities and persons proposing ((~~electric generation projects or~~)) conservation resources may apply for an advisory opinion from the department. The application must be in writing and must include information that accurately describes the proposed ((~~project or~~)) resource. Within ((~~ninety~~)) 90 days of receiving an application, the director of the department must issue a signed advisory opinion on whether the proposed ((~~project or~~)) resource qualifies to meet a target under RCW 19.285.040. The governing board of the consumer-owned utility that will use the resource ((~~or project~~)) must either adopt or reject the advisory opinion after public notice and hearing. Under its responsibilities in RCW 19.285.060, the auditor shall consider any ((~~project or~~)) resource reviewed and adopted under the process in this section as being in compliance with RCW 19.285.040 and 19.285.060, but only if: (a) The advisory opinion affirmatively qualifies the ((~~project or~~)) resource; (b) the governing board of the consumer-owned utility that will use the ((~~project or~~)) resource adopts the advisory opinion

after public notice and hearing; and (c) the ((~~project or~~)) resource is built or acquired as proposed.

(3) The department may require an applicant to pay an application fee to cover the cost of reviewing the ((~~project~~)) resource and preparing an advisory opinion.

(4) ((~~An electric generation project reviewed and adopted under this section may produce renewable energy credits as defined in RCW 19.285.030.~~

~~(5)~~)) The department may adopt rules to implement this section.

((~~(6)~~)) (5) Nothing in this section preempts the authority of any governing board of a consumer-owned utility from making a determination, independent of the process in this section, on whether a proposed ((~~electric generation project or~~)) conservation resource may qualify to meet a target under RCW 19.285.040.

Sec. 6. RCW 19.285.050 and 2007 c 1 s 5 are each amended to read as follows:

((~~(1)(a) A qualifying utility shall be considered in compliance with an annual target created in RCW 19.285.040(2) for a given year if the utility invested four percent of its total annual retail revenue requirement on the incremental costs of eligible renewable resources, the cost of renewable energy credits, or a combination of both, but a utility may elect to invest more than this amount.~~

~~(b) The incremental cost of an eligible renewable resource is calculated as the difference between the levelized delivered cost of the eligible renewable resource, regardless of ownership, compared to the levelized delivered cost of an equivalent amount of reasonably available substitute resources that do not qualify as eligible renewable resources, where the resources being compared have the same contract length or facility life.~~

~~(2)~~)) An investor-owned utility is entitled to recover all prudently incurred costs associated with compliance with this chapter. The commission shall address cost recovery issues of qualifying utilities that are investor-owned utilities that serve both in Washington and in other states in complying with this chapter.

Sec. 7. RCW 19.285.060 and 2021 c 79 s 2 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, a qualifying utility that fails to comply with the energy conservation ((~~or renewable energy~~)) targets established in RCW 19.285.040 shall pay an administrative penalty to the state of Washington in the amount of ((~~fifty dollars~~)) $50 for each megawatt-hour of shortfall. Beginning in 2007, this penalty shall be adjusted annually according to the rate of change of the inflation indicator, gross domestic product-implicit price deflator, as published by the bureau of economic analysis of the United States department of commerce or its successor.

(2) A qualifying utility that does not meet ((~~an annual renewable energy target established in RCW 19.285.040(2) or~~)) a biennial acquisition target for cost-effective conservation in RCW 19.285.040(1) is exempt from the administrative penalty in subsection (1) of this section for that year if the commission for investor-owned utilities or the auditor for all other qualifying utilities determines that the utility complied with RCW 19.285.040 (1)(e) ((~~or (2) (d) or (i) or 19.285.050(1)~~)).

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

(4) The commission shall determine if an investor-owned utility may recover the cost of this administrative penalty in electric rates, and may consider providing positive incentives for an investor-owned utility to exceed the targets established in RCW 19.285.040.

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

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

(7) For qualifying utilities that are not investor-owned utilities, the auditor is responsible for auditing compliance with this chapter and rules adopted under this chapter that apply to those utilities and the attorney general is responsible for enforcing that compliance.

Sec. 8. RCW 19.285.070 and 2007 c 1 s 7 are each amended to read as follows:

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

(2) A qualifying utility that is an investor-owned utility shall also report all information required in subsection (1) of this section to the commission, and all other qualifying utilities shall also make all information required in subsection (1) of this section available to the auditor.

(3) A qualifying utility shall also make reports required in this section available to its customers.

Sec. 9. RCW 19.285.080 and 2017 c 315 s 3 are each amended to read as follows:

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

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

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

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

Conforming Amendments

Sec. 10. RCW 19.29A.060 and 2019 c 222 s 4 are each amended to read as follows:

(1) Each retail supplier must disclose to its customers the fuel characteristics of each electricity product it offers to retail electric customers using information consistent with the retail supplier's source and disposition report.

(2) The fuel characteristics disclosures required by this section must identify for each electricity product the percentage of the total electricity product sold by a retail supplier during the previous calendar year from each of the following categories, using a uniform format:

(a) Coal;

(b) Hydroelectric;

(c) Natural gas;

(d) Nuclear;

(e) Petroleum;

(f) Solar;

(g) Wind;

(h) Other generation, except that when a component of the other generation category meets or exceeds two percent of the total electricity product sold by a retail supplier during the previous calendar year, the retail supplier shall identify the component or components and display the fuel mix percentages for these component sources. A retail supplier may voluntarily identify any component or components within the other generation category that comprises two percent or less of annual sales; and

(i) Unspecified sources.

(3) If the percentage amount of unspecified sources identified in subsection (2) of this section exceeds two percent for an electricity product, the retail supplier must include on the label a general description of unspecified sources and an explanation of why some power sources are unknown to the retail supplier.

(4) A retail supplier may not include in the electricity product content label any environmental quality or environmental impact qualifier, other than those permitted or required by this chapter, related to any of the generation categories disclosed.

(5) For the portion of an electricity product purchased from the Bonneville power administration, a retail supplier may incorporate the Bonneville power administration system mix in its disclosure.

(6) A retail supplier may include with the electricity product content label additional information concerning the quantity of renewable energy certificates, if not otherwise included in the retail supplier's declared resources, that are retired ((~~for compliance with RCW 19.285.040(2) in the~~)) in a reporting year.

Sec. 11. RCW 19.405.040 and 2019 c 288 s 4 are each amended to read as follows:

(1) It is the policy of the state that all retail sales of electricity to Washington retail electric customers be greenhouse gas neutral by January 1, 2030.

(a) For the four-year compliance period beginning January 1, 2030, and for each multiyear compliance period thereafter through December 31, 2044, an electric utility must demonstrate its compliance with this standard using a combination of nonemitting

electric generation and electricity from renewable resources, or alternative compliance options, as provided in this section. To achieve compliance with this standard, an electric utility must: (i) Pursue all cost-effective, reliable, and feasible conservation and efficiency resources to reduce or manage retail electric load, using the methodology established in RCW 19.285.040, if applicable; and (ii) use electricity from renewable resources and nonemitting electric generation in an amount equal to ((~~one hundred~~)) 100 percent of the utility's retail electric loads over each multiyear compliance period. An electric utility must achieve compliance with this standard for the following compliance periods: January 1, 2030, through December 31, 2033; January 1, 2034, through December 31, 2037; January 1, 2038, through December 31, 2041; and January 1, 2042, through December 31, 2044.

(b) Through December 31, 2044, an electric utility may satisfy up to ((~~twenty~~)) 20 percent of its compliance obligation under (a) of this subsection with an alternative compliance option consistent with this section. An alternative compliance option may include any combination of the following:

(i) Making an alternative compliance payment under RCW 19.405.090(2);

(ii) Using unbundled renewable energy credits, provided that there is no double counting of any nonpower attributes associated with renewable energy credits within Washington or programs in other jurisdictions, as follows:

(A) Unbundled renewable energy credits produced from eligible renewable resources, as defined under RCW 19.285.030((~~, which may be used by the electric utility for compliance with RCW 19.285.040 and this section as provided under RCW 19.285.040(2)(e)~~)); and

(B) Unbundled renewable energy credits, other than those included in (b)(ii)(A) of this subsection, that represent electricity generated within the compliance period;

(iii) Investing in energy transformation projects, including additional conservation and efficiency resources beyond what is otherwise required under this section, provided the projects meet the requirements of subsection (2) of this section and are not credited as resources used to meet the standard under (a) of this subsection; or

(iv) Using electricity from an energy recovery facility using municipal solid waste as the principal fuel source, where the

facility was constructed prior to 1992, and the facility is operated in compliance with federal laws and regulations and meets state air quality standards. An electric utility may only use electricity from such an energy recovery facility if the department and the department of ecology determine that electricity generation at the facility provides a net reduction in greenhouse gas emissions compared to any other available waste management best practice. The determination must be based on a life-cycle analysis comparing the energy recovery facility to other technologies available in the jurisdiction in which the facility is located for the waste management best practices of waste reduction, recycling, composting, and minimizing the use of a landfill.

(c) Electricity from renewable resources used to meet the standard under (a) of this subsection must be verified by the retirement of renewable energy credits. Renewable energy credits must be tracked and retired in the tracking system selected by the department.

(d) Hydroelectric generation used by an electric utility in meeting the standard under (a) of this subsection may not include new diversions, new impoundments, new bypass reaches, or expansion of existing reservoirs constructed after May 7, 2019, unless the diversions, bypass reaches, or reservoir expansions are necessary for the operation of a pumped storage facility that: (i) Does not conflict with existing state or federal fish recovery plans; and (ii) complies with all local, state, and federal laws and regulations.

(e) Nothing in (d) of this subsection precludes an electric utility that owns and operates hydroelectric generating facilities, or the owner of a hydroelectric generating facility whose energy output is marketed by the Bonneville power administration, from making efficiency or other improvements to its hydroelectric generating facilities existing as of May 7, 2019, or from installing hydroelectric generation in pipes, culverts, irrigation canals, and other man-made waterways, as long as those changes do not create conflicts with existing state or federal fish recovery plans and comply with all local, state, and federal laws and regulations.

(f) Nonemitting electric generation used to meet the standard under (a) of this subsection must be generated during the compliance period and must be verified by documentation that the electric utility owns the nonpower attributes of the electricity generated by the nonemitting electric generation resource.

(g) Nothing in this section prohibits an electric utility from purchasing or exchanging power from the Bonneville power administration.

(2) Investments in energy transformation projects used to satisfy an alternative compliance option provided under subsection (1)(b) of this section must use criteria developed by the department of ecology, in consultation with the department and the commission. For the purpose of crediting an energy transformation project toward the standard in subsection (1)(a) of this section, the department of ecology must establish a conversion factor of emissions reductions resulting from energy transformation projects to megawatt-hours of electricity from nonemitting electric generation that is consistent with the emission factors for unspecified electricity, or for energy transformation projects in the transportation sector, consistent with default emissions or conversion factors established by other jurisdictions for clean alternative fuels. Emissions reductions from energy transformation projects must be:

(a) Real, specific, identifiable, and quantifiable;

(b) Permanent: The department of ecology must look to other jurisdictions in setting this standard and make a reasonable determination on length of time;

(c) Enforceable by the state of Washington;

(d) Verifiable;

(e) Not required by another statute, rule, or other legal requirement; and

(f) Not reasonably assumed to occur absent investment, or if an investment has already been made, not reasonably assumed to occur absent additional funding in the near future.

(3) Energy transformation projects must be associated with the consumption of energy in Washington and must not create a new use of fossil fuels that results in a net increase of fossil fuel usage.

(4) The compliance eligibility of energy transformation projects may be scaled or prorated by an approved protocol in order to distinguish effects related to reductions in electricity usage from reductions in fossil fuel usage.

(5) Any compliance obligation fulfilled through an investment in an energy transformation project is eligible for use only: (a) By the electric utility that makes the investment; (b) if the investment is made by the Bonneville power administration, by electric utilities that are preference customers of the Bonneville power administration;

or (c) if the investment is made by a joint operating agency organized under chapter 43.52 RCW, by a member of the joint operating agency. An electric utility making an investment in partnership with another electric utility or entity may claim credit proportional to its share invested in the total project cost.

(6)(a) In meeting the standard under subsection (1) of this section, an electric utility must, consistent with the requirements of RCW 19.285.040, if applicable, pursue all cost-effective, reliable, and feasible conservation and efficiency resources, and demand response. In making new investments, an electric utility must, to the maximum extent feasible:

(i) Achieve targets at the lowest reasonable cost, considering risk;

(ii) Consider acquisition of existing renewable resources; and

(iii) In the acquisition of new resources constructed after May 7, 2019, rely on renewable resources and energy storage, insofar as doing so is consistent with (a)(i) of this subsection.

(b) Electric utilities subject to RCW 19.285.040 must demonstrate pursuit of all conservation and efficiency resources through compliance with the requirements in RCW 19.285.040.

(7) An electric utility that fails to meet the requirements of this section must pay the administrative penalty established under RCW 19.405.090(1), except as otherwise provided in this chapter.

(8) In complying with this section, an electric utility must, consistent with the requirements of RCW 19.280.030 and 19.405.140, ensure that all customers are benefiting from the transition to clean energy: Through the equitable distribution of energy and nonenergy benefits and reduction of burdens to vulnerable populations and highly impacted communities; long-term and short-term public health and environmental benefits and reduction of costs and risks; and energy security and resiliency.

(9) Affected market customers must comply with the standard established under subsection (1) of this section.

(10) A market customer that purchases electricity exclusively from carbon-free resources and eligible renewable resources, as defined in RCW 19.285.030 as of January 1, 2019, pursuant to a special contract with an investor-owned utility approved, prior to May 7, 2019, by order of the commission is subject to the requirements of such an order and not to the standard established in this section. For purposes of interpreting any such special contract,

chapter 19.285 RCW, as in effect on January 1, 2019, is not, either directly or indirectly, amended or supplemented.

(11) To reduce costs for utility customers or avoid exceeding the cost impact limit in RCW 19.405.060(3)(a), a multistate electric utility with fewer than ((~~two hundred fifty thousand~~)) 250,000 customers in Washington may apply the total amount of megawatt-hours of coal-fired resources eliminated from the utility's allocation of electricity before December 31, 2025, as an equivalent amount of megawatt-hours of nonemitting electric generation or electricity from renewable resources required to comply with subsection (1)(a) of this section. The utility must demonstrate that for every megawatt-hour of early action compliance credit there is a real, permanent reduction in greenhouse gas emissions in the western interconnection directly associated with that credit. A multistate electric utility must request to use early action compliance credit in its clean energy implementation plan that is submitted under RCW 19.405.060. The multistate electric utility must specify in its clean energy implementation plan the compliance years to which the early action compliance credit will apply, but in no event may the multistate electric utility use the early action compliance credits beyond 2035. The commission must establish conditions for use of early action compliance credits, including a determination of whether action constitutes early action, before the multistate electric utility's use of early action compliance credits in a clean energy implementation plan.

Effective Date

NEW SECTION. **Sec. 12.** This act takes effect January 1, 2024.

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