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HOUSE BILL 3386

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State of Washington                      60th Legislature                      2008 Regular Session

By Representatives Ericksen, Crouse, Armstrong, Haler, McCune,  
Hankins, and Dunn

Read first time 03/06/08.      Referred to Committee on Technology,  
Energy & Communications.

1            AN ACT Relating to the energy independence act; amending RCW  
2 19.285.030, 19.285.040, and 19.285.050; adding new sections to chapter  
3 80.28 RCW; and creating a new section.

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

5            NEW SECTION.    **Sec. 1.** (1) The legislature finds that:

6            (a) A majority of the retail electric load in the western United  
7 States is presently served by electric utilities that are subject to  
8 renewable portfolio standards, mandating that they acquire renewable  
9 energy resources in prescribed amounts by specific timelines under  
10 penalty of law;

11           (b) Washington utilities must compete with other electric  
12 utilities, some much larger and better capitalized, to acquire cost-  
13 effective renewable energy resources, and this competition, along with  
14 other factors, has been shown to drive up the cost of renewable energy  
15 resources;

16           (c) Future legislation requiring the electricity sector to reduce  
17 greenhouse gas emissions will further heighten competition among  
18 electric utilities in the western United States for renewable energy  
19 resources; and

1 (d) The renewable portfolio standard laws of other states,  
2 particularly California and Oregon, give electric utilities subject to  
3 those laws a competitive advantage over Washington's utilities through  
4 their ability to: (i) Acquire renewable energy resources from a  
5 broader geographic region; (ii) count existing hydropower generation  
6 and other low-emitting or zero-emitting generation resources against a  
7 renewable portfolio standard; (iii) bank renewable energy credits to  
8 comply with future renewable energy standards; (iv) account for and  
9 recover the full costs of financing, developing, integrating, and  
10 delivering renewable energy in a timely manner that respects procedural  
11 rights; and (v) invest in distributed generation that has above-market  
12 costs.

13 (2) The legislature declares that the requirements of the energy  
14 independence act should be reconciled with conceptually similar laws in  
15 neighboring states to facilitate the achievement of the act's  
16 objectives in a manner that promotes the development of eligible  
17 renewable resources and the reduction of greenhouse gas emissions at  
18 the lowest reasonable cost.

19 **Sec. 2.** RCW 19.285.030 and 2007 c 1 s 3 (Initiative Measure No.  
20 937) are each amended to read as follows:

21 The definitions in this section apply throughout this chapter  
22 unless the context clearly requires otherwise.

23 (1) "Attorney general" means the Washington state office of the  
24 attorney general.

25 (2) "Auditor" means: (a) The Washington state auditor's office or  
26 its designee for qualifying utilities under its jurisdiction that are  
27 not investor-owned utilities; or (b) an independent auditor selected by  
28 a qualifying utility that is not under the jurisdiction of the state  
29 auditor and is not an investor-owned utility.

30 (3) "Commission" means the Washington state utilities and  
31 transportation commission.

32 (4) "Conservation" means any reduction in electric power  
33 consumption resulting from increases in the efficiency of energy use,  
34 production, or distribution.

35 (5) "Cost-effective" has the same meaning as defined in RCW  
36 80.52.030.

1 (6) "Council" means the Washington state apprenticeship and  
2 training council within the department of labor and industries.

3 (7) "Customer" means a person or entity that purchases electricity  
4 for ultimate consumption and not for resale.

5 (8) "Department" means the department of community, trade, and  
6 economic development or its successor.

7 (9) "Distributed generation" means an eligible renewable resource  
8 where the generation facility or any integrated cluster of such  
9 facilities has a generating capacity of not more than five megawatts.

10 (10) "Eligible renewable resource" means:

11 (a) Electricity from a generation facility powered by a renewable  
12 resource other than fresh water that commences operation after March  
13 31, ~~((1999, where:—(i)))~~ 1995, when the facility is located ((in the  
14 Pacific Northwest; or (ii) the electricity from the facility is  
15 delivered into Washington state on a real time basis without shaping,  
16 storage, or integration services)) within the geographic boundary of  
17 the western electricity coordinating council or its successor; ((or))

18 (b) Incremental electricity produced as a result of efficiency  
19 improvements completed after March 31, ~~((1999))~~ 1995, to hydroelectric  
20 generation projects owned by a qualifying utility or nonqualifying  
21 utility and located ((in the Pacific Northwest)) within the geographic  
22 area of the western electricity coordinating council or its successor  
23 or to hydroelectric generation in irrigation pipes and canals located  
24 ((in the Pacific Northwest, where)) within the geographic area of the  
25 western electricity coordinating council or its successor when the  
26 additional generation in either case does not result in new water  
27 diversions or impoundments; or

28 (c) Electricity from a generation facility powered by qualified  
29 hydropower, biomass, landfill gas, municipal solid waste, or solar  
30 energy that commenced operation before March 31, 1995, and the facility  
31 is located in the state.

32 (11) "Investor-owned utility" has the same meaning as defined in  
33 RCW 19.29A.010.

34 (12) "Joint operating agency" has the same meaning as defined in  
35 RCW 43.52.250.

36 (13) "Load" means the amount of kilowatt-hours of electricity  
37 delivered in the most recently completed year by a qualifying utility  
38 to its Washington retail customers.

1        ~~((13))~~ (14) "Nonpower attributes" means all environmentally  
2 related characteristics, exclusive of energy, capacity reliability, and  
3 other electrical power service attributes, that are associated with the  
4 generation of electricity from a renewable resource, including but not  
5 limited to the facility's fuel type, geographic location, vintage,  
6 qualification as an eligible renewable resource, and avoided emissions  
7 of pollutants to the air, soil, or water, and avoided emissions of  
8 carbon dioxide and other greenhouse gases.

9        ~~((14))~~ (15) "Nonqualifying utility" means an electric utility as  
10 defined in RCW 19.29A.010 that serves less than twenty-five thousand  
11 customers in the state of Washington, a joint operating agency as  
12 defined under RCW 43.52.250, and the Bonneville power administration.  
13 The number of customers served may be based on data reported by a  
14 utility in form 861, "annual electric utility report," filed with the  
15 energy information administration, United States department of energy.

16        (16) "Pacific Northwest" has the same meaning as defined for the  
17 Bonneville power administration in section 3 of the Pacific Northwest  
18 electric power planning and conservation act (94 Stat. 2698; 16 U.S.C.  
19 Sec. 839a).

20        ~~((15))~~ (17) "Public facility" has the same meaning as defined in  
21 RCW 39.35C.010.

22        ~~((16))~~ (18) "Qualified hydropower" means electricity from: (i)  
23 A generating facility powered by water with generation capacity of  
24 thirty megawatts or less and the facility commenced operation before  
25 March 31, 1995; (ii) efficiency improvements made after March 31, 1995,  
26 to a generating facility powered by water that is owned or marketed by  
27 a nonqualifying electric utility; and (iii) an impoundment that is  
28 modified after March 31, 1995, to produce electricity.

29        (19) "Qualifying utility" means an electric utility, as the term  
30 "electric utility" is defined in RCW 19.29A.010, that serves more than  
31 twenty-five thousand customers in the state of Washington. The number  
32 of customers served may be based on data reported by a utility in form  
33 861, "annual electric utility report," filed with the energy  
34 information administration, United States department of energy.

35        ~~((17))~~ (20) "Renewable energy credit" means a tradable  
36 certificate of proof of at least one megawatt-hour of an eligible  
37 renewable resource where the generation facility is ~~((not powered by~~  
38 ~~fresh water))~~ an eligible renewable resource, the certificate includes

1 all of the nonpower attributes associated with that one megawatt-hour  
2 of electricity, and the certificate is verified by a renewable energy  
3 credit tracking system selected by the department.

4 ~~((18))~~ (21) "Renewable resource" means: (a) Water; (b) wind; (c)  
5 solar energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean,  
6 or tidal power; (g) gas from sewage treatment facilities; (h) biodiesel  
7 fuel as defined in RCW 82.29A.135 that is not derived from crops raised  
8 on land cleared from old growth or first-growth forests where the  
9 clearing occurred after December 7, 2006; ~~((and))~~ (i) biomass energy  
10 based on animal waste or solid organic fuels from wood, forest, or  
11 field residues, or dedicated energy crops that do not include (i) wood  
12 pieces that have been treated with chemical preservatives such as  
13 creosote, pentachlorophenol, or copper-chrome-arsenic; (ii) ~~((black  
14 liquor byproduct from paper production; (iii))~~ wood from old growth  
15 forests; or ~~((iv))~~ (iii) municipal solid waste; and (j) spent pulping  
16 liquor.

17 ~~((19))~~ (22) "Rule" means rules adopted by an agency or other  
18 entity of Washington state government to carry out the intent and  
19 purposes of this chapter.

20 ~~((20))~~ (23) "Year" means the twelve-month period commencing  
21 January 1st and ending December 31st.

22 **Sec. 3.** RCW 19.285.040 and 2007 c 1 s 4 (Initiative Measure No.  
23 937) are each amended to read as follows:

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

26 (a) By January 1, 2010, using methodologies consistent with those  
27 used by the Pacific Northwest electric power and conservation planning  
28 council in its most recently published regional power plan, each  
29 qualifying utility shall identify its achievable cost-effective  
30 conservation potential through 2019. At least every two years  
31 thereafter, the qualifying utility shall review and update this  
32 assessment for the subsequent ten-year period.

33 (b) Beginning January 2010, each qualifying utility shall establish  
34 and make publicly available a biennial acquisition target for cost-  
35 effective conservation consistent with its identification of achievable  
36 opportunities in (a) of this subsection, and meet that target during  
37 the subsequent two-year period. At a minimum, each biennial target

1 must be no lower than the qualifying utility's pro rata share for that  
2 two-year period of its cost-effective conservation potential for the  
3 subsequent ten-year period.

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

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

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

22 (2)(a) Each qualifying utility shall use eligible renewable  
23 resources or acquire equivalent renewable energy credits or make  
24 alternative compliance payments pursuant to section 6 of this act, or  
25 ((a)) any combination of ((both)) these options, to meet the following  
26 annual targets:

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

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

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

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

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

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

15 (e) The requirements of this section may be met for any given year  
16 with renewable energy credits produced during that year, the preceding  
17 year, or the subsequent year. Each renewable energy credit may be used  
18 only once to meet the requirements of this section. Renewable energy  
19 credits may be traded, sold, or otherwise transferred. Renewable  
20 energy credits that are not used by a qualifying utility to comply with  
21 the requirements of this subsection (2) in any given year may be banked  
22 and carried forward indefinitely. Banked renewable energy credits with  
23 the oldest issuance date must be used to comply with the annual target  
24 before banked renewable energy credits with more recent issuance dates  
25 are used. A qualifying utility must demonstrate that a renewable  
26 energy credit used to comply with the requirements of this subsection  
27 (2) is derived from an eligible renewable resource and that the  
28 qualifying utility has not used, traded, sold, or otherwise transferred  
29 the credit. A qualifying utility that uses a renewable energy credit  
30 to comply with a renewable energy standard imposed by any other state  
31 may not use the same credit to comply with the requirements of this  
32 section.

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

35 (+)) eligible renewable resources or distributed generation where  
36 the associated renewable energy credits are owned by a separate  
37 entity((÷-or

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

4 (g) Where fossil and combustible renewable resources are cofired in  
5 one generating unit located in the Pacific Northwest where the cofiring  
6 commenced after March 31, ~~((1999))~~ 1995, the unit shall be considered  
7 to produce eligible renewable resources in direct proportion to the  
8 percentage of the total heat value represented by the heat value of the  
9 renewable resources.

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

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

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

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

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

28 (3) Utilities that become qualifying utilities after December 31,  
29 2006, shall meet the requirements in this section on a time frame  
30 comparable in length to that provided for qualifying utilities as of  
31 December 7, 2006.

32 **Sec. 4.** RCW 19.285.050 and 2007 c 1 s 5 (Initiative Measure No.  
33 937) are each amended to read as follows:

34 (1)~~((a))~~ A qualifying utility shall be considered in compliance  
35 with an annual target created in RCW 19.285.040(2) for a given year if  
36 the utility invested four percent of its total annual retail revenue  
37 requirement on the incremental costs of eligible renewable resources,

1 the cost of renewable energy credits, or a combination of both, but a  
2 utility may elect to invest more than this amount. Qualifying electric  
3 utilities are encouraged to acquire eligible renewable resources and  
4 associated transmission, including components necessary for the  
5 development of eligible renewable resources and associated  
6 transmission, in advance of the annual targets under RCW  
7 19.285.040(2)(a) if such an acquisition can be reasonably expected to  
8 reduce the cost of complying with an annual target.

9 ((~~(b)~~)) (2) The incremental cost of an eligible renewable resource  
10 is calculated as the difference between the levelized delivered cost of  
11 the eligible renewable resource, regardless of ownership, compared to  
12 the levelized delivered cost of an equivalent amount of reasonably  
13 available substitute resources that do not qualify as eligible  
14 renewable resources, where the resources being compared have the same  
15 contract length or facility life. In determining the levelized  
16 delivered cost of an eligible renewable resource, the commission shall  
17 use the net present value of delivered cost, including: (a) Capital,  
18 operating, and maintenance costs of generating facilities; (b)  
19 financing costs attributable to capital, operating, and maintenance  
20 expenditures for generating facilities; (c) transmission and substation  
21 costs; (d) load following and ancillary services costs; and (e) costs  
22 associated with using other assets, physical or financial, to  
23 integrate, firm, or shape renewable energy sources on a firm annual  
24 basis to meet retail electricity needs.

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

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

32 (1) The commission shall by rule: (a) Address cost recovery issues  
33 of electrical companies that serve both in Washington and in other  
34 states in complying with chapter 19.285 RCW; and (b) establish a  
35 process for allocating the use of renewable energy credits by an  
36 electrical company that makes sales of electricity to retail customers  
37 in more than one state.

1 (2)(a) All prudently incurred costs by an electrical company to  
2 comply with the requirements of RCW 19.285.040(2) are recoverable in  
3 the rates of an electric company, including interconnection costs,  
4 costs associated with using physical or financial assets to integrate,  
5 firm, or shape renewable energy sources on a firm annual basis to meet  
6 retail electricity needs, and other costs associated with transmission  
7 and delivery of qualifying electricity to retail electricity consumers.

8 (b) The commission shall allow an electrical company to recover the  
9 reasonable costs of procuring renewable energy credits in rates. All  
10 revenues received by an electrical company from the sale of renewable  
11 energy credits, the cost of which had been recovered in rates, shall  
12 accrue to the benefit of ratepayers.

13 (3) The commission shall establish an automatic adjustment clause  
14 or another method that allows timely recovery of costs prudently  
15 incurred by an electrical company to construct or otherwise acquire  
16 facilities that generate electricity from eligible renewable resources  
17 and for associated electricity transmission. Upon the request of any  
18 interested person the commission shall conduct a proceeding to  
19 establish the terms of the automatic adjustment clause or other method  
20 for timely recovery of costs. The commission shall provide parties to  
21 the proceeding with the procedural rights described under chapter 34.05  
22 RCW, including but not limited to the opportunity to develop an  
23 evidentiary record, conduct discovery, introduce evidence, conduct  
24 cross-examination, and submit written briefs and oral argument. The  
25 commission shall issue a written order with findings on the evidentiary  
26 record developed in the proceeding.

27 (4) An electric company must file with the commission for approval  
28 of a proposed rate change to recover costs under the terms of an  
29 automatic adjustment clause or other method for timely recovery of  
30 costs established under subsection (3) of this section. Upon the  
31 request of any interested person the commission shall conduct a  
32 proceeding to determine whether to approve a proposed change in rates  
33 under the automatic adjustment clause or other method for timely  
34 recovery of costs. The commission shall provide parties to the  
35 proceeding with the procedural rights described under chapter 34.05  
36 RCW, including but not limited to the opportunity to develop an  
37 evidentiary record, conduct discovery, introduce evidence, conduct  
38 cross-examination, and submit written briefs and oral argument. The

1 commission shall issue a written order with findings on the evidentiary  
2 record developed in the proceeding. A filing made under this  
3 subsection is subject to the commission's authority to suspend a rate,  
4 or schedule of rates, for investigation.

5 (5) The commission shall establish the automatic adjustment clause  
6 or another method for timely recovery of costs as required by this  
7 section no later than January 1, 2010. The clause or method applies to  
8 all prudently incurred costs described in this section incurred by an  
9 electric company since the date of the company's last general rate case  
10 that was decided by the commission before the effective date of this  
11 section.

12 (6) For the purposes of this section, "automatic adjustment clause"  
13 means a provision of a rate schedule that provides for rate increases,  
14 decreases, or both, without prior hearing, reflecting increases,  
15 decreases, or both in costs incurred or revenues earned by a utility  
16 and that is subject to review by the commission at least once every two  
17 years.

18 NEW SECTION. **Sec. 6.** A new section is added to chapter 80.28 RCW  
19 to read as follows:

20 (1) The commission shall establish an alternative compliance rate  
21 for each compliance year for each electrical company subject to the  
22 requirements of RCW 19.285.040(2). The rate shall be expressed in  
23 dollars per megawatt-hour.

24 (2) The commission shall establish an alternative compliance rate  
25 based on the cost of qualifying electricity, contracts that the  
26 electrical company has acquired for future delivery of qualifying  
27 electricity, and the number of renewable energy credits that the  
28 company anticipates using in the compliance year to meet the annual  
29 target under RCW 19.285.040(2)(a). The commission shall also consider  
30 any determinations made under RCW 19.285.070 in reviewing the reports  
31 made by the electrical company for the previous compliance year. In  
32 establishing an alternative compliance rate, the commission shall set  
33 the rate to provide adequate incentive for the electrical company to  
34 purchase or generate qualifying electricity in lieu of using  
35 alternative compliance payments to meet the requirements of RCW  
36 19.285.040(2).

1 (3) An electrical company may elect to use, or may be required by  
2 the commission to use, alternative compliance payments to comply with  
3 the requirements of RCW 19.285.040. Any election by an electrical  
4 company to use alternative compliance payments is subject to review by  
5 the commission. An electrical company may not be required to make  
6 alternative compliance payments that would result in the company  
7 exceeding the cost cap established under RCW 19.285.050.

8 (4) The commission shall determine for each electrical company the  
9 extent to which alternative compliance payments may be recovered in the  
10 rates of the company. Each electrical company shall deposit any  
11 amounts recovered in the rates of the company for alternative  
12 compliance payments in a holding account established by the company.  
13 Amounts in the holding account shall accrue interest at the rate of  
14 return authorized by the commission for the electrical company.

15 (5) Amounts in holding accounts established under subsection (4) of  
16 this section may be expended by an electrical company only for costs of  
17 acquiring new generating capacity from eligible renewable resources,  
18 investments in efficiency upgrades to electricity generating facilities  
19 owned by the company, and energy conservation programs within the  
20 company's service area. The commission must approve expenditures by an  
21 electrical company from a holding account established under subsection  
22 (4) of this section. Amounts that are collected from customers and  
23 spent by an electrical company under this subsection may not be  
24 included in the company's rate base.

25 (6) The commission shall establish initial alternative compliance  
26 rates as required under this section no later than July 1, 2010.

27 (7) For the purposes of this section, (a) "eligible renewable  
28 resource" has the same meaning as defined under RCW 19.285.030; and (b)  
29 "qualifying electricity" means electricity produced from an eligible  
30 renewable resource.

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