
SENATE BILL 5840

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By Senators Marr, Honeyford, Rockefeller, Holmquist, Hatfield, Parlette, Ranker, Morton, Sheldon, Jarrett, Delvin, and Hewitt

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1 AN ACT Relating to modifying the energy independence act; and
2 amending RCW 19.285.010, 19.285.030, 19.285.040, and 19.285.080.

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

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

6 This chapter concerns requirements for new energy resources. This
7 chapter requires large utilities to obtain fifteen percent of their
8 electricity, or one hundred percent of their electricity to serve load
9 growth after conservation, whichever is less, from new renewable
10 resources such as solar and wind by 2020 and undertake cost-effective
11 energy conservation.

12 **Sec. 2.** RCW 19.285.030 and 2007 c 1 s 3 are each amended to read
13 as follows:

14 The definitions in this section apply throughout this chapter
15 unless the context clearly requires otherwise.

16 (1) "Attorney general" means the Washington state office of the
17 attorney general.

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

6 (3) "Commission" means the Washington state utilities and
7 transportation commission.

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

11 (5) "Cost-effective" has the same meaning as defined in RCW
12 80.52.030.

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

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

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

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

22 (10) "Eligible renewable resource" means:

23 (a) Electricity from a generation facility powered by a renewable
24 resource other than fresh water, except as provided in (b) through (e)
25 of this subsection, that commences operation after March 31, 1999,
26 where(~~(i)~~) the facility is located ((in the Pacific Northwest; or
27 ~~(ii) the electricity from the facility is delivered into Washington~~
28 ~~state on a real-time basis without shaping, storage, or integration~~
29 ~~services))~~ within the geographic boundary of the western electricity
30 coordinating council or its successor entity; ((or))

31 (b) Incremental electricity produced as a result of efficiency
32 improvements completed after March 31, 1999, to hydroelectric
33 generation projects (~~owned by a qualifying utility and~~) located in
34 the Pacific Northwest or to hydroelectric generation in water supply
35 pipes, irrigation pipes (~~and~~), or canals located in the Pacific
36 Northwest, where the additional generation in either case does not
37 result in new water diversions or impoundments;

1 (c) Electricity from existing hydroelectric generation projects
2 located in Washington with a rated capacity of thirty megawatts or less
3 and owned by a qualifying utility or joint operating agency formed
4 under RCW 43.52.360;

5 (d) Electricity produced from an impoundment located in the Pacific
6 Northwest that has not generated electricity with water since 1990 and
7 that is modified or repowered after the effective date of this section
8 to produce electricity;

9 (e) Electricity from a distributed generation facility that uses
10 currents from freshwater rivers and streams that commenced operations
11 after March 31, 1999. The generation of electricity may not be
12 produced as a result of water diversions, impoundments, or dams; or

13 (f) Electricity from a biomass energy powered generation facility
14 located in Washington that commenced operation before March 31, 1999.

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

17 (12) "Load" means the amount of kilowatt-hours of electricity
18 delivered in the most recently completed year by a qualifying utility
19 to its Washington retail customers.

20 (13) "Nonpower attributes" means all environmentally related
21 characteristics, exclusive of energy, capacity reliability, and other
22 electrical power service attributes, that are associated with the
23 generation of electricity from a renewable resource, including but not
24 limited to the facility's fuel type, geographic location, vintage,
25 qualification as an eligible renewable resource, and avoided emissions
26 of pollutants to the air, soil, or water, and avoided emissions of
27 carbon dioxide and other greenhouse gases. For an anaerobic digester,
28 its nonpower attributes may be separated into avoided emissions of
29 carbon dioxide, and other greenhouse gases, and into renewable energy
30 credits.

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

35 (15) "Public facility" has the same meaning as defined in RCW
36 39.35C.010.

37 (16) "Qualifying utility" means an electric utility, as the term
38 "electric utility" is defined in RCW 19.29A.010, that serves more than

1 twenty-five thousand customers in the state of Washington. The number
2 of customers served may be based on data reported by a utility in form
3 861, "annual electric utility report," filed with the energy
4 information administration, United States department of energy.

5 (17) "Renewable energy credit" means a tradable certificate of
6 proof of at least one megawatt-hour of an eligible renewable resource
7 where the generation facility is not powered by fresh water, the
8 certificate includes all of the nonpower attributes associated with
9 that one megawatt-hour of electricity, and the certificate is verified
10 by a renewable energy credit tracking system selected by the
11 department.

12 (18) "Renewable resource" means: (a) Water; (b) wind; (c) solar
13 energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or
14 tidal power; (g) gas from sewage treatment facilities; (h) biodiesel
15 fuel as defined in RCW 82.29A.135 that is not derived from crops raised
16 on land cleared from old growth (~~(or first-growth forests)~~) where the
17 clearing occurred after December 7, 2006; (~~and~~) (i) byproducts of
18 pulping or wood manufacturing processes located in Washington that are
19 not derived from old growth forests, including but not limited to bark,
20 wood chips, sawdust, and lignin in spent pulping liquors; (j) black
21 liquors derived from algae and other sources; and (k) biomass energy
22 based on animal waste, food waste, yard waste, or solid organic fuels
23 from wood, forest, or field residues, or dedicated energy crops that do
24 not include (i) wood pieces that have been treated with chemical
25 preservatives such as creosote, pentachlorophenol, or copper-chrome-
26 arsenic; (ii) (~~black liquor byproduct from paper production;~~ (~~iii~~))
27 wood from old growth forests; or (~~(iv)~~) (iii) municipal solid waste.

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

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

33 **Sec. 3.** RCW 19.285.040 and 2007 c 1 s 4 are each amended to read
34 as follows:

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

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

8 (b) ~~((Beginning))~~ By January 1, 2010, each qualifying utility shall
9 establish and make publicly available a biennial acquisition target for
10 cost-effective conservation consistent with its identification of
11 achievable opportunities in (a) of this subsection, and meet that
12 target during the subsequent two-year period. At a minimum, each
13 biennial acquisition target must be no lower than the qualifying
14 utility's pro rata share for that two-year period of its cost-effective
15 conservation potential for the subsequent ten-year period. A
16 qualifying utility may not use incremental electricity produced as a
17 result of efficiency improvements to hydroelectric generation projects
18 to meet its biennial conservation acquisition target if the
19 improvements were used to meet its targets under subsection (2)(a) of
20 this section.

21 (c) In meeting its conservation targets, a qualifying utility may
22 count high-efficiency cogeneration owned and used by a retail electric
23 customer to meet its own needs. High-efficiency cogeneration is the
24 sequential production of electricity and useful thermal energy from a
25 common fuel source, where, under normal operating conditions, the
26 facility ~~((has a useful thermal energy output of no less than thirty-~~
27 ~~three percent of the total energy output))~~ is designed to have a
28 projected overall thermal conversion efficiency of at least seventy
29 percent. For the purposes of this section, "overall thermal conversion
30 efficiency" means the output of electricity plus usable heat divided by
31 fuel input. The reduction in load due to high-efficiency cogeneration
32 shall be ~~((:—(i) Calculated as the ratio of the fuel chargeable to~~
33 ~~power heat rate of the cogeneration facility compared to the heat rate~~
34 ~~on a new and clean basis of a best commercially available technology~~
35 ~~combined-cycle natural gas-fired combustion turbine; and (ii)))~~ counted
36 towards meeting the biennial conservation target in the same manner as
37 other production conservation savings.

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

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

6 (2)(a) Each qualifying utility shall use eligible renewable
7 resources ~~((or))~~, acquire equivalent renewable energy credits, or use
8 conservation achieved under subsection (1) of this section, or a
9 combination of ~~((both))~~ these options, to meet the following annual
10 targets:

11 (i) At least ~~((three))~~ four percent of its load, or one hundred
12 percent of its load growth after conservation, whichever is less, by
13 January 1, 2012, and each year thereafter through December 31, 2015;

14 (ii) At least ~~((nine))~~ ten percent of its load, or one hundred
15 percent of its load growth after conservation, whichever is less, by
16 January 1, 2016, and each year thereafter through December 31, 2019;
17 and

18 (iii) At least ~~((fifteen))~~ sixteen percent of its load, or one
19 hundred percent of its load growth after conservation, whichever is
20 less, by January 1, 2020, and each year thereafter.

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

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

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

1 eligible renewable resources, renewable energy credits, or a
2 combination of both.

3 (e) The requirements of this section may be met for any given year
4 with renewable energy credits produced during that year, the preceding
5 year, or the subsequent year. Each renewable energy credit may be used
6 only once to meet the requirements of this section.

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

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

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

15 (iii) Efficiency improvements to hydroelectric generation projects
16 attributable to any utility other than the qualifying utility and whose
17 energy output is marketed by the Bonneville power administration.

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

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

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

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

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

34 (i) A qualifying utility that acquires solar energy may count that
35 acquisition at four times its base value where the energy is produced
36 using solar inverters and modules manufactured in Washington state.

37 (j) A qualifying utility shall be considered in compliance with an
38 annual target in (a) of this subsection if events beyond the reasonable

1 control of the utility that could not have been reasonably anticipated
2 or ameliorated prevented it from meeting the renewable energy target.
3 Such events include weather-related damage, mechanical failure,
4 strikes, lockouts, and actions of a governmental authority that
5 adversely affect the generation, transmission, or distribution of an
6 eligible renewable resource under contract to a qualifying utility.

7 (3) Utilities that become qualifying utilities after December 31,
8 2006, shall meet the requirements in this section on a time frame
9 comparable in length to that provided for qualifying utilities as of
10 December 7, 2006.

11 **Sec. 4.** RCW 19.285.080 and 2007 c 1 s 8 are each amended to read
12 as follows:

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

16 (2) The department shall adopt rules concerning only process,
17 timelines, and documentation to ensure the proper implementation of
18 this chapter as it applies to qualifying utilities that are not
19 investor-owned utilities. Those rules include, but are not limited to,
20 rules associated with a qualifying utility's development of
21 conservation targets under RCW 19.285.040(1); a qualifying utility's
22 decision to pursue alternative compliance in RCW 19.285.040(2) (d) or
23 (~~((i))~~) (j) or 19.285.050(1); and the format and content of reports
24 required in RCW 19.285.070. Nothing in this subsection may be
25 construed to restrict the rate-making authority of the commission or a
26 qualifying utility as otherwise provided by law.

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

30 (4)(a) Pursuant to the administrative procedure act, chapter 34.05
31 RCW, rules needed for the implementation of this chapter must be
32 adopted by (~~(December 31, 2007)~~) June 30, 2010. These rules may be
33 revised as needed to carry out the intent and purposes of this chapter.

34 (b) Within six months of the adoption by the Pacific Northwest
35 electric power and conservation planning council of each of its
36 regional power plans, the department shall initiate rule making to
37 consider adopting any changes in methodologies used by the Pacific

1 Northwest electric power and conservation planning council that would
2 impact a qualifying utility's conservation potential assessment in
3 accordance with RCW 19.285.040(1).

4 (c) Within six months of the adoption by the Pacific Northwest
5 electric power and conservation planning council of each of its
6 regional power plans, the commission shall initiate rule making to
7 consider adopting any changes in methodologies used by the Pacific
8 Northwest electric power and conservation planning council that would
9 impact a qualifying utility's conservation potential assessment in
10 accordance with RCW 19.285.040(1).

11 (d) Rules adopted under (b) and (c) of this subsection must be
12 applied to the next biennial target that begins at least six months
13 after the adoption date of the rules.

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