S-0859.1

SENATE BILL 5431

State of Washington 62nd Legislature 2011 Regular Session

By Senators Rockefeller and Nelson

Read first time 01/25/11. Referred to Committee on Environment, Water & Energy.

AN ACT Relating to null generation electricity; amending RCW 19.29A.010, 19.29A.060, and 80.80.040; and reenacting and amending RCW 80.80.010.

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

Sec. 1. RCW 19.29A.010 and 2000 c 213 s 2 are each amended to read as follows:

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

(1) "Biomass generation" means electricity derived from burning solid organic fuels from wood, forest, or field residue, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic.

(2) "Bonneville power administration system mix" means a generation mix sold by the Bonneville power administration that is net of any resource specific sales and that is net of any electricity sold to direct service industrial customers, as defined in section 3(8) of the Pacific Northwest electric power planning and conservation act (16 U.S.C. Sec. 839(a)(8)).

(3) "Coal generation" means the electricity produced by a generating facility that burns coal as the primary fuel source.

(4) "Commission" means the utilities and transportation commission.

(5) "Conservation" means an increase in efficiency in the use of energy use that yields a decrease in energy consumption while providing the same or higher levels of service. Conservation includes low-income weatherization programs.

(6) "Consumer-owned utility" means a municipal electric utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, or a mutual corporation or association formed under chapter 24.06 RCW, that is engaged in the business of distributing electricity to more than one retail electric customer in the state.

(7) "Declared resource" means an electricity source specifically identified by a retail supplier to serve retail electric customers. A declared resource includes a stated quantity of electricity tied directly to a specified generation facility or set of facilities either through ownership or contract purchase, or a contractual right to a stated quantity of electricity from a specified generation facility or set of facilities.

(8) "Department" means the department of ((~~community, trade, and economic development~~)) commerce.

(9) "Electricity information coordinator" means the organization selected by the department under RCW 19.29A.080 to: (a) Compile generation data in the Northwest power pool by generating project and by resource category; (b) compare the quantity of electricity from declared resources reported by retail suppliers with available generation from such resources; (c) calculate the net system power mix; and (d) coordinate with other comparable organizations in the western interconnection.

(10) "Electric meters in service" means those meters that record in at least nine of twelve calendar months in any calendar year not less than two hundred fifty kilowatt hours per month.

(11) "Electricity product" means the electrical energy produced by a generating facility or facilities that a retail supplier sells or offers to sell to retail electric customers in the state of Washington, provided that nothing in this title shall be construed to mean that

electricity is a good or product for the purposes of Title 62A RCW, or any other purpose. It does not include electrical energy generated on-site at a retail electric customer's premises.

(12) "Electric utility" means a consumer-owned or investor-owned utility as defined in this section.

(13) "Electricity" means electric energy measured in kilowatt hours, or electric capacity measured in kilowatts, or both.

(14) "Fuel mix" means the actual or imputed sources of electricity sold to retail electric customers, expressed in terms of percentage contribution by resource category. The total fuel mix included in each disclosure shall total one hundred percent.

(15) "Geothermal generation" means electricity derived from thermal energy naturally produced within the earth.

(16) "Governing body" means the council of a city or town, the commissioners of an irrigation district, municipal electric utility, or public utility district, or the board of directors of an electric cooperative or mutual association that has the authority to set and approve rates.

(17) "High efficiency cogeneration" means electricity produced by equipment, such as heat or steam used for industrial, commercial, heating, or cooling purposes, that meets the federal energy regulatory commission standards for qualifying facilities under the public utility regulatory policies act of 1978.

(18) "Hydroelectric generation" means a power source created when water flows from a higher elevation to a lower elevation and the flow is converted to electricity in one or more generators at a single facility.

(19) "Investor-owned utility" means a company owned by investors that meets the definition of RCW 80.04.010 and is engaged in distributing electricity to more than one retail electric customer in the state.

(20) "Landfill gas generation" means electricity produced by a generating facility that uses waste gases produced by the decomposition of organic materials in landfills.

(21) "Natural gas generation" means electricity produced by a generating facility that burns natural gas as the primary fuel source.

(22) "Northwest power pool" means the generating resources included

in the United States portion of the Northwest power pool area as defined by the western systems coordinating council.

(23) "Net system power mix" means the fuel mix in the Northwest power pool, net of: (a) Any declared resources in the Northwest power pool identified by in-state retail suppliers or out-of-state entities that offer electricity for sale to retail electric customers; (b) any electricity sold by the Bonneville power administration to direct service industrial customers; and (c) any resource specific sales made by the Bonneville power administration.

(24) "Oil generation" means electricity produced by a generating facility that burns oil as the primary fuel source.

(25) "Proprietary customer information" means: (a) Information that relates to the source and amount of electricity used by a retail electric customer, a retail electric customer's payment history, and household data that is made available by the customer solely by virtue of the utility-customer relationship; and (b) information contained in a retail electric customer's bill.

(26) "Renewable resources" means electricity generation facilities fueled by: (a) Water; (b) wind; (c) solar energy; (d) geothermal energy; (e) landfill gas; or (f) biomass energy based on solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic.

(27) "Resale" means the purchase and subsequent sale of electricity for profit, but does not include the purchase and the subsequent sale of electricity at the same rate at which the electricity was purchased.

(28) "Retail electric customer" means a person or entity that purchases electricity for ultimate consumption and not for resale.

(29) "Retail supplier" means an electric utility that offers an electricity product for sale to retail electric customers in the state.

(30) "Small utility" means any consumer-owned utility with twenty-five thousand or fewer electric meters in service, or that has an average of seven or fewer customers per mile of distribution line.

(31) "Solar generation" means electricity derived from radiation from the sun that is directly or indirectly converted to electrical energy.

(32) "State" means the state of Washington.

(33) "Waste incineration generation" means electricity derived from burning solid or liquid wastes from businesses, households, municipalities, or waste treatment operations.

(34) "Wind generation" means electricity created by movement of air that is converted to electrical energy.

(35) "Null generation" means electricity generated from renewable resources that is separated from its renewable attributes by the use of renewable energy credits.

(36) "Renewable energy credit" has the same meaning as defined under RCW 19.285.030.

Sec. 2. RCW 19.29A.060 and 2000 c 213 s 4 are each amended to read as follows:

(1) Each retail supplier shall disclose the fuel mix of each electricity product it offers to retail electric customers as follows:

(a) For an electricity product comprised entirely of declared resources, a retail supplier shall disclose the fuel mix for the electricity product based on the quantity of electric generation from those declared resources for the previous calendar year and any adjustment, if taken, available under subsection (6) of this section.

(b) For an electricity product comprised of no declared resources, a retail supplier shall report the fuel mix for the electricity product as the fuel mix of net system power for the previous calendar year, as determined by the electricity information coordinator under RCW 19.29A.080.

(c) For an electricity product comprised of a combination of declared resources and the net system power, a retail supplier shall disclose the fuel mix for the electricity product as a weighted average of the megawatt-hours from declared resources and the megawatt-hours from the net system power mix for the previous calendar year according to the proportion of declared resources and net system power contained in the electricity product.

(2) The disclosures required by this section shall identify the percentage of the total electricity product sold by a retail supplier during the previous calendar year from each of the following categories:

(a) Coal generation;

(b) Hydroelectric generation;

(c) Natural gas generation;

(d) Nuclear generation; ((~~and~~))

(e) Null generation; and

(f) 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, which may include, but are not limited to: (i) Biomass generation; (ii) geothermal generation; (iii) landfill gas generation; (iv) oil generation; (v) solar generation; (vi) waste incineration; or (vii) wind generation. A retail supplier may voluntarily identify any component or components within the other generation category that comprises two percent or less of annual sales.

(3) Retail suppliers may separately report a subcategory of natural gas generation to identify high efficiency cogeneration.

(4) Except as provided in subsection (3) of this section, a retail supplier cannot include in the disclosure label any environmental quality or environmental impact qualifier related to any of the generation categories disclosed.

(5) For the portion of an electricity product purchased from the Bonneville power administration, retail suppliers may disclose the Bonneville power administration system mix.

(6) A retail supplier may adjust its reported fuel mix for known changes in its declared resources for the current year based on any changes in its sources of electricity supply from either generation or contracts. If a retail supplier changes its fuel mix during a calendar year, it shall report those changes to the electricity information coordinator.

(7) Disclosure of the fuel mix information required in this section shall be made in the following uniform format: A tabular format with two columns, where the first column shall alphabetically list each category and the second column shall display the corresponding percentage of the total that each category represents. The percentage shall be reported as a numeric value rounded to the nearest one percent. The percentages listed for the categories identified must sum to one hundred percent with the table displaying such a total.

Sec. 3. RCW 80.80.010 and 2009 c 565 s 54 and 2009 c 448 s 1 are each reenacted and amended to read as follows:

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

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

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

(3) "Average available greenhouse gas emissions output" means the level of greenhouse gas emissions as surveyed and determined by the energy policy division of the department of commerce under RCW 80.80.050.

(4) "Baseload electric generation" means electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least sixty percent.

(5) "Cogeneration facility" means a power plant in which the heat or steam is also used for industrial or commercial heating or cooling purposes and that meets federal energy regulatory commission standards for qualifying facilities under the public utility regulatory policies act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

(6) "Combined-cycle natural gas thermal electric generation facility" means a power plant that employs a combination of one or more gas turbines and steam turbines in which electricity is produced in the steam turbine from otherwise lost waste heat exiting from one or more of the gas turbines.

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

(8) "Consumer-owned utility" means a municipal utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, a mutual corporation or association formed under chapter 24.06 RCW, or port district within which an industrial district has been established as authorized by Title 53 RCW, that is engaged in the business of distributing electricity to more than one retail electric customer in the state.

(9) "Department" means the department of ecology.

(10) "Distributed generation" means electric generation connected to the distribution level of the transmission and distribution grid, which is usually located at or near the intended place of use.

(11) "Electric utility" means an electrical company or a consumer-owned utility.

(12) "Electrical company" means a company owned by investors that meets the definition of RCW 80.04.010.

(13) "Governing board" means the board of directors or legislative authority of a consumer-owned utility.

(14) "Greenhouse gases" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(15) "Long-term financial commitment" means:

(a) Either a new ownership interest in baseload electric generation or an upgrade to a baseload electric generation facility; or

(b) A new or renewed contract for baseload electric generation with a term of five or more years for the provision of retail power or wholesale power to end-use customers in this state.

(16) "Plant capacity factor" means the ratio of the electricity produced during a given time period, measured in kilowatt-hours, to the electricity the unit could have produced if it had been operated at its rated capacity during that period, expressed in kilowatt-hours.

(17) "Power plant" means a facility for the generation of electricity that is permitted as a single plant by a jurisdiction inside or outside the state.

(18) "Upgrade" means any modification made for the primary purpose of increasing the electric generation capacity of a baseload electric generation facility. "Upgrade" does not include routine or necessary maintenance, installation of emission control equipment, installation, replacement, or modification of equipment that improves the heat rate of the facility, or installation, replacement, or modification of equipment for the primary purpose of maintaining reliable generation output capability that does not increase the heat input or fuel usage as specified in existing generation air quality permits as of July 22, 2007, but may result in incidental increases in generation capacity.

(19) "Null generation" means electricity generated from renewable resources that is separated from its renewable attributes by the use of renewable energy credits.

(20) "Renewable energy credit" has the same meaning as defined under RCW 19.285.030.

Sec. 4. RCW 80.80.040 and 2009 c 448 s 2 are each amended to read as follows:

(1) Beginning July 1, 2008, the greenhouse gas emissions performance standard for all baseload electric generation for which electric utilities enter into long-term financial commitments on or after such date is the lower of:

(a) One thousand one hundred pounds of greenhouse gases per megawatt-hour; or

(b) The average available greenhouse gas emissions output as determined under RCW 80.80.050.

(2) This chapter does not apply to long-term financial commitments with the Bonneville power administration.

(3) All baseload electric generation facilities in operation as of June 30, 2008, are deemed to be in compliance with the greenhouse gas emissions performance standard established under this section until the facilities are the subject of long-term financial commitments. All baseload electric generation that commences operation after June 30, 2008, and is located in Washington, must comply with the greenhouse gas emissions performance standard established in subsection (1) of this section.

(4) All electric generation facilities or power plants powered exclusively by renewable resources, as defined in RCW 19.280.020, are deemed to be in compliance with the greenhouse gas emissions performance standard established under this section.

(5) All cogeneration facilities in the state that are fueled by natural gas or waste gas or a combination of the two fuels, and that are in operation as of June 30, 2008, are deemed to be in compliance with the greenhouse gas emissions performance standard established under this section until the facilities are the subject of a new ownership interest or are upgraded.

(6) In determining the rate of emissions of greenhouse gases for baseload electric generation, the total emissions associated with producing electricity shall be included.

(7) In no case shall a long-term financial commitment be determined

to be in compliance with the greenhouse gas emissions performance standard if the commitment includes more than twelve percent of electricity from unspecified sources.

(8) For a long-term financial commitment with multiple power plants, each specified power plant must be treated individually for the purpose of determining the annualized plant capacity factor and net emissions, and each power plant must comply with subsection (1) of this section, except as provided in subsections (3) through (5) of this section.

(9) The department shall establish an output-based methodology to ensure that the calculation of emissions of greenhouse gases for a cogeneration facility recognizes the total usable energy output of the process, and includes all greenhouse gases emitted by the facility in the production of both electrical and thermal energy. In developing and implementing the greenhouse gas emissions performance standard, the department shall consider and act in a manner consistent with any rules adopted pursuant to the public utilities regulatory policy act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

(10) The following greenhouse gas emissions produced by baseload electric generation owned or contracted through a long-term financial commitment shall not be counted as emissions of the power plant in determining compliance with the greenhouse gas emissions performance standard:

(a) Those emissions that are injected permanently in geological formations;

(b) Those emissions that are permanently sequestered by other means approved by the department; and

(c) Those emissions sequestered or mitigated as approved under subsection (16) of this section.

(11) In adopting and implementing the greenhouse gas emissions performance standard, the department of ((~~community, trade, and economic development~~)) commerce energy policy division, in consultation with the commission, the department, the Bonneville power administration, the western electricity ((~~coordination [coordinating]~~)) coordinating council, the energy facility site evaluation council, electric utilities, public interest representatives, and consumer representatives, shall consider the effects of the greenhouse gas

emissions performance standard on system reliability and overall costs to electricity customers.

(12)(a) In developing and implementing the greenhouse gas emissions performance standard, the department shall, with assistance of the commission, the department of ((~~community, trade, and economic development~~)) commerce energy policy division, and electric utilities, and to the extent practicable, address long-term purchases of electricity from unspecified sources and null generation in a manner consistent with this chapter.

(b) When determining the measured emission rate of null generation, the department shall assign the rate of zero.

(13) The directors of the energy facility site evaluation council and the department shall each adopt rules under chapter 34.05 RCW in coordination with each other to implement and enforce the greenhouse gas emissions performance standard. The rules necessary to implement this section shall be adopted by June 30, 2008.

(14) In adopting the rules for implementing this section, the energy facility site evaluation council and the department shall include criteria to be applied in evaluating the carbon sequestration plan, for baseload electric generation that will rely on subsection (10) of this section to demonstrate compliance, but that will commence sequestration after the date that electricity is first produced. The rules shall include but not be limited to:

(a) Provisions for financial assurances, as a condition of plant operation, sufficient to ensure successful implementation of the carbon sequestration plan, including construction and operation of necessary equipment, and any other significant costs;

(b) Provisions for geological or other approved sequestration commencing within five years of plant operation, including full and sufficient technical documentation to support the planned sequestration;

(c) Provisions for monitoring the effectiveness of the implementation of the sequestration plan;

(d) Penalties for failure to achieve implementation of the plan on schedule;

(e) Provisions for an owner to purchase emissions reductions in the event of the failure of a sequestration plan under subsection (16) of this section; and

(f) Provisions for public notice and comment on the carbon sequestration plan.

(15)(a) Except as provided in (b) of this subsection, as part of its role enforcing the greenhouse gas emissions performance standard, the department shall determine whether sequestration or a plan for sequestration will provide safe, reliable, and permanent protection against the greenhouse gases entering the atmosphere from the power plant and all ancillary facilities.

(b) For facilities under its jurisdiction, the energy facility site evaluation council shall contract for review of sequestration or the carbon sequestration plan with the department consistent with the conditions under (a) of this subsection, consider the adequacy of sequestration or the plan in its adjudicative proceedings conducted under RCW 80.50.090(3), and incorporate specific findings regarding adequacy in its recommendation to the governor under RCW 80.50.100.

(16) A project under consideration by the energy facility site evaluation council by July 22, 2007, is required to include all of the requirements of subsection (14) of this section in its carbon sequestration plan submitted as part of the energy facility site evaluation council process. A project under consideration by the energy facility site evaluation council by July 22, 2007, that receives final site certification agreement approval under chapter 80.50 RCW shall make a good faith effort to implement the sequestration plan. If the project owner determines that implementation is not feasible, the project owner shall submit documentation of that determination to the energy facility site evaluation council. The documentation shall demonstrate the steps taken to implement the sequestration plan and evidence of the technological and economic barriers to successful implementation. The project owner shall then provide to the energy facility site evaluation council notification that they shall implement the plan that requires the project owner to meet the greenhouse gas emissions performance standard by purchasing verifiable greenhouse gas emissions reductions from an electric generating facility located within the western interconnection, where the reduction would not have occurred otherwise or absent this contractual agreement, such that the sum of the emissions reductions purchased and the facility's emissions

meets the standard for the life of the facility.

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