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**SUBSTITUTE SENATE BILL 5295**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senate Environment, Energy & Technology (originally sponsored by Senators Carlyle and Short)

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

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

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

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

18      (3) It is the intent of the legislature that the regulatory  
19      construct should require a forward-looking orientation for regulation  
20      consistent with state policy objectives that focus on planning,  
21      flexibility, and fair allocation of risks, while fostering and

1 supporting a culture that delivers performance and cost control in  
2 this new industry environment.

3 (4) It is the intent of the legislature that the regulation of  
4 gas and electrical companies transform toward multiyear rate plans  
5 and performance-based rate making to provide certainty and stability  
6 to customers and gas and electrical companies, with those plans  
7 focused on ensuring alignment of public policy objectives,  
8 investment, safety, and reliability.

9 **Sec. 2.** RCW 80.28.005 and 1994 c 268 s 1 are each amended to  
10 read as follows:

11 (~~Unless the context clearly requires otherwise, the~~) The  
12 definitions in this section apply throughout this chapter unless the  
13 context clearly requires otherwise.

14 (1) "Bondable conservation investment" means all expenditures  
15 made by electrical, gas, or water companies with respect to energy or  
16 water conservation measures and services intended to improve the  
17 efficiency of electricity, gas, or water end use, including related  
18 carrying costs if:

19 (a) The conservation measures and services do not produce assets  
20 that would be bondable utility property under the general utility  
21 mortgage of the electrical, gas, or water company;

22 (b) The commission has determined that the expenditures were  
23 incurred in conformance with the terms and conditions of a  
24 conservation service tariff in effect with the commission at the time  
25 the costs were incurred, and at the time of such determination the  
26 commission finds that the company has proven that the costs were  
27 prudent, that the terms and conditions of the financing are  
28 reasonable, and that financing under this chapter is more favorable  
29 to the customer than other reasonably available alternatives;

30 (c) The commission has approved inclusion of the expenditures in  
31 rate base and has not ordered that they be currently expensed; and

32 (d) The commission has not required that the measures demonstrate  
33 that energy savings have persisted at a certain level for a certain  
34 period before approving the cost of these investments as bondable  
35 conservation investment.

36 (2) "Conservation bonds" means bonds, notes, certificates of  
37 beneficial interests in trusts, or other evidences of indebtedness or  
38 ownership that:

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

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

6 (3) "Conservation investment assets" means the statutory right of  
7 an electrical, gas, or water company:

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

10 (b) To receive through rates revenues sufficient to recover the  
11 bondable conservation investment and the costs of equity and debt  
12 capital associated with it, including, without limitation, the  
13 payment of principal, premium, if any, and interest on conservation  
14 bonds.

15 (4) "Finance subsidiary" means any corporation, company,  
16 association, joint stock association, or trust that is beneficially  
17 owned, directly or indirectly, by an electrical, gas, or water  
18 company, or in the case of a trust issuing conservation bonds  
19 consisting of beneficial interests, for which an electrical, gas, or  
20 water company or a subsidiary thereof is the grantor, or an  
21 unaffiliated entity formed for the purpose of financing or  
22 refinancing approved conservation investment, and that acquires  
23 conservation investment assets directly or indirectly from such  
24 company in a transaction approved by the commission.

25 (5) "Fourth rate year" means the consecutive 12-month period, if  
26 any, that commences on the third anniversary of the rate effective  
27 date.

28 (6) "Future rate year" means any of an initial rate year, a  
29 second rate year, a third rate year, or a fourth rate year.

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

32 (8) "Historic test year" means the 12-month period that reflects  
33 the actual results of operations consistent with commission  
34 precedent.

35 (9) "Initial rate year" means the consecutive 12-month period  
36 that commences on the rate effective date.

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

1       (11) "Operating expense" means expenditures of a gas or  
2 electrical company associated with the direct or regular activity of  
3 supplying gas or electricity and related services to customers  
4 including, but not limited to, salaries, wages, cost of maintenance  
5 and operation, materials, fuel, supplies, insurance, and all other  
6 items normally included under recognized accounting practices, but  
7 does not include allowances for depreciation in the value of physical  
8 property.

9       (12) "Rate effective date" means the date on which rates approved  
10 by the commission pursuant to this chapter first become effective.

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

13       (14) "Third rate year" means the consecutive 12-month period, if  
14 any, that commences on the second anniversary of the rate effective  
15 date.

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

18       (1) Beginning January 1, 2022, every general rate case filing of  
19 a gas or electrical company must include a proposal for a multiyear  
20 rate plan as provided in this chapter. The commission shall approve,  
21 approve with conditions, or reject, a proposal for, an alternative  
22 proposal presented by parties in response to, a multiyear rate plan,  
23 or any combination thereof. The commission's consideration of a  
24 proposal for a multiyear rate plan is subject to the same standards  
25 applicable to other rate filings made under this title.

26       (2) A gas or electrical company may propose and the commission  
27 may approve any proposal to recover from ratepayers up to five  
28 percent of the total approved revenue requirement approved by the  
29 commission for the initial rate year for tariffs that expand the  
30 affordability of services available to customers including, but not  
31 limited to: (a) Bill assistance programs for low-income residential  
32 customers; or (b) one or more special rates for low-income  
33 residential customers to reduce the energy burden of those customers.

34       (3)(a) The commission shall separately approve rates for each of  
35 the initial rate year, the second rate year and, if applicable, the  
36 third rate year, and the fourth rate year.

37       (b) The commission shall ascertain and determine the fair value  
38 for rate-making purposes of the property of any gas or electrical  
39 company that has filed a multiyear rate plan pursuant to this section

1 that is or will be used and useful for service in this state by or  
2 during each rate year of the multiyear rate plan. For the initial  
3 rate year, the commission shall, at a minimum, ascertain and  
4 determine the fair value for rate-making purposes of the property of  
5 any gas or electrical company that has filed a multiyear rate plan  
6 pursuant to this section that is used and useful for service in this  
7 state as of the rate effective date. The commission may order refunds  
8 to customers if property expected to be used and useful by the rate  
9 effective date when the commission approves a multiyear rate plan is  
10 in fact not used and useful by such a date.

11 (c) The commission shall project the operating expenses for rate-  
12 making purposes of any gas or electrical company that has filed a  
13 multiyear rate plan pursuant to this section for each rate year of  
14 the multiyear rate plan.

15 (d) In ascertaining and determining the fair value of property of  
16 a gas or electrical company pursuant to (b) of this subsection and  
17 projecting the operating expenses of a gas or electrical company  
18 pursuant to (c) of this subsection, the commission may use any  
19 standard, formula, method, or theory of valuation reasonably  
20 calculated to arrive at fair, just, reasonable, and sufficient rates.

21 (e) If the commission approves a multiyear rate plan with a  
22 duration of three or four years, then the gas or electrical company  
23 must update its power costs as of the rate effective date of the  
24 third rate year. The proceeding to update the gas or electrical  
25 company's power costs is subject to the same standards that apply to  
26 other rate filings made under this title.

27 (4) The commission may, by order, establish terms, conditions,  
28 and procedures for a multiyear rate plan and ensure that rates remain  
29 just and reasonable during the course of the plan, including terms  
30 and procedures for rate adjustment during the term of the plan.

31 (5) The gas or electrical company is bound by the terms of the  
32 multiyear rate plan approved by the commission for each of the  
33 initial rate year and the second rate year. A gas or electrical  
34 company may file any of the following for the third rate year and  
35 fourth rate year, if any, of a multiyear rate plan, the effect of  
36 which could be to change rates affected by the multiyear rate plan:

37 (a) A general rate case; or

38 (b) A new multiyear rate plan in accordance with this section.

39 (6) The commission may, in approving a multiyear rate plan,  
40 determine a set of reasonable and applicable performance measures

1 that can be used to assess a gas or electrical company operating  
2 under a multiyear rate plan. These performance measures may be  
3 proposed by the gas or electrical company in its initial application  
4 or by any other party to the proceeding in its response to the  
5 company's filing.

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

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

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

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

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

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

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

33 (2) An electrical company may provide discounts under this  
34 section to reduce the energy burden of low-income or vulnerable  
35 populations and to ensure that the benefits of the transition to  
36 clean energy are equitably distributed, as required under chapter  
37 19.405 RCW.

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

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

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

1       (6)(a) A residential customer may not be charged for initiating  
2 or terminating low-income discount rates when the initiation or  
3 termination request is made after a regular meter reading has  
4 occurred and the customer is in receipt of the results of the  
5 reading.

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

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

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

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

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

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

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

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

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

29       (1) A gas company or electrical company may enter into one or  
30 more written agreements with organizations that represent interests  
31 of customers belonging to a highly impacted community or vulnerable  
32 populations to assist these organizations with the costs of  
33 participating in regulatory proceedings conducted by the commission.  
34 The agreement must govern the manner in which financial assistance  
35 may be provided to the organization representing customer interests  
36 of vulnerable populations or a highly impacted community. More than  
37 one gas company, electrical company, or organization representing  
38 customer interests of vulnerable populations or a highly impacted  
39 community may join in a single agreement. Any agreement entered into



1 under this section must be approved by the commission before any  
2 financial assistance is provided under the agreement.

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

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

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

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

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

14 (3) The commission shall allow a gas company or electrical  
15 company that provides financial assistance under this section to  
16 recover the amounts provided in rates. The commission shall allow a  
17 gas company or electrical company to defer inclusion of those amounts  
18 in rates if the gas company or electrical company so elects. An  
19 agreement under this section may not provide for payment of any  
20 amounts to the commission.

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

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

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

27 NEW SECTION. **Sec. 7.** If any provision of this act or its  
28 application to any person or circumstance is held invalid, the  
29 remainder of the act or the application of the provision to other  
30 persons or circumstances is not affected.

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