

---

**ENGROSSED SUBSTITUTE SENATE BILL 5295**

---

AS AMENDED BY THE HOUSE

Passed Legislature - 2021 Regular Session

**State of Washington**

**67th Legislature**

**2021 Regular Session**

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

READ FIRST TIME 02/12/21.

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 80.28.068 and 80.28.074; 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) To provide clarity and certainty to  
7       stakeholders on the details of performance-based regulation, the  
8       utilities and transportation commission is directed to conduct a  
9       proceeding to develop a policy statement addressing alternatives to  
10      traditional cost of service rate making, including performance  
11      measures or goals, targets, performance incentives, and penalty  
12      mechanisms. As part of such a proceeding, the utilities and  
13      transportation commission must consider factors including, but not  
14      limited to, lowest reasonable cost planning, affordability, increases  
15      in energy burden, cost of service, customer satisfaction and  
16      engagement, service reliability, clean energy or renewable  
17      procurement, conservation acquisition, demand side management  
18      expansion, rate stability, timely execution of competitive  
19      procurement practices, attainment of state energy and emissions  
20      reduction policies, rapid integration of renewable energy resources,  
21      and fair compensation of utility employees.

1 (2) In developing its policy statement, the utilities and  
2 transportation commission must in its proceeding allow for  
3 participation and consultation with regulated utilities, the attorney  
4 general's office, and other interested stakeholders including, but  
5 not limited to, residential, industrial, commercial, and low-income  
6 customers and organizations, as well as environmental or community  
7 organizations and stakeholders.

8 (3) By January 1, 2022, the utilities and transportation  
9 commission shall notify the chairs and ranking members of the  
10 appropriate committees of the legislature of the process to date, the  
11 expected duration of, and work plan associated with this proceeding.

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 80.28  
13 RCW to read as follows:

14 (1) Beginning January 1, 2022, every general rate case filing of  
15 a gas or electrical company must include a proposal for a multiyear  
16 rate plan as provided in this chapter. The commission may, by order  
17 after an adjudicative proceeding as provided by chapter 34.05 RCW,  
18 approve, approve with conditions, or reject, a multiyear rate plan  
19 proposal made by a gas or electrical company or an alternative  
20 proposal made by one or more parties, or any combination thereof. The  
21 commission's consideration of a proposal for a multiyear rate plan is  
22 subject to the same standards applicable to other rate filings made  
23 under this title, including the public interest and fair, just,  
24 reasonable, and sufficient rates. In determining the public interest,  
25 the commission may consider such factors including, but not limited  
26 to, environmental health and greenhouse gas emissions reductions,  
27 health and safety concerns, economic development, and equity, to the  
28 extent such factors affect the rates, services, and practices of a  
29 gas or electrical company regulated by the commission.

30 (2) The commission may approve, disapprove, or approve with  
31 modifications any proposal to recover from ratepayers up to five  
32 percent of the total revenue requirement approved by the commission  
33 for each year of a multiyear rate plan for tariffs that reduce the  
34 energy burden of low-income residential customers including, but not  
35 limited to: (a) Bill assistance programs; or (b) one or more special  
36 rates. For any multiyear rate plan approved under this section  
37 resulting in a rate increase, the commission must approve an increase  
38 in the amount of low-income bill assistance to take effect in each  
39 year of the rate plan where there is a rate increase. At a minimum,

1 the amount of such low-income assistance increase must be equal to  
2 double the percentage increase, if any, in the residential base rates  
3 approved for each year of the rate plan. The commission may approve a  
4 larger increase to low-income bill assistance based on an appropriate  
5 record.

6 (3) (a) If it approves a multiyear rate plan, the commission shall  
7 separately approve rates for each of the initial rate year, the  
8 second rate year and, if applicable, the third rate year, and the  
9 fourth rate year.

10 (b) The commission shall ascertain and determine the fair value  
11 for rate-making purposes of the property of any gas or electrical  
12 company that is or will be used and useful under RCW 80.04.250 for  
13 service in this state by or during each rate year of the multiyear  
14 rate plan. For the initial rate year, the commission shall, at a  
15 minimum, ascertain and determine the fair value for rate-making  
16 purposes of the property of any gas or electrical company that is  
17 used and useful for service in this state as of the rate effective  
18 date. The commission may order refunds to customers if property  
19 expected to be used and useful by the rate effective date when the  
20 commission approves a multiyear rate plan is in fact not used and  
21 useful by such a date.

22 (c) The commission shall ascertain and determine the revenues and  
23 operating expenses for rate-making purposes of any gas or electrical  
24 company for each rate year of the multiyear rate plan.

25 (d) In ascertaining and determining the fair value of property of  
26 a gas or electrical company pursuant to (b) of this subsection and  
27 projecting the revenues and operating expenses of a gas or electrical  
28 company pursuant to (c) of this subsection, the commission may use  
29 any standard, formula, method, or theory of valuation reasonably  
30 calculated to arrive at fair, just, reasonable, and sufficient rates.

31 (e) If the commission approves a multiyear rate plan with a  
32 duration of three or four years, then the electrical company must  
33 update its power costs as of the rate effective date of the third  
34 rate year. The proceeding to update the electrical company's power  
35 costs is subject to the same standards that apply to other rate  
36 filings made under this title.

37 (4) Subject to subsection (5) of this section, the commission may  
38 by order establish terms, conditions, and procedures for a multiyear  
39 rate plan and ensure that rates remain fair, just, reasonable, and  
40 sufficient during the course of the plan.

1 (5) Notwithstanding subsection (4) of this section, a gas or  
2 electrical company is bound by the terms of the multiyear rate plan  
3 approved by the commission for each of the initial rate year and the  
4 second rate year. A gas or electrical company may file a new  
5 multiyear rate plan in accordance with this section for the third  
6 rate year and fourth rate year, if any, of a multiyear rate plan.

7 (6) If the annual commission basis report for a gas or electrical  
8 company demonstrates that the reported rate of return on rate base of  
9 the company for the 12-month period ending as of the end of the  
10 period for which the annual commission basis report is filed is more  
11 than .5 percent higher than the rate of return authorized by the  
12 commission in the multiyear rate plan for such a company, the company  
13 shall defer all revenues that are in excess of .5 percent higher than  
14 the rate of return authorized by the commission for refunds to  
15 customers or another determination by the commission in a subsequent  
16 adjudicative proceeding. If a multistate electrical company with  
17 fewer than 250,000 customers in Washington files a multiyear rate  
18 plan that provides for no increases in base rates in consecutive  
19 years beyond the initial rate year, the commission shall waive the  
20 requirements of this subsection provided that such a waiver results  
21 in just and reasonable rates.

22 (7) The commission must, in approving a multiyear rate plan,  
23 determine a set of performance measures that will be used to assess a  
24 gas or electrical company operating under a multiyear rate plan.  
25 These performance measures may be based on proposals made by the gas  
26 or electrical company in its initial application, by any other party  
27 to the proceeding in its response to the company's filing, or in the  
28 testimony and evidence admitted in the proceeding. In developing  
29 performance measures, incentives, and penalty mechanisms, the  
30 commission may consider factors including, but not limited to, lowest  
31 reasonable cost planning, affordability, increases in energy burden,  
32 cost of service, customer satisfaction and engagement, service  
33 reliability, clean energy or renewable procurement, conservation  
34 acquisition, demand side management expansion, rate stability, timely  
35 execution of competitive procurement practices, attainment of state  
36 energy and emissions reduction policies, rapid integration of  
37 renewable energy resources, and fair compensation of utility  
38 employees.

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

1 (9) The commission shall align, to the extent practical, the  
2 timing of approval of a multiyear rate plan of an electrical company  
3 submitted pursuant to this section with the clean energy  
4 implementation plan of the electrical company filed pursuant to  
5 RCW 19.405.060.

6 (10) The provisions of this section may not be construed to limit  
7 the existing rate-making authority of the commission.

8 **Sec. 3.** RCW 80.28.068 and 2009 c 32 s 1 are each amended to read  
9 as follows:

10 ~~((Upon))~~ (1) Upon its own motion, or upon request by an  
11 electrical or gas company, or other party to a general rate case  
12 hearing, or other proceeding to set rates, the commission may approve  
13 rates, charges, services, and/or physical facilities at a discount,  
14 or through grants, for low-income senior customers and low-income  
15 customers. Expenses and lost revenues as a result of these discounts,  
16 grants, or other low-income assistance programs shall be included in  
17 the company's cost of service and recovered in rates to other  
18 customers. Each gas or electrical company must propose a low-income  
19 assistance program comprised of a discount rate for low-income senior  
20 customers and low-income customers as well as grants and other low-  
21 income assistance programs. The commission shall approve, disapprove,  
22 or approve with modifications each gas or electrical company's low-  
23 income assistance discount rate and grant program. The gas or  
24 electrical company must use reasonable and good faith efforts to seek  
25 approval for low-income program design, eligibility, operation,  
26 outreach, and funding proposals from its low-income and equity  
27 advisory groups in advance of filing such proposals with the  
28 commission. In order to remove barriers and to expedite assistance,  
29 low-income discounts or grants approved under this section must be  
30 provided in coordination with community-based organizations in the  
31 gas or electrical company's service territory including, but not  
32 limited to, grantees of the department of commerce, community action  
33 agencies, and community-based nonprofit organizations. Nothing in  
34 this section may be construed as limiting the commission's authority  
35 to approve or modify tariffs authorizing low-income discounts or  
36 grants.

37 (2) Eligibility for a low-income discount rate or grant  
38 established in this section may be established upon verification of a  
39 low-income customer's receipt of any means-tested public benefit, or

1 verification of eligibility for the low-income home energy assistance  
2 program, or its successor program, for which eligibility does not  
3 exceed the low-income definition set by the commission pursuant to  
4 RCW 19.405.020. The public benefits may include, but are not limited  
5 to, assistance that provides cash, housing, food, or medical care  
6 including, but not limited to, temporary assistance for needy  
7 families, supplemental security income, emergency assistance to  
8 elders, disabled, and children, supplemental nutrition assistance  
9 program benefits, public housing, federally subsidized or state-  
10 subsidized housing, the low-income home energy assistance program,  
11 veterans' benefits, and similar benefits.

12 (3) Each gas or electrical company shall conduct substantial  
13 outreach efforts to make the low-income discounts or grants available  
14 to eligible customers and must provide annual reports to the  
15 commission as to the gas or electrical company's outreach activities  
16 and results. Such outreach: (a) Shall be made at least semiannually  
17 to inform customers of available rebates, discounts, credits, and  
18 other cost-saving mechanisms that can help them lower their monthly  
19 bills for gas or electrical service; and (b) may be in the form of  
20 any customary and usual methods of communication or distribution  
21 including, without limitation, widely broadcast communications with  
22 customers, direct mailing, telephone calls, electronic  
23 communications, social media postings, in-person contacts, websites  
24 of the gas or electrical company, press releases, and print and  
25 electronic media, that are designed to increase access to and  
26 participation in bill assistance programs.

27 (4) Outreach may include establishing an automated program of  
28 matching customer accounts with lists of recipients of the means-  
29 tested public benefit programs and, based on the results of the  
30 matching program, to presumptively offer a low-income discount rate  
31 or grant to eligible customers so identified. However, the gas or  
32 electrical company must within 60 days of the presumptive enrollment  
33 inform such a low-income customer of the presumptive enrollment and  
34 all rights and obligations of a customer under the program, including  
35 the right to withdraw from the program without penalty.

36 (5) A residential customer eligible for a low-income discount  
37 rate must receive the service on demand.

38 (6) A residential customer may not be charged for initiating or  
39 terminating low-income discount rates, grants, or any other form of  
40 energy assistance.

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

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

5       (b) "Low-income" has the same meaning as defined in RCW  
6 19.405.020.

7       (c) "Physical facilities" includes, but may not be limited to, a  
8 community solar project as defined in RCW 80.28.370.

9       NEW SECTION. Sec. 4. A new section is added to chapter 80.28  
10 RCW to read as follows:

11       (1) A gas company or electrical company shall, upon request,  
12 enter into one or more written agreements with organizations that  
13 represent broad customer interests in regulatory proceedings  
14 conducted by the commission, subject to commission approval in  
15 accordance with subsection (2) of this section, including but not  
16 limited to organizations representing low-income, commercial, and  
17 industrial customers, vulnerable populations, or highly impacted  
18 communities. The agreement must govern the manner in which financial  
19 assistance may be provided to the organization. More than one gas  
20 company, electrical company, or organization representing customer  
21 interests may join in a single agreement. Any agreement entered into  
22 under this section must be approved, approved with modifications, or  
23 rejected by the commission. The commission must consider whether the  
24 agreement is consistent with a reasonable allocation of financial  
25 assistance provided to organizations pursuant to this section among  
26 classes of customers of the gas or electrical company.

27       (2) Before administering an agreement entered into under  
28 subsection (1) of this section, the commission shall, by rule or  
29 order, determine:

30       (a) The amount of financial assistance, if any, that may be  
31 provided to any organization;

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

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

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

37       (3) The commission shall allow a gas company or electrical  
38 company that provides financial assistance under this section to  
39 recover the amounts provided in rates. The commission shall allow a

1 gas company or electrical company to defer inclusion of those amounts  
2 in rates if the gas company or electrical company so elects. An  
3 agreement under this section may not provide for payment of any  
4 amounts to the commission.

5 (4) Organizations representing vulnerable populations or highly  
6 impacted communities must be prioritized for funding under this  
7 section.

8 **Sec. 5.** RCW 80.28.074 and 1988 c 166 s 1 are each amended to  
9 read as follows:

10 The legislature declares it is the policy of the state to:

11 (1) Preserve affordable (~~((natural gas and electric))~~) energy  
12 services to the residents of the state;

13 (2) Maintain and advance the efficiency and availability of  
14 (~~((natural gas and electric))~~) energy services to the residents of the  
15 state of Washington;

16 (3) Ensure that customers pay only reasonable charges for  
17 (~~((natural gas and electric service))~~) energy services;

18 (4) Permit flexible pricing of (~~((natural gas and electric))~~)  
19 energy services.

20 NEW SECTION. **Sec. 6.** If any provision of this act or its  
21 application to any person or circumstance is held invalid, the  
22 remainder of the act or the application of the provision to other  
23 persons or circumstances is not affected.

--- END ---