
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
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.

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