
ENGROSSED SUBSTITUTE SENATE BILL 5840

State of Washington

61st Legislature

2009 Regular Session

By Senate Environment, Water & Energy (originally sponsored by Senators Marr, Honeyford, Rockefeller, Holmquist, Hatfield, Parlette, Ranker, Morton, Sheldon, Jarrett, Delvin, and Hewitt)

READ FIRST TIME 02/23/09.

1 AN ACT Relating to the energy independence act; amending RCW
2 19.285.020, 19.285.030, 19.285.040, 19.285.070, and 19.285.080; and
3 creating a new section.

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

5 **Sec. 1.** RCW 19.285.020 and 2007 c 1 s 2 are each amended to read
6 as follows:

7 Increasing energy conservation and the use of appropriately sited
8 renewable energy facilities builds on the strong foundation of low-cost
9 renewable hydroelectric generation in Washington state and will promote
10 energy independence in the state and the Pacific Northwest region. It
11 shall be the policy of the state to recognize and promote the use of
12 low-cost renewable hydroelectric generation to firm, shape, and
13 integrate other renewable energy resources into the northwestern
14 electric grid for delivery to Washington residents. Making the most of
15 our plentiful local resources will stabilize electricity prices for
16 Washington residents, provide economic benefits for Washington counties
17 and farmers, create high-quality jobs in Washington, provide
18 opportunities for training apprentice workers in the renewable energy

1 field, protect clean air and water, and position Washington state as a
2 national leader in clean energy technologies.

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

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

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

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

14 (3) "Commission" means the Washington state utilities and
15 transportation commission.

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

19 (5) "Cost-effective" has the same meaning as defined in RCW
20 80.52.030.

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

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

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

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

30 (10) "Eligible renewable resource" means:

31 (a) Electricity from a generation facility powered by a renewable
32 resource other than fresh water, except as provided in (b) and (c) of
33 this subsection, that commences operation after March 31, 1999,
34 where(~~(i)~~) the facility is located (~~(in the Pacific Northwest; or~~
35 ~~(ii) the electricity from the facility is delivered into Washington~~
36 ~~state on a real-time basis without shaping, storage, or integration~~

1 services)) within the geographic boundary of the western electricity
2 coordinating council or its successor entity; ((or))

3 (b) Incremental electricity produced as a result of efficiency
4 improvements completed after March 31, 1999, to hydroelectric
5 generation (~~(projects owned by a qualifying utility and)~~) facilities
6 located in the Pacific Northwest or to hydroelectric generation in
7 water supply pipes, irrigation pipes ((and)), or canals located in the
8 Pacific Northwest, where the additional generation in either case does
9 not result in new water diversions or impoundments;

10 (c) Twenty-five percent of electricity from a biomass energy
11 powered generation facility located in Washington, and that commenced
12 operation before March 31, 1999; or

13 (d) Electricity from existing hydroelectric generation facilities
14 located in Washington with a rated capacity of thirty megawatts or less
15 and owned by a qualifying utility or joint operating agency formed
16 under RCW 43.52.360.

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

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

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

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

37 (15) "Public facility" has the same meaning as defined in RCW
38 39.35C.010.

1 (16) "Qualifying utility" means an electric utility, as the term
2 "electric utility" is defined in RCW 19.29A.010, that serves more than
3 twenty-five thousand customers in the state of Washington. The number
4 of customers served may be based on data reported by a utility in form
5 861, "annual electric utility report," filed with the energy
6 information administration, United States department of energy.

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

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

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

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

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

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

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

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

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

1 towards meeting the biennial conservation target in the same manner as
2 other production conservation savings.

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

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

8 (2)(a) Each qualifying utility shall use eligible renewable
9 resources (~~((or))~~), acquire equivalent renewable energy credits, or use
10 up to twenty-five percent of conservation achieved in excess of a
11 biennial acquisition target under subsection (1) of this section, or a
12 combination of (~~both~~) these options, to meet the following annual
13 targets:

14 (i) At least three percent of its load by January 1, 2012, and each
15 year thereafter through December 31, (~~((2015))~~) 2013;

16 (ii) At least four percent of its load by January 1, 2014, and each
17 year thereafter through December 31, 2015;

18 (iii) At least (~~nine~~) ten percent of its load by January 1, 2016,
19 and each year thereafter through December 31, 2019; (~~and~~

20 ~~(iii))~~ (iv) At least (~~fifteen~~) sixteen percent of its load by
21 January 1, 2020, and each year thereafter through December 31, 2024;
22 and

23 (v) At least twenty percent of its load by January 1, 2025, and
24 each year thereafter.

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

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

33 (d) A qualifying utility is considered in compliance with an annual
34 target in (a) of this subsection if: (i) In any given target year its
35 load growth, measured as load served in the target year compared to the
36 utility's annual average load served in 2010 and 2011, is less than the
37 target in (a) of this subsection for that year; and (ii) the utility

1 meets one hundred percent of any increase in load for that target year
2 with eligible renewable resources or renewable energy credits.

3 (e) A qualifying utility shall be considered in compliance with an
4 annual target in (a) of this subsection if: (i) The utility's weather-
5 adjusted load for the previous three years on average did not increase
6 over that time period; (ii) after December 7, 2006, the utility did not
7 commence or renew ownership or incremental purchases of electricity
8 from resources other than renewable resources other than on a daily
9 spot price basis and the electricity is not offset by equivalent
10 renewable energy credits; and (iii) the utility invested at least one
11 percent of its total annual retail revenue requirement that year on
12 eligible renewable resources, renewable energy credits, or a
13 combination of both.

14 ~~((e))~~ (f) The requirements of this section may be met for any
15 given target year with renewable energy credits produced during that
16 year, the preceding year, or the subsequent year. Qualifying utilities
17 may purchase or contract for purchase renewable energy credits in
18 advance of or throughout the target year, the preceding year, or the
19 subsequent year for meeting the requirements of this section. Each
20 renewable energy credit may be used only once to meet the requirements
21 of this section.

22 ~~((f))~~ (g) In complying with the targets established in (a) of
23 this subsection, a qualifying utility may not count:

24 (i) Eligible renewable resources or distributed generation where
25 the associated renewable energy credits are owned by a separate entity;
26 ~~((e))~~

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

30 (iii) Efficiency improvements to hydroelectric generation
31 facilities whose energy output is marketed by the Bonneville power
32 administration that is attributable to any other utility other than the
33 qualifying utility.

34 ~~((g))~~ (h) Where fossil and combustible renewable resources are
35 cofired in one generating unit located in the Pacific Northwest where
36 the cofiring commenced after March 31, 1999, the unit shall be
37 considered to produce eligible renewable resources in direct proportion

1 to the percentage of the total heat value represented by the heat value
2 of the renewable resources.

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

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

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

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

13 ~~((i))~~ (j) A qualifying utility that acquires solar energy may
14 count that acquisition at six times its base value where the energy is
15 produced using solar inverters and modules manufactured in Washington
16 state.

17 (k) A qualifying utility shall be considered in compliance with an
18 annual target in (a) of this subsection if events beyond the reasonable
19 control of the utility that could not have been reasonably anticipated
20 or ameliorated prevented it from meeting the renewable energy target.
21 Such events include weather-related damage, mechanical failure,
22 strikes, lockouts, and actions of a governmental authority that
23 adversely affect the generation, transmission, or distribution of an
24 eligible renewable resource under contract to a qualifying utility.

25 (3) Utilities that become qualifying utilities after December 31,
26 2006, shall meet the requirements in this section on a time frame
27 comparable in length to that provided for qualifying utilities as of
28 December 7, 2006.

29 **Sec. 4.** RCW 19.285.070 and 2007 c 1 s 7 are each amended to read
30 as follows:

31 (1) On or before June 1, 2012, and annually thereafter, each
32 qualifying utility shall report to the department on its progress in
33 the preceding year in meeting the targets established in RCW
34 19.285.040, including expected electricity savings from the biennial
35 conservation target, expenditures on conservation, actual electricity
36 savings results, the utility's annual load for the prior two years, the
37 amount of megawatt-hours needed to meet the annual renewable energy

1 target, the amount of megawatt-hours of each type of eligible renewable
2 resource acquired, the type and amount of renewable energy credits
3 acquired, and the percent of its total annual retail revenue
4 requirement invested in the incremental cost of eligible renewable
5 resources and the cost of renewable energy credits. (~~For each year
6 that a qualifying utility elects to demonstrate alternative compliance
7 under RCW 19.285.040(2) (d) or (i) or 19.285.050(1), it must include in
8 its annual report relevant data to demonstrate that it met the criteria
9 in that section.~~) A qualifying utility may submit its report to the
10 department in conjunction with its annual obligations in chapter 19.29A
11 RCW.

12 (2) A qualifying utility that is an investor-owned utility shall
13 also report all information required in subsection (1) of this section
14 to the commission, and on or before June 1, 2014, and annually
15 thereafter, report to the commission its compliance in meeting the
16 targets established in RCW 19.285.040. All other qualifying utilities
17 shall also make all information required in subsection (1) of this
18 section available to the auditor, and on or before June 1, 2014, and
19 annually thereafter, make available to the auditor its determination of
20 compliance in meeting the targets established in RCW 19.285.040. For
21 each year that a qualifying utility elects to demonstrate alternative
22 compliance under RCW 19.285.040(2) or 19.285.050(1), it must include in
23 its annual report relevant data to demonstrate that it met the criteria
24 in that section.

25 (3) A qualifying utility shall also make reports required in this
26 section available to its customers.

27 **Sec. 5.** RCW 19.285.080 and 2007 c 1 s 8 are each amended to read
28 as follows:

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

32 (2) The department shall adopt rules concerning only process,
33 timelines, and documentation to ensure the proper implementation of
34 this chapter as it applies to qualifying utilities that are not
35 investor-owned utilities. Those rules include, but are not limited to,
36 rules associated with a qualifying utility's development of
37 conservation targets under RCW 19.285.040(1); a qualifying utility's

1 decision to pursue alternative compliance in RCW 19.285.040(2) (~~((d))~~)
2 (e) or (~~((i))~~) (k) or 19.285.050(1); and the format and content of
3 reports required in RCW 19.285.070. Nothing in this subsection may be
4 construed to restrict the rate-making authority of the commission or a
5 qualifying utility as otherwise provided by law.

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

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

13 (b) Within six months of the adoption by the Pacific Northwest
14 electric power and conservation planning council of each of its
15 regional power plans, the department shall initiate rule making to
16 consider adopting any changes in methodologies used by the Pacific
17 Northwest electric power and conservation planning council that would
18 impact a qualifying utility's conservation potential assessment in
19 accordance with RCW 19.285.040(1).

20 (c) Within six months of the adoption by the Pacific Northwest
21 electric power and conservation planning council of each of its
22 regional power plans, the commission shall initiate rule making to
23 consider adopting any changes in methodologies used by the Pacific
24 Northwest electric power and conservation planning council that would
25 impact a qualifying utility's conservation potential assessment in
26 accordance with RCW 19.285.040(1).

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

30 (e) The department shall report to the legislature by December 1,
31 2009, with recommendations on implementing the state's policy of
32 recognizing and promoting the use of low-cost hydroelectric generation
33 to firm, shape, and integrate other renewable energy resources into the
34 northwestern electric grid for delivery to Washington residents. The
35 report must include recommendations for promoting hydroelectric
36 generation based upon the economic and environmental benefits of using
37 hydroelectric generation in place of fossil fuel-fired generation for
38 integration services. The report must include results from existing

1 studies and analyses from the Pacific Northwest electric power and
2 conservation planning council, the Bonneville power administration, and
3 other relevant organizations. The department shall also consider
4 information and recommendations from integration service providers and
5 users.

6 NEW SECTION. Sec. 6. The joint legislative audit and review
7 committee shall evaluate the feed-in tariff program contemplated in
8 Substitute House Bill No. 1086 (2009). The evaluation shall include
9 comparisons of the feed-in tariff program with the energy independence
10 act, chapter 19.285 RCW, the net-metering program in chapter 80.60 RCW,
11 and the renewable energy cost recovery program in chapter 82.16 RCW.
12 In making the comparisons, the following factors must be examined: (1)
13 the effectiveness of each program in encouraging the deployment of
14 renewable energy systems; and (2) the effect of each program on
15 ratepayers. The evaluation is due December 1, 2010.

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