
SENATE BILL 5137

State of Washington

61st Legislature

2009 Regular Session

By Senators Honeyford, Sheldon, Holmquist, Morton, Delvin, Hatfield,
and Parlette

Read first time 01/14/09. Referred to Committee on Environment, Water
& Energy.

1 AN ACT Relating to energy resources; amending RCW 19.285.030 and
2 19.285.040; and adding a new section to chapter 80.28 RCW.

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

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

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

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

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

15 (3) "Biomass energy" includes (a) organic byproducts of the pulping
16 process; (b) animal waste; (c) solid organic fuels from wood; (d)
17 forest or field residues; (e) wooden demolition or construction debris;
18 (f) food waste that is decomposed in an anaerobic digester; (g) black
19 liquors derived from algae; or (h) dedicated energy crops. "Biomass"

1 does not include wood pieces that have been treated with chemical
2 preservatives such as creosote, pentachlorophenol, or copper-chrome-
3 arsenic; wood from old growth forests; or municipal solid waste.

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

6 ~~((+4))~~ (5) "Conservation" means any reduction in electric power
7 consumption resulting from increases in the efficiency of energy use,
8 production, or distribution.

9 ~~((+5))~~ (6) "Cost-effective" has the same meaning as defined in RCW
10 80.52.030.

11 ~~((+6))~~ (7) "Council" means the Washington state apprenticeship and
12 training council within the department of labor and industries.

13 ~~((+7))~~ (8) "Customer" means a person or entity that purchases
14 electricity for ultimate consumption and not for resale.

15 ~~((+8))~~ (9) "Department" means the department of community, trade,
16 and economic development or its successor.

17 ~~((+9))~~ (10) "Distributed generation" means an eligible renewable
18 resource where the generation facility or any integrated cluster of
19 such facilities has a generating capacity of not more than five
20 megawatts.

21 ~~((+10))~~ (11) "Eligible renewable resource" means:

22 (a) Electricity from a generation facility powered by a renewable
23 resource other than fresh water that commences operation after March
24 31, ~~((1999))~~ 1995, ~~((where:—(i) The))~~ when the facility is located
25 ~~((in the Pacific Northwest; or (ii) the electricity from the facility~~
26 ~~is delivered into Washington state on a real time basis without~~
27 ~~shaping, storage, or integration services))~~ within the geographic
28 jurisdiction of the western electricity coordinating council or its
29 successor; ~~((or))~~

30 (b) ~~((Incremental electricity produced as a result of efficiency~~
31 ~~improvements completed after March 31, 1999, to hydroelectric~~
32 ~~generation projects owned by a qualifying utility and located in the~~
33 ~~Pacific Northwest or to hydroelectric generation in irrigation pipes~~
34 ~~and canals located in the Pacific Northwest, where the additional~~
35 ~~generation in either case does not result in new water diversions or~~
36 ~~impoundments))~~ Electricity from a hydroelectric generation facility
37 powered by fresh water where: (i) The facility is located in the

1 Pacific Northwest; and (ii) electricity from the facility, including
2 electricity from projects or utilities of any size, meets the
3 definition of "renewable resources" under RCW 19.29A.010; or

4 (c) Electricity from a generation facility located in the Pacific
5 Northwest that commenced operation before March 31, 1999, and is
6 powered by biomass energy.

7 ~~((+11+))~~ (12) "Investor-owned utility" has the same meaning as
8 defined in RCW 19.29A.010.

9 ~~((+12+))~~ (13) "Load" means the amount of kilowatt-hours of
10 electricity delivered in the most recently completed year by a
11 qualifying utility to its Washington retail customers.

12 ~~((+13+))~~ (14) "Nonpower attributes" means all environmentally
13 related characteristics, exclusive of energy, capacity reliability, and
14 other electrical power service attributes, that are associated with the
15 generation of electricity from a renewable resource, including but not
16 limited to the facility's fuel type, geographic location, vintage,
17 qualification as an eligible renewable resource, and avoided emissions
18 of pollutants to the air, soil, or water, and avoided emissions of
19 carbon dioxide and other greenhouse gases.

20 ~~((+14+))~~ (15) "Pacific Northwest" has the same meaning as defined
21 for the Bonneville power administration in section 3 of the Pacific
22 Northwest electric power planning and conservation act (94 Stat. 2698;
23 16 U.S.C. Sec. 839a).

24 ~~((+15+))~~ (16) "Public facility" has the same meaning as defined in
25 RCW 39.35C.010.

26 ~~((+16+))~~ (17) "Qualifying utility" means an electric utility, as
27 the term "electric utility" is defined in RCW 19.29A.010, that serves
28 more than twenty-five thousand customers in the state of Washington.
29 The number of customers served may be based on data reported by a
30 utility in form 861, "annual electric utility report," filed with the
31 energy information administration, United States department of energy.

32 ~~((+17+))~~ (18) "Renewable energy credit" means a tradable
33 certificate of proof of at least one megawatt-hour of an eligible
34 renewable resource where the generation facility is ~~((not powered by~~
35 ~~fresh water,))~~ a renewable resource, regardless of its geographic
36 location, and the certificate includes all of the nonpower attributes
37 associated with that one megawatt-hour of electricity, and the

1 certificate is verified by a renewable energy credit tracking system
2 selected by the department.

3 ~~((+18))~~ (19) "Renewable resource" means: (a) Water; (b) wind; (c)
4 solar energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean,
5 or tidal power; (g) gas from sewage treatment facilities; (h) biodiesel
6 fuel as defined in RCW 82.29A.135 that is not derived from crops raised
7 on land cleared from old growth or first-growth forests where the
8 clearing occurred after December 7, 2006; and (i) biomass energy
9 ~~((based on animal waste or solid organic fuels from wood, forest, or
10 field residues, or dedicated energy crops that do not include (i) wood
11 pieces that have been treated with chemical preservatives such as
12 creosote, pentachlorophenol, or copper-chrome-arsenic; (ii) black
13 liquor byproduct from paper production; (iii) wood from old-growth
14 forests; or (iv) municipal solid waste))~~.

15 ~~((+19))~~ (20) "Rule" means rules adopted by an agency or other
16 entity of Washington state government to carry out the intent and
17 purposes of this chapter.

18 ~~((+20))~~ (21) "Year" means the twelve-month period commencing
19 January 1st and ending December 31st.

20 **Sec. 2.** RCW 19.285.040 and 2007 c 1 s 4 are each amended to read
21 as follows:

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

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

31 (b) Beginning January 2010, each qualifying utility shall establish
32 and make publicly available a biennial acquisition target for cost-
33 effective conservation consistent with its identification of achievable
34 opportunities in (a) of this subsection, and meet that target during
35 the subsequent two-year period. At a minimum, each biennial target
36 must be no lower than the qualifying utility's pro rata share for that

1 two-year period of its cost-effective conservation potential for the
2 subsequent ten-year period.

3 (c) In meeting its conservation targets, a qualifying utility may
4 count high-efficiency cogeneration owned and used by a retail electric
5 customer to meet its own needs. High-efficiency cogeneration is the
6 sequential production of electricity and useful thermal energy from a
7 common fuel source, where, under normal operating conditions, the
8 facility has a useful thermal energy output of no less than thirty-
9 three percent of the total energy output. The reduction in load due to
10 high-efficiency cogeneration shall be: (i) Calculated as the ratio of
11 the fuel chargeable to power heat rate of the cogeneration facility
12 compared to the heat rate on a new and clean basis of a
13 best-commercially available technology combined-cycle natural gas-fired
14 combustion turbine; and (ii) counted towards meeting the biennial
15 conservation target in the same manner as other conservation savings.

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

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

21 (2)(a) Each qualifying utility shall (i) use eligible renewable
22 resources or acquire equivalent renewable energy credits((7)); (ii)
23 make alternative compliance payments; or ((a)) (iii) use any
24 combination of ((both7)) the options listed in (a)(i) or (ii) of this
25 subsection to meet the following annual targets:

26 ((+i)) (A) At least three percent of its load ((by)) as measured
27 on January 1, 2012, by December 31, 2012, and each year thereafter
28 through December 31, 2015;

29 ((+ii)) (B) At least nine percent of its load ((by)) as measured
30 on January 1, 2016, by December 31, 2016, and each year thereafter
31 through December 31, 2019; and

32 ((+iii)) (C) At least fifteen percent of its load ((by)) as
33 measured on January 1, 2020, by December 31, 2020, and each year
34 thereafter.

35 (b) A qualifying utility may count distributed generation at double
36 the facility's electrical output if the utility: (i) Owns or has
37 contracted for the distributed generation and the associated renewable

1 energy credits; or (ii) has contracted to purchase the associated
2 renewable energy credits.

3 (c) In meeting the annual targets in (a) of this subsection, a
4 qualifying utility shall calculate its annual load based on the average
5 of the utility's load for the previous two years. A qualifying utility
6 shall deduct from its annual load the amount of electricity or
7 renewable energy credits it has obtained for and used in an optional
8 pricing program established in RCW 19.29A.090.

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

20 (e) The requirements of this section may be met for any given year
21 with renewable energy credits produced during that year, the preceding
22 year, or the subsequent year. Each renewable energy credit may be used
23 only once to meet the requirements of this section. Renewable energy
24 credits may be traded, sold, or otherwise transferred. Renewable
25 energy credits that are not used by a qualifying utility to comply with
26 the requirements of (a) of this subsection in any given year may be
27 banked and carried forward indefinitely. Banked renewable energy
28 credits with the oldest issuance date must be used to comply with the
29 annual target before banked renewable energy credits with more recent
30 issuance dates are used. A qualifying utility must demonstrate that a
31 renewable energy credit used to comply with the requirements of (a) of
32 this subsection is derived from an eligible renewable resource and that
33 the qualifying utility has not used, traded, sold, or otherwise
34 transferred the credit. A qualifying utility that uses a renewable
35 energy credit to comply with a renewable energy standard imposed by any
36 other state may not use the same credit to comply with the requirements
37 of this section.

1 (f) In complying with the targets established in (a) of this
2 subsection, a qualifying utility may not count(~~(+~~

3 ~~(+))~~ eligible renewable resources or distributed generation where
4 the associated renewable energy credits are owned by a separate
5 entity(~~(+ or~~

6 ~~(ii) Eligible renewable resources or renewable energy credits~~
7 ~~obtained for and used in an optional pricing program such as the~~
8 ~~program established in RCW 19.29A.090)).~~

9 (g) Where fossil and combustibile renewable resources are cofired in
10 one generating unit located (~~(in the Pacific Northwest where))~~ within
11 the geographic jurisdiction of the western electricity coordinating
12 council or its successor and the cofiring commenced after March 31,
13 (~~(1999))~~ 1995, the unit shall be considered to produce eligible
14 renewable resources in direct proportion to the percentage of the total
15 heat value represented by the heat value of the renewable resources.

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

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

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

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

26 (i) A qualifying utility shall be considered in compliance with an
27 annual target in (a) of this subsection if events beyond the reasonable
28 control of the utility that could not have been reasonably anticipated
29 or ameliorated prevented it from meeting the renewable energy target.
30 Such events include weather-related damage, mechanical failure,
31 strikes, lockouts, and actions of a governmental authority that
32 adversely affect the generation, transmission, or distribution of an
33 eligible renewable resource under contract to a qualifying utility.

34 (j) A qualifying utility is not required to comply with the targets
35 established in (a) of this subsection to the extent that compliance
36 would require the utility to substitute eligible renewable resources
37 for electricity derived from any renewable resource owned by or
38 contracted to the utility as of the effective date of this section.

1 (3) Utilities that become qualifying utilities after December 31,
2 2006, shall meet the requirements in this section on a time frame
3 comparable in length to that provided for qualifying utilities as of
4 December 7, 2006.

5 NEW SECTION. **Sec. 3.** A new section is added to chapter 80.28 RCW
6 to read as follows:

7 (1) The commission shall establish an alternative compliance rate
8 for each compliance year for each electrical company subject to the
9 requirements of RCW 19.285.040(2). The rate shall be expressed in
10 dollars per megawatt-hour.

11 (2) The commission shall establish an alternative compliance rate
12 based on the cost of qualifying electricity, contracts that the
13 electrical company has acquired for future delivery of qualifying
14 electricity, and the number of renewable energy credits that the
15 company anticipates using in the compliance year to meet the annual
16 target under RCW 19.285.040(2)(a). The commission shall also consider
17 any determinations made under RCW 19.285.070 in reviewing the reports
18 made by the electrical company for the previous compliance year. In
19 establishing an alternative compliance rate, the commission shall set
20 the rate to provide adequate incentive for the electrical company to
21 purchase or generate qualifying electricity in lieu of using
22 alternative compliance payments to meet the requirements of RCW
23 19.285.040(2).

24 (3) An electrical company may elect to use, or may be required by
25 the commission to use, alternative compliance payments to comply with
26 the requirements of RCW 19.285.040. Any election by an electrical
27 company to use alternative compliance payments is subject to review by
28 the commission. An electrical company may not be required to make
29 alternative compliance payments that would result in the company
30 exceeding the cost cap established in RCW 19.285.050.

31 (4) The commission shall determine for each electrical company the
32 extent to which alternative compliance payments may be recovered in the
33 rates of the company. Each electrical company shall deposit any
34 amounts recovered in the rates of the company for alternative
35 compliance payments in a holding account established by the company.
36 Amounts in the holding account accrue interest at the rate authorized
37 by the commission for the electrical company.

1 (5) Amounts in holding accounts established under subsection (4) of
2 this section may be expended by an electrical company only for the
3 costs of acquiring new generating capacity from eligible renewable
4 resources, investments in efficiency upgrades to electricity generating
5 facilities owned by the company, and energy conservation programs
6 within the company's service area. The commission must approve
7 expenditures by an electrical company from a holding account
8 established under subsection (4) of this section. Amounts that are
9 collected from customers and spent by an electrical company under this
10 subsection may not be included in the company's rate base.

11 (6) The commission shall establish initial alternative compliance
12 rates as required under this section by July 1, 2010.

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

15 (a) "Eligible renewable resource" has the same meaning as defined
16 in RCW 19.285.030.

17 (b) "Qualifying electricity" means electricity produced from an
18 eligible renewable resource.

--- END ---