

**ESSB 5840 - H AMD 666**

By Representative Hudgins

WITHDRAWN 04/17/2009

1       Strike everything after the enacting clause and insert the  
2 following:

3       "**Sec. 1.** RCW 19.285.010 and 2007 c 1 s 1 are each amended to read  
4 as follows:

5       This chapter concerns requirements for new energy resources. This  
6 chapter requires large utilities to obtain ((fifteen)) twenty percent  
7 of their electricity from new renewable resources such as solar and  
8 wind by ((2020)) 2025 and undertake cost-effective energy conservation.

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

11       The definitions in this section apply throughout this chapter  
12 unless the context clearly requires otherwise.

13       (1) "Attorney general" means the Washington state office of the  
14 attorney general.

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

20       (3) "Commission" means the Washington state utilities and  
21 transportation commission.

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

25       (5) "Cost-effective" has the same meaning as defined in RCW  
26 80.52.030.

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

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

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

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

8 (10) "Eligible renewable resource" means:

9 (a) Electricity from a generation facility powered by a renewable  
10 resource other than fresh water, except as provided in (b) and (c) of  
11 this subsection, that commences operation after March 31, 1999,  
12 where(~~(i)~~) the facility is located ((in the Pacific Northwest; or  
13 ~~(ii) the electricity from the facility is delivered into Washington~~  
14 ~~state on a real-time basis without shaping, storage, or integration~~  
15 ~~services))~~ within the geographic boundary of the western electricity  
16 coordinating council or its successor entity; ((or))

17 (b) Incremental electricity produced as a result of efficiency  
18 improvements completed after March 31, 1999, to hydroelectric  
19 generation (~~(projects owned by a qualifying utility and))~~ facilities  
20 located in the Pacific Northwest or to hydroelectric generation in  
21 water supply pipes, irrigation pipes ((and)), or canals located in the  
22 Pacific Northwest, where the additional generation in either case does  
23 not result in new water diversions or impoundments;

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

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

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

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

36 (13) "Nonpower attributes" means all environmentally related  
37 characteristics, exclusive of energy, capacity reliability, and other  
38 electrical power service attributes, that are associated with the

1 generation of electricity from a renewable resource, including but not  
2 limited to the facility's fuel type, geographic location, vintage,  
3 qualification as an eligible renewable resource, and avoided emissions  
4 of pollutants to the air, soil, or water, and avoided emissions of  
5 carbon dioxide and other greenhouse gases. For an anaerobic digester,  
6 its nonpower attributes may be separated into avoided emissions of  
7 carbon dioxide, and other greenhouse gases, and into renewable energy  
8 credits.

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

13 (15) "Public facility" has the same meaning as defined in RCW  
14 39.35C.010.

15 (16) "Qualifying utility" means an electric utility, as the term  
16 "electric utility" is defined in RCW 19.29A.010, that serves more than  
17 twenty-five thousand customers in the state of Washington. The number  
18 of customers served may be based on data reported by a utility in form  
19 861, "annual electric utility report," filed with the energy  
20 information administration, United States department of energy.

21 (17) "Renewable energy credit" means a tradable certificate of  
22 proof of at least one megawatt-hour of an eligible renewable resource  
23 where the generation facility is not powered by fresh water, the  
24 certificate includes all of the nonpower attributes associated with  
25 that one megawatt-hour of electricity, and the certificate is verified  
26 by a renewable energy credit tracking system selected by the  
27 department.

28 (18) "Renewable resource" means: (a) Water; (b) wind; (c) solar  
29 energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or  
30 tidal power; (g) gas from sewage treatment facilities; (h) biodiesel  
31 fuel as defined in RCW 82.29A.135 that is not derived from crops raised  
32 on land cleared from old growth (~~or first growth~~) forests where the  
33 clearing occurred after December 7, 2006; (~~and~~) (i) byproducts of  
34 pulping or wood manufacturing processes that are not derived from old  
35 growth forests, including but not limited to bark, wood chips, sawdust,  
36 and lignin in spent pulping liquors; (j) wooden demolition or  
37 construction debris; (k) black liquors derived from algae and other  
38 sources; and (l) biomass energy based on animal waste, food waste, yard

1 waste, biosolids, or solid organic fuels from wood, forest, or field  
2 residues, or dedicated energy crops that do not include (i) wood pieces  
3 that have been treated with chemical preservatives such as creosote,  
4 pentachlorophenol, or copper-chrome-arsenic; (ii) ~~((black liquor~~  
5 ~~byproduct from paper production; (iii))~~) wood from old growth forests;  
6 or ~~((iv))~~ (iii) municipal solid waste.

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

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

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

14 (1) Each qualifying utility shall pursue all available conservation  
15 related to energy end-use, production, and distribution that is cost-  
16 effective, reliable, and feasible.

17 (a) By January 1, 2010, ~~((using methodologies consistent with those~~  
18 ~~used by the Pacific Northwest electric power and conservation planning~~  
19 ~~council in its most recently published regional power plan,))~~ each  
20 qualifying utility shall identify its achievable cost-effective  
21 conservation potential through 2019. Cost-effective conservation  
22 potential includes all achievable cost-effective conservation related  
23 to energy end-use, production, and distribution. In assessing this  
24 potential, the qualifying utility shall use methodologies consistent  
25 with those used by the Pacific Northwest electric power and  
26 conservation planning council in its most recently published regional  
27 power plan. At least every two years thereafter, the qualifying  
28 utility shall review and update this assessment for the subsequent ten-  
29 year period.

30 (b) ~~((Beginning))~~ By January 1, 2010, each qualifying utility shall  
31 establish and make publicly available a biennial acquisition target for  
32 cost-effective conservation consistent with its identification of  
33 achievable opportunities in (a) of this subsection, and meet that  
34 target during the subsequent two-year period. At a minimum, each  
35 biennial acquisition target must ~~((be no lower than))~~ include: (i) At  
36 least twenty percent of the qualifying utility's ~~((pro rata share for~~  
37 ~~that two year period of its))~~ cost-effective end-use conservation

1 potential identified for the subsequent ten-year period; and (ii) at  
2 least twenty percent of the qualifying utility's cost-effective  
3 distribution and production conservation potential identified for the  
4 subsequent ten-year period. In meeting its biennial acquisition  
5 target, a qualifying utility may not use distribution or production  
6 conservation in lieu of end-use conservation. A qualifying utility may  
7 not use incremental electricity produced as a result of efficiency  
8 improvements to hydroelectric generation projects to meet its biennial  
9 acquisition target.

10 (c) In meeting its conservation targets, a qualifying utility may  
11 count high-efficiency cogeneration owned and used by a retail electric  
12 customer to meet its own needs. High-efficiency cogeneration is the  
13 sequential production of electricity and useful thermal energy from a  
14 common fuel source, where, under normal operating conditions, the  
15 facility (~~(has a useful thermal energy output of no less than thirty-~~  
16 ~~three percent of the total energy output)) is designed to have a~~  
17 projected overall thermal conversion efficiency of at least seventy  
18 percent. For the purposes of this section, overall thermal conversion  
19 efficiency means the output of electricity plus usable heat divided by  
20 fuel input. The reduction in load due to high-efficiency cogeneration  
21 shall be(~~(:—(i) Calculated as the ratio of the fuel chargeable to~~  
22 ~~power heat rate of the cogeneration facility compared to the heat rate~~  
23 ~~on a new and clean basis of a best commercially available technology~~  
24 ~~combined-cycle natural gas-fired combustion turbine; and (ii))~~) counted  
25 towards meeting the biennial conservation target in the same manner as  
26 other production conservation savings.

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

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

32 (2)(a) Each qualifying utility shall use eligible renewable  
33 resources or acquire equivalent renewable energy credits, or a  
34 combination of both, to meet the following annual targets:

35 (i) At least (~~(three)) four~~ percent of its load by January 1, 2012,  
36 and each year thereafter through December 31, 2015, where the eligible  
37 renewable resources and renewable energy credits are generated by or  
38 derived from generation facilities located in the Pacific Northwest;

1 (ii) At least (~~nine~~) ten percent of its load by January 1, 2016,  
2 and each year thereafter through December 31, 2019, where:

3 (A) At least half of the eligible renewable resources and renewable  
4 energy credits are generated by or derived from generation facilities  
5 located in the Pacific Northwest; and

6 (B) Any electricity from an eligible renewable resource that is  
7 derived from generation facilities located outside the Pacific  
8 Northwest is delivered to the Bonneville power administration or to the  
9 transmission system of a qualifying utility; (~~and~~)

10 (iii) At least (~~fifteen~~) sixteen percent of its load by January  
11 1, 2020, and each year thereafter, where:

12 (A) At least half of the eligible renewable resources and renewable  
13 energy credits are generated by or derived from generation facilities  
14 located in the Pacific Northwest; and

15 (B) Any electricity from an eligible renewable resource that is  
16 derived from generation facilities located outside the Pacific  
17 Northwest is delivered to the Bonneville power administration or to the  
18 transmission system of a qualifying utility; and

19 (iv) At least twenty percent of its load by January 1, 2025, and  
20 each year thereafter, where:

21 (A) At least half of the eligible renewable resources and renewable  
22 energy credits are generated by or derived from generation facilities  
23 located in the Pacific Northwest; and

24 (B) Any electricity from an eligible renewable resource that is  
25 derived from generation facilities located outside the Pacific  
26 Northwest is delivered to the Bonneville power administration or to the  
27 transmission system of a qualifying utility.

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

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

36 (d) A qualifying utility shall be considered in compliance with an  
37 annual target in (a) of this subsection if: (i) The utility's weather-  
38 adjusted load for the previous three years on average did not increase

1 over that time period; (ii) after December 7, 2006, the utility did not  
2 commence or renew ownership or incremental purchases of electricity  
3 from resources other than renewable resources other than on a daily  
4 spot price basis and the electricity is not offset by equivalent  
5 renewable energy credits; and (iii) the utility invested at least one  
6 percent of its total annual retail revenue requirement that year on  
7 eligible renewable resources, renewable energy credits, or a  
8 combination of both.

9 (e) The requirements of this section may be met for any given year  
10 with renewable energy credits produced during that year, the preceding  
11 year, or the subsequent year. A qualifying utility may use renewable  
12 energy credits from an eligible renewable resource owned in whole or in  
13 part by the utility if the credits were generated within three years  
14 prior to the year for which the credits are applied to its annual  
15 renewable resource target. Each renewable energy credit may be used  
16 only once to meet the requirements of this section.

17 (f) In complying with the targets established in (a) of this  
18 subsection, a qualifying utility may not count:

19 (i) Eligible renewable resources or distributed generation where  
20 the associated renewable energy credits are owned by a separate entity;  
21 ((or))

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

25 (iii) Efficiency improvements to hydroelectric generation projects  
26 attributable to any utility other than the qualifying utility and whose  
27 energy output is marketed by the Bonneville power administration.

28 (g) Where fossil and combustible renewable resources are cofired in  
29 one generating unit located in the Pacific Northwest where the cofiring  
30 commenced after March 31, 1999, the unit shall be considered to produce  
31 eligible renewable resources in direct proportion to the percentage of  
32 the total heat value represented by the heat value of the renewable  
33 resources.

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

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

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

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

6 (i) Beginning July 1, 2009, a qualifying utility may acquire  
7 renewable energy credits produced on or after July 1, 2009, from a  
8 biomass energy facility, regardless of the date it commences  
9 operations.

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

18 (k) A qualifying utility that acquires solar energy may count that  
19 acquisition at four times its base value or six times its base value  
20 where the energy is produced using solar inverters and modules  
21 manufactured in Washington state.

22 (3) Utilities that become qualifying utilities after December 31,  
23 2006, shall meet the requirements in this section on a time frame  
24 comparable in length to that provided for qualifying utilities as of  
25 December 7, 2006.

26 **Sec. 4.** RCW 19.285.050 and 2007 c 1 s 5 are each amended to read  
27 as follows:

28 (1)(a) A qualifying utility shall be considered in compliance with  
29 an annual target created in RCW 19.285.040(2) for a given year if the  
30 utility invested four percent of its total annual retail revenue  
31 requirement on the incremental costs of eligible renewable resources,  
32 the cost of renewable energy credits, or a combination of both, but a  
33 utility may elect to invest more than this amount.

34 (b) The incremental cost of an eligible renewable resource is  
35 calculated as the difference between the levelized delivered cost of  
36 the eligible renewable resource, regardless of ownership, compared to  
37 the levelized delivered cost of an equivalent amount of reasonably



1 available substitute resources that do not qualify as eligible  
2 renewable resources, where the resources being compared have the same  
3 contract length or facility life.

4 (c)(i) Except as provided in (c)(ii) of this subsection, for  
5 purposes of this section and RCW 19.285.040(2)(d), an investor-owned  
6 utility shall use its commission-approved total retail revenue  
7 requirement resulting from the utility's most recent general rate case.

8 (ii) For each investor-owned utility, if the commission has not  
9 issued an order in a general rate case for that utility in any of the  
10 three years prior to January 1st of a year for which an annual target  
11 is created in RCW 19.285.040(2), the commission shall calculate the  
12 total annual retail revenue requirement for that utility for that  
13 target year. The total annual retail revenue requirement for each  
14 utility must be calculated based on only the operations of the utility  
15 relating to electricity and must be updated annually until the  
16 commission issues an order for that utility in a general rate case.  
17 The total annual retail revenue requirement calculated for purposes of  
18 this subsection has no bearing on the commission's rate-making policies  
19 and practices under Title 80 RCW.

20 (2) An investor-owned utility is entitled to recover all prudently  
21 incurred costs associated with compliance with this chapter. The  
22 commission shall address cost recovery issues of qualifying utilities  
23 that are investor-owned utilities that serve both in Washington and in  
24 other states in complying with this chapter.

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

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

30 (2) The department shall adopt rules concerning only process,  
31 timelines, and documentation to ensure the proper implementation of  
32 this chapter as it applies to qualifying utilities that are not  
33 investor-owned utilities. Those rules include, but are not limited to,  
34 rules associated with a qualifying utility's development of  
35 conservation targets under RCW 19.285.040(1); a qualifying utility's  
36 decision to pursue alternative compliance in RCW 19.285.040(2) (d) or  
37 (~~(i)~~) (j) or 19.285.050(1); and the format and content of reports

1 required in RCW 19.285.070. Nothing in this subsection may be  
2 construed to restrict the rate-making authority of the commission or a  
3 qualifying utility as otherwise provided by law.

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

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

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

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

23 Correct the title.

EFFECT: Provides an intent section which requires large utilities to obtain twenty percent of their electricity from new renewable resources by 2025.

Allows qualifying utilities to obtain electricity from renewable resources located within the geographic boundaries of the western electricity coordinating council. Permits up to twenty-five percent of electricity from biomass energy-powered generation facilities located in Washington to qualify as an eligible renewable resource. Allows as an eligible renewable resource electricity from existing hydroelectric generation facilities located in Washington with a rated capacity of thirty megawatts or less and owned by a qualifying utility or joint operating agency. Includes as a renewable resource byproducts of pulping or wood process manufacturing processes; wooden demolition or construction debris; black liquors derived from algae and other sources; food and yard waste; and biosolids.

Requires qualifying utilities to use methodologies consistent with the Pacific Northwest electric power and conservation planning council in its most recently published regional power plan when identifying and achieving cost-effective conservation. Requires qualifying utilities by January 1, 2010, to acquire at a minimum at least twenty percent of its cost-effective end-use conservation potential identified for the subsequent ten-year period and at least twenty percent of the qualifying utility's cost-effective distribution and production conservation potential.

Increases the renewable resources targets to four percent in 2012; ten percent in 2016; and sixteen percent in 2020. Establishes a new renewable resource target of twenty percent for 2025. Specifies that before 2016 all renewable resources must come from the Pacific Northwest and after 2106 at least half of the renewable resources must come from the Pacific Northwest and the remaining may come from within the western electricity coordinating council boundaries. Specifies that a qualifying utility may not count efficiency improvements to hydroelectric generation projects attributable to any utility other than the qualifying utility and whose energy output is marketed by the Bonneville power administration. Allows a qualifying utility beginning July 1, 2009, to acquire renewable energy credits produced on or after July 1, 2009, from a biomass energy generation facility. Allows a qualifying utility to use renewable energy credits from an eligible renewable resource owned in whole or in part by the utility if the credits were generated within three years prior to the year for which the credits are applied to its annual renewable resource target. Allows a qualifying utility that acquires solar energy to count that acquisition at four times its base value, or six times its base value where the energy is produced using solar inverters and modules manufactured in Washington.

Specifies that an investor-owned utility, for the purposes of complying with the renewable energy targets, must use its total retail revenue requirement resulting from the utility's most recent general rate case. Specifies that if the commission has not issued an order in a general rate case for that utility in any of the three years prior to January 1st of a year for which an annual renewable resource target takes effect, the commission must calculate the total annual retail revenue requirement for that utility for that target year. Provides that the total annual retail revenue requirement for each utility must be calculated based on only the operations of the utility relating to electricity, and must be updated annually until the commission issues an order for that utility in a general rate case.

Directs the utilities and transportation commission (commission) and the department of community, trade, and economic development (department) to adopt rules to implement Initiative 937 by June 30, 2010. Directs the commission and the department, within six months of the adoption by the Pacific Northwest electric power and conservation planning council (council) of each of its regional power plans, to initiate and complete rule making to consider adopting any changes in methodologies used by the council that would impact a qualifying utility's conservation potential assessment.

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