
HOUSE BILL 1294

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By Representative Blake

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1 AN ACT Relating to energy resources; and amending RCW 19.285.010,
2 19.285.030, 19.285.040, 19.285.050, 19.285.060, and 19.285.080.

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

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

6 This chapter concerns requirements for new energy resources. This
7 chapter requires large utilities to obtain fifteen percent of their
8 electricity, or one hundred percent of their electricity to serve load
9 growth, whichever is less, from new renewable resources such as solar
10 and wind by 2020 and undertake cost-effective energy conservation.

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

13 The definitions in this section apply throughout this chapter
14 unless the context clearly requires otherwise.

15 (1) "Attorney general" means the Washington state office of the
16 attorney general.

17 (2) "Auditor" means: (a) The Washington state auditor's office or
18 its designee for qualifying utilities under its jurisdiction that are

1 not investor-owned utilities; or (b) an independent auditor selected by
2 a qualifying utility that is not under the jurisdiction of the state
3 auditor and is not an investor-owned utility.

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

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

9 (5) "Consumer-owned utility" has the same meaning as defined in RCW
10 19.29A.010.

11 (6) "Cost-effective" has the same meaning as defined in RCW
12 80.52.030.

13 ~~((+6))~~ (7) "Council" means the Washington state apprenticeship and
14 training council within the department of labor and industries.

15 ~~((+7))~~ (8) "Customer" means a person or entity that purchases
16 electricity for ultimate consumption and not for resale.

17 ~~((+8))~~ (9) "Department" means the department of community, trade,
18 and economic development or its successor.

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

23 ~~((+10))~~ (11) "Eligible renewable resource" means:

24 (a) Electricity from a generation facility powered by a renewable
25 resource other than fresh water that commences operation after March
26 31, 1999, where ~~((+—(i)))~~ the facility is located ~~((in the Pacific~~
27 ~~Northwest; or (ii) the electricity from the facility is delivered into~~
28 ~~Washington state on a real-time basis without shaping, storage, or~~
29 ~~integration services))~~ within the geographic boundary of the western
30 electricity coordinating council or its successor entity, but in no
31 event may the geographic location be less than that included in the
32 western electricity coordinating council geographic boundary on the
33 effective date of this section; ~~((+))~~

34 (b) Incremental electricity produced as a result of efficiency
35 improvements completed after March 31, 1999, to hydroelectric
36 generation projects ~~((owned by a qualifying utility and))~~ located in
37 the Pacific Northwest or to hydroelectric generation in irrigation

1 pipes and canals located in the Pacific Northwest(~~(, where the~~
2 ~~additional generation in either case does not result in new water~~
3 ~~diversions or impoundments));~~

4 (c) Electricity from new hydroelectric generation located in the
5 Pacific Northwest, including pumped storage and new or existing
6 irrigation hydrogeneration, that have met applicable licensing
7 requirements, if any, of the federal energy regulatory commission; or

8 (d) Electricity produced from hydroelectric generation, including
9 pumped storage projects, located in the Pacific Northwest that is used
10 to integrate other eligible renewable resources into the transmission
11 grid for delivery to a qualifying utility.

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

14 ~~((+12))~~ (13) "Load" means the amount of kilowatt-hours of
15 electricity delivered in the most recently completed year by a
16 qualifying utility to its Washington retail customers.

17 ~~((+13))~~ (14) "Nonpower attributes" means all environmentally
18 related characteristics, exclusive of energy, capacity reliability, and
19 other electrical power service attributes, that are associated with the
20 generation of electricity from a renewable resource, including but not
21 limited to the facility's fuel type, geographic location, vintage,
22 qualification as an eligible renewable resource, and avoided criteria
23 emissions of pollutants to the air, soil, or water(~~(, and avoided~~
24 ~~emissions of carbon dioxide and other greenhouse gases)). Nonpower
25 attributes do not include avoided emissions of carbon dioxide and other
26 greenhouse gases, which may be retained by the generator or sold
27 separately.~~

28 ~~((+14))~~ (15) "Pacific Northwest" has the same meaning as defined
29 for the Bonneville power administration in section 3 of the Pacific
30 Northwest electric power planning and conservation act (94 Stat. 2698;
31 16 U.S.C. Sec. 839a).

32 ~~((+15))~~ (16) "Public facility" has the same meaning as defined in
33 RCW 39.35C.010.

34 ~~((+16))~~ (17) "Qualifying utility" means an electric utility, as
35 the term "electric utility" is defined in RCW 19.29A.010, that serves
36 more than twenty-five thousand customers in the state of Washington.
37 The number of customers served may be based on data reported by a

1 utility in form 861, "annual electric utility report," filed with the
2 energy information administration, United States department of energy.

3 ~~((+17))~~ (18) "Renewable energy credit" means a tradable
4 certificate of proof of at least one megawatt-hour of an eligible
5 renewable resource where ~~((the generation facility is not powered by
6 fresh water,))~~ the certificate includes all of the nonpower attributes
7 associated with that one megawatt-hour of electricity~~((7))~~ and the
8 certificate is verified by a renewable energy credit tracking system
9 selected by the department.

10 ~~((+18))~~ (19) "Renewable resource" means: (a) Water; (b) wind; (c)
11 solar energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean,
12 or tidal power; (g) gas from sewage treatment facilities; (h) biodiesel
13 fuel as defined in RCW 82.29A.135 that is not derived from crops raised
14 on land cleared from old growth or first-growth forests where the
15 clearing occurred after December 7, 2006; ~~((and))~~ (i) byproducts of
16 pulping or wood manufacturing processes located within the geographic
17 boundary of the western electricity coordinating council or its
18 successor entity, but in no event may the geographic location be less
19 than that included in the western electricity coordinating council on
20 the effective date of this section, including but not limited to bark,
21 wood chips, sawdust, and lignin in spent pulping liquors; (j) black
22 liquors derived from algae; and (k) biomass energy based on animal
23 waste, food waste, yard waste, or solid organic fuels from wood,
24 forest, or field residues, or dedicated energy crops that do not
25 include (i) wood pieces that have been treated with chemical
26 preservatives such as creosote, pentachlorophenol, or copper-chrome-
27 arsenic; (ii) ~~((black liquor byproduct from paper production; (iii))~~
28 wood from old growth forests; or ~~((+iv))~~ (iii) municipal solid waste.

29 ~~((+19))~~ (20) "Rule" means rules adopted by an agency or other
30 entity of Washington state government to carry out the intent and
31 purposes of this chapter.

32 ~~((+20))~~ (21) "Year" means the twelve-month period commencing
33 January 1st and ending December 31st.

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

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

1 (a) By January 1, 2010, (~~using methodologies consistent with those~~
2 ~~used by the Pacific Northwest electric power and conservation planning~~
3 ~~council in its most recently published regional power plan,~~) each
4 qualifying utility shall identify its achievable cost-effective
5 conservation potential through 2019. Cost-effective conservation
6 potential includes achievable cost-effective conservation related to
7 energy use, production, and distribution. 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 achievable
17 cost-effective conservation potential for the subsequent ten-year
18 period.

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

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

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

3 (f) The governing board of a consumer-owned utility shall determine
4 if a conservation program to be implemented by the consumer-owned
5 utility is achievable and cost-effective.

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

9 (i) At least three percent of its load, or one hundred percent of
10 its load growth from the effective date of this section, whichever is
11 less, by January 1, 2012, and each year thereafter through December 31,
12 2015;

13 (ii) At least nine percent of its load, or one hundred percent of
14 its load growth from the effective date of this section, whichever is
15 less, by January 1, 2016, and each year thereafter through December 31,
16 2019; and

17 (iii) At least fifteen percent of its load, or one hundred percent
18 of its load growth from the effective date of this section, whichever
19 is less, by January 1, 2020, and each year thereafter.

20 (b) A qualifying utility may count distributed generation at double
21 the facility's electrical output if the utility: (i) Owns or has
22 contracted for the distributed generation and the associated renewable
23 energy credits; or (ii) has contracted to purchase the associated
24 renewable energy credits.

25 (c) In meeting the annual targets in (a) of this subsection, a
26 qualifying utility shall calculate its annual load based on the average
27 of the utility's load for the previous two years or calculate its load
28 growth beginning with the retail sales of electricity in calendar year
29 2007.

30 (d) A qualifying utility shall be considered in compliance with an
31 annual target in (a) of this subsection if: (i) The utility's weather-
32 adjusted load for the previous three years on average did not increase
33 over that time period; (ii) after December 7, 2006, the utility did not
34 commence or renew ownership or incremental purchases of electricity
35 from resources other than renewable resources other than on a daily
36 spot price basis and the electricity is not offset by equivalent
37 renewable energy credits; and (iii) the utility invested at least one

1 percent of its total annual retail revenue requirement that year on
2 eligible renewable resources, renewable energy credits, or a
3 combination of both.

4 (e) The requirements of this section may be met for any given year
5 with renewable energy credits produced during that year, the preceding
6 year, or the subsequent year. Each renewable energy credit may be used
7 only once to meet the requirements of this section.

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

10 (+)) eligible renewable resources or distributed generation where
11 the associated renewable energy credits are owned by a separate
12 entity((+or

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

16 (g) Where fossil and combustible renewable resources are cofired in
17 one generating unit located in the Pacific Northwest where the cofiring
18 commenced after March 31, 1999, the unit shall be considered to produce
19 eligible renewable resources in direct proportion to the percentage of
20 the total heat value represented by the heat value of the renewable
21 resources.

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

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

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

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

32 (i) A qualifying utility shall be considered in compliance with an
33 annual target in (a) of this subsection if events beyond the reasonable
34 control of the utility that could not have been reasonably anticipated
35 or ameliorated prevented it from meeting the renewable energy target.
36 Such events include weather-related damage, mechanical failure,
37 strikes, lockouts, and actions of a governmental authority that

1 adversely affect the generation, transmission, or distribution of an
2 eligible renewable resource under contract to a qualifying utility.

3 (j) A qualifying utility is not required to comply with an annual
4 target in (a) of this subsection if purchases of eligible renewable
5 resources would displace hydroelectric generation that is available to
6 serve the qualifying utility's retail load.

7 (3) Utilities that become qualifying utilities after December 31,
8 2006, shall meet the requirements in this section on a time frame
9 comparable in length to that provided for qualifying utilities as of
10 December 7, 2006.

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

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

19 (b) The incremental cost of an eligible renewable resource is
20 calculated as the difference between the levelized delivered cost of
21 the eligible renewable resource, regardless of ownership, compared to
22 the levelized delivered cost of an equivalent amount of reasonably
23 available substitute resources that do not qualify as eligible
24 renewable resources, where the resources being compared have the same
25 contract length or facility life.

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

30 (ii) For each investor-owned utility, if the commission has not
31 issued an order in a general rate case for that utility in any of the
32 three years prior to January 1st of a year for which an annual target
33 is created in RCW 19.285.040(2), the commission shall calculate the
34 total annual retail revenue requirement for that utility for that
35 target year. The total annual retail revenue requirement for each such
36 utility must be calculated based on only the operations of the utility
37 relating to electricity, and must be updated on an annual basis until

1 the commission issues an order for that utility in a general rate case.
2 The total annual retail revenue requirement calculated for purposes of
3 this subsection (1)(c)(ii) has no bearing on the commission's rate-
4 making policies and practices under Title 80 RCW.

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

10 **Sec. 5.** RCW 19.285.060 and 2007 c 1 s 6 are each amended to read
11 as follows:

12 (1) Except as provided in subsection (2) of this section, a
13 qualifying utility that fails to comply with the energy conservation or
14 renewable energy targets established in RCW 19.285.040 shall pay an
15 administrative penalty to the state of Washington in the amount of
16 fifty dollars for each megawatt-hour of shortfall. Beginning in 2007,
17 this penalty shall be adjusted annually according to the rate of change
18 of the inflation indicator, gross domestic product-implicit price
19 deflator, as published by the bureau of economic analysis of the United
20 States department of commerce or its successor.

21 (2) A qualifying utility that does not meet an annual renewable
22 energy target established in RCW 19.285.040(2) is exempt from the
23 administrative penalty in subsection (1) of this section for that year
24 if the commission for investor-owned utilities or the auditor for all
25 other qualifying utilities determines that the utility complied with
26 RCW 19.285.040(2) (d) or (i) or 19.285.050(1).

27 (3) A qualifying utility must notify its retail electric customers
28 in published form within three months of incurring a penalty regarding
29 the size of the penalty and the reason it was incurred.

30 (4) The commission shall determine if an investor-owned utility may
31 recover the cost of this administrative penalty in electric rates, and
32 may consider providing positive incentives for an investor-owned
33 utility to exceed the targets established in RCW 19.285.040.

34 (5) Administrative penalties collected under this chapter shall be
35 deposited into the energy independence act special account which is
36 hereby created. All receipts from administrative penalties collected
37 under this chapter must be deposited into the account. Expenditures

1 from the account may be used only for the purchase of renewable energy
2 credits or for energy conservation projects at public facilities, local
3 government facilities, community colleges, or state universities. The
4 state shall own and retire any renewable energy credits purchased using
5 moneys from the account. Only the director of general administration
6 or the director's designee may authorize expenditures from the account.
7 The account is subject to allotment procedures under chapter 43.88 RCW,
8 but an appropriation is not required for expenditures.

9 (6) For a qualifying utility that is an investor-owned utility, the
10 commission shall determine compliance with the provisions of this
11 chapter and assess penalties for noncompliance as provided in
12 subsection (1) of this section.

13 (7) For qualifying utilities that are not investor-owned
14 utilities(~~(7)~~): (a) The governing board is responsible for determining
15 compliance with the provisions of this chapter and rules adopted under
16 this chapter; (b) the auditor is responsible for auditing compliance
17 with this chapter and rules adopted under this chapter that apply to
18 those utilities; and (c) the attorney general is responsible for
19 enforcing that compliance. By November 1, 2009, the auditor may
20 develop a guidance manual related to compliance with the conservation
21 provisions of this chapter and other relevant state law.

22 **Sec. 6.** RCW 19.285.080 and 2007 c 1 s 8 are each amended to read
23 as follows:

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

27 (2) The department shall adopt rules concerning only process,
28 timelines, and documentation to ensure the proper implementation of
29 this chapter as it applies to qualifying utilities that are not
30 investor-owned utilities. Those rules include, but are not limited to,
31 rules associated with a qualifying utility's development of
32 conservation targets under RCW 19.285.040(1); a qualifying utility's
33 decision to pursue alternative compliance in RCW 19.285.040(2) (d) or
34 (i) or 19.285.050(1); and the format and content of reports required in
35 RCW 19.285.070. Nothing in this subsection may be construed to
36 restrict the rate-making authority of the commission or a qualifying
37 utility as otherwise provided by law.

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

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

8 (b) Within six months of the adoption by the Pacific Northwest
9 electric power and conservation council of each of its regional power
10 plans, the commission and department shall adopt rules, according to
11 subsections (1) and (2) of this section, to consider adopting any
12 changes in methodologies used by the Pacific Northwest electric power
13 and conservation council that would impact a qualifying utility's
14 conservation potential assessment in accordance with RCW 19.285.040(1).
15 If rules are adopted under this subsection, the rules are applicable to
16 the next biennial target that is at least one year from the effective
17 date of the rules.

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