

---

HOUSE BILL 1334

---

State of Washington

65th Legislature

2017 Regular Session

By Representatives Tarleton, Fitzgibbon, Fey, Pollet, Hudgins, and Doglio

Read first time 01/17/17. Referred to Committee on Technology & Economic Development.

1 AN ACT Relating to the energy independence act; amending RCW  
2 19.285.030, 19.285.040, 19.285.060, 19.285.070, and 19.285.080;  
3 adding new sections to chapter 19.285 RCW; creating a new section;  
4 and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that Washington  
7 should continue its leadership in conservation, clean energy, and  
8 climate change mitigation by maximizing energy efficiency across the  
9 state and avoiding new investments in conventional sources of  
10 electricity generation.

11 (2) The legislature acknowledges that since the passage of the  
12 energy independence act, Initiative Measure No. 937, in 2006, the  
13 seventeen electric utilities that must comply with the act have, as  
14 of the effective date of this section, exceeded targets for cost-  
15 effective energy efficiency reductions in every two-year reporting  
16 period. These electric utilities have also met the renewable energy  
17 acquisition targets of three percent of annual load by 2012 and nine  
18 percent of annual load by 2016, and are generally on track to meet  
19 the target of fifteen percent of annual load by 2020. The legislature  
20 finds that since the passage of the energy independence act, hundreds  
21 of businesses and thousands of jobs have been created or supported in

1 the clean technology areas of energy efficiency, wind generation, and  
2 solar energy. The legislature also finds that in that same period,  
3 Washington progressed from having the nation's seventh lowest average  
4 retail electric price to having the nation's least expensive average  
5 retail electric rate by 2014, thereby evidencing that cleaner energy  
6 does not necessarily equate to higher energy prices. The legislature  
7 further finds that passage of the energy independence act has reduced  
8 air and water pollution and has been the single most effective  
9 measure for reducing greenhouse gases, as evidenced by the projection  
10 that eight million tons of carbon pollution will have been reduced by  
11 2020.

12 (3) By building on the state's foundation of hydroelectric  
13 generation with clean energy resources, the legislature declares that  
14 Washington can promote energy independence, create high-quality jobs  
15 in the clean energy sector, maintain stable and affordable rates for  
16 all customers, especially low-income customers, and protect clean air  
17 and water in the Pacific Northwest.

18 **Sec. 2.** RCW 19.285.030 and 2014 c 45 s 1 are each amended to  
19 read as follows:

20 The definitions in this section apply throughout this chapter  
21 unless the context clearly requires otherwise.

22 (1) "Attorney general" means the Washington state office of the  
23 attorney general.

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

29 (3)(a) "Biomass energy" includes: (i) Organic by-products of  
30 pulping and the wood manufacturing process; (ii) animal manure; (iii)  
31 solid organic fuels from wood; (iv) forest or field residues; (v)  
32 untreated wooden demolition or construction debris; (vi) food waste  
33 and food processing residuals; (vii) liquors derived from algae;  
34 (viii) dedicated energy crops; and (ix) yard waste.

35 (b) "Biomass energy" does not include: (i) Wood pieces that have  
36 been treated with chemical preservatives such as creosote,  
37 pentachlorophenol, or copper-chrome-arsenic; (ii) wood from old  
38 growth forests; or (iii) municipal solid waste.

1 (4) "Coal transition power" has the same meaning as defined in  
2 RCW 80.80.010, as that section existed on December 31, 2016.

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

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

8 (7) "Cost-effective" has the same meaning as defined in RCW  
9 80.52.030.

10 (8) "Council" means the Washington state apprenticeship and  
11 training council within the department of labor and industries.

12 (9) "Customer" means a person or entity that purchases  
13 electricity for ultimate consumption and not for resale.

14 (10) "Department" means the department of commerce or its  
15 successor.

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

20 (12) "Eligible renewable resource" means:

21 (a) Electricity from a generation facility powered by a renewable  
22 resource other than freshwater that commences operation after March  
23 31, 1999, where: (i) The facility is located in the Pacific Northwest  
24 or anywhere within the boundary of a state whose territories are  
25 partially included in the Pacific Northwest; or (ii) the electricity  
26 from the facility is delivered into Washington state on a real-time  
27 basis without shaping, storage, or integration services;

28 (b) Incremental electricity produced as a result of efficiency  
29 improvements completed after March 31, 1999, to hydroelectric  
30 generation projects owned by a qualifying utility and located in the  
31 Pacific Northwest where the additional generation does not result in  
32 new water diversions or impoundments;

33 (c) Hydroelectric generation from a project completed after March  
34 31, 1999, where the generation facility is located in irrigation  
35 pipes, irrigation canals, water pipes whose primary purpose is for  
36 conveyance of water for municipal use, and wastewater pipes located  
37 in Washington where the generation does not result in new water  
38 diversions or impoundments;

39 (d) Qualified biomass energy; ((e))

1 (e) For a qualifying utility that serves customers in other  
2 states, electricity from a generation facility powered by a renewable  
3 resource other than freshwater that commences operation after March  
4 31, 1999, where: (i) The facility is located within a state in which  
5 the qualifying utility serves retail electrical customers; and (ii)  
6 the qualifying utility owns the facility in whole or in part or has a  
7 long-term contract with the facility of at least twelve months or  
8 more; or

9 (f) Beginning January 1, 2017, the portion of incremental  
10 electricity produced as a result of efficiency improvements completed  
11 after March 31, 1999, attributable to a qualifying utility's  
12 Washington share of electricity output from hydroelectric generation  
13 projects whose energy output is marketed by the Bonneville power  
14 administration, where the additional generation does not result in  
15 new water diversions or impoundments.

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

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

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

29 (b) "Nonpower attributes" does not include any aspects, claims,  
30 characteristics, and benefits associated with the on-site capture and  
31 destruction of methane or other greenhouse gases at a facility  
32 through a digester system, landfill gas collection system, or other  
33 mechanism, which may be separately marketable as greenhouse gas  
34 emission reduction credits, offsets, or similar tradable commodities.  
35 However, these separate avoided emissions may not result in or  
36 otherwise have the effect of attributing greenhouse gas emissions to  
37 the electricity.

38 (16) "Pacific Northwest" has the same meaning as defined for the  
39 Bonneville power administration in section 3 of the Pacific Northwest

1 electric power planning and conservation act (94 Stat. 2698; 16  
2 U.S.C. Sec. 839a).

3 (17) "Public facility" has the same meaning as defined in RCW  
4 39.35C.010.

5 (18) "Qualified biomass energy" means electricity produced from a  
6 biomass energy facility that: (a) Commenced operation before March  
7 31, 1999; (b) contributes to the qualifying utility's load; and (c)  
8 is owned either by: (i) A qualifying utility; or (ii) an industrial  
9 facility that is directly interconnected with electricity facilities  
10 that are owned by a qualifying utility and capable of carrying  
11 electricity at transmission voltage.

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

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

25 (21) "Renewable resource" means: (a) Water; (b) wind; (c) solar  
26 energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or  
27 tidal power; (g) gas from sewage treatment facilities; (h) biodiesel  
28 fuel as defined in RCW 82.29A.135 that is not derived from crops  
29 raised on land cleared from old growth or first-growth forests where  
30 the clearing occurred after December 7, 2006; or (i) biomass energy.

31 (22) "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 (23) "Year" means the twelve-month period commencing January 1st  
35 and ending December 31st.

36 (24) "Consumer-owned utility" has the same meaning as defined in  
37 RCW 19.29A.010.

38 (25) "Market customer" means a nonresidential customer of a  
39 qualifying utility or a small utility that: (a) Purchases electricity  
40 from an entity or entities other than the utility with which it is

1 directly interconnected; or (b) generates electricity to meet its own  
2 needs.

3 (26) "New energy or capacity need" means any electricity  
4 generation needed by a qualifying utility, small utility, or market  
5 customer after April 1, 2017, to meet any of the following:

- 6 (a) Electricity load growth;
- 7 (b) Changes in capacity needs;
- 8 (c) Changes in ancillary services needs;
- 9 (d) Changes in reliability needs;
- 10 (e) Changes in flexibility needs;
- 11 (f) Needs arising due to replacing electricity generation; or
- 12 (g) Needs arising due to replacing expiring electricity resource  
13 contracts.

14 (27) "North American electric reliability corporation" means the  
15 electricity reliability organization designated by the federal energy  
16 regulatory commission to ensure legal compliance with mandatory  
17 electricity reliability standards in accordance with the energy  
18 policy act of 2005 (119 Stat. 941; 16 U.S.C. Sec. 824o).

19 (28) "Small utility" means an electric utility, as the term  
20 "electric utility" is defined in RCW 19.29A.010, that serves twenty-  
21 five thousand or fewer customers in the state of Washington.

22 (29) "Tier 1 contract" means a power sales contract between a  
23 utility and the Bonneville power administration under which the  
24 utility purchases power from the Bonneville power administration at  
25 rates established in accordance with the Bonneville power  
26 administration's tiered rate methodology.

27 (30) "Washington share" means the portion of federal Columbia  
28 river power system generation attributable to the Washington load of  
29 hydroelectric efficiency upgrades that the Bonneville power  
30 administration provides to: (a) Each consumer-owned utility serving  
31 load located in Washington, pursuant to a contract; (b) each joint  
32 operating agency with retail utility members serving load located in  
33 Washington, pursuant to a contract; and (c) each investor-owned  
34 utility participating in the residential exchange program that serves  
35 load located in Washington.

36 **Sec. 3.** RCW 19.285.040 and 2014 c 26 s 1 are each amended to  
37 read as follows:

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

4 (a) By January 1, 2010, using methodologies consistent with those  
5 used by the Pacific Northwest electric power and conservation  
6 planning council in the most recently published regional power plan  
7 as it existed on June 12, 2014, or a subsequent date as may be  
8 provided by the department or the commission by rule, each qualifying  
9 utility shall identify its achievable cost-effective conservation  
10 potential through 2019. Nothing in the rule adopted under this  
11 subsection precludes a qualifying utility from using its utility  
12 specific conservation measures, values, and assumptions in  
13 identifying its achievable cost-effective conservation potential. At  
14 least every two years thereafter, the qualifying utility shall review  
15 and update this assessment for the subsequent ten-year period.

16 (b) By January 1, 2020, each small utility shall identify its  
17 achievable cost-effective conservation potential through 2029 in  
18 accordance with the requirements for qualifying utilities under (a)  
19 of this subsection. At least every two years thereafter, the small  
20 utility shall review and update this assessment for the subsequent  
21 ten-year period.

22 (c) Beginning January 2010, each qualifying utility shall  
23 establish and make publicly available a biennial acquisition target  
24 for cost-effective conservation consistent with its identification of  
25 achievable opportunities in (a) of this subsection, and meet that  
26 target during the subsequent two-year period. At a minimum, each  
27 biennial target must be no lower than the qualifying utility's pro  
28 rata share for that two-year period of its cost-effective  
29 conservation potential for the subsequent ten-year period.

30 ~~((e))~~ (d) Beginning January 2020, each small utility shall  
31 establish and make publicly available a biennial acquisition target  
32 for cost-effective conservation consistent with its identification of  
33 achievable opportunities in (b) of this subsection and meet that  
34 target during the subsequent two-year period. At a minimum, each  
35 biennial target must be no lower than the small utility's pro rata  
36 share for that two-year period of its cost-effective conservation  
37 potential for the subsequent ten-year period.

38 (e)(i) Except as provided in ~~((e))~~ (e)(ii) and (iii) of this  
39 subsection, beginning on January 1, 2014, for qualifying utilities or  
40 January 1, 2020, for small utilities, cost-effective conservation

1 achieved by a qualifying utility or small utility in excess of its  
2 biennial acquisition target may be used to help meet the immediately  
3 subsequent two biennial acquisition targets, such that no more than  
4 twenty percent of any biennial target may be met with excess  
5 conservation savings.

6 (ii) Beginning January 1, 2014, for qualifying utilities or  
7 January 1, 2020, for small utilities, a qualifying utility or a small  
8 utility may use single large facility conservation savings in excess  
9 of its biennial target to meet up to an additional five percent of  
10 the immediately subsequent two biennial acquisition targets, such  
11 that no more than twenty-five percent of any biennial target may be  
12 met with excess conservation savings allowed under all of the  
13 provisions of this section combined. For the purposes of this  
14 subsection (1)((+e)) (e)(ii), "single large facility conservation  
15 savings" means cost-effective conservation savings achieved in a  
16 single biennial period at the premises of a single customer of a  
17 qualifying utility whose annual electricity consumption prior to the  
18 conservation savings exceeded five average megawatts.

19 (iii) Beginning January 1, 2012, and until December 31, 2017, a  
20 qualifying utility with an industrial facility located in a county  
21 with a population between ninety-five thousand and one hundred  
22 fifteen thousand that is directly interconnected with electricity  
23 facilities that are capable of carrying electricity at transmission  
24 voltage((τ)) may use cost-effective conservation from that industrial  
25 facility in excess of its biennial acquisition target to help meet  
26 the immediately subsequent two biennial acquisition targets, such  
27 that no more than twenty-five percent of any biennial target may be  
28 met with excess conservation savings allowed under all of the  
29 provisions of this section combined.

30 ((+d)) (f) In meeting its conservation targets, a qualifying  
31 utility or a small utility may count high-efficiency cogeneration  
32 owned and used by a retail electric customer to meet its own needs.  
33 High-efficiency cogeneration is the sequential production of  
34 electricity and useful thermal energy from a common fuel source,  
35 where, under normal operating conditions, the facility has a useful  
36 thermal energy output of no less than thirty-three percent of the  
37 total energy output. The reduction in load due to high-efficiency  
38 cogeneration shall be: (i) Calculated as the ratio of the fuel  
39 chargeable to power heat rate of the cogeneration facility compared  
40 to the heat rate on a new and clean basis of a best-commercially

1 available technology combined-cycle natural gas-fired combustion  
2 turbine; and (ii) counted towards meeting the biennial conservation  
3 target in the same manner as other conservation savings.

4 ~~((e))~~ (g) Each market customer shall pay a per kilowatt-hour  
5 charge to the utility with which it is directly interconnected to  
6 help fund utility conservation programs under this section. The  
7 commission shall determine the appropriate per kilowatt-hour charge  
8 for a market customer of an investor-owned utility and the governing  
9 board shall determine the appropriate per kilowatt-hour charge for a  
10 market customer of a consumer-owned utility. The commission or the  
11 governing board shall approve a methodology for allocating  
12 conservation costs to market customers that is equitable with regard  
13 to other utility customers. This methodology must consider, at a  
14 minimum, past contributions made by each market customer toward  
15 funding a utility's conservation program. Nothing in this section  
16 precludes a market customer from receiving financial or other  
17 incentives for conservation acquisition from the utility with which  
18 it is directly interconnected.

19 (h) The commission may determine if a conservation program  
20 implemented by an investor-owned utility is cost-effective based on  
21 the commission's policies and practice.

22 ~~((f))~~ (i) The commission may rely on its standard practice for  
23 review and approval of investor-owned utility conservation targets.

24 (2)(a) Except as provided in (j) of this subsection, each  
25 qualifying utility shall use eligible renewable resources or acquire  
26 equivalent renewable energy credits, or any combination of them, to  
27 meet the following annual targets:

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

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

32 (iii) At least fifteen percent of its load by January 1, 2020,  
33 ~~((and each year thereafter)); and~~

34 (iv) Beginning January 1, 2021, and each year thereafter, at  
35 least fifteen percent of its 2020 load.

36 (b) A qualifying utility may count distributed generation at  
37 double the facility's electrical output if the utility: (i) Owns or  
38 has contracted for the distributed generation and the associated  
39 renewable energy credits; or (ii) has contracted to purchase the  
40 associated renewable energy credits.

1 (c) In meeting the annual targets in (a)(i) through (iii) of this  
2 subsection, a qualifying utility shall calculate its annual load  
3 based on the average of the utility's load for the previous two  
4 years. In meeting the annual target in (a)(iv) of this subsection, a  
5 qualifying utility shall calculate its annual load based on the  
6 average of the utility's load in the years 2019 and 2020.

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

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

22 (f) In complying with the targets established in (a) of this  
23 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  
26 entity; or

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.

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

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

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

15 (j)(i) Beginning January 1, 2016, only a qualifying utility that  
16 owns or is directly interconnected to a qualified biomass energy  
17 facility may use qualified biomass energy to meet its compliance  
18 obligation under this subsection.

19 (ii) A qualifying utility may no longer use electricity and  
20 associated renewable energy credits from a qualified biomass energy  
21 facility if the associated industrial pulping or wood manufacturing  
22 facility ceases operation other than for purposes of maintenance or  
23 upgrade.

24 (k) An industrial facility that hosts a qualified biomass energy  
25 facility may only transfer or sell renewable energy credits  
26 associated with its facility to the qualifying utility with which it  
27 is directly interconnected with facilities owned by such a qualifying  
28 utility and that are capable of carrying electricity at transmission  
29 voltage. The qualifying utility may only use an amount of renewable  
30 energy credits associated with qualified biomass energy that are  
31 equivalent to the proportionate amount of its annual targets under  
32 (a)(ii) and (iii) of this subsection that was created by the load of  
33 the industrial facility. A qualifying utility that owns a qualified  
34 biomass energy facility may not transfer or sell renewable energy  
35 credits associated with qualified biomass energy to another person,  
36 entity, or qualifying utility.

37 (l) Beginning January 1, 2017, a qualifying utility may use  
38 eligible renewable resources as identified in RCW 19.285.030(12)(f)  
39 to meet its compliance obligations under this subsection. A  
40 qualifying utility may not transfer or sell these eligible renewable

1 resources to another utility for compliance purposes under this  
2 chapter.

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

7 NEW SECTION. Sec. 4. (1) Except as provided in RCW 19.285.040  
8 or in subsection (4) of this section, each qualifying utility, small  
9 utility, and market customer may not use electricity from any of the  
10 following resources to meet any new energy or capacity needs:

11 (a) Coal-fired generation;

12 (b) Hydroelectric generation that requires new diversions, new  
13 impoundments, new bypass reaches, or expansion of existing reservoirs  
14 unless the diversions, bypass reaches, or reservoir expansions are  
15 necessary for the operation of a pumped storage facility that: (i)  
16 Does not conflict with existing state or federal fish recovery plans;  
17 and (ii) complies with all local, state, and federal laws and  
18 regulations;

19 (c) Natural gas-fired generation;

20 (d) Nuclear generation;

21 (e) Oil or diesel generation; or

22 (f) Waste incineration, in which electricity is derived from  
23 burning solid or liquid wastes from businesses, households,  
24 municipalities, or waste treatments operations.

25 (2)(a) The requirements of subsection (1) of this section apply,  
26 at minimum, to: (i) Any new or increased ownership interest after  
27 April 1, 2017, in a new or existing electricity generation facility  
28 or unit; and (ii) any new or increased contractual commitment after  
29 April 1, 2017, that obligates or allows a qualifying utility, small  
30 utility, or market customer to purchase a specified amount of  
31 megawatts or megawatt-hours from an electricity generation facility  
32 or unit, or a specified percentage of an electricity generation  
33 facility or unit.

34 (b) A qualifying utility, small utility, or market customer may  
35 not enter into a contract for electricity generation to meet new  
36 energy or capacity needs if the contract does not specify the sources  
37 or origins of the electricity generation.

38 (3) Except as provided in RCW 19.285.030(15)(b), any tradable  
39 certificate of proof of a conservation or renewable resource,

1 including but not limited to a renewable energy credit, associated  
2 with the portion of any resource or resources used to meet new energy  
3 or capacity needs under this section must be retired for the purposes  
4 of this section and cannot be sold, transferred, used for compliance  
5 with the requirements under this chapter, or used for other purposes.  
6 A qualifying utility, small utility, or market customer may not use a  
7 tradable certificate of proof of a conservation or renewable  
8 resource, including but not limited to a renewable energy credit, to  
9 meet the requirements of this section if the associated energy or  
10 capacity has been sold, transferred, or otherwise used separately.

11 (4) Nothing in this section precludes the use of any of the  
12 following resources to meet new energy or capacity needs:

13 (a) A qualifying utility's or small utility's allocation of  
14 Bonneville power administration tier 1 power, pursuant to the  
15 utility's tier 1 contract with the Bonneville power administration,  
16 until such a contract expires in 2028;

17 (b) Short-term spot market purchases;

18 (c) Renewal or extension of contracts in effect as of the  
19 effective date of this section, where the renewal or extension does  
20 not lead to any increase in the energy or capacity provided;

21 (d) Coal transition power through 2025;

22 (e) Generation resources owned as of the effective date of this  
23 section by a market customer and used by that market customer to meet  
24 its own needs, until the generation resources are at the end of the  
25 facility's useful life, are retired, or cease operations;

26 (f) Generation resources owned as of the effective date of this  
27 section by a qualifying utility or small utility and used by that  
28 utility to meet the needs of its customers, until the generation  
29 resources are at the end of the facility's useful life, are retired,  
30 or cease operations;

31 (g) Increased megawatt-hours from a generation facility that is  
32 owned by a qualifying utility or a small utility as of the effective  
33 date of this section, where the qualifying utility or small utility  
34 uses the increased megawatt-hours to serve the utility's customers  
35 and where the utility's ownership interest in the facility does not  
36 increase;

37 (h) Increased megawatt-hours from a generation facility that is  
38 owned by a market customer as of the effective date of this section,  
39 where the market customer uses the increased megawatt-hours to meet

1 its own needs and where the market customer's ownership interest in  
2 the facility does not increase; and

3 (i) Electricity generation that is found by the commission, in  
4 accordance with section 5 of this act, or the utility's governing  
5 board, in accordance with section 6 of this act, to be required to  
6 maintain reliable service and comply with applicable standards of the  
7 North American electric reliability corporation or its successor.

8 (5) The requirements of this section do not replace or modify the  
9 requirements established under RCW 19.285.040 for a qualifying  
10 utility, small utility, or market customer. A qualifying utility,  
11 small utility, or market customer must comply with the requirements  
12 of this section in addition to the requirements imposed elsewhere in  
13 this chapter. As provided in subsection (3) of this section, the  
14 portion of any resource or resources used to meet new energy or  
15 capacity needs under this section may not be used for compliance with  
16 the requirements under this chapter.

17 (6) The definitions in this subsection apply throughout this  
18 section unless the context clearly requires otherwise.

19 (a) "Short-term spot market purchase" means: (i) The purchase of  
20 energy on the spot market for immediate delivery; or (ii) a contract  
21 for the purchase of electricity on the spot market that is for a term  
22 of one month or less.

23 (b) "Spot market" means a public financial market in which  
24 electricity is bought, sold, or traded for immediate delivery.

25 NEW SECTION. **Sec. 5.** (1) Upon its own motion or at the request  
26 of an investor-owned utility, the commission may open an  
27 investigation to determine whether an investor-owned utility's  
28 compliance with the requirements of section 4 of this act is likely  
29 to result in conflicts with or compromises to the investor-owned  
30 utility's obligation to comply with the mandatory and enforceable  
31 reliability standards of the North American electric reliability  
32 corporation, or compromises to the integrity of the investor-owned  
33 utility's electrical system. An investor-owned utility making a  
34 request under this subsection must submit an application to the  
35 commission that includes:

36 (a) An explanation of the reliability or integrity issue and how  
37 a temporary exemption from complying with the requirements of section  
38 4 of this act will avoid the reliability or integrity issue; and

1 (b) A plan and timeline to achieve full compliance with the  
2 requirements of section 4 of this act.

3 (2) In applying for a temporary exemption under this section, an  
4 investor-owned utility has the burden of demonstrating that  
5 compliance with the requirements of section 4 of this act is likely  
6 to result in:

7 (a) Conflicts with or compromises to the investor-owned utility's  
8 obligation to comply with the mandatory and enforceable reliability  
9 standards of the North American electric reliability corporation; or

10 (b) Compromises to the integrity of the investor-owned utility's  
11 electrical system.

12 (3) After opportunity for public comment and adjudication if  
13 deemed necessary, the commission shall approve, approve with  
14 modifications, or deny the plan and timeline submitted in subsection  
15 (1)(b) of this section.

16 (4) If the commission determines under this section that  
17 compliance with the requirements of section 4 of this act is likely  
18 to result in conflicts with or compromises to an investor-owned  
19 utility's obligation to comply with the mandatory and enforceable  
20 reliability standards of the North American electric reliability  
21 corporation, or compromises to the integrity of the investor-owned  
22 utility's electrical system, the commission shall issue an order:

23 (a) Temporarily exempting the investor-owned utility from the  
24 requirements of section 4 of this act for an amount of time  
25 sufficient to allow the investor-owned utility to achieve full  
26 compliance with the requirements of section 4 of this act;

27 (b) Allowing the investor-owned utility to meet all or a portion  
28 of its new energy or capacity needs with electricity produced by a  
29 generating facility that burns natural gas as the primary fuel source  
30 as long as the facility: (i) Is operating as of the effective date of  
31 this section; and (ii) does not exist as a result of a conversion  
32 that occurs after the effective date of this section from a different  
33 fuel source to a generation source listed in section 4(1) of this  
34 act;

35 (c) Directing the investor-owned utility to file a progress  
36 report within six months after an order granting an exemption is  
37 issued, or within an amount of time determined to be reasonable by  
38 the commission, on achieving full compliance with the requirements of  
39 section 4 of this act; and

1 (d) Directing the investor-owned utility to take specific actions  
2 to achieve full compliance with the requirements of section 4 of this  
3 act.

4 (5) An investor-owned utility may request an extension of a  
5 temporary exemption granted under this section and must report to the  
6 commission at least once every six months as to its progress in  
7 resolving its reliability or system integrity issues.

8 (6) This section does not permanently relieve an investor-owned  
9 utility of its obligation to comply with the requirements of section  
10 4 of this act.

11 NEW SECTION. **Sec. 6.** (1) Upon its own motion or at the request  
12 of a consumer-owned utility, the governing board of a consumer-owned  
13 utility may open an investigation to determine whether the consumer-  
14 owned utility's compliance with the requirements of section 4 of this  
15 act is likely to result in conflicts with or compromises to the  
16 consumer-owned utility's obligation to comply with the mandatory and  
17 enforceable reliability standards of the North American electric  
18 reliability corporation, or compromises to the integrity of the  
19 consumer-owned utility's electrical system. At a minimum, the  
20 governing board must consider in one or more publicly noticed  
21 meetings:

22 (a) An explanation of the reliability or integrity issue and how  
23 a temporary exemption from complying with the requirements of section  
24 4 of this act will avoid the reliability or integrity issue; and

25 (b) A plan and timeline to achieve full compliance with the  
26 requirements of section 4 of this act.

27 (2) After opportunity for public comment and hearings if deemed  
28 necessary, the governing board shall approve, approve with  
29 modifications, or deny the plan and timeline considered in subsection  
30 (1)(b) of this section.

31 (3) If the governing board determines under this section that  
32 compliance with the requirements of section 4 of this act is likely  
33 to result in conflicts with or compromises to the consumer-owned  
34 utility's obligation to comply with the mandatory and enforceable  
35 reliability standards of the North American electric reliability  
36 corporation, or compromises to the integrity of the consumer-owned  
37 utility's electrical system, the governing board shall issue an  
38 order:

1 (a) Temporarily exempting the consumer-owned utility from the  
2 requirements of section 4 of this act for an amount of time  
3 sufficient to allow the consumer-owned utility to achieve full  
4 compliance with the requirements of section 4 of this act;

5 (b) Providing evidence to support the temporary exemption granted  
6 in (a) of this subsection;

7 (c) Allowing the consumer-owned utility to meet all or a portion  
8 of its new energy or capacity needs with electricity produced by a  
9 generating facility that burns natural gas as the primary fuel source  
10 as long as the facility: (i) Is operating as of the effective date of  
11 this section; and (ii) does not exist as a result of a conversion  
12 that occurs after the effective date of this section from a different  
13 fuel source to a generation source listed in section 4(1) of this  
14 act;

15 (d) Directing the consumer-owned utility to file a progress  
16 report within six months after an order granting an exemption is  
17 issued on achieving full compliance with the requirements of section  
18 4 of this act; and

19 (e) Directing the consumer-owned utility to take specific actions  
20 to achieve full compliance with the requirements of section 4 of this  
21 act.

22 (4) A consumer-owned utility may request an extension of a  
23 temporary exemption granted under this section and must report to the  
24 governing board in a publicly noticed meeting at least once every six  
25 months as to its progress in resolving its reliability or system  
26 integrity issues.

27 (5) This section does not permanently relieve a consumer-owned  
28 utility of its obligation to comply with the requirements of section  
29 4 of this act.

30 **Sec. 7.** RCW 19.285.060 and 2015 c 225 s 22 are each amended to  
31 read as follows:

32 (1) Except as provided in subsection (2) of this section, a  
33 qualifying utility that fails to comply with the energy conservation  
34 or renewable energy targets established in RCW 19.285.040 shall pay  
35 an administrative penalty to the state of Washington in the amount of  
36 fifty dollars for each megawatt-hour of shortfall. Beginning in 2007,  
37 this penalty shall be adjusted annually according to the rate of  
38 change of the inflation indicator, gross domestic product-implicit

1 price deflator, as published by the bureau of economic analysis of  
2 the United States department of commerce or its successor.

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

9 (3) A small utility that fails to comply with the energy  
10 conservation targets established in RCW 19.285.040 shall pay the  
11 administrative penalty in subsection (1) of this section.

12 (4) Except as provided in subsection (5) of this section, a  
13 qualifying utility, small utility, or market customer that fails to  
14 comply with the requirements regarding new energy or capacity needs  
15 established in section 4 of this act shall pay an administrative  
16 penalty to the state of Washington of fifty dollars for each  
17 megawatt-hour of energy or megawatt of capacity from a generation  
18 resource listed in section 4(1) of this act that was used to meet new  
19 energy or capacity needs. This penalty shall be adjusted annually  
20 according to the rate of change of the inflation indicator, gross  
21 domestic product-implicit price deflator, as published by the bureau  
22 of economic analysis of the United States department of commerce or  
23 its successor.

24 (5) A qualifying utility or a small utility that does not meet  
25 the requirements established in section 4 of this act is exempt from  
26 the administrative penalty in subsection (4) of this section for that  
27 year if the commission, in the case of an investor-owned utility, or  
28 the auditor, in the case of a consumer-owned utility, determines that  
29 the utility complied with section 5 or 6 of this act, as applicable.  
30 In determining compliance with section 5 or 6 of this act, the  
31 commission or the auditor, as applicable, shall consider the efforts  
32 undertaken by the utility to comply with the requirements established  
33 in section 4 of this act, including the duration of time during which  
34 the utility was not in compliance with section 4 of this act.

35 (6) A qualifying utility or small utility must notify its retail  
36 electric customers in published form within three months of incurring  
37 a penalty regarding the size of the penalty and the reason it was  
38 incurred.

39 ~~((+4))~~ (7) The commission shall determine if an investor-owned  
40 utility may recover the cost of this administrative penalty in

1 electric rates, and may consider providing positive incentives for an  
2 investor-owned utility to exceed the targets established in RCW  
3 19.285.040.

4 ~~((5))~~ (8) Administrative penalties collected under this chapter  
5 shall be deposited into the energy independence act special account  
6 which is hereby created. All receipts from administrative penalties  
7 collected under this chapter must be deposited into the account.  
8 Expenditures from the account may be used only for the purchase of  
9 renewable energy credits or for energy conservation projects at  
10 public facilities, local government facilities, community colleges,  
11 or state universities. The state shall own and retire any renewable  
12 energy credits purchased using moneys from the account. Only the  
13 director of enterprise services or the director's designee may  
14 authorize expenditures from the account. The account is subject to  
15 allotment procedures under chapter 43.88 RCW, but an appropriation is  
16 not required for expenditures.

17 ~~((6))~~ (9) For ~~((a qualifying utility that is))~~ an investor-  
18 owned utility, the commission shall determine compliance with the  
19 provisions of this chapter and assess penalties for noncompliance as  
20 provided in subsection (1) of this section.

21 ~~((7))~~ (10) For ~~((qualifying utilities that are not investor-  
22 owned utilities))~~ a consumer-owned utility, the auditor is  
23 responsible for auditing compliance with this chapter and rules  
24 adopted under this chapter that apply to those utilities and the  
25 attorney general is responsible for enforcing that compliance.

26 (11) For a market customer, the attorney general is responsible  
27 for enforcing compliance with this chapter, except that the  
28 commission is responsible for enforcing compliance with RCW  
29 19.285.040 for a market customer of an investor-owned utility.

30 **Sec. 8.** RCW 19.285.070 and 2007 c 1 s 7 are each amended to read  
31 as follows:

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

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

12 ~~((A qualifying utility that is an))~~ On or before June 1,  
13 2022, and annually thereafter, each small utility shall report to the  
14 department on its progress in the preceding year in meeting the  
15 conservation targets established in RCW 19.285.040, including  
16 expected electricity savings from the biennial conservation target,  
17 expenditures on conservation, actual electricity savings results, and  
18 if applicable, market customers' aggregated conservation expenditures  
19 and savings.

20 (3) On or before June 1, 2018, and annually thereafter, each  
21 qualifying utility, small utility, and market customer shall report  
22 to the department on the electricity sources used to meet any new  
23 energy or capacity needs in accordance with section 4 of this act,  
24 including but not limited to the amount of megawatt-hours or  
25 megawatts needed, and the amount of megawatt-hours of each type of  
26 resource acquired, including those resources exempted from compliance  
27 under section 4(4) of this act. For each year that a qualifying  
28 utility or small utility requests or uses a temporary exemption under  
29 section 5 or 6 of this act, the utility must include in its annual  
30 report relevant data to demonstrate that it met the criteria for  
31 exemption.

32 (4) Each investor-owned utility shall also report all information  
33 required in subsections (1) through (3) of this section to the  
34 commission, and ~~((all other qualifying utilities))~~ each consumer-  
35 owned utility shall also make all information required in subsections  
36 (1) through (3) of this section available to the auditor.

37 ~~((3) A))~~ (5) Each qualifying utility and each small utility  
38 shall also make reports required in this section available to its  
39 customers.

1       (6) Each market customer shall make all information required in  
2 subsection (3) of this section available to the attorney general.

3       **Sec. 9.** RCW 19.285.080 and 2007 c 1 s 8 are each amended to read  
4 as follows:

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

8       (2) The department shall adopt rules concerning only process,  
9 timelines, and documentation to ensure the proper implementation of  
10 this chapter as it applies to (~~qualifying utilities that are not~~  
11 ~~investor-owned~~) consumer-owned utilities. Those rules include, but  
12 are not limited to, rules associated with a qualifying utility's  
13 development of conservation targets under RCW 19.285.040(1); a small  
14 utility's development of conservation targets under RCW 19.285.040; a  
15 qualifying utility's decision to pursue alternative compliance in RCW  
16 19.285.040(2) (d) or (i) or 19.285.050(1); a consumer-owned utility's  
17 decision under section 6 of this act to pursue a temporary exemption  
18 from section 4 of this act; and the format and content of reports  
19 required in RCW 19.285.070. Nothing in this subsection may be  
20 construed to restrict the rate-making authority of the commission, a  
21 qualifying utility, or a (~~qualifying~~) small utility as otherwise  
22 provided by law.

23       (3) The department shall adopt rules to ensure proper  
24 implementation of this chapter as it applies to market customers. The  
25 rules must include, but are not limited to, rules associated with a  
26 market customer's acquisition of resources in accordance with section  
27 4 of this act and the format and content of reports required in RCW  
28 19.285.070.

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

32       (~~(4)~~) (5) Pursuant to the administrative procedure act, chapter  
33 34.05 RCW, rules needed for the implementation of this chapter must  
34 be adopted by December 31, 2007. These rules may be revised as needed  
35 to carry out the intent and purposes of this chapter.

1        NEW SECTION.   **Sec. 10.**   Sections 4 through 6 of this act are each  
2   added to chapter 19.285 RCW.

--- END ---