

# FINAL BILL REPORT

## E2SSB 5116

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Synopsis as Enacted

**Brief Description:** Supporting Washington's clean energy economy and transitioning to a clean, affordable, and reliable energy future.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Carlyle, Palumbo, McCoy, Pedersen, Wellman, Das, Rolfes, Frockt, Wilson, C., Kuderer, Nguyen, Keiser, Lias, Hunt, Saldaña, Darneille and Billig; by request of Governor Inslee).

**Senate Committee on Environment, Energy & Technology**  
**Senate Committee on Ways & Means**  
**House Committee on Environment & Energy**  
**House Committee on Finance**  
**House Committee on Appropriations**

**Background:** Energy Independence Act. Initiative 937, also called the Energy Independence Act (EIA), requires electric utilities with 25,000 or more customers to meet targets for energy conservation and for using eligible renewable resources.

Greenhouse Gas Emissions Performance Standard for Electric Generation Plants. Electric utilities may not enter into a long-term financial commitment for baseload electric generation on or after July 1, 2008, unless the generating plant's emissions are the lower of:

- 1100 pounds of greenhouse gas (GHG) per megawatt-hour (MWh); or
- the average available GHG output as updated by the Department of Commerce (Commerce), which is currently set at 970 pounds per MWh.

Baseload electric generation means electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least 60 percent. Long-term financial commitment means:

- either a new ownership interest in baseload electric generation or an upgrade to a baseload electric generation facility; or
- a new or renewed contract for baseload electric generation with a term of five or more years for the provision of retail power or wholesale power to end-use customers in this state.

Greenhouse Gas Emissions Performance Standard and Coal Transition Power. In 2011 the Legislature established a schedule for applying the Greenhouse Gas Emissions Performance Standard (EPS) to the Centralia coal-fired electric generation facility. In addition, the EPS

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

was amended to allow long-term contracts for Centralia's generated electricity, called coal transition power. A process was created to allow electric investor-owned utilities (IOUs) to petition the Utilities and Transportation Commission (UTC) for approval of a power purchase agreement for coal transition power.

Integrated Resource Plans. All investor-owned and consumer-owned electric utilities in the state with more than 25,000 customers must develop integrated resource plans (IRPs). All other electric utilities in the state, including those that essentially receive all their power from the Bonneville Power Administration (BPA), must file either an IRP or a less-detailed resource plan (RP).

IRPs and RPs must be updated every two years. IOUs must submit their plans to the UTC. Consumer-owned utilities (COUs) must file a copy of their plans with Commerce every two years.

**Summary:** Coal Phase-Out Standard. By December 31, 2025, all electric utilities must eliminate coal-fired resources from their allocation of electricity. The cost of delivering power does not include the costs associated with decommissioning and remediation of the facilities.

For IOUs, the UTC is required to accelerate depreciation for any coal-fired resource owned by an IOU and is allowed to accelerate depreciation for any qualified transmission line to no later than December 31, 2025. The UTC must allow in rates prudently incurred undepreciated investments in a fossil-fuel generating resource that has been retired from service under specific conditions.

For the purposes of this standard, "coal-fired resource" does not include:

- an electric generating facility that is subject to an obligation to meet the state's Greenhouse Gas Emissions Performance Standard; or
- an electric generation facility that is included as part of certain limited duration wholesale power purchases.

Greenhouse Gas Neutral Standard. By January 1, 2030, each electric utility must make all retail sales of electricity to Washington customers GHG neutral. To achieve compliance with this standard, an electric utility must:

- pursue all cost-effective, reliable, and feasible conservation and efficiency resources and demand response resources to reduce or manage electric retail load; and
- use electricity from renewable resources and non-emitting electric generation in an amount equal to 100 percent of the utility's average annual retail electric load.

An electric utility must achieve compliance with the GHG neutral standard for multiyear compliance periods beginning January 1, 2030, through December 31, 2044.

All renewable resources used to meet the compliance obligation must be verified using renewable energy credits (RECs), and must be tracked and retired in the tracking system selected by Commerce. Non-emitting generation resources used to meet the obligation must be generated during the compliance period and must be verified by documentation that the utility owns the nonpower attributes of the electricity.

An electric utility may satisfy up to 20 percent of the standard with an alternative compliance option through December 31, 2044. An alternative compliance option includes any combination of the following:

- making an alternative compliance payment;
- purchasing unbundled RECs;
- investing in energy transformation projects; or
- using electricity from an energy recovery facility using municipal solid waste as the principal fuel source, where the facility was constructed prior to 1992 and is in compliance with federal and state air quality standards.

Energy transformation projects must meet criteria and quality standards developed by the Department of Ecology (Ecology), in consultation with Commerce and the UTC. Criteria for emissions reductions must be met.

Energy transformation projects must be associated with the consumption of energy in Washington. Any compliance obligation fulfilled through investment in such a project is only eligible for use by the entity that makes the investment: an electric utility; a preference customer of BPA; or a member of a joint operating agency under current law.

Clean Energy Standard. By January 1, 2045, each electric utility must meet 100 percent of its retail electric load to Washington customers using non-emitting electric generation and electricity from renewable resources. UTC, Commerce, the Energy Facility Site Evaluation Council, Ecology, and all other state agencies must incorporate this standard into all relevant planning and use all statutory programs to achieve the standard.

In planning to meet projected demand, an electric utility must, consistent with the requirements of the Energy Independence Act, pursue all cost-effective, reliable, and feasible conservation efficiency resources, and demand response. In making new investments, an electric utility must, and to the maximum extent feasible, achieve targets at the lowest reasonable cost; consider acquisition of surplus renewable resources, and in the acquisition of new resources rely on renewable resources and energy storage.

Hydroelectric Generation. In complying with the GHG neutral standard and clean energy standard, an electric utility may not use hydroelectric generation that requires new diversions, impoundments, or bypass reaches, or expansion of existing reservoirs, unless otherwise required for the operation of a pumped storage facility. An electric utility may make efficiency or other improvements to its existing facilities and may install hydroelectric generation in pipes, culverts, irrigation canals, and other manmade waterways.

Nothing in the GHG neutral or clean energy standards prohibits an electric utility from purchasing or exchanging power from BPA.

Market Customers. Customers who become market customers after the effective date of this act must comply with the obligations of the GHG neutral and clean energy standards. A market customer that purchases electricity exclusively from carbon-free resources and eligible renewable resources, as defined under the EIA as of January 1, 2019, pursuant to a special contract with an IOU, is subject to the requirements of that contract.

Clean Energy Implementation Plans and Incremental Cost Caps. By January 1, 2022, and every four years thereafter, each electric utility must develop a four-year Clean Energy Implementation Plan (CEIP) for the GHG neutral and clean energy standards and establish interim targets for meeting the standards. The CEIP must identify specific actions to be taken by the electric utility over the next four years, consistent with the utility's long-range resource plan and resource adequacy requirements.

An IOU must be considered in compliance with the GHG neutral and clean energy standards if, over the four-year compliance period, the average annual incremental cost of meeting the standards or the utility's interim targets equals a 2 percent increase of the investor-owned utility's weather-adjusted sales revenue to customers for electric operations above the previous year.

A COU must be considered in compliance with the GHG neutral and clean energy standards if, over the four-year compliance period, the average annual incremental cost of meeting the standards or the utility's interim targets meets, but does not exceed, a 2 percent increase of the COU's retail revenue requirement above the previous year.

Early Action Compliance Credits. A multistate electric utility with fewer than 250,000 customers in Washington may apply the total amount of MWhs of coal-fired resources eliminated from the utility's allocation of electricity before December 31, 2025, as an equivalent amount of MWhs of nonemitting electric generation or electricity from renewable resources required to comply with the GHG neutral standard. The utility must demonstrate that for every MWh of early action credit there is a real, permanent reduction in greenhouse gas emissions in the Western Interconnection directly associated with that credit. A multistate electric utility must request to use early compliance credits in its CEIP and may not use the early action compliance credits beyond 2035. The UTC must establish conditions for use of early action compliance credits.

Administrative Penalty. An electric utility that fails to comply with the coal-elimination or carbon neutral standards must pay a \$100 administrative penalty, times the following multipliers, for each MWh of emitting or unspecified electric generation used to meet an electric utility's retail electric load:

- 1.5 for coal-fired resources;
- 0.84 for gas-fired peaking power plants; and
- 0.60 for gas-fired combined-cycle power plants.

The penalty is adjusted for inflation, beginning in 2027. Beginning in 2040, the UTC may increase the penalty for IOUs to accelerate compliance.

An electric utility may elect to pay an amount equal to the administrative penalty as an alternative compliance option.

The UTC, for an IOU, may relieve the utility of its penalty, or the governing body of a COU may authorize a temporary exemption from the GHG neutral standard if it finds that a utility's compliance is likely to result in conflicts with or compromises to its obligation to comply with NERC reliability standards, violate prudent utility practice for assuring resource

adequacy, compromise the power quality or integrity of its system, or due to factors reasonably outside the utility's control.

Upon request by the governing body of a consumer-owned utility, a consumer-owned utility must be relieved of its administrative penalty obligation if the auditor issues a finding that the governing body has properly issued a temporary exemption for a period of time not to exceed six months, and the governing body has submitted to Commerce a plan to take specific actions to achieve full compliance.

The attorney general may bring a civil action for an appropriate civil remedy including, but not limited to, injunctive relief, penalties, costs, and attorneys' fees, to enforce compliance with the coal phase-out and GHG neutral standards.

Additionally, the Governor may waive a penalty by declaring an energy emergency under current law if Commerce's report demonstrates adverse system reliability impacts due to implementation of the coal phase-out or GHG neutral standards.

Monies collected must be deposited into existing low-income weatherization and structural rehabilitation assistance accounts. The standard is enforced by the UTC for IOUs and the state auditor's office for COUs.

The fair market value compensation for an asset that is condemned by a municipal electric utility, public utility district, or irrigation district must include, but not be limited to, a replacement value approach, if it is either demonstrated in an electric utility's Clean Energy Action Plan or CEIP to be used or acquired after the effective date of this act to meet the requirements of the GHG neutral standard or clean energy standard, or an asset that generates electricity from renewable resources or nonemitting electric generation.

Additionally, the electric utility may seek, and the court may award, damages attributable to the severance, separation, replacement, or relocation of utility assets. The trier of fact may also consider other damages that it finds just and equitable.

An entity that establishes or extends service to the premises of a customer who is being served by an electric utility or was served by an electric utility prior to the effective date of this act must serve those premises in a manner that complies with the requirements of this act and with the EIA, if applicable.

Reporting Requirements. By January 1, 2024, and every four years thereafter, Commerce must report to the Legislature a review of the three standards focused on technologies, forecasts, existing transmission, environmental and public safety, affordability, and reliability. The report must include an evaluation of impacts or costs and benefits on system reliability and utilities; an evaluation identifying anticipated financial costs and benefits to electric utilities; an evaluation of new or emerging technologies that could be considered a renewable resources; and an assessment of the impacts on middle-income families, small businesses, and manufacturers in Washington.

Rulemaking Authority. By January 1, 2021, UTC for IOUs and Commerce for COUs may adopt rules. Nothing restricts rate-making authority of the governing bodies of COUs unless

otherwise provided by law. UTC and Commerce are encouraged to coordinate and consult with other agencies in developing rules.

Commerce must adopt rules establishing reporting requirements for electric utilities to demonstrate compliance with the coal phase-out, GHG neutral, and clean energy standards.

Ecology must adopt rules, in consultation with UTC and Commerce, to establish requirements for energy transformation project investments.

The requirements of this act do not replace or modify the requirements of the EIA.

Energy Resource Planning. For electric utilities required to develop an IRP, the IRP must include the following:

- an assessment and 10-year forecast of the availability of regional generation and transmission capacity on which the utility may rely to provide and deliver electricity to its customers;
- a determination of resource adequacy metrics for the resource plan consistent with the forecasts;
- a forecast of distributed energy resources that may be installed by the utility's customers and an assessment of their effect on the utility's load and operations;
- an assessment, informed by the Department of Health's Cumulative Impact Analysis, of energy and nonenergy benefits and reductions of burdens to vulnerable communities and highly impacted communities; and
- a 10-year clean energy action plan for implementing the coal phase-out standard, the GHG neutral standard, and the clean energy standard at the lowest reasonable cost, and at an acceptable resource adequacy standard, that identifies the specific actions to be taken by the utility consistent with the long-range IRP.

An electric utility must consider the social cost of GHG emissions when developing its IRP and clean energy action plan. An electric utility must incorporate the social cost of GHG emissions as a cost adder when evaluating and selecting conservation policies, programs, and targets and evaluating and selecting intermediate term and long-term resource options.

Integrated Resource Plans and Clean Energy Action Plans. An IOU must develop the following: (1) a 10-year clean energy action plan and strategy 4-year clean energy implementation plan identifying specific actions with long-ranging integrated resource planning and resource adequacy requirements, and proposing interim targets for implementing the coal phase out and carbon-neutral standards at the lowest reasonable cost; and (2) a 20-year clean energy transformation plan identifying the lowest reasonable cost pathways to meet the 100 percent clean standard. Specific requirements are set for the clean energy action plan and compliance strategy.

The cost of GHG emissions resulting from the generation of electricity is equal to the cost per metric ton of carbon dioxide equivalent emissions, using the 2.5 percent discount rate published by the Interagency Working Group on Social Cost of GHGs of the United States government.

By December 31, 2020, and in every resource plan thereafter, an electric utility that is not required to develop an IPR must include in its Resource Plan how it plans to implement the GHG neutral and clean energy standards over a 10-year period.

Utilities and Transportation Commission Property Valuation and Authority. UTC's authority to determine the fair value of property for rate making purposes is amended to include the consideration of property acquired or constructed by or during the rate effective period, including the reasonable costs of construction work in progress, to the extent UTC finds that the inclusion is in the public interest and will yield fair, just, reasonable, and sufficient rates. UTC is authorized to approve changes to these rates for up to 48 months, and must establish a process to identify, review, and approve property that becomes used and useful after the rate effective date.

The UTC's authority to consider and implement performance and incentive-based regulation, multiyear rate plans, and other flexible regulatory mechanisms is clarified.

Deferral of Costs. An electric utility may apply to the UTC to defer for later consideration costs incurred in connection with the acquisition or development of resources identified in the utility's clean energy implementation plan. The deferral begins on the date the resource begins commercial operation or on the effective date of a power purchase agreement and continues for up to 24 months, unless a general rate case or other proceeding for the recovery of such costs ensues.

The costs that a utility may account for and defer for later consideration by the UTC include all operating and maintenance costs, depreciation, taxes, costs of capital associated with the applicable resources, or the execution of a power purchase agreement. Costs of capital include the utility's authorized return on equity for any resource acquired or development, or a rate of return no less than the authorized cost of debt and no greater than the authorized rate of return of the company for a power purchase agreement.

Low-income Assistance. Electric utilities must make funding available for low-income bill assistance by July 31, 2021. Beginning July 31, 2020, Commerce must collect and aggregate data estimating energy burden and energy assistance need and reported energy assistance need for each utility, and update the specified aggregated data biennially.

Electricity Market Work Group. Commerce and UTC must convene a stakeholder work group to examine the efficient and consistent integration of this act and transactions with carbon and electricity markets outside Washington and compatibility with a linked cap-and-trade program.

Commerce and UTC must adopt rules by June 30, 2022, defining requirements for retail electric load met with market purchases and the Western Energy Imbalance Market or other centralized markets, and to address the prohibition on double counting of nonpower attributes.

Energy Strategy Advisory Committee. Commerce must review the state energy strategy in order to align it with the purposes of this act and Ecology's recommended GHG emission reductions by December 31, 2020, and at least once every eight years thereafter, subject to

funding. A specified 26-member state energy advisory committee must be established for each review.

Energy and Climate Policy Advisory Committee. A policy advisory committee is created to develop recommendations to the Legislature to examine costs and benefits of energy-related policies and to conduct other energy-related studies as directed, to be reported by December 31, 2020, subject to funding. Membership includes Washington's four-year higher education institutions, the Pacific Northwest National Laboratory, and the Washington State Institute of Public Policy.

Cumulative Impact Analysis. By December 31, 2020, the Department of Health must conduct or adopt a cumulative impact analysis to designate the communities highly impacted by fossil fuel pollution and climate change in Washington. By December 31, 2021, Commerce and UTC must establish requirements for incorporating the cumulative impact analysis into the clean energy action plans and clean energy transformation plans.

Transmission Work Group. The Energy Facility Site Evaluation Council must convene an inter-agency transmission work group to look at the need for transmission and strategies for designating transmission corridors and improving coordination in siting transmission, and report findings to the Governor and Legislature by December 31, 2022.

Extending Sales & Use Tax Exemptions. The expiration date is extended from January 1, 2020, to December 31, 2030, for the sales and use tax exemptions for alternative energy machinery and equipment.

A purchaser, as well as the consumer, who have paid tax on machinery and equipment used to generate electricity consistent with the purposes of the act is entitled to an exemption of state and local taxes, in the form of a remittance of:

- 50 percent if the procurement and contract was from an organization owned by women, minorities, or veterans;
- 75 percent if workers on the project were compensated at prevailing wages determined by local collective bargaining; or
- 100 percent if the project is developed under a community workforce agreement or project labor agreement.

Allowances are provided for good faith efforts to meet one of the above requirements, given certain conditions.

Beginning January 1, 2020, through December 31, 2029, the purchaser of eligible machinery and equipment for solar energy systems greater than 100 kW but no more than 500 kW is entitled to an exemption, in the form of a remittance, in an amount equal to 50 percent of the state and local sales and use tax paid, if the Department of Labor and Industries (L&I) certifies that the project meets certain labor and procurement standards and the purchaser provides certain documentation.

Beginning July 1, 2019, through December 31, 2029, the purchaser of eligible machinery and equipment for solar energy systems smaller than 100 kW in size is entitled to an exemption

in an amount equal to 100 percent of the state and local sales and use tax paid if the purchaser meets certain requirements.

Community workforce agreements and project labor agreements are defined. L&I is responsible for administering the provisions of the labor standards used in this section of the bill and is directed to conduct emergency rule making, to be completed by December 1, 2019.

Energy Independence Act. Beginning January 1, 2020, a qualifying utility may use the following as eligible renewable resources to comply with the EIA:

- incremental electricity produced as a result of efficiency improvements to hydroelectric generation projects whose energy output is marketed by BPA, if the improvements are completed after March 31, 1999, and the additional generation does not result in new water diversions or impoundments; and
- the environmental attributes of incremental hydroelectricity, including RECs, allocated to IOUs pursuant to the residential exchange program as an eligible renewable resource to comply with the EIA.

Beginning January 1, 2030, a qualifying utility will be in compliance with the annual targets for eligible renewable resources under the EIA if the utility uses electricity from renewable resources, non-emitting electric generation, and RECs, in an amount equal to 100 percent of the utility's average annual retail electric load.

**Votes on Final Passage:**

|        |    |    |                    |
|--------|----|----|--------------------|
| Senate | 28 | 19 |                    |
| House  | 56 | 42 | (House amended)    |
| Senate | 29 | 20 | (Senate concurred) |

**Effective:** May 7, 2019