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**HOUSE BILL 2402**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Representatives Tarleton, Slatter, Macri, Pollet, and Doglio

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

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

NEW SECTION. **Sec.**  (1) The legislature finds that Washington should continue its leadership in conservation, renewable energy, and climate change mitigation by maximizing energy efficiency across the state and avoiding new investments in sources of electricity generation that have a significant negative impact on our air, water, or other natural resources.

(2) By building on the state's foundation of renewable hydroelectric generation with additional conservation and renewable energy resources, the legislature declares that Washington can: Promote energy independence; create high-quality jobs in the clean energy sector; maintain stable and affordable rates for all customers, especially low-income customers; and protect clean air and water in the Pacific Northwest.

**Sec.**  RCW 19.285.030 and 2017 c 315 s 1 are each amended to read as follows:

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

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

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

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

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

(4) "Coal transition power" has the same meaning as defined in RCW 80.80.010.

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

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

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

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

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

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

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

(12) "Eligible renewable resource" means:

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

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

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

(d) Qualified biomass energy;

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

(f) Beginning January 1, 2018, the portion of incremental electricity produced as a result of efficiency improvements completed after March 31, 1999, attributable to a qualifying utility's Washington share of electricity output from hydroelectric generation projects whose energy output is marketed by the Bonneville power administration, where the additional generation does not result in water diversions or impoundments; or

(g)(i) Incremental electricity produced as a result of a capital investment completed after January 1, 2010, that increases, relative to a baseline level of generation prior to the capital investment, the amount of electricity generated in a facility that generates qualified biomass energy as defined under subsection (18)(c)(ii) of this section and that commenced operation before March 31, 1999.

(ii) Beginning January 1, 2007, the facility must demonstrate its baseline level of generation over a three-year period prior to the capital investment in order to calculate the amount of incremental electricity produced.

(iii) The facility must demonstrate that the incremental electricity resulted from the capital investment, which does not include expenditures on operation and maintenance in the normal course of business, through direct or calculated measurement.

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

(14) "Load" means the amount of kilowatt-hours of electricity or therms of natural gas delivered in the most recently completed year by ((~~a qualifying~~)) an electric utility or natural gas utility to its Washington retail customers.

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

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

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

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

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

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

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

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

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

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

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

(25) "Contract high water mark" means the amount of firm power from tier 1 system resources that each electric utility is eligible to purchase through a power sales contract with the Bonneville power administration.

(26) "Low-income" means household incomes as defined by the department or commission, provided that the definition may not exceed the higher of eighty percent of area median household income or two hundred percent of the federal poverty level, adjusted for household size.

(27) "Market customer" means a nonresidential customer of a qualifying utility or a small utility that: (a) Purchases electricity from an entity or entities other than the utility with which it is directly interconnected; or (b) generates electricity to meet its own needs.

(28) "Natural gas utility" includes: Every corporation, company, association, joint stock association, partnership, and person; their lessees, trustees, or receiver appointed by any court whatsoever; and every city or town, that owns, controls, operates, or manages any gas plant within the state and is engaged in distributing natural gas to more than one retail gas customer in the state.

(29) "New energy or capacity need" means any electricity generation needed by a qualifying utility, small utility, or market customer after April 1, 2018, to meet any of the following:

(a) Electricity load growth;

(b) Changes in capacity needs;

(c) Changes in ancillary services needs;

(d) Changes in reliability needs;

(e) Changes in flexibility needs;

(f) Needs arising due to replacing electricity generation; or

(g) Needs arising due to replacing expiring electricity resource contracts.

(30) "Short-term spot market purchase" means: (a) The purchase of energy on the spot market for immediate delivery; or (b) a contract for the purchase of energy on the spot market that is for a term of one month or less.

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

(32) "Spot market" means a public financial market where electricity is bought, sold, or traded for immediate delivery.

(33) "Tier 1 system" means the specific collection of resources and contract purchases that are designated for contract sales by the Bonneville power administration under the tiered rate methodology.

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

**Sec.**  RCW 19.285.040 and 2017 c 315 s 2 are each amended to read as follows:

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

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

(b) Beginning January 2010, each qualifying utility shall establish and make publicly available a biennial acquisition target for cost-effective conservation consistent with its identification of achievable opportunities in (a) of this subsection, and meet that target during the subsequent two-year period. ((~~At a minimum,~~)) Each biennial target must be no lower than the higher of the qualifying utility's pro rata share for that two-year period of its cost-effective conservation potential for the subsequent ten-year period or two percent of the qualifying utility's retail load, as calculated for the biennium.

(c) Beginning January 1, 2020, each small utility shall biennially set a target for conservation and meet that target during the subsequent two-year period. This target should be no lower than two percent of the small utility's retail load, as calculated for the biennium.

(d) Beginning January 1, 2020, each natural gas utility shall biennially set a target for conservation and meet that target during the subsequent two-year period. This target should be no lower than one and one-half percent of the natural gas utility's retail load, as calculated for the biennium.

(e) Conversions from electricity as an energy source to natural gas do not count toward compliance with the requirements established under this section.

(f)(i) Except as provided in ((~~(c)~~)) (f)(ii) and (iii) of this subsection, beginning on January 1, 2014, ((~~cost-effective~~)) for qualifying utilities or January 1, 2020, for natural gas utilities and small utilities, conservation achieved by a qualifying utility, natural gas utility, or small utility in excess of its biennial acquisition target may be used to help meet the immediately subsequent two biennial acquisition targets, such that no more than twenty percent of any biennial target may be met with excess conservation savings.

(ii) Beginning January 1, 2014, for qualifying utilities or January 1, 2020, for natural gas utilities and small utilities, a qualifying utility, natural gas utility, or small utility may use single large facility conservation savings in excess of its biennial target to meet up to an additional five percent of the immediately subsequent two biennial acquisition targets, such that no more than twenty-five percent of any biennial target may be met with excess conservation savings allowed under all of the provisions of this section combined. For the purposes of this subsection ((~~(1)(c)(ii)~~)) (1)(f)(ii), "single large facility conservation savings" means cost-effective conservation savings achieved in a single biennial period at the premises of a single customer of a qualifying utility whose annual electricity consumption prior to the conservation savings exceeded five average megawatts.

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

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

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

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

((~~(f)~~)) (j) The commission may rely on its standard practice for review and approval of investor‑owned utility conservation targets.

(k) The commission shall establish a mechanism to incentivize an investor-owned utility whose conservation acquisition exceeds two percent of its electric or natural gas load.

(l)(i) The commission and department shall adopt rules requiring qualifying utilities, natural gas utilities, and small utilities to meet biennial conservation targets through programs that serve all customer segments, including programs specifically for low-income residential customers.

(ii) Low-income customers must be served by conservation programs proportionate to the percentage of low-income customers in the utility service territory.

(iii) For low-income customers, qualifying utilities, natural gas utilities, and small utilities must leverage state and federal dollars so that conservation measures and associated costs are fully funded, in accordance with commission or department guidelines.

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

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

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

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

(iv) Beginning January 1, 2021, and each year thereafter, at least fifteen percent of the average of its 2019 and 2020 loads.

(b) Except as provided in (j) of this subsection, each investor-owned qualifying utility shall use eligible renewable resources or acquire equivalent renewable energy credits, or any combination of them, to meet the following annual targets:

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

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

(iii) At least fifteen percent of its load by January 1, 2020, and each year thereafter through December 31, 2024;

(iv) At least twenty percent of its load by January 1, 2025, and each year thereafter through December 31, 2029;

(v) At least thirty percent of its load by January 1, 2030, and each year thereafter through December 31, 2034;

(vi) At least forty percent of its load by January 1, 2035, and each year thereafter through December 31, 2039; and

(vii) At least fifty percent of its load by January 1, 2040, and each year thereafter.

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

((~~(c)~~)) (d) In meeting the annual targets in (a) and (b) of this subsection, except as provided in (a)(iv) of this subsection, a qualifying utility shall calculate its annual load based on the average of the utility's load for the previous two years.

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

(e) Any utility acquiring a retail electric customer or customers that were formerly served in the same physical location by a qualifying utility shall comply with (a) of this subsection if the former utility is a consumer-owned utility, or (b) of this subsection if the former utility is an investor-owned utility when serving the entire retail load of the customer or customers.

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

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

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

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

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

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

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

(B) Where the developer of the facility used apprenticeship programs that include low-income trainees and in which at least thirty percent of the trainees qualify as low-income. The apprenticeship program must be approved by the council during facility construction.

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

((~~(i)~~)) (iii) A qualifying utility that acquires an eligible renewable resource may count that acquisition at one and one-half times its base value:

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

(B) Where one hundred percent of the output of the facility will be used to offset utility bills of low-income customers.

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

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

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

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

(m) Beginning January 1, 2018, a qualifying utility or small utility may use eligible renewable resources as identified in RCW 19.285.030(12)(f) to meet its compliance obligations under this section. A qualifying utility may not transfer or sell these eligible renewable resources to another utility for compliance purposes under this chapter.

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

NEW SECTION. **Sec.**  A new section is added to chapter 19.285 RCW to read as follows:

(1) Except as provided in RCW 19.285.040(2)(a) or in subsection (4) of this section, each consumer-owned qualifying utility, small utility, and market customer may not use electricity from any of the following resources to meet any new energy or capacity needs:

(a) Coal-fired generation;

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

(c) Natural gas-fired generation, except as provided in subsection (4)(i) of this section;

(d) Nuclear generation;

(e) Oil or diesel generation; or

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

(2)(a) The requirements of subsection (1) of this section apply, at minimum, to any new or increased:

(i) Ownership interest after April 1, 2018, in a new or existing electricity generation facility or unit; and

(ii) Contractual commitment after April 1, 2018, that obligates or allows a consumer-owned qualifying utility, small utility, or market customer to purchase a specified amount of megawatts or megawatt-hours from an electricity generation facility or unit, or a specified percentage of an electricity generation facility or unit.

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

(3) Except as provided in RCW 19.285.030(15)(b), any tradable certificate of proof of conservation from energy efficiency improvements or the nonpower attributes of a renewable resource, including but not limited to a renewable energy credit, associated with the portion of any resource or resources used to meet new energy or capacity needs under this section must be retired for the purposes of this section and cannot be sold, transferred, used for compliance with the requirements under this chapter, or used for other purposes. A consumer-owned qualifying utility, small utility, or market customer may not use a tradable certificate of proof of conservation achieved through efficiency improvements or the nonpower attributes of a renewable resource, including but not limited to a renewable energy credit, to meet the requirements of this section if the associated energy or capacity has been sold, transferred, or otherwise used separately.

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

(a) A consumer-owned qualifying utility's or small utility's contract high water mark allocation of the Bonneville power administration's tier 1 system as it exists on the effective date of this section;

(b) Short-term spot market purchases;

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

(d) Coal transition power through 2025;

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

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

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

(h) Increased megawatt-hours from a generation facility that is owned by a market customer as of the effective date of this section, where the market customer uses the increased megawatt-hours to meet its own needs and where the market customer's ownership interest in the facility does not increase; and

(i) Electricity generation from any natural gas-fired generation facility that is in operation as of the effective date of this section where the total amount of natural gas generation acquired from all additions does not exceed five percent of the utility's or market customer's retail load for each year.

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

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

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

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

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

(4) A natural gas utility that fails to comply with the energy conservation targets established in RCW 19.285.040 shall pay an administrative penalty to the state of Washington in the amount of fifty dollars for each dekatherm of shortfall. Beginning January 1, 2020, this penalty must be adjusted annually according to the rate of the change of the inflation indicator, gross domestic product-implicit price deflator, as published by the bureau of economic analysis of the United States department of commerce or its successor.

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

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

((~~(4)~~)) (7) A natural gas utility must notify its retail natural gas customers in published form within three months of incurring a penalty regarding the size of the penalty and the reason it was incurred.

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

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

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

((~~(7)~~)) (11) For ((~~qualifying utilities that are not investor-owned utilities~~)) a consumer-owned utility and a small utility, the auditor is responsible for auditing compliance with this chapter and rules adopted under this chapter that apply to those utilities and the attorney general is responsible for enforcing that compliance.

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

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

(1) On or before June 1, 2012, and annually thereafter, each qualifying utility shall report to the department on its progress in the preceding year in meeting the targets established in RCW 19.285.040, including expected electricity savings from the biennial conservation target, expenditures on conservation, actual electricity savings results, market customers' aggregated conservation expenditures and savings if applicable, the utility's annual load for the prior two years, the amount of megawatt‑hours needed to meet the annual renewable energy target, the amount of megawatt‑hours of each type of eligible renewable resource acquired, the type and amount of renewable energy credits acquired, and the percent of its total annual retail revenue requirement invested in the incremental cost of eligible renewable resources and the cost of renewable energy credits. For each year that a qualifying utility elects to demonstrate alternative compliance under RCW 19.285.040(2) ((~~(d) or (i)~~)) (j) or 19.285.050(1), it must include in its annual report relevant data to demonstrate that it met the criteria in that section. A qualifying utility may submit its report to the department in conjunction with its annual obligations in chapter 19.29A RCW.

(2) ((~~A qualifying utility that is an~~)) On or before June 1, 2022, and annually thereafter, each small utility shall report to the department on its progress in the preceding year in meeting the conservation targets established in RCW 19.285.040, including biennial retail load calculations, expected electricity savings, expenditures on conservation, actual electricity savings results, and if applicable, market customers' aggregated conservation expenditures and savings.

(3) On or before June 1, 2022, and annually thereafter, each natural gas utility shall report to the commission on its progress in the preceding year in meeting the conservation targets established in RCW 19.285.040, including biennial retail load calculations, expected natural gas savings, expenditures on conservation, and actual natural gas savings results.

(4) On or before June 1, 2019, and each year thereafter, each consumer-owned qualifying utility, small utility, and market customer shall report to the department on the electricity resources used to meet any new energy or capacity needs in accordance with section 4 of this act, including but not limited to the amount of megawatt-hours or megawatts needed, and the amount of megawatt-hours of each type of resource acquired, including those resources exempted from compliance under section 4(4) of this act.

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

((~~(3) A~~)) (6) Each qualifying utility, natural gas utility, and small utility shall also make reports required in this section available to its customers.

(7) Each market customer shall make all information required in subsection (4) of this section available to the office of the attorney general.

**Sec.**  RCW 19.285.080 and 2017 c 315 s 3 are each amended to read as follows:

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

(2) The department shall adopt rules concerning only process, timelines, and documentation to ensure the proper implementation of this chapter as it applies to ((~~qualifying utilities that are not investor~~‑~~owned~~)) consumer-owned utilities. Those rules include, but are not limited to, rules associated with a qualifying utility's development of conservation targets under RCW 19.285.040(1); a small utility's conservation acquisition targets under RCW 19.285.040; a qualifying utility's decision to pursue alternative compliance in RCW 19.285.040(2) ((~~(d) or (i)~~)) (j) or 19.285.050(1); the format and content of reports required in RCW 19.285.070; and the development of a methodology for calculating baseline levels of generation under RCW 19.285.030(12)((~~(f)~~)) (g). Nothing in this subsection may be construed to restrict the rate-making authority of the commission, a qualifying utility, or a ((~~qualifying~~)) small utility as otherwise provided by law.

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

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

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

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