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**ENGROSSED SUBSTITUTE HOUSE BILL 2839**

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

**By** House Technology & Economic Development (originally sponsored by Representatives Morris, Slatter, Doglio, and Fitzgibbon)

AN ACT Relating to authorizing an alternative form of regulation of electrical and natural gas companies; amending RCW 80.28.005 and 80.28.010; adding a new section to chapter 80.28 RCW; creating a new section; and providing a contingent effective date.

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

NEW SECTION. **Sec.**  The legislature finds that the electrical and natural gas utility industry is facing a transformational change brought on by new technology, rapidly changing costs, and emerging opportunities for customers. The legislature finds that similar changes in technology and customer preferences have swiftly altered other industries and intends for Washington's electrical and natural gas utility regulatory environment to continue to protect consumers while enabling regulated utilities to systematically respond to new technologies and opportunities. The legislature intends to ensure that consumers receive cost-effective and reliable services that are environmentally responsible services by authorizing the Washington utilities and transportation commission to employ alternative forms of regulation to traditional rate-based, rate of return regulation for electrical and gas companies. The legislature finds that a similar update to the utilities and transportation commission's statutory grant of authority for telecommunications customers a decade ago serves as a reasonable model. The legislature intends that the utilities and transportation commission will utilize alternative forms of regulation to further the state's public policy goals by ensuring that electrical and gas companies are incentivized to invest to meet state policy objectives.

The legislature intends that an alternative form of regulation should: Enable utility services designed to support optimal and efficient use of the electrical or natural gas system and utility operations; align utility regulatory incentives with the public interest; maintain and enhance overall electrical or natural gas system reliability, resilience, and security; allow electrical or natural gas companies to support and participate in market transformation for enabling technologies, without harming competition; maximize the value of new business opportunities to utility customers, especially low-income customers; protect utility customers from short and long-term risk; ensure an appropriate level of consumer protection; and support the achievement of state emissions reduction goals while avoiding adverse environmental impacts.

**Sec.**  RCW 80.28.005 and 1994 c 268 s 1 are each amended to read as follows:

((~~Unless the context clearly requires otherwise,~~)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Bondable conservation investment" means all expenditures made by electrical, gas, or water companies with respect to energy or water conservation measures and services intended to improve the efficiency of electricity, gas, or water end use, including related carrying costs if:

(a) The conservation measures and services do not produce assets that would be bondable utility property under the general utility mortgage of the electrical, gas, or water company;

(b) The commission has determined that the expenditures were incurred in conformance with the terms and conditions of a conservation service tariff in effect with the commission at the time the costs were incurred, and at the time of such determination the commission finds that the company has proven that the costs were prudent, that the terms and conditions of the financing are reasonable, and that financing under this chapter is more favorable to the customer than other reasonably available alternatives;

(c) The commission has approved inclusion of the expenditures in rate base and has not ordered that they be currently expensed; and

(d) The commission has not required that the measures demonstrate that energy savings have persisted at a certain level for a certain period before approving the cost of these investments as bondable conservation investment.

(2) "Conservation bonds" means bonds, notes, certificates of beneficial interests in trusts, or other evidences of indebtedness or ownership that:

(a) The commission determines at or before the time of issuance are issued to finance or refinance bondable conservation investment by an electrical, gas or water company; and

(b) Rely partly or wholly for repayment on conservation investment assets and revenues arising with respect thereto.

(3) "Conservation investment assets" means the statutory right of an electrical, gas, or water company:

(a) To have included in rate base all of its bondable conservation investment and related carrying costs; and

(b) To receive through rates revenues sufficient to recover the bondable conservation investment and the costs of equity and debt capital associated with it, including, without limitation, the payment of principal, premium, if any, and interest on conservation bonds.

(4) "Finance subsidiary" means any corporation, company, association, joint stock association, or trust that is beneficially owned, directly or indirectly, by an electrical, gas, or water company, or in the case of a trust issuing conservation bonds consisting of beneficial interests, for which an electrical, gas, or water company or a subsidiary thereof is the grantor, or an unaffiliated entity formed for the purpose of financing or refinancing approved conservation investment, and that acquires conservation investment assets directly or indirectly from such company in a transaction approved by the commission.

(5) "Greenhouse gas" and "greenhouse gases" has the same meaning as defined in RCW 70.235.010.

(6) "Greenhouse gas planning adder" means a calculation of the economic impacts associated with an incremental increase in greenhouse gas emissions in a calendar year and must be an amount equal to the greater of: (a) The minimum annual greenhouse gas planning adder for such a calendar year; or (b) the applicable carbon or greenhouse gas tax rate, if any, as expressed in dollars per metric ton of carbon dioxide or greenhouse gas for such a calendar year.

(7) "Intermediate-term resource options" means a new or renewed contract for electricity or natural gas with a term of more than three but less than five years for the provision of electricity or natural gas to retail end-use customers in this state.

(8) "Long-term resource options" means:

(a) Either a new ownership interest in an electric or gas plant or an upgrade to an existing electric plant; or

(b) A new or renewed contract for electricity or natural gas with a term of five or more years for the provision of electricity or natural gas to retail end-use customers in this state.

(9) "Minimum annual greenhouse gas planning adder" means, for calendar year 2018, forty dollars per metric ton of greenhouse gas, which amount must be increased each January 1st by one and one-fourth percent, rounded to the nearest dollar.

(10) "Qualified biomass energy" has the same meaning as defined in RCW 19.285.030.

(11) "Upgrade" means any modification made for the primary purpose of increasing the electric generation capacity of an electric generation facility. "Upgrade" does not include routine or necessary maintenance, installation of emission control equipment, installation, replacement, or modification of equipment that improves the heat rate of the facility, or installation, replacement, or modification of equipment for the primary purpose of maintaining reliable generation output capability that does not increase the heat input or fuel usage.

**Sec.**  RCW 80.28.010 and 2011 c 214 s 11 are each amended to read as follows:

(1) All charges made, demanded or received by any gas company, electrical company, wastewater company, or water company for gas, electricity or water, or for any service rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient. Reasonable charges necessary to cover the cost of administering the collection of voluntary donations for the purposes of supporting the development and implementation of evergreen community management plans and ordinances under RCW 80.28.300 must be deemed as prudent and necessary for the operation of a utility.

(2) Every gas company, electrical company, wastewater company, and water company shall furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable.

(3) All rules and regulations issued by any gas company, electrical company, wastewater company, or water company, affecting or pertaining to the sale or distribution of its product or service, must be just and reasonable.

(4) Utility service for residential space heating shall not be terminated between November 15th through March 15th if the customer:

(a) Notifies the utility of the inability to pay the bill, including a security deposit. This notice should be provided within five business days of receiving a payment overdue notice unless there are extenuating circumstances. If the customer fails to notify the utility within five business days and service is terminated, the customer can, by paying reconnection charges, if any, and fulfilling the requirements of this section, receive the protections of this chapter;

(b) Provides self-certification of household income for the prior twelve months to a grantee of the department of commerce, which administers federally funded energy assistance programs. The grantee shall determine that the household income does not exceed the maximum allowed for eligibility under the state's plan for low-income energy assistance under 42 U.S.C. 8624 and shall provide a dollar figure that is seven percent of household income. The grantee may verify information provided in the self-certification;

(c) Has applied for home heating assistance from applicable government and private sector organizations and certifies that any assistance received will be applied to the current bill and future utility bills;

(d) Has applied for low-income weatherization assistance to the utility or other appropriate agency if such assistance is available for the dwelling;

(e) Agrees to a payment plan and agrees to maintain the payment plan. The plan will be designed both to pay the past due bill by the following October 15th and to pay for continued utility service. If the past due bill is not paid by the following October 15th, the customer is not eligible for protections under this chapter until the past due bill is paid. The plan may not require monthly payments in excess of seven percent of the customer's monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter during November 15th through March 15th. A customer may agree to pay a higher percentage during this period, but shall not be in default unless payment during this period is less than seven percent of monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter. If assistance payments are received by the customer subsequent to implementation of the plan, the customer shall contact the utility to reformulate the plan; and

(f) Agrees to pay the moneys owed even if he or she moves.

(5) The utility shall:

(a) Include in any notice that an account is delinquent and that service may be subject to termination, a description of the customer's duties in this section;

(b) Assist the customer in fulfilling the requirements under this section;

(c) Be authorized to transfer an account to a new residence when a customer who has established a plan under this section moves from one residence to another within the same utility service area;

(d) Be permitted to disconnect service if the customer fails to honor the payment program. Utilities may continue to disconnect service for those practices authorized by law other than for nonpayment as provided for in this subsection. Customers who qualify for payment plans under this section who default on their payment plans and are disconnected can be reconnected and maintain the protections afforded under this chapter by paying reconnection charges, if any, and by paying all amounts that would have been due and owing under the terms of the applicable payment plan, absent default, on the date on which service is reconnected; and

(e) Advise the customer in writing at the time it disconnects service that it will restore service if the customer contacts the utility and fulfills the other requirements of this section.

(6) A payment plan implemented under this section is consistent with RCW 80.28.080.

(7) Every gas company and electrical company shall offer residential customers the option of a budget billing or equal payment plan. The budget billing or equal payment plan shall be offered low-income customers eligible under the state's plan for low-income energy assistance prepared in accordance with 42 U.S.C. 8624(C)(1) without limiting availability to certain months of the year, without regard to the length of time the customer has occupied the premises, and without regard to whether the customer is the tenant or owner of the premises occupied.

(8) Every gas company, electrical company, wastewater company, and water company shall construct and maintain such facilities in connection with the manufacture and distribution of its product, or provision of its services, as will be efficient and safe to its employees and the public.

(9) An agreement between the customer and the utility, whether oral or written, does not waive the protections afforded under this chapter.

(10) In establishing rates or charges for water service, water companies as defined in RCW 80.04.010 may consider the achievement of water conservation goals and the discouragement of wasteful water use practices.

(11)(a) Electrical companies, gas companies, and the commission shall use the greenhouse gas planning adder when evaluating and selecting conservation policies, programs, and targets.

(b)(i) Electrical companies shall use the greenhouse gas planning adder in developing and evaluating integrated resource plans pursuant to chapter 19.280 RCW; and

(ii) Gas companies shall use the greenhouse gas planning adder in developing integrated resource plans that describe a mix of natural gas, biogas, or synthetic gas and conservation designated to meet current and future needs at the lowest reasonable costs to the gas company and its customers.

(c) Electrical companies and gas companies shall use the greenhouse gas planning adder in evaluating and selecting intermediate-term and long-term resource options.

(d) The commission shall use the greenhouse gas planning adder in evaluating integrated resource plans and intermediate-term and long-term resource options selected by electrical companies and gas companies under this subsection.

(e) For the purposes of this subsection: (i) Gas consisting largely of methane and other hydrocarbons derived from the decomposition of organic material in landfills, wastewater treatment facilities, and anaerobic digesters must be considered a nonemitting resource; and (ii) qualified biomass energy must be considered a nonemitting resource.

(f) A multistate electric company with retail customers and generation located outside the state of Washington shall use the greenhouse gas planning adder pursuant to this subsection beginning January 1, 2020.

(g) This section takes effect upon the effective date of any act by the legislature that imposes a tax, fee, or other monetary price on the carbon content of fossil fuels and electricity sold or used within the state.

(h) The commission must provide notice of the effective date of this section to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the commission.

NEW SECTION. **Sec.**  A new section is added to chapter 80.28 RCW to read as follows:

(1) The legislature declares that changes in technology and the structure of the energy industry may produce conditions under which traditional rate of return, rate-based regulation of electrical and gas companies may not in all cases provide the most efficient and effective means of achieving the legislature's intent and the public policy goals of this state as declared in chapters 19.280 and 19.285 RCW and this title. The commission should be authorized to employ an alternative form of regulation if that alternative is better suited to achieving those policy goals.

(2)(a) Subject to the conditions set forth in this chapter, the commission may regulate an electrical or gas company by authorizing an alternative form of regulation. The commission may determine the manner and extent of any alternative form of regulation as may be appropriate in the public interest, including, but not limited to, authorizing an alternative form of regulation for all or individual utility services.

(b) The commission shall consider, to the extent applicable, the extent to which an alternative form of regulation is expected to:

(i) Align utility regulatory incentives with the public interest;

(ii) Maintain and enhance the ability of the electrical or gas company to furnish safe, adequate, and efficient service to its customers;

(iii) Support prudent and efficient use of the electrical or natural gas system and utility operations;

(iv) Maintain and enhance overall electrical or natural gas system reliability, security, and resilience;

(v) Allow an electrical or gas company to support and participate in market transformation for enabling technologies without harming competition;

(vi) Allow an electrical or gas company to be financially indifferent as to: (A) The ownership of the property necessary to furnish service to its customers, except where appropriate for facilities furnished to establish a person as a customer of the electrical or gas company; or (B) the quantity of electricity or gas sold to its customers;

(vii) Reasonably protect customers, including low-income customers, from associated short and long-term risks;

(viii) Ensure an appropriate level of consumer protection;

(ix) Support the achievement of state emissions reduction goals;

(x) Consider adverse environmental impacts;

(xi) Provide the electrical or gas company with the opportunity to earn a reasonable rate of return on investment; and

(xii) Provide for broad customer engagement to promote participation by a diversity of customers, particularly underserved communities or segments thereof, in the associated programs to help achieve the criteria identified in this subsection (2)(b).

(3) An electrical or gas company may petition the commission to establish an alternative form of regulation. The electrical or gas company shall submit with the petition a plan for an alternative form of regulation, which may include provisions establishing a reasonable range for rate of return on investment. The plan must contain a proposal for transition to the alternative form of regulation and the proposed duration of the plan. The development of a plan, which must include customer and stakeholder input, shall contain a proposal for appropriate performance metrics and enforcement or remedial provisions in the event the company fails to meet such metrics. The commission also may initiate consideration of alternative forms of regulation for a company or companies on its own motion. The commission, after notice and hearing, shall issue an order accepting, modifying, or rejecting the plan within eleven months after the petition or motion is filed, unless extended by the commission for good cause. Nothing in this section may be interpreted as requiring an electrical or gas company to submit a petition for a plan for an alternative form of regulation as part of or concurrent with a general rate case or other proceeding for recovery of costs of such a company.

(4) Not later than sixty days from the entry of the commission's order, the electrical or gas company affected by the order shall file with the commission: (a) An election to proceed with the alternative form of regulation as authorized by the commission; or (b) an election not to proceed with the alternative form of regulation as authorized by the commission.

(5) The commission may waive such a regulatory requirement under this title for an electrical or gas company subject to an alternative form of regulation as may be appropriate to facilitate the implementation of this section. However, as part of a proceeding to consider alternative forms of regulation, the commission may not waive any grant of legal rights to any person contained in this chapter and chapter 80.04 RCW. The commission may waive different regulatory requirements for different electrical or gas companies or services if the different treatment is in the public interest.

(6) Upon petition by the electrical or gas company, or on motion by the commission when evaluating the achievement of metrics developed in subsection (3) of this section, and after notice and hearing, the commission may rescind or modify an alternative form of regulation in the manner requested by the electrical or gas company.

(7) The commission or any person may file a complaint under RCW 80.04.110 alleging that an electrical or gas company under an alternative form of regulation has not complied with the terms and conditions set forth in the alternative form of regulation. The complainant bears the burden of proving the allegations in the complaint.

(8) During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population.

(9) The provisions of this section apply only to alternative forms of regulation submitted to the commission pursuant to this section. Nothing contained in this section may be construed to alter, amend, repeal, modify, interpret, or be in conflict with this chapter. Nothing in this section may be construed to expand or alter the commission's jurisdiction to regulate in the public interest and ensure just, fair, reasonable, and sufficient rates for electrical and gas companies.

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