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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)

READ FIRST TIME 02/02/18.

1 AN ACT Relating to authorizing an alternative form of regulation  
2 of electrical and natural gas companies; amending RCW 80.28.005 and  
3 80.28.010; adding a new section to chapter 80.28 RCW; creating a new  
4 section; and providing a contingent effective date.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the electrical  
7 and natural gas utility industry is facing a transformational change  
8 brought on by new technology, rapidly changing costs, and emerging  
9 opportunities for customers. The legislature finds that similar  
10 changes in technology and customer preferences have swiftly altered  
11 other industries and intends for Washington's electrical and natural  
12 gas utility regulatory environment to continue to protect consumers  
13 while enabling regulated utilities to systematically respond to new  
14 technologies and opportunities. The legislature intends to ensure  
15 that consumers receive cost-effective and reliable services that are  
16 environmentally responsible services by authorizing the Washington  
17 utilities and transportation commission to employ alternative forms  
18 of regulation to traditional rate-based, rate of return regulation  
19 for electrical and gas companies. The legislature finds that a  
20 similar update to the utilities and transportation commission's  
21 statutory grant of authority for telecommunications customers a

1 decade ago serves as a reasonable model. The legislature intends that  
2 the utilities and transportation commission will utilize alternative  
3 forms of regulation to further the state's public policy goals by  
4 ensuring that electrical and gas companies are incentivized to invest  
5 to meet state policy objectives.

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

20 **Sec. 2.** RCW 80.28.005 and 1994 c 268 s 1 are each amended to  
21 read as follows:

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

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

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

33 (b) The commission has determined that the expenditures were  
34 incurred in conformance with the terms and conditions of a  
35 conservation service tariff in effect with the commission at the time  
36 the costs were incurred, and at the time of such determination the  
37 commission finds that the company has proven that the costs were  
38 prudent, that the terms and conditions of the financing are

1 reasonable, and that financing under this chapter is more favorable  
2 to the customer than other reasonably available alternatives;

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

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

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

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

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

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

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

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

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

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

38 (6) "Greenhouse gas planning adder" means a calculation of the  
39 economic impacts associated with an incremental increase in  
40 greenhouse gas emissions in a calendar year and must be an amount

1 equal to the greater of: (a) The minimum annual greenhouse gas  
2 planning adder for such a calendar year; or (b) the applicable carbon  
3 or greenhouse gas tax rate, if any, as expressed in dollars per  
4 metric ton of carbon dioxide or greenhouse gas for such a calendar  
5 year.

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

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

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

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

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

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

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

31 **Sec. 3.** RCW 80.28.010 and 2011 c 214 s 11 are each amended to  
32 read as follows:

33 (1) All charges made, demanded or received by any gas company,  
34 electrical company, wastewater company, or water company for gas,  
35 electricity or water, or for any service rendered or to be rendered  
36 in connection therewith, shall be just, fair, reasonable and  
37 sufficient. Reasonable charges necessary to cover the cost of  
38 administering the collection of voluntary donations for the purposes  
39 of supporting the development and implementation of evergreen

1 community management plans and ordinances under RCW 80.28.300 must be  
2 deemed as prudent and necessary for the operation of a utility.

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

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

11 (4) Utility service for residential space heating shall not be  
12 terminated between November 15<sup>th</sup> through March 15<sup>th</sup> if the customer:

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

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

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

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

36 (e) Agrees to a payment plan and agrees to maintain the payment  
37 plan. The plan will be designed both to pay the past due bill by the  
38 following October 15<sup>th</sup> and to pay for continued utility service. If  
39 the past due bill is not paid by the following October 15<sup>th</sup>, the  
40 customer is not eligible for protections under this chapter until the

1 past due bill is paid. The plan may not require monthly payments in  
2 excess of seven percent of the customer's monthly income plus one-  
3 twelfth of any arrearage accrued from the date application is made  
4 and thereafter during November 15<sup>th</sup> through March 15<sup>th</sup>. A customer  
5 may agree to pay a higher percentage during this period, but shall  
6 not be in default unless payment during this period is less than  
7 seven percent of monthly income plus one-twelfth of any arrearage  
8 accrued from the date application is made and thereafter. If  
9 assistance payments are received by the customer subsequent to  
10 implementation of the plan, the customer shall contact the utility to  
11 reformulate the plan; and

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

13 (5) The utility shall:

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

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

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

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

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

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

37 (7) Every gas company and electrical company shall offer  
38 residential customers the option of a budget billing or equal payment  
39 plan. The budget billing or equal payment plan shall be offered low-  
40 income customers eligible under the state's plan for low-income

1 energy assistance prepared in accordance with 42 U.S.C. 8624(C)(1)  
2 without limiting availability to certain months of the year, without  
3 regard to the length of time the customer has occupied the premises,  
4 and without regard to whether the customer is the tenant or owner of  
5 the premises occupied.

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

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

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

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

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

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

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

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

36 (e) For the purposes of this subsection: (i) Gas consisting  
37 largely of methane and other hydrocarbons derived from the  
38 decomposition of organic material in landfills, wastewater treatment  
39 facilities, and anaerobic digesters must be considered a nonemitting

1 resource; and (ii) qualified biomass energy must be considered a  
2 nonemitting resource.

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

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

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

15 NEW SECTION. Sec. 4. A new section is added to chapter 80.28  
16 RCW to read as follows:

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

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

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

35 (i) Align utility regulatory incentives with the public interest;  
36 (ii) Maintain and enhance the ability of the electrical or gas  
37 company to furnish safe, adequate, and efficient service to its  
38 customers;



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

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

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

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

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

16 (viii) Ensure an appropriate level of consumer protection;

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

18 (x) Consider adverse environmental impacts;

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

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

25 (3) An electrical or gas company may petition the commission to  
26 establish an alternative form of regulation. The electrical or gas  
27 company shall submit with the petition a plan for an alternative form  
28 of regulation, which may include provisions establishing a reasonable  
29 range for rate of return on investment. The plan must contain a  
30 proposal for transition to the alternative form of regulation and the  
31 proposed duration of the plan. The development of a plan, which must  
32 include customer and stakeholder input, shall contain a proposal for  
33 appropriate performance metrics and enforcement or remedial  
34 provisions in the event the company fails to meet such metrics. The  
35 commission also may initiate consideration of alternative forms of  
36 regulation for a company or companies on its own motion. The  
37 commission, after notice and hearing, shall issue an order accepting,  
38 modifying, or rejecting the plan within eleven months after the  
39 petition or motion is filed, unless extended by the commission for  
40 good cause. Nothing in this section may be interpreted as requiring

1 an electrical or gas company to submit a petition for a plan for an  
2 alternative form of regulation as part of or concurrent with a  
3 general rate case or other proceeding for recovery of costs of such a  
4 company.

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

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

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

25 (7) The commission or any person may file a complaint under RCW  
26 80.04.110 alleging that an electrical or gas company under an  
27 alternative form of regulation has not complied with the terms and  
28 conditions set forth in the alternative form of regulation. The  
29 complainant bears the burden of proving the allegations in the  
30 complaint.

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

37 (9) The provisions of this section apply only to alternative  
38 forms of regulation submitted to the commission pursuant to this  
39 section. Nothing contained in this section may be construed to alter,  
40 amend, repeal, modify, interpret, or be in conflict with this

1 chapter. Nothing in this section may be construed to expand or alter  
2 the commission's jurisdiction to regulate in the public interest and  
3 ensure just, fair, reasonable, and sufficient rates for electrical  
4 and gas companies.

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