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**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; and creating a  
4 new section.

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, reliable, and environmentally  
16 responsible services by authorizing the Washington utilities and  
17 transportation commission to employ alternative forms of regulation  
18 to traditional rate-based, rate of return regulation for electrical  
19 and gas companies. The legislature finds that a similar update to the  
20 utilities and transportation commission's statutory grant of  
21 authority for telecommunications customers a decade ago serves as a

1 reasonable model. The legislature intends that the utilities and  
2 transportation commission will utilize alternative forms of  
3 regulation to further the state's public policy goals by ensuring  
4 that electrical and gas companies are incentivized to invest to meet  
5 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; maintain and enhance overall electrical or natural gas  
10 system reliability and security; allow electrical or natural gas  
11 companies to support and participate in market transformation for  
12 enabling technologies, without harming competition; maximize the  
13 value of new business opportunities to utility customers, especially  
14 low-income customers; protect utility customers from undue risk;  
15 ensure an appropriate level of consumer protection; and support the  
16 achievement of state emissions reduction goals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 metric ton of carbon dioxide or greenhouse gas for such a calendar  
2 year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (e) Agrees to a payment plan and agrees to maintain the payment  
35 plan. The plan will be designed both to pay the past due bill by the  
36 following October 15<sup>th</sup> and to pay for continued utility service. If  
37 the past due bill is not paid by the following October 15<sup>th</sup>, the  
38 customer is not eligible for protections under this chapter until the  
39 past due bill is paid. The plan may not require monthly payments in  
40 excess of seven percent of the customer's monthly income plus one-

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

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

11 (5) The utility shall:

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

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

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

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

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

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

35 (7) Every gas company and electrical company shall offer  
36 residential customers the option of a budget billing or equal payment  
37 plan. The budget billing or equal payment plan shall be offered low-  
38 income customers eligible under the state's plan for low-income  
39 energy assistance prepared in accordance with 42 U.S.C. 8624(C)(1)  
40 without limiting availability to certain months of the year, without

1 regard to the length of time the customer has occupied the premises,  
2 and without regard to whether the customer is the tenant or owner of  
3 the premises occupied.

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

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

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

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

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

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

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

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

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

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

5       NEW SECTION.   **Sec. 4.**   A new section is added to chapter 80.28  
6 RCW to read as follows:

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

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

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

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

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

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

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

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

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



1 electrical or gas company; or (B) the quantity of electricity or gas  
2 sold to its customers;

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

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

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

7 (x) Consider adverse environmental impacts;

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

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

14 (3) An electrical or gas company may petition the commission to  
15 establish an alternative form of regulation. The electrical or gas  
16 company shall submit with the petition a plan for an alternative form  
17 of regulation, which may include provisions establishing a reasonable  
18 range for rate of return on investment. The plan must contain a  
19 proposal for transition to the alternative form of regulation and the  
20 proposed duration of the plan. The development of a plan, which must  
21 include customer and stakeholder input, and must also contain a  
22 proposal for appropriate performance metrics that include, but are  
23 not limited to, ensuring adequate customer service quality, including  
24 service quality standards, and appropriate enforcement or remedial  
25 provisions in the event the company fails to meet service quality  
26 standards or performance measures. The commission also may initiate  
27 consideration of alternative forms of regulation for a company or  
28 companies on its own motion. The commission, after notice and  
29 hearing, shall issue an order accepting, modifying, or rejecting the  
30 plan within eleven months after the petition or motion is filed,  
31 unless extended by the commission for good cause. Nothing in this  
32 section may be interpreted as requiring an electrical or gas company  
33 to submit a petition for a plan for an alternative form of regulation  
34 as part of or concurrent with a general rate case or other proceeding  
35 for recovery of costs of such a company.

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

1 election not to proceed with the alternative form of regulation as  
2 authorized by the commission.

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

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

17 (7) The commission or any person may file a complaint under RCW  
18 80.04.110 alleging that an electrical or gas company under an  
19 alternative form of regulation has not complied with the terms and  
20 conditions set forth in the alternative form of regulation. The  
21 complainant bears the burden of proving the allegations in the  
22 complaint.

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

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