
SENATE BILL 5639

State of Washington **55th Legislature** **1997 Regular Session**

By Senators Finkbeiner, Strannigan, Rossi and Hochstatter

Read first time 02/04/97. Referred to Committee on Energy & Utilities.

1 AN ACT Relating to the electric utility industry; amending RCW
2 80.12.020, 80.12.040, 80.24.010, 80.28.020, and 80.28.050; reenacting
3 and amending RCW 42.17.310; and adding a new chapter to Title 80 RCW.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

6 (a) The traditional forms of electric utility regulation have
7 stifled competition, produced inefficient and disparate rates for
8 electricity, and discouraged technological innovation.

9 (b) The cost of electricity is an important monthly expenditure for
10 many households and is of increasing significance to businesses and
11 industries, which compete in a sophisticated interstate and
12 international marketplace. Restructuring the electrical utility
13 industry in the manner described in this chapter will provide for more
14 consumer choice and will provide an orderly transition from regulation
15 to a more efficient and competitive environment.

16 (c) Many of the changes now underway in the electrical utility
17 industry have occurred as a result of federal legislation that requires
18 utilities to open up their interstate transmission lines to other users
19 on a nondiscriminatory basis.

1 (d) It is in the interests of all Washington consumers to have a
2 state-wide framework that is compatible with federal developments. The
3 goal of this new structure is to provide competitive, low-cost, and
4 reliable electric service to all of the state's residents and
5 businesses.

6 (2) The legislature intends to:

7 (a) Allow all retail electric customers to select their electricity
8 supplier of choice no later than July 1, 1999;

9 (b) Permit new entities, including power marketers and others, to
10 sell electricity directly to retail electric customers;

11 (c) Impose on electric utilities an obligation, similar to a common
12 carrier, to provide nondiscriminatory and nonpreferential service in
13 operating electric distribution facilities;

14 (d) Preserve the obligations of electric utilities to operate safe
15 and reliable distribution facilities;

16 (e) Retain local control over publicly owned utilities and
17 cooperatives that distribute electricity to retail customers;

18 (f) Establish procedures and deadlines for utilities;

19 (g) Ensure that the benefits of a competitive market are enjoyed by
20 all customer classes;

21 (h) Provide electric utilities with a reasonable opportunity to
22 recover a portion of their uneconomic utility investments during a
23 five-year period;

24 (i) Deregulate the pricing of electric generation for electrical
25 companies after July 1, 1999, to allow sellers and buyers to negotiate
26 market-based transactions;

27 (j) Maintain regulation of rates for local distribution facilities
28 and ancillary services, and prohibit a utility from shifting unrelated
29 costs onto the rates of its distribution facilities and ancillary
30 services;

31 (k) Permit customers to aggregate or pool their purchases;

32 (l) Adopt consumer information provisions to ensure that all
33 customers receive itemized bills with unbundled rates; and

34 (m) Provide retail electric customers with sufficient information
35 to enable them to compare and select among products and services in the
36 electricity market.

37 NEW SECTION. **Sec. 2.** This chapter shall be known and may be cited
38 as the electric customer choice act.

1 NEW SECTION. **Sec. 3.** The definitions in this section apply

2 throughout this chapter unless the context clearly indicates otherwise.

3 (1) "Aggregator" means an entity that combines retail electric
4 customers into a group for the purpose of purchasing electricity and
5 related services.

6 (2) "Ancillary services" means scheduling, reactive power, voltage
7 control, and other services that allow a retail electric customer to
8 use distribution facilities and that are not subject to the exclusive
9 jurisdiction of the federal energy regulatory commission. "Ancillary
10 services" does not include long-term emergency or backup power to
11 replace the loss of generation resources or to cover that portion of a
12 customer's load that exceeds generation supply.

13 (3) "Commission" means the utilities and transportation commission.

14 (4) "Direct access" means the right of all retail electric
15 customers and electricity service suppliers to interconnect with and
16 use distribution facilities on a nondiscriminatory basis to transport
17 electricity from any source by or on behalf of any retail electric
18 customer. "Direct access" is also known as "retail wheeling."

19 (5) "Distribution facilities" means the equipment and
20 infrastructure used to deliver electricity to retail electric
21 customers, except a transmission facility.

22 (6) "Electrical company" means a company owned by investors that
23 meets the definition of RCW 80.04.010.

24 (7) "Electric cooperative" means a cooperative or association
25 organized under chapter 23.86 RCW.

26 (8) "Electric utility" means any electrical company, public utility
27 district, electric cooperative, or municipal electric utility, that is
28 engaged in the business of distributing electricity to retail electric
29 customers in the state.

30 (9) "Electricity" means electric energy, measured in kilowatt
31 hours, or electric capacity, measured in kilowatts.

32 (10) "Electricity service supplier" means any person or entity that
33 sells electricity to more than one retail electric customer, including
34 but not limited to electric utilities, aggregators, marketers, brokers,
35 independent power producers, or other municipal or state authorities.

36 (11) "Generating asset" means the plant and equipment needed to
37 generate electricity;

38 (12) "Governing body" means the board of directors; the council of
39 a city or town; or the commissioners of an electric cooperative,

1 municipal electric utility, or public utility district, respectively,
2 that has the authority to set and approve rates.

3 (13) "Load" means the amount of electricity delivered or required
4 by a retail electric customer at a specific point of delivery.

5 (14) "Market-based rate" means the rate for electricity that an
6 electrical company is required to offer pursuant to section 9 of this
7 act.

8 (15) "Municipal electric utility" means a city or town that owns
9 and operates an electric utility authorized by chapter 35.92 RCW.

10 (16) "Public utility district" means a district authorized by
11 chapter 54.04 RCW that sells electricity to retail electric customers.

12 (17) "Retail electric customer" means any person or entity,
13 including but not limited to a residential, commercial, and industrial
14 consumer, that purchases electricity for ultimate consumption and not
15 for resale.

16 (18) "State" means the state of Washington.

17 (19) "Transition charge" means a charge or fee that recovers a
18 portion of an uneconomic utility investment and that is levied only
19 during the transition period on the bill of a retail electric customer
20 who purchases direct access service or who purchases electricity at the
21 market-based rate.

22 (20) "Transition period" means the period beginning July 1, 1999,
23 and ending no later than June 30, 2004.

24 (21) "Transmission facility" means plant and equipment used to
25 transmit electricity in interstate commerce and whose rates, terms, and
26 conditions are subject to the exclusive jurisdiction of the federal
27 energy regulatory commission.

28 (22) "Undue market power" means the unfair or improper exercise of
29 influence to increase or decrease the availability and price of a
30 service or product in a manner inconsistent with competitive markets.

31 (23) "Uneconomic utility investment" means generating assets,
32 conservation investments, and contractual obligations that were entered
33 into in good faith by an electric utility before July 11, 1994, and
34 that were prudent at the time the obligations were assumed, but that
35 are no longer economic as a direct result of implementation of this
36 chapter. "Uneconomic utility investment" does not include costs or
37 expenses disallowed by the commission in a prudence review or other
38 proceeding, but only to the extent of such a disallowance, nor does it

1 include fines or penalties as authorized by this chapter or by another
2 statute.

3 NEW SECTION. **Sec. 4.** (1) Notwithstanding any other provision of
4 law, every retail electric customer has the right no later than July 1,
5 1999, to: (a) Choose one or more electricity service suppliers to
6 serve all or a portion of its load; and (b) choose the quality and
7 nature of electricity service, including but not limited to different
8 product and pricing options from one or more electricity service
9 suppliers.

10 (2) If the schedules for implementing the requirements of this
11 chapter, including but not limited to the deadlines for commission
12 rulemaking, are delayed for any reason, the July 1, 1999, deadline is
13 not affected and remains in effect.

14 (3) No later than July 1, 1999, every retail electric customer has
15 the right to interconnect with and use the distribution facilities of
16 any electric utility on a nondiscriminatory basis to transport
17 electricity from any electricity service supplier to the customer at
18 rates that comply with section 7 of this act.

19 NEW SECTION. **Sec. 5.** By July 1, 1999, every electricity service
20 supplier has the right to interconnect with or use, or both, the
21 distribution facilities of an electric utility on a nondiscriminatory
22 basis to transport electricity from any source to any retail electric
23 customer at rates that comply with section 7 of this act.

24 NEW SECTION. **Sec. 6.** (1) If a retail electric customer has not
25 chosen a new electricity service supplier no later than July 1, 1999,
26 the existing electric utility shall continue as that customer's
27 supplier and shall maintain its obligation to serve that customer,
28 pursuant to section 24 of this act.

29 (2) Nothing in this chapter diminishes or reduces the default
30 supplier's statutory obligation to low-income residential customers,
31 including but not limited to the restrictions on termination of service
32 contained in RCW 80.28.010, 35.21.300 and 54.16.285.

33 NEW SECTION. **Sec. 7.** (1) Every electric utility shall offer
34 unbundled rates, terms, and conditions for the use of its distribution
35 facilities and for ancillary services. Any retail electric customer

1 may purchase ancillary services from third parties if such services are
2 available.

3 (2) The commission shall set rates for the use of electrical
4 company distribution facilities and ancillary services that are based
5 on embedded cost-of-service methods and that are just, fair,
6 reasonable, and sufficient. The commission shall ensure that the
7 utility's costs, including but not limited to overhead directly
8 attributable to distribution facilities and ancillary services, are
9 allocated accurately among the various classes of customers without
10 shifting costs from one class to another. Nothing in this subsection
11 prevents the commission from approving incentive or performance-based
12 ratemaking to reduce such costs.

13 (3) The governing body of a public utility district, municipal
14 electric utility, or electric cooperative shall set rates for the use
15 of distribution facilities and ancillary services that are based on
16 embedded cost-of-service methods and that are just, fair, reasonable,
17 and sufficient. The governing body shall ensure that the utility's
18 costs, including but not limited to overhead directly attributable to
19 distribution facilities and ancillary services, are allocated
20 accurately among the various classes of customers without shifting
21 costs from one class to another. Nothing in this subsection prevents
22 the governing body from approving incentive or performance-based
23 ratemaking to reduce such costs.

24 (4) Every retail electric customer has the option to purchase and
25 install its own metering and interconnection facilities that meet
26 standard utility specifications, in which case the customer shall not
27 be required to purchase and pay for those facilities from the electric
28 utility.

29 NEW SECTION. **Sec. 8.** After July 1, 1999, the commission shall not
30 set the rates, terms, or conditions for the sale of electricity from
31 generating assets owned by electrical companies. If, however, an
32 electrical company offers direct access prior to that date, the
33 commission may accelerate the deregulation of generating assets to
34 match the date the company offers direct access, but nothing in this
35 section reduces or limits the commission's authority to review
36 electrical company rates for distribution facilities and ancillary
37 services.

1 NEW SECTION. **Sec. 9.** (1) The legislature intends for every
2 electrical company to offer a market-based rate for retail electric
3 customers, primarily residential and small businesses, who wish to
4 purchase full-requirements electric service from the company. Each
5 electrical company shall offer a market-based rate that allows
6 customers to continue purchasing electricity from their existing
7 utility but permits them to take advantage of market conditions.

8 (2) Between July 1, 1999, and June 30, 2004, every electrical
9 company shall offer a market-based rate to its retail electric
10 customers. The market-based rate must equal: (a) The market rate for
11 the commodity cost of wholesale power, as posted at a valid delivery
12 point and published in a commercial or trade publication; (b) the cost
13 of distribution facilities and ancillary services, approved pursuant to
14 section 7 of this act, and transmission services; (c) the remaining
15 cost to the utility to deliver the electricity to its loads, including
16 but not limited to character of service adjustments, reserves, and
17 other items needed to provide reliable service to retail electric
18 customers; and (d) the transition charge, if any. Nothing in this
19 section prohibits an electrical company from offering additional rate
20 schedules, products, or services to its customers, if it so chooses.

21 (3) No later than January 1, 1999, the commission shall approve
22 rates for items in (2)(c) of this section that are just, fair,
23 reasonable, and sufficient.

24 NEW SECTION. **Sec. 10.** A new customer of any electric utility has
25 the same right as an existing customer to interconnect with and use the
26 utility's distribution facilities, and the utility shall not
27 discriminate against or grant preferential treatment to the new
28 customer in the use of its facilities.

29 NEW SECTION. **Sec. 11.** (1) The commission has the authority before
30 July 1, 1999, to approve pilot programs for direct access with retail
31 electric customers of individual electrical companies. Such programs
32 must help ensure that full implementation of this chapter is achieved
33 by July 1, 1999.

34 (2) The governing body of a public utility district, municipal
35 electric utility, or electric cooperative has the authority prior to
36 July 1, 1999, to approve pilot programs for direct access with retail

1 electric customers. Such programs must help ensure that full
2 implementation of this chapter is achieved by July 1, 1999.

3 NEW SECTION. **Sec. 12.** In addition to rights under existing
4 statute, every retail electric customer has the right to self-generate
5 or to purchase or otherwise use electricity directly from generators
6 located at or near their load and to interconnect with transmission and
7 distribution facilities without the imposition of the transition charge
8 or any other noncost-related payment on self-generated electricity.

9 NEW SECTION. **Sec. 13.** Before July 1, 1999, every electric utility
10 that uses the distribution facilities of another electric utility to
11 deliver electricity to or on behalf of a retail electric customer shall
12 provide reciprocal services on its distribution facilities to any
13 electricity service supplier or retail electric customer, if so
14 requested.

15 NEW SECTION. **Sec. 14.** Every electric utility has an obligation to
16 mitigate uneconomic utility investments through contract negotiations,
17 buy outs, buy downs, and other cost control or cost containment
18 measures. The commission may adopt rules establishing standards for
19 mitigation for electrical companies, but shall do so not later than
20 January 1, 1998, to coincide with commission rulemaking on uneconomic
21 utility investments pursuant to section 15 of this act.

22 NEW SECTION. **Sec. 15.** (1) By January 1, 1998, the commission
23 shall adopt by rule a uniform methodology for calculating uneconomic
24 utility investments for electrical companies. The methodology must
25 provide a means to: (a) Establish the net value of the utility's
26 entire portfolio of generating assets, conservation investments, and
27 contractual obligations, when considered as a group; and (b) allocate
28 uneconomic utility investments fairly and accurately among various
29 customer classes without shifting costs from one class to another.

30 (2) By January 1, 1998, the governing body of a public utility
31 district, municipal electric utility, or electric cooperative shall
32 determine whether or not it has any uneconomic utility investments. If
33 it finds that it has such investments, the governing body shall hold
34 one or more public, evidentiary hearings in which it shall adopt a
35 methodology to: (a) Establish the net value of the utility's entire

1 portfolio of generating assets, conservation investments, and
2 contractual obligations, when considered as a group; and (b) allocate
3 uneconomic utility investments fairly and accurately among various
4 customer classes without shifting costs from one class to another.

5 NEW SECTION. **Sec. 16.** (1) By July 1, 1998, each electrical
6 company shall prepare and submit to the commission an implementation
7 plan with the following elements: (a) The proposed tariffs, terms, and
8 conditions for direct access and ancillary services; (b) the
9 identification of uneconomic utility investments, if any; (c) the steps
10 the electrical company has taken to mitigate the impacts of any
11 uneconomic utility investments; and (d) the calculation of transition
12 charges, if any.

13 (2) By July 1, 1998, each public utility district, municipal
14 electric utility, and electric cooperative shall submit an
15 implementation plan to its governing body that contains the elements of
16 subsection (1)(a) through (d) of this section.

17 (3) By November 1, 1998, the commission shall accept or modify the
18 implementation plan, including the tariffs, to ensure that the
19 nondiscriminatory and nonpreferential terms of direct access are
20 implemented. The commission shall hold one or more public hearings
21 before taking final action on the implementation plan.

22 (4) By November 1, 1998, the governing body of a public utility
23 district, municipal electric utility, or electric cooperative shall
24 approve an implementation plan, including the tariffs, to ensure that
25 the nondiscriminatory and nonpreferential terms of direct access are
26 implemented. The governing body shall hold one or more public hearings
27 before taking final action on the implementation plan.

28 NEW SECTION. **Sec. 17.** (1) No later than January 1, 1999, every
29 electric utility shall: (a) Separate its generation, transmission, and
30 distribution assets and operations to accurately assess the costs of
31 utility functions and to allow for fair and accurate pricing of
32 unbundled services; and (b) publish separate rates, terms, and
33 conditions for at least the following unbundled products and services:
34 Electricity; ancillary services; and direct access to distribution
35 facilities.

36 (2) No later than July 1, 1999, every electric utility shall
37 provide direct access to any retail electric customer or electricity

1 service supplier and shall, to the extent permitted by federal law,
2 also provide retail electric customers and electricity service
3 suppliers with access to its transmission facilities.

4 NEW SECTION. **Sec. 18.** After July 1, 1999, or when an electric
5 utility offers direct access, whichever is sooner, the utility shall:
6 (1) Provide to electricity service suppliers comparable access to its
7 distribution facilities, as it would for its own use; (2) provide to
8 electricity service suppliers comparable access to information about
9 its distribution facilities, metering, and loads, as it would to its
10 own divisions or affiliates; and (3) refrain from granting to its
11 generating or transmission operations any access to or information
12 about its distribution facilities that is not provided to electricity
13 service suppliers and retail electric customers.

14 NEW SECTION. **Sec. 19.** (1) The legislature intends to create a
15 mechanism that allows electrical utilities to recover a portion of
16 their uneconomic utility investments, if they were made in good faith
17 and were prudent at the time the obligations were assumed. Only
18 investments made before July 11, 1994 are eligible. That date is used
19 by the federal energy regulatory commission at the wholesale level to
20 allow for the recovery of uneconomic utility investments in
21 transmission rates.

22 The legislature further intends to allow differential treatment
23 between electrical companies, owned by investors, and other utilities,
24 such as public utility districts, municipal electric utilities, and
25 electric cooperatives, owned by consumers.

26 The management of electrical companies had considerable discretion
27 in deciding which generating assets to build or acquire and at what
28 cost. Shareholders have benefited over the years by many of these
29 decisions. To the extent that the utility now has uneconomic utility
30 investments, it would be unfair to burden only customers with the
31 obligation to pay for these uneconomic assets and investments.

32 The legislature concludes it is reasonable for both shareholders
33 and customers to split the net costs, if any, of the utility's
34 uneconomic utility investments for a five-year period, with
35 shareholders and customers each paying for the net cost of fifty
36 percent of these assets, after the utility has mitigated its costs and
37 otherwise complied with this chapter.

1 For consumer-owned utilities, which have no shareholders, the
2 legislature has determined that a one hundred percent recovery is
3 appropriate, after the utility has mitigated its costs and otherwise
4 complied with this chapter.

5 (2) An electric utility may, in accordance with this section, levy
6 a transition charge not to exceed five years in duration to recover a
7 portion of its uneconomic utility investments. The utility shall
8 calculate the transition charge in compliance with the methodology in
9 section 15 of this act. The transition charge is to be levied on the
10 bill of retail electric customers who purchase direct access service or
11 who purchase electricity at the market-based rate.

12 (3) No electric utility shall levy a transition charge unless and
13 until it has adopted nondiscriminatory and nonpreferential tariffs,
14 terms, and conditions for direct access and ancillary services, and
15 otherwise complied with the terms of this chapter, nor shall an
16 electric utility levy such a charge under any circumstance after June
17 30, 2004.

18 (4) Each electrical company may recover in a transition charge
19 fifty percent of the net, verifiable costs of its uneconomic utility
20 investments that cannot be mitigated. The shareholders of an
21 electrical company are responsible for the remaining costs of any
22 uneconomic utility investments.

23 (5) The governing body of a public utility district, municipal
24 electric utility, or electric cooperative shall allow the utility to
25 recover in a transition charge the net, verifiable costs of its
26 uneconomic utility investments that cannot be mitigated, as determined
27 by the governing body.

28 (6) No electric utility shall levy on a retail electric customer
29 any other type of charge, fee, or penalty related to the recovery of
30 uneconomic utility investments, other than a transition charge approved
31 pursuant to this chapter.

32 NEW SECTION. **Sec. 20.** (1) Every electricity service supplier that
33 is not an electric utility conducting business in the state as of
34 January 1, 1999, and that sells electricity to one or more retail
35 electric customers with individual annual loads less than eight million
36 seven hundred sixty thousand kilowatt hours, shall file a certificate
37 of financial responsibility with the commission, showing that the
38 applicant: (a) Possesses the financial and technical capabilities to

1 provide any service pursuant to this chapter; and (b) is able to meet
2 its contractual agreements and obligations. If necessary, the
3 commission may require such an electricity service supplier to provide
4 a bond or other security.

5 (2) By July 1, 1998, the commission shall adopt final rules
6 pursuant to RCW 80.04.160 to implement this section.

7 NEW SECTION. **Sec. 21.** Every electric utility is obligated to
8 maintain the integrity of its distribution facilities and provide safe,
9 reliable service to all retail electric customers. Nothing in this
10 chapter reduces or diminishes the statutory or contractual obligations
11 of electric utilities to maintain the reliability of their distribution
12 facilities and other infrastructure or equipment used to deliver
13 electricity.

14 NEW SECTION. **Sec. 22.** (1) Every bill to a retail electric
15 customer from an electricity service supplier must contain, among other
16 things: (a) A complete and accurate list of the rates and amount due
17 for each unbundled service or product that the customer is purchasing;
18 (b) the rates and amount of state and local taxes, if any, imposed on
19 the customer; and (c) other price information necessary to facilitate
20 customer choice, as determined by the commission for electrical
21 companies, pursuant to rules adopted under RCW 80.04.160, and by the
22 governing body of public utility districts, municipal electric
23 utilities, and electric cooperatives.

24 (2) All retail electric customers have the right to receive a
25 separate bill from an individual electricity service supplier that
26 provides products and services. With the permission of the retail
27 electric customer and the electricity service supplier, an electric
28 utility, at its option, may consolidate the bill for all electric
29 services in a single statement. The utility, however, shall not be
30 required to forward payment to an electricity service supplier for
31 services it provided to a retail electric customer before the utility
32 has received payment for those services from the customer.

33 (3) By July 1, 1998, the commission shall adopt uniform rules
34 pursuant to RCW 80.04.160 to protect the confidentiality of individual
35 customer-usage records of electrical companies that offer direct access
36 and of electrical service suppliers that are registered pursuant to
37 section 20 of this act.

1 NEW SECTION. **Sec. 23.** (1) After July 1, 1999, or when an electric
2 utility adopts direct access tariffs, whichever is sooner, an electric
3 utility's statutory obligation to serve retail electric customers is
4 modified as follows:

5 (a) For a retail electric customer that chooses to continue
6 purchasing all components of its electric service from the electric
7 utility, the utility remains obligated to provide all components of
8 electric service to the customer.

9 (b) For a retail electric customer that chooses to purchase
10 electricity from other sources, the electric utility has an obligation
11 to provide direct access and ancillary services, pursuant to this
12 chapter.

13 (c) For a retail electric customer that chooses to purchase a
14 portion of its service, including electricity or unbundled products,
15 from the electric utility and a portion from other sources, the
16 electric utility is obligated to: (i) Continue providing the level of
17 service that the customer chooses to purchase from electric utility;
18 and (ii) provide direct access and ancillary services for the portion
19 that is provided by other sources.

20 (2) If a retail electric customer who purchases direct access
21 service decides, at a later date, to purchase electricity from the
22 electric utility, the utility shall not discriminate against the retail
23 electric customer and shall offer service to the retail electric
24 customer as if it were a new, similarly situated customer.

25 NEW SECTION. **Sec. 24.** Upon receiving a complaint from a retail
26 electric customer, the commission has the authority to investigate
27 whether any electrical company or any corporation that is an electrical
28 service supplier has exercised undue market power with respect to the
29 sale of electricity. The commission shall make a finding based on its
30 investigation and, if warranted, refer the case to the attorney
31 general's office for further investigation or action under the consumer
32 protection act, chapter 19.86 RCW.

33 NEW SECTION. **Sec. 25.** (1) The practices covered by this chapter
34 vitally affect the public interest, the electricity bills of consumers,
35 and the competitive position of businesses and industries. The
36 legislature therefore intends for the consumer protection act, chapter
37 19.86 RCW, to apply to the sale and distribution of electricity.

1 (2) No electric utility or electricity service supplier is entitled
2 to any exemption from state consumer protection or antitrust laws,
3 including but not limited to any exemption based on state action.
4 Failure of an electric utility to offer direct access according to the
5 provisions of this chapter constitutes a restraint of trade, as defined
6 in chapter 19.86 RCW, and an attempted monopoly, as defined in chapter
7 19.86 RCW.

8 NEW SECTION. **Sec. 26.** Any person or entity injured by an electric
9 utility's failure to comply with this chapter has the right to file
10 suit in superior court for an order requiring compliance with this
11 chapter.

12 NEW SECTION. **Sec. 27.** Nothing in this chapter restricts the
13 ability of electric utilities to fulfill their obligations under
14 voluntary agreements that designate boundaries for service areas as
15 authorized by chapter 54.48 RCW. The signing of such agreements does
16 not restrict or limit the obligation of the electric utility to offer
17 direct access service and ancillary services and otherwise comply with
18 this chapter.

19 **Sec. 28.** RCW 42.17.310 and 1996 c 305 s 2, 1996 c 253 s 302, 1996
20 c 191 s 88, and 1996 c 80 s 1 are each reenacted and amended to read as
21 follows:

22 (1) The following are exempt from public inspection and copying:

23 (a) Personal information in any files maintained for students in
24 public schools, patients or clients of public institutions or public
25 health agencies, or welfare recipients.

26 (b) Personal information in files maintained for employees,
27 appointees, or elected officials of any public agency to the extent
28 that disclosure would violate their right to privacy.

29 (c) Information required of any taxpayer in connection with the
30 assessment or collection of any tax if the disclosure of the
31 information to other persons would (i) be prohibited to such persons by
32 RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result
33 in unfair competitive disadvantage to the taxpayer.

34 (d) Specific intelligence information and specific investigative
35 records compiled by investigative, law enforcement, and penology
36 agencies, and state agencies vested with the responsibility to

1 discipline members of any profession, the nondisclosure of which is
2 essential to effective law enforcement or for the protection of any
3 person's right to privacy.

4 (e) Information revealing the identity of persons who are witnesses
5 to or victims of crime or who file complaints with investigative, law
6 enforcement, or penology agencies, other than the public disclosure
7 commission, if disclosure would endanger any person's life, physical
8 safety, or property. If at the time a complaint is filed the
9 complainant, victim or witness indicates a desire for disclosure or
10 nondisclosure, such desire shall govern. However, all complaints filed
11 with the public disclosure commission about any elected official or
12 candidate for public office must be made in writing and signed by the
13 complainant under oath.

14 (f) Test questions, scoring keys, and other examination data used
15 to administer a license, employment, or academic examination.

16 (g) Except as provided by chapter 8.26 RCW, the contents of real
17 estate appraisals, made for or by any agency relative to the
18 acquisition or sale of property, until the project or prospective sale
19 is abandoned or until such time as all of the property has been
20 acquired or the property to which the sale appraisal relates is sold,
21 but in no event shall disclosure be denied for more than three years
22 after the appraisal.

23 (h) Valuable formulae, designs, drawings, and research data
24 obtained by any agency within five years of the request for disclosure
25 when disclosure would produce private gain and public loss.

26 (i) Preliminary drafts, notes, recommendations, and intra-agency
27 memorandums in which opinions are expressed or policies formulated or
28 recommended except that a specific record shall not be exempt when
29 publicly cited by an agency in connection with any agency action.

30 (j) Records which are relevant to a controversy to which an agency
31 is a party but which records would not be available to another party
32 under the rules of pretrial discovery for causes pending in the
33 superior courts.

34 (k) Records, maps, or other information identifying the location of
35 archaeological sites in order to avoid the looting or depredation of
36 such sites.

37 (l) Any library record, the primary purpose of which is to maintain
38 control of library materials, or to gain access to information, which
39 discloses or could be used to disclose the identity of a library user.

1 (m) Financial information supplied by or on behalf of a person,
2 firm, or corporation for the purpose of qualifying to submit a bid or
3 proposal for (i) a ferry system construction or repair contract as
4 required by RCW 47.60.680 through 47.60.750 or (ii) highway
5 construction or improvement as required by RCW 47.28.070.

6 (n) Railroad company contracts filed prior to July 28, 1991, with
7 the utilities and transportation commission under *RCW 81.34.070,
8 except that the summaries of the contracts are open to public
9 inspection and copying as otherwise provided by this chapter.

10 (o) Financial and commercial information and records supplied by
11 private persons pertaining to export services provided pursuant to
12 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to
13 export projects pursuant to RCW 43.23.035.

14 (p) Financial disclosures filed by private vocational schools under
15 chapters 28B.85 and 28C.10 RCW.

16 (q) Records filed with the utilities and transportation commission
17 or attorney general under RCW 80.04.095 that a court has determined are
18 confidential under RCW 80.04.095.

19 (r) Financial and commercial information and records supplied by
20 businesses or individuals during application for loans or program
21 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,
22 or during application for economic development loans or program
23 services provided by any local agency.

24 (s) Membership lists or lists of members or owners of interests of
25 units in timeshare projects, subdivisions, camping resorts,
26 condominiums, land developments, or common-interest communities
27 affiliated with such projects, regulated by the department of
28 licensing, in the files or possession of the department.

29 (t) All applications for public employment, including the names of
30 applicants, resumes, and other related materials submitted with respect
31 to an applicant.

32 (u) The residential addresses and residential telephone numbers of
33 employees or volunteers of a public agency which are held by the agency
34 in personnel records, employment or volunteer rosters, or mailing lists
35 of employees or volunteers.

36 (v) The residential addresses and residential telephone numbers of
37 the customers of a public utility contained in the records or lists
38 held by the public utility of which they are customers.

1 (w)(i) The federal social security number of individuals governed
2 under chapter 18.130 RCW maintained in the files of the department of
3 health, except this exemption does not apply to requests made directly
4 to the department from federal, state, and local agencies of
5 government, and national and state licensing, credentialing,
6 investigatory, disciplinary, and examination organizations; (ii) the
7 current residential address and current residential telephone number of
8 a health care provider governed under chapter 18.130 RCW maintained in
9 the files of the department, if the provider requests that this
10 information be withheld from public inspection and copying, and
11 provides to the department an accurate alternate or business address
12 and business telephone number. On or after January 1, 1995, the
13 current residential address and residential telephone number of a
14 health care provider governed under RCW 18.130.140 maintained in the
15 files of the department shall automatically be withheld from public
16 inspection and copying unless the provider specifically requests the
17 information be released, and except as provided for under RCW
18 42.17.260(9).

19 (x) Information obtained by the board of pharmacy as provided in
20 RCW 69.45.090.

21 (y) Information obtained by the board of pharmacy or the department
22 of health and its representatives as provided in RCW 69.41.044,
23 69.41.280, and 18.64.420.

24 (z) Financial information, business plans, examination reports, and
25 any information produced or obtained in evaluating or examining a
26 business and industrial development corporation organized or seeking
27 certification under chapter 31.24 RCW.

28 (aa) Financial and commercial information supplied to the state
29 investment board by any person when the information relates to the
30 investment of public trust or retirement funds and when disclosure
31 would result in loss to such funds or in private loss to the providers
32 of this information.

33 (bb) Financial and valuable trade information under RCW 51.36.120.

34 (cc) Client records maintained by an agency that is a domestic
35 violence program as defined in RCW 70.123.020 or 70.123.075 or a rape
36 crisis center as defined in RCW 70.125.030.

37 (dd) Information that identifies a person who, while an agency
38 employee: (i) Seeks advice, under an informal process established by
39 the employing agency, in order to ascertain his or her rights in

1 connection with a possible unfair practice under chapter 49.60 RCW
2 against the person; and (ii) requests his or her identity or any
3 identifying information not be disclosed.

4 (ee) Investigative records compiled by an employing agency
5 conducting a current investigation of a possible unfair practice under
6 chapter 49.60 RCW or of a possible violation of other federal, state,
7 or local laws prohibiting discrimination in employment.

8 (ff) Business related information protected from public inspection
9 and copying under RCW 15.86.110.

10 (gg) Financial, commercial, operations, and technical and research
11 information and data submitted to or obtained by the clean Washington
12 center in applications for, or delivery of, program services under
13 chapter 70.95H RCW.

14 (hh) Information and documents created specifically for, and
15 collected and maintained by a quality improvement committee pursuant to
16 RCW 43.70.510, regardless of which agency is in possession of the
17 information and documents.

18 (ii) Personal information in files maintained in a data base
19 created under RCW 43.07.360.

20 (jj) Customer-usage records of a public agency that distributes
21 electricity to retail electric consumers.

22 (kk) Financial or commercial information furnished to or developed
23 by a public agency as part of a proposal, bid, or negotiation for
24 electricity or related services.

25 (2) Except for information described in subsection (1)(c)(i) of
26 this section and confidential income data exempted from public
27 inspection pursuant to RCW 84.40.020, the exemptions of this section
28 are inapplicable to the extent that information, the disclosure of
29 which would violate personal privacy or vital governmental interests,
30 can be deleted from the specific records sought. No exemption may be
31 construed to permit the nondisclosure of statistical information not
32 descriptive of any readily identifiable person or persons.

33 (3) Inspection or copying of any specific records exempt under the
34 provisions of this section may be permitted if the superior court in
35 the county in which the record is maintained finds, after a hearing
36 with notice thereof to every person in interest and the agency, that
37 the exemption of such records is clearly unnecessary to protect any
38 individual's right of privacy or any vital governmental function.

1 (4) Agency responses refusing, in whole or in part, inspection of
2 any public record shall include a statement of the specific exemption
3 authorizing the withholding of the record (or part) and a brief
4 explanation of how the exemption applies to the record withheld.

5 **Sec. 29.** RCW 80.12.020 and 1981 c 117 s 1 are each amended to read
6 as follows:

7 No public service company shall sell, lease, assign or otherwise
8 dispose of the whole or any part of its franchises, properties or
9 facilities whatsoever, which are necessary or useful in the performance
10 of its duties to the public, and no public service company shall, by
11 any means whatsoever, directly or indirectly, merge or consolidate any
12 of its franchises, properties or facilities with any other public
13 service company, without having secured from the commission an order
14 authorizing it so to do: PROVIDED, That this section shall not apply
15 to any sale, lease, assignment or other disposal of such franchises,
16 properties or facilities to a special purpose district as defined in
17 RCW 36.96.010, city, county, or town.

18 After July 1, 1999, this section does not apply to the generating
19 plant and equipment of any electrical company.

20 **Sec. 30.** RCW 80.12.040 and 1961 c 14 s 80.12.040 are each amended
21 to read as follows:

22 No public service company shall, directly or indirectly, purchase,
23 acquire, or become the owner of any of the franchises, properties,
24 facilities, capital stocks or bonds of any other public service company
25 unless authorized so to do by the commission. Nothing contained in
26 this chapter shall prevent the holding of stocks or other securities
27 heretofore lawfully acquired or prohibit, upon the surrender or
28 exchange of said stocks or other securities pursuant to a
29 reorganization plan, the purchase, acquisition, taking or holding by
30 the owner of a proportionate amount of the stocks or other securities
31 of any new corporation organized to take over at foreclosure or other
32 sale, the property of the corporation the stocks or securities of which
33 have been thus surrendered or exchanged. Any contract by any public
34 service company for the purchase, acquisition, assignment or transfer
35 to it of any of the stocks or other securities of any other public
36 service company, directly or indirectly, without the approval of the
37 commission shall be void and of no effect.

1 After July 1, 1999, this section does not apply to the generating
2 plant and equipment of any electrical company.

3 **Sec. 31.** RCW 80.24.010 and 1994 c 83 s 1 are each amended to read
4 as follows:

5 Every public service company subject to regulation by the
6 commission shall, on or before the date specified by the commission for
7 filing annual reports under RCW 80.04.080, file with the commission a
8 statement on oath showing its gross operating revenue from intrastate
9 operations for the preceding calendar year or portion thereof and pay
10 to the commission a fee equal to one-tenth of one percent of the first
11 fifty thousand dollars of gross operating revenue, plus two-tenths of
12 one percent of any gross operating revenue in excess of fifty thousand
13 dollars: PROVIDED, That the fee shall in no case be less than one
14 dollar.

15 The percentage rates of gross operating revenue to be paid in any
16 year may be decreased by the commission for any class of companies
17 subject to the payment of such fees, by general order entered before
18 March 1st of such year, and for such purpose such companies shall be
19 classified as follows:

20 Electrical, gas, water, telecommunications, and irrigation
21 companies shall constitute class one. Every other company subject to
22 regulation by the commission, for which regulatory fees are not
23 otherwise fixed by law shall pay fees as herein provided and shall
24 constitute additional classes according to kinds of businesses engaged
25 in.

26 Any payment of the fee imposed by this section made after its due
27 date shall include a late fee of two percent of the amount due.
28 Delinquent fees shall accrue interest at the rate of one percent per
29 month.

30 After July 1, 1999, the regulatory fees of electrical companies
31 shall not be based on revenue from generating plants and equipment.

32 **Sec. 32.** RCW 80.28.020 and 1961 c 14 s 80.28.020 are each amended
33 to read as follows:

34 Whenever the commission shall find, after a hearing had upon its
35 own motion, or upon complaint, that the rates or charges demanded,
36 exacted, charged or collected by any gas company, electrical company or
37 water company, for gas, electricity or water, or in connection

1 therewith, or that the rules, regulations, practices or contracts
2 affecting such rates or charges are unjust, unreasonable, unjustly
3 discriminatory or unduly preferential, or in any wise in violation of
4 the provisions of the law, or that such rates or charges are
5 insufficient to yield a reasonable compensation for the service
6 rendered, the commission shall determine the just, reasonable, or
7 sufficient rates, charges, regulations, practices or contracts to be
8 thereafter observed and in force, and shall fix the same by order.

9 After July 1, 1999, this section does not apply to the rates and
10 charges for electricity sold by electrical companies to retail electric
11 customers, except for market-based rates adopted pursuant to section 9
12 of this act.

13 **Sec. 33.** RCW 80.28.050 and 1961 c 14 s 80.28.050 are each amended
14 to read as follows:

15 Every gas company, electrical company and water company shall file
16 with the commission and shall print and keep open to public inspection
17 schedules in such form as the commission may prescribe, showing all
18 rates and charges made, established or enforced, or to be charged or
19 enforced, all forms of contract or agreement, all rules and regulations
20 relating to rates, charges or service, used or to be used, and all
21 general privileges and facilities granted or allowed by such gas
22 company, electrical company or water company.

23 After July 1, 1999, this section does not apply to the rates and
24 charges for electricity sold by electrical companies to retail electric
25 customers, except for market-based rates adopted pursuant to section 9
26 of this act.

27 NEW SECTION. **Sec. 34.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

31 NEW SECTION. **Sec. 35.** Sections 1 through 27 of this act
32 constitute a new chapter in Title 80 RCW.

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