
SENATE BILL 5938

State of Washington

56th Legislature

1999 Regular Session

By Senators Fraser, Hochstatter, B. Sheldon and Patterson

Read first time 02/17/1999. Referred to Committee on Energy,
Technology & Telecommunications.

1 AN ACT Relating to establishing a moratorium on bypassing the
2 facilities of local electric utilities; adding a new chapter to Title
3 80 RCW; providing an expiration date; and declaring an emergency.

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

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

6 (1) The inappropriate shifting of costs of the electric system
7 between or among customers does not constitute fair and efficient
8 competition, is contrary to the public interest, and should be avoided;

9 (2) The threat of uneconomic bypass is real and immediate. Several
10 companies are presently making concerted efforts to bypass their local
11 utilities, and shift costs to other customers;

12 (3) In order to preserve options for legislative action, protect
13 all customers against unfair cost shifting, and promote continued
14 investment needed for reliability and system improvements, the status
15 quo in the electric utility industry should be maintained for a
16 reasonable period until comprehensive legislative policy is enacted to
17 protect consumers and guarantee fair and efficient competition.
18 However, a comprehensive legislative policy must be adopted within five
19 years;

1 (4) A moratorium on bypassing the facilities of local electric
2 utilities will preserve the status quo; and

3 (5) An exception to the moratorium on bypassing the facilities of
4 local electric utilities is warranted for customers who reimburse costs
5 that they would otherwise shift to other customers by bypassing the
6 facilities of their local electric utility.

7 NEW SECTION. **Sec. 2.** The definitions in this section apply
8 throughout this chapter unless the context clearly requires otherwise.

9 (1) "Bypassing the facilities of a local electric utility" means
10 the transmitting or distributing of electricity to customer premises or
11 facilities by a person who, as of January 1, 1999, had not provided
12 these services to the premises or facilities and where an electric
13 utility that had provided these services before January 1, 1999, is
14 willing and able to provide services under its normal terms and
15 conditions of service or otherwise.

16 (2) "Electric utility" includes an electric company subject to the
17 jurisdiction of the Washington utilities and transportation commission,
18 a municipal corporation or special district that owns or operates any
19 electric plant or service, municipal electric utility, public utility
20 district, and cooperative or mutual electric company.

21 (3) "Person" means an individual, company, corporation, municipal
22 corporation, governmental district, agency of government, partnership,
23 association, limited liability company, or other form of entity and
24 includes an electric utility.

25 (4) "Public utility regulatory policies act (PURPA) costs" means
26 the above-market portion of costs, as determined under section 4(2) of
27 this act, incurred under contracts for the output of electric
28 cogeneration plants owned or operated by nonutility generators.

29 NEW SECTION. **Sec. 3.** There is established a moratorium on
30 bypassing the facilities of local electric utilities. During this
31 moratorium: (1) No electric utility or any other person may offer or
32 provide facilities or services for bypassing the facilities of a local
33 electric utility and no person may bypass the facilities of a local
34 electric utility; and (2) no electric utility or any other person may
35 apply for permits for, construct, or have constructed on its behalf or
36 for its use or benefit any electric line or other facility for the

1 transmission or distribution of electricity that will be used to bypass
2 the facilities of a local electric utility.

3 NEW SECTION. **Sec. 4.** (1) An electric utility may establish a
4 cost-shifting reimbursement fee as provided in this section. A person
5 who pays a cost-shifting reimbursement fee is exempt from the
6 moratorium imposed by section 3 of this act. A cost-shifting
7 reimbursement fee shall recover the following items related to the
8 person:

9 (a) The fair value of bypassed transmission and distribution
10 facilities;

11 (b) Past, present, and future charges for conservation, PURPA
12 costs, and for other public purposes;

13 (c) The difference, if any, between the state and local taxes
14 payable after bypass and the state and local taxes that would be
15 payable if the person continued to be served by the local electric
16 utility; and

17 (d) Any other costs that may be shifted to other customers as a
18 result of bypassing the facilities of the electric utility, as
19 determined by the Washington utilities and transportation commission in
20 the case of an electric utility subject to its jurisdiction or by the
21 governing body of an electric utility not subject to the jurisdiction
22 of the commission.

23 (2) PURPA costs shall be the amount, if any, by which the payments
24 by the electrical company for the remaining duration of all of its
25 agreements for the purchase of the output of electric cogeneration
26 plants owned or operated by nonutility generators (taking into account
27 existing mitigation of such payments in effect as of the date of
28 determination of PURPA costs for a specific person) exceeds the market
29 value of electricity during the remaining duration of the agreements,
30 determined monthly by using the Dow Jones mid columbia, or a comparable
31 successor market index, monthly average market price of electricity.

32 (3) Costs related to a person shall be based on the amount of
33 electricity previously transmitted or distributed to the person and the
34 previous charges paid by such a person.

35 (4) An electric company subject to the jurisdiction of the
36 Washington utilities and transportation commission that proposes to
37 establish a cost-shifting reimbursement fee for a specific customer
38 shall make a filing setting forth the proposed fee. Within sixty days

1 after the date of filing, the Washington utilities and transportation
2 commission shall approve the fee if it finds that the fee conforms to
3 the requirements of this chapter. If the commission finds that the
4 proposed fee does not conform to the requirements of this chapter, it
5 shall specify any changes required to conform to the requirements of
6 this chapter. The company may submit a revised proposed fee and the
7 review and approval process of this subsection shall recommence.

8 (5) The amount of a cost-shifting reimbursement fee of a municipal
9 electric utility, public utility district, or cooperative or mutual
10 company shall be established in accordance with rules adopted by its
11 governing board.

12 (6) An electric utility shall be entitled to and shall recover the
13 full amount of its investments and costs identified in subsection
14 (1)(a) and (b) of this section related to a person who bypasses its
15 transmission and distribution facilities. Exemption from the
16 moratorium created in section 3 of this act shall constitute a contract
17 between the person so exempted and the electric utility that the person
18 will pay the cost-shifting reimbursement fee until such costs are fully
19 recovered. The person shall pay the cost-shifting reimbursement fee
20 directly to the electric utility. The utility shall forward the
21 portions of the fee identified in subsection (1)(c) of this section to
22 state or local taxing authorities as directed by the Washington
23 utilities and transportation commission or the governing board and
24 shall make the disposition of the portion of the fee identified in
25 subsection (1)(d) of this section as directed in the order of the
26 commission or governing board determining such costs.

27 NEW SECTION. **Sec. 5.** The Washington utilities and transportation
28 commission may bring an action in the superior court for Thurston
29 county for an injunction against any act that may adversely affect an
30 electric utility subject to its jurisdiction where such an act violates
31 or may result in a violation of section 3 of this act. An electric
32 utility that is adversely affected by an act that violates or that may
33 result in a violation of section 3 of this act may bring an action in
34 the superior court for the county in which its principal office is
35 located for an injunction against such an act.

36 NEW SECTION. **Sec. 6.** Section 3 of this act expires June 30, 2004.

1 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and takes effect
4 immediately.

5 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act constitute
6 a new chapter in Title 80 RCW.

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