ESSB 5840 - CONF REPT
By Conference Committee

NOT CONSIDERED 04/26/2009

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 19.285.030 and 2007 c 1 s 3 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Attorney general" means the Washington state office of the attorney general.

(2) "Auditor" means: (a) The Washington state auditor's office or its designee for qualifying utilities under its jurisdiction that are not investor-owned utilities; or (b) an independent auditor selected by a qualifying utility that is not under the jurisdiction of the state auditor and is not an investor-owned utility.

(3) "Biomass energy" includes: (a) Byproducts of pulping and wood manufacturing process; (b) animal waste; (c) solid organic fuels from wood; (d) forest or field residues; (e) wooden demolition or construction debris; (f) food waste; (g) liquors derived from algae and other sources; (h) dedicated energy crops; (i) biosolids; and (j) yard waste. "Biomass energy" does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; wood from old growth forests; or municipal solid waste.

(4) "Commission" means the Washington state utilities and transportation commission.

((~~(4)~~)) (5) "Conservation" means any reduction in electric power consumption resulting from increases in the efficiency of energy use, production, or distribution.

((~~(5)~~)) (6) "Cost-effective" has the same meaning as defined in RCW 80.52.030.

((~~(6)~~)) (7) "Council" means the Washington state apprenticeship and training council within the department of labor and industries.

((~~(7)~~)) (8) "Customer" means a person or entity that purchases electricity for ultimate consumption and not for resale.

((~~(8)~~)) (9) "Department" means the department of community, trade, and economic development or its successor.

((~~(9)~~)) (10) "Distributed generation" means an eligible renewable resource where the generation facility or any integrated cluster of such facilities has a generating capacity of not more than ((~~five~~)) seven megawatts.

((~~(10)~~)) (11) "Eligible renewable resource" means:

(a) Electricity from a generation facility powered by a renewable resource other than fresh water that commences operation after March 31, 1999, where((~~: (i)~~)) the facility is located ((~~in the Pacific Northwest; or (ii) the electricity from the facility is delivered into Washington state on a real-time basis without shaping, storage, or integration services~~)) within the geographic boundary of the western electricity coordinating council or its successor entity; ((~~or~~))

(b) Incremental electricity produced as a result of efficiency improvements completed after March 31, 1999, to hydroelectric generation ((~~projects~~)) facilities owned by a qualifying utility and located in the Pacific Northwest or to hydroelectric generation in water supply pipes, irrigation pipes ((~~and~~)), or canals located in the Pacific Northwest, where the additional generation in either case does not result in new water diversions or ((~~impoundments~~)) an increase in the amount of water storage;

(c) That portion of incremental electricity produced as a result of efficiency improvements completed after March 31, 1999, attributable to a qualifying utility's share of the electricity output to hydroelectric generation facilities whose energy output is marketed by the Bonneville power administration where the additional generation does not result in new water diversions or an increase in the amount of water storage; or

(d) Electricity from a biomass energy powered generation facility located in Washington that commenced operation before March 31, 1999, that is: (i) Owned by a qualifying utility as of the effective date of this section; or (ii) subject to a maximum of twenty-five percent of the electrical output delivered to a qualifying utility, owned by an

entity other than a qualifying utility as of the effective date of this section.

((~~(11)~~)) (12) "Investor-owned utility" has the same meaning as defined in RCW 19.29A.010.

((~~(12)~~)) (13) "Load" means the amount of kilowatt-hours of electricity delivered in the most recently completed year by a qualifying utility to its Washington retail customers.

((~~(13)~~)) (14) "Nonpower attributes" means all environmentally related characteristics, exclusive of energy, capacity reliability, and other electrical power service attributes, that are associated with the generation of electricity from a renewable resource, including but not limited to the facility's fuel type, geographic location, vintage, qualification as an eligible renewable resource, and avoided emissions of pollutants to the air, soil, or water, and avoided emissions of carbon dioxide and other greenhouse gases. For an anaerobic digester, its nonpower attributes may be separated into avoided emissions of carbon dioxide, and other greenhouse gases, and into renewable energy credits.

((~~(14)~~)) (15) "Pacific Northwest" has the same meaning as defined for the Bonneville power administration in section 3 of the Pacific Northwest electric power planning and conservation act (94 Stat. 2698; 16 U.S.C. Sec. 839a).

((~~(15)~~)) (16) "Public facility" has the same meaning as defined in RCW 39.35C.010.

((~~(16)~~)) (17) "Qualifying utility" means an electric utility, as the term "electric utility" is defined in RCW 19.29A.010, that serves more than twenty-five thousand customers in the state of Washington. The number of customers served may be based on data reported by a utility in form 861, "annual electric utility report," filed with the energy information administration, United States department of energy.

((~~(17)~~)) (18) "Renewable energy credit" means a tradable certificate of proof of at least one megawatt-hour of an eligible renewable resource where the generation facility is not powered by fresh water, the certificate includes all of the nonpower attributes associated with that one megawatt-hour of electricity, and the certificate is verified by a renewable energy credit tracking system selected by the department.

((~~(18)~~)) (19) "Renewable resource" means: (a) Water; (b) wind; (c) solar energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or tidal power; (g) gas from sewage treatment facilities; (h) biodiesel fuel as defined in RCW 82.29A.135 that is not derived from crops raised on land cleared from old growth ((~~or first-growth~~)) forests where the clearing occurred after December 7, 2006; ((~~and~~)) or (i) biomass energy ((~~based on animal waste or solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include (i) wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; (ii) black liquor byproduct from paper production; (iii) wood from old growth forests; or (iv) municipal solid waste~~)).

((~~(19)~~)) (20) "Rule" means rules adopted by an agency or other entity of Washington state government to carry out the intent and purposes of this chapter.

((~~(20)~~)) (21) "Year" means the twelve-month period commencing January 1st and ending December 31st.

Sec. 2. RCW 19.285.040 and 2007 c 1 s 4 are each amended to read as follows:

(1) Each qualifying utility shall pursue all available conservation that is cost-effective, reliable, and feasible.

(a) By January 1, 2010, using methodologies consistent with those used by the Pacific Northwest electric power and conservation planning council in its most recently published regional power plan, each qualifying utility shall identify its achievable cost-effective conservation potential through 2019. At least every two years thereafter, the qualifying utility shall review and update this assessment for the subsequent ten-year period.

(b) ((~~Beginning~~)) By January 1, 2010, each qualifying utility shall establish and make publicly available a biennial acquisition target for cost-effective conservation consistent with its identification of achievable opportunities in (a) of this subsection, and meet that target during the subsequent two-year period. At a minimum, each biennial acquisition target must be no lower than the qualifying utility's pro rata share for that two-year period of its cost-effective conservation potential for the subsequent ten-year period. A qualifying utility may not use incremental electricity produced as a

result of efficiency improvements to hydroelectric generation facilities to meet its biennial conservation acquisition target if the improvements were used to meet its targets under subsection (2)(a) of this section.

(c) In meeting its conservation targets, a qualifying utility may count high-efficiency cogeneration owned and used by a retail electric customer to meet its own needs. High-efficiency cogeneration is the sequential production of electricity and useful thermal energy from a common fuel source, where, under normal operating conditions, the facility ((~~has a useful thermal energy output of no less than thirty-three percent of the total energy output~~)) is designed to have a projected overall thermal conversion efficiency of at least seventy percent. For the purposes of this section, "overall thermal conversion efficiency" means the output of electricity plus usable heat divided by fuel input. The reduction in load due to high-efficiency cogeneration shall be((~~: (i) Calculated as the ratio of the fuel chargeable to power heat rate of the cogeneration facility compared to the heat rate on a new and clean basis of a best-commercially available technology combined-cycle natural gas-fired combustion turbine; and (ii)~~)) counted towards meeting the biennial conservation target in the same manner as other production conservation savings.

(d) The commission may determine if a conservation program implemented by an investor-owned utility is cost-effective based on the commission's policies and practice.

(e) The commission may rely on its standard practice for review and approval of investor-owned utility conservation targets.

(2)(a) Each qualifying utility shall use eligible renewable resources or acquire equivalent renewable energy credits, or a combination of both, to meet the following annual targets:

(i) At least three percent of its load by January 1, 2012, and each year thereafter through December 31, 2015;

(ii) At least ((~~nine~~)) ten and twenty-five one-hundredths of one percent of its load by January 1, 2016, and each year thereafter through December 31, 2019; and

(iii) At least ((~~fifteen~~)) sixteen and twenty-five one-hundredths of one percent of its load by January 1, 2020, and each year thereafter.

(b) It must be the goal of the state for each qualifying utility to use eligible renewable resources or acquire equivalent renewable energy credits or a combination of both to meet an annual renewable resource goal of at least twenty percent of its load by January 1, 2025, and each year thereafter.

(c) Except as provided in (k) of this subsection, a qualifying utility may count distributed generation at double the facility's electrical output if the utility: (i) Owns or has contracted for the distributed generation and the associated renewable energy credits; or (ii) has contracted to purchase the associated renewable energy credits.

((~~(c)~~)) (d) In meeting the annual targets in (a) of this subsection, a qualifying utility shall calculate its annual load based on the average of the utility's load for the previous two years.

((~~(d)~~)) (e) A qualifying utility with annual sales of less than two million megawatt hours is considered in compliance with an annual target in (a) of this subsection if: (i) In any given target year its load growth, measured as load served in the target year compared to the utility's annual average load served in 2010 and 2011, is less than the target in (a) of this subsection for that year; and (ii) for that target year, the utility meets one hundred percent of its load growth as calculated in (e)(i) of this subsection with eligible renewable resources or renewable energy credits.

(f) A qualifying utility shall be considered in compliance with an annual target in (a) of this subsection if: (i) The utility's weather-adjusted load for the previous three years on average did not increase over that time period; (ii) after December 7, 2006, the utility did not commence or renew ownership or incremental purchases of electricity from resources other than renewable resources other than on a daily spot price basis and the electricity is not offset by equivalent renewable energy credits; and (iii) the utility invested at least one percent of its total annual retail revenue requirement that year on eligible renewable resources, renewable energy credits, or a combination of both.

((~~(e)~~)) (g) The requirements of this section may be met for any given target year with renewable energy credits produced during that year, the preceding two years, or the subsequent year. Each renewable

energy credit may be used only once to meet the requirements of this section.

((~~(f)~~)) (h) In complying with the targets established in (a) of this subsection, a qualifying utility may not count:

(i) Eligible renewable resources or distributed generation where the associated renewable energy credits are owned by a separate entity; ((~~or~~))

(ii) Eligible renewable resources or renewable energy credits obtained for and used in an optional pricing program such as the program established in RCW 19.29A.090; or

(iii) Efficiency improvements to hydroelectric generation facilities whose energy output is marketed by the Bonneville power administration that is attributable to any other utility other than the qualifying utility.

((~~(g)~~)) (i) Where fossil and combustible renewable resources are cofired in one generating unit located in the Pacific Northwest where the cofiring commenced after March 31, 1999, the unit shall be considered to produce eligible renewable resources in direct proportion to the percentage of the total heat value represented by the heat value of the renewable resources.

((~~(h)~~)) (j)(i) A qualifying utility that acquires an eligible renewable resource or renewable energy credit may count that acquisition at one and two-tenths times its base value:

(A) Where the eligible renewable resource comes from a facility that commenced operation after December 31, 2005; and

(B) Where the developer of the facility used apprenticeship programs approved by the council during facility construction.

(ii) The council shall establish minimum levels of labor hours to be met through apprenticeship programs to qualify for this extra credit.

((~~(i)~~)) (k)(i) A qualifying utility that acquires electricity from photovoltaic facilities or solar thermal electric systems located in Washington may count that acquisition at four times its base value.

(ii) A qualifying utility that acquires electricity from photovoltaic facilities located in Washington using solar inverters and modules manufactured in Washington, or from solar thermal electric systems located and manufactured in Washington, may count that acquisition at six times its base value.

(iii) A qualifying utility may count the electricity produced in (k)(i) and (ii) of this subsection if it: (A) Owns or has contracted for the solar energy generation and the associated renewable energy credits; or (B) has contracted to purchase the associated renewable energy credits.

(l) A qualifying utility shall be considered in compliance with an annual target in (a) of this subsection if events beyond the reasonable control of the utility that could not have been reasonably anticipated or ameliorated prevented it from meeting the renewable energy target. Such events include weather-related damage, mechanical failure, strikes, lockouts, and actions of a governmental authority that adversely affect the generation, transmission, or distribution of an eligible renewable resource under contract to a qualifying utility.

(3) Utilities that become qualifying utilities after December 31, 2006, shall meet the requirements in this section on a time frame comparable in length to that provided for qualifying utilities as of December 7, 2006.

Sec. 3. RCW 19.285.050 and 2007 c 1 s 5 are each amended to read as follows:

(1)(a) A qualifying utility shall be considered in compliance with an annual target created in RCW 19.285.040(2) for a given year if the utility invested four percent of its total annual retail revenue requirement on the incremental costs of eligible renewable resources, the cost of renewable energy credits, or a combination of both, but a utility may elect to invest more than this amount.

(b) A qualifying utility shall be considered in compliance with an annual target in RCW 19.285.040(2) if, beginning in 2016 and each target year thereafter until December 31, 2019, the qualifying utility has between one hundred fifty thousand and two hundred thousand retail customers in Washington as of the effective date of this section and has invested at least three percent of its total annual retail revenue requirement on the incremental costs of that year on eligible renewable resources, renewable energy credits, or a combination of both.

(c) The incremental cost of an eligible renewable resource is calculated as the difference between the levelized delivered cost of the eligible renewable resource, regardless of ownership, compared to the levelized delivered cost of an equivalent amount of reasonably

available substitute resources that do not qualify as eligible renewable resources, where the resources being compared have the same contract length or facility life.

(2) An investor-owned utility is entitled to recover all prudently incurred costs associated with compliance with this chapter. The commission shall address cost recovery issues of qualifying utilities that are investor-owned utilities that serve both in Washington and in other states in complying with this chapter.

Sec. 4. RCW 19.285.070 and 2007 c 1 s 7 are each amended to read as follows:

(1) On or before June 1, 2012, and annually thereafter, each qualifying utility shall report to the department on its progress in the preceding year in meeting the targets established in RCW 19.285.040, including expected electricity savings from the biennial conservation target, expenditures on conservation, actual electricity savings results, the utility's annual load for the prior two years, the amount of megawatt-hours needed to meet the annual renewable energy target, the amount of megawatt-hours of each type of eligible renewable resource acquired, the type and amount of renewable energy credits acquired, and the percent of its total annual retail revenue requirement invested in the incremental cost of eligible renewable resources and the cost of renewable energy credits. ((~~For each year that a qualifying utility elects to demonstrate alternative compliance under RCW 19.285.040(2) (d) or (i) or 19.285.050(1), it must include in its annual report relevant data to demonstrate that it met the criteria in that section.~~)) A qualifying utility may submit its report to the department in conjunction with its annual obligations in chapter 19.29A RCW.

(2) A qualifying utility that is an investor-owned utility shall also report all information required in subsection (1) of this section to the commission, and on or before June 1, 2014, and annually thereafter, report to the commission its compliance in meeting the targets established in RCW 19.285.040. All other qualifying utilities shall also make all information required in subsection (1) of this section available to the auditor, and on or before June 1, 2014, and annually thereafter, make available to the auditor its determination of compliance in meeting the targets established in RCW 19.285.040. For

each year that a qualifying utility elects to demonstrate alternative compliance under RCW 19.285.040(2) or 19.285.050(1), it must include in its annual report relevant data to demonstrate that it met the criteria in that section.

(3) A qualifying utility shall also make reports required in this section available to its customers.

Sec. 5. RCW 19.285.080 and 2007 c 1 s 8 are each amended to read as follows:

(1) The commission may adopt rules to ensure the proper implementation and enforcement of this chapter as it applies to investor-owned utilities.

(2) The department shall adopt rules concerning only process, timelines, and documentation to ensure the proper implementation of this chapter as it applies to qualifying utilities that are not investor-owned utilities. Those rules include, but are not limited to, rules associated with a qualifying utility's development of conservation targets under RCW 19.285.040(1); a qualifying utility's decision to pursue alternative compliance in RCW 19.285.040(2) ((~~(d)~~)) (f) or ((~~(i)~~)) (l) or 19.285.050(1); and the format and content of reports required in RCW 19.285.070. Nothing in this subsection may be construed to restrict the rate-making authority of the commission or a qualifying utility as otherwise provided by law.

(3) The commission and department may coordinate in developing rules related to process, timelines, and documentation that are necessary for implementation of this chapter.

(4)(a) Pursuant to the administrative procedure act, chapter 34.05 RCW, rules needed for the implementation of this chapter must be adopted by ((~~December 31, 2007~~)) June 30, 2010. These rules may be revised as needed to carry out the intent and purposes of this chapter.

(b) Within six months of the adoption by the Pacific Northwest electric power and conservation planning council of each of its regional power plans, the department shall initiate rule making to consider adopting any changes in methodologies used by the Pacific Northwest electric power and conservation planning council that would impact a qualifying utility's conservation potential assessment in accordance with RCW 19.285.040(1).

(c) Within six months of the adoption by the Pacific Northwest electric power and conservation planning council of each of its regional power plans, the commission shall initiate rule making to consider adopting any changes in methodologies used by the Pacific Northwest electric power and conservation planning council that would impact a qualifying utility's conservation potential assessment in accordance with RCW 19.285.040(1).

(d) Rules adopted under (b) and (c) of this subsection must be applied to the next biennial target that begins at least six months after the adoption date of the rules.

NEW SECTION. **Sec. 6.** (1) Within existing resources, the department of community, trade, and economic development shall report to the legislature by December 1, 2009, its recommendations on how low-cost hydroelectric generation may be used to firm, shape, and integrate renewable energy resources into the northwestern electric grid for delivery to Washington residents. The report must make recommendations on the economic and environmental benefits of using hydroelectric generation in place of fossil fuel-fired generation for integration services. The report must include results from existing studies and analyses from the Pacific Northwest electric power and conservation planning council, the Bonneville power administration, and other relevant organizations. The department of community, trade, and economic development shall also consider information and recommendations from integration service providers and users.

(2) By June 30, 2011, the joint legislative audit and review committee shall conduct a study of the electricity cost impacts for each qualifying utility to meet the 2016 and 2020 renewable resource and conservation targets under chapter 19.285 RCW. The study must include the following:

(a) An analysis of the impacts on each utility's commercial, industrial, and residential customers, including an additional analysis of the impacts on low-income residential customers;

(b) An inventory of current and projected eligible renewable resource facilities within the geographic boundary of the western electricity coordinating council and a determination if the electric output of these facilities will be used by qualifying utilities in Washington; and

(c) An examination of the effect of the cost cap provisions in chapter 19.285 RCW and a determination whether the cost cap provisions provide appropriate relief to ratepayers for the costs of acquiring eligible renewable resources or renewable energy credits in compliance with this act."

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On page 1, line 1 of the title, after "act;" strike the remainder of the title and insert "amending RCW 19.285.030, 19.285.040, 19.285.050, 19.285.070, and 19.285.080; and creating a new section."

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