
SENATE BILL 5510

State of Washington

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By Senators Rockefeller and Nelson

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1 AN ACT Relating to null power; amending RCW 19.29A.010, 19.29A.060,
2 and 80.80.040; and reenacting and amending RCW 80.80.010.

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

4 **Sec. 1.** RCW 19.29A.010 and 2000 c 213 s 2 are each amended to read
5 as follows:

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

8 (1) "Biomass generation" means electricity derived from burning
9 solid organic fuels from wood, forest, or field residue, or dedicated
10 energy crops that do not include wood pieces that have been treated
11 with chemical preservatives such as creosote, pentachlorophenol, or
12 copper-chroma-arsenic.

13 (2) "Bonneville power administration system mix" means a generation
14 mix sold by the Bonneville power administration that is net of any
15 resource specific sales and that is net of any electricity sold to
16 direct service industrial customers, as defined in section 3(8) of the
17 Pacific Northwest electric power planning and conservation act (16
18 U.S.C. Sec. 839(a)(8)).

1 (3) "Coal generation" means the electricity produced by a
2 generating facility that burns coal as the primary fuel source.

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

4 (5) "Conservation" means an increase in efficiency in the use of
5 energy use that yields a decrease in energy consumption while providing
6 the same or higher levels of service. Conservation includes low-income
7 weatherization programs.

8 (6) "Consumer-owned utility" means a municipal electric utility
9 formed under Title 35 RCW, a public utility district formed under Title
10 54 RCW, an irrigation district formed under chapter 87.03 RCW, a
11 cooperative formed under chapter 23.86 RCW, or a mutual corporation or
12 association formed under chapter 24.06 RCW, that is engaged in the
13 business of distributing electricity to more than one retail electric
14 customer in the state.

15 (7) "Declared resource" means an electricity source specifically
16 identified by a retail supplier to serve retail electric customers. A
17 declared resource includes a stated quantity of electricity tied
18 directly to a specified generation facility or set of facilities either
19 through ownership or contract purchase, or a contractual right to a
20 stated quantity of electricity from a specified generation facility or
21 set of facilities.

22 (8) "Department" means the department of (~~community, trade, and~~
23 ~~economic development~~) commerce.

24 (9) "Electricity information coordinator" means the organization
25 selected by the department under RCW 19.29A.080 to: (a) Compile
26 generation data in the Northwest power pool by generating project and
27 by resource category; (b) compare the quantity of electricity from
28 declared resources reported by retail suppliers with available
29 generation from such resources; (c) calculate the net system power mix;
30 and (d) coordinate with other comparable organizations in the western
31 interconnection.

32 (10) "Electric meters in service" means those meters that record in
33 at least nine of twelve calendar months in any calendar year not less
34 than two hundred fifty kilowatt hours per month.

35 (11) "Electricity product" means the electrical energy produced by
36 a generating facility or facilities that a retail supplier sells or
37 offers to sell to retail electric customers in the state of Washington,
38 provided that nothing in this title shall be construed to mean that

1 electricity is a good or product for the purposes of Title 62A RCW, or
2 any other purpose. It does not include electrical energy generated on-
3 site at a retail electric customer's premises.

4 (12) "Electric utility" means a consumer-owned or investor-owned
5 utility as defined in this section.

6 (13) "Electricity" means electric energy measured in kilowatt
7 hours, or electric capacity measured in kilowatts, or both.

8 (14) "Fuel mix" means the actual or imputed sources of electricity
9 sold to retail electric customers, expressed in terms of percentage
10 contribution by resource category. The total fuel mix included in each
11 disclosure shall total one hundred percent.

12 (15) "Geothermal generation" means electricity derived from thermal
13 energy naturally produced within the earth.

14 (16) "Governing body" means the council of a city or town, the
15 commissioners of an irrigation district, municipal electric utility, or
16 public utility district, or the board of directors of an electric
17 cooperative or mutual association that has the authority to set and
18 approve rates.

19 (17) "High efficiency cogeneration" means electricity produced by
20 equipment, such as heat or steam used for industrial, commercial,
21 heating, or cooling purposes, that meets the federal energy regulatory
22 commission standards for qualifying facilities under the public utility
23 regulatory policies act of 1978.

24 (18) "Hydroelectric generation" means a power source created when
25 water flows from a higher elevation to a lower elevation and the flow
26 is converted to electricity in one or more generators at a single
27 facility.

28 (19) "Investor-owned utility" means a company owned by investors
29 that meets the definition of RCW 80.04.010 and is engaged in
30 distributing electricity to more than one retail electric customer in
31 the state.

32 (20) "Landfill gas generation" means electricity produced by a
33 generating facility that uses waste gases produced by the decomposition
34 of organic materials in landfills.

35 (21) "Natural gas generation" means electricity produced by a
36 generating facility that burns natural gas as the primary fuel source.

37 (22) "Northwest power pool" means the generating resources included

1 in the United States portion of the Northwest power pool area as
2 defined by the western systems coordinating council.

3 (23) "Net system power mix" means the fuel mix in the Northwest
4 power pool, net of: (a) Any declared resources in the Northwest power
5 pool identified by in-state retail suppliers or out-of-state entities
6 that offer electricity for sale to retail electric customers; (b) any
7 electricity sold by the Bonneville power administration to direct
8 service industrial customers; and (c) any resource specific sales made
9 by the Bonneville power administration.

10 (24) "Oil generation" means electricity produced by a generating
11 facility that burns oil as the primary fuel source.

12 (25) "Proprietary customer information" means: (a) Information
13 that relates to the source and amount of electricity used by a retail
14 electric customer, a retail electric customer's payment history, and
15 household data that is made available by the customer solely by virtue
16 of the utility-customer relationship; and (b) information contained in
17 a retail electric customer's bill.

18 (26) "Renewable resources" means electricity generation facilities
19 fueled by: (a) Water; (b) wind; (c) solar energy; (d) geothermal
20 energy; (e) landfill gas; (~~(f)~~) (f) biomass energy based on solid
21 organic fuels from wood, forest, or field residues, or dedicated energy
22 crops that do not include wood pieces that have been treated with
23 chemical preservatives such as creosote, pentachlorophenol, or copper-
24 chrome-arsenic; or (g) null power.

25 (27) "Resale" means the purchase and subsequent sale of electricity
26 for profit, but does not include the purchase and the subsequent sale
27 of electricity at the same rate at which the electricity was purchased.

28 (28) "Retail electric customer" means a person or entity that
29 purchases electricity for ultimate consumption and not for resale.

30 (29) "Retail supplier" means an electric utility that offers an
31 electricity product for sale to retail electric customers in the state.

32 (30) "Small utility" means any consumer-owned utility with twenty-
33 five thousand or fewer electric meters in service, or that has an
34 average of seven or fewer customers per mile of distribution line.

35 (31) "Solar generation" means electricity derived from radiation
36 from the sun that is directly or indirectly converted to electrical
37 energy.

38 (32) "State" means the state of Washington.

1 (33) "Waste incineration generation" means electricity derived from
2 burning solid or liquid wastes from businesses, households,
3 municipalities, or waste treatment operations.

4 (34) "Wind generation" means electricity created by movement of air
5 that is converted to electrical energy.

6 (35) "Nonpower attributes" has the same meaning as defined under
7 RCW 19.285.030.

8 (36) "Null power" means energy, capacity, reliability, and other
9 electrical power service attributes, that are associated with the
10 generation of electricity from a renewable resource that are separated
11 from its nonpower attributes by the severing or unbundling of the
12 associated renewable energy credits.

13 (37) "Renewable energy credit" has the same meaning as defined
14 under RCW 19.285.030.

15 **Sec. 2.** RCW 19.29A.060 and 2000 c 213 s 4 are each amended to read
16 as follows:

17 (1) Each retail supplier shall disclose the fuel mix of each
18 electricity product it offers to retail electric customers as follows:

19 (a) For an electricity product comprised entirely of declared
20 resources, a retail supplier shall disclose the fuel mix for the
21 electricity product based on the quantity of electric generation from
22 those declared resources for the previous calendar year and any
23 adjustment, if taken, available under subsection (6) of this section.

24 (b) For an electricity product comprised of no declared resources,
25 a retail supplier shall report the fuel mix for the electricity product
26 as the fuel mix of net system power for the previous calendar year, as
27 determined by the electricity information coordinator under RCW
28 19.29A.080.

29 (c) For an electricity product comprised of a combination of
30 declared resources and the net system power, a retail supplier shall
31 disclose the fuel mix for the electricity product as a weighted average
32 of the megawatt-hours from declared resources and the megawatt-hours
33 from the net system power mix for the previous calendar year according
34 to the proportion of declared resources and net system power contained
35 in the electricity product.

36 (2) The disclosures required by this section shall identify the

1 percentage of the total electricity product sold by a retail supplier
2 during the previous calendar year from each of the following
3 categories:

4 (a) Coal generation;

5 (b) Hydroelectric generation;

6 (c) Natural gas generation;

7 (d) Nuclear generation; (~~and~~)

8 (e) Renewable resources, except hydroelectric generation; and

9 (f) Other generation, except that when a component of the other
10 generation category meets or exceeds two percent of the total
11 electricity product sold by a retail supplier during the previous
12 calendar year, the retail supplier shall identify the component or
13 components and display the fuel mix percentages for these component
14 sources, which may include, but are not limited to: (i) Biomass
15 generation; (ii) geothermal generation; (iii) landfill gas generation;
16 (iv) oil generation; (v) solar generation; (vi) waste incineration;
17 (~~or~~) (vii) wind generation; or (viii) null power. A retail supplier
18 may voluntarily identify any component or components within the other
19 generation category that comprises two percent or less of annual sales.

20 (3) Retail suppliers may separately report a subcategory of natural
21 gas generation to identify high efficiency cogeneration.

22 (4) Except as provided in subsection (3) of this section, a retail
23 supplier cannot include in the disclosure label any environmental
24 quality or environmental impact qualifier related to any of the
25 generation categories disclosed.

26 (5) For the portion of an electricity product purchased from the
27 Bonneville power administration, retail suppliers may disclose the
28 Bonneville power administration system mix.

29 (6) A retail supplier may adjust its reported fuel mix for known
30 changes in its declared resources for the current year based on any
31 changes in its sources of electricity supply from either generation or
32 contracts. If a retail supplier changes its fuel mix during a calendar
33 year, it shall report those changes to the electricity information
34 coordinator.

35 (7) Disclosure of the fuel mix information required in this section
36 shall be made in the following uniform format: A tabular format with
37 two columns, where the first column shall alphabetically list each
38 category and the second column shall display the corresponding

1 percentage of the total that each category represents. The percentage
2 shall be reported as a numeric value rounded to the nearest one
3 percent. The percentages listed for the categories identified must sum
4 to one hundred percent with the table displaying such a total.

5 **Sec. 3.** RCW 80.80.010 and 2009 c 565 s 54 and 2009 c 448 s 1 are
6 each reenacted and amended to read as follows:

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

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

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

15 (3) "Average available greenhouse gas emissions output" means the
16 level of greenhouse gas emissions as surveyed and determined by the
17 energy policy division of the department of commerce under RCW
18 80.80.050.

19 (4) "Baseload electric generation" means electric generation from
20 a power plant that is designed and intended to provide electricity at
21 an annualized plant capacity factor of at least sixty percent.

22 (5) "Cogeneration facility" means a power plant in which the heat
23 or steam is also used for industrial or commercial heating or cooling
24 purposes and that meets federal energy regulatory commission standards
25 for qualifying facilities under the public utility regulatory policies
26 act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

27 (6) "Combined-cycle natural gas thermal electric generation
28 facility" means a power plant that employs a combination of one or more
29 gas turbines and steam turbines in which electricity is produced in the
30 steam turbine from otherwise lost waste heat exiting from one or more
31 of the gas turbines.

32 (7) "Commission" means the Washington utilities and transportation
33 commission.

34 (8) "Consumer-owned utility" means a municipal utility formed under
35 Title 35 RCW, a public utility district formed under Title 54 RCW, an
36 irrigation district formed under chapter 87.03 RCW, a cooperative
37 formed under chapter 23.86 RCW, a mutual corporation or association

1 formed under chapter 24.06 RCW, or port district within which an
2 industrial district has been established as authorized by Title 53 RCW,
3 that is engaged in the business of distributing electricity to more
4 than one retail electric customer in the state.

5 (9) "Department" means the department of ecology.

6 (10) "Distributed generation" means electric generation connected
7 to the distribution level of the transmission and distribution grid,
8 which is usually located at or near the intended place of use.

9 (11) "Electric utility" means an electrical company or a consumer-
10 owned utility.

11 (12) "Electrical company" means a company owned by investors that
12 meets the definition of RCW 80.04.010.

13 (13) "Governing board" means the board of directors or legislative
14 authority of a consumer-owned utility.

15 (14) "Greenhouse gases" includes carbon dioxide, methane, nitrous
16 oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

17 (15) "Long-term financial commitment" means:

18 (a) Either a new ownership interest in baseload electric generation
19 or an upgrade to a baseload electric generation facility; or

20 (b) A new or renewed contract for baseload electric generation with
21 a term of five or more years for the provision of retail power or
22 wholesale power to end-use customers in this state.

23 (16) "Plant capacity factor" means the ratio of the electricity
24 produced during a given time period, measured in kilowatt-hours, to the
25 electricity the unit could have produced if it had been operated at its
26 rated capacity during that period, expressed in kilowatt-hours.

27 (17) "Power plant" means a facility for the generation of
28 electricity that is permitted as a single plant by a jurisdiction
29 inside or outside the state.

30 (18) "Upgrade" means any modification made for the primary purpose
31 of increasing the electric generation capacity of a baseload electric
32 generation facility. "Upgrade" does not include routine or necessary
33 maintenance, installation of emission control equipment, installation,
34 replacement, or modification of equipment that improves the heat rate
35 of the facility, or installation, replacement, or modification of
36 equipment for the primary purpose of maintaining reliable generation
37 output capability that does not increase the heat input or fuel usage

1 as specified in existing generation air quality permits as of July 22,
2 2007, but may result in incidental increases in generation capacity.

3 (19) "Nonpower attributes" has the same meaning as defined under
4 RCW 19.285.030.

5 (20) "Null power" means energy, capacity, reliability, and other
6 electrical power service attributes, that are associated with the
7 generation of electricity from renewable resources, that are separated
8 from its nonpower attributes by the severing or unbundling of the
9 associated renewable energy credits.

10 (21) "Renewable energy credit" has the same meaning as defined
11 under RCW 19.285.030.

12
13 **Sec. 4.** RCW 80.80.040 and 2009 c 448 s 2 are each amended to read
14 as follows:

15 (1) Beginning July 1, 2008, the greenhouse gas emissions
16 performance standard for all baseload electric generation for which
17 electric utilities enter into long-term financial commitments on or
18 after such date is the lower of:

19 (a) One thousand one hundred pounds of greenhouse gases per
20 megawatt-hour; or

21 (b) The average available greenhouse gas emissions output as
22 determined under RCW 80.80.050.

23 (2) This chapter does not apply to long-term financial commitments
24 with the Bonneville power administration.

25 (3) All baseload electric generation facilities in operation as of
26 June 30, 2008, are deemed to be in compliance with the greenhouse gas
27 emissions performance standard established under this section until the
28 facilities are the subject of long-term financial commitments. All
29 baseload electric generation that commences operation after June 30,
30 2008, and is located in Washington, must comply with the greenhouse gas
31 emissions performance standard established in subsection (1) of this
32 section.

33 (4) Null power and all electric generation facilities or power
34 plants powered exclusively by renewable resources, as defined in RCW
35 19.280.020, are deemed to be in compliance with the greenhouse gas
36 emissions performance standard established under this section.

1 (5) All cogeneration facilities in the state that are fueled by
2 natural gas or waste gas or a combination of the two fuels, and that
3 are in operation as of June 30, 2008, are deemed to be in compliance
4 with the greenhouse gas emissions performance standard established
5 under this section until the facilities are the subject of a new
6 ownership interest or are upgraded.

7 (6) In determining the rate of emissions of greenhouse gases for
8 baseload electric generation, the total emissions associated with
9 producing electricity shall be included.

10 (7) In no case shall a long-term financial commitment be determined
11 to be in compliance with the greenhouse gas emissions performance
12 standard if the commitment includes more than twelve percent of
13 electricity from unspecified sources.

14 (8) For a long-term financial commitment with multiple power
15 plants, each specified power plant must be treated individually for the
16 purpose of determining the annualized plant capacity factor and net
17 emissions, and each power plant must comply with subsection (1) of this
18 section, except as provided in subsections (3) through (5) of this
19 section.

20 (9) The department shall establish an output-based methodology to
21 ensure that the calculation of emissions of greenhouse gases for a
22 cogeneration facility recognizes the total usable energy output of the
23 process, and includes all greenhouse gases emitted by the facility in
24 the production of both electrical and thermal energy. In developing
25 and implementing the greenhouse gas emissions performance standard, the
26 department shall consider and act in a manner consistent with any rules
27 adopted pursuant to the public utilities regulatory policy act of 1978
28 (16 U.S.C. Sec. 824a-3), as amended.

29 (10) The following greenhouse gas emissions produced by baseload
30 electric generation owned or contracted through a long-term financial
31 commitment shall not be counted as emissions of the power plant in
32 determining compliance with the greenhouse gas emissions performance
33 standard:

34 (a) Those emissions that are injected permanently in geological
35 formations;

36 (b) Those emissions that are permanently sequestered by other means
37 approved by the department; and

1 (c) Those emissions sequestered or mitigated as approved under
2 subsection (16) of this section.

3 (11) In adopting and implementing the greenhouse gas emissions
4 performance standard, the department of (~~community, trade, and~~
5 ~~economic development~~) commerce energy policy division, in consultation
6 with the commission, the department, the Bonneville power
7 administration, the western electricity (~~coordination~~ ~~[coordinating]~~)
8 coordinating council, the energy facility site evaluation council,
9 electric utilities, public interest representatives, and consumer
10 representatives, shall consider the effects of the greenhouse gas
11 emissions performance standard on system reliability and overall costs
12 to electricity customers.

13 (12) In developing and implementing the greenhouse gas emissions
14 performance standard, the department shall, with assistance of the
15 commission, the department of (~~community, trade, and economic~~
16 ~~development~~) commerce energy policy division, and electric utilities,
17 and to the extent practicable, address long-term purchases of
18 electricity from unspecified sources in a manner consistent with this
19 chapter.

20 (13) The directors of the energy facility site evaluation council
21 and the department shall each adopt rules under chapter 34.05 RCW in
22 coordination with each other to implement and enforce the greenhouse
23 gas emissions performance standard. The rules necessary to implement
24 this section shall be adopted by June 30, 2008.

25 (14) In adopting the rules for implementing this section, the
26 energy facility site evaluation council and the department shall
27 include criteria to be applied in evaluating the carbon sequestration
28 plan, for baseload electric generation that will rely on subsection
29 (10) of this section to demonstrate compliance, but that will commence
30 sequestration after the date that electricity is first produced. The
31 rules shall include but not be limited to:

32 (a) Provisions for financial assurances, as a condition of plant
33 operation, sufficient to ensure successful implementation of the carbon
34 sequestration plan, including construction and operation of necessary
35 equipment, and any other significant costs;

36 (b) Provisions for geological or other approved sequestration
37 commencing within five years of plant operation, including full and

1 sufficient technical documentation to support the planned
2 sequestration;

3 (c) Provisions for monitoring the effectiveness of the
4 implementation of the sequestration plan;

5 (d) Penalties for failure to achieve implementation of the plan on
6 schedule;

7 (e) Provisions for an owner to purchase emissions reductions in the
8 event of the failure of a sequestration plan under subsection (16) of
9 this section; and

10 (f) Provisions for public notice and comment on the carbon
11 sequestration plan.

12 (15)(a) Except as provided in (b) of this subsection, as part of
13 its role enforcing the greenhouse gas emissions performance standard,
14 the department shall determine whether sequestration or a plan for
15 sequestration will provide safe, reliable, and permanent protection
16 against the greenhouse gases entering the atmosphere from the power
17 plant and all ancillary facilities.

18 (b) For facilities under its jurisdiction, the energy facility site
19 evaluation council shall contract for review of sequestration or the
20 carbon sequestration plan with the department consistent with the
21 conditions under (a) of this subsection, consider the adequacy of
22 sequestration or the plan in its adjudicative proceedings conducted
23 under RCW 80.50.090(3), and incorporate specific findings regarding
24 adequacy in its recommendation to the governor under RCW 80.50.100.

25 (16) A project under consideration by the energy facility site
26 evaluation council by July 22, 2007, is required to include all of the
27 requirements of subsection (14) of this section in its carbon
28 sequestration plan submitted as part of the energy facility site
29 evaluation council process. A project under consideration by the
30 energy facility site evaluation council by July 22, 2007, that receives
31 final site certification agreement approval under chapter 80.50 RCW
32 shall make a good faith effort to implement the sequestration plan. If
33 the project owner determines that implementation is not feasible, the
34 project owner shall submit documentation of that determination to the
35 energy facility site evaluation council. The documentation shall
36 demonstrate the steps taken to implement the sequestration plan and
37 evidence of the technological and economic barriers to successful
38 implementation. The project owner shall then provide to the energy

1 facility site evaluation council notification that they shall implement
2 the plan that requires the project owner to meet the greenhouse gas
3 emissions performance standard by purchasing verifiable greenhouse gas
4 emissions reductions from an electric generating facility located
5 within the western interconnection, where the reduction would not have
6 occurred otherwise or absent this contractual agreement, such that the
7 sum of the emissions reductions purchased and the facility's emissions
8 meets the standard for the life of the facility.

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