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**HOUSE BILL 1233**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Representatives Morris, Tarleton, and Hudgins

AN ACT Relating to enabling electric utilities to prepare for the distributed energy future; adding a new section to chapter 19.280 RCW; adding new sections to chapter 80.28 RCW; adding a new section to chapter 80.60 RCW; adding a new chapter to Title 80 RCW; adding a new chapter to Title 19 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. **Sec.**  It is the intent of the legislature to establish a mosaic of pathways by which the state's existing and future electric utilities can accommodate a wide range of new resources being brought to the retail electric distribution system by customer investment.

The legislature recognizes that in states across the nation, the unplanned, organic uptake of new resources that both consume and contribute energy and capacity to the electric distribution system has led to costly capital expenditures. These expenditures then lead to higher electricity rates for customers in all rate classes as well as to less reliability when existing infrastructure is stretched to its limits.

Studies conducted by national laboratories have shown that when electric utilities are keenly aware of the power flow limits on their distribution system outside of extreme weather events, they can identify symbiotic relationships between customer investments in distribution resources. Utilities may then plan around customer values that are not represented in the volumetric sale of electricity at least cost and a highly efficient and more reliable electric distribution system will be achieved.

As electric utilities move away from volumetric sales as the single business model for electric utility financial stability, and therefore toward less cross-subsidization among electric customer rate classes, the legislature further recognizes that, with over sixty-four electric utilities with wide-ranging customer bases and demographics, a one size fits all solution does not exist for Washington. It is therefore the intent of the legislature that the provisions established under this act be voluntary but also flexible, so that all electric utilities may have tools to accommodate what their customers want and need while also providing for the system benefit of efficient, low-cost electricity.

NEW SECTION. **Sec.**  A new section is added to chapter 19.280 RCW to read as follows:

(1) An electric utility may submit to the commission, in the case of an investor-owned utility, or to the governing body, in the case of a consumer-owned utility, an annually updated, ten-year distributed energy resources plan that may inform and be incorporated within the plan developed pursuant to RCW 19.280.030. The distributed energy resources plan must:

(a) Apply the traditional utility regulatory principles of efficiency and fairness to achieve fairness among customers, efficiency in the expenditure of dollars dedicated to providing reliable utility service, and revenue stability and predictability; and

(b) Establish a methodology by which to assign a locational value to distributed energy resources that reflects the value of avoided transmission and distribution costs including, but not limited to:

(i) The value of avoided high voltage transmission operations and maintenance costs and line losses;

(ii) The value of avoided or deferred capital expenditure and operations and maintenance costs to utility-owned baseload and ancillary power generation assets;

(iii) The value of avoided or deferred capital expenditure on the distribution system, including the avoided or deferred capital expenditure associated with anticipating and incorporating customer-side investments and avoiding intradistribution system imbalances caused by distributed energy resources;

(iv) An avoided cost multiplier of ten percent for the nonenergy economic benefits associated with increased local procurement of distributed energy resources; and

(v) The value of avoided carbon emission costs associated with high voltage transmission and generation.

(2) The commission must review and approve or reject a distributed energy resources plan submitted by an investor-owned utility under subsection (1) of this section. The commission shall establish by rule the requirements for preparation and submission of distributed energy resources plans. The commission may adopt additional rules as necessary to clarify the requirements of this section as they apply to investor-owned utilities.

(3) The governing body of a consumer-owned utility that develops a distributed energy resources plan under subsection (1) of this section shall encourage participation of its consumers in development of the plan and may approve the plan after it has provided public notice and hearing.

(4)(a) Following approval of a distributed energy resources plan under subsection (2) or (3) of this section, an electric utility must issue a call for distributed energy resources. The call for distributed energy resources must outline a technology-neutral request for cost-effective resources that deliver a locational value to the distribution system, as the locational value of distributed energy resources is determined under subsection (1)(b) of this section.

(b) A call for distributed energy resources issued under this subsection may be issued for any increment of years within the ten-year distributed energy resources planning window.

(c) An electric utility must use actual locational costs of distributed energy resources as reflected in any responses it receives to the call for resources under this subsection to annually update the ten-year distributed energy resources plan, such that the plan:

(i) Uses actual locational costs in calculating the value of distributed energy resources under subsection (1)(b) of this section; and

(ii) Reflects ten years of planning.

(5) A distributed energy resources plan developed under subsection (1) of this section must establish methods to compensate customer investments in the distribution system that represent the value of distributed energy resources calculated under subsection (1)(b) of this section.

(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Cost-effective" has the same meaning as provided in RCW 80.52.030;

(b) "Distributed energy resource" includes, but is not limited to, distributed renewable generation resources, energy efficiency, energy storage, electric vehicles, electric vehicle charging infrastructure, and demand response technologies; and

(c) "Technology-neutral" means criteria for acquiring or otherwise soliciting distributed energy resources that do not place an undue preference, value, or system outcome on any particular distributed energy resource technology.

NEW SECTION. **Sec.**  (1) Subject to the conditions set forth in this chapter, the commission may regulate an electrical company subject to traditional rate of return, rate base regulation by authorizing an alternative form of regulation. The commission may determine the manner and extent of any alternative forms of regulation as may be appropriate in ensuring system benefits including, but not limited to, authorizing an alternative form of regulation for all utility services or for individual utility services.

(2)(a) In addition to any considerations raised by the utility, in determining the appropriateness of any proposed alternative form of regulation, the commission must at a minimum consider the extent to which such an alternative regulation is expected to:

(i) Promote resiliency and reliability;

(ii) Improve service quality, including both the quality of customer service and of power itself, such as providing more precise voltage control;

(iii) Achieve reduced per capita consumption of energy in the state;

(iv) Encourage economic development within the state, as measured by creation of local jobs;

(v) Help attain statewide carbon reduction goals and compliance with federal air quality standards; and

(vi) Provide clear incentives to achieving least-cost energy service to customers, in terms of overall efficiency of operations and maintenance costs per megawatt-hour of energy produced.

(b) The commission may establish, by rule or order, requirements governing the filing of a petition to approve an alternative regulation plan, as provided in subsection (3) of this section.

(3)(a) An electrical company may petition the commission to establish an alternative form of regulation including, but not limited to, an alternative form of regulation for all utility services or for individual utility services.

(b) Before petitioning for an alternative form of regulation, the company must conduct a consultation with customers of all rate classes in order to determine the customers' preferred performance metrics and benchmarks.

(c) The company must submit with the petition for an alternative form of regulation a plan. This plan must include, at a minimum, the following:

(i) The performance metrics and benchmarks identified through the customer consultation required under this section;

(ii) A proposal for ensuring adequate service quality;

(iii) Data and other inputs relevant to external benchmarking of costs;

(iv) Identification of incentives for achieving performance targets as well as appropriate enforcement or remedial provisions in the event the company fails to meet performance measures;

(v) Proposed mechanisms, such as reopeners, pass-through, trigger, or true-up mechanisms, to help provide a reasonable level of protection from risk, uncertainty, or unforeseeable costs and events; and

(vi) A proposal for transition to the alternative form of regulation.

(d) A plan submitted under this section for an alternative form of regulation that applies to all utility services must leave current rates for each customer class unchanged for the first three years of the transition to the alternative form of regulation. Proposed changes in rates must be phased in over a period of not less than the following three years.

(4) The commission, after notice and hearing, shall issue an order accepting, modifying, or rejecting the plan within nine months after the petition or motion is filed, unless extended by the commission for good cause. The commission shall order implementation of the alternative plan of regulation unless it finds that, on balance, an alternative plan as proposed or modified fails to meet the considerations stated in subsection (3) of this section.

(5) No later than sixty days from the entry of the commission's order, the company or companies affected by the order may file with the commission an election not to proceed with the alternative form of regulation as authorized by the commission.

(6) The commission may waive those regulatory requirements under this title for an electrical company subject to any alternative form of regulation as may be appropriate to facilitate the implementation of this section. However, the commission may not waive any grant of legal rights to any person contained in this chapter and chapter 80.04 RCW. The commission may waive different regulatory requirements for different companies or services if the different treatment is in the public interest.

(7) Upon petition by the company, and after notice and hearing, the commission may rescind or modify an alternative form of regulation in the manner requested by the company.

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

NEW SECTION. **Sec.**  (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Consumer-owned utility" includes a municipal electric utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, a mutual corporation or association formed under chapter 24.06 RCW, a port district formed under Title 53 RCW, or a water-sewer district formed under Title 57 RCW, that is engaged in the business of distributing electricity to one or more retail electric customers in the state.

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

(2) In addition to any existing authority to engage in the sale and distribution of electricity, a consumer-owned utility may provide other energy services and recover the cost of providing these services directly from its ratepayers if provision of the energy services by the consumer-owned utility is consistent with helping the utility and its customers achieve the public policy goals declared in this chapter.

(3) The governing body of a consumer-owned utility may approve providing energy services beyond the sale and distribution of electricity if the energy services will:

(a) Promote resiliency and reliability of the electric grid;

(b) Improve service quality to the utility's customers, including both the quality of customer service and of power itself, such as providing more precise voltage control;

(c) Achieve reduced per capita consumption of energy in the state;

(d) Encourage economic development within the state, as measured by the creation of local jobs;

(e) Help attain statewide carbon reduction goals and compliance with federal air quality standards; and

(f) Provide clear incentives to achieving least-cost energy service to customers, in terms of overall efficiency of operations and maintenance costs per megawatt-hour of energy produced.

(4) Any energy services approved by the governing body pursuant to the authority of this section must also be approved by a majority of the voters of the consumer-owned utility voting upon the question at a duly noticed annual or special meeting held for that purpose.

(5) Nothing in this section may be construed to decrease existing authority of any consumer-owned utility to provide energy services.

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

(1) "Competitive electrical services" means the provision of electricity generated by a renewable energy system to the customer and may include other services associated with the use of a renewable energy system under a lease, power purchase agreement, loan, or other financial transaction. Such other services may include system monitoring and maintenance, warranty provisions, performance guarantees, and customer service.

(2) "Consumer contract" means the lease, power purchase agreement, loan, or other financial agreement between a competitive electrical company and a customer, by which the customer obtains a beneficial interest in, other than direct ownership of, a renewable energy system installed on the customer's side of the meter on property controlled by the customer.

(3)(a) Except as specified in (b) of this subsection, "direct retail to electric consumer company" means an electrical company or third-party vendor that owns a renewable energy system on property controlled by a customer and enters into a consumer contract with a customer to provide competitive electrical services.

(b) The following entities are not direct retail to electric consumer companies:

(i) Commercial lending institutions that are regulated by the department of financial institutions and provide loans for the purchase of renewable energy systems;

(ii) Companies engaged in retail sales of renewable energy equipment that are not otherwise engaged in business as a direct retail to an electric consumer company; and

(iii) Electric utilities offering competitive electrical services to their customers or members in conjunction with other utility services.

(4) "Direct retail to electric consumer program" means a program developed by an electric utility to provide customers of the utility access to renewable energy systems through a consumer contract.

(5) "Electric utility" means a consumer-owned utility or investor-owned utility as those terms are defined in RCW 19.280.020.

(6) "Renewable energy system" means a renewable energy system that is located in Washington and installed on a utility customer's premises, where the renewable energy system is:

(a) Owned by a direct retail to electric consumer company that has a consumer contract with a customer of an electric utility for competitive electrical services; or

(b) Owned by an electric utility that has a consumer contract with a customer of that electric utility to provide competitive electrical services.

(7) "Third-party vendor" means an entity other than an electric utility that provides a renewable energy system to electric utility customers through a consumer contract.

NEW SECTION. **Sec.**  (1) It is the intent of the legislature to prepare for a distributed energy future by providing consumers greater access to distributed renewable energy systems.

(2) The legislature recognizes the importance of ensuring public safety and consumer protection with an appropriate level of regulation that still allows a competitive marketplace to develop, and for this reason the legislature confers authority to the Washington utilities and transportation commission to register as "direct retail to electric consumer companies" third-party vendors who provide renewable energy systems directly to consumers and investor-owned utilities who invest company dollars to make these systems more widely accessible.

NEW SECTION. **Sec.**  (1) The Washington utilities and transportation commission shall publish, without disclosing proprietary information, a list of financing models being offered by investor-owned utilities or third-party vendors registered as direct retail to electric consumer companies under section 6 of this act.

(2) If a consumer-owned utility opts to provide a direct retail to electric consumer program or contracts with a third-party vendor to offer a direct retail to electric consumer program, the governing body of a consumer-owned utility shall publish, without disclosing proprietary information, a list of financing models being offered by the utility or third-party vendor or vendors contracted by the utility as part of a direct retail to electric consumer program.

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

(1) No third-party vendor, including an affiliate of an electric utility, may engage in business as a direct retail to electric consumer company in this state, except in accordance with the provisions of this chapter. Engaging in business as a direct retail to electric consumer company includes advertising, soliciting, offering, or entering into an agreement to own a renewable energy system and provide competitive electrical services on property owned or controlled by a customer.

(2) A third-party vendor or an electrical company offering a direct retail to electric consumer program that is outside of its regulated service must register with the commission as a direct retail to electric consumer company before beginning operations in this state to provide renewable energy systems. The registration must be on a form prescribed by the commission and contain that information as the commission may by rule require, but must include at a minimum: The name and address of the company; the name and address of the company's registered agent, if any; the name, address, and title of each officer or director; the company's most current balance sheet; the company's latest annual report, if any; a description of the services the company offers or intends to offer, including financing models; and disclosure of any pending litigation against it. Registration with the commission as a direct retail to electric consumer company must occur on an annual basis.

(3) As a precondition to registration, the commission may require the procurement of a performance bond or other mechanism sufficient to cover any advances or deposits the direct retail to electric consumer company may collect from its customers or order that the advances or deposits be held in escrow or trust.

(4) The commission may deny registration to any company that:

(a) Does not provide the information required by this section;

(b) Fails to provide a performance bond or other mechanism, if required;

(c) Does not possess adequate financial resources to provide the proposed service; or

(d) Does not possess adequate technical competency to provide the proposed service.

(5) The commission shall take action to approve or issue a notice of hearing concerning any application for registration within thirty days after receiving the application. The commission may approve an application with or without a hearing. The commission may deny an application after a hearing.

(6) The commission may charge direct retail to electric consumer companies a one-time application fee to recover the cost of processing applications for registration under this section.

(7) The commission shall adopt rules that describe the manner by which it will register direct retail to electric consumer companies, ensure that consumer contracts comply with commission rules and the requirements of this act, and establish the companies' responsibilities for responding to customer complaints and disputes. Pursuant to RCW 80.04.080, 80.24.010, and 80.24.020, the commission shall adopt annual reporting requirements and the amount of application and regulatory fees applicable to direct retail to electric consumer companies.

(8) The commission may suspend or revoke a registration upon complaint by any interested party, or upon the commission's own motion after notice and opportunity for hearing, when it finds that the registered direct retail to electric consumer company or its agent has violated this chapter, the rules of the commission, or the company or its registered agent has been found by a court or governmental agency to have violated the laws of a state or the United States.

(9) The definitions in section 4(1) of this act apply throughout this section unless the context clearly requires otherwise.

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

In addition to the penalties provided in this title, a violation by a direct retail to electric consumer company of section 8 of this act constitutes an unfair or deceptive act in trade or commerce in violation of chapter 19.86 RCW, the consumer protection act. Acts in violation of this act are not reasonable in relation to the development and preservation of business, and constitute matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. The commission may consult with the office of the attorney general regarding the administration and enforcement of this chapter as it pertains to direct retail to electric consumer companies.

NEW SECTION. **Sec.**  A new section is added to chapter 80.60 RCW to read as follows:

(1) Except as provided in subsection (2) of this section, an electric utility that has reached the cumulative generating capacity available to net metering under RCW 80.60.020 and develops a ten-year distributed energy resources plan under section 2 of this act must compensate customer investments in the distribution system including, but not limited to, a net metering system, using the methods established under section 2(3) of this act.

(2) A customer-generator with a net metering system that is interconnected with the electrical facilities of an electric utility as of the effective date of this section is compensated according to RCW 80.60.020 and 80.60.030, as those sections existed on the effective date of this section, until the property on which the net metering system is located is sold or until the financial responsibility for the electric meter is transferred to a new customer.

(3) An electric utility that does not develop a ten-year distributed energy resources plan under section 2 of this act must compensate a customer-generator according to RCW 80.60.020 and 80.60.030, as those sections existed on the effective date of this section.

(4) For the purposes of this section, "new customer" means an electric utility customer who is establishing service for the first time at a meter connected to a utility's distribution system.

NEW SECTION. **Sec.**  Sections 3 and 4 of this act constitute a new chapter in Title 80 RCW.

NEW SECTION. **Sec.**  Sections 5 through 7 of this act constitute a new chapter in Title 19 RCW.

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