
HOUSE BILL 1446

State of Washington

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2021 Regular Session

By Representative Fey

Read first time 02/01/21. Referred to Committee on Environment & Energy.

1 AN ACT Relating to prohibiting a utility from being assessed a
2 penalty for not meeting its biennial acquisition target for cost-
3 effective conservation in special circumstances outside the utility's
4 control; and amending RCW 19.285.040 and 19.285.060.

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

6 **Sec. 1.** RCW 19.285.040 and 2019 c 288 s 29 are each amended to
7 read as follows:

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

10 (a) By January 1, 2010, using methodologies consistent with those
11 used by the Pacific Northwest electric power and conservation
12 planning council in the most recently published regional power plan
13 as it existed on June 12, 2014, or a subsequent date as may be
14 provided by the department or the commission by rule, each qualifying
15 utility shall identify its achievable cost-effective conservation
16 potential through 2019. Nothing in the rule adopted under this
17 subsection precludes a qualifying utility from using its utility
18 specific conservation measures, values, and assumptions in
19 identifying its achievable cost-effective conservation potential. At
20 least every two years thereafter, the qualifying utility shall review
21 and update this assessment for the subsequent ten-year period.

1 (b) Beginning January 2010, each qualifying utility shall
2 establish and make publicly available a biennial acquisition target
3 for cost-effective conservation consistent with its identification of
4 achievable opportunities in (a) of this subsection, and meet that
5 target during the subsequent two-year period. At a minimum, each
6 biennial target must be no lower than the qualifying utility's pro
7 rata share for that two-year period of its cost-effective
8 conservation potential for the subsequent ten-year period.

9 (c) (i) Except as provided in (c) (ii) and (iii) of this
10 subsection, beginning on January 1, 2014, cost-effective conservation
11 achieved by a qualifying utility in excess of its biennial
12 acquisition target may be used to help meet the immediately
13 subsequent two biennial acquisition targets, such that no more than
14 twenty percent of any biennial target may be met with excess
15 conservation savings.

16 (ii) Beginning January 1, 2014, a qualifying utility may use
17 single large facility conservation savings in excess of its biennial
18 target to meet up to an additional five percent of the immediately
19 subsequent two biennial acquisition targets, such that no more than
20 twenty-five percent of any biennial target may be met with excess
21 conservation savings allowed under all of the provisions of this
22 section combined. For the purposes of this subsection (1)(c)(ii),
23 "single large facility conservation savings" means cost-effective
24 conservation savings achieved in a single biennial period at the
25 premises of a single customer of a qualifying utility whose annual
26 electricity consumption prior to the conservation savings exceeded
27 five average megawatts.

28 (iii) Beginning January 1, 2012, and until December 31, 2017, a
29 qualifying utility with an industrial facility located in a county
30 with a population between ninety-five thousand and one hundred
31 fifteen thousand that is directly interconnected with electricity
32 facilities that are capable of carrying electricity at transmission
33 voltage may use cost-effective conservation from that industrial
34 facility in excess of its biennial acquisition target to help meet
35 the immediately subsequent two biennial acquisition targets, such
36 that no more than twenty-five percent of any biennial target may be
37 met with excess conservation savings allowed under all of the
38 provisions of this section combined.

39 (d) In meeting its conservation targets, a qualifying utility may
40 count high-efficiency cogeneration owned and used by a retail

1 electric customer to meet its own needs. High-efficiency cogeneration
2 is the sequential production of electricity and useful thermal energy
3 from a common fuel source, where, under normal operating conditions,
4 the facility has a useful thermal energy output of no less than
5 thirty-three percent of the total energy output. The reduction in
6 load due to high-efficiency cogeneration shall be: (i) Calculated as
7 the ratio of the fuel chargeable to power heat rate of the
8 cogeneration facility compared to the heat rate on a new and clean
9 basis of a best-commercially available technology combined-cycle
10 natural gas-fired combustion turbine; and (ii) counted towards
11 meeting the biennial conservation target in the same manner as other
12 conservation savings.

13 (e) A qualifying utility is considered in compliance with its
14 biennial acquisition target for cost-effective conservation in (b) of
15 this subsection if events beyond the reasonable control of the
16 utility that could not have been reasonably anticipated or
17 ameliorated prevented it from meeting the conservation target. These
18 events include natural disasters, public health disasters, severe
19 economic recession, unanticipated loss of significant retail electric
20 load, strikes, lockouts, and actions of a governmental authority that
21 adversely affects the acquisition of cost-effective conservation by
22 the qualifying utility.

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

26 ~~((f))~~ (g) The commission may rely on its standard practice for
27 review and approval of investor-owned utility conservation targets.

28 (2)(a) Except as provided in (j) of this subsection, each
29 qualifying utility shall use eligible renewable resources or acquire
30 equivalent renewable energy credits, or any combination of them, to
31 meet the following annual targets:

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

34 (ii) At least nine percent of its load by January 1, 2016, and
35 each year thereafter through December 31, 2019; and

36 (iii) At least fifteen percent of its load by January 1, 2020,
37 and each year thereafter.

38 (b) A qualifying utility may count distributed generation at
39 double the facility's electrical output if the utility: (i) Owns or
40 has contracted for the distributed generation and the associated

1 renewable energy credits; or (ii) has contracted to purchase the
2 associated renewable energy credits.

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

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

17 (e) A qualifying utility may use renewable energy credits to meet
18 the requirements of this section, subject to the limitations of this
19 subsection.

20 (i) A renewable energy credit from electricity generated by a
21 resource other than freshwater may be used to meet a requirement
22 applicable to the year in which the credit was created, the year
23 before the year in which the credit was created, or the year after
24 the year in which the credit was created.

25 (ii) A renewable energy credit from electricity generated by
26 freshwater:

27 (A) May only be used to meet a requirement applicable to the year
28 in which the credit was created; and

29 (B) Must be acquired by the qualifying utility through ownership
30 of the generation facility or through a transaction that conveyed
31 both the electricity and the nonpower attributes of the electricity.

32 (iii) A renewable energy credit transferred to an investor-owned
33 utility pursuant to the Bonneville power administration's residential
34 exchange program may not be used by any utility other than the
35 utility receiving the credit from the Bonneville power
36 administration.

37 (iv) Each renewable energy credit may only be used once to meet
38 the requirements of this section and must be retired using procedures
39 of the renewable energy credit tracking system.

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

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

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

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

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

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

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

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

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

34 (j)(i) Beginning January 1, 2016, only a qualifying utility that
35 owns or is directly interconnected to a qualified biomass energy
36 facility may use qualified biomass energy to meet its compliance
37 obligation under this subsection.

38 (ii) A qualifying utility may no longer use electricity and
39 associated renewable energy credits from a qualified biomass energy
40 facility if the associated industrial pulping or wood manufacturing

1 facility ceases operation other than for purposes of maintenance or
2 upgrade.

3 (k) An industrial facility that hosts a qualified biomass energy
4 facility may only transfer or sell renewable energy credits
5 associated with qualified biomass energy generated at its facility to
6 the qualifying utility with which it is directly interconnected with
7 facilities owned by such a qualifying utility and that are capable of
8 carrying electricity at transmission voltage. The qualifying utility
9 may only use an amount of renewable energy credits associated with
10 qualified biomass energy that are equivalent to the proportionate
11 amount of its annual targets under (a)(ii) and (iii) of this
12 subsection that was created by the load of the industrial facility. A
13 qualifying utility that owns a qualified biomass energy facility may
14 not transfer or sell renewable energy credits associated with
15 qualified biomass energy to another person, entity, or qualifying
16 utility.

17 (l) Beginning January 1, 2020, a qualifying utility may use
18 eligible renewable resources as identified under RCW 19.285.030(12)
19 (g) and (h) to meet its compliance obligation under this subsection
20 (2). A qualifying utility may not transfer or sell these eligible
21 renewable resources to another utility for compliance purposes under
22 this chapter.

23 (m) Beginning January 1, 2030, a qualifying utility is considered
24 to be in compliance with an annual target in (a) of this subsection
25 if the utility uses electricity from: (i) Renewable resources and
26 renewable energy credits as defined in RCW 19.285.030; and (ii)
27 nonemitting electric generation as defined in RCW 19.405.020, in an
28 amount equal to one hundred percent of the utility's average annual
29 retail electric load. Nothing in this subsection relieves the
30 requirements of a qualifying utility to comply with subsection (1) of
31 this section.

32 (3) Utilities that become qualifying utilities after December 31,
33 2006, shall meet the requirements in this section on a time frame
34 comparable in length to that provided for qualifying utilities as of
35 December 7, 2006.

36 **Sec. 2.** RCW 19.285.060 and 2015 c 225 s 22 are each amended to
37 read as follows:

38 (1) Except as provided in subsection (2) of this section, a
39 qualifying utility that fails to comply with the energy conservation

1 or renewable energy targets established in RCW 19.285.040 shall pay
2 an administrative penalty to the state of Washington in the amount of
3 fifty dollars for each megawatt-hour of shortfall. Beginning in 2007,
4 this penalty shall be adjusted annually according to the rate of
5 change of the inflation indicator, gross domestic product-implicit
6 price deflator, as published by the bureau of economic analysis of
7 the United States department of commerce or its successor.

8 (2) A qualifying utility that does not meet an annual renewable
9 energy target established in RCW 19.285.040(2) or biennial
10 acquisition target for cost-effective conservation in RCW
11 19.285.040(1) is exempt from the administrative penalty in subsection
12 (1) of this section for that year if the commission for investor-
13 owned utilities or the auditor for all other qualifying utilities
14 determines that the utility complied with RCW 19.285.040 (1)(e) or
15 (2)(d) or (i) or 19.285.050(1).

16 (3) A qualifying utility must notify its retail electric
17 customers in published form within three months of incurring a
18 penalty regarding the size of the penalty and the reason it was
19 incurred.

20 (4) The commission shall determine if an investor-owned utility
21 may recover the cost of this administrative penalty in electric
22 rates, and may consider providing positive incentives for an
23 investor-owned utility to exceed the targets established in RCW
24 19.285.040.

25 (5) Administrative penalties collected under this chapter shall
26 be deposited into the energy independence act special account which
27 is hereby created. All receipts from administrative penalties
28 collected under this chapter must be deposited into the account.
29 Expenditures from the account may be used only for the purchase of
30 renewable energy credits or for energy conservation projects at
31 public facilities, local government facilities, community colleges,
32 or state universities. The state shall own and retire any renewable
33 energy credits purchased using moneys from the account. Only the
34 director of enterprise services or the director's designee may
35 authorize expenditures from the account. The account is subject to
36 allotment procedures under chapter 43.88 RCW, but an appropriation is
37 not required for expenditures.

38 (6) For a qualifying utility that is an investor-owned utility,
39 the commission shall determine compliance with the provisions of this

1 chapter and assess penalties for noncompliance as provided in
2 subsection (1) of this section.

3 (7) For qualifying utilities that are not investor-owned
4 utilities, the auditor is responsible for auditing compliance with
5 this chapter and rules adopted under this chapter that apply to those
6 utilities and the attorney general is responsible for enforcing that
7 compliance.

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