
SUBSTITUTE SENATE BILL 5295

State of Washington

67th Legislature

2021 Regular Session

By Senate Environment, Energy & Technology (originally sponsored by Senators Carlyle and Short)

READ FIRST TIME 02/12/21.

1 AN ACT Relating to transforming the regulation of gas and
2 electrical companies toward multiyear rate plans and performance-
3 based rate making; amending RCW 80.28.005 and 80.28.068; adding new
4 sections to chapter 80.28 RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that gas and
7 electrical companies face transformational change brought on by new
8 technology, rapidly changing costs, emerging opportunities for
9 customers, and public policy mandates. Policy mandates, such as
10 chapter 19.405 RCW, the clean energy transformation act, mean these
11 companies must find innovative and creative solutions to equitably
12 serve their customers.

13 (2) The legislature finds that the traditional regulatory
14 construct is neither adaptable, nor well suited to adjusting to
15 rapidly changing societal expectations and public policy objectives,
16 and therefore hinders the ability of gas and electrical companies to
17 effectively evolve to meet new challenges and opportunities.

18 (3) It is the intent of the legislature that the regulatory
19 construct should require a forward-looking orientation for regulation
20 consistent with state policy objectives that focus on planning,
21 flexibility, and fair allocation of risks, while fostering and

1 supporting a culture that delivers performance and cost control in
2 this new industry environment.

3 (4) It is the intent of the legislature that the regulation of
4 gas and electrical companies transform toward multiyear rate plans
5 and performance-based rate making to provide certainty and stability
6 to customers and gas and electrical companies, with those plans
7 focused on ensuring alignment of public policy objectives,
8 investment, safety, and reliability.

9 **Sec. 2.** RCW 80.28.005 and 1994 c 268 s 1 are each amended to
10 read as follows:

11 (~~Unless the context clearly requires otherwise, the~~) The
12 definitions in this section apply throughout this chapter unless the
13 context clearly requires otherwise.

14 (1) "Bondable conservation investment" means all expenditures
15 made by electrical, gas, or water companies with respect to energy or
16 water conservation measures and services intended to improve the
17 efficiency of electricity, gas, or water end use, including related
18 carrying costs if:

19 (a) The conservation measures and services do not produce assets
20 that would be bondable utility property under the general utility
21 mortgage of the electrical, gas, or water company;

22 (b) The commission has determined that the expenditures were
23 incurred in conformance with the terms and conditions of a
24 conservation service tariff in effect with the commission at the time
25 the costs were incurred, and at the time of such determination the
26 commission finds that the company has proven that the costs were
27 prudent, that the terms and conditions of the financing are
28 reasonable, and that financing under this chapter is more favorable
29 to the customer than other reasonably available alternatives;

30 (c) The commission has approved inclusion of the expenditures in
31 rate base and has not ordered that they be currently expensed; and

32 (d) The commission has not required that the measures demonstrate
33 that energy savings have persisted at a certain level for a certain
34 period before approving the cost of these investments as bondable
35 conservation investment.

36 (2) "Conservation bonds" means bonds, notes, certificates of
37 beneficial interests in trusts, or other evidences of indebtedness or
38 ownership that:

1 (a) The commission determines at or before the time of issuance
2 are issued to finance or refinance bondable conservation investment
3 by an electrical, gas, or water company; and

4 (b) Rely partly or wholly for repayment on conservation
5 investment assets and revenues arising with respect thereto.

6 (3) "Conservation investment assets" means the statutory right of
7 an electrical, gas, or water company:

8 (a) To have included in rate base all of its bondable
9 conservation investment and related carrying costs; and

10 (b) To receive through rates revenues sufficient to recover the
11 bondable conservation investment and the costs of equity and debt
12 capital associated with it, including, without limitation, the
13 payment of principal, premium, if any, and interest on conservation
14 bonds.

15 (4) "Finance subsidiary" means any corporation, company,
16 association, joint stock association, or trust that is beneficially
17 owned, directly or indirectly, by an electrical, gas, or water
18 company, or in the case of a trust issuing conservation bonds
19 consisting of beneficial interests, for which an electrical, gas, or
20 water company or a subsidiary thereof is the grantor, or an
21 unaffiliated entity formed for the purpose of financing or
22 refinancing approved conservation investment, and that acquires
23 conservation investment assets directly or indirectly from such
24 company in a transaction approved by the commission.

25 (5) "Fourth rate year" means the consecutive 12-month period, if
26 any, that commences on the third anniversary of the rate effective
27 date.

28 (6) "Future rate year" means any of an initial rate year, a
29 second rate year, a third rate year, or a fourth rate year.

30 (7) "Highly impacted community" has the same meaning as defined
31 in RCW 19.405.020.

32 (8) "Historic test year" means the 12-month period that reflects
33 the actual results of operations consistent with commission
34 precedent.

35 (9) "Initial rate year" means the consecutive 12-month period
36 that commences on the rate effective date.

37 (10) "Multiyear rate plan" means a period of no more than 48
38 months for which a gas or electrical company proposes to develop and
39 apply rates and consists of the initial rate year, the second rate
40 year and, if applicable, a third rate year, and a fourth rate year.

1 (11) "Operating expense" means expenditures of a gas or
2 electrical company associated with the direct or regular activity of
3 supplying gas or electricity and related services to customers
4 including, but not limited to, salaries, wages, cost of maintenance
5 and operation, materials, fuel, supplies, insurance, and all other
6 items normally included under recognized accounting practices, but
7 does not include allowances for depreciation in the value of physical
8 property.

9 (12) "Rate effective date" means the date on which rates approved
10 by the commission pursuant to this chapter first become effective.

11 (13) "Second rate year" means the consecutive 12-month period
12 that commences on the first anniversary of the rate effective date.

13 (14) "Third rate year" means the consecutive 12-month period, if
14 any, that commences on the second anniversary of the rate effective
15 date.

16 NEW SECTION. Sec. 3. A new section is added to chapter 80.28
17 RCW to read as follows:

18 (1) Beginning January 1, 2022, every general rate case filing of
19 a gas or electrical company must include a proposal for a multiyear
20 rate plan as provided in this chapter. The commission shall approve,
21 approve with conditions, or reject, a proposal for, an alternative
22 proposal presented by parties in response to, a multiyear rate plan,
23 or any combination thereof. The commission's consideration of a
24 proposal for a multiyear rate plan is subject to the same standards
25 applicable to other rate filings made under this title.

26 (2) A gas or electrical company may propose and the commission
27 may approve any proposal to recover from ratepayers up to five
28 percent of the total approved revenue requirement approved by the
29 commission for the initial rate year for tariffs that expand the
30 affordability of services available to customers including, but not
31 limited to: (a) Bill assistance programs for low-income residential
32 customers; or (b) one or more special rates for low-income
33 residential customers to reduce the energy burden of those customers.

34 (3) (a) The commission shall separately approve rates for each of
35 the initial rate year, the second rate year and, if applicable, the
36 third rate year, and the fourth rate year.

37 (b) The commission shall ascertain and determine the fair value
38 for rate-making purposes of the property of any gas or electrical
39 company that has filed a multiyear rate plan pursuant to this section

1 that is or will be used and useful for service in this state by or
2 during each rate year of the multiyear rate plan. For the initial
3 rate year, the commission shall, at a minimum, ascertain and
4 determine the fair value for rate-making purposes of the property of
5 any gas or electrical company that has filed a multiyear rate plan
6 pursuant to this section that is used and useful for service in this
7 state as of the rate effective date. The commission may order refunds
8 to customers if property expected to be used and useful by the rate
9 effective date when the commission approves a multiyear rate plan is
10 in fact not used and useful by such a date.

11 (c) The commission shall project the operating expenses for rate-
12 making purposes of any gas or electrical company that has filed a
13 multiyear rate plan pursuant to this section for each rate year of
14 the multiyear rate plan.

15 (d) In ascertaining and determining the fair value of property of
16 a gas or electrical company pursuant to (b) of this subsection and
17 projecting the operating expenses of a gas or electrical company
18 pursuant to (c) of this subsection, the commission may use any
19 standard, formula, method, or theory of valuation reasonably
20 calculated to arrive at fair, just, reasonable, and sufficient rates.

21 (e) If the commission approves a multiyear rate plan with a
22 duration of three or four years, then the gas or electrical company
23 must update its power costs as of the rate effective date of the
24 third rate year. The proceeding to update the gas or electrical
25 company's power costs is subject to the same standards that apply to
26 other rate filings made under this title.

27 (4) The commission may, by order, establish terms, conditions,
28 and procedures for a multiyear rate plan and ensure that rates remain
29 just and reasonable during the course of the plan, including terms
30 and procedures for rate adjustment during the term of the plan.

31 (5) The gas or electrical company is bound by the terms of the
32 multiyear rate plan approved by the commission for each of the
33 initial rate year and the second rate year. A gas or electrical
34 company may file any of the following for the third rate year and
35 fourth rate year, if any, of a multiyear rate plan, the effect of
36 which could be to change rates affected by the multiyear rate plan:

37 (a) A general rate case; or

38 (b) A new multiyear rate plan in accordance with this section.

39 (6) The commission may, in approving a multiyear rate plan,
40 determine a set of reasonable and applicable performance measures

1 that can be used to assess a gas or electrical company operating
2 under a multiyear rate plan. These performance measures may be
3 proposed by the gas or electrical company in its initial application
4 or by any other party to the proceeding in its response to the
5 company's filing.

6 (7) Nothing in this section precludes any gas or electrical
7 company from making filings required or permitted by the commission.

8 (8) A gas or electrical company may defer, without interest, any
9 new costs, unknown at the time of the approval of any multiyear rate
10 plan then in effect, that are associated with compliance of any
11 governmental policy or plan not in existence as of the rate effective
12 date and implemented during a multiyear rate plan. Recovery of these
13 deferred costs must be addressed in the next applicable rate case or
14 multiyear rate plan of the applicable gas or electrical company.

15 (9) The commission shall align, to the extent practical, the
16 timing of approval of a multiyear rate plan of an electrical company
17 submitted pursuant to this section with the clean energy
18 implementation plan of the electrical company filed pursuant to
19 RCW 19.405.060.

20 NEW SECTION. **Sec. 4.** A new section is added to chapter 80.28
21 RCW to read as follows:

22 The provisions of RCW 80.28.005 and section 3 of this act,
23 inclusive, may not be construed to limit the existing rate-making
24 authority of the commission.

25 **Sec. 5.** RCW 80.28.068 and 2009 c 32 s 1 are each amended to read
26 as follows:

27 (1) Upon request by an electrical or gas company, or other party
28 to a general rate case hearing, the commission may approve rates,
29 charges, services, and/or physical facilities at a discount for low-
30 income senior customers and low-income customers. Expenses and lost
31 revenues as a result of these discounts shall be included in the
32 company's cost of service and recovered in rates to other customers.

33 (2) An electrical company may provide discounts under this
34 section to reduce the energy burden of low-income or vulnerable
35 populations and to ensure that the benefits of the transition to
36 clean energy are equitably distributed, as required under chapter
37 19.405 RCW.

1 (3) Eligibility for the discount rates established in this
2 section must be established upon verification of a low-income
3 customer's receipt of any means tested public benefit, or
4 verification of eligibility for the low-income home energy assistance
5 program, or its successor program, for which eligibility does not
6 exceed 200 percent of the federal poverty level based on a
7 household's gross income. The public benefits may include, but are
8 not limited to, assistance that provides cash, housing, food, or
9 medical care including, but not limited to, temporary assistance for
10 needy families, supplemental security income, emergency assistance to
11 elders, disabled, and children, supplemental nutrition assistance
12 program benefits, public housing, federally subsidized or state-
13 subsidized housing, the low-income home energy assistance program,
14 veterans' benefits, and similar benefits. Each gas or electrical
15 company shall conduct substantial outreach efforts to make the low-
16 income discount available to eligible customers and must provide
17 annual reports to the commission as to the gas or electrical
18 company's outreach activities and results. Outreach may include
19 establishing an automated program of matching customer accounts with
20 lists of recipients of the means tested public benefit programs and,
21 based on the results of the matching program, to presumptively offer
22 a low-income discount rate to eligible customers so identified.
23 However, the gas or electrical company must within 60 days of the
24 presumptive enrollment inform such a low-income customer of the
25 presumptive enrollment and all rights and obligations of a customer
26 under the program, including the right to withdraw from the program
27 without penalty.

28 (4) A residential customer eligible for a low-income discount
29 rate must receive the service on demand. Each gas or electrical
30 company shall periodically notify all customers of the availability
31 and method of obtaining low-income discount rates.

32 (5) The commission shall adopt rules requiring gas or electrical
33 companies to produce information, in the form of a mailing,
34 electronic distribution, or other customary and usual method of
35 distribution, to their customers, to inform them of available
36 rebates, discounts, credits, and other cost-saving mechanisms that
37 can help the customers to lower their monthly bills for gas or
38 electrical service, and send out the information semiannually, unless
39 otherwise provided by this chapter.

1 (6) (a) A residential customer may not be charged for initiating
2 or terminating low-income discount rates when the initiation or
3 termination request is made after a regular meter reading has
4 occurred and the customer is in receipt of the results of the
5 reading.

6 (b) A gas or electrical company may impose a reasonable charge,
7 as set by the commission through regulation, for initiating or
8 terminating low-income discount rates when a customer does not make
9 such an initiation or termination request upon the receipt of the
10 results and prior to the receipt of the next regularly scheduled
11 meter reading.

12 (c) Notwithstanding (b) of this subsection, a residential
13 customer may not be charged when the initiation or termination is
14 involuntary on the part of the customer.

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

17 (a) "Energy burden" has the same meaning as defined in
18 RCW 19.405.020.

19 (b) "Highly impacted communities" has the same meaning as defined
20 in RCW 19.405.020.

21 (c) "Low-income" has the same meaning as defined in
22 RCW 19.405.020.

23 (d) "Physical facilities" includes, but may not be limited to, a
24 community solar project as defined in RCW 82.16.160.

25 (e) "Vulnerable populations" has the same meaning as defined in
26 RCW 19.405.020.

27 NEW SECTION. Sec. 6. A new section is added to chapter 80.28
28 RCW to read as follows:

29 (1) A gas company or electrical company may enter into one or
30 more written agreements with organizations that represent interests
31 of customers belonging to a highly impacted community or vulnerable
32 populations to assist these organizations with the costs of
33 participating in regulatory proceedings conducted by the commission.
34 The agreement must govern the manner in which financial assistance
35 may be provided to the organization representing customer interests
36 of vulnerable populations or a highly impacted community. More than
37 one gas company, electrical company, or organization representing
38 customer interests of vulnerable populations or a highly impacted
39 community may join in a single agreement. Any agreement entered into

1 under this section must be approved by the commission before any
2 financial assistance is provided under the agreement.

3 (2) In administering an agreement entered into under
4 subsection (1) of this section, the commission by rule or order may
5 determine:

6 (a) The amount of financial assistance that may be provided to
7 any organization representing customer interests of vulnerable
8 populations or a highly impacted community;

9 (b) The manner in which the financial assistance is distributed;

10 (c) The manner in which the financial assistance is recovered in
11 the rates of the gas company or electrical company under
12 subsection (3) of this section; and

13 (d) Other matters necessary to administer the agreement.

14 (3) The commission shall allow a gas company or electrical
15 company that provides financial assistance under this section to
16 recover the amounts provided in rates. The commission shall allow a
17 gas company or electrical company to defer inclusion of those amounts
18 in rates if the gas company or electrical company so elects. An
19 agreement under this section may not provide for payment of any
20 amounts to the commission.

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

23 (a) "Highly impacted community" has the same meaning as defined
24 in RCW 19.405.020.

25 (b) "Vulnerable populations" has the same meaning as defined in
26 RCW 19.405.020.

27 NEW SECTION. **Sec. 7.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

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