
SUBSTITUTE SENATE BILL 5735

State of Washington

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By Senate Energy, Environment & Telecommunications (originally sponsored by Senators Ericksen, Rivers, Angel, Baumgartner, Brown, Hewitt, Bailey, Schoesler, Parlette, Honeyford, Braun, Padden, Becker, Hatfield, and Sheldon)

READ FIRST TIME 02/18/15.

1 AN ACT Relating to providing incentives for carbon reduction
2 investments; and amending RCW 19.285.030 and 19.285.040.

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

4 **Sec. 1.** RCW 19.285.030 and 2014 c 45 s 1 are each amended to
5 read as follows:

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

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

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

15 (3)(a) "Biomass energy" includes: (i) Organic by-products of
16 pulping and the wood manufacturing process; (ii) animal manure; (iii)
17 solid organic fuels from wood; (iv) forest or field residues; (v)
18 untreated wooden demolition or construction debris; (vi) food waste
19 and food processing residuals; (vii) liquors derived from algae;
20 (viii) dedicated energy crops; and (ix) yard waste.

1 (b) "Biomass energy" does not include: (i) Wood pieces that have
2 been treated with chemical preservatives such as creosote,
3 pentachlorophenol, or copper-chrome-arsenic; (ii) wood from old
4 growth forests; or (iii) municipal solid waste.

5 (4) "Coal transition power" has the same meaning as defined in
6 RCW 80.80.010.

7 (5) "Commission" means the Washington state utilities and
8 transportation commission.

9 (6) "Conservation" means any reduction in electric power
10 consumption resulting from increases in the efficiency of energy use,
11 production, or distribution.

12 (7) "Cost-effective" has the same meaning as defined in RCW
13 80.52.030.

14 (8) "Council" means the Washington state apprenticeship and
15 training council within the department of labor and industries.

16 (9) "Customer" means a person or entity that purchases
17 electricity for ultimate consumption and not for resale.

18 (10) "Department" means the department of commerce or its
19 successor.

20 (11) "Distributed generation" means an eligible renewable
21 resource where the generation facility or any integrated cluster of
22 such facilities has a generating capacity of not more than five
23 megawatts.

24 (12) "Eligible renewable resource" means:

25 (a) Electricity from a generation facility powered by a renewable
26 resource other than freshwater that commences operation after March
27 31, 1999, where: (i) The facility is located in the Pacific
28 Northwest; or (ii) the electricity from the facility is delivered
29 into Washington state on a real-time basis without shaping, storage,
30 or integration services;

31 (b) Incremental electricity produced as a result of efficiency
32 improvements completed after March 31, 1999, to hydroelectric
33 generation projects owned by a qualifying utility and located in the
34 Pacific Northwest where the additional generation does not result in
35 new water diversions or impoundments;

36 (c) Hydroelectric generation from a project completed after March
37 31, 1999, where the generation facility is located in irrigation
38 pipes, irrigation canals, water pipes whose primary purpose is for
39 conveyance of water for municipal use, and wastewater pipes located

1 in Washington where the generation does not result in new water
2 diversions or impoundments;

3 (d) Carbon reduction investments;

4 (e) Qualified biomass energy; or

5 ~~((e+))~~ (f) For a qualifying utility that serves customers in
6 other states, electricity from a generation facility powered by a
7 renewable resource other than freshwater that commences operation
8 after March 31, 1999, where: (i) The facility is located within a
9 state in which the qualifying utility serves retail electrical
10 customers; and (ii) the qualifying utility owns the facility in whole
11 or in part or has a long-term contract with the facility of at least
12 twelve months or more.

13 (13) "Investor-owned utility" has the same meaning as defined in
14 RCW 19.29A.010.

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

18 (15)(a) "Nonpower attributes" means all environmentally related
19 characteristics, exclusive of energy, capacity reliability, and other
20 electrical power service attributes, that are associated with the
21 generation of electricity from a renewable resource, including but
22 not limited to the facility's fuel type, geographic location,
23 vintage, qualification as an eligible renewable resource, and avoided
24 emissions of pollutants to the air, soil, or water, and avoided
25 emissions of carbon dioxide and other greenhouse gases.

26 (b) "Nonpower attributes" does not include any aspects, claims,
27 characteristics, and benefits associated with the on-site capture and
28 destruction of methane or other greenhouse gases at a facility
29 through a digester system, landfill gas collection system, or other
30 mechanism, which may be separately marketable as greenhouse gas
31 emission reduction credits, offsets, or similar tradable commodities.
32 However, these separate avoided emissions may not result in or
33 otherwise have the effect of attributing greenhouse gas emissions to
34 the electricity.

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

39 (17) "Public facility" has the same meaning as defined in RCW
40 39.35C.010.

1 (18) "Qualified biomass energy" means electricity produced from a
2 biomass energy facility that: (a) Commenced operation before March
3 31, 1999; (b) contributes to the qualifying utility's load; and (c)
4 is owned either by: (i) A qualifying utility; or (ii) an industrial
5 facility that is directly interconnected with electricity facilities
6 that are owned by a qualifying utility and capable of carrying
7 electricity at transmission voltage.

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

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

21 (21) "Renewable resource" means: (a) Water; (b) wind; (c) solar
22 energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or
23 tidal power; (g) gas from sewage treatment facilities; (h) biodiesel
24 fuel as defined in RCW 82.29A.135 that is not derived from crops
25 raised on land cleared from old growth or first-growth forests where
26 the clearing occurred after December 7, 2006; or (i) biomass energy.

27 (22) "Rule" means rules adopted by an agency or other entity of
28 Washington state government to carry out the intent and purposes of
29 this chapter.

30 (23) "Year" means the twelve-month period commencing January 1st
31 and ending December 31st.

32 (24) "Carbon reduction investment" means an investment in support
33 of eligible projects or actions that reduce, prevent, or remove from
34 the atmosphere the emissions of greenhouse gases in the state. An
35 eligible project or action includes, but is not limited to,
36 investment in or purchase of the emissions reductions attributable to
37 the following: (a) Conservation measures exceeding the avoided cost
38 of power as identified by the Pacific Northwest electric power and
39 conservation planning council; (b) installation of electric vehicle
40 chargers and related infrastructure; (c) installation of

1 infrastructure to provide compressed natural gas, liquefied natural
2 gas, and renewable natural gas for motor vehicles, locomotives, and
3 marine vessels; (d) the fuel conversion of state ferries to liquefied
4 natural gas; (e) demand side management of electricity consumption;
5 (f) energy storage technologies; and (g) carbon sequestration
6 programs.

7 (25) "Greenhouse gas" means carbon dioxide (CO₂), methane (CH₄),
8 nitrogen trifluoride (NF₃), nitrous oxide (N₂O), sulfur hexafluoride
9 (SF₆), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and other
10 fluorinated greenhouse gases.

11 **Sec. 2.** RCW 19.285.040 and 2014 c 26 s 1 are each amended to
12 read as follows:

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

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

27 (b) Beginning January 2010, each qualifying utility shall
28 establish and make publicly available a biennial acquisition target
29 for cost-effective conservation consistent with its identification of
30 achievable opportunities in (a) of this subsection, and meet that
31 target during the subsequent two-year period. At a minimum, each
32 biennial target must be no lower than the qualifying utility's pro
33 rata share for that two-year period of its cost-effective
34 conservation potential for the subsequent ten-year period.

35 (c)(i) Except as provided in (c)(ii) and (iii) of this
36 subsection, beginning on January 1, 2014, cost-effective conservation
37 achieved by a qualifying utility in excess of its biennial
38 acquisition target may be used to help meet the immediately

1 subsequent two biennial acquisition targets, such that no more than
2 twenty percent of any biennial target may be met with excess
3 conservation savings.

4 (ii) Beginning January 1, 2014, a qualifying utility may use
5 single large facility conservation savings in excess of its biennial
6 target to meet up to an additional five percent of the immediately
7 subsequent two biennial acquisition targets, such that no more than
8 twenty-five percent of any biennial target may be met with excess
9 conservation savings allowed under all of the provisions of this
10 section combined. For the purposes of this subsection (1)(c)(ii),
11 "single large facility conservation savings" means cost-effective
12 conservation savings achieved in a single biennial period at the
13 premises of a single customer of a qualifying utility whose annual
14 electricity consumption prior to the conservation savings exceeded
15 five average megawatts.

16 (iii) Beginning January 1, 2012, and until December 31, 2017, a
17 qualifying utility with an industrial facility located in a county
18 with a population between ninety-five thousand and one hundred
19 fifteen thousand that is directly interconnected with electricity
20 facilities that are capable of carrying electricity at transmission
21 voltage((τ)) may use cost-effective conservation from that industrial
22 facility in excess of its biennial acquisition target to help meet
23 the immediately subsequent two biennial acquisition targets, such
24 that no more than twenty-five percent of any biennial target may be
25 met with excess conservation savings allowed under all of the
26 provisions of this section combined.

27 (d) In meeting its conservation targets, a qualifying utility may
28 count high-efficiency cogeneration owned and used by a retail
29 electric customer to meet its own needs. High-efficiency cogeneration
30 is the sequential production of electricity and useful thermal energy
31 from a common fuel source, where, under normal operating conditions,
32 the facility has a useful thermal energy output of no less than
33 thirty-three percent of the total energy output. The reduction in
34 load due to high-efficiency cogeneration shall be: (i) Calculated as
35 the ratio of the fuel chargeable to power heat rate of the
36 cogeneration facility compared to the heat rate on a new and clean
37 basis of a best-commercially available technology combined-cycle
38 natural gas-fired combustion turbine; and (ii) counted towards
39 meeting the biennial conservation target in the same manner as other
40 conservation savings.

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

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

6 (2)(a) Except as provided in (~~(j)~~) (m) of this subsection, each
7 qualifying utility shall use eligible renewable resources or acquire
8 equivalent renewable energy credits, or any combination of them, to
9 meet the following annual targets:

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

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

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

16 (b) A qualifying utility may count distributed generation at
17 double the facility's electrical output if the utility: (i) Owns or
18 has contracted for the distributed generation and the associated
19 renewable energy credits; or (ii) has contracted to purchase the
20 associated renewable energy credits.

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

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

35 (e) Beginning January 1, 2016, a qualifying utility may use
36 carbon reduction investments for compliance with an annual target in
37 (a) of this subsection as specified under this subsection (2)(e). For
38 the purposes of complying with an annual target in (a) of this
39 subsection, one-half metric ton of carbon dioxide equivalent
40 emissions reduced, prevented, or removed from the atmosphere is equal

1 to the compliance equivalent of one renewable energy credit. Each
2 compliance equivalent under this subsection (2)(e) must be recognized
3 by the commission or auditor for each year that the emissions
4 reduction is certified to persist. The determination and
5 certification of emissions reductions must be measured, verified, and
6 documented by a third-party expert retained by the qualifying utility
7 and subject only to determination or audit as specified under RCW
8 19.285.060. Emissions reductions under this subsection that are
9 certified to persist for longer than one year may be carried forward
10 and applied as compliance equivalents in future years.

11 (f) Beginning January 1, 2016, a qualifying utility is considered
12 in compliance with an annual target in (a) of this subsection if it
13 invests at least one percent of its total annual retail revenue
14 requirement for that year in carbon reduction investments as
15 identified in (e) of this subsection. Each compliance equivalent
16 under this subsection (2)(f) must be recognized by the commission or
17 auditor for each year that the emissions reduction is certified to
18 persist. The determination and certification of emissions reductions
19 must be measured, verified, and documented by a third-party expert
20 retained by the qualifying utility and subject only to determination
21 or audit as specified under RCW 19.285.060. Emissions reductions
22 under this subsection that are certified to persist for longer than
23 one year may be carried forward and applied as compliance equivalents
24 under (e) of this subsection.

25 (g) A qualifying utility using the alternative compliance path in
26 (f) of this subsection shall resume meeting the annual targets in (a)
27 of this subsection on a time frame comparable in length to what it
28 would have been before using this compliance path.

29 (h) The requirements of this section may be met for any given
30 year with renewable energy credits produced during that year, the
31 preceding year, or the subsequent year. Each renewable energy credit
32 may be used only once to meet the requirements of this section.

33 ((+f)) (i) In complying with the targets established in (a) of
34 this subsection, a qualifying utility may not count:

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

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

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

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

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

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

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

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

26 ~~((j))~~ (m)(i) Beginning January 1, 2016, only a qualifying
27 utility that owns or is directly interconnected to a qualified
28 biomass energy facility may use qualified biomass energy to meet its
29 compliance obligation under this subsection.

30 (ii) A qualifying utility may no longer use electricity and
31 associated renewable energy credits from a qualified biomass energy
32 facility if the associated industrial pulping or wood manufacturing
33 facility ceases operation other than for purposes of maintenance or
34 upgrade.

35 ~~((k))~~ (n) An industrial facility that hosts a qualified biomass
36 energy facility may only transfer or sell renewable energy credits
37 associated with its facility to the qualifying utility with which it
38 is directly interconnected with facilities owned by such a qualifying
39 utility and that are capable of carrying electricity at transmission
40 voltage. The qualifying utility may only use an amount of renewable

1 energy credits associated with qualified biomass energy that are
2 equivalent to the proportionate amount of its annual targets under
3 (a)(ii) and (iii) of this subsection that was created by the load of
4 the industrial facility. A qualifying utility that owns a qualified
5 biomass energy facility may not transfer or sell renewable energy
6 credits associated with qualified biomass energy to another person,
7 entity, or qualifying utility.

8 (3) Utilities that become qualifying utilities after December 31,
9 2006, shall meet the requirements in this section on a time frame
10 comparable in length to that provided for qualifying utilities as of
11 December 7, 2006.

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