

September 25, 2015

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
201 High Street SE, Suite 100
Salem, OR 97301-1166

Attn: Filing Center

Re: Docket UM 1746—PacifiCorp's Comments

PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) appreciates the opportunity to provide comments regarding Staff's program design proposal in this proceeding.

I. Background

On July 14, 2015, the Public Utility Commission of Oregon (Commission) opened this docket to implement Section 3 of HB 2941, which requires the Commission to hold a proceeding "to examine a range of community solar programs and attributes to allow individual customers to share in the costs and benefits of solar facilities." The results of this proceeding are due to the Oregon Legislature by November 1, 2015. Parties were asked to submit community solar design proposals by August 7, 2015, and Commission Staff held a workshop on August 11, 2015, to discuss these proposals. On September 18, 2015, Staff submitted their "current thinking in identifying the preferred characteristics that should be part of a community solar program design in Oregon," and requested that parties file comments on these draft recommendations by September 25, 2015.

II. Objective and Legislative Intent

On June 25, 2015, the Oregon legislature passed House Bill 2941. The primary purpose of Section 3 of HB 2941¹ is to encourage the development of community solar programs in Oregon. In discussions leading up to the passage of HB 2941, it was understood that the appeal of community solar programs is that they allow utility customers greater access to solar in part because they do not require the installation of rooftop solar on customer property. The purpose of community solar programs, as stated in HB 2941, is to allow individual customers to share in the costs and benefits of solar facilities. The Company supports community solar programs in general and supported HB 2941 during the legislative session. The Company has currently proposed a subscriber solar program in at least one of its other states that would enable customers to participate in the development of solar projects without the installation of rooftop solar. However, in the Company's view, it is critically important to the success of any community solar program that it be designed to minimize costs to customers by identifying least-cost solar resources and minimizing administrative costs. Consistent with this, under HB 2941

¹ Section 3 of HB 2941 is the relevant section for this proceeding.

the Commission is tasked with recommending a community solar program design that best balances the resource value benefits, costs and impacts to ratepayers. The Company is concerned that Staff's draft recommendations and positions held during public workshops are not consistent with the intent of the legislation. This has resulted in a draft recommendation from Staff that is confusing, and in some cases inconsistent, and not sufficiently grounded in the legislative intent of HB 2941.

As an example, Staff is proposing to prohibit utility-owned solar resources from participation in the program, thereby excluding utilities from competing in the solar resource market pool available for the program. Confusingly, one of the reasons for the recommendation to limit market participation is that it will encourage market competition. This approach is not consistent with Staff later stating it wants a "true" market, nor is this recommendation consistent with the legislative intent to encourage a fair competitive market. The legislation is designed to promote the establishment of a new voluntary *competitive* market for solar projects, one that includes both third-party ownership models and utility-owned models. As intended by the legislature, HB 2941 clearly provides authority for *utilities* to offer community solar programs, should the Commission determine sufficient customer demand through this proceeding.² The intent of the legislation is to provide Oregonians with a new program that offers both consumer protection and choice in a way that balances the value of solar with cost impacts to customers. Staff has not explained how excluding utility ownership as part of its recommended program design will achieve this balance or foster a fair competitive market.

III. Definition of Community Solar in Oregon

The Company urges Staff to set forth a proposal to the Commission that supports a flexible approach to community solar program design.

At this time, the definition of community solar in Oregon should be broadly constructed to allow for flexible program designs that can achieve the overall objective of encouraging the development of solar projects through identification of least-cost resources and minimizing administrative costs. The definition should incorporate these elements. The Company also recommends that, prior to adopting a definition of community solar in Oregon and recommending program design characteristics, Staff should set forth a set of program design principles. Such program principles could include: 1) the program should incentivize the development of small-scale solar projects; 2) the program should allow individual customers to participate in the program while holding non-participating customers harmless; 3) the program should not be administratively burdensome – for customers or utilities.

² Section 1(2)(c) states "If the commission finds, through public comment and hearing or through market research conducted by the electric company, that demand is sufficient to justify the rate, a rate option for electricity associated with a specific renewable energy resource, including solar photovoltaic energy."

IV. Community Solar Resource's System Constraints

System Ownership Attribute

As discussed above, Staff's preferred attribute for community solar ownership that excludes utility-owned projects is problematic and was not supported by the majority of stakeholder comments in this proceeding. Staff does not indicate how this proposal will result in balancing the resource value of solar with costs to customers. Staff's proposal should, at a minimum, allow for an informed review of least-cost resource options. Removing utility-owned options removes a set of otherwise viable resource options and will limit customer access to low-priced community solar options. In fact, the Company's utility-owned proposal presented earlier in this process has received positive support from solar stakeholders, regulatory staff, and consumer advocates in another state.

Staff's reasoning for preferring a non-utility ownership structure (or utility affiliate ownership) is in part to "avoid layers of accounting complexity and oversight" where "the utility would need to separate accounts for *existing customer rate base and associated return on investments* from *subscriber community solar accounts and associated returns on investment*." The Company finds this rationale unconvincing. First, the utility already administers programs necessitating separate accounting as described above. Second, Staff envisions a community solar program design which requires a similar administrative burden on the utility whereby the utility administers the bill credit. With respect to the bill credit component, Staff does not express the same concerns about accounting complexity for the utility. Third, Staff reasons that excluding utility-owned projects will avoid stranded cost risk in the event the resource is partially unsubscribed and that excluding utilities will encourage market competition. However, Staff reasons that, in fact, utilities may have an advantage because utility-owned projects may be lower risk. If in fact utility-owned projects are lower risk and lower cost, which is Staff's assertion, their participation in the market would be a benefit to customers. Staff's recommendation should not exclude the possibility of utility participation. The Company fully understands and appreciates the risk of stranded costs. However, the details with respect to how stranded costs will be addressed can be resolved without precluding utility participation entirely. Finally, the Company is concerned that Staff's preference to prohibit utility participation except through a utility affiliate has not been fully vetted. When proposing a community solar program in another state, the Company received no feedback similar to the Staff's unsupported concerns for utility provided community solar.

System Location Attribute

The Company supports Staff's recommendation that projects should be located in Oregon, but the Company prefers that the location be within a utility's service territory.

The Company recognizes the potential value of targeting projects to specific areas to alleviate system operation and reliability concerns. However, the Company is concerned about including this type of recommendation in the report. As the utilities' understanding of the technical impacts of solar improve, program incentives could be developed to encourage this

targeted development. Rather than require this type of output at this early stage when the technical understanding is still being developed and where costs may outweigh the potential benefits, the Company suggests allowing flexibility in the program design to incorporate this type of planning in the future. In fact, Staff notes that this is a concept that needs further exploration with stakeholders.

System Size Attribute

If a community solar program were open to both utility and third-party solar developers, as the comments of the majority of parties envision, the size of the program should not be unlimited. PacifiCorp recommends that as the size of a community solar program grows to a threshold level, it may be prudent to revisit with the Commission the program design of pricing and bill crediting to ensure that the program is sustainable without undue cost shifting to non-participants.

V. Eligibility/Limitations

Customer Type Attribute

The Company supports Staff's preferred attribute to limit participation to residential and small commercial. PacifiCorp agrees that Staff's preferred limitation may be appropriate because large industrial customers currently have other third-party options (i.e. direct access) for satisfying their renewable goals and other dockets are examining possible expansion of utility-provided renewable options for this customer segment. That said, the Company is open to a flexible approach to participation.

Special Carve-Outs Attribute

The Company supports Staff's decision declining to identify special carve-outs for the initial stages of the community solar program. It is premature to identify these special carve-outs.

Subscription Size Attribute

The Company supports Staff's preferred attribute to limit subscription size to average annual load and that any solar energy credits in excess of annual energy use at the subscriber site should be donated to low-income programs.

VI. Contract Terms

There are significant aspects of the contractual relationships between the utility, the project developer, and the participating customer that provide the underlying framework for community solar programs that were not sufficiently addressed in the Staff's program attributes. For instance, Staff identified the contract term attribute but has not identified the contracting parties. The Company recommends more discussion about this attribute or explicit language from Staff that this will need to be considered during a rulemaking proceeding.

Power Purchase Agreement (PPA)

Throughout Staff's proposal there are references to the power purchase agreement (PPA) completed between the utility and the project developer. The most descriptive reference is found on page 1 of Staff's Draft Recommendation on Program Attributes and Characteristics in the high level outline of the program design. The fourth bullet describes some characteristics of the PPA.

Interconnection and power purchase agreements (PPA) completed between the project owner and the utility equate to; (1) the bid price for the subscribed energy and the associated Renewable Energy Credit (RECs) (utility would pass through the subscriber payment portion via utility bills) and (2) the utility avoided cost price for unsubscribed energy.

The Company is concerned that there is no description of how the cost of the subscribed energy is determined nor how resources are selected. During discussion at the second workshop, a request for proposal concept or process was discussed, but in the written description there is no discussion of a process to determine energy prices. The Company found it difficult to provide meaningful feedback on a concept that was not directly addressed in Staff's draft recommendations.

The Company is concerned about the relationship between the price paid for the energy and value of the energy actually provided to the utility. If the price paid is higher than the value of energy provided to the utility, non-participating customers may bear the burden of the difference. As noted above, it is critically important that any program design not impact non-participating customers. The contractual relationship, payment amounts, and payment mechanisms between the utility, project developer, and subscriber are also critically important.

The Company is concerned that the Staff recommendations did not address the term length of the PPA between the utilities and the project developers. The suggestion from Staff at the second workshop was that the PPA would run for the duration project life (20+ years). A long-term PPA between the utility and the project developers is problematic. The Company understands Staff's draft recommendation as meaning that utilities would be required to purchase unsubscribed project output for the duration of the PPA with the project developer—regardless of whether there are customers actually subscribing to the project. Thus, utilities (and their non-subscribing customers) would be providing a long-term, guaranteed market for the output from potentially unneeded or unwanted community solar projects.

In that respect, the utility/project developer PPA construct as envisioned by Staff begins to look much like a utility's must-purchase obligations under the Public Utility Reform and Policy Act (PURPA), where utilities are required to purchase output from small generating projects at avoided costs, regardless of whether there is any actual need for the project output. PacifiCorp is very concerned that the legislature's admirable goal of developing a framework for promoting community solar projects is being transformed into a new obligation whereby utilities

are compelled to enter into long-term, must-purchase contracts for output that is neither needed nor demonstrated to be the least-cost, least-risk option for satisfying customer demand.

Staff's vision for very short subscription terms would exacerbate this problem. Staff envisions customer subscription terms for durations as short as one year (to encourage participation by renters). Any disconnect between subscription term (between customers and the project developer) and the PPA term (between the utility and the project developer) magnifies the risk imposed upon utilities (and their non-subscribing customers) by long-term PPA purchase obligations. A reasonably foreseeable example illustrates the potential problem. A community solar project is offered and fully subscribed for short terms (one to five years, for example). At the end of their subscription terms, subscribers will have the choice of re-subscribing to the original project, or subscribing to a new project that offers more competitive terms due to changed market conditions (i.e., reduced prices) or exiting the community solar program altogether. Some or all of those customers would presumably migrate to the newer, more economically favorable project, leaving the original project unsubscribed. The utility (and its non-subscribing customers), in turn, would be left with an obligation to purchase output from the original project (regardless of need) for the remainder of the PPA term (15+ years). Staff's vision is unreasonably predicated on an assumption that there will be long-term subscriber demand for each project even in the face of rapidly changing technological and market conditions and consumer preferences.

Staff's draft recommendation alternately reference avoided cost and market based pricing as the compensation amount for unsubscribed energy. While it is unnecessary for Staff to define this level of detail in its recommendation, the Company points out "avoided costs" and "market based pricing" are not necessarily synonymous terms. PacifiCorp has many concerns about PPA pricing for long-term PPAs with project developers. Would the market price for unsubscribed power be determined and fixed at the beginning of a long-term PPA, or would there be mechanisms for price adjustments to reflect actual market conditions (in order to protect non-subscribing customers)? If PPA prices are set at market, what happens when a utility's actual avoided costs are lower than market prices (and vice-a-versa)? For these reasons, and in light of the many unanswered questions associated with this aspect of Staff's draft recommendation, the Company does not support a recommendation to the legislature that includes a requirement for a PPA between the utility and the project developer without clarification from Staff and additional stakeholder input at a minimum.

Length Attribute

The Company cautions Staff against over-prescribing the contract lengths required for participation at this early stage. Contract length could be an opportunity for differentiation between projects, as different financial structures are developed over the life of the program. There is also some concern that existing federal, state and Energy Trust of Oregon incentives will require a specific duration for eligibility, and allowing the flexibility to conform program design to those requirements as they are identified would be beneficial by providing a lower cost project for participating customers.

Early Termination Attribute

The Company supports Staff's preferred attribute to charge participating customers an early termination fee.

VII. Subscription Pricing

The Company generally supports Staff's recommendation to include the solar resource cost and administration costs in the subscription pricing.

Calculation Method Attribute

As PacifiCorp stated in earlier comments, the price of participating in a community solar project should be determined by the entity developing the project. The subscription cost should be sufficient to cover the cost of the resource, interconnection costs, potential transmission costs, and the cost of administering the program. There should be no expectation that non-participating customers or ratepayers, in general, subsidize the development or operation of the program, either indirectly through providing long-term administrative support or directly through an incentivized rate.

Product Design Attribute

The Company does not oppose Staff's recommendation that the program be structured as a capacity product, and that participating customers are compensated through the energy generated by that capacity. However, the Company cautions Staff that being too prescriptive at this stage may limit the development of administratively efficient options for customers and project developers.

The Company does not support the inclusion of any mandatory capacity targets. Instead, the Company views the goal of this report to the legislature is to suggest a framework for the development of community solar projects, or, in other words, a set of rules or attributes under which these projects can be developed. This framework would allow project developers to design and market projects that conform within that framework. The Company underscores the importance of flexibility regarding capacity for the program based on customer demand for the product. A capacity mandate has the potential to alter the basic economics and create an artificial driver that escalates costs, as recently demonstrated with the Volumetric Incentive Rate in Oregon.

As discussed above, the Company is supportive of the phased approach included within Staff's preferred characteristics for system size. This structure would provide certainty that a known capacity of projects would be permitted under the rule framework. The phases should be conservatively constructed to allow opportunities for review of the impacts and results from the program, while providing an opportunity for program modifications.

Oversight Attribute

If third-party non-utility groups are allowed to participate in the development of community solar projects, a consumer protection entity and procedure must be developed to provide oversight to protect customers. The Company agrees with Staff that “there should be some subscription cost oversight so that there is a rational relationship with the costs of the community solar project and the subscription fee.” During the second workshop, Staff stated a preference that this oversight should not be by the Commission. It is critically important that the oversight of the third-party be clearly defined. This is particularly important if the program contemplates a direct relationship between customers and solar project developers.

Staff’s preferred characteristic for oversight is to have the Portfolio Options Committee review messaging and outreach for consumer protection. This proposal is insufficient because the Portfolio Option Committee is an advisory group—it does not have independent authority to make binding decisions—and its recommendations are made to the Commission, which does not currently have clear jurisdiction to regulate third-party non-utility groups. There are also aspects of consumer protection if third party non-utility groups engage in community solar that extend beyond just messaging and outreach, for example, investigation of consumer complaints and investigation into the long-term financial viability of third party non-utility providers. The Company strongly encourages Staff to include meaningful and comprehensive oversight recommendations.

If third party non-utility groups are allowed to participate in the development of community solar projects, a consumer protection entity and procedure must be developed to mitigate risks to customers. In a utility-run community solar program, the Commission will review the utility’s proposal and ensure the proper balancing of risk. Non-utility, third-party offerings should be no different in terms of the level of risk assigned to participating customers.

The Washington Utilities and Transportation Commission (UTC) also contemplated the issue of consumer protection within third-party ownership models of community solar projects. The UTC, with stakeholder input, crafted draft language in 2015 that would allow for non-economic regulation of third-party owned community solar projects. The key elements of the UTC language are:

- Requiring third-party vendors to register with the UTC and, in doing so, disclose their terms of service and cooperate with the UTC investigations of consumer complaints;
- Provides that an electric utility is not liable for harm caused to a customer or third-party vendor by disconnection of a leased energy system, except that the electric utility may not develop or apply disconnection standards that discriminate based on who owns the system;
- Addresses rights and responsibilities of seller, buyer and third-party vendor if there is a transfer of ownership of real property subject to a consumer contract;
- Defines “consumer contract;” and

- Makes violations by a third-party vendor enforceable as unfair or deceptive acts under the Consumer Protection Act;³

The Company suggests using the Washington UTC language as a base guide for discussion of consumer protection of third-party ownership models in Oregon. The draft language is attached to these comments as Attachment A.

VIII. Bill Credits – Calculation

The Company generally supports Staff's Rate Attributes, including netting with subscription costs, and allowing flexibility for Commission determination in each case. However, the Company is concerned that Staff's preferred attribute relies too heavily on the outcome of the resource value of solar to inform this determination. The Commission has not yet made a determination as to which elements will be used to determine a resource value of solar, and therefore, it is premature to rely on an outcome from this docket for these community solar attributes. Moreover, tying the community solar recommendation to the investigation into the resource value of solar proceeding could unnecessarily delay community solar developments given the difference in the timelines.

If the resource value of solar is used to determine bill credits, it is important that the value be reflective of the type of solar for which a participant is subscribing. For example, it would not be appropriate to confer a bill credit based upon the value of a distributed solar resource if a participant is subscribing for a utility scale solar plant that is remotely located.

The design of bill crediting should be primarily concerned with the actual costs for service and value to the utility for the solar resource. The approach the Company outlined in its initial comments reasonably balances providing participants with real benefits on their bills while ensuring that those participants continue to pay their fair share of costs.

The Company does not agree with bill credits that are valued at the full retail rate of energy. A participant should still be subject to delivery charges because these customers rely upon the utility's system to deliver power to them. Allowing participants to avoid delivery charges would unduly shift costs to non-participants.

IX. Risk and Cost-Shifting Minimization

In the initial comments, the Company recommended that a threshold level for community solar programs would be set where after the program grew to a specific size in terms of total capacity, the program design would be revisited to ensure that the program is sustainable without undue cost shifting to non-participants. Staff did not address this recommendation in their Draft Recommendations on Program Attributes and Characteristics.

³ Washington Proposed Substitute House Bill 1912. Draft June 11, 2015.

X. Conclusion

In Staff's draft recommendation and during the second stakeholder workshop, Staff stated that it is looking forward to receiving stakeholder input and was not putting forth a recommendation. The Company is hopeful that Staff will incorporate stakeholder feedback in its ultimate recommendation to the Commission. Additionally, PacifiCorp is hopeful that in areas where there was near-consensus among stakeholders in the last round of comments, such as the ownership attribute, Staff will work to provide a recommendation that is inclusive of all points of view and sufficiently flexible in program design.

Respectfully submitted this 25th day of September, 2015.



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ATTACHMENT A

Proposed Substitute House Bill 1912 (H-2771.6)

By Representative Morris

Adds the following to the underlying (title only) bill:

1. Former Program. Closes the existing renewable energy investment cost recovery incentive program (Legacy Program) to new participants, after December 31, 2015. Legacy Program participants may continue to apply for annual incentive payments, at current incentive rates, through June 30, 2020. Transfers program management, technical review, and tracking responsibilities for administering the new program from the Department of Revenue to the Washington State University Energy Extension Program (WSU), beginning January 1, 2016.
2. New Program. Allows WSU to certify, beginning January 1, 2016, and ending June 30, 2020, new participants to receive 10 years of annual incentive payments.
3. Incentive Rates. Establishes the following rates for incentive payments under the New Program:
 - 1) a base rate of \$0.16 per kilowatt-hour (kW-hr) for residential and Community Solar systems certified in 2016, declining annually for new systems until \$0.06/kW-hr in 2020;
 - 2) a base rate of \$0.10/kW-hr for commercial systems declining annually to \$0.04/kW-hr in 2020;
 - 3) a bonus rate of \$0.12/kW-hr for electricity generated with solar modules or wind generator components manufactured in Washington, declining annually to \$0.02/kW-hr in 2020;
 - 4) a bonus rate of \$0.05/kW-hr for systems that incorporate a smart inverter, declining annually to \$0.00/kW-hr in 2020;
 - 5) a bonus rate of \$0.05/kW-hr for systems that are part of a pilot project identified in the "Smart Plan for a Smart Grid" study; and
 - 6) a bonus rate of \$0.05/kW-hr for a person or entity who signs an affidavit attesting that they are unable to benefit from federal tax incentives.
4. Cap on Incentives Available Per System. Residential-scale systems (under 10 kW) and Community Solar Project participants may not receive more than \$5,000 in incentive payments. Larger systems (10 kW to 500 kW) may not receive more than \$25,000 or \$500/kW, whichever is less.
5. Community Solar Project Eligibility. A Community Solar Project is defined as a solar energy system that is 500 kW or smaller, with at least 10 participants, each of whom is a utility customer that is a meter holder of the electric utility, and each of whom owns a share not to exceed 10 kW. No person may be a participant in more than one community solar project per meter for which the person is a meter holder.

6. Limit on Total Public Utility Tax Funds Available. Raises the per-utility limit on total Public Utility Taxes available to fund the production incentive program (both Legacy and New Program), to 1 percent of a utility's taxable power sales or \$250,000, whichever is greater. Allows an additional credit of up to \$100,000 to a utility that purchases software enabling the utility to view renewable energy systems and is capable of electronically receiving data from WSU.
7. Other Certification Limits. In any fiscal year, caps at 25 percent of all funds available the total funds available for certifications for leased energy systems or community solar projects.
8. Regulation of Leased Systems. Broadens eligibility for the New Program incentive to include leased systems, and establishes a new regulatory framework for such systems:
 - 1) makes the legislative finding that the Utilities and Transportation Commission (UTC) should regulate, as "competitive electrical companies" (CECs) third-party vendors who provide renewable energy systems to consumers through a lease or other consumer contract and investor-owned utilities who invest company dollars in providing such systems to consumers;
 - 2) requires third-party vendors and affiliates of an electric utility who provide competitive electrical services (access to the electricity produced by a renewable energy system through a consumer contract) to register with the UTC as a CEC, disclose terms of service, and cooperate with UTC investigations of consumer complaints. This includes requirements to provide, on a separate page in conspicuous print, certain terms addressing arbitration or waiving the right to join a class action, and to file with the UTC or the Attorney General copies of judgments or arbitration decisions in actions alleging violation of consumer protections;
 - 3) provides that an electric utility is not liable for harm caused to a customer or CEC by disconnection of a leased energy system, except that the electric utility may not develop or apply disconnection standards that discriminate based on who owns the system;
 - 4) addresses rights and responsibilities of seller, buyer, and third parties if there is a transfer of ownership of real property subject to a consumer contract, including a provision prohibiting a consumer contract from granting a utility or competitive electric company any authority to approve or disapprove the transfer of real property;
 - 5) defines "consumer contract" as the lease, power purchase agreement, loan, or other financial agreement between a CEC 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; and
 - 6) makes violations by a CEC enforceable as unfair or deceptive acts under the Consumer Protection Act.

9. Certification Requirements. (1) New certification applications must be accompanied by a consumer template, developed in consultation with the UTC and Attorney General, filled out by an installer or CEC, and provided to the consumer prior to final execution of a consumer contract. The template includes terms deemed necessary for a consumer to understand the business deal, such as performance guarantees, respective rights of the parties, and the financial payback of the system. (2) Applications also must include information identified by WSU, in consultation with UTC and Commerce, as necessary for aggregating in a central platform that allows an electric utility to view solar energy systems as a fleet, such tilt, shading, azimuth, and global position systems coordinates.
10. Solar Module Recycling Program. Requires the Department of Ecology to make recommendations to the Legislature prior to October 31, 2016 for a program for recycling and decommissioning of solar modules and financing such activities, including consideration of how such a program may be modeled on an existing state electronic product recycling program financed through participation in the Washington Materials Management and Financing Authority. Restricts incentive payments to those systems for which a manufacturer has registered with the Department of Ecology as a participant in the solar module recycling program. Requires Ecology to establish and implement a registration process by December 1, 2015.
11. Smart inverter. Defines a smart inverter as one that WSU determines, by reference to standards established the public utilities commissions in the Western Electricity Coordinating Council region, has sufficient functionality to provide utilities and state agencies ways to share granular data and diagnose operational and maintenance issues, such as ride-through of low and high voltage and frequency excursions and provision of volt-ampere reactive power by a fixed power factor.
12. Program Administration. Requires WSU to develop any program requirement and policies necessary for administration of the incentive payments through a public process, and authorizes the Department of Revenue to adopt any rules necessary for the administration of the program, in consultation with WSU. Requires utility customers or, at the utility's option, the utility, to annually electronically report to WSU the gross kW-hrs generated by the renewable energy system. Requires WSU to calculate the amount of incentive payment due, unless a utility opts to perform the calculation. Generally requires the utility to issue the incentive payment within 60 days of receiving from WSU the amount due.
13. Confidentiality of Participant Information. Deems information about incentive payments, system certifications, and total tax credit claimed to be subject to disclosure and not confidential taxpayer information.
14. "Smart Plan for the Smart Grid" Study. Requires the Office of Financial Management, in consultation with the Joint Committee on Energy Supply and Energy Conservation, to competitively select an independent consultant to conduct a two-phase study to review distributed energy resources laws and policies and identify best practices, pilot projects,

and analytical tools that can assist with planning for and accounting for the costs and benefits of distributed generation.

15. Taxpayer Performance Statement. Requires the Joint Legislative Audit and Review Committee in 2019 to evaluate the New Program's performance, based on achievement of: (1) Installation of 165 MW of solar energy systems; (2) improved cost-effectiveness, as measured by a shortened payback period; (3) growth of solar-related employment; (4) creation of a system for capturing data about installed solar systems that can be transferred to utilities; and (5) creation and propagation of tools that give utilities greater situational viewability of what customers' capital investments are being made behind the electricity meter. Requires the legislative auditor to provide the Legislature an overview of market conditions for solar energy system installation in the state.
16. Sales and Use Tax Exemptions for Solar Photovoltaic Systems. Moves up the expiration date for certain existing renewable energy sales and use tax exemptions, providing that such exemptions, as applied to solar photovoltaic systems of a size eligible to receive the production incentive (500 kW or less), expire December 31, 2015, instead of existing expiration dates of June 30, 2018 or January 1, 2020.
17. Net Metering True-Up Date. Authorizes a utility to identify an annual incentive payment date and an annual net metering true-up date for program participants served by that utility that are aligned with the utility's billing system cycles and with customer meter systems.
18. Includes an emergency clause.

1 AN ACT Relating to distributed generation; amending RCW
2 82.16.120, 82.16.130, 19.86.170, 82.08.962, 82.08.963, 82.12.962, and
3 82.12.963; adding new sections to chapter 82.16 RCW; adding a new
4 section to chapter 70.95N RCW; adding new sections to chapter 80.28
5 RCW; adding a new chapter to Title 19 RCW; creating new sections; and
6 declaring an emergency.

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

8 NEW SECTION. **Sec. 1.** (1) The legislature finds that distributed
9 generation, including renewable energy systems interconnected to the
10 grid on utility customers' premises, is an important part of a state
11 energy strategy to increase energy independence, promote economic
12 development, and attain environmental benefits in the form of reduced
13 air pollutant emissions. It is desirable to conduct a systematic
14 evaluation of existing and emerging policies that promote cost-
15 effective integration of distributed energy resources.

16 (2) The legislature recognizes that the smart grid of the future
17 is likely to contain billions of intelligent devices, and the
18 architecture to control or coordinate the operation of these devices
19 at the distribution level of the grid in a reliable way is not yet
20 certain. While our utilities have a good understanding of how their
21 electric distribution system works today against extreme cold weather

1 events in deterministic plans, little dynamic planning is conducted
2 to shed light on what customers will be purchasing and at what rate
3 new technologies such as electric vehicles, smart home energy
4 management packages, and distributed generation may be adopted.
5 Neighboring states like Hawaii have been put into a reactive planning
6 and engineering mode by not understanding the relationship between
7 the timeline of customer adoption of these technologies and how they
8 will impact their electric distribution systems. Knowing this
9 information is the keystone to keeping rates low through proactive
10 dynamic smart planning for the smart grid that utilizes symbiotic
11 opportunities like those between electric vehicles and distributed
12 generation, and utilizing individual customers investments and
13 choices in a harmonized way that defer more costly capital
14 investments.

15 (3) The legislature seeks to contract with a third-party
16 consultant, through a competitive procurement process, to obtain
17 recommendations about policies, pilot projects, and tools that can
18 increase situational viewability of distributed resources and cost-
19 effectively integrate distributed resources into the distribution
20 grid.

21 (4) It is the legislature's intent to extend incentives for
22 renewable energy systems while obtaining recommendations from a
23 third-party consultant who shall work with utilities, customers, and
24 other stakeholders to develop better tools for utilities,
25 particularly tools that give them better situational awareness that
26 will keep electricity rates low for consumers as we transition to the
27 digital smart grid of the future.

28 **Sec. 2.** RCW 82.16.120 and 2011 c 179 s 3 are each amended to
29 read as follows:

30 (1)(a) Any individual, business, local governmental entity, not
31 in the light and power business or in the gas distribution business,
32 or a participant in a community solar project may apply to the light
33 and power business serving the situs of the system, each fiscal year
34 beginning on July 1, 2005, and ending June 30, 2020, for an
35 investment cost recovery incentive for each kilowatt-hour from a
36 customer-generated electricity renewable energy system.

37 (b) In the case of a community solar project as defined in RCW
38 82.16.110(2)(a)(i), the administrator must apply for the investment
39 cost recovery incentive on behalf of each of the other owners.

1 (c) In the case of a community solar project as defined in RCW
2 82.16.110(2)(a)(iii), the company owning the community solar project
3 must apply for the investment cost recovery incentive on behalf of
4 each member of the company.

5 (2)(a) Before submitting for the first time the application for
6 the incentive allowed under subsection (4) of this section, the
7 applicant must submit to the department of revenue and to the climate
8 and rural energy development center at the Washington State
9 University, established under RCW 28B.30.642, a certification in a
10 form and manner prescribed by the department that includes, but is
11 not limited to, the ~~((following))~~ information~~((+))~~ described in (c)
12 of this subsection.

13 (b) No person may submit for the first time the application for
14 the incentive allowed under subsection (4) of this section after
15 December 31, 2015.

16 (c)(i) The name and address of the applicant and location of the
17 renewable energy system.

18 (A) If the applicant is an administrator of a community solar
19 project as defined in RCW 82.16.110(2)(a)(i), the certification must
20 also include the name and address of each of the owners of the
21 community solar project.

22 (B) If the applicant is a company that owns a community solar
23 project as defined in RCW 82.16.110(2)(a)(iii), the certification
24 must also include the name and address of each member of the company;

25 (ii) The applicant's tax registration number;

26 (iii) That the electricity produced by the applicant meets the
27 definition of "customer-generated electricity" and that the renewable
28 energy system produces electricity with:

29 (A) Any solar inverters and solar modules manufactured in
30 Washington state;

31 (B) A wind generator powered by blades manufactured in Washington
32 state;

33 (C) A solar inverter manufactured in Washington state;

34 (D) A solar module manufactured in Washington state;

35 (E) A stirling converter manufactured in Washington state; or

36 (F) Solar or wind equipment manufactured outside of Washington
37 state;

38 (iv) That the electricity can be transformed or transmitted for
39 entry into or operation in parallel with electricity transmission and
40 distribution systems; and

1 (v) The date that the renewable energy system received its final
2 electrical permit from the applicable local jurisdiction.

3 ((~~(b)~~)) (d) Within thirty days of receipt of the certification
4 the department of revenue must notify the applicant by mail, or
5 electronically as provided in RCW 82.32.135, whether the renewable
6 energy system qualifies for an incentive under this section. The
7 department may consult with the climate and rural energy development
8 center to determine eligibility for the incentive. System
9 certifications and the information contained therein are not
10 confidential tax information under RCW 82.32.330 and are subject to
11 disclosure ((~~under RCW 82.32.330(3)(1)~~)).

12 (3)(a) By August 1st of each year application for the incentive
13 must be made to the light and power business serving the situs of the
14 system by certification in a form and manner prescribed by the
15 department that includes, but is not limited to, the following
16 information:

17 (i) The name and address of the applicant and location of the
18 renewable energy system.

19 (A) If the applicant is an administrator of a community solar
20 project as defined in RCW 82.16.110(2)(a)(i), the application must
21 also include the name and address of each of the owners of the
22 community solar project.

23 (B) If the applicant is a company that owns a community solar
24 project as defined in RCW 82.16.110(2)(a)(iii), the application must
25 also include the name and address of each member of the company;

26 (ii) The applicant's tax registration number;

27 (iii) The date of the notification from the department of revenue
28 stating that the renewable energy system is eligible for the
29 incentives under this section; and

30 (iv) A statement of the amount of kilowatt-hours generated by the
31 renewable energy system in the prior fiscal year.

32 (b) Within sixty days of receipt of the incentive certification
33 the light and power business serving the situs of the system must
34 notify the applicant in writing whether the incentive payment will be
35 authorized or denied. The business may consult with the climate and
36 rural energy development center to determine eligibility for the
37 incentive payment. Incentive certifications and the information
38 contained therein are not confidential tax information under RCW
39 82.32.330 and are subject to disclosure ((~~under RCW~~
40 ~~82.32.330(3)(1)~~)).

1 (c)(i) Persons, administrators of community solar projects, and
2 companies receiving incentive payments must keep and preserve, for a
3 period of five years, suitable records as may be necessary to
4 determine the amount of incentive applied for and received. Such
5 records must be open for examination at any time upon notice by the
6 light and power business that made the payment or by the department.
7 If upon examination of any records or from other information obtained
8 by the business or department it appears that an incentive has been
9 paid in an amount that exceeds the correct amount of incentive
10 payable, the business may assess against the person for the amount
11 found to have been paid in excess of the correct amount of incentive
12 payable and must add thereto interest on the amount. Interest is
13 assessed in the manner that the department assesses interest upon
14 delinquent tax under RCW 82.32.050.

15 (ii) If it appears that the amount of incentive paid is less than
16 the correct amount of incentive payable the business may authorize
17 additional payment.

18 (4) Except for community solar projects, the investment cost
19 recovery incentive may be paid fifteen cents per economic development
20 kilowatt-hour unless requests exceed the amount authorized for credit
21 to the participating light and power business. For community solar
22 projects, the investment cost recovery incentive may be paid thirty
23 cents per economic development kilowatt-hour unless requests exceed
24 the amount authorized for credit to the participating light and power
25 business. For the purposes of this section, the rate paid for the
26 investment cost recovery incentive may be multiplied by the following
27 factors:

28 (a) For customer-generated electricity produced using solar
29 modules manufactured in Washington state or a solar stirling
30 converter manufactured in Washington state, two and four-tenths;

31 (b) For customer-generated electricity produced using a solar or
32 a wind generator equipped with an inverter manufactured in Washington
33 state, one and two-tenths;

34 (c) For customer-generated electricity produced using an
35 anaerobic digester, or by other solar equipment or using a wind
36 generator equipped with blades manufactured in Washington state, one;
37 and

38 (d) For all other customer-generated electricity produced by
39 wind, eight-tenths.

1 (5)(a) No individual, household, business, or local governmental
2 entity is eligible for incentives provided under subsection (4) of
3 this section for more than five thousand dollars per year.

4 (b) Except as provided in (c) through (e) of this subsection (5),
5 each applicant in a community solar project is eligible for up to
6 five thousand dollars per year.

7 (c) Where the applicant is an administrator of a community solar
8 project as defined in RCW 82.16.110(2)(a)(i), each owner is eligible
9 for an incentive but only in proportion to the ownership share of the
10 project, up to five thousand dollars per year.

11 (d) Where the applicant is a company owning a community solar
12 project that has applied for an investment cost recovery incentive on
13 behalf of its members, each member of the company is eligible for an
14 incentive that would otherwise belong to the company but only in
15 proportion to each ownership share of the company, up to five
16 thousand dollars per year. The company itself is not eligible for
17 incentives under this section.

18 (e) In the case of a utility-owned community solar project, each
19 ratepayer that contributes to the project is eligible for an
20 incentive in proportion to the contribution, up to five thousand
21 dollars per year.

22 (6) If requests for the investment cost recovery incentive under
23 this section exceed the amount of funds available for credit to the
24 participating light and power business, the incentive payments must
25 be reduced proportionately.

26 (7) The climate and rural energy development center at Washington
27 State University energy program may establish guidelines and
28 standards for technologies that are identified as Washington
29 manufactured and therefore most beneficial to the state's
30 environment.

31 (8) The environmental attributes of the renewable energy system
32 belong to the applicant, and do not transfer to the state or the
33 light and power business upon receipt of the investment cost recovery
34 incentive.

35 (9) No incentive may be paid under this section for kilowatt-
36 hours generated before July 1, 2005, or after June 30, 2020.

37 (10) Beginning January 1, 2016, program management, technical
38 review, and tracking responsibilities of the department under this
39 section are transferred to the Washington State University extension
40 energy program. At the earliest date practicable, the department must

1 transfer all records necessary for the administration of the
2 remaining incentive payments due under this section to the Washington
3 State University extension energy program.

4 **Sec. 3.** RCW 82.16.130 and 2010 c 202 s 3 are each amended to
5 read as follows:

6 (1)(a) A light and power business shall be allowed a credit
7 against taxes due under this chapter in an amount equal to
8 ~~((investment cost recovery))~~ incentive payments made in any fiscal
9 year under RCW 82.16.120 and section 5 of this act.

10 (b) A light and power business shall be allowed a one-time credit
11 against taxes due under this chapter in an amount equal to the lesser
12 of one hundred thousand dollars or the cost of purchasing software
13 that: (i) Enables the light and power business to view the renewable
14 energy systems for which the light and power business has made or
15 will make incentive payments under RCW 82.16.120 and section 5 of
16 this act; and (ii) is capable of electronically receiving data from
17 the Washington State University extension energy program.

18 (2) The credits ~~((shall))~~ must be taken in a form and manner as
19 required by the department. The credit under subsection (1)(a) of
20 this section for the fiscal year may not exceed ((one-half)) one
21 percent of the businesses' taxable power sales due under RCW
22 82.16.020(1)(b) or ((one)) two hundred fifty thousand dollars,
23 whichever is greater. ((Incentive payments to participants in a
24 utility-owned community solar project as defined in RCW
25 82.16.110(2)(a)(ii) may only account for up to twenty-five percent of
26 the total allowable credit. Incentive payments to participants in a
27 company-owned community solar project as defined in RCW
28 82.16.110(2)(a)(iii) may only account for up to five percent of the
29 total allowable credit.))

30 (3) The credit may not exceed the tax that would otherwise be due
31 under this chapter. Refunds shall not be granted in the place of
32 credits. Expenditures not used to earn a credit in one fiscal year
33 may not be used to earn a credit in subsequent years.

34 ~~((+2))~~ (4) For any business that has claimed credit for amounts
35 that exceed the correct amount of the incentive payable under RCW
36 82.16.120 or, for payments made after January 1, 2016, that exceed
37 the amount reported to the utility as payable by the Washington State
38 University extension energy program as provided under section 5(17)
39 of this act, the amount of tax against which credit was claimed for

1 the excess payments (~~((shall be))~~) is immediately due and payable. The
2 department (~~((shall))~~) must assess interest but not penalties on the
3 taxes against which the credit was claimed. Interest (~~((shall))~~) must
4 be assessed at the rate provided for delinquent excise taxes under
5 chapter 82.32 RCW, retroactively to the date the credit was claimed,
6 and (~~((shall))~~) accrues until the taxes against which the credit was
7 claimed are repaid.

8 (~~((+3+))~~) (5) The amount of credit taken under this section is not
9 confidential taxpayer information under RCW 82.32.330 and is subject
10 to disclosure.

11 (6) The right to earn tax credits under this section expires June
12 30, (~~((2020))~~) 2030. Credits may not be claimed after June 30, (~~((2021))~~)
13 2031.

14 (7) The right to earn tax credits under subsection (1)(b) of this
15 section expires December 31, 2015. Credits may not be claimed after
16 December 31, 2016.

17 NEW SECTION. Sec. 4. A new section is added to chapter 82.16
18 RCW to read as follows:

19 The definitions in this section apply throughout this section and
20 section 5 of this act unless the context clearly requires otherwise.

21 (1) "Certification" means the authorization issued by the
22 Washington State University energy program establishing a person's
23 eligibility to receive annual incentive payments from the person's
24 utility for a term of ten years.

25 (2) "Commercial-scale system" means a renewable energy system
26 with nameplate capacity greater than ten kilowatts.

27 (3) "Community solar project" means a solar energy system: (a)
28 That has a direct current nameplate generating capacity that is no
29 larger than five hundred kilowatts; (b) that has at least ten
30 participants, each of whom is a utility customer that is a meter
31 holder of the electric utility that provides service at the situs of
32 the solar energy system; and (c) in which each participant is an
33 owner or beneficial owner of a share not exceeding ten kilowatts.

34 (4) "Competitive electrical company" has the same meaning as in
35 section 11 of this act.

36 (5) "Competitive electrical services" has the same meaning as in
37 section 11 of this act.

38 (6) "Consumer contract" has the same meaning as in section 11 of
39 this act.

(7) "Consumer-owned utility" has the same meaning as in RCW 19.280.020.

(8) "Customer-owner" means the owner of a residential-scale or commercial-scale renewable energy system, where such owner is not a utility and is not a competitive electrical company, and such owner either owns the premises where the renewable energy system is installed or occupies the premises.

(9) "Leased 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 competitive electrical company that has a consumer contract with a customer of the utility for competitive electrical services, as such terms are defined in section 11 of this act; or

(b) Owned by an electric utility and installed on the customer's side of the meter.

(10) "Person" means any person or legal entity.

(11) "Renewable energy system" means a solar energy system, an anaerobic digester as defined in RCW 82.08.900, or a wind generator used for producing electricity.

(12) "Residential-scale system" means a renewable energy system with nameplate capacity of ten kilowatts or less.

(13) "Smart inverter" means an inverter capable of: (a) Enhancing the operating reliability of the grid by autonomously contributing to grid support during excursions from normal operating voltage and frequency system conditions; (b) providing dynamic volt-ampere reactive/real power support, voltage and frequency ride-through, ramp rate controls; and (c) accepting externally communicated commands and other functions.

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

(15) "Washington State University energy program" means the Washington State University extension energy program.

NEW SECTION. **Sec. 5.** A new section is added to chapter 82.16 RCW to read as follows:

(1) Beginning January 1, 2016, the following may apply to the Washington State University energy program to receive a certification authorizing the utility serving the situs of a renewable energy system in the state of Washington to remit an annual production

1 incentive for each kilowatt-hour of alternating current electricity
2 generated by the renewable energy system:

3 (a) The customer-owner of a residential-scale or commercial-scale
4 renewable energy system;

5 (b) In the case of a community solar project, a person or entity
6 designated by all participants to be the project sponsor, who must
7 apply on behalf of each of the other participants;

8 (c) In the case of a leased energy system owned by a utility, the
9 utility, who must apply on behalf of its utility customer who hosts
10 the leased energy system; and

11 (d) In the case of a leased energy system owned by a competitive
12 electrical company, the utility customer who is hosting the system.

13 (2) No certification may be issued under this section for:

14 (a) A renewable energy system that was certified under RCW
15 82.16.120; or

16 (b) A renewable energy system served by a utility who has elected
17 not to participate in the incentive program, as provided in
18 subsection (3) of this section.

19 (3) A utility's participation in the incentive program provided
20 in this section is voluntary. A utility electing to participate in
21 the incentive program shall notify the Washington State University
22 energy program of such election in writing by December 1st preceding
23 the calendar year in which the utility will participate. Such notice
24 shall also identify an annual incentive payment date and an annual
25 net metering true-up date for program participants served by that
26 utility that are aligned with that utility's billing system cycles
27 and with customer meter systems.

28 (4) The utility may terminate its voluntary participation in the
29 production incentive program by providing notice in writing to the
30 Washington State University energy program to cease issuing new
31 certifications for renewable energy systems that would be served by
32 that utility.

33 (a) A utility's notice of termination of participation is
34 effective after fifteen days, at which point the Washington State
35 University energy program may not accept new applications for
36 certification from renewable energy systems that would be served by
37 that utility.

38 (b) Upon receiving a utility's notice of termination of
39 participation in the incentive program, the Washington State
40 University energy program must report on its web site that renewable

1 energy systems that would be served by that utility are no longer
2 eligible to receive new certification for a renewable energy system.

3 (c) A utility's termination of participation does not affect the
4 utility's obligation to continue to make annual incentive payments to
5 systems that have already been certified.

6 (d) The Washington State University energy program must continue
7 to process and issue certifications for renewable energy systems that
8 were received by the Washington State University energy program
9 before the effective date of the notice of termination.

10 (e) A utility that has terminated participation in the program
11 may resume participation upon filing notice with the Washington State
12 University energy program.

13 (5) The Washington State University energy program may only
14 certify a renewable energy system that meets the following
15 eligibility criteria:

16 (a) The renewable energy system is connected to equipment capable
17 of measuring the electricity production of the system and
18 interconnects with the utility's system in a manner that allows the
19 utility to measure and report electronically to the Washington State
20 University energy program the total amount of electricity produced on
21 the premises.

22 (b) If the renewable energy system is a solar energy system, the
23 manufacturer, as the term is defined in section 9 of this act, is
24 registered as a participant in the solar module recycling program
25 described in section 9 of this act.

26 (6) No renewable energy system is eligible for certification to
27 receive annual incentive payments provided under this section for
28 more than the following amounts:

29 (a) Five thousand dollars for a system with under ten kilowatts
30 nameplate capacity;

31 (b) Five thousand dollars per community solar project
32 participant;

33 (c) Five hundred dollars per kilowatt or twenty-five thousand
34 dollars, whichever is less, for any system other than a community
35 solar project that is ten kilowatts or larger.

36 (7) No person may be a participant in more than one community
37 solar project per meter for which the person is a meter holder.

38 (8) To obtain certification to receive the annual production
39 incentive payments provided in this section for electricity produced

1 by a renewable energy system, a person must submit to the Washington
2 State University energy program:

3 (a) An application, which must include, but is not limited to,
4 the following:

5 (i) An affidavit that the applicant has not previously received a
6 certification from the department under RCW 82.16.120 entitling it to
7 receive annual incentive payments for electricity generated by the
8 renewable energy system;

9 (ii) A statement of the amount of annual electricity production
10 expected from the renewable energy system and an estimate of the
11 annual electrical demand of the premises;

12 (iii) The date that the renewable energy system received its
13 final electrical inspection from the applicable local jurisdiction,
14 as well as a copy of the permit;

15 (iv) Any information identified by the Washington State
16 University energy program in consultation with the utilities and
17 transportation commission, utilities, and the department of commerce
18 as necessary for establishing a central platform that allows an
19 electric utility to view solar energy systems receiving the
20 production incentive as a fleet, such as panel global positioning
21 system coordinates, tilt, shading, and azimuth; and

22 (v) Any other information the Washington State University energy
23 program deems necessary in determining eligibility and incentive
24 levels, administering the program, tracking progress toward achieving
25 the limits on program participation established in RCW 82.16.130, or
26 facilitating the review of the performance of the tax preferences by
27 the joint legislative audit and review committee, as described in
28 section 8 of this act.

29 (b) A copy of the signed uniform disclosure of essential terms
30 provided by the installation company, competitive electrical service
31 provider, or electric utility pursuant to section 6 of this act.

32 (9) Within thirty days of receipt of the application for
33 certification, the Washington State University energy program must
34 notify the applicant and the utility serving the situs of the system,
35 by mail or electronically, of whether certification has been granted.
36 The certification notice must state the rate to be paid per kilowatt-
37 hour of electricity generated by the renewable energy system, as
38 provided in subsection (11) of this section, subject to any
39 applicable cap on total annual payment provided in subsection (6) of
40 this section.

1 (10) Certification is valid for ten years and may not be
2 retroactively changed due to evolutionary standards or
3 interpretations by the Washington State University energy program,
4 except it may be adjusted in response to later discovered errors in
5 the original application or certification. Certification of a
6 renewable energy system follows the system with the transfer of
7 property if the owner of the renewable energy system notifies the
8 Washington State University energy program of the transfer using
9 procedures established by the Washington State University energy
10 program.

11 (11) The Washington State University energy program must
12 determine the total incentive rate for a new renewable energy system
13 certification by adding to the base rate any applicable bonus rates.

14 (a) For new systems certified in calendar year 2016, the base
15 incentive rate available under this section, payable for a period of
16 ten years from the date that a system commences operation, per
17 kilowatt-hour generated by the renewable energy system, is sixteen
18 cents per kilowatt-hour for a residential-scale renewable energy
19 system or community solar project and ten cents per kilowatt-hour for
20 a commercial-scale renewable energy system.

21 (b) In 2016, the following bonus rates shall be available:

22 (i) Twelve cents per kilowatt-hour for electricity generated by a
23 renewable energy system with solar modules made in Washington or with
24 a wind turbine or tower that is made in Washington;

25 (ii) Five cents per kilowatt-hour for electricity generated by a
26 renewable energy system that includes a smart inverter;

27 (iii) Five cents per kilowatt-hour for electricity generated by a
28 renewable energy system that is participating in a pilot project
29 identified by the third-party consultant in the "smart plan for the
30 smart grid" report to the legislature provided in section 7(2)(b) of
31 this act; and

32 (iv) Five cents per kilowatt-hour for a community solar project,
33 where the owner files an affidavit with the Washington State
34 University energy program attesting that the entity is unable to
35 benefit from the federal investment tax credit provided in section 48
36 of the internal revenue code, and the federal residential renewable
37 energy tax credit provided in section 25D of the internal revenue
38 code and has not contracted with and will not contract with a third
39 party capable of benefiting from such incentives for competitive
40 electrical services related to the community solar project.

(c) For new system certifications after calendar year 2016, the base rates and the bonus rates for made in Washington systems and smart inverters must decline as follows:

Calendar year of system certification	Base rate - residential and community solar projects	Base rate - commercial	Made in Washington bonus	Inverter bonus
2016	\$0.160	\$0.100	\$0.120	\$0.050
2017	\$0.135	\$0.085	\$0.095	\$0.040
2018	\$0.110	\$0.070	\$0.070	\$0.025
2019	\$0.085	\$0.055	\$0.045	\$0.010
2020	\$0.060	\$0.040	\$0.020	\$0.000

(d) For purposes of this section, the Washington State University energy program must define when a renewable energy system commences operation.

(12) The Washington State University energy program must cease to issue new certifications:

(a) For leased energy systems in any fiscal year that twenty-five percent of available funds for credit under RCW 82.16.130 have been allocated to leased energy systems;

(b) For community solar projects in any fiscal year that twenty-five percent of available funds for credit under RCW 82.16.130 have been allocated to community solar projects; and

(c) For any additional renewable energy system served by a utility if certification is likely to result in incentive payments by that utility exceeding the utility's total public utility tax liability.

(13) If the Washington State University energy program ceases issuing new certifications during a fiscal year or biennium as provided in subsection (12) of this section, in the following fiscal year or biennium, or when additional funds are available for credit such that the thresholds described in subsection (12) of this section are no longer exceeded, the Washington State University energy program shall resume issuing new certifications using a lottery or

1 other method of awarding certifications that results in equitable and
2 orderly allocation of benefits to applicants.

3 (14) In order to begin to receive annual incentive payments, a
4 person who has been issued a certification for the incentive as
5 provided in subsection (9) of this section must submit the
6 certification to the utility serving the situs of the system.

7 (15) The Washington State University energy program must
8 establish a list of equipment that is eligible for the bonus rates
9 described in subsection (11) of this section. The Washington State
10 University energy program shall, in consultation with the department
11 of commerce, develop technical specifications and guidelines to
12 ensure consistent and predictable determination of eligibility. A
13 solar module is made in Washington for purposes of receiving the
14 bonus rate only if the lamination of the module takes place in
15 Washington. A wind turbine is made in Washington only if it is
16 powered by a turbine or built with a tower manufactured in
17 Washington.

18 (16) The manufacturer of a renewable energy system component
19 subject to a bonus rate under subsection (11) of this section may
20 apply to the Washington State University energy program to receive a
21 determination of eligibility for such bonus rates. The Washington
22 State University energy program must publish a list of components
23 that have been certified as eligible for such bonus rates. The
24 Washington State University energy program may determine smart
25 inverter eligibility by reference to standards established by the
26 public utilities commissions in the western electricity coordinating
27 council region as in effect on the effective date of this section.
28 The Washington State University energy program may assess an
29 equipment certification fee to recover its costs.

30 (17) Annually, the applicant or the utility, at the utility's
31 option, must electronically report to the Washington State University
32 energy program the amount of gross kilowatt-hours generated by each
33 renewable energy system since the prior annual report.

34 (18)(a) The Washington State University energy program must
35 calculate for the year and provide to the utility the amount of the
36 incentive payment due to each participant and the total amount of
37 credit against tax due available to the utility under RCW 82.16.130
38 that has been allocated as annual incentive payments. Upon notice to
39 the Washington State University energy program, a utility may opt to

1 directly perform this calculation and provide its results to the
2 Washington State University energy program.

3 (b) No person is eligible for incentive payments under this
4 section for electricity generated in excess of the estimated
5 kilowatt-hours to be consumed annually at the metered location,
6 except in the case of a community solar project.

7 (c) If the Washington State University energy program identifies
8 an abnormal production claim, it must notify the utility and the
9 applicant and recommend withholding payment until the applicant has
10 demonstrated that the production claim is accurate and valid.

11 (19) Within sixty days of receipt of the information required
12 under subsection (18)(a) of this section from the Washington State
13 University energy program, the utility must issue the incentive
14 payment.

15 (20) The Washington State University energy program must post on
16 its web site and update quarterly a report, by utility, of:

17 (a) The certification limits for various system types and sizes
18 established under subsection (12) of this section; and

19 (b) An estimate of the amount of credit that has not yet been
20 allocated for incentive payments under each utility's credit limit
21 and remains available for new renewable energy system certifications.

22 (21) Persons receiving incentive payments under this section must
23 keep and preserve, for a period of five years, suitable records as
24 may be necessary to determine the amount of incentive payments
25 applied for and received. The Washington State University energy
26 program may direct a utility to cease issuing incentive payments if
27 the records are not made available for examination upon request. A
28 utility receiving such a directive is not liable to the recipient for
29 any incentive payments or other damages for ceasing payments pursuant
30 to the directive.

31 (22) The nonpower attributes of the renewable energy system
32 belong to the customer who hosts the system or, in the case of a
33 community solar project, the participant, unless, in the case of a
34 utility-owned system, the contract clearly specifies that the
35 attributes will be retained by the utility.

36 (23) All lists, technical specifications, determinations, and
37 guidelines developed under this section must be made publicly
38 available online.

39 (24) No certification may be issued under this section after June
40 30, 2020.

1 (25) The Washington State University energy program may establish
2 fees to recover all or a portion of its costs in administering the
3 incentive program. At a minimum, a one-time fee must be assessed to
4 each participant to recover any ongoing costs incurred for tracking
5 the power production from certified systems, including any software
6 costs incurred in collecting the information described in subsection
7 (8)(a)(iv) of this section. This fee must be assessed in direct
8 proportion to the amount of incentive payments that a participant is
9 certified to receive, and no participant may be assessed a fee that
10 exceeds ten percent of the cumulative incentive payments certified
11 under this section and RCW 82.16.120.

12 (26) The Washington State University energy program may, through
13 a public process, develop any program requirements and policies
14 necessary for the administration of this section, RCW 82.16.120, and
15 section 6 of this act. The department of revenue is authorized, in
16 consultation with the Washington State University energy program, to
17 adopt any rules necessary for administration of the program.

18 (27) Applications, certifications, requests for incentive
19 payments under this section, and the information contained therein
20 are not deemed tax information under RCW 82.32.330 and are subject to
21 disclosure.

22 NEW SECTION. **Sec. 6.** (1) Any installation company, competitive
23 electric service provider, or electric utility providing a renewable
24 energy system eligible for an incentive payment under section 5 of
25 this act must provide the entity applying under section 5(1) of this
26 act a uniform statement of essential terms. The uniform statement
27 must be in a format established by the Washington State University
28 extension energy program, which must consult with the attorney
29 general, the utilities and transportation commission, and
30 representatives of utilities in establishing the uniform statement.

31 (2) The uniform statement must be provided prior to execution of
32 the consumer contract and must be signed by the customer.

33 (3) The uniform statement must include information regarding the
34 respective rights and responsibilities of all parties involved, and
35 include such terms as reasonably necessary for the customer to
36 understand and make an informed decision to enter the consumer
37 contract. Such information must include the following:

1 (a) Information about the system's performance, such as a monthly
2 or annual production performance guarantee or range of performance
3 and system size and capacity;

4 (b) Customer costs, including the amount of any down payment
5 required, periodic payments, or cost per kilowatt-hour of electricity
6 produced, and any built-in escalation rates or schedule of payment
7 amounts;

8 (c) Length of contract term and total expenditure or range of
9 expenditures, or the effective annual interest rate over the term of
10 the agreement; and

11 (d) The customer's rights and responsibilities when selling a
12 renewable energy system as part of a sale of real property, including
13 responsibility for system removal costs, disposal of the system, and
14 any remaining periodic payments.

15 NEW SECTION. **Sec. 7.** (1) The office of financial management, in
16 consultation with the joint committee on energy supply and energy
17 conservation, must competitively select an independent consultant to
18 conduct a two phase "smart plan for the smart grid" study. The
19 consultant must have experience working on advanced grid
20 infrastructure demonstration projects or otherwise demonstrate
21 familiarity with utility applications, technology, customer
22 engagement strategies, and associated analytical tools that
23 facilitate situational awareness in the distribution grid for
24 purposes of increasing the efficiency, reliability, and
25 sustainability of the distribution grid. Prior to selection, the
26 office of financial management must consult with investor-owned
27 utilities, consumer-owned utility stakeholders, and the members of
28 the joint committee on energy supply and energy conservation.

29 (2) The consultant must facilitate a dialogue with stakeholders,
30 for example by convening a blue ribbon panel, to obtain input for
31 both phases of the study. Stakeholders must include utility
32 representatives, state and local governmental agencies, consumer
33 advocates, industry leaders, and academic experts.

34 (a) In the first phase, the consultant must review distributed
35 energy resources laws and policies in Washington, the status of
36 existing and proposed efforts of state utilities to ensure cost-
37 effective integration of such resources, and best practices emerging
38 nationally and internationally to plan for and account for the costs
39 and benefits of distributed energy resource integration.

(b) The consultant must issue a report to the legislature and the governor by December 18, 2016, identifying pilot projects for maximizing cost-effective integration of distributed energy resources in Washington, identifying potential sources of funding for such pilot projects, and recommending tools that can assist utilities in obtaining a more dynamic and situational view of consumer activities on the distribution grid and in managing the effects of those activities.

(c) In the second phase, prior to December 18, 2017, the consultant shall provide a report to the legislature and the governor reviewing any pilot projects that have been implemented and providing recommendations of policies and incentives that could best facilitate cost-effective integration of distributed energy resources by Washington utilities.

NEW SECTION. **Sec. 8.** A new section is added to chapter 82.16 RCW to read as follows:

(1) This section is the tax preference performance statement for the tax preference and incentives created under RCW 82.16.130 and section 5 of this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference and incentives. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment or for certification under section 14 of this act.

(2) The legislature categorizes the tax preference and incentive created in section 5 of this act as intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a), and to create or retain jobs, as indicated in RCW 82.32.808(2)(c).

(3) The legislature's public policy objectives are:

(a) To increase and improve utilization of clean energy technology in Washington; and

(b) To increase the number of jobs in and enhance the sustainability of the clean energy technology industry in Washington.

(4) It is the legislature's intent to provide the incentives in section 5 of this act and RCW 82.16.130 in order to reduce the costs associated with installing and operating clean energy systems by persons or entities receiving the incentive and to reduce the costs for providing those incentives by entities receiving a credit under RCW 82.16.130, thereby increasing the ability for clean energy

1 technology firms to access the energy market and expand their
2 operations in Washington and increasing the number of jobs in the
3 clean energy technology industry in Washington.

4 (5) As part of its 2019 tax preference reviews conducted under
5 chapter 43.136 RCW, the joint legislative audit and review committee
6 must review the tax preferences and incentives in section 5 of this
7 act and RCW 82.16.130. The legislature intends for the legislative
8 auditor to determine that the incentive has achieved its desired
9 outcome and no extension of the tax preference is necessary if the
10 following performance milestones are met:

11 (a) Installation of one hundred sixty-five megawatts of solar
12 photovoltaic capacity in Washington by 2020;

13 (b) Improved cost-effectiveness, as measured by a shorter payback
14 period for a consumer who installs a residential solar energy system
15 in Washington in 2019, taking into account applicable state and
16 federal incentives in 2019, as compared to the payback period in
17 2014, and taking into account applicable state and federal incentives
18 in effect in 2014;

19 (c) Growth of solar-related employment, as evidenced by an
20 increase in the total number and per capita rate of solar energy-
21 related jobs in Washington, as reported by a relevant trade
22 association in the state and achievement of an improved national
23 ranking for solar energy-related employment and per capita solar
24 energy-related employment, as reported in a nationally recognized
25 report;

26 (d) Creation of a system for capturing data about installed solar
27 systems that can be transferred to utilities, so that utilities can
28 see solar systems as a fleet and manage them with other generation
29 resources; and

30 (e) Creation and propagation of tools for utilities that give
31 them greater situational viewability of what customers' capital
32 investments are being made behind the electricity meter and better
33 understanding of how such investments might fit together efficiently
34 into a ten-year distributed energy resource plan.

35 (6) The legislative auditor must include in its 2019 report to
36 the legislature an overview of market conditions for solar energy
37 system installation in the state and an analysis of how expiration of
38 the tax preference provided in section 5 of this act and RCW
39 82.16.130 may affect the continued development of a sustainable solar
40 industry in Washington. The legislative auditor should consider the

1 levelized cost of solar energy systems installed in 2019, the payback
2 period for such systems for a person or entity installing the system,
3 with or without the solar production incentive, and the average
4 contribution of the state of Washington to the total levelized cost
5 of a solar energy system for a person benefiting from the tax
6 preference, as compared to the average contribution of other states
7 with comparable insolation levels that provide solar production tax
8 incentives.

9 (7) In order to obtain the data necessary to perform the review,
10 the joint legislative audit and review committee may refer to the
11 data collected by the Washington State University extension energy
12 program and the department under the application and certification
13 process established in section 5 of this act, and may obtain
14 employment data from the employment security department.

15 (8) The Washington State University extension energy program is
16 encouraged to collect, through the application process, data from
17 persons receiving the incentive payments created in section 5 of this
18 act, as necessary, and may collect data from other interested persons
19 to report on progress toward achieving the performance milestones
20 listed in subsection (5) of this section.

21 (9) All recipients of tax credits or incentive payments awarded
22 under this chapter must provide any data requested by the Washington
23 State University extension energy program or the joint legislative
24 audit and review committee. Failure to comply may result in the loss
25 of a tax credit award or incentive payment in the following year.

26 NEW SECTION. **Sec. 9.** A new section is added to chapter 70.95N
27 RCW to read as follows:

28 (1) The legislature finds that a convenient, safe, and
29 environmentally sound system for the decommissioning and recycling of
30 solar modules must be established. The legislature further finds that
31 the responsibility for this system must be shared among all
32 stakeholders, with manufacturers financing the decommissioning and
33 recycling system.

34 (2) The department shall establish a process for stakeholders to
35 make recommendations for a program for the decommissioning and
36 recycling of solar modules and the financing of such activities by an
37 authority on behalf of participating manufacturers. Such a program
38 may be modeled on electronic product recycling and manufacturer

1 participation through the Washington materials management and
2 financing authority created under RCW 70.95N.280.

3 (3) In order for a solar energy system to be eligible for
4 incentive payments under section 5 of this act, at least one
5 manufacturer of the solar module must be registered with the
6 department as a participant in the solar module recycling program.
7 The department must establish and implement a registration process by
8 December 1, 2015.

9 (4) Registration requirements in calendar year 2015 are limited
10 to paying any fee established by the department under RCW 70.95N.230
11 to cover the costs of administering this section.

12 (5) Prior to December 1, 2015, the department must complete the
13 stakeholder process and report recommendations to the legislature and
14 the governor for how a solar module recycling program should be
15 structured and enforced.

16 (6) For purposes of this section, "manufacturer" means any
17 person, in business or no longer in business but having a successor
18 in interest, who, irrespective of the selling technique used,
19 including by means of distance or remote sale:

20 (a) Manufactures or has manufactured a solar module under its own
21 brand names for sale in or into this state;

22 (b) Assembles or has assembled a solar module that uses parts
23 manufactured by others for sale in or into this state under the
24 assembler's brand names;

25 (c) Resells or has resold in or into this state under its own
26 brand names a solar module produced by other suppliers, including
27 retail establishments that sell solar modules under their own brand
28 names;

29 (d) Manufactures or manufactured a cobranded solar module product
30 for sale in or into this state that carries the name of both the
31 manufacturer and a retailer;

32 (e) Imports or has imported a solar module into the United States
33 that is sold in or into this state. However, if the imported solar
34 module is manufactured by any person with a presence in the United
35 States meeting the criteria of manufacturer under (a) through (d) of
36 this subsection, that person is the manufacturer;

37 (f) Sells at retail a solar module acquired from an importer that
38 is the manufacturer as described in (e) of this subsection, and
39 elects to register in lieu of the importer as the manufacturer for
40 those products; or

(g) Elects to assume the responsibility and register in lieu of a manufacturer as defined under this section.

NEW SECTION. **Sec. 10.** (1) It is the intent of the legislature to provide consumers greater access to renewable energy systems owned by third parties and utilities but provided to the consumer through a lease, power purchase agreement, or other contractual arrangement. Such access will help minimize the upfront costs of distributed generation, providing further opportunities for consumers to access the benefits of these systems.

(2) It is the intent of the legislature to provide for consumer protection of customers accessing renewable energy systems through a consumer contract, and to recognize and encourage electric utility efforts in being early adopters of programs that promote customers' energy independence.

(3) The legislature finds that access to distributed renewable energy systems installed on residential, commercial, and governmental real property facilitates energy independence by consumers.

(4) 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 regulate as "competitive electrical companies" private third-party vendors who provide renewable energy systems directly to consumers through a consumer contract and affiliates of investor-owned utilities who invest company dollars to make these systems more widely accessible.

NEW SECTION. **Sec. 11.** The definitions in this section apply throughout this chapter and sections 16 through 21 of this act unless the context clearly requires otherwise.

(1)(a) Except as specified in (b) of this subsection, "competitive electrical company" means an electrical company that owns a renewable energy system on property controlled by a customer and enters into an agreement with a customer to provide competitive electrical services.

(b) The following entities are not competitive electrical companies:

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

4 (ii) Companies engaged in retail sales of renewable energy
5 equipment that are not otherwise engaged in business as a competitive
6 electrical company; and

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

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

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

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

25 (5) "Leased energy program" means a program developed by an
26 electric utility to provide customers of the utility access to
27 renewable energy systems through a consumer contract.

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

31 (a) Owned by a competitive electrical company that has a consumer
32 contract with a customer of an electric utility for competitive
33 electrical services; or

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

37 (7) "Renewable energy system" means a net metering system, as
38 defined in RCW 80.60.010, that generates renewable energy, as defined
39 in RCW 80.60.010.

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

4 NEW SECTION. **Sec. 12.** (1) Except as provided in subsection (3)
5 of this section, an electric utility is not liable for any harm,
6 economic or otherwise, caused to a customer or competitive electrical
7 company by disconnection of a leased energy system owned by the
8 competitive electrical company or owned by another electric utility.

9 (2) The reasons for such disconnection may include, but are not
10 limited to, safety or reliability purposes, faulty equipment, a
11 customer's nonpayment of an electric bill, or violation by the
12 customer or competitive electrical company of the interconnection
13 agreement between the electric utility and the customer.

14 (3) An electric utility may not develop or apply standards for
15 disconnection of a renewable energy system that discriminate on the
16 basis of whether the system is owned by the utility, the customer, or
17 a competitive electrical company.

18 NEW SECTION. **Sec. 13.** Electric utilities and competitive
19 electrical service companies are encouraged to offer to customers the
20 option to purchase the renewable energy system at the end of the
21 consumer contract's term.

22 NEW SECTION. **Sec. 14.** (1)(a) In the event that real property
23 subject to a renewable energy system consumer contract is sold, the
24 remainder of the consumer contract must be assumed by the buyer if a
25 memorandum has been recorded reflecting the essential terms of the
26 consumer contract, unless the seller and buyer agree otherwise. The
27 transfer of ownership of real property subject to a consumer contract
28 does not trigger a requirement to recertify a renewable energy system
29 previously certified for incentives under chapter 82.16 RCW. If the
30 buyer of such property assumes a consumer contract for a renewable
31 energy system previously certified for these incentives, the buyer
32 continues to qualify for all applicable incentives as originally
33 certified under chapter 82.16 RCW and any other benefits of the
34 consumer contract, as long as the buyer enters a new interconnection
35 agreement with the utility. The utility may not, as a condition of
36 entering into a new interconnection agreement with the person who has
37 assumed the consumer contract, require installation of new equipment

1 during the term that the system has received certification for the
2 incentives provided in section 5 of this act.

3 (b) Thirty days prior to closing, the seller of property subject
4 to a consumer contract shall notify any utility and competitive
5 electrical company affected by the consumer contract that the buyer
6 is assuming the contract, or that the buyer and seller have agreed
7 otherwise as provided in (a) of this subsection.

8 (c) Within seven days of the seller's notice, the utility and
9 competitive electrical company shall provide the documentation of the
10 procedures necessary for assumption of the consumer contract by the
11 buyer, or, in the event that the buyer is not assuming the contract,
12 for termination of the consumer contract and removal of the renewable
13 energy system.

14 (d) At the end of the consumer contract term or in the event of
15 any earlier termination of the consumer contract, the owner of the
16 renewable energy system, whether it is a utility or competitive
17 electrical company, is responsible for the removal of the renewable
18 energy system from the property and may recover the cost thereof only
19 as specified in the consumer contract and noted in the recorded
20 memorandum. The owner of the renewable energy system may only obtain
21 damages for the premature termination of a consumer contract to the
22 extent that the amount of the damages is specified as liquidated
23 damages in the consumer contract.

24 (e) Renewable energy system consumer contracts may not grant
25 utilities or competitive electrical companies any authority to
26 approve or disapprove of the transfer of real property associated
27 with such a consumer contract.

28 (2)(a) The owner of a renewable energy system shall guarantee
29 sufficient funds to properly dispose of the system at the end of the
30 consumer contract.

31 (b) The owner of a renewable energy system must remove the
32 renewable energy system from the property within twenty-one days of a
33 written request of the property owner.

34 (c) The owner of a renewable energy system is responsible for
35 identifying hazardous and commercial valuable materials contained in
36 the renewable energy system and how those materials will be properly
37 disposed of or reclaimed. The owner must provide this information to
38 the utilities and transportation commission upon request of the
39 commission.

1 NEW SECTION. **Sec. 15.** (1) Except as provided in subsection (2)
2 of this section, the utilities and transportation commission shall
3 publish, without disclosing proprietary information, a list of
4 financing models for leased energy systems being offered to utility
5 customers by investor-owned utilities or competitive electrical
6 companies.

7 (2) If a consumer-owned utility opts to provide a leased energy
8 program, or contracts with a competitive electrical company to offer
9 a leased energy program, the governing board of the consumer-owned
10 utility shall publish, without disclosing proprietary information, a
11 list of financing models being offered by the consumer-owned utility
12 or by competitive electrical companies that the consumer-owned
13 utility has contracted with to provide services to the consumer-owned
14 utility's customers as part of a leased energy program.

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

17 (1) The legislature finds that:

18 (a) Competitive electrical companies are electrical companies as
19 defined in this title and are subject to the jurisdiction of the
20 commission.

21 (b) Traditional rate of return, rate base regulation of
22 competitive electrical companies providing leasing and installation
23 of renewable energy systems does not provide the most efficient and
24 effective means of achieving the public policy goals of this state as
25 declared in RCW 80.28.024, 80.28.074, this section, and section 8 of
26 this act. These goals include promoting the use of renewable energy
27 resources, maintaining and advancing the efficiency and availability
28 of electric services, and ensuring that customers pay only reasonable
29 charges.

30 (c) The provision of competitive electrical services is affected
31 with the public interest and requires the oversight of the commission
32 in order to protect consumers. Nothing in this act precludes the
33 office of the attorney general from exercising its statutory
34 authority under chapter 19.86 RCW.

35 (2) The definitions in section 11 of this act apply throughout
36 this section unless the context clearly requires otherwise.

37 NEW SECTION. **Sec. 17.** A new section is added to chapter 80.28
38 RCW to read as follows:

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

8 (2) Competitive electrical companies must register with the
9 commission. The registration must be on a form prescribed by the
10 commission, contain information the commission may by rule require,
11 and must include at a minimum: The name and address of the company;
12 the name and address of the company's registered agent, if any; the
13 company's universal business identification number; the name,
14 address, and title of each officer or director; if the company is
15 publicly traded, the company's most recent annual report filed with
16 the United States securities and exchange commission; if the company
17 is not publicly traded, the company's current balance sheet; the
18 company's latest annual report, if any; and a description of the
19 services the company offers or intends to offer.

20 (3) The commission may reject an application that does not
21 contain all information required by this section or by commission
22 rule.

23 (4) The commission must take action to approve or deny any
24 application for registration within thirty days after receiving the
25 application. The commission may approve such application with or
26 without a hearing. The commission may deny such application after a
27 hearing when it finds that the company or its registered agent has
28 violated this chapter or the rules of the commission, or the company
29 or its registered agent has been found by a court or governmental
30 agency to have violated the laws of a state or the United States.

31 (5) The commission may charge competitive electrical companies a
32 one-time application fee to recover the cost of processing
33 applications for registration under this section.

34 (6) The commission shall adopt rules that describe the manner by
35 which it will register competitive electrical companies, ensure that
36 consumer contracts comply with commission rules and section 18 of
37 this act, and establish the companies' responsibilities for
38 responding to customer complaints and disputes. Pursuant to RCW
39 80.04.080, 80.24.010, and 80.24.020, the commission shall adopt

1 annual reporting requirements, and the amount of application and
2 regulatory fees applicable to competitive electrical companies.

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

10 (8) The definitions in section 11 of this act apply throughout
11 this section unless the context clearly requires otherwise.

12 NEW SECTION. **Sec. 18.** A new section is added to chapter 80.28
13 RCW to read as follows:

14 (1) Competitive electrical companies are subject to consumer
15 protection regulation applicable to electrical companies under this
16 title, and as described in this act. Such regulation shall be limited
17 to registration, disclosure of terms of services, and investigation
18 and resolution of complaints and disputes. The commission may issue
19 penalties for violations of this chapter or commission rules, as
20 authorized in chapter 80.04 RCW. Competitive electrical companies are
21 not subject to the regulatory requirements concerning rate regulation
22 and furnishing of service for electrical companies in this title,
23 including but not limited to RCW 80.28.010, 80.28.020, 80.28.025,
24 80.28.050, 80.28.060, 80.28.065, 80.28.068, 80.28.075, 80.28.080,
25 80.28.090, 80.28.100, 80.28.110, and 80.28.120. Competition among
26 competitive electrical companies serves the same purposes as economic
27 regulation. The commission may waive any regulatory requirement under
28 this title for competitive electrical companies when it determines
29 that competition will serve the same purposes as public interest
30 regulation.

31 (2) Competitive electrical companies may not engage in unfair or
32 deceptive business practices in the provision of competitive
33 electrical company services. A competitive electrical company shall
34 at a minimum:

35 (a) Keep its customer records available for inspection by the
36 commission for five years;

37 (b) Cooperate with commission investigations of customer
38 complaints;

1 (c) Ensure that its consumer contracts meet the disclosure
2 requirements established by commission rules. Consumer contracts must
3 clearly state:

4 (i) The payment schedule and an estimate of the amount of
5 periodic payments;

6 (ii) Estimates of the total contract payments in the first year,
7 the percentage contract payments increase each year, and the total
8 amount the customer will pay over time;

9 (iii) Any potential fees or penalties for late payments;

10 (iv) A concise list of customer obligations beyond the monthly
11 payments;

12 (v) An estimate of annual energy production for the term of the
13 contract;

14 (vi) A description of warranties provided;

15 (vii) The manufacturer and model of all substantial system
16 components;

17 (viii) If applicable, a reference to the source of any
18 information concerning historical or projected electricity prices;

19 (ix) A clear statement that the customer is responsible for
20 making a regular payment to his or her electric utility at billed
21 rates in addition to a regular payment to the competitive electrical
22 company;

23 (x) A clear statement that the customer is responsible for
24 entering into necessary interconnection and net metering agreements
25 with his or her electric utility;

26 (xi) A description of a customer's options upon sale of his or
27 her property;

28 (xii) The amount of operations and maintenance costs charged in
29 the agreement per month and amount of such costs being paid towards
30 capital costs of systems; and

31 (xiii) The length of time it may take to make a repair
32 necessitated by failure of the installation or equipment.

33 (3) Any consumer contract for competitive electrical services
34 that includes terms limiting the customer's right to obtain a remedy
35 by accessing a court or the customer's right to enter into class
36 litigation must provide these terms on a separate contract page in
37 bold and conspicuous print and require the customer to separately
38 sign acknowledgment of the terms.

39 (4) A competitive electrical company may not include in a
40 consumer contract a provision that limits a consumer's ability to

1 seek damages. A provision limiting damages is void as against public
2 policy.

3 (5) Nothing in this section removes a competitive electrical
4 company's responsibility to ensure that its consumer contracts also
5 meet the requirements of applicable state and federal laws.

6 (6) During a state of emergency declared under RCW 43.06.010(12),
7 the governor may waive or suspend the operation or enforcement of
8 this section, any portion of this section, or any administrative rule
9 created pursuant to this section and issue any orders to facilitate
10 the operation of state or local government or to promote and secure
11 the safety and protection of the civilian population.

12 (7) The definitions in section 11 of this act apply throughout
13 this section unless the context clearly requires otherwise.

14 NEW SECTION. **Sec. 19.** A new section is added to chapter 80.28
15 RCW to read as follows:

16 (1) Each competitive electrical company and each electrical
17 company shall provide to the commission, within thirty days of its
18 issuance, a copy of every judgment or arbitration decision in an
19 action alleging a violation of the consumer protections afforded by
20 sections 10 through 15 of this act or chapter 19.86 RCW.

21 (2) Each consumer-owned utility shall provide to the attorney
22 general, within thirty days of its issuance, a copy of every judgment
23 or arbitration decision in an action alleging a violation of the
24 consumer protections afforded by sections 10 through 15 of this act
25 or chapter 19.86 RCW.

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

28 In addition to the penalties provided in this title, a violation
29 by a competitive electrical company of sections 16 through 19 of this
30 act constitutes an unfair or deceptive act in trade or commerce in
31 violation of chapter 19.86 RCW, the consumer protection act. Acts in
32 violation of this act are not reasonable in relation to the
33 development and preservation of business, and constitute matters
34 vitally affecting the public interest for the purpose of applying the
35 consumer protection act, chapter 19.86 RCW. The commission may
36 consult with the office of the attorney general regarding the
37 administration and enforcement of this chapter as it pertains to
38 competitive electrical companies.

1 **Sec. 21.** RCW 19.86.170 and 1977 c 49 s 1 are each amended to
2 read as follows:

3 Nothing in this chapter shall apply to actions or transactions
4 otherwise permitted, prohibited or regulated under laws administered
5 by the insurance commissioner of this state, the Washington utilities
6 and transportation commission, the federal power commission or
7 actions or transactions permitted by any other regulatory body or
8 officer acting under statutory authority of this state or the United
9 States: PROVIDED, HOWEVER, That actions and transactions prohibited
10 or regulated under the laws administered by the insurance
11 commissioner shall be subject to the provisions of RCW 19.86.020 and
12 all sections of chapter 216, Laws of 1961 and chapter 19.86 RCW which
13 provide for the implementation and enforcement of RCW 19.86.020
14 except that nothing required or permitted to be done pursuant to
15 Title 48 RCW shall be construed to be a violation of RCW 19.86.020:
16 PROVIDED, FURTHER, That actions or transactions specifically
17 permitted within the statutory authority granted to any regulatory
18 board or commission established within Title 18 RCW shall not be
19 construed to be a violation of chapter 19.86 RCW: PROVIDED, FURTHER,
20 That this chapter shall apply to actions and transactions in
21 connection with the disposition of human remains.

22 RCW 9A.20.010(2) shall not be applicable to the terms of this
23 chapter and no penalty or remedy shall result from a violation of
24 this chapter except as expressly provided herein.

25 For the purposes of this section, actions or transactions of
26 competitive electrical companies, as defined in section 11 of this
27 act, are not deemed otherwise permitted, prohibited, or regulated by
28 the utilities and transportation commission.

29 **Sec. 22.** RCW 82.08.962 and 2013 2nd sp.s. c 13 s 1502 are each
30 amended to read as follows:

31 (1)(a) Except as provided in RCW 82.08.963, purchasers who have
32 paid the tax imposed by RCW 82.08.020 on machinery and equipment used
33 directly in generating electricity using fuel cells, wind, sun,
34 biomass energy, tidal or wave energy, geothermal resources, anaerobic
35 digestion, technology that converts otherwise lost energy from
36 exhaust, or landfill gas as the principal source of power, or to
37 sales of or charges made for labor and services rendered in respect
38 to installing such machinery and equipment, are eligible for an
39 exemption as provided in this section, but only if the purchaser

1 develops with such machinery, equipment, and labor a facility capable
2 of generating not less than one thousand watts of electricity.

3 (b) Beginning on July 1, 2009, through June 30, 2011, the tax
4 levied by RCW 82.08.020 does not apply to the sale of machinery and
5 equipment described in (a) of this subsection that are used directly
6 in generating electricity or to sales of or charges made for labor
7 and services rendered in respect to installing such machinery and
8 equipment.

9 (c) Beginning on July 1, 2011, through January 1, 2020, the
10 amount of the exemption under this subsection (1) is equal to
11 seventy-five percent of the state and local sales tax paid. The
12 purchaser is eligible for an exemption under this subsection (1)(c)
13 in the form of a remittance.

14 (2) For purposes of this section and RCW 82.12.962, the following
15 definitions apply:

16 (a) "Biomass energy" includes: (i) By-products of pulping and
17 wood manufacturing process; (ii) animal waste; (iii) solid organic
18 fuels from wood; (iv) forest or field residues; (v) wooden demolition
19 or construction debris; (vi) food waste; (vii) liquors derived from
20 algae and other sources; (viii) dedicated energy crops; (ix)
21 biosolids; and (x) yard waste. "Biomass energy" does not include wood
22 pieces that have been treated with chemical preservatives such as
23 creosote, pentachlorophenol, or copper-chrome-arsenic; wood from old
24 growth forests; or municipal solid waste.

25 (b) "Fuel cell" means an electrochemical reaction that generates
26 electricity by combining atoms of hydrogen and oxygen in the presence
27 of a catalyst.

28 (c) "Landfill gas" means biomass fuel, of the type qualified for
29 federal tax credits under Title 26 U.S.C. Sec. 29 of the federal
30 internal revenue code, collected from a "landfill" as defined under
31 RCW 70.95.030.

32 (d)(i) "Machinery and equipment" means fixtures, devices, and
33 support facilities that are integral and necessary to the generation
34 of electricity using fuel cells, wind, sun, biomass energy, tidal or
35 wave energy, geothermal resources, anaerobic digestion, technology
36 that converts otherwise lost energy from exhaust, or landfill gas as
37 the principal source of power.

38 (ii) "Machinery and equipment" does not include: (A) Hand-powered
39 tools; (B) property with a useful life of less than one year; (C)
40 repair parts required to restore machinery and equipment to normal

1 working order; (D) replacement parts that do not increase
2 productivity, improve efficiency, or extend the useful life of
3 machinery and equipment; (E) buildings; or (F) building fixtures that
4 are not integral and necessary to the generation of electricity that
5 are permanently affixed to and become a physical part of a building.

6 (3)(a) Machinery and equipment is "used directly" in generating
7 electricity by wind energy, solar energy, biomass energy, tidal or
8 wave energy, geothermal resources, anaerobic digestion, technology
9 that converts otherwise lost energy from exhaust, or landfill gas
10 power if it provides any part of the process that captures the energy
11 of the wind, sun, biomass energy, tidal or wave energy, geothermal
12 resources, anaerobic digestion, technology that converts otherwise
13 lost energy from exhaust, or landfill gas, converts that energy to
14 electricity, and stores, transforms, or transmits that electricity
15 for entry into or operation in parallel with electric transmission
16 and distribution systems.

17 (b) Machinery and equipment is "used directly" in generating
18 electricity by fuel cells if it provides any part of the process that
19 captures the energy of the fuel, converts that energy to electricity,
20 and stores, transforms, or transmits that electricity for entry into
21 or operation in parallel with electric transmission and distribution
22 systems.

23 (4)(a) A purchaser claiming an exemption in the form of a
24 remittance under subsection (1)(c) of this section must pay the tax
25 imposed by RCW 82.08.020 and all applicable local sales taxes imposed
26 under the authority of chapters 82.14 and 81.104 RCW. The purchaser
27 may then apply to the department for remittance in a form and manner
28 prescribed by the department. A purchaser may not apply for a
29 remittance under this section more frequently than once per quarter.
30 The purchaser must specify the amount of exempted tax claimed and the
31 qualifying purchases for which the exemption is claimed. The
32 purchaser must retain, in adequate detail, records to enable the
33 department to determine whether the purchaser is entitled to an
34 exemption under this section, including: Invoices; proof of tax paid;
35 and documents describing the machinery and equipment.

36 (b) The department must determine eligibility under this section
37 based on the information provided by the purchaser, which is subject
38 to audit verification by the department. The department must on a
39 quarterly basis remit exempted amounts to qualifying purchasers who
40 submitted applications during the previous quarter.

1 (5) The exemption provided by this section expires December 31,
2 2015, as it applies to: (a) Machinery and equipment that is used
3 directly in the generation of electricity using solar energy and
4 capable of generating no more than five hundred kilowatts of
5 electricity; or (b) sales of or charges made for labor and services
6 rendered in respect to installing such machinery and equipment.

7 (6) This section expires January 1, 2020.

8 **Sec. 23.** RCW 82.08.963 and 2013 2nd sp.s. c 13 s 1602 are each
9 amended to read as follows:

10 (1) The tax levied by RCW 82.08.020 does not apply to sales of
11 machinery and equipment used directly in generating electricity or
12 producing thermal heat using solar energy, or to sales of or charges
13 made for labor and services rendered in respect to installing such
14 machinery and equipment, but only if the purchaser develops with such
15 machinery, equipment, and labor a facility capable of generating not
16 more than ten kilowatts of electricity or producing not more than
17 three million British thermal units per day and provides the seller
18 with an exemption certificate in a form and manner prescribed by the
19 department. The seller must retain a copy of the certificate for the
20 seller's files. For sellers who electronically file their taxes, the
21 department must provide a separate tax reporting line for exemption
22 amounts claimed by a buyer under this section.

23 (2) For purposes of this section and RCW 82.12.963:

24 (a) "Machinery and equipment" means industrial fixtures, devices,
25 and support facilities that are integral and necessary to the
26 generation of electricity or production and use of thermal heat using
27 solar energy;

28 (b) "Machinery and equipment" does not include: (i) Hand-powered
29 tools; (ii) property with a useful life of less than one year; (iii)
30 repair parts required to restore machinery and equipment to normal
31 working order; (iv) replacement parts that do not increase
32 productivity, improve efficiency, or extend the useful life of
33 machinery and equipment; (v) buildings; or (vi) building fixtures
34 that are not integral and necessary to the generation of electricity
35 that are permanently affixed to and become a physical part of a
36 building;

37 (c) Machinery and equipment is "used directly" in generating
38 electricity with solar energy if it provides any part of the process
39 that captures the energy of the sun, converts that energy to

1 electricity, and stores, transforms, or transmits that electricity
2 for entry into or operation in parallel with electric transmission
3 and distribution systems; and

4 (d) Machinery and equipment is "used directly" in producing
5 thermal heat with solar energy if it uses a solar collector or a
6 solar hot water system that (i) meets the certification standards for
7 solar collectors and solar hot water systems developed by the solar
8 rating and certification corporation; or (ii) is determined by the
9 Washington State University extension whether a solar collector or
10 solar hot water system is an equivalent collector or system.

11 (3) The exemption provided by this section for the sales of
12 machinery and equipment that is used directly in the generation of
13 electricity using solar energy, or for sales of or charges made for
14 labor or services rendered in respect to installing such machinery
15 and equipment, expires December 31, 2015.

16 (4) This section expires June 30, 2018.

17 **Sec. 24.** RCW 82.12.962 and 2013 2nd sp.s. c 13 s 1505 are each
18 amended to read as follows:

19 (1)(a) Except as provided in RCW 82.12.963, consumers who have
20 paid the tax imposed by RCW 82.12.020 on machinery and equipment used
21 directly in generating electricity using fuel cells, wind, sun,
22 biomass energy, tidal or wave energy, geothermal resources, anaerobic
23 digestion, technology that converts otherwise lost energy from
24 exhaust, or landfill gas as the principal source of power, or to
25 sales of or charges made for labor and services rendered in respect
26 to installing such machinery and equipment, are eligible for an
27 exemption as provided in this section, but only if the purchaser
28 develops with such machinery, equipment, and labor a facility capable
29 of generating not less than one thousand watts of electricity.

30 (b) Beginning on July 1, 2009, through June 30, 2011, the
31 provisions of this chapter do not apply in respect to the use of
32 machinery and equipment described in (a) of this subsection that are
33 used directly in generating electricity or to sales of or charges
34 made for labor and services rendered in respect to installing such
35 machinery and equipment.

36 (c) Beginning on July 1, 2011, through January 1, 2020, the
37 amount of the exemption under this subsection (1) is equal to
38 seventy-five percent of the state and local sales tax paid. The

1 consumer is eligible for an exemption under this subsection (1)(c) in
2 the form of a remittance.

3 (2)(a) A person claiming an exemption in the form of a remittance
4 under subsection (1)(c) of this section must pay the tax imposed by
5 RCW 82.12.020 and all applicable local use taxes imposed under the
6 authority of chapters 82.14 and 81.104 RCW. The consumer may then
7 apply to the department for remittance in a form and manner
8 prescribed by the department. A consumer may not apply for a
9 remittance under this section more frequently than once per quarter.
10 The consumer must specify the amount of exempted tax claimed and the
11 qualifying purchases or acquisitions for which the exemption is
12 claimed. The consumer must retain, in adequate detail, records to
13 enable the department to determine whether the consumer is entitled
14 to an exemption under this section, including: Invoices; proof of tax
15 paid; and documents describing the machinery and equipment.

16 (b) The department must determine eligibility under this section
17 based on the information provided by the consumer, which is subject
18 to audit verification by the department. The department must on a
19 quarterly basis remit exempted amounts to qualifying consumers who
20 submitted applications during the previous quarter.

21 (3) Purchases exempt under RCW 82.08.962 are also exempt from the
22 tax imposed under RCW 82.12.020.

23 (4) The definitions in RCW 82.08.962 apply to this section.

24 (5) The exemption provided in subsection (1) of this section does
25 not apply:

26 (a) To machinery and equipment used directly in the generation of
27 electricity using solar energy and capable of generating no more than
28 five hundred kilowatts of electricity, or to sales of or charges made
29 for labor and services rendered in respect to installing such
30 machinery and equipment, when first use within this state of such
31 machinery and equipment, or labor and services, occurs after December
32 31, 2015; and

33 (b) To any other machinery and equipment described in subsection
34 (1)(a) of this section, or to sales of or charges made for labor and
35 services rendered in respect to installing such machinery or
36 equipment, when first use within this state of such machinery and
37 equipment, or labor and services, occurs after December 31, 2019.

38 (6) This section expires January 1, 2020.

1 **Sec. 25.** RCW 82.12.963 and 2013 2nd sp.s. c 13 s 1603 are each
2 amended to read as follows:

3 (1) The provisions of this chapter do not apply with respect to
4 machinery and equipment used directly in generating not more than ten
5 kilowatts of electricity or producing not more than three million
6 British thermal units per day using solar energy, or to the use of
7 labor and services rendered in respect to installing such machinery
8 and equipment.

9 (2) The definitions in RCW 82.08.963 apply to this section.

10 (3) The exemption provided by this section does not apply:

11 (a) To the use of machinery and equipment used directly in the
12 generation of electricity using solar energy, or to the use of labor
13 and services rendered in respect to installing such machinery and
14 equipment, when first use within this state of such machinery and
15 equipment, or labor and services, occurs after December 31, 2015; and

16 (b) To the use of any machinery or equipment used directly in
17 producing thermal heat using solar energy, or to the use of labor and
18 services rendered in respect to installing such machinery or
19 equipment, when first use within this state of such machinery and
20 equipment, or labor and services, occurs after June 30, 2018.

21 (4) This section expires June 30, 2018.

22 NEW SECTION. **Sec. 26.** Sections 6 and 10 through 15 of this act
23 constitute a new chapter in Title 19 RCW.

24 NEW SECTION. **Sec. 27.** This act is necessary for the immediate
25 preservation of the public peace, health, or safety, or support of
26 the state government and its existing public institutions, and takes
27 effect immediately.

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