

State of
Washington
House of
Representatives



January 8, 2018

The Honorable Bob Ferguson
Attorney General of the State of Washington
1125 Washington St SE
Olympia, WA 98501

Attorney General Ferguson:

I humbly request your legal opinion regarding the authority of electric utilities in the State of Washington to change the statutory formula once an electric utility reaches their statutory net metering capacity limit. Per chapter 80.60 RCW, the cumulative generating capacity available to net metering systems is equal to 0.5 percent of the utility's peak demand during 1996. This was established in 1998 with the passage of House Bill 2773 and subsequently affirmed in 2000 per House Bill 2334 ("Requiring electric utilities to provide net-metering systems to customers), and again in 2006 per House Bill 2352 ("Modifying net-metering systems"), and once again in 2007 with House Bill 1140 ("Allowing for net-meter aggregation of electricity").

I negotiated much of the language in House Bill 2773 in partnership with Rep. Brian Thomas of the 5th District and have continued to be involved with drafting each of the subsequent House bills. My intent with the legislation -year after year- is clear, concise, and available through existing resources, including floor debates, available to the public.

In almost every hearing and/or floor debate, it was clear that the intent was for the Legislature to develop a new formula once utilities began meeting the 0.5 percent threshold set in statute. Once the threshold is met, absent any updated legislation, utilities would no longer be required to net meter customer generation, but if they chose to continue the practice, the existing net metering requirements were to be followed.

According to utility testimony in 1998 reaching the .25 percent or later statutory 0.5 percent threshold was seemingly so far off that the legislative understanding was we would legislate new formulas once utilities started to approach 0.5 percent threshold.

None of the net metering definitions or procedures set forth in the net metering chapter should be construed to authorize electric utilities to devise their own monetized formulas for reimbursement of customer investment in the distribution grid. In many other chapters of statutes regulating energy distribution and transmission, the Legislature has trifurcated the authority to the UTC for regulated utilities, to the boards/councils of public utilities, and to the board of directors of not-for-profit cooperatives. This trifurcated authority was not provided in the net metering section because it was not Legislative intent to provide the authority to these entities. Instead, the intent was for the Legislature to consider the next phase of net metering formulas for customer reimbursement.

Given this background, I request your legal opinion on the following questions:

What duties of an electric utility to a customer-generator continue, after the utility has interconnected systems beyond the 0.5% threshold set forth in RCW 80.60.020(1)(a).

First, in terms of the plain language of the statute, RCW 80.60.020 as I read it sets out three independent duties of a utility:

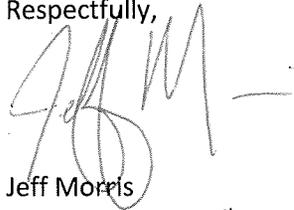
- 1) Billing mechanism: to offer a billing mechanism (called net metering) for compensating customer-generators until the 0.5% threshold is met; and
- 2) Standard meter: to allow "net metering systems" (defined independently of the billing mechanism) the use of a standard meter, unless a test is met; and
- 3) Nondiscrimination: to refrain from imposing discriminatory charges or fees on customer-generators, unless another stringent test is met.

What is the source of a utility's authority to purchase power from a customer-generator? Does that authority derive exclusively from Chapter 80.60 RCW?

- 1) Were electric utilities given the authority in RCW 80.60. to establish their own monetized formulas to reimburse customer generators known as net metering post meeting the 0.5 percent threshold?
- 2) Was the legislative intent in RCW 80.60.020 and 80.60.030 that utilities only be required to offer net-metering to customer generators to the point that that electric utilities net-metering systems equal 0.5 percent of the utility's peak 1996 demand, and that post- meeting this threshold, those utilities can opt to continue the net-metering practice using the existing statutory formula?

As Washington State has several utilities approaching the 0.5 percent threshold your urgent attention is appreciated. Please find enclosed certified copies of transcripts of Legislative debates to demonstrate Legislative intent on the original bill creating chapter 80.60 RCW as well as subsequent amendments.

Respectfully,



Jeff Morris
Representative 40th Legislative District.