

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO.

Nonpublic utility generators.

Sponsored by: Joint Minerals, Business & Economic
Development Interim Committee

A BILL

for

1 AN ACT relating to public utilities; specifying
2 requirements for a person to be designated as a nonpublic
3 utility generator; providing standards for nonpublic
4 utility generators in the provision of electricity to other
5 persons; specifying duties of the public service
6 commission; making conforming amendments; specifying
7 applicability; requiring rulemaking; and providing for
8 effective dates.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

1 **Section 1.** W.S. 37-19-101 through 37-19-103 are
2 created to read:

4 CHAPTER 19

5 NONPUBLIC UTILITY GENERATORS

7 **37-19-101. Definitions; designation of nonpublic**
8 **utility generators; provision of service.**

10 (a) As used in this chapter, "consumer" means a
11 nonresidential, nonutility retail electricity consumer who
12 receives electricity service from a person designated as a
13 nonpublic utility generator under this chapter.

15 (b) Notwithstanding W.S. 37-2-205 and 37-2-205.1, any
16 person who has not been issued a certificate of public
17 convenience and necessity to provide electric service as a
18 public utility and who proposes to generate and sell or
19 otherwise provide electricity to one (1) or more consumers
20 may apply for designation as a nonpublic utility generator
21 in accordance with this chapter.

(c) No person shall be designated as a nonpublic utility generator under this chapter unless the commission first finds that the proposed activity by the person would not constitute the provision of service by a public utility under any of the functions specified in W.S. 37-1-101(a)(vi)(C) or that the proposed activity is otherwise exempt from regulation as a public utility under W.S. 37-1-101(a)(vi)(H).

STAFF COMMENT

For reference, the provisions of W.S. 37-1-101(a)(vi) cited above are included here.

37-1-101. Definitions.

(a) As used in chapters 1, 2, 3, 12, 17 and 18 of this title:

(vi) "Public utility" means and includes every person that owns, operates, leases, controls or has power to operate, lease or control:

(C) Any plant, property or facility for the generation, transmission, distribution, sale or furnishing to or for the public of electricity for light, heat or power, including any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power;

(H) None of the provisions of this chapter shall apply to:

1 (I) Interstate commerce except when a
2 regulatory field has not been preempted by the United
3 States government;
4

5 (II) To public utilities owned and
6 operated by a municipality of the state of Wyoming or owned
7 and operated by a joint powers entity formed pursuant to
8 the Wyoming Joint Powers Act, W.S. 16-1-102 through 16-1-
9 110, and comprised of two (2) or more municipalities,
10 except as to that portion of a municipality owned and
11 operated public utility or joint powers entity owned and
12 operated public utility, if any, as may extend services
13 outside the corporate limits of a municipality and except
14 that if any municipal or joint powers utility owns an
15 undivided interest in a facility for the production of
16 electricity which is also partly owned by an agency subject
17 to the jurisdiction of the public service commission, the
18 sale of electricity in excess of the participating
19 municipalities' or joint powers entities' need is subject
20 to this act;
21

22 (III) To farmers' mutual telephone
23 associations having no capital stock and furnishing service
24 to members of associations only and without tolls, except
25 as provided in W.S. 37-2-205;
26

27 (IV) To mutual water companies or
28 associations having no capital stock and furnishing water
29 service to members of companies or associations only, and
30 without charges other than assessments of members to
31 reimburse companies or associations for expenses incurred
32 in their establishment or operation;
33

34 (V) To any person who is not otherwise
35 affiliated with a utility, that owns, leases, controls or
36 has power to lease or control any plant, property or
37 facility which, in a transaction approved or authorized by
38 the commission, is leased to one (1) or more public
39 utilities, and is to be operated by the lessee or lessees
40 for the generation, transmission, distribution, sale or
41 furnishing to or for the public of electricity for light,
42 heat, power or other utility purposes;
43

44 (VI) To the generation, transmission
45 or distribution of electricity, or to the manufacture or

1 distribution of gas, or to the furnishing or distribution
2 of water, nor to the production, delivery or furnishing of
3 steam or any other substance, by a producer or other
4 person, for the sole use of a producer or other person, or
5 for the use of tenants of a producer or other person and
6 not for sale to others. Such exemptions shall not apply to
7 metered or other direct sales of a utility commodity by a
8 producer or other person to his tenants;
9

10 (VII) The retail sale of compressed
11 natural gas for use as motor vehicle fuel by a person that
12 is not otherwise regulated under this title;
13

14 (VIII) Metered and other direct sales
15 of water by a person to his tenants when the metered or
16 other direct sales are solely for purposes of allocating
17 usage among tenants and includes no additional fees or
18 charges;
19

20 (IX) Metered and other direct sales of
21 water by a person operating a water system that:
22

23 (1) Has less than fifteen (15)
24 potential service connections;
25

26 (2) Is not owned, controlled or
27 otherwise affiliated with a water utility or any other
28 utility that provides water service;
29

30 (3) Is not a centralized water
31 supply system associated with a subdivision; and
32

33 (4) Is not located within the
34 established service territory of a water utility or the
35 corporate limits of a municipality.
36

37 (X) The retail sale of electricity for
38 charging electric vehicles by a person that is not
39 otherwise regulated under this title.
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42 *****
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1 (d) A person seeking a designation as a nonpublic
2 utility generator shall file an application with the
3 commission on a form and in a manner prescribed by the
4 commission.

5
6 (e) Not less than ninety (90) days before filing an
7 application for designation as a nonpublic utility
8 generator, the person shall provide written notice to the
9 electric public utility certificated to provide service in
10 the area and any other electric public utility providing
11 service within ten (10) miles of the proposed nonpublic
12 utility generator's service location of the person's intent
13 to generate electric power for a consumer. The notice under
14 this subsection shall provide information sufficient for
15 the public utility to evaluate the financial and
16 operational implications of the proposed provision of
17 service.

18
19 (f) Each application for designation as a nonpublic
20 utility generator under this section shall include, at a
21 minimum, all of the following:

22

1 (i) A description of the proposed nonpublic
2 utility generator, including the entity type, state of
3 organization or incorporation and ownership;

4
5 (ii) A description of each proposed consumer,
6 including the nature of the use of electricity and any
7 other service or product to be provided by the proposed
8 nonpublic utility generator, the type of entity of the
9 consumer, the state of organization or incorporation of the
10 consumer and ownership;

11
12 (iii) A map depicting the location of proposed
13 generation, transmission, distribution and energy storage
14 facilities of the proposed nonpublic utility generator and
15 the facilities of each consumer;

16
17 (iv) A description of the proposed generation,
18 transmission, distribution and energy storage facilities of
19 the proposed nonpublic utility generator and the facilities
20 of each consumer;

21
22 (v) A description of the proposed disposition of
23 any excess electricity generated;

1

2 (vi) A description of any existing relationships
3 between the proposed nonpublic utility generator, the
4 proposed consumers and any affected electric public
5 utility;

6

7 (vii) A description and the status of all permits
8 and approvals required for the construction and operation
9 of any facilities for the activities of the proposed
10 nonpublic utility generator;

11

12 (viii) A statement of the dates of the
13 anticipated commencement of construction and service of the
14 proposed generation, transmission, distribution and energy
15 storage facilities of the nonpublic utility generator;

16

17 (ix) A statement of any electric safety codes,
18 standards and other requirements applicable to the
19 facilities to be constructed and operated by the nonpublic
20 utility generator and the consumers;

21

22 (x) A statement addressing the effects of
23 potential disturbances within an area that surpasses the

1 threshold set forth in executive order 2019-3 for assessing
2 growth and canopy cover within designated zones for greater
3 sage-grouse habitat;

4
5 (xi) A description of any solicitation of
6 prospective consumers;

7
8 (xii) A description of any known prospective
9 consumers not included in the information provided in
10 paragraph (ii) of this subsection and an explanation for
11 their exclusion;

12
13 (xiii) A copy of the notices provided under
14 subsection (e) of this section.

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17 *****
18 STAFF COMMENT
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20 The Committee may wish to consider including a catch-all
21 requirement for materials to include in the application
22 ("Any other item designated by rule of the commission.").
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24 *****
25 *****
26

27 (g) Upon receiving an application filed under this
28 section, the commission shall:

1

2 (i) Arrange for the publication of notice of the
3 application, at the applicant's expense;

4

5 (ii) Provide interested parties an opportunity
6 for a public hearing;

7

8 (iii) Conduct any investigation, inquiry or
9 hearing as the commission deems necessary;

10

11 (iv) Not later than one (1) year after the
12 application is filed, issue a written decision denying the
13 application and stating the reasons for the denial of the
14 application or approving the application and designating
15 the applicant as a nonpublic utility generator and
16 describing the service that may be provided to the
17 identified consumers as a nonpublic utility service.

18

19 (h) An applicant for designation as a nonpublic
20 utility generator, and a person approved as a nonpublic
21 utility generator, shall:

22

(i) Provide electric service with electricity generated within Wyoming to consumers identified in the application and approved by the commission that are located in Wyoming and at or proximate to the generation site;

(ii) Provide electric service to consumers without the use of public utility transmission or distribution facilities, except pursuant to the approved tariffs of an electric public utility or a special contract entered into with an electric public utility;

(iii) Sell or provide electricity generated in excess of the amount delivered to identified and approved consumers to an electric public utility under a power purchase agreement voluntarily entered into by the electric public utility;

STAFF COMMENT

The Committee may wish to consider specifying the disposition of excess electricity generated by a nonpublic utility generator that the applicable electric public utility does not purchase from the generator.

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2 (iv) Construct and operate electric generation,
3 transmission and distribution facilities only in locations
4 under the exclusive control of the nonpublic utility
5 generator or the consumers to be served;

6

7 (v) Not serve or replace any portion of the
8 maximum load of any existing customer of an incumbent
9 electric public utility, unless the service or replacement
10 will not materially harm the incumbent electric public
11 utility or its customers;

12

13 (vi) Not materially harm any electric public
14 utility or the customers of any electric public utility.

15

16 (j) No public utility shall be obligated to:

17

18 (i) Assist in the system design or planning
19 studies related to any system intended for the provision of
20 electricity to consumers served by a nonpublic utility
21 generator, except pursuant to the public utility's approved
22 tariffs;

23

1 (ii) Provide electric service to a designated
2 nonpublic utility generator or a consumer, except pursuant
3 to the public utility's approved tariffs.

4
5 **37-19-102. Nonpublic utility generators; substitution**
6 **or increase of service; addition of consumers.**

7
8 (a) If an identified and approved consumer ceases to
9 receive electric service from a designated nonpublic
10 utility generator, the nonpublic utility generator may
11 provide similar service to another consumer in the same
12 location or proximate to the site of the consumer that has
13 ceased to receive service.

14
15 (b) A designated nonpublic utility generator may apply
16 to amend its designation to provide electric service to
17 additional consumers not identified and approved in the
18 generator's initial application or to increase the service
19 provided to current consumers. Applications to amend
20 designations under this subsection shall include all of the
21 information required under W.S. 37-19-101(f).

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3 STAFF COMMENT

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5 The Committee may wish to consider this alternate version
6 of subsection (b); this language makes clear that if a
7 nonpublic utility generator wishes to change or add
8 consumers, it must apply to the Public Service Commission
9 to do so.

10
11 (b) A designated nonpublic utility generator shall
12 apply to amend its designation to provide electric service
13 to additional consumers not identified and approved in the
14 generator's initial application or to increase the service
15 provided to current consumers before providing the electric
16 service to new consumers or additional service to
17 previously identified consumers. Applications to amend
18 designations under this subsection shall include all of the
19 information required under W.S. 37-19-101(f).

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23
24 (c) Upon receiving an application under this section,
25 the commission shall:

26
27 (i) Arrange for the publication of notice of the
28 application, at the applicant's expense;

29
30 (ii) Provide interested parties an opportunity
31 for a public hearing;

32
33 (iii) Conduct any investigation, inquiry or
34 hearing as the commission deems necessary;

1

2 (iv) Subject to a showing of good cause for an
3 extension, not later than one hundred eighty (180) days
4 after the application is filed, issue a written decision
5 approving the amendment of the designation or denying the
6 application along with a statement of reasons for the
7 denial.

8

9 **37-19-103. Nonpublic utility generators; safety**
10 **jurisdiction.**

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12 The commission shall retain jurisdiction over all nonpublic
13 utility generators designated under this chapter for
14 matters of safety in the provision of electric service.

15

16 **Section 2.** Nothing in this act shall be construed to
17 impair, alter or amend any contract or agreement entered
18 into before the effective date of this act.

19

20 **Section 3.** The public service commission shall
21 promulgate all rules necessary to implement this act.

22

23 **Section 4.**

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(a) Except as provided in subsection (b) of this section, this act is effective July 1, 2027.

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(b) Sections 3 and 4 of this act are effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

9

10 (END)