
SUBSTITUTE HOUSE BILL 2002

State of Washington

64th Legislature

2015 Regular Session

By House Technology & Economic Development (originally sponsored by Representatives Morris, Magendanz, and Fitzgibbon)

1 AN ACT Relating to regulatory and financial mechanisms and means
2 to promote the retirement of coal-fired electric generation
3 facilities; amending RCW 80.80.060; adding new sections to chapter
4 80.82 RCW; creating a new section; and recodifying RCW 80.82.010 and
5 80.82.020.

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

7 NEW SECTION. **Sec. 1.** RCW 80.82.010 and 80.82.020 are each
8 recodified as sections in chapter 80.82 RCW under the subchapter
9 heading "Closure of Certain Coal-Fired Electric Generation
10 Facilities."

11 NEW SECTION. **Sec. 2.** Sections 3 through 5 and 7 through 11 of
12 this act are each added to chapter 80.82 RCW and codified under the
13 subchapter heading of "Washington State Coal Generation Retirement
14 Program."

15 NEW SECTION. **Sec. 3.** This act may be known and cited as the
16 Washington state coal generation retirement program act.

17 NEW SECTION. **Sec. 4.** (1) The legislature finds that:

1 (a) Washington state citizens benefit from the reduction of
2 greenhouse gas emissions and from reliable and environmentally sound
3 generation resources that are sufficient to provide economic
4 opportunities and employment in a manner consistent with the state's
5 energy priorities;

6 (b) Over a period of years, significant investments have been
7 made in coal-fired electric generation facilities by electrical
8 companies serving retail electric load within the state;

9 (c) Promotion of the early retirement of certain coal-fired
10 electric generation facilities requires secure and predictable
11 regulatory and financial mechanisms that encourage such early
12 retirement; and

13 (d) Such retirement of certain coal-fired electric generation
14 facilities should be done in a prudent and cost-effective manner.

15 (2) To assure Washington state citizens the benefits of reduced
16 greenhouse gas emissions associated with the transition away from
17 certain coal-fired electricity generation facilities, the legislature
18 intends by this act to establish the Washington state coal generation
19 retirement program whereby:

20 (a) Specific regulatory and financial mechanisms defined by the
21 legislature are available to electrical companies that commit to or
22 that are impacted by the retirement of coal-fired electric generation
23 facilities;

24 (b) Electrical companies or financing subsidiaries are authorized
25 by the legislature to facilitate the issuance of carbon reduction
26 bonds, secured by revenues from the customers of electrical companies
27 that commit to retire coal-fired electric generation facilities, for
28 purposes of financing carbon reduction costs incurred in connection
29 with the retirement of coal-fired electric generation facilities; and

30 (c) The transition away from certain coal-fired electric
31 generation facilities shall be done in a prudent and cost-effective
32 manner.

33 NEW SECTION. **Sec. 5.** DEFINITIONS. The definitions in this
34 section apply throughout this chapter unless the context clearly
35 requires otherwise.

36 (1) "Binding notice" means a notice, filed with the commission by
37 an electrical company as set forth in section 8 of this act, to
38 irrevocably commit to the retirement of an eligible coal plant within

1 twenty years of the date of the commission's acceptance of a binding
2 notice.

3 (2) "Carbon reduction bonds" means bonds, debentures, notes,
4 certificates of participation, certificates of beneficial interest,
5 certificates of ownership, or other evidences of indebtedness that
6 are issued by an electrical company or a financing subsidiary to
7 recover, finance, or refinance carbon reduction costs and that are
8 secured by or payable from carbon reduction property.

9 (3) "Carbon reduction charge" means a prudent and cost-effective
10 charge paid by customers of an electrical company or its successors
11 to recover carbon reduction costs.

12 (4) "Carbon reduction costs" means any cost or expense incurred,
13 or to be incurred, by an electrical company directly related to the
14 retirement of an eligible coal plant. Carbon reduction costs may be
15 incurred by an electrical company prior to, and may be incurred by an
16 electrical company from and after, the date of retirement of an
17 eligible coal plant. Carbon reduction costs include cost-effective
18 and prudently incurred costs and expenses incurred or to be incurred
19 in connection with the following:

20 (a) The permanent decommissioning, reduction, termination,
21 severance, unamortized investment of plant, assets, equipment,
22 facilities, property, rights-of-way, easements, operations, labor,
23 personnel, contracts, and agreements, including any and all cost-
24 effective and prudently incurred costs or expenses in connection with
25 the acquisition, extension, modification, alteration, or surrender of
26 any permits, licenses, approvals, consents, orders, or authorizations
27 required with respect to any such actions or interests;

28 (b) The identification, assessment, handling, storage,
29 minimization, containment, cleanup, removal, remediation,
30 transportation, or disposal of any substance, material, circumstance,
31 or condition that presents a threat or potential threat to human
32 health or the environment, including all cost-effective and prudently
33 incurred costs or expenses in connection with: (i) Analyses, tests,
34 studies, or investigations conducted or required in connection with
35 such matters; and (ii) permits, licenses, approvals, consents,
36 orders, or authorizations required in connection with such matters;

37 (c) Capital costs, construction work in progress, and the
38 unamortized investment of the property that is retired, including any
39 demolition or similar cost that exceeds the salvage value of the
40 property;

1 (d) Financing costs; and
2 (e) Mitigation costs under section 11 of this act.
3 (5) "Carbon reduction property" means all of the following:
4 (a) The right specified in a financing order to impose, collect,
5 or receive carbon reduction charges, or to obtain adjustments to
6 carbon reduction charges as provided in section 9 of this act, and
7 any interest in such right;
8 (b) All revenues and proceeds arising from the rights and
9 interests specified in section 9(2)(a) of this act.
10 (6) "Commission" means the Washington utilities and
11 transportation commission.
12 (7) "Electrical company" means a company owned by investors that
13 meets the definition of electrical company set forth in RCW
14 80.04.010.
15 (8) "Eligible coal plant" means a coal-fired electric generation
16 facility that: (a) Is owned, controlled, or operated, in whole or in
17 part, by an electrical company serving a retail electric load within
18 the state of Washington; (b) provides, as a portion of the load
19 served by the coal-fired electric generation facility, electricity to
20 retail electric customers in the state of Washington; and (c) is
21 located in Rosebud county, Montana. An eligible coal plant includes,
22 and may be limited to, for purposes of a binding notice, one or more
23 operating units of an eligible coal plant that collectively comprise
24 a larger facility.
25 (9) "Eligible coal plant acquisition costs" means all cost-
26 effective and prudently incurred costs and expenses incurred by an
27 electrical company in connection with the acquisition of an
28 additional or increased interest in any one or more eligible coal
29 plants. Eligible coal plant acquisition costs include all cost-
30 effective and prudently incurred costs and expenses incurred by an
31 electrical company to secure, finance, purchase, and acquire an
32 additional or increased interest in any one or more such eligible
33 coal plants, together with any and all rights and obligations related
34 to the ownership, operation, and control of such interest, and
35 includes any and all transaction costs, closing costs, legal fees,
36 taxes, charges, expenses, and other amounts incurred by an electrical
37 company in connection with such acquisitions.
38 (10) "Financing cost" means any of the following:
39 (a) Interest and redemption premiums that are payable on carbon
40 reduction bonds;

1 (b) A reasonable payment required under an ancillary agreement,
2 including any amount required to fund a reserve account, made in
3 connection with the issuance or servicing of carbon reduction bonds;

4 (c) The reasonable cost of retiring or refunding existing debt
5 and equity securities issued by or for the benefit of an electrical
6 company to finance such electrical company's investment in an
7 eligible coal plant to be retired, including the full payment, when
8 due under the terms thereof or upon redemption prior to maturity, of
9 all the principal of and interest on any redemption premium, if
10 applicable;

11 (d) Any other reasonable cost related to issuing and servicing
12 carbon reduction bonds or the retiring or refunding of existing debt
13 and equity securities issued by or for the benefit of an electrical
14 company to finance such electrical company's investment in an
15 eligible coal plant to be retired, including servicing fees, trustee
16 fees, legal fees, administrative fees, placement fees, capitalized
17 interest, and rating agency fees;

18 (e) Any taxes and license fees imposed on the revenues to the
19 electric utility generated from the collection of carbon reduction
20 charges.

21 (11) "Financing order" means an order, issued by the commission
22 pursuant to section 9 of this act, that allows for the issuance of
23 carbon reduction bonds, the collection of carbon reduction charges,
24 and the creation of carbon reduction property.

25 (12) "Financing subsidiary" means a wholly owned subsidiary of an
26 electrical company that has no direct or indirect interest in the
27 business of the electrical company and its other affiliates and was
28 formed for the limited purpose of:

29 (a) Issuing, facilitating, or administering carbon reduction
30 bonds;

31 (b) Facilitating or administering carbon reduction property;

32 (c) Entering into mortgages, notes, loans, or other contractual
33 obligations secured by carbon reduction property for the purpose of
34 financing carbon reduction costs; or

35 (d) Any other business as may be reasonably incidental to those
36 described in (a) and (c) of this subsection, including the ownership
37 and use of carbon reduction property in connection therewith.

38 (13) "Program" means the Washington state coal generation
39 retirement program established by this act.

1 (14) "Program investment" means, for any eligible electrical
2 company that retires any one or more eligible coal plants under the
3 program, an amount, which such amount in the aggregate is the sum of
4 all of the following: (a) The amount of the eligible electrical
5 company's net plant investment allowed and approved by the commission
6 for purposes of section 7(1) of this act; (b) the amount of the
7 eligible electrical company's net plant investment allowed and
8 approved by the commission for purposes of section 7(2) of this act;
9 and (c) the amount of the carbon reduction costs to be incurred and
10 paid by such electrical company. An electrical company's program
11 investment is subject to its program limit.

12 (15) "Program limit" means a dollar amount, determined for each
13 electrical company that retires any one or more eligible coal plants
14 under the program, and is the amount that is equal to nine and eight-
15 tenths percent of such electrical company's Washington state rate
16 base as of the effective date of this section. The program limit may
17 be subject to adjustment by the commission in accordance with section
18 8(7)(b) of this act.

19 (16) "Retirement" or "retire" means the complete and permanent
20 closure of an eligible coal plant as a coal-fired electric generation
21 facility. Closure shall be deemed to have occurred upon the date that
22 the eligible coal plant shall permanently cease operations as a coal-
23 fired electric generation facility.

24 NEW SECTION. **Sec. 6.** (1) Before December 1, 2015, the utilities
25 and transportation commission shall assess the liabilities, risks,
26 and costs to ratepayers associated with the rehabilitation,
27 maintenance, expansion, and continued operation of impoundment ponds
28 of each eligible coal plant that is currently included in an
29 electrical company's resource portfolio.

30 (2) This assessment must include, but is not limited to, a broad
31 examination of the following:

32 (a) Identification of potential risks, including but not limited
33 to damage to human health, the environment, and property interests,
34 and liabilities associated with existing contaminated groundwater
35 plumes and failure of the impoundment ponds;

36 (b) Estimation of capital expenditures that may be necessary to
37 address any structural deficiencies in impoundment ponds due to
38 current and anticipated federal regulations, including closure of
39 existing wet impoundments and conversion to dry handling facilities;

1 (c) Analysis of the extent to which any of the liabilities,
2 risks, and costs to ratepayers can be mitigated or avoided by early
3 retirement or decreased operation of a plant or plants; and

4 (d) Any other information that the commission deems relevant in
5 determining the impact of impoundment pond liabilities on a decision
6 to continue to operate and make capital investments in an eligible
7 coal plant.

8 (3) By December 1, 2015, the utilities and transportation
9 commission shall report the results of the assessment to the governor
10 and the legislature.

11 NEW SECTION. **Sec. 7.** REGULATORY MECHANISMS. The following
12 regulatory mechanisms are available to an electrical company under
13 the program:

14 (1) Regulatory asset. For each eligible coal plant designated in
15 a binding notice for retirement by an eligible electrical company,
16 the electrical company may petition the commission for authority to
17 place all or a portion of its net plant investment in an eligible
18 coal plant into a regulatory asset account. Any request by an
19 electrical company to place all or a portion of its net plant
20 investment in a retired eligible coal plant into a regulatory asset
21 account shall be subject to a prudence review by the commission,
22 which shall include a review of the costs the electrical company
23 seeks to include in the regulatory asset account and a determination
24 that the creation of a regulatory asset account represents the least-
25 cost alternative for customers. The net plant investment shall
26 include the net book value of the retired eligible coal plant as of
27 the date of retirement, any and all transmission or other costs
28 related to the eligible coal plant and traditionally included in an
29 electrical company's rate base, and any carbon reduction costs
30 associated with the eligible coal plant that are not otherwise
31 recovered by a carbon reduction charge. The electrical company shall
32 be allowed to earn a reasonable rate of return on such investment, as
33 determined by the commission. The amount recoverable in the
34 regulatory asset account may be amortized and recovered in rates over
35 a period not to exceed twenty years. Charges among customer classes
36 shall be allocated over such time and among such customers consistent
37 with the allocation methodology for utility production plants
38 accepted by the commission in the electrical company's most recent
39 rate proceeding.

1 (2) Accelerated depreciation and amortization. For each eligible
2 coal plant designated in a binding notice for retirement by an
3 eligible electrical company, the electrical company shall have the
4 right to accelerated depreciation and amortization of all or a
5 portion of the electrical company's net plant investment in such
6 eligible coal plant, subject to a determination by the commission
7 that such accelerated depreciation and amortization is in the public
8 interest and represents the least-cost alternative for customers.
9 Such accelerated depreciation and amortization shall not exceed the
10 three percent cost cap identified in subsection (7) of this section.
11 The net plant investment so allowed and approved may, if requested by
12 the electrical company, be fully depreciated by the retirement date
13 subject to a finding by the commission that such depreciation and
14 amortization schedule is in the public interest and contributes to
15 rates that are fair, just, reasonable, and sufficient. The net plant
16 investment in such coal plant shall include its net book value as of
17 the date of the binding notice, all transmission or other costs
18 traditionally included in the electrical company's rate base, and any
19 carbon reduction costs that are not otherwise recovered by a carbon
20 reduction charge. The electrical company shall be allowed to earn a
21 reasonable and sufficient rate of return on such net plant
22 investment. Charges among customer classes shall be allocated over
23 such time and among such customers consistent with the allocation
24 methodology for utility production plants accepted by the commission
25 in the electrical company's most recent rate proceeding.

26 (3) Any eligible coal plant acquisition costs incurred by an
27 eligible electrical company are only allowed in the electrical
28 company's rates upon a finding by the commission that such eligible
29 coal plant acquisition costs were reasonably and prudently incurred.
30 Upon a commission finding that eligible coal plant acquisition costs
31 were reasonably and prudently incurred, an electrical company may
32 designate eligible coal plant acquisition costs in a financing order
33 issued by the commission pursuant to section 9(1)(c) of this act as
34 carbon reduction costs to be recovered by carbon reduction charges.

35 (4) Creation of subsidiaries. Each eligible electrical company
36 may create or acquire one or more subsidiaries with commission
37 approval to accomplish the acquisition or retirement of one or more
38 eligible coal plants.

39 (5) Timing of mechanisms. If requested by the eligible electrical
40 company, and the commission finds it to be reasonable and prudent, an

1 order by the commission establishing and implementing the regulatory
2 and financial mechanisms authorized and approved by this act may
3 provide for such mechanisms to be implemented in phases to better
4 correspond with the timing and implementation of the electrical
5 company's retirement plan.

6 (6) Commission authority. The commission shall, upon petition,
7 issue such orders as may be necessary to implement any and all of the
8 regulatory and financial mechanisms hereby authorized and approved by
9 this act.

10 (7) In no event shall the regulatory mechanisms specified in this
11 section result in an average annual rate increase for an eligible
12 electrical company's Washington customers of more than three percent
13 of the eligible electrical company's revenue requirement.

14 NEW SECTION. **Sec. 8.** BINDING NOTICE. (1) Binding notice. An
15 eligible electrical company must file a binding notice with the
16 commission that sets forth the financial and regulatory mechanisms
17 the electrical company requires to irrevocably commit the electrical
18 company to the retirement of one or more eligible coal plants. A
19 binding notice may include one or more eligible coal plants. A
20 binding notice must state with particularity the following
21 information:

22 (a) As to any eligible coal plant to be retired, the name and
23 location of the plant, the identity of the owners and operators of
24 such plant, documentation that the plant to be retired is an eligible
25 plant for purposes of this chapter, a preliminary retirement plan, a
26 preliminary estimate of the cost to implement the retirement plan,
27 the electrical company's program limit, and the date certain by which
28 the eligible coal plant shall permanently cease operations as a coal-
29 fired electric generation facility.

30 (b) The date, which shall not be more than ten years after the
31 date that an eligible plant is retired, on or before which the
32 eligible electrical company must petition the commission for any
33 regulatory asset accounts to be established for the net plant
34 investment of an electrical company in a retired eligible plant as
35 set forth in section 7(1) of this act.

36 (c) A statement of whether the eligible electrical company or
37 financing subsidiary anticipates issuing carbon reduction bonds under
38 a financing order to be issued by the commission in accordance with
39 section 9(1)(c) of this act.

1 (d) A statement regarding any obligations the electrical company
2 has assumed to conduct environmental clean up at the retired coal
3 plant facilities; the electrical company's plans to finance any
4 clean-up operations; and a request that the commission assess any
5 potential impacts to ratepayers associated with the environmental
6 clean-up obligations.

7 (2) Commission authority. Within thirty days of the commission's
8 receipt of a binding notice, the commission shall determine if the
9 binding notice is complete and may request further or additional
10 information as the commission may reasonably request to accept or
11 reject the binding notice. Not less than one hundred twenty days from
12 the date of an electrical company's submittal of a binding notice,
13 the commission shall accept the binding notice unless the commission
14 finds, based upon a preponderance of the evidence, that:

15 (a) The plant designated for retirement is not an eligible coal
16 plant for purposes of this chapter;

17 (b) The regulatory and financial mechanisms identified in the
18 binding notice are not authorized by this chapter or any other
19 applicable law;

20 (c) Retirement, based on the electrical company's preliminary
21 retirement plan and preliminary estimate of the cost to implement the
22 retirement plan, is not in the public interest;

23 (d) The eligible electrical company is unable, through
24 commercially feasible means, to fulfill its obligation to retire an
25 eligible plant on or before the date set forth in the binding notice;

26 (e) The eligible electrical company's program investment will
27 exceed the electrical company's program limit; or

28 (f) The eligible electrical company's retirement plan is not
29 cost-effective or prudent.

30 (3) Rejection of binding notice. If the commission rejects a
31 binding notice as set forth in subsection (2) of this section, the
32 rejection shall be without prejudice to the electrical company's
33 right to refile the same, subject to any further direction as the
34 commission may provide with respect to any deficiencies in the
35 binding notice.

36 (4) Enforceable obligation. Upon the commission's acceptance of a
37 binding notice, the electrical company shall be legally bound and
38 irrevocably committed to the retirement of an eligible coal plant, as
39 set forth in the terms and conditions set forth in the binding

1 notice, which terms and conditions shall be enforceable obligations
2 of the electrical company and its respective successors and assigns.

3 (5) New emission control technology.

4 (a) An eligible electrical company is relieved of its obligation
5 to retire an eligible coal plant if, subsequent to the date of the
6 commission's acceptance of a binding notice with respect to an
7 eligible coal plant, the electrical company is required by state or
8 federal law to reduce emissions, such that: (i) The plant must
9 install or provide any new or additional emission control measures or
10 technology at the eligible coal plant; and (ii) the cost of
11 implementing any one or more of state or federal requirements,
12 individually or in the aggregate, is an amount that exceeds ten
13 percent of the net book value of the electric utility's interest in
14 the eligible coal plant. For purposes of this subsection (5)(a), the
15 net book value of an eligible coal plant shall be determined as of
16 the date the requirement to install additional emission control
17 measures becomes binding.

18 (b) Notwithstanding the provisions of (a) of this subsection, an
19 eligible electrical company may elect, by written notice to the
20 commission, to proceed with the retirement of an eligible coal plant.
21 Such decision shall be subject to a prudence review at the time the
22 electrical company seeks cost recovery.

23 (6) Reliability.

24 (a) An eligible electrical company may defer its obligation to
25 retire an eligible coal plant if, subsequent to the date of the
26 commission's acceptance of a binding notice with respect to an
27 eligible coal plant, the eligible coal plant to be retired is needed
28 for purposes of reliability.

29 (b) An eligible electrical company that is irrevocably committing
30 to the retirement of an eligible coal plant pursuant to subsection
31 (4) of this section may petition the commission for an order to defer
32 its retirement obligation. Any such petition shall identify: (i) The
33 change in circumstances occurring, from and after the date of the
34 commission's acceptance of the electrical company's binding notice,
35 that give rise to the need to maintain the eligible coal plant in
36 operation for purposes of reliability; and (ii) any resource
37 alternatives considered by the electrical company for purposes of
38 reliability, and why such alternatives are insufficient or
39 unsuitable. The electrical company shall bear the burden of proof in

1 establishing that the eligible coal plant to be retired is needed for
2 purposes of reliability.

3 (c) Based upon the petition and such other evidence as may be
4 presented to the commission, the commission may: (i) Grant the
5 petition and defer the retirement date of the eligible coal plant to
6 a date that is later than the date established by the binding notice;
7 or (ii) reject the petition and decline to defer the retirement
8 obligation of the electrical company.

9 (7) Regulatory and financial mechanisms program limits.

10 (a) The amount of an eligible electrical company's program
11 investment may at any time equal, but shall not exceed, such
12 electrical company's then applicable program limit.

13 (b) An eligible electrical company may, at any time, petition the
14 commission for an order to increase its program limit. Any such
15 petition shall: (i) Identify the change in circumstances occurring,
16 from and after the date of the commission's acceptance of the
17 electrical company's binding notice, that give rise to the need to
18 increase the electric company's program limit; and (ii) include an
19 update to the retirement plan that the electrical company proposes to
20 undertake in connection with the retirement of an eligible coal plant
21 that necessitates an increase in the electrical company's program
22 limit. Based upon the petition and such other evidence as may be
23 presented to the commission, the commission may grant, in whole or in
24 part, the electrical company's petition to increase its program limit
25 if the commission finds that such increase is in the public interest.

26 (c) If an eligible electrical company shall incur carbon
27 reduction costs in excess of such electrical company's program limit,
28 the electrical company may seek to recover any and all such costs in
29 rates consistent with the principles of ratemaking that are
30 traditionally applied in the determination of rates that are just,
31 fair, reasonable, and sufficient. Nothing in this subsection (7)(c)
32 shall: (i) Limit or impair the commission's general investigative
33 authority; or (ii) preclude the commission's consideration of any
34 evidence the commission deems relevant to the determination of rates
35 that are just, fair, reasonable, and sufficient. The electrical
36 company shall bear the burden of proof to demonstrate that the excess
37 carbon reduction costs were appropriately and prudently incurred and
38 that such excess costs were not reasonably foreseeable such that the
39 electrical company could have petitioned under (b) of this subsection

1 the commission for an increase in its program limit to include such
2 excess costs.

3 NEW SECTION. **Sec. 9.** CARBON REDUCTION BONDS. (1) Carbon
4 reduction bonds.

5 (a) An eligible electrical company or a financing subsidiary may
6 issue carbon reduction bonds as a financing mechanism authorized by
7 this act upon approval by the commission of a financing order in
8 accordance with this section. An application for a financing order
9 under this section shall include the following:

10 (i) A copy of the commission's order accepting the electrical
11 company's binding notice irrevocably committing the electrical
12 company to the retirement of an eligible coal plant;

13 (ii) A description of the retirement plan that the electrical
14 company proposes to undertake in connection with the retirement of an
15 eligible coal plant, which may include one or more phases of
16 retirement scheduled to be undertaken over a period of time;

17 (iii) A description of the current or anticipated legal
18 obligations that establish the retirement requirements applicable to
19 the retirement of an eligible coal plant;

20 (iv) An estimate of the carbon reduction costs associated with
21 the retirement described in the application, including an estimate of
22 the financing costs associated with each series of carbon reduction
23 bonds proposed to be issued;

24 (v) An estimate of the amount of the carbon reduction charges
25 necessary to recover the carbon reduction costs to be financed, which
26 estimate and calculation should take into account the estimated date
27 of issuance and estimated principal amount of each series of carbon
28 reduction bonds proposed to be issued;

29 (vi) An estimate of the date on which the carbon reduction bonds
30 are expected to be issued and the expected term over which the
31 financing costs associated with the issuance are expected to be
32 recovered and, if the bonds are expected to be issued in more than
33 one series, the estimated issuance date and expected term for each
34 bond issuance;

35 (vii) A proposed adjustment mechanism for making any adjustments
36 necessary to correct for any over-collection or under-collection of
37 carbon reduction charges or otherwise to ensure the timely and
38 complete payment and recovery of carbon reduction costs;

1 (viii) A description of the carbon reduction property that is
2 created and that may be used to pay or secure carbon reduction bonds;

3 (ix) A methodology for allocating carbon reduction charges among
4 customer classes that maintains consistency with the allocation
5 methodology for utility production plants accepted by the commission
6 in the electrical company's most recent rate proceeding; and

7 (x) A description of the trust instrument, including the proposed
8 terms and conditions thereof, to be used to establish a carbon
9 reduction trust pursuant to (h) of this subsection.

10 (b) The commission shall, within one hundred twenty days of its
11 receipt thereof, review an application for a financing order to
12 determine the sufficiency thereof with respect to the requirements
13 set forth in (a) of this subsection. The commission shall approve the
14 application unless the commission finds:

15 (i) The retirement plan that the electrical company proposes to
16 undertake in connection with the retirement of an eligible coal plant
17 is inconsistent with applicable law;

18 (ii) The estimated carbon reduction costs described in the
19 application are not supported by substantial evidence;

20 (iii) The carbon reduction costs to be financed from proceeds of
21 carbon reduction bonds to be authorized by the financing order will
22 cause the electrical company's program investment to exceed the
23 electrical company's program limit;

24 (iv) The issuance of carbon reduction bonds is not the least-cost
25 method for customers of financing the retirement of an eligible coal
26 plant; or

27 (v) The application is not in the public interest as filed.

28 (c) If an application is found by the commission to satisfy
29 (b)(i) through (v) of this subsection, the commission shall issue a
30 financing order on the terms and conditions proposed in the
31 application, and the financing order shall state:

32 (i) The carbon reduction costs to be financed from proceeds of
33 carbon reduction bonds authorized by the financing order;

34 (ii) The carbon reduction charges necessary to recover carbon
35 reduction costs that shall be imposed on and collected from customers
36 of the electrical company, for as long as the carbon reduction bonds
37 are outstanding;

38 (iii) The adjustment mechanism to be applied for making any
39 necessary adjustments to carbon reduction charges;

1 (iv) The carbon reduction property that is created and that may
2 be used to pay or secure carbon reduction bonds; and

3 (v) The methodology for allocating carbon reduction charges among
4 customer classes.

5 (d) In issuing a financing order, the commission may not alter
6 the terms and conditions of an application, nor may the commission
7 approve an application on terms or conditions other than the terms
8 and conditions set forth in the application.

9 (e) A financing order may authorize the issuance of more than one
10 series of carbon reduction bonds for the retirement of an eligible
11 coal plant. If so authorized, the electrical company will not
12 subsequently be required to secure a separate financing order for
13 each issuance of carbon reduction bonds or for each scheduled phase
14 of the retirement approved in the financing order.

15 (f) A financing order shall remain in effect until the carbon
16 reduction bonds issued pursuant to the financing order have been paid
17 in full and all carbon reduction costs relating to the carbon
18 reduction bonds have been paid in full. For so long as carbon
19 reduction bonds issued pursuant to a financing order are outstanding
20 and the related carbon reduction costs have not been paid in full,
21 the carbon reduction charges authorized to be imposed in the
22 financing order shall apply to all customers of the electrical
23 company.

24 (g) If the commission issues a financing order authorizing the
25 issuance of carbon reduction bonds, the commission may not, in
26 exercising its powers and carrying out its duties regarding
27 regulation and ratemaking, consider: (i) Carbon reduction bonds
28 issued pursuant to the financing order to be the debt of the
29 electrical company; (ii) the carbon reduction charges paid under the
30 financing order to be revenue of the electrical company; or (iii) the
31 carbon reduction costs specified in the financing order to be the
32 costs of the electrical company, nor shall the commission determine
33 that any action taken by an electrical company that is consistent
34 with the financing order is unjust or unreasonable from a regulatory
35 or ratemaking perspective. The commission shall, as of any given time
36 of determination, exclude the effect of the issuance of carbon
37 reduction bonds or the write-down of discontinued operations of an
38 eligible coal plant in calculating the equity ratio of an electrical
39 company. An electrical company shall not issue carbon reduction bonds
40 if doing so would result in any of the major credit rating agencies

1 imputing the carbon reduction bonds as debt on the utility's balance
2 sheet.

3 (h) Based upon semiannual reports filed by an eligible electrical
4 company with the commission, the commission shall apply the
5 adjustment mechanism approved in the financing order to correct for
6 any over-collection or under-collection of the carbon reduction
7 charges and to provide for timely payment of scheduled principal of
8 and interest on the carbon reduction bonds and the payment and
9 recovery of other financing costs in accordance with the financing
10 order. Application of the adjustment mechanism shall occur at least
11 annually or more frequently as provided in the financing order.

12 (i) An eligible electrical company or a financing subsidiary may
13 issue carbon reduction bonds pursuant to a financing order. The
14 issuer shall establish and maintain an irrevocable carbon reduction
15 trust with a bank or trust company as trustee. The proceeds of any
16 carbon reduction bonds issued shall be placed in such carbon
17 reduction trust. The carbon reduction trust shall indemnify an
18 electrical company for carbon reduction costs approved by a financing
19 order and for no other purpose. The trustee shall furnish yearly to
20 the commission a financial report in a form designated by the
21 commission with respect to the carbon reduction trust.

22 (j) The assets of a carbon reduction trust shall be invested and
23 reinvested subject to all the terms, conditions, limitations, and
24 restrictions imposed by the laws of the state upon executors and
25 trustees regarding the making and depositing of investments with
26 trust moneys pursuant to chapter 11.100 RCW. Subject to said terms,
27 conditions, limitations, and restrictions, the trustee of the carbon
28 reduction trust shall have full power to hold, purchase, sell,
29 assign, transfer, reinvest, and dispose of any of the securities and
30 investments in which any of the assets of said fund are invested,
31 including proceeds of investments.

32 (k) To protect the customer interest, the commission shall
33 oversee the creation, structuring, and marketing of carbon reduction
34 bonds, regardless of whether they are issued by the electrical
35 company or a financing subsidiary. Additionally, representatives of
36 the customer interest are also eligible to oversee the creation,
37 structuring, and marketing of carbon reduction bonds.

38 (l) Upon satisfaction of all terms of the carbon reduction bonds,
39 any assets remaining in the carbon reduction trust shall be refunded
40 to customers and allocated over such time and among such customers

1 consistent with the allocation methodology for utility production
2 plants accepted by the commission in the electrical company's most
3 recent rate proceeding.

4 (2) Carbon reduction property.

5 (a) In general.

6 (i) Carbon reduction property that is specified in a financing
7 order shall constitute a present property right notwithstanding that
8 the imposition and collection of carbon reduction charges depend on
9 the electrical company to which the order is issued performing its
10 servicing functions relating to the collection of carbon reduction
11 charges and on future energy consumption. Such property is considered
12 to exist whether or not the revenues or proceeds arising from the
13 property have accrued and whether or not the value of the property is
14 dependent on the receipt of service by customers of an electrical
15 company.

16 (ii) Carbon reduction property specified in a financing order
17 shall continue to exist until the carbon reduction bonds issued
18 pursuant to the order are paid in full and all financing costs of the
19 bonds have been recovered in full.

20 (iii) Carbon reduction property specified in a financing order
21 issued to an electrical company may be transferred, sold, conveyed,
22 or assigned to any person, including a financing subsidiary. Carbon
23 reduction property may be pledged to secure carbon reduction bonds
24 issued pursuant to the order. Each such transfer, sale, conveyance,
25 assignment, or pledge by an electrical company or financing
26 subsidiary is considered to be a transaction in the ordinary course
27 of business.

28 (iv) If an eligible electrical company or financing subsidiary
29 defaults on any required payment of revenues arising from carbon
30 reduction property specified in a financing order, a court, upon
31 application by an interested party, and without limiting any other
32 remedies available to the applying party, shall order the
33 sequestration and payment of the revenues. Any such order shall
34 remain in full force and effect notwithstanding any bankruptcy,
35 reorganization, or other insolvency proceedings with respect to the
36 electrical company or financing subsidiary.

37 (v) The interest of an assignee or pledgee in carbon reduction
38 property specified in a financing order issued to an electrical
39 company, and in the revenue and collections arising from that
40 property, is not subject to setoff, counterclaim, surcharge, or

1 defense by the electrical company, a financing subsidiary, or any
2 other person or in connection with the bankruptcy of the electrical
3 company, a financing subsidiary, or any other entity.

4 (vi) Any successor to an eligible electrical company or a
5 financing subsidiary, whether pursuant to any bankruptcy,
6 reorganization, or other insolvency proceeding or pursuant to any
7 merger or acquisition, sale, or transfer by operation of law, as a
8 result of such electrical company or financing subsidiary
9 restructuring or otherwise, shall perform and satisfy all obligations
10 of, and have the same rights under a financing order as, the
11 electrical company or financing subsidiary under the financing order
12 in the same manner and to the same extent as the electrical company
13 or financing subsidiary, including collecting and paying to the
14 person entitled to receive them revenues with respect to the carbon
15 reduction property.

16 (b) Security interests. Except as otherwise provided in this
17 subsection (2)(b), the creation, perfection, and enforcement of
18 security interests in carbon reduction property to secure carbon
19 reduction bonds are governed by chapter 62A.9A RCW. Notwithstanding
20 chapter 62A.9A RCW, with regard to creating, perfecting, and
21 enforcing a valid security interest in carbon reduction property to
22 secure carbon reduction bonds, all of the following apply:

23 (i) The description of carbon reduction property in a security
24 agreement is sufficient if the description refers to this subsection
25 (2)(b) and the financing order creating the carbon reduction
26 property.

27 (ii) A security interest is created, valid, binding, and
28 perfected at the time a security agreement is made and attaches
29 without any physical delivery of collateral or other act, and the
30 lien of such security interest shall be valid, binding, and perfected
31 against all parties having claims of any kind in tort, contract, or
32 otherwise against the person granting the security interest,
33 regardless of whether such parties have notice of the lien. The
34 filing or recording of a financial statement or instrument in which
35 such a security interest is created is not required.

36 (iii) A security interest in carbon reduction property is a
37 continuously perfected security interest and has priority over any
38 other lien created by operation of law or otherwise, which
39 subsequently attaches to the carbon reduction property.

1 (iv) The priority of a security interest created under this
2 subsection (2)(b) is not affected by the commingling of proceeds
3 arising from carbon reduction property with other amounts.

4 (v) Any changes that the commission makes to a financing order
5 that creates the carbon reduction property does not affect the
6 validity, perfection, or priority of a security interest in the
7 carbon reduction property.

8 (c) Sales. The sale, assignment, and transfer of carbon reduction
9 property are governed by this subsection (2)(c). All of the following
10 apply to a sale, assignment, or transfer under this subsection
11 (2)(c):

12 (i) The sale, assignment, or transfer is an absolute transfer of,
13 and not a pledge of or secured transaction relating to, the seller's
14 right, title, and interest in, to, and under the carbon reduction
15 property, if the documents governing the transaction expressly state
16 that the transaction is a sale or other absolute transfer. After such
17 a transaction, the carbon reduction property is not subject to any
18 claims of the seller or the seller's creditors, other than creditors
19 holding a prior security interest in the carbon reduction property
20 perfected under (b) of this subsection.

21 (ii) The characterization of the sale, assignment, or transfer as
22 an absolute transfer under (a) of this subsection and the
23 corresponding characterization of the purchaser's property interest
24 are not affected by any of the following factors:

25 (A) Commingling of amounts arising with respect to the carbon
26 reduction property with other amounts;

27 (B) The retention by the seller of a partial or residual
28 interest, including an equity interest, in the carbon reduction
29 property, whether direct or indirect or whether subordinate or
30 otherwise;

31 (C) Any recourse that the purchaser may have against the seller;

32 (D) Any indemnifications, obligations, or repurchase rights made
33 or provided by the seller;

34 (E) The responsibility of the seller to collect carbon reduction
35 charges; and

36 (F) The treatment of the sale, assignment, or transfer for tax,
37 financial reporting, or other purposes.

38 (3) Carbon reduction bonds not public debt The state is not
39 liable on carbon reduction bonds and the bonds are not a debt of the
40 state. An issue of carbon reduction bonds does not, directly or

1 indirectly or contingently, obligate the state or a political
2 subdivision of the state to levy any tax or make any appropriation
3 for payment of the bonds.

4 (4) Carbon reduction bonds as legal investments. Except for any
5 owner, subsidiary, or other affiliate of an eligible electrical
6 company, any of the following may legally invest any sinking funds,
7 moneys, or other funds belonging to them or under their control in
8 carbon reduction bonds:

9 (a) The state, municipal corporations, political subdivisions,
10 public bodies, and public officers except for members of the
11 commission;

12 (b) Banks and bankers, savings and loan associations, credit
13 unions, trust companies, savings banks and institutions, investment
14 companies, insurance companies, insurance associations, and other
15 persons carrying on a banking or insurance business; and

16 (c) Personal representatives, guardians, trustees, and other
17 fiduciaries.

18 (5) State pledge.

19 (a) In this subsection (5), "bondholder" means a person who holds
20 a carbon reduction bond.

21 (b) The state pledges to and agrees with bondholders that the
22 state will not do any of the following:

23 (i) Take or permit any action that impairs the value of carbon
24 reduction property; or

25 (ii) Except as allowed under this section, reduce, alter, or
26 impair carbon reduction charges that are imposed, collected, and
27 remitted for the benefit of the bondholders until any principal,
28 interest, premium, or other charge incurred, or contract to be
29 performed, in connection with carbon reduction bonds held by the
30 bondholders is paid or performed in full.

31 (c) Any person who issues carbon reduction bonds is allowed to
32 include the pledge specified in (b) of this subsection in the bonds
33 and relating documentation.

34 (6) Effect of invalidity on actions. Effective on the date that
35 carbon reduction bonds are first issued under this section, if any
36 provision of this section is held to be invalid or is invalidated,
37 superseded, replaced, repealed, or expires for any reason, that
38 occurrence shall not affect any action allowed under this section
39 that is taken by an electrical company, a financing subsidiary, an

1 assignee, a collection agent, or a party to a transaction, and any
2 such action shall remain in full force and effect.

3 NEW SECTION. **Sec. 10.** CONFLICTS OF LAW. In the event of
4 conflict between section 9 of this act and any other law regarding
5 the attachment, assignment, or perfection, or the effect of
6 perfection, or priority of any security interest in carbon reduction
7 property, section 9 of this act to the extent of the conflict shall
8 govern and control.

9 NEW SECTION. **Sec. 11.** RECOVERY OF COSTS ASSOCIATED WITH
10 RETIREMENT OF AN ELIGIBLE COAL PLANT. (1) For the purposes of this
11 section:

12 (a) "Impacted electrical company" means an eligible electrical
13 company that incurs mitigation costs as a result of the retirement of
14 an eligible coal plant.

15 (b) "Memorandum of agreement" means an agreement between an
16 impacted electrical company and a state other than the state of
17 Washington which includes obligations accepted by the impacted
18 electrical company to mitigate for the impacts of the retirement of
19 an eligible coal plant. The obligations of a memorandum of agreement
20 may include, but may not be limited to, payment of mitigation costs
21 and the development of replacement electrical generation facilities,
22 other than coal-fired generation facilities.

23 (c) "Mitigation costs" means payments made by an impacted
24 electrical company to another state either under a memorandum of
25 agreement, or as a requirement of law for: (i) Financial assistance
26 to a community affected by the retirement of an eligible coal plant;
27 (ii) financial assistance to retrain workers who will be displaced as
28 a result of the retirement of an eligible coal plant; and (iii) any
29 other cash or in-kind payment made pursuant to a memorandum of
30 agreement entered into between an electrical company and another
31 state regarding the retirement of an eligible coal plant.

32 (2) An impacted electrical company shall be entitled to recover
33 prudently incurred mitigation costs from its customers. No
34 replacement electric generation facilities shall be recoverable in an
35 impacted electrical company's Washington rates unless the impacted
36 electrical company can demonstrate that the replacement electric
37 generation facilities provide benefits to its Washington customers.
38 An impacted electrical company must file a petition with the

1 commission to recover mitigation costs within ten years of the
2 retirement of an eligible coal plant. No mitigation costs incurred
3 subsequent to this date shall be allowed in the impacted electrical
4 company's rates. An impacted electrical company may file a petition
5 with the commission to recover mitigation costs at any time, and an
6 impacted electrical company may file more than one petition for the
7 recovery of mitigation costs.

8 (3) An impacted electrical company shall be entitled to petition
9 the commission to recover in rates any investments made and expenses
10 incurred to restore any loss of transfer capacity on, and to maintain
11 the efficient operation of, the transmission system used to deliver
12 electrical energy from an eligible coal plant to retail electric
13 customers in Washington, when the transfer capacity or efficient
14 operation of the transmission system are affected by the retirement
15 of portions of an eligible coal plant and other units of the eligible
16 coal plant remain in operation.

17 NEW SECTION. **Sec. 12.** SEVERABILITY. If any provision of this
18 act or its application to any person or circumstance is held invalid,
19 the remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

21 **Sec. 13.** RCW 80.80.060 and 2011 c 180 s 104 are each amended to
22 read as follows:

23 (1) No electrical company may enter into a long-term financial
24 commitment unless the baseload electric generation supplied under
25 such a long-term financial commitment complies with the greenhouse
26 gas emissions performance standard established under RCW 80.80.040.

27 (2) In order to enforce the requirements of this chapter, the
28 commission shall review in a general rate case or as provided in
29 subsection (5) of this section any long-term financial commitment
30 entered into by an electrical company after June 30, 2008, to
31 determine whether the baseload electric generation to be supplied
32 under that long-term financial commitment complies with the
33 greenhouse gas emissions performance standard established under RCW
34 80.80.040.

35 (3) In determining whether a long-term financial commitment is
36 for baseload electric generation, the commission shall consider the
37 design of the power plant and its intended use, based upon the
38 electricity purchase contract, if any, permits necessary for the

1 operation of the power plant, and any other matter the commission
2 determines is relevant under the circumstances.

3 (4) Upon application by an electric utility, the commission may
4 provide a case-by-case exemption from the greenhouse gas emissions
5 performance standard to address: (a) Unanticipated electric system
6 reliability needs; (b) extraordinary cost impacts on utility
7 ratepayers; or (c) catastrophic events or threat of significant
8 financial harm that may arise from unforeseen circumstances.

9 (5) Upon application by an electrical company, the commission
10 shall determine whether the company's proposed decision to acquire
11 electric generation or enter into a power purchase agreement for
12 electricity complies with the greenhouse gas emissions performance
13 standard established under RCW 80.80.040. The commission shall not
14 decide in a proceeding under this subsection (5) issues involving the
15 actual costs to construct and operate the selected resource, cost
16 recovery, or other issues reserved by the commission for decision in
17 a general rate case or other proceeding for recovery of the resource
18 or contract costs.

19 (6) An electrical company may account for and defer for later
20 consideration by the commission costs incurred in connection with a
21 long-term financial commitment, including operating and maintenance
22 costs, depreciation, taxes, and cost of invested capital. The
23 deferral begins with the date on which the power plant begins
24 commercial operation or the effective date of the power purchase
25 agreement and continues for a period not to exceed twenty-four
26 months; provided that if during such period the company files a
27 general rate case or other proceeding for the recovery of such costs,
28 deferral ends on the effective date of the final decision by the
29 commission in such proceeding. Creation of such a deferral account
30 does not by itself determine the actual costs of the long-term
31 financial commitment, whether recovery of any or all of these costs
32 is appropriate, or other issues to be decided by the commission in a
33 general rate case or other proceeding for recovery of these costs.
34 For the purpose of this subsection (6) only, the term "long-term
35 financial commitment" also includes an electric company's ownership
36 or power purchase agreement with a term of five or more years
37 associated with an eligible renewable resource as defined in RCW
38 19.285.030.

39 (7) The commission shall consult with the department to apply the
40 procedures adopted by the department to verify the emissions of

1 greenhouse gases from baseload electric generation under RCW
2 80.80.040. The department shall report to the commission whether
3 baseload electric generation will comply with the greenhouse gas
4 emissions performance standard for the duration of the period the
5 baseload electric generation is supplied to the electrical company.

6 (8) The commission shall adopt rules for the enforcement of this
7 section with respect to electrical companies and adopt procedural
8 rules for approving costs incurred by an electrical company under
9 subsection (4) of this section.

10 (9) This section does not apply to: (a) A long-term financial
11 commitment for the purchase of coal transition power with termination
12 dates consistent with the applicable dates in RCW 80.80.040(3)(c); or
13 (b) a long-term financial commitment pursuant to which an electrical
14 company incurs eligible coal plant acquisition costs; provided,
15 however, that an electrical company that incurs eligible coal plant
16 acquisition costs shall, within ten years of the effective date of
17 this section, file a binding notice to retire one or more eligible
18 coal plants under the Washington state coal generation retirement
19 program within chapter 80.82 RCW.

20 (10) The commission shall adopt rules necessary to implement this
21 section by December 31, 2008.

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