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SECOND SUBSTITUTE HOUSE BILL 2002

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State of Washington                      64th Legislature                      2015 Regular Session

By House General Government & Information Technology (originally sponsored by Representatives Morris, Magendanz, and Fitzgibbon)

READ FIRST TIME 02/27/15.

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; and recodifying RCW 80.82.010 and 80.82.020.

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

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

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

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

15           NEW SECTION.    **Sec. 4.**    (1) The legislature finds that:  
16           (a) Washington state citizens benefit from the reduction of  
17 greenhouse gas emissions and from reliable and environmentally sound  
18 generation resources that are sufficient to provide economic

1 opportunities and employment in a manner consistent with the state's  
2 energy priorities;

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

6 (c) Promotion of the early retirement of certain coal-fired  
7 electric generation facilities requires secure and predicable  
8 regulatory and financial mechanisms that encourage such early  
9 retirement; and

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

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

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

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

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

30 NEW SECTION. **Sec. 5.** DEFINITIONS. The definitions in this  
31 section apply throughout this chapter unless the context clearly  
32 requires otherwise.

33 (1) "Binding notice" means a notice, filed with the commission by  
34 an electrical company as set forth in section 8 of this act, to  
35 irrevocably commit to the retirement of an eligible coal plant within  
36 twenty years of the date of the commission's acceptance of a binding  
37 notice.

38 (2) "Carbon reduction bonds" means bonds, debentures, notes,  
39 certificates of participation, certificates of beneficial interest,

1 certificates of ownership, or other evidences of indebtedness that  
2 are issued by an electrical company or a financing subsidiary to  
3 recover, finance, or refinance carbon reduction costs and that are  
4 secured by or payable from carbon reduction property.

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

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

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

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

33 (c) Capital costs, construction work in progress, and the  
34 unamortized investment of the property that is retired, including any  
35 demolition or similar cost that exceeds the salvage value of the  
36 property;

37 (d) Financing costs; and

38 (e) Mitigation costs under section 11 of this act.

39 (5) "Carbon reduction property" means all of the following:

1 (a) The right specified in a financing order to impose, collect,  
2 or receive carbon reduction charges, or to obtain adjustments to  
3 carbon reduction charges as provided in section 9 of this act, and  
4 any interest in such right;

5 (b) All revenues and proceeds arising from the rights and  
6 interests specified in section 9(2)(a) of this act.

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

9 (7) "Electrical company" means a company owned by investors that  
10 meets the definition of electrical company set forth in RCW  
11 80.04.010.

12 (8) "Eligible coal plant" means a coal-fired electric generation  
13 facility that: (a) Is owned, controlled, or operated, in whole or in  
14 part, by an electrical company serving a retail electric load within  
15 the state of Washington; (b) provides, as of the effective date of  
16 this act, as a portion of the load served by the coal-fired electric  
17 generation facility, electricity to retail electric customers in the  
18 state of Washington. An eligible coal plant includes, and may be  
19 limited to, for purposes of a binding notice, one or more operating  
20 units of an eligible coal plant that collectively comprise a larger  
21 facility.

22 (9) "Eligible coal plant acquisition costs" means all cost-  
23 effective and prudently incurred costs and expenses incurred by an  
24 electrical company in connection with the acquisition of an  
25 additional or increased interest in any one or more eligible coal  
26 plants. Eligible coal plant acquisition costs include all cost-  
27 effective and prudently incurred costs and expenses incurred by an  
28 electrical company to secure, finance, purchase, and acquire an  
29 additional or increased interest in any one or more such eligible  
30 coal plants, together with any and all rights and obligations related  
31 to the ownership, operation, and control of such interest, and  
32 includes any and all transaction costs, closing costs, legal fees,  
33 taxes, charges, expenses, and other amounts incurred by an electrical  
34 company in connection with such acquisitions.

35 (10) "Financing cost" means any of the following:

36 (a) Interest and redemption premiums that are payable on carbon  
37 reduction bonds;

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

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

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

15 (e) Any taxes and license fees imposed on the revenues to the  
16 electric utility generated from the collection of carbon reduction  
17 charges.

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

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

26 (a) Issuing, facilitating, or administering carbon reduction  
27 bonds;

28 (b) Facilitating or administering carbon reduction property;

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

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

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

37 (14) "Program investment" means, for any eligible electrical  
38 company that retires any one or more eligible coal plants under the  
39 program, an amount, which such amount in the aggregate is the sum of  
40 all of the following: (a) The amount of the eligible electrical

1 company's net plant investment allowed and approved by the commission  
2 for purposes of section 7(1) of this act; (b) the amount of the  
3 eligible electrical company's net plant investment allowed and  
4 approved by the commission for purposes of section 7(2) of this act;  
5 and (c) the amount of the carbon reduction costs to be incurred and  
6 paid by such electrical company. An electrical company's program  
7 investment is subject to its program limit.

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

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

20 NEW SECTION. **Sec. 6.** (1) The commission may not issue a  
21 financing order authorizing a regulatory mechanism provided in  
22 section 7 of this act, and may not otherwise authorize recovery of  
23 capital expenditures, operating costs, or eligible acquisition costs  
24 incurred pursuant to a long-term financial commitment as provided in  
25 RCW 80.80.060(9), until the commission:

26 (a) Completes an environmental impact investigation, as provided  
27 in subsection (2) of this section; and

28 (b) Makes a determination that the total environmental impact is  
29 minimized by the proposed expenditures, costs, investments, or other  
30 regulatory treatment and therefore the proposed expenditures, costs,  
31 investments, or other regulatory treatment is reasonable, as provided  
32 in subsection (3) of this section.

33 (2) The commission shall assess:

34 (a) The liabilities, risks, and costs to ratepayers and the  
35 environment associated with environmental impacts of continued  
36 operation of the eligible coal plant, including but not limited to  
37 the following:

38 (i) Carbon emissions;

1 (ii) Air emissions of pollutants considered harmful to human  
2 health, as measured and regulated under current or anticipated  
3 federal or state law;

4 (iii) Visibility impairment, as measured and regulated under  
5 current or anticipated federal or state law; and

6 (iv) Contaminated groundwater and other pollution associated with  
7 structure deficiencies at impoundment ponds; and

8 (b) The estimated capital expenditures and operation and  
9 maintenance costs to be incurred in order to continue to operate the  
10 facility in compliance with current and reasonably anticipated state  
11 and federal law related to the impacts listed in (a) of this  
12 subsection, including but not limited to carbon pollution standards,  
13 ambient air quality standards, groundwater standards, preconstruction  
14 permitting requirements, and short-term and long-term rehabilitation  
15 and remediation to address closure of existing wet impoundments and  
16 conversion to dry handling facilities and releases or threatened  
17 releases of coal ash or other noxious or hazardous substances located  
18 at or around the eligible coal plant.

19 (3)(a) The commission shall determine, based on the assessment,  
20 whether and the extent to which additional expenditures, costs,  
21 investments, or other regulatory treatments are reasonably likely to  
22 minimize the environmental impact of the eligible coal plant. In  
23 doing so, the commission must identify the extent to which any of the  
24 liabilities, risks, and costs to ratepayers and the environment can  
25 be mitigated or avoided by early retirement or decreased operation of  
26 an eligible coal plant.

27 (b) The commission must also identify, based on current and  
28 reasonably anticipated state and federal law, rule, or regulation,  
29 the circumstance or circumstances in which continued expenditure,  
30 investment, or operation of an eligible coal plant would no longer be  
31 reasonable. This must be determined by balancing the commission's  
32 assessment of the environmental impacts of continued operation of the  
33 eligible coal plant against any benefits to ratepayers of continued  
34 operation and investment in the eligible coal plant.

35 (4) The commission shall report the results of any assessment  
36 conducted pursuant to this section to the governor and the  
37 legislature.

1        NEW SECTION.

2        **Sec. 7.**

3        REGULATORY MECHANISMS. The following

4        regulatory mechanisms are available to an electrical company under  
5        the program:

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

32       (2) Accelerated depreciation and amortization. For each eligible  
33       coal plant designated in a binding notice for retirement by an  
34       eligible electrical company, the electrical company shall have the  
35       right to accelerated depreciation and amortization of all or a  
36       portion of the electrical company's net plant investment in such  
37       eligible coal plant, subject to a determination by the commission  
38       that such accelerated depreciation and amortization is in the public  
39       interest and represents the least-cost alternative for customers.  
40       Such accelerated depreciation and amortization shall not exceed the  
41       three percent cost cap identified in subsection (7) of this section.  
42       The net plant investment so allowed and approved may, if requested by

1 the electrical company, be fully depreciated by the retirement date  
2 subject to a finding by the commission that such depreciation and  
3 amortization schedule is in the public interest and contributes to  
4 rates that are fair, just, reasonable, and sufficient. The net plant  
5 investment in such coal plant shall include its net book value as of  
6 the date of the binding notice, all transmission or other costs  
7 traditionally included in the electrical company's rate base, and any  
8 carbon reduction costs that are not otherwise recovered by a carbon  
9 reduction charge. The electrical company shall be allowed to earn a  
10 reasonable and sufficient rate of return on such net plant  
11 investment. Charges among customer classes shall be allocated over  
12 such time and among such customers consistent with the allocation  
13 methodology for utility production plants accepted by the commission  
14 in the electrical company's most recent rate proceeding.

15 (3) Any eligible coal plant acquisition costs incurred by an  
16 eligible electrical company are only allowed in the electrical  
17 company's rates upon a finding by the commission that such eligible  
18 coal plant acquisition costs were reasonably and prudently incurred.  
19 Upon a commission finding that eligible coal plant acquisition costs  
20 were reasonably and prudently incurred, an electrical company may  
21 designate eligible coal plant acquisition costs in a financing order  
22 issued by the commission pursuant to section 9(1)(c) of this act as  
23 carbon reduction costs to be recovered by carbon reduction charges.

24 (4) Creation of subsidiaries. Each eligible electrical company  
25 may create or acquire one or more subsidiaries with commission  
26 approval to accomplish the acquisition or retirement of one or more  
27 eligible coal plants.

28 (5) Timing of mechanisms. If requested by the eligible electrical  
29 company, and the commission finds it to be reasonable and prudent, an  
30 order by the commission establishing and implementing the regulatory  
31 and financial mechanisms authorized and approved by this act may  
32 provide for such mechanisms to be implemented in phases to better  
33 correspond with the timing and implementation of the electrical  
34 company's retirement plan.

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

39 (7) In no event shall the regulatory mechanisms specified in this  
40 section result in an average annual rate increase for an eligible

1 electrical company's Washington customers of more than three percent  
2 of the eligible electrical company's revenue requirement.

3 NEW SECTION. **Sec. 8.** BINDING NOTICE. (1) Binding notice. An  
4 eligible electrical company may file a binding notice with the  
5 commission that sets forth the financial and regulatory mechanisms  
6 the electrical company requires to irrevocably commit the electrical  
7 company to the retirement of one or more eligible coal plants. A  
8 binding notice may include one or more eligible coal plants. A  
9 binding notice must state with particularity the following  
10 information:

11 (a) As to any eligible coal plant to be retired, the name and  
12 location of the plant, the identity of the owners and operators of  
13 such plant, documentation that the plant to be retired is an eligible  
14 plant for purposes of this chapter, a preliminary retirement plan, a  
15 preliminary estimate of the cost to implement the retirement plan,  
16 the electrical company's program limit, and the date certain by which  
17 the eligible coal plant shall permanently cease operations as a coal-  
18 fired electric generation facility.

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

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

29 (d) A statement regarding any obligations the electrical company  
30 has assumed to conduct environmental clean up at the retired coal  
31 plant facilities; the electrical company's plans to finance any  
32 clean-up operations; and a request that the commission assess any  
33 potential impacts to ratepayers associated with the environmental  
34 clean-up obligations.

35 (2) Commission authority. Within thirty days of the commission's  
36 receipt of a binding notice, the commission shall determine if the  
37 binding notice is complete and may request further or additional  
38 information as the commission may reasonably request to accept or  
39 reject the binding notice. Not less than one hundred twenty days from

1 the date of an electrical company's submittal of a binding notice,  
2 the commission shall accept the binding notice unless the commission  
3 finds, based upon a preponderance of the evidence, that:

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

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

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

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

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

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

19 (3) Rejection of binding notice. If the commission rejects a  
20 binding notice as set forth in subsection (2) of this section, the  
21 rejection shall be without prejudice to the electrical company's  
22 right to refile the same, subject to any further direction as the  
23 commission may provide with respect to any deficiencies in the  
24 binding notice.

25 (4) Enforceable obligation. Upon the commission's acceptance of a  
26 binding notice, the electrical company shall be legally bound and  
27 irrevocably committed to the retirement of an eligible coal plant, as  
28 set forth in the terms and conditions set forth in the binding  
29 notice, which terms and conditions shall be enforceable obligations  
30 of the electrical company and its respective successors and assigns.

31 (5) New emission control technology.

32 (a) An eligible electrical company is relieved of its obligation  
33 to retire an eligible coal plant if, subsequent to the date of the  
34 commission's acceptance of a binding notice with respect to an  
35 eligible coal plant, the electrical company is required by state or  
36 federal law to reduce emissions, such that: (i) The plant must  
37 install or provide any new or additional emission control measures or  
38 technology at the eligible coal plant; and (ii) the cost of  
39 implementing any one or more of state or federal requirements,  
40 individually or in the aggregate, is an amount that exceeds ten

1 percent of the net book value of the electric utility's interest in  
2 the eligible coal plant. For purposes of this subsection (5)(a), the  
3 net book value of an eligible coal plant shall be determined as of  
4 the date the requirement to install additional emission control  
5 measures becomes binding.

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

11 (6) Reliability.

12 (a) An eligible electrical company may defer its obligation to  
13 retire an eligible coal plant if, subsequent to the date of the  
14 commission's acceptance of a binding notice with respect to an  
15 eligible coal plant, the eligible coal plant to be retired is needed  
16 for purposes of reliability.

17 (b) An eligible electrical company that is irrevocably committing  
18 to the retirement of an eligible coal plant pursuant to subsection  
19 (4) of this section may petition the commission for an order to defer  
20 its retirement obligation. Any such petition shall identify: (i) The  
21 change in circumstances occurring, from and after the date of the  
22 commission's acceptance of the electrical company's binding notice,  
23 that give rise to the need to maintain the eligible coal plant in  
24 operation for purposes of reliability; and (ii) any resource  
25 alternatives considered by the electrical company for purposes of  
26 reliability, and why such alternatives are insufficient or  
27 unsuitable. The electrical company shall bear the burden of proof in  
28 establishing that the eligible coal plant to be retired is needed for  
29 purposes of reliability.

30 (c) Based upon the petition and such other evidence as may be  
31 presented to the commission, the commission may: (i) Grant the  
32 petition and defer the retirement date of the eligible coal plant to  
33 a date that is later than the date established by the binding notice;  
34 or (ii) reject the petition and decline to defer the retirement  
35 obligation of the electrical company.

36 (7) Regulatory and financial mechanisms program limits.

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

1 (b) An eligible electrical company may, at any time, petition the  
2 commission for an order to increase its program limit. Any such  
3 petition shall: (i) Identify the change in circumstances occurring,  
4 from and after the date of the commission's acceptance of the  
5 electrical company's binding notice, that give rise to the need to  
6 increase the electric company's program limit; and (ii) include an  
7 update to the retirement plan that the electrical company proposes to  
8 undertake in connection with the retirement of an eligible coal plant  
9 that necessitates an increase in the electrical company's program  
10 limit. Based upon the petition and such other evidence as may be  
11 presented to the commission, the commission may grant, in whole or in  
12 part, the electrical company's petition to increase its program limit  
13 if the commission finds that such increase is in the public interest.

14 (c) If an eligible electrical company shall incur carbon  
15 reduction costs in excess of such electrical company's program limit,  
16 the electrical company may seek to recover any and all such costs in  
17 rates consistent with the principles of ratemaking that are  
18 traditionally applied in the determination of rates that are just,  
19 fair, reasonable, and sufficient. Nothing in this subsection (7)(c)  
20 shall: (i) Limit or impair the commission's general investigative  
21 authority; or (ii) preclude the commission's consideration of any  
22 evidence the commission deems relevant to the determination of rates  
23 that are just, fair, reasonable, and sufficient. The electrical  
24 company shall bear the burden of proof to demonstrate that the excess  
25 carbon reduction costs were appropriately and prudently incurred and  
26 that such excess costs were not reasonably foreseeable such that the  
27 electrical company could have petitioned under (b) of this subsection  
28 the commission for an increase in its program limit to include such  
29 excess costs.

30 NEW SECTION. **Sec. 9.** CARBON REDUCTION BONDS. (1) Carbon  
31 reduction bonds.

32 (a) An eligible electrical company or a financing subsidiary may  
33 issue carbon reduction bonds as a financing mechanism authorized by  
34 this act upon approval by the commission of a financing order in  
35 accordance with this section. An application for a financing order  
36 under this section shall include the following:

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

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

5 (iii) A description of the current or anticipated legal  
6 obligations that establish the retirement requirements applicable to  
7 the retirement of an eligible coal plant;

8 (iv) An estimate of the carbon reduction costs associated with  
9 the retirement described in the application, including an estimate of  
10 the financing costs associated with each series of carbon reduction  
11 bonds proposed to be issued;

12 (v) An estimate of the amount of the carbon reduction charges  
13 necessary to recover the carbon reduction costs to be financed, which  
14 estimate and calculation should take into account the estimated date  
15 of issuance and estimated principal amount of each series of carbon  
16 reduction bonds proposed to be issued;

17 (vi) An estimate of the date on which the carbon reduction bonds  
18 are expected to be issued and the expected term over which the  
19 financing costs associated with the issuance are expected to be  
20 recovered and, if the bonds are expected to be issued in more than  
21 one series, the estimated issuance date and expected term for each  
22 bond issuance;

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

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

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

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

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

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

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

6 (iii) The carbon reduction costs to be financed from proceeds of  
7 carbon reduction bonds to be authorized by the financing order will  
8 cause the electrical company's program investment to exceed the  
9 electrical company's program limit;

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

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

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

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

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

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

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

28 (v) The methodology for allocating carbon reduction charges among  
29 customer classes.

30 (d) In issuing a financing order, the commission may not alter  
31 the terms and conditions of an application, nor may the commission  
32 approve an application on terms or conditions other than the terms  
33 and conditions set forth in the application.

34 (e) A financing order may authorize the issuance of more than one  
35 series of carbon reduction bonds for the retirement of an eligible  
36 coal plant. If so authorized, the electrical company will not  
37 subsequently be required to secure a separate financing order for  
38 each issuance of carbon reduction bonds or for each scheduled phase  
39 of the retirement approved in the financing order.

1 (f) A financing order shall remain in effect until the carbon  
2 reduction bonds issued pursuant to the financing order have been paid  
3 in full and all carbon reduction costs relating to the carbon  
4 reduction bonds have been paid in full. For so long as carbon  
5 reduction bonds issued pursuant to a financing order are outstanding  
6 and the related carbon reduction costs have not been paid in full,  
7 the carbon reduction charges authorized to be imposed in the  
8 financing order shall apply to all customers of the electrical  
9 company.

10 (g) If the commission issues a financing order authorizing the  
11 issuance of carbon reduction bonds, the commission may not, in  
12 exercising its powers and carrying out its duties regarding  
13 regulation and ratemaking, consider: (i) Carbon reduction bonds  
14 issued pursuant to the financing order to be the debt of the  
15 electrical company; (ii) the carbon reduction charges paid under the  
16 financing order to be revenue of the electrical company; or (iii) the  
17 carbon reduction costs specified in the financing order to be the  
18 costs of the electrical company, nor shall the commission determine  
19 that any action taken by an electrical company that is consistent  
20 with the financing order is unjust or unreasonable from a regulatory  
21 or ratemaking perspective. The commission shall, as of any given time  
22 of determination, exclude the effect of the issuance of carbon  
23 reduction bonds or the write-down of discontinued operations of an  
24 eligible coal plant in calculating the equity ratio of an electrical  
25 company. An electrical company shall not issue carbon reduction bonds  
26 if doing so would result in any of the major credit rating agencies  
27 imputing the carbon reduction bonds as debt on the utility's balance  
28 sheet.

29 (h) Based upon semiannual reports filed by an eligible electrical  
30 company with the commission, the commission shall apply the  
31 adjustment mechanism approved in the financing order to correct for  
32 any over-collection or under-collection of the carbon reduction  
33 charges and to provide for timely payment of scheduled principal of  
34 and interest on the carbon reduction bonds and the payment and  
35 recovery of other financing costs in accordance with the financing  
36 order. Application of the adjustment mechanism shall occur at least  
37 annually or more frequently as provided in the financing order.

38 (i) An eligible electrical company or a financing subsidiary may  
39 issue carbon reduction bonds pursuant to a financing order. The  
40 issuer shall establish and maintain an irrevocable carbon reduction

1 trust with a bank or trust company as trustee. The proceeds of any  
2 carbon reduction bonds issued shall be placed in such carbon  
3 reduction trust. The carbon reduction trust shall indemnify an  
4 electrical company for carbon reduction costs approved by a financing  
5 order and for no other purpose. The trustee shall furnish yearly to  
6 the commission a financial report in a form designated by the  
7 commission with respect to the carbon reduction trust.

8 (j) The assets of a carbon reduction trust shall be invested and  
9 reinvested subject to all the terms, conditions, limitations, and  
10 restrictions imposed by the laws of the state upon executors and  
11 trustees regarding the making and depositing of investments with  
12 trust moneys pursuant to chapter 11.100 RCW. Subject to said terms,  
13 conditions, limitations, and restrictions, the trustee of the carbon  
14 reduction trust shall have full power to hold, purchase, sell,  
15 assign, transfer, reinvest, and dispose of any of the securities and  
16 investments in which any of the assets of said fund are invested,  
17 including proceeds of investments.

18 (k) To protect the customer interest, the commission shall  
19 oversee the creation, structuring, and marketing of carbon reduction  
20 bonds, regardless of whether they are issued by the electrical  
21 company or a financing subsidiary. Additionally, representatives of  
22 the customer interest are also eligible to oversee the creation,  
23 structuring, and marketing of carbon reduction bonds.

24 (l) Upon satisfaction of all terms of the carbon reduction bonds,  
25 any assets remaining in the carbon reduction trust shall be refunded  
26 to customers and allocated over such time and among such customers  
27 consistent with the allocation methodology for utility production  
28 plants accepted by the commission in the electrical company's most  
29 recent rate proceeding.

30 (2) Carbon reduction property.

31 (a) In general.

32 (i) Carbon reduction property that is specified in a financing  
33 order shall constitute a present property right notwithstanding that  
34 the imposition and collection of carbon reduction charges depend on  
35 the electrical company to which the order is issued performing its  
36 servicing functions relating to the collection of carbon reduction  
37 charges and on future energy consumption. Such property is considered  
38 to exist whether or not the revenues or proceeds arising from the  
39 property have accrued and whether or not the value of the property is

1 dependent on the receipt of service by customers of an electrical  
2 company.

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

7 (iii) Carbon reduction property specified in a financing order  
8 issued to an electrical company may be transferred, sold, conveyed,  
9 or assigned to any person, including a financing subsidiary. Carbon  
10 reduction property may be pledged to secure carbon reduction bonds  
11 issued pursuant to the order. Each such transfer, sale, conveyance,  
12 assignment, or pledge by an electrical company or financing  
13 subsidiary is considered to be a transaction in the ordinary course  
14 of business.

15 (iv) If an eligible electrical company or financing subsidiary  
16 defaults on any required payment of revenues arising from carbon  
17 reduction property specified in a financing order, a court, upon  
18 application by an interested party, and without limiting any other  
19 remedies available to the applying party, shall order the  
20 sequestration and payment of the revenues. Any such order shall  
21 remain in full force and effect notwithstanding any bankruptcy,  
22 reorganization, or other insolvency proceedings with respect to the  
23 electrical company or financing subsidiary.

24 (v) The interest of an assignee or pledgee in carbon reduction  
25 property specified in a financing order issued to an electrical  
26 company, and in the revenue and collections arising from that  
27 property, is not subject to setoff, counterclaim, surcharge, or  
28 defense by the electrical company, a financing subsidiary, or any  
29 other person or in connection with the bankruptcy of the electrical  
30 company, a financing subsidiary, or any other entity.

31 (vi) Any successor to an eligible electrical company or a  
32 financing subsidiary, whether pursuant to any bankruptcy,  
33 reorganization, or other insolvency proceeding or pursuant to any  
34 merger or acquisition, sale, or transfer by operation of law, as a  
35 result of such electrical company or financing subsidiary  
36 restructuring or otherwise, shall perform and satisfy all obligations  
37 of, and have the same rights under a financing order as, the  
38 electrical company or financing subsidiary under the financing order  
39 in the same manner and to the same extent as the electrical company  
40 or financing subsidiary, including collecting and paying to the

1 person entitled to receive them revenues with respect to the carbon  
2 reduction property.

3 (b) Security interests. Except as otherwise provided in this  
4 subsection (2)(b), the creation, perfection, and enforcement of  
5 security interests in carbon reduction property to secure carbon  
6 reduction bonds are governed by chapter 62A.9A RCW. Notwithstanding  
7 chapter 62A.9A RCW, with regard to creating, perfecting, and  
8 enforcing a valid security interest in carbon reduction property to  
9 secure carbon reduction bonds, all of the following apply:

10 (i) The description of carbon reduction property in a security  
11 agreement is sufficient if the description refers to this subsection  
12 (2)(b) and the financing order creating the carbon reduction  
13 property.

14 (ii) A security interest is created, valid, binding, and  
15 perfected at the time a security agreement is made and attaches  
16 without any physical delivery of collateral or other act, and the  
17 lien of such security interest shall be valid, binding, and perfected  
18 against all parties having claims of any kind in tort, contract, or  
19 otherwise against the person granting the security interest,  
20 regardless of whether such parties have notice of the lien. The  
21 filing or recording of a financial statement or instrument in which  
22 such a security interest is created is not required.

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

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

30 (v) Any changes that the commission makes to a financing order  
31 that creates the carbon reduction property does not affect the  
32 validity, perfection, or priority of a security interest in the  
33 carbon reduction property.

34 (c) Sales. The sale, assignment, and transfer of carbon reduction  
35 property are governed by this subsection (2)(c). All of the following  
36 apply to a sale, assignment, or transfer under this subsection  
37 (2)(c):

38 (i) The sale, assignment, or transfer is an absolute transfer of,  
39 and not a pledge of or secured transaction relating to, the seller's  
40 right, title, and interest in, to, and under the carbon reduction

1 property, if the documents governing the transaction expressly state  
2 that the transaction is a sale or other absolute transfer. After such  
3 a transaction, the carbon reduction property is not subject to any  
4 claims of the seller or the seller's creditors, other than creditors  
5 holding a prior security interest in the carbon reduction property  
6 perfected under (b) of this subsection.

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

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

13 (B) The retention by the seller of a partial or residual  
14 interest, including an equity interest, in the carbon reduction  
15 property, whether direct or indirect or whether subordinate or  
16 otherwise;

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

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

20 (E) The responsibility of the seller to collect carbon reduction  
21 charges; and

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

24 (3) Carbon reduction bonds not public debt The state is not  
25 liable on carbon reduction bonds and the bonds are not a debt of the  
26 state. An issue of carbon reduction bonds does not, directly or  
27 indirectly or contingently, obligate the state or a political  
28 subdivision of the state to levy any tax or make any appropriation  
29 for payment of the bonds.

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

35 (a) The state, municipal corporations, political subdivisions,  
36 public bodies, and public officers except for members of the  
37 commission;

38 (b) Banks and bankers, savings and loan associations, credit  
39 unions, trust companies, savings banks and institutions, investment

1 companies, insurance companies, insurance associations, and other  
2 persons carrying on a banking or insurance business; and

3 (c) Personal representatives, guardians, trustees, and other  
4 fiduciaries.

5 (5) State pledge.

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

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

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

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

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

21 (6) Effect of invalidity on actions. Effective on the date that  
22 carbon reduction bonds are first issued under this section, if any  
23 provision of this section is held to be invalid or is invalidated,  
24 superseded, replaced, repealed, or expires for any reason, that  
25 occurrence shall not affect any action allowed under this section  
26 that is taken by an electrical company, a financing subsidiary, an  
27 assignee, a collection agent, or a party to a transaction, and any  
28 such action shall remain in full force and effect.

29 NEW SECTION. **Sec. 10.** CONFLICTS OF LAW. In the event of  
30 conflict between section 9 of this act and any other law regarding  
31 the attachment, assignment, or perfection, or the effect of  
32 perfection, or priority of any security interest in carbon reduction  
33 property, section 9 of this act to the extent of the conflict shall  
34 govern and control.

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

1 (a) "Impacted electrical company" means an eligible electrical  
2 company that incurs mitigation costs as a result of the retirement of  
3 an eligible coal plant.

4 (b) "Memorandum of agreement" means an agreement between an  
5 impacted electrical company and a state other than the state of  
6 Washington which includes obligations accepted by the impacted  
7 electrical company to mitigate for the impacts of the retirement of  
8 an eligible coal plant. The obligations of a memorandum of agreement  
9 may include, but may not be limited to, payment of mitigation costs  
10 and the development of replacement electrical generation facilities,  
11 other than coal-fired generation facilities.

12 (c) "Mitigation costs" means payments made by an impacted  
13 electrical company to another state either under a memorandum of  
14 agreement, or as a requirement of law for: (i) Financial assistance  
15 to a community affected by the retirement of an eligible coal plant;  
16 (ii) financial assistance to retrain workers who will be displaced as  
17 a result of the retirement of an eligible coal plant; and (iii) any  
18 other cash or in-kind payment made pursuant to a memorandum of  
19 agreement entered into between an electrical company and another  
20 state regarding the retirement of an eligible coal plant.

21 (2) An impacted electrical company shall be entitled to recover  
22 prudently incurred mitigation costs from its customers. No  
23 replacement electric generation facilities shall be recoverable in an  
24 impacted electrical company's Washington rates unless the impacted  
25 electrical company can demonstrate that the replacement electric  
26 generation facilities provide benefits to its Washington customers.  
27 An impacted electrical company must file a petition with the  
28 commission to recover mitigation costs within ten years of the  
29 retirement of an eligible coal plant. No mitigation costs incurred  
30 subsequent to this date shall be allowed in the impacted electrical  
31 company's rates. An impacted electrical company may file a petition  
32 with the commission to recover mitigation costs at any time, and an  
33 impacted electrical company may file more than one petition for the  
34 recovery of mitigation costs.

35 (3) An impacted electrical company shall be entitled to petition  
36 the commission to recover in rates any investments made and expenses  
37 incurred to restore any loss of transfer capacity on, and to maintain  
38 the efficient operation of, the transmission system used to deliver  
39 electrical energy from an eligible coal plant to retail electric  
40 customers in Washington, when the transfer capacity or efficient

1 operation of the transmission system are affected by the retirement  
2 of portions of an eligible coal plant and other units of the eligible  
3 coal plant remain in operation.

4 NEW SECTION. **Sec. 12.** (1) Once an electrical company has filed  
5 a binding notice irrevocably committing to retire an eligible coal  
6 plant, an electrical company that owns an interest in or contracts  
7 for power from the plant subject to the binding notice may purchase  
8 or contract for replacement power only as provided in this section.  
9 The potential sources of replacement power must be ranked by carbon  
10 intensity.

11 (2) The electrical company may only acquire such replacement  
12 power as achieves the greatest carbon reduction.

13 (3)(a) For purposes of this section, "greatest carbon reduction"  
14 is achieved by:

15 (i) Conservation, demand response, storage, or generation of  
16 power from renewable resources; or

17 (ii) Power generated from a fossil-fuel power plant, under the  
18 following circumstances:

19 (A) Carbon capture and sequestration technology is installed at  
20 the plant, and such technology is demonstrated as the best system of  
21 emission reduction under applicable state or federal law, such that  
22 it is adequately demonstrated, technically feasible, implementable at  
23 reasonable cost, provides meaningful emission reductions, and its  
24 implementation serves to promote further development and deployment  
25 of the technology; and

26 (B) The electrical company can demonstrate that the carbon  
27 capture and sequestration technology is likely to capture and secure  
28 storage of carbon that, but for such continued operation of the plant  
29 with carbon capture and sequestration technology, would otherwise be  
30 emitted to or remain in the atmosphere, due to activities, such as  
31 gas flaring, that would occur outside the plant's boundaries.

32 (b) The following definitions apply throughout this section  
33 unless context clearly requires otherwise:

34 (i) "Conservation" means any reduction in electric power  
35 consumption resulting from increases in the efficiency of energy use,  
36 production, or distribution.

37 (ii) "Demand response" means changes in electric usage by demand-  
38 side resources from their normal consumption patterns in response to  
39 changes in the price of electricity over time, or to incentive

1 payments designed to induce lower electricity use at times of high  
2 wholesale market prices or when system reliability is jeopardized.

3 (iii) "Renewable resources" has the meaning provided in RCW  
4 19.285.030.

5 (iv) "Storage" means a technology or technologies capable of  
6 storing previously generated electric energy and releasing that  
7 energy at a later time, such that the ability of an electric utility  
8 to follow load or meet peak load without acquiring additional  
9 generation resources is enhanced.

10 NEW SECTION. **Sec. 13.** SEVERABILITY. If any provision of this  
11 act or its application to any person or circumstance is held invalid,  
12 the remainder of the act or the application of the provision to other  
13 persons or circumstances is not affected.

14 **Sec. 14.** RCW 80.80.060 and 2011 c 180 s 104 are each amended to  
15 read as follows:

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

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

28 (3) In determining whether a long-term financial commitment is  
29 for baseload electric generation, the commission shall consider the  
30 design of the power plant and its intended use, based upon the  
31 electricity purchase contract, if any, permits necessary for the  
32 operation of the power plant, and any other matter the commission  
33 determines is relevant under the circumstances.

34 (4) Upon application by an electric utility, the commission may  
35 provide a case-by-case exemption from the greenhouse gas emissions  
36 performance standard to address: (a) Unanticipated electric system  
37 reliability needs; (b) extraordinary cost impacts on utility

1 ratepayers; or (c) catastrophic events or threat of significant  
2 financial harm that may arise from unforeseen circumstances.

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

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

33 (7) The commission shall consult with the department to apply the  
34 procedures adopted by the department to verify the emissions of  
35 greenhouse gases from baseload electric generation under RCW  
36 80.80.040. The department shall report to the commission whether  
37 baseload electric generation will comply with the greenhouse gas  
38 emissions performance standard for the duration of the period the  
39 baseload electric generation is supplied to the electrical company.

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

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

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

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