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SENATE BILL 5874

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State of Washington

64th Legislature

2015 Regular Session

By Senators Ericksen and Ranker

Read first time 02/06/15. Referred to Committee on Energy,  
Environment & Telecommunications.

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 19.285.030, 54.48.030, and 80.80.060; adding  
4 new sections to chapter 80.82 RCW; 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 Coal-Fired Electric Generation Facilities."

10 NEW SECTION. **Sec. 2.** Sections 3 through 10 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.** DEFINITIONS. The definitions in this  
16 section apply throughout this chapter unless the context clearly  
17 requires otherwise.

1 (1) "Binding notice" means a notice, filed with the commission by  
2 an electrical company as set forth in section 6 of this act, to  
3 irrevocably commit to the retirement of an eligible coal plant within  
4 twenty years of the date of the commission's acceptance of a binding  
5 notice.

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

12 (3) "Carbon reduction charge" means a charge paid by customers of  
13 an electrical company or its successors to recover carbon reduction  
14 costs.

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

22 (a) The permanent decommissioning, reduction, termination,  
23 severance, stranding, or closure of plant, assets, equipment,  
24 facilities, property, rights-of-way, easements, operations, labor,  
25 personnel, contracts, agreements, franchises, or any other interest  
26 in an eligible coal plant, including any and all costs or expenses in  
27 connection with: (i) The acquisition, extension, modification,  
28 alteration, or surrender of any permits, licenses, approvals,  
29 consents, orders, or authorizations required with respect to any such  
30 actions or interests; and (ii) any damages, fees, charges or other  
31 cost and expenses incurred in any legal, judicial, administrative, or  
32 regulatory proceedings, or any settlements thereof, arising in  
33 connection with any such actions or interests;

34 (b) The identification, assessment, handling, storage,  
35 minimization, containment, cleanup, removal, remediation,  
36 transportation, or disposal of any substance, material, circumstance,  
37 or condition that presents a threat or potential threat to human  
38 health or the environment, including any and all costs or expenses in  
39 connection with: (i) Analyses, tests, studies, or investigations  
40 conducted or required in connection with such matters; (ii) permits,

1 licenses, approvals, consents, orders, or authorizations required in  
2 connection with such matters; and (iii) any damages, fees, charges,  
3 or other cost and expenses incurred in any legal, judicial,  
4 administrative, or regulatory actions or proceedings, or any  
5 settlements thereof, arising in connection with any such matters;

6 (c) Capital costs, construction work in progress, and the  
7 unrecovered value of property that is retired, including any  
8 demolition or similar cost that exceeds the salvage value of the  
9 property; and

10 (d) Financing costs.

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

12 (a) The right specified in a financing order to impose, collect,  
13 or receive carbon reduction charges, or to obtain adjustments to  
14 carbon reduction charges as provided in section 7 of this act, and  
15 any interest in such right;

16 (b) All revenues and proceeds arising from the rights and  
17 interests specified in section 7(2)(a) of this act.

18 (6) "Commission" means the Washington utilities and  
19 transportation commission.

20 (7) "Electrical company" means a company owned by investors that  
21 meets the definition of electrical company set forth in RCW  
22 80.04.010.

23 (8) "Eligible coal plant" means a coal-fired electric generating  
24 facility that: (a) Is owned, controlled, or operated, in whole or in  
25 part, by an electrical company serving a retail electric load within  
26 the state of Washington; and (b) provides, as a portion of the load  
27 served by the coal-fired electric generating facility, electricity to  
28 retail electric customers in the state of Washington. An eligible  
29 coal plant includes, and may be limited to, for purposes of a binding  
30 notice, one or more operating units of an eligible coal plant that  
31 collectively comprise a larger facility.

32 (9) "Eligible coal plant acquisition costs" means all costs and  
33 expenses incurred by an electrical company in connection with the  
34 acquisition of an additional or increased interest in any one or more  
35 eligible coal plants which, as of the effective date of this section,  
36 provide electricity to retail electric customers in the state of  
37 Washington. Eligible coal plant acquisition costs include all costs  
38 and expenses incurred by an electrical company to secure, finance,  
39 purchase, and acquire an additional or increased interest in any one  
40 or more such eligible coal plants, together with any and all rights

1 and obligations related to the ownership, operation, and control of  
2 such interest, and includes any and all transaction costs, closing  
3 costs, legal fees, taxes, charges, expenses, and other amounts  
4 incurred by an electrical company in connection with such  
5 acquisitions.

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

7 (a) Interest and redemption premiums that are payable on carbon  
8 reduction bonds;

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

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

18 (d) Any other reasonable cost related to issuing and servicing  
19 carbon reduction bonds or the retiring or refunding of existing debt  
20 and equity securities issued by or for the benefit of an electrical  
21 company to finance such electrical company's investment in an  
22 eligible coal plant to be retired, including servicing fees, trustee  
23 fees, legal fees, administrative fees, placement fees, capitalized  
24 interest, and rating agency fees;

25 (e) Any taxes and license fees imposed on the revenues generated  
26 from the collection of carbon reduction charges.

27 (11) "Financing order" means an order, issued by the commission  
28 pursuant to section 7 of this act, that allows for the issuance of  
29 carbon reduction bonds, the collection of carbon reduction charges,  
30 and the creation of carbon reduction property.

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

35 (a) Issuing, facilitating, or administering carbon reduction  
36 bonds;

37 (b) Facilitating or administering carbon reduction property;

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

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

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

6 (14) "Program investment" means, for any electrical company that  
7 retires any one or more eligible coal plants under the program, an  
8 amount, which such amount in the aggregate is the sum of all of the  
9 following: (a) The amount of the electrical company's net plant  
10 investment allowed and approved by the commission for purposes of  
11 section 5(1) of this act; (b) the amount of the electrical company's  
12 net plant investment allowed and approved by the commission for  
13 purposes of section 5(2) of this act; and (c) the amount of the  
14 carbon reduction costs to be incurred and paid by such electrical  
15 company from proceeds of carbon reduction bonds authorized by a  
16 financing order issued by the commission pursuant to section 7(1)(c)  
17 of this act.

18 (15) "Program limit" means a dollar amount, determined for each  
19 electrical company that retires any one or more eligible coal plants  
20 under the program, and is the amount that is equal to nine and eight-  
21 tenths percent of such electrical company's rate base as of the  
22 effective date of this section. The program limit shall be subject to  
23 adjustment by the commission in accordance with section 6(7) (b) and  
24 (c) of this act.

25 (16) "Retirement" or "retire" means the complete and permanent  
26 closure of an eligible coal plant as a coal-fired electric generating  
27 facility. Closure shall be deemed to have occurred upon the date that  
28 the eligible coal plant shall permanently cease operations as a coal-  
29 fired electric generation facility.

30 NEW SECTION. **Sec. 5.** REGULATORY MECHANISMS. The following  
31 regulatory mechanisms are available to an electrical company under  
32 the program:

33 (1) Regulatory asset. For each eligible coal plant designated in  
34 a binding notice for retirement by an electrical company, the  
35 electrical company shall have the right to place all or a portion of  
36 its net plant investment in an eligible coal plant into a regulatory  
37 asset account. Any request by an electrical company to place all or a  
38 portion of its net plant investment in a retired eligible coal plant  
39 into a regulatory asset account shall be allowed and approved by the

1 commission. The net plant investment shall include the net book value  
2 of the retired eligible coal plant as of the date of retirement, any  
3 and all transmission or other costs related to the eligible coal  
4 plant and traditionally included in an electrical company's rate  
5 base, and any carbon reduction costs associated with the eligible  
6 coal plant that are not otherwise recovered by a carbon reduction  
7 charge. The electrical company shall be allowed to earn a reasonable  
8 and sufficient rate of return on such investment, and in no event  
9 shall the rate of return on such investment be less than the rate of  
10 return authorized by the commission in the electrical company's most  
11 recent rate proceeding. The amount recoverable in the regulatory  
12 asset account may be amortized and recovered in rates over a period  
13 not to exceed twenty years. All revenues required to recover the cost  
14 of the electrical company's investment in such regulatory asset  
15 account, and all revenues required to provide the electrical company  
16 its allowed rate of return on such investment, shall be included in  
17 the electrical company's rates. Charges among customer classes shall  
18 be allocated over such time and among such customers consistent with  
19 the allocation methodology for utility production plants accepted by  
20 the commission in the electrical company's most recent rate  
21 proceeding.

22 (2) Accelerated depreciation and amortization. For each eligible  
23 coal plant designated in a binding notice for retirement by an  
24 electrical company, the electrical company shall have the right to  
25 accelerated depreciation and amortization of all or a portion of the  
26 electrical company's net plant investment in such eligible coal  
27 plant. Any accelerated depreciation and amortization of the  
28 electrical company's net plant investment requested by the electrical  
29 company shall be allowed and approved by the commission. The net  
30 plant investment so allowed and approved may, if requested by the  
31 electrical company, be fully depreciated by the retirement date. The  
32 net plant investment in such coal plant shall include its net book  
33 value as of the date of the binding notice, all subsequent capital  
34 investments required to keep such plant in service prior to  
35 retirement, all transmission or other costs traditionally included in  
36 the electrical company's rate base, and any carbon reduction costs  
37 that are not otherwise recovered by a carbon reduction charge. The  
38 electrical company shall be allowed to earn a reasonable and  
39 sufficient rate of return on such net plant investment, and in no  
40 event shall the rate of return on such net plant investment be less

1 than the rate of return authorized by the commission in the  
2 electrical company's most recent rate proceeding. All revenues  
3 required to recover the cost of the electrical company's net plant  
4 investment, and all revenues required to provide the electrical  
5 company its allowed rate of return on such net plant investment,  
6 shall be included in the electrical company's rates. Charges among  
7 customer classes shall be allocated over such time and among such  
8 customers consistent with the allocation methodology for utility  
9 production plants accepted by the commission in the electrical  
10 company's most recent rate proceeding.

11 (3) Any eligible coal plant acquisition costs incurred by an  
12 electrical company shall be deemed by the commission to be costs and  
13 expenses that were reasonably and prudently incurred by the  
14 electrical company. An electrical company shall have the right to the  
15 following regulatory treatment of eligible coal plant acquisition  
16 costs, which shall be allowed and approved by the commission upon and  
17 as requested by the electrical company:

18 (a) Upon the acquisition of an interest in an eligible coal  
19 plant, all eligible coal plant acquisition costs may be included in  
20 an electrical company's rate base. The electrical company shall be  
21 allowed to earn a reasonable and sufficient rate of return on such  
22 investment, and in no event shall the rate of return on such  
23 investment be less than the rate of return authorized by the  
24 commission in the electrical company's most recent rate proceeding.  
25 All revenues required to recover the cost of the electrical company's  
26 investment in such eligible coal plant, and all revenues required to  
27 provide the electrical company its allowed rate of return on such  
28 investment, shall be included in the electrical company's rates.

29 (b) If the electrical company shall file a binding notice with  
30 respect to any eligible coal plant acquired during the program,  
31 eligible coal plant acquisition costs may, at the electrical  
32 company's option, thereafter in whole or in part be: (i) Depreciated  
33 and amortized under section 5(2) of this act; or (ii) removed from  
34 rate base and designated in a financing order issued by the  
35 commission pursuant to section 7(1)(c) of this act as carbon  
36 reduction costs to be recovered by carbon reduction charges.

37 (c) If the electrical company shall retire any eligible coal  
38 plant acquired during the program, any unrecovered eligible coal  
39 plant acquisition costs may, at the electrical company's option,  
40 thereafter in whole or in part be: (i) Removed from rate base and

1 designated in a financing order issued by the commission pursuant to  
2 section 7(1)(c) of this act as carbon reduction costs to be recovered  
3 by carbon reduction charges; or (ii) transferred to a regulatory  
4 asset account established by section 5(1) of this act.

5 (4) Creation of subsidiaries. Each electrical company may create  
6 or acquire one or more subsidiaries without commission approval to  
7 accomplish the acquisition or retirement of one or more eligible coal  
8 plants. Chapter 80.16 RCW shall not apply to any contracts or other  
9 arrangements between an electrical company and any subsidiary that  
10 are made or undertaken in order to accomplish the acquisition or  
11 retirement of an eligible coal plant.

12 (5) Timing of mechanisms. If requested by the electrical company,  
13 an order by the commission establishing and implementing the  
14 regulatory and financial mechanisms authorized and approved by this  
15 act may provide for such mechanisms to be implemented in phases to  
16 better correspond with the timing and implementation of the  
17 electrical company's retirement plan. If so authorized, no further or  
18 additional orders from the commission shall be required to establish  
19 and implement such phased regulatory and financial mechanisms.

20 (6) Commission authority. The commission shall, upon petition,  
21 issue such orders as may be necessary to implement any and all of the  
22 regulatory and financial mechanisms hereby authorized and approved by  
23 this act. The commission shall not, at any time, take any action to  
24 directly or indirectly disallow, alter, modify, condition, offset, or  
25 diminish the value of any of the regulatory or financial mechanisms  
26 authorized and approved by this act.

27 NEW SECTION. **Sec. 6.** BINDING NOTICE. (1) Binding notice. An  
28 electrical company may file a binding notice with the commission that  
29 sets forth the financial and regulatory mechanisms the electrical  
30 company requires to irrevocably commit the electrical company to the  
31 retirement of one or more eligible coal plants. A binding notice may  
32 include one or more eligible coal plants. A binding notice must state  
33 with particularity the following information:

34 (a) As to any eligible coal plant to be retired, the name and  
35 location of the plant, the identity of the owners and operators of  
36 such plant, documentation that the plant to be retired is an eligible  
37 plant for purposes of this chapter, a preliminary retirement plan, a  
38 preliminary estimate of the cost to implement the retirement plan,  
39 the electrical company's program limit (which may be projected over

1 the term of the retirement plan), and the date certain by which the  
2 eligible coal plant shall permanently cease operations as a coal-  
3 fired electric generation facility.

4 (b) The date, which shall not be more than ten years after the  
5 date that an eligible plant is retired, on or before which the  
6 electrical company must petition the commission for any regulatory  
7 asset accounts to be established for the net plant investment of an  
8 electrical company in a retired eligible plant as set forth in  
9 section 5(1) of this act.

10 (c) A statement of whether the electrical company or financing  
11 subsidiary anticipates issuing carbon reduction bonds under a  
12 financing order to be issued by the commission in accordance with  
13 section 7(1)(c) of this act.

14 (2) Commission authority. Within thirty days of the commission's  
15 receipt of a binding notice, the commission shall determine if the  
16 binding notice is complete and may request further or additional  
17 information as the commission may reasonably request to accept or  
18 reject the binding notice. Not less than one hundred twenty days from  
19 the date of an electrical company's submittal of a binding notice,  
20 the commission shall accept the binding notice unless the commission  
21 finds, based upon clear and convincing evidence, that:

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

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

27 (c) The electrical company is unable, through commercially  
28 feasible means, to fulfill its obligation to retire an eligible plant  
29 on or before the date set forth in the binding notice; or

30 (d) The electrical company's program investment will exceed the  
31 electrical company's program limit.

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

38 (4) Enforceable obligation. Upon the commission's acceptance of a  
39 binding notice, the electrical company shall be:

1 (a) Legally bound and irrevocably committed to the retirement of  
2 an eligible coal plant, as set forth in the terms and conditions set  
3 forth in the binding notice, which terms and conditions shall be  
4 enforceable obligations of the electrical company and its respective  
5 successors and assigns; and

6 (b) Legally entitled to the regulatory and financial mechanisms  
7 provided by this chapter, and the mechanisms shall be binding and  
8 enforceable obligations of the state and each of its departments,  
9 agencies, divisions, bureaus, commissions, boards, and political  
10 subdivisions, and their respective successors and assigns.

11 (5) New emission control technology.

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

24 (b) Notwithstanding the provisions of (a) of this subsection, an  
25 electrical company may elect, by written notice to the commission, to  
26 proceed with the retirement of an eligible coal plant.

27 (c) Any investment in new or additional emission control measures  
28 or technology by an electrical company at an eligible coal plant is a  
29 carbon reduction cost recoverable pursuant to section 5 or 7 of this  
30 act.

31 (6) Reliability.

32 (a) An electrical company may defer its obligation to retire an  
33 eligible coal plant if, subsequent to the date of the commission's  
34 acceptance of a binding notice with respect to an eligible coal  
35 plant, the eligible coal plant to be retired is needed for purposes  
36 of reliability.

37 (b) An electrical company that is irrevocably committing to the  
38 retirement of an eligible coal plant pursuant to subsection (4) of  
39 this section may petition the commission for an order to defer its  
40 retirement obligation. Any such petition shall identify: (i) The

1 change in circumstances occurring, from and after the date of the  
2 commission's acceptance of the electrical company's binding notice,  
3 that give rise to the need to maintain the eligible coal plant in  
4 operation for purposes of reliability; and (ii) any resource  
5 alternatives considered by the electrical company for purposes of  
6 reliability, and why such alternatives are insufficient or  
7 unsuitable. The electrical company shall bear the burden of proof in  
8 establishing that the eligible coal plant to be retired is needed for  
9 purposes of reliability.

10 (c) Based upon the petition and such other evidence as may be  
11 presented to the commission, the commission may: (i) Grant the  
12 petition and defer the retirement date of the eligible coal plant to  
13 a date that is later than the date established by the binding notice;  
14 or (ii) reject the petition and decline to defer the retirement  
15 obligation of the electrical company.

16 (7) Regulatory and financial mechanisms program limits.

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

20 (b) An electrical company's program limit shall adjust to account  
21 for inflation in accordance with an index and an adjustment mechanism  
22 to be established by the commission. In no event, however, shall the  
23 amount of an electrical company's program limit ever be less than the  
24 amount that is equal to nine and eight-tenths percent of the  
25 electrical company's rate base as of the effective date of this  
26 section.

27 (c) An electrical company may, at any time, petition the  
28 commission for an order to increase its program limit. Any such  
29 petition shall: (i) Identify the change in circumstances occurring,  
30 from and after the date of the commission's acceptance of the  
31 electrical company's binding notice, that give rise to the need to  
32 increase the electric company's program limit; and (ii) include an  
33 update to the retirement plan that the electrical company proposes to  
34 undertake in connection with the retirement of an eligible coal plant  
35 that necessitates an increase in the electrical company's program  
36 limit. Based upon the petition and such other evidence as may be  
37 presented to the commission, the commission may grant, in whole or in  
38 part, the electrical company's petition to increase its program limit  
39 if the commission finds that such increase is in the public interest.

1 (d) If an electrical company shall incur carbon reduction costs  
2 in excess of such electrical company's program limit, no presumption  
3 shall be applied by the commission as to whether such excess carbon  
4 reduction costs were appropriately and prudently incurred. In such  
5 event, the electrical company may seek to recover any and all such  
6 costs in rates consistent with the principles of ratemaking that are  
7 traditionally applied in the determination of rates that are just,  
8 fair, reasonable, and sufficient. Nothing in this subsection (7)(d)  
9 shall: (i) Limit or impair the commission's general investigative  
10 authority; or (ii) preclude the commission's consideration of any  
11 evidence the commission deems relevant to the determination of rates  
12 that are just, fair, reasonable, and sufficient.

13 NEW SECTION. **Sec. 7.** CARBON REDUCTION BONDS. (1) Carbon  
14 reduction bonds.

15 (a) An electrical company or a financing subsidiary may issue  
16 carbon reduction bonds as a financing mechanism authorized by this  
17 act upon approval by the commission of a financing order in  
18 accordance with this section. An application for a financing order  
19 under this section shall include the following:

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

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

27 (iii) A description of the current or anticipated legal  
28 obligations that establish the retirement requirements applicable to  
29 the retirement of an eligible coal plant;

30 (iv) An estimate of the carbon reduction costs associated with  
31 the retirement described in the application, including an estimate of  
32 the financing costs associated with each series of carbon reduction  
33 bonds proposed to be issued;

34 (v) An estimate of the amount of the carbon reduction charges  
35 necessary to recover the carbon reduction costs to be financed, which  
36 estimate and calculation should take into account the estimated date  
37 of issuance and estimated principal amount of each series of carbon  
38 reduction bonds proposed to be issued;

1 (vi) An estimate of the date on which the carbon reduction bonds  
2 are expected to be issued and the expected term over which the  
3 financing costs associated with the issuance are expected to be  
4 recovered and, if the bonds are expected to be issued in more than  
5 one series, the estimated issuance date and expected term for each  
6 bond issuance;

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

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

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

17 (x) A description of the trust instrument, including the proposed  
18 terms and conditions thereof, to be used to establish a carbon  
19 reduction trust pursuant to subsection (1)(h) of this section.

20 (b) The commission shall, within one hundred twenty days of its  
21 receipt thereof, review an application for a financing order to  
22 determine the sufficiency thereof with respect to the requirements  
23 set forth in subsection (1)(a) of this section. The commission shall  
24 approve the application unless the commission finds:

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

28 (ii) The estimated carbon reduction costs described in the  
29 application are not supported by substantial evidence; or

30 (iii) The carbon reduction costs to be financed from proceeds of  
31 carbon reduction bonds to be authorized by the financing order will  
32 cause the electrical company's program investment to exceed the  
33 electrical company's program limit.

34 (c) If an application is found by the commission to satisfy  
35 (b)(i), (ii), and (iii) of this subsection, the commission shall  
36 issue a financing order on the terms and conditions proposed in the  
37 application, and the financing order shall state:

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

1 (ii) The carbon reduction charges necessary to recover carbon  
2 reduction costs that shall be imposed on and collected from customers  
3 within the electrical company's service area, for as long as the  
4 carbon reduction bonds are outstanding;

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

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

9 (v) The methodology for allocating carbon reduction charges among  
10 customer classes.

11 (d) In issuing a financing order, the commission may not alter  
12 the terms and conditions of an application, nor may the commission  
13 approve an application on terms or conditions other than the terms  
14 and conditions set forth in the application.

15 (e) A financing order may authorize the issuance of more than one  
16 series of carbon reduction bonds for the retirement of an eligible  
17 coal plant. If so authorized, the electrical company will not  
18 subsequently be required to secure a separate financing order for  
19 each issuance of carbon reduction bonds or for each scheduled phase  
20 of the retirement approved in the financing order.

21 (f) A financing order shall remain in effect until the carbon  
22 reduction bonds issued pursuant to the financing order have been paid  
23 in full and all carbon reduction costs relating to the carbon  
24 reduction bonds have been paid in full. For so long as carbon  
25 reduction bonds issued pursuant to a financing order are outstanding  
26 and the related carbon reduction costs have not been paid in full,  
27 the carbon reduction charges authorized to be imposed in the  
28 financing order shall apply to:

29 (i) All customers of the electrical company located within its  
30 service area, whether or not the customers may become entitled by law  
31 to purchase electric generation, transmission, or distribution  
32 services from a provider of such services other than the electrical  
33 company; and

34 (ii) Any person or legal entity located within the utility  
35 service area that may subsequently receive electric generation,  
36 transmission, or distribution services from another provider of such  
37 services operating in the same service area.

38 (g) If the commission issues a financing order authorizing the  
39 issuance of carbon reduction bonds, the commission may not, in  
40 exercising its powers and carrying out its duties regarding

1 regulation and ratemaking, consider: (i) Carbon reduction bonds  
2 issued pursuant to the financing order to be the debt of the  
3 electrical company; (ii) the carbon reduction charges paid under the  
4 financing order to be revenue of the electrical company; or (iii) the  
5 carbon reduction costs specified in the financing order to be the  
6 costs of the electrical company, nor shall the commission determine  
7 that any action taken by an electrical company that is consistent  
8 with the financing order is unjust or unreasonable from a regulatory  
9 or ratemaking perspective. The commission shall, as of any given time  
10 of determination, exclude the effect of the issuance of carbon  
11 reduction bonds or the write-down of discontinued operations of an  
12 eligible coal plant in calculating the equity ratio of an electrical  
13 company.

14 (h) Based upon semiannual reports filed by an electrical company  
15 with the commission, the commission shall apply the adjustment  
16 mechanism approved in the financing order to correct for any over-  
17 collection or under-collection of the carbon reduction charges and to  
18 provide for timely payment of scheduled principal of and interest on  
19 the carbon reduction bonds and the payment and recovery of other  
20 financing costs in accordance with the financing order. Application  
21 of the adjustment mechanism shall occur at least annually or more  
22 frequently as provided in the financing order.

23 (i) An electrical company or a financing subsidiary may issue  
24 carbon reduction bonds pursuant to a financing order. The issuer  
25 shall establish and maintain an irrevocable carbon reduction trust  
26 with a bank or trust company as trustee. The proceeds of any carbon  
27 reduction bonds issued shall be placed in such carbon reduction  
28 trust. The carbon reduction trust shall indemnify an electrical  
29 company for carbon reduction costs approved by a financing order and  
30 for no other purpose. The trustee shall furnish yearly to the  
31 commission a financial report in a form designated by the commission  
32 with respect to the carbon reduction trust.

33 (j) The assets of a carbon reduction trust shall be invested and  
34 reinvested subject to all the terms, conditions, limitations, and  
35 restrictions imposed by the laws of the state upon executors and  
36 trustees regarding the making and depositing of investments with  
37 trust moneys pursuant to chapter 11.100 RCW. Subject to said terms,  
38 conditions, limitations, and restrictions, the trustee of the carbon  
39 reduction trust shall have full power to hold, purchase, sell,  
40 assign, transfer, reinvest, and dispose of any of the securities and

1 investments in which any of the assets of said fund are invested,  
2 including proceeds of investments.

3 (2) Carbon reduction property.

4 (a) In general.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (E) The responsibility of the seller to collect carbon reduction  
32 charges; and

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

35 (3) Carbon reduction bonds not public debt The state is not  
36 liable on carbon reduction bonds and the bonds are not a debt of the  
37 state. An issue of carbon reduction bonds does not, directly or  
38 indirectly or contingently, obligate the state or a political  
39 subdivision of the state to levy any tax or make any appropriation  
40 for payment of the bonds.

1 (4) Carbon reduction bonds as legal investments. Any of the  
2 following may legally invest any sinking funds, moneys, or other  
3 funds belonging to them or under their control in carbon reduction  
4 bonds:

5 (a) The state, municipal corporations, political subdivisions,  
6 public bodies, and public officers except for members of the  
7 commission;

8 (b) Banks and bankers, savings and loan associations, credit  
9 unions, trust companies, savings banks and institutions, investment  
10 companies, insurance companies, insurance associations, and other  
11 persons carrying on a banking or insurance business; and

12 (c) Personal representatives, guardians, trustees, and other  
13 fiduciaries.

14 (5) State pledge.

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

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

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

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

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

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

38 NEW SECTION. **Sec. 8.** CONFLICTS OF LAW. (1) In the event of  
39 conflict between section 7 of this act and any other law regarding

1 the attachment, assignment, or perfection, or the effect of  
2 perfection, or priority of any security interest in carbon reduction  
3 property, section 7 of this act to the extent of the conflict shall  
4 govern and control.

5 (2) The provisions of this act and the implementation thereof are  
6 expressly intended to be preemptive and controlling of any  
7 inconsistent or conflicting rule, regulation, order, policy,  
8 authorization, or approval now or hereafter issued, promulgated,  
9 granted, or made by any departments, agencies, divisions, bureaus,  
10 commissions, boards, or political subdivisions of the state.

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

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

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

25 (c) "Mitigation costs" means payments made by an impacted  
26 electrical company to another state either under a memorandum of  
27 agreement, or as a requirement of law for: (i) Financial assistance  
28 to a community affected by the retirement of an eligible coal plant;  
29 (ii) financial assistance to retrain workers who will be displaced as  
30 a result of the retirement of an eligible coal plant; (iii) any tax  
31 or fee imposed upon an electrical company that had not been imposed  
32 as of the effective date of this section; and (iv) any other cash or  
33 in-kind payment made pursuant to a memorandum of agreement entered  
34 into between an electrical company and another state regarding the  
35 retirement of an eligible coal plant.

36 (d) "Tax" includes, but is not limited to, an increase in the  
37 rate at which a tax is imposed above the rate that had been charged  
38 on the effective date of this section.

1 (2) An impacted electrical company that incurs mitigation costs  
2 shall be entitled to recover its mitigation costs from its customers.  
3 All revenues required to recover mitigation costs shall be included  
4 in the impacted electrical company's rates. Mitigation costs shall be  
5 deemed by the commission to be costs and expenses that were  
6 reasonably and prudently incurred by the impacted electrical company.  
7 An impacted electrical company may file a petition with the  
8 commission to recover mitigation costs at any time, and an impacted  
9 electrical company may file more than one petition for the recovery  
10 of mitigation costs.

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

20 (4) Any costs that are recoverable by an impacted electrical  
21 company pursuant to this section may, in lieu of such recovery, be  
22 recovered by an electrical company as carbon reduction costs if and  
23 to the extent such costs are incurred by an electrical company that  
24 files a binding notice to retire an eligible coal plant.

25 NEW SECTION. **Sec. 10.** CONDEMNATION. Should any one or more of  
26 the rights, benefits, and privileges accruing to an electrical  
27 company under this act be limited, damaged, or impaired by reason of  
28 any threatened or actual condemnation by the state, or any political  
29 subdivision thereof, of any generation, transmission, or distribution  
30 facilities owned or operated by such electrical company, then any  
31 such limitation, damage, or impairment of such rights, benefits, and  
32 privileges shall be deemed to be a severance damage attributable to  
33 such threatened or actual condemnation, and the electrical company  
34 shall be entitled to recover full, just, and fair compensation for  
35 any and all such severance damages.

36 NEW SECTION. **Sec. 11.** SEVERABILITY. If any provision of this  
37 act or its application to any person or circumstance is held invalid,

1 the remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

3 **Sec. 12.** RCW 19.285.030 and 2014 c 45 s 1 are each amended to  
4 read as follows:

5 The definitions in this section apply throughout this chapter  
6 unless the context clearly requires otherwise.

7 (1) "Attorney general" means the Washington state office of the  
8 attorney general.

9 (2) "Auditor" means: (a) The Washington state auditor's office or  
10 its designee for qualifying utilities under its jurisdiction that are  
11 not investor-owned utilities; or (b) an independent auditor selected  
12 by a qualifying utility that is not under the jurisdiction of the  
13 state auditor and is not an investor-owned utility.

14 (3)(a) "Biomass energy" includes: (i) Organic by-products of  
15 pulping and the wood manufacturing process; (ii) animal manure; (iii)  
16 solid organic fuels from wood; (iv) forest or field residues; (v)  
17 untreated wooden demolition or construction debris; (vi) food waste  
18 and food processing residuals; (vii) liquors derived from algae;  
19 (viii) dedicated energy crops; and (ix) yard waste.

20 (b) "Biomass energy" does not include: (i) Wood pieces that have  
21 been treated with chemical preservatives such as creosote,  
22 pentachlorophenol, or copper-chrome-arsenic; (ii) wood from old  
23 growth forests; or (iii) municipal solid waste.

24 (4) "Coal transition power" has the same meaning as defined in  
25 RCW 80.80.010.

26 (5) "Commission" means the Washington state utilities and  
27 transportation commission.

28 (6) "Conservation" means any reduction in electric power  
29 consumption resulting from increases in the efficiency of energy use,  
30 production, or distribution.

31 (7) "Cost-effective" has the same meaning as defined in RCW  
32 80.52.030.

33 (8) "Council" means the Washington state apprenticeship and  
34 training council within the department of labor and industries.

35 (9) "Customer" means a person or entity that purchases  
36 electricity for ultimate consumption and not for resale.

37 (10) "Department" means the department of commerce or its  
38 successor.

1 (11) "Distributed generation" means an eligible renewable  
2 resource where the generation facility or any integrated cluster of  
3 such facilities has a generating capacity of not more than five  
4 megawatts.

5 (12) "Eligible renewable resource" means:

6 (a) Electricity from a generation facility powered by a renewable  
7 resource other than freshwater that commences operation after March  
8 31, 1999, where: (i) The facility is located in the Pacific  
9 Northwest; or (ii) the electricity from the facility is delivered  
10 into Washington state on a real-time basis without shaping, storage,  
11 or integration services;

12 (b) Incremental electricity produced as a result of efficiency  
13 improvements completed after March 31, 1999, to hydroelectric  
14 generation projects owned by a qualifying utility and located in the  
15 Pacific Northwest where the additional generation does not result in  
16 new water diversions or impoundments;

17 (c) Hydroelectric generation from a project completed after March  
18 31, 1999, where the generation facility is located in irrigation  
19 pipes, irrigation canals, water pipes whose primary purpose is for  
20 conveyance of water for municipal use, and wastewater pipes located  
21 in Washington where the generation does not result in new water  
22 diversions or impoundments;

23 (d) Qualified biomass energy; or

24 (e) For a qualifying utility that serves customers in other  
25 states, electricity from a generation facility powered by a renewable  
26 resource other than freshwater that commences operation after March  
27 31, 1999, where: (i) The facility is located within a state in which  
28 the qualifying utility serves retail electrical customers; and (ii)  
29 the qualifying utility owns the facility in whole or in part or has a  
30 long-term contract with the facility of at least twelve months or  
31 more.

32 (13) "Investor-owned utility" has the same meaning as defined in  
33 RCW 19.29A.010.

34 (14) "Load" means the amount of kilowatt-hours of electricity  
35 delivered in the most recently completed year by a qualifying utility  
36 to its Washington retail customers.

37 (15)(a) "Nonpower attributes" means all environmentally related  
38 characteristics, exclusive of energy, capacity reliability, and other  
39 electrical power service attributes, that are associated with the  
40 generation of electricity from a renewable resource, including but

1 not limited to the facility's fuel type, geographic location,  
2 vintage, qualification as an eligible renewable resource, and avoided  
3 emissions of pollutants to the air, soil, or water, and avoided  
4 emissions of carbon dioxide and other greenhouse gases.

5 (b) "Nonpower attributes" does not include any aspects, claims,  
6 characteristics, and benefits associated with the on-site capture and  
7 destruction of methane or other greenhouse gases at a facility  
8 through a digester system, landfill gas collection system, or other  
9 mechanism, which may be separately marketable as greenhouse gas  
10 emission reduction credits, offsets, or similar tradable commodities.  
11 However, these separate avoided emissions may not result in or  
12 otherwise have the effect of attributing greenhouse gas emissions to  
13 the electricity.

14 (16) "Pacific Northwest" has the same meaning as defined for the  
15 Bonneville power administration in section 3 of the Pacific Northwest  
16 electric power planning and conservation act (94 Stat. 2698; 16  
17 U.S.C. Sec. 839a).

18 (17) "Public facility" has the same meaning as defined in RCW  
19 39.35C.010.

20 (18) "Qualified biomass energy" means electricity produced from a  
21 biomass energy facility that: (a) Commenced operation before March  
22 31, 1999; (b) contributes to the qualifying utility's load; and (c)  
23 is owned either by: (i) A qualifying utility; or (ii) an industrial  
24 facility that is directly interconnected with electricity facilities  
25 that are owned by a qualifying utility and capable of carrying  
26 electricity at transmission voltage.

27 (19) "Qualifying utility" means an electric utility, as the term  
28 "electric utility" is defined in RCW 19.29A.010, that serves more  
29 than twenty-five thousand customers in the state of Washington, and  
30 any electric utility that acquires, in violation of a service area  
31 agreement or commission-determined service area as authorized by RCW  
32 54.48.040, service territory or customers from an electric utility  
33 that serves more than twenty-five thousand customers in the state of  
34 Washington. The number of customers served may be based on data  
35 reported by a utility in form 861, "annual electric utility report,"  
36 filed with the energy information administration, United States  
37 department of energy.

38 (20) "Renewable energy credit" means a tradable certificate of  
39 proof of at least one megawatt-hour of an eligible renewable resource  
40 where the generation facility is not powered by freshwater. The

1 certificate includes all of the nonpower attributes associated with  
2 that one megawatt-hour of electricity, and the certificate is  
3 verified by a renewable energy credit tracking system selected by the  
4 department.

5 (21) "Renewable resource" means: (a) Water; (b) wind; (c) solar  
6 energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or  
7 tidal power; (g) gas from sewage treatment facilities; (h) biodiesel  
8 fuel as defined in RCW 82.29A.135 that is not derived from crops  
9 raised on land cleared from old growth or first-growth forests where  
10 the clearing occurred after December 7, 2006; or (i) biomass energy.

11 (22) "Rule" means rules adopted by an agency or other entity of  
12 Washington state government to carry out the intent and purposes of  
13 this chapter.

14 (23) "Year" means the twelve-month period commencing January 1st  
15 and ending December 31st.

16 **Sec. 13.** RCW 54.48.030 and 1969 c 102 s 3 are each amended to  
17 read as follows:

18 (1) In aid of the foregoing declaration of policy, any public  
19 utility and any cooperative is hereby authorized to enter into  
20 agreements with any one or more other public utility or one or more  
21 other cooperative for the designation of the boundaries of adjoining  
22 service areas which each such public utility or each such cooperative  
23 shall observe, for the establishment of procedures for orderly  
24 extension of service in adjoining areas not currently served by any  
25 such public utility or any such cooperative and for the acquisition  
26 or disposal by purchase or sale by any such public utility or any  
27 such cooperative of duplicating utility facilities, which agreements  
28 shall be for a reasonable period of time not in excess of twenty-five  
29 years: PROVIDED, That the participation in such agreement of any  
30 cooperative and any public utility which is an electrical company  
31 under RCW 80.04.010(~~(, excepting cities and towns,)~~) shall be  
32 approved by the Washington utilities and transportation commission.

33 (2) If any two or more public utilities or cooperatives with  
34 adjoining service areas are unable to reach an agreement designating  
35 service area boundaries pursuant to subsection (1) of this section,  
36 then upon the petition of any such public utility or cooperative, the  
37 commission shall issue an order determining the service area  
38 boundaries of each public utility or cooperative in dispute within  
39 one hundred eighty days, and the commission shall thereafter prepare

1 or cause to be prepared a map or maps to accurately and clearly  
2 designate the service area boundaries of each such public utility or  
3 cooperative. A public utility or a cooperative shall have the right,  
4 to the exclusion of other public utilities or cooperatives, to  
5 provide retail electric service within its designated service area.

6 (3) Except as may be otherwise provided by an agreement  
7 designating the boundaries of adjoining service areas authorized by  
8 subsection (1) of this section, no public utility or cooperative is  
9 authorized to extend or shall extend service into an adjoining  
10 service area if the adjoining service area is served by any other  
11 public utility or cooperative.

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

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

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

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

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

38 (5) Upon application by an electrical company, the commission  
39 shall determine whether the company's proposed decision to acquire

1 electric generation or enter into a power purchase agreement for  
2 electricity complies with the greenhouse gas emissions performance  
3 standard established under RCW 80.80.040. The commission shall not  
4 decide in a proceeding under this subsection (5) issues involving the  
5 actual costs to construct and operate the selected resource, cost  
6 recovery, or other issues reserved by the commission for decision in  
7 a general rate case or other proceeding for recovery of the resource  
8 or contract costs.

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

29 (7) The commission shall consult with the department to apply the  
30 procedures adopted by the department to verify the emissions of  
31 greenhouse gases from baseload electric generation under RCW  
32 80.80.040. The department shall report to the commission whether  
33 baseload electric generation will comply with the greenhouse gas  
34 emissions performance standard for the duration of the period the  
35 baseload electric generation is supplied to the electrical company.

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

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

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

--- END ---