

PROPOSED SUBSTITUTE HOUSE BILL 2002

By Representative Smith

As compared to HB 2002, the Proposed Substitute (H-1921.1) makes the following changes:

1. Narrows the definition of "eligible coal plant" covered under the retirement program to only include a plant located in Rosebud County, Montana.
2. Removes the provision entitling electrical companies to recover full compensation for severance damages.
3. Removes provisions establishing enforceable, exclusive service area boundaries for utilities.
4. Removes the exemption from UTC affiliated transaction rules for financing subsidiaries created or acquired by an electrical company for purposes of retiring a coal plant, and requires the UTC to approve such creation or acquisition.
5. Removes the prohibition that restricts the UTC from taking any action to directly or indirectly diminish the value of any of the authorized regulatory or financial mechanism.
6. Makes the following changes related to carbon reduction costs:
 - Limits carbon reduction costs recoverable through a carbon reduction charge to only such costs directly related to retirement of an eligible coal plant.
 - Removes the certain ability to recover, as "carbon reduction costs," (1) mitigation costs; (2) damages, fees, and other expenses incurred in any legal, judicial, administrative, or regulatory proceeding or settlement; and (3) investments in new or additional emission control measures or technology by an electrical company at an eligible coal plant.
7. Requires a prudency determination or other determination by the Utilities and Transportation Commission for:
 - Recovery of eligible coal plant acquisition costs;
 - Recovery of carbon reduction costs;
 - Placement of all or portion of net plant investment in a regulatory asset account;
 - Accelerated depreciation and amortization of all or a portion of the net plant investment;
 - Acceptance of a binding notice;
 - Recovery of mitigation costs; and
 - Decision to retire an eligible coal plant.
8. Removes from the definition of "net plant investment" any capital investments made, after the date of the binding notice, to keep a plant in service.
9. Removes from the definition of "mitigation costs" recoverable in rates any tax or fee imposed upon an electrical company that has not been imposed as of the effective date of the act.
10. Makes changes to the Program Limit:
 - Removes the provision allowing the program limit to be adjusted for inflation.
 - States that the burden of proof is on the electrical company to demonstrate that carbon reduction costs incurred in excess of the program limit were appropriately and prudently incurred.

11. Removes the requirement that the rate of return be no less than the rate of return authorized by the UTC in the electrical company's most recent rate proceeding for the following:
 - net plant investment; and
 - eligible coal plant acquisition costs
12. Makes the following changes related to the binding notice, financing order, and bond issuance:
 - Changes the requirement that the UTC must accept a binding notice unless it makes certain findings upon clear and convincing evidence, requiring instead such findings to be made upon a preponderance of the evidence.
 - Removes the provision establishing that regulatory and financing mechanisms in a binding notice are binding and enforceable on each of the state's departments, agencies, divisions, bureaus, commissions, boards, and political subdivisions.
 - Gives the UTC 180 days, not 120 days, to review an application for a financing order.
 - Allows the UTC to withhold approval of an application if it finds that issuance of carbon reduction bonds is not the least-cost method for financing the retirement of the plant, or the application as filed is not in the public interest.
 - Restricts an electrical company from issuing carbon reduction bonds if doing so would result in a major credit rating agency's imputation of the bonds as debt on the utility's balance sheet.
 - Requires the UTC and customer interest representatives to oversee the creation, structuring, and marketing of carbon reduction bonds.
 - Requires refund to customers any assets remaining in the carbon reduction trust, upon satisfaction of the carbon reduction bond terms.
 - Prohibits an owner, subsidiary, or other affiliate of an electrical company from investing in carbon reduction bonds

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 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.** (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 predictable
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 7 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 10 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 8 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 8(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 a portion of the load
16 served by the coal-fired electric generation facility, electricity to
17 retail electric customers in the state of Washington; and (c) is
18 located in Rosebud county, Montana. An eligible coal plant includes,
19 and may be limited to, for purposes of a binding notice, one or more
20 operating units of an eligible coal plant that collectively comprise
21 a larger 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 8 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 6(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 6(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 7(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.** REGULATORY MECHANISMS. The following
21 regulatory mechanisms are available to an electrical company under
22 the program:

23 (1) Regulatory asset. For each eligible coal plant designated in
24 a binding notice for retirement by an eligible electrical company,
25 the electrical company may petition the commission for authority to
26 place all or a portion of its net plant investment in an eligible
27 coal plant into a regulatory asset account. Any request by an
28 electrical company to place all or a portion of its net plant
29 investment in a retired eligible coal plant into a regulatory asset
30 account shall be subject to a prudence review by the commission,
31 which shall include a review of the costs the electrical company
32 seeks to include in the regulatory asset account and a determination
33 that the creation of a regulatory asset account represents the least-
34 cost alternative for customers. The net plant investment shall
35 include the net book value of the retired eligible coal plant as of
36 the date of retirement, any and all transmission or other costs
37 related to the eligible coal plant and traditionally included in an
38 electrical company's rate base, and any carbon reduction costs
39 associated with the eligible coal plant that are not otherwise

1 recovered by a carbon reduction charge. The electrical company shall
2 be allowed to earn a reasonable rate of return on such investment, as
3 determined by the commission. The amount recoverable in the
4 regulatory asset account may be amortized and recovered in rates over
5 a period not to exceed twenty years. Charges among customer classes
6 shall be allocated over such time and among such customers consistent
7 with the allocation methodology for utility production plants
8 accepted by the commission in the electrical company's most recent
9 rate proceeding.

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

35 (3) Any eligible coal plant acquisition costs incurred by an
36 eligible electrical company are only allowed in the electrical
37 company's rates upon a finding by the commission that such eligible
38 coal plant acquisition costs were reasonably and prudently incurred.
39 Upon a commission finding that eligible coal plant acquisition costs
40 were reasonably and prudently incurred, an electrical company may

1 designate eligible coal plant acquisition costs in a financing order
2 issued by the commission pursuant to section 8(1)(c) of this act as
3 carbon reduction costs to be recovered by carbon reduction charges.

4 (4) Creation of subsidiaries. Each eligible electrical company
5 may create or acquire one or more subsidiaries with commission
6 approval to accomplish the acquisition or retirement of one or more
7 eligible coal plants.

8 (5) Timing of mechanisms. If requested by the eligible electrical
9 company, and the commission finds it to be reasonable and prudent, an
10 order by the commission establishing and implementing the regulatory
11 and financial mechanisms authorized and approved by this act may
12 provide for such mechanisms to be implemented in phases to better
13 correspond with the timing and implementation of the electrical
14 company's retirement plan.

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

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

23 NEW SECTION. **Sec. 7.** BINDING NOTICE. (1) Binding notice. An
24 eligible electrical company may file a binding notice with the
25 commission that sets forth the financial and regulatory mechanisms
26 the electrical company requires to irrevocably commit the electrical
27 company to the retirement of one or more eligible coal plants. A
28 binding notice may include one or more eligible coal plants. A
29 binding notice must state with particularity the following
30 information:

31 (a) As to any eligible coal plant to be retired, the name and
32 location of the plant, the identity of the owners and operators of
33 such plant, documentation that the plant to be retired is an eligible
34 plant for purposes of this chapter, a preliminary retirement plan, a
35 preliminary estimate of the cost to implement the retirement plan,
36 the electrical company's program limit, and the date certain by which
37 the eligible coal plant shall permanently cease operations as a coal-
38 fired electric generation facility.

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

7 (c) A statement of whether the eligible electrical company or
8 financing subsidiary anticipates issuing carbon reduction bonds under
9 a financing order to be issued by the commission in accordance with
10 section 8(1)(c) of this act.

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

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

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

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

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

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

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

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

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

7 (5) New emission control technology.

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

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

27 (6) Reliability.

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

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

1 alternatives considered by the electrical company for purposes of
2 reliability, and why such alternatives are insufficient or
3 unsuitable. The electrical company shall bear the burden of proof in
4 establishing that the eligible coal plant to be retired is needed for
5 purposes of reliability.

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

12 (7) Regulatory and financial mechanisms program limits.

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

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

29 (c) If an eligible electrical company shall incur carbon
30 reduction costs in excess of such electrical company's program limit,
31 the electrical company may seek to recover any and all such costs in
32 rates consistent with the principles of ratemaking that are
33 traditionally applied in the determination of rates that are just,
34 fair, reasonable, and sufficient. Nothing in this subsection (7)(c)
35 shall: (i) Limit or impair the commission's general investigative
36 authority; or (ii) preclude the commission's consideration of any
37 evidence the commission deems relevant to the determination of rates
38 that are just, fair, reasonable, and sufficient. The electrical
39 company shall bear the burden of proof to demonstrate that the excess
40 carbon reduction costs were appropriately and prudently incurred and

1 that such excess costs were not reasonably foreseeable such that the
2 electrical company could have petitioned under (b) of this subsection
3 the commission for an increase in its program limit to include such
4 excess costs.

5 NEW SECTION. **Sec. 8.** CARBON REDUCTION BONDS. (1) Carbon
6 reduction bonds.

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

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

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

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

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

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

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

37 (vii) A proposed adjustment mechanism for making any adjustments
38 necessary to correct for any over-collection or under-collection of

1 carbon reduction charges or otherwise to ensure the timely and
2 complete payment and recovery of carbon reduction costs;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (v) The methodology for allocating carbon reduction charges among
6 customer classes.

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

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

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

25 (i) All retail customers of the eligible electrical company that
26 are not entitled by law to purchase electric generation,
27 transmission, or distribution services from a provider of such
28 services other than the electrical company as of the effective date
29 of this section; and

30 (ii) All retail customers of the eligible electrical company that
31 may subsequently receive electric generation, transmission, or
32 distribution services from another provider of such services
33 operating in the same service area.

34 (g) If the commission issues a financing order authorizing the
35 issuance of carbon reduction bonds, the commission may not, in
36 exercising its powers and carrying out its duties regarding
37 regulation and ratemaking, consider: (i) Carbon reduction bonds
38 issued pursuant to the financing order to be the debt of the
39 electrical company; (ii) the carbon reduction charges paid under the
40 financing order to be revenue of the electrical company; or (iii) the

1 carbon reduction costs specified in the financing order to be the
2 costs of the electrical company, nor shall the commission determine
3 that any action taken by an electrical company that is consistent
4 with the financing order is unjust or unreasonable from a regulatory
5 or ratemaking perspective. The commission shall, as of any given time
6 of determination, exclude the effect of the issuance of carbon
7 reduction bonds or the write-down of discontinued operations of an
8 eligible coal plant in calculating the equity ratio of an electrical
9 company. An electrical company shall not issue carbon reduction bonds
10 if doing so would result in any of the major credit rating agencies
11 imputing the carbon reduction bonds as debt on the utility's balance
12 sheet.

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

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

32 (j) The assets of a carbon reduction trust shall be invested and
33 reinvested subject to all the terms, conditions, limitations, and
34 restrictions imposed by the laws of the state upon executors and
35 trustees regarding the making and depositing of investments with
36 trust moneys pursuant to chapter 11.100 RCW. Subject to said terms,
37 conditions, limitations, and restrictions, the trustee of the carbon
38 reduction trust shall have full power to hold, purchase, sell,
39 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 (k) To protect the customer interest, the commission shall
4 oversee the creation, structuring, and marketing of carbon reduction
5 bonds, regardless of whether they are issued by the electrical
6 company or a financing subsidiary. Additionally, representatives of
7 the customer interest are also eligible to oversee the creation,
8 structuring, and marketing of carbon reduction bonds.

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

15 (2) Carbon reduction property.

16 (a) In general.

17 (i) Carbon reduction property that is specified in a financing
18 order shall constitute a present property right notwithstanding that
19 the imposition and collection of carbon reduction charges depend on
20 the electrical company to which the order is issued performing its
21 servicing functions relating to the collection of carbon reduction
22 charges and on future energy consumption. Such property is considered
23 to exist whether or not the revenues or proceeds arising from the
24 property have accrued and whether or not the value of the property is
25 dependent on the receipt of service by customers of an electrical
26 company.

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

31 (iii) Carbon reduction property specified in a financing order
32 issued to an electrical company may be transferred, sold, conveyed,
33 or assigned to any person, including a financing subsidiary. Carbon
34 reduction property may be pledged to secure carbon reduction bonds
35 issued pursuant to the order. Each such transfer, sale, conveyance,
36 assignment, or pledge by an electrical company or financing
37 subsidiary is considered to be a transaction in the ordinary course
38 of business.

39 (iv) If an eligible electrical company or financing subsidiary
40 defaults on any required payment of revenues arising from carbon

1 reduction property specified in a financing order, a court, upon
2 application by an interested party, and without limiting any other
3 remedies available to the applying party, shall order the
4 sequestration and payment of the revenues. Any such order shall
5 remain in full force and effect notwithstanding any bankruptcy,
6 reorganization, or other insolvency proceedings with respect to the
7 electrical company or financing subsidiary.

8 (v) The interest of an assignee or pledgee in carbon reduction
9 property specified in a financing order issued to an electrical
10 company, and in the revenue and collections arising from that
11 property, is not subject to setoff, counterclaim, surcharge, or
12 defense by the electrical company, a financing subsidiary, or any
13 other person or in connection with the bankruptcy of the electrical
14 company, a financing subsidiary, or any other entity.

15 (vi) Any successor to an eligible electrical company or a
16 financing subsidiary, whether pursuant to any bankruptcy,
17 reorganization, or other insolvency proceeding or pursuant to any
18 merger or acquisition, sale, or transfer by operation of law, as a
19 result of such electrical company or financing subsidiary
20 restructuring or otherwise, shall perform and satisfy all obligations
21 of, and have the same rights under a financing order as, the
22 electrical company or financing subsidiary under the financing order
23 in the same manner and to the same extent as the electrical company
24 or financing subsidiary, including collecting and paying to the
25 person entitled to receive them revenues with respect to the carbon
26 reduction property.

27 (b) Security interests. Except as otherwise provided in this
28 subsection (2)(b), the creation, perfection, and enforcement of
29 security interests in carbon reduction property to secure carbon
30 reduction bonds are governed by chapter 62A.9A RCW. Notwithstanding
31 chapter 62A.9A RCW, with regard to creating, perfecting, and
32 enforcing a valid security interest in carbon reduction property to
33 secure carbon reduction bonds, all of the following apply:

34 (i) The description of carbon reduction property in a security
35 agreement is sufficient if the description refers to this subsection
36 (2)(b) and the financing order creating the carbon reduction
37 property.

38 (ii) A security interest is created, valid, binding, and
39 perfected at the time a security agreement is made and attaches
40 without any physical delivery of collateral or other act, and the

1 lien of such security interest shall be valid, binding, and perfected
2 against all parties having claims of any kind in tort, contract, or
3 otherwise against the person granting the security interest,
4 regardless of whether such parties have notice of the lien. The
5 filing or recording of a financial statement or instrument in which
6 such a security interest is created is not required.

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

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

14 (v) Any changes that the commission makes to a financing order
15 that creates the carbon reduction property does not affect the
16 validity, perfection, or priority of a security interest in the
17 carbon reduction property.

18 (c) Sales. The sale, assignment, and transfer of carbon reduction
19 property are governed by this subsection (2)(c). All of the following
20 apply to a sale, assignment, or transfer under this subsection
21 (2)(c):

22 (i) The sale, assignment, or transfer is an absolute transfer of,
23 and not a pledge of or secured transaction relating to, the seller's
24 right, title, and interest in, to, and under the carbon reduction
25 property, if the documents governing the transaction expressly state
26 that the transaction is a sale or other absolute transfer. After such
27 a transaction, the carbon reduction property is not subject to any
28 claims of the seller or the seller's creditors, other than creditors
29 holding a prior security interest in the carbon reduction property
30 perfected under (b) of this subsection.

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

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

37 (B) The retention by the seller of a partial or residual
38 interest, including an equity interest, in the carbon reduction
39 property, whether direct or indirect or whether subordinate or
40 otherwise;

(C) Any recourse that the purchaser may have against the seller;
(D) Any indemnifications, obligations, or repurchase rights made or provided by the seller;

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

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

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

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

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

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

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

(5) State pledge.

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

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

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

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

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

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

12 NEW SECTION. **Sec. 9.** CONFLICTS OF LAW. (1) In the event of
13 conflict between section 8 of this act and any other law regarding
14 the attachment, assignment, or perfection, or the effect of
15 perfection, or priority of any security interest in carbon reduction
16 property, section 8 of this act to the extent of the conflict shall
17 govern and control.

18 (2) The provisions of this act and the implementation thereof are
19 expressly intended to be preemptive and controlling of any
20 inconsistent or conflicting rule, regulation, order, policy,
21 authorization, or approval now or hereafter issued, promulgated,
22 granted, or made by any departments, agencies, divisions, bureaus,
23 commissions, boards, or political subdivisions of the state.

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

27 (a) "Impacted electrical company" means an eligible electrical
28 company that incurs mitigation costs as a result of the retirement of
29 an eligible coal plant.

30 (b) "Memorandum of agreement" means an agreement between an
31 impacted electrical company and a state other than the state of
32 Washington which includes obligations accepted by the impacted
33 electrical company to mitigate for the impacts of the retirement of
34 an eligible coal plant. The obligations of a memorandum of agreement
35 may include, but may not be limited to, payment of mitigation costs
36 and the development of replacement electrical generation facilities,
37 other than coal-fired generation facilities.

1 (c) "Mitigation costs" means payments made by an impacted
2 electrical company to another state either under a memorandum of
3 agreement, or as a requirement of law for: (i) Financial assistance
4 to a community affected by the retirement of an eligible coal plant;
5 (ii) financial assistance to retrain workers who will be displaced as
6 a result of the retirement of an eligible coal plant; and (iii) any
7 other cash or in-kind payment made pursuant to a memorandum of
8 agreement entered into between an electrical company and another
9 state regarding the retirement of an eligible coal plant.

10 (2) An impacted electrical company shall be entitled to recover
11 prudently incurred mitigation costs from its customers. No
12 replacement electric generation facilities shall be recoverable in an
13 impacted electrical company's Washington rates unless the impacted
14 electrical company can demonstrate that the replacement electric
15 generation facilities provide benefits to its Washington customers.
16 An impacted electrical company must file a petition with the
17 commission to recover mitigation costs within ten years of the
18 retirement of an eligible coal plant. No mitigation costs incurred
19 subsequent to this date shall be allowed in the impacted electrical
20 company's rates. An impacted electrical company may file a petition
21 with the commission to recover mitigation costs at any time, and an
22 impacted electrical company may file more than one petition for the
23 recovery of mitigation costs.

24 (3) An impacted electrical company shall be entitled to petition
25 the commission to recover in rates any investments made and expenses
26 incurred to restore any loss of transfer capacity on, and to maintain
27 the efficient operation of, the transmission system used to deliver
28 electrical energy from an eligible coal plant to retail electric
29 customers in Washington, when the transfer capacity or efficient
30 operation of the transmission system are affected by the retirement
31 of portions of an eligible coal plant and other units of the eligible
32 coal plant remain in operation.

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

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

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

5 (2) In order to enforce the requirements of this chapter, the
6 commission shall review in a general rate case or as provided in
7 subsection (5) of this section any long-term financial commitment
8 entered into by an electrical company after June 30, 2008, to
9 determine whether the baseload electric generation to be supplied
10 under that long-term financial commitment complies with the
11 greenhouse gas emissions performance standard established under RCW
12 80.80.040.

13 (3) In determining whether a long-term financial commitment is
14 for baseload electric generation, the commission shall consider the
15 design of the power plant and its intended use, based upon the
16 electricity purchase contract, if any, permits necessary for the
17 operation of the power plant, and any other matter the commission
18 determines is relevant under the circumstances.

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

25 (5) Upon application by an electrical company, the commission
26 shall determine whether the company's proposed decision to acquire
27 electric generation or enter into a power purchase agreement for
28 electricity complies with the greenhouse gas emissions performance
29 standard established under RCW 80.80.040. The commission shall not
30 decide in a proceeding under this subsection (5) issues involving the
31 actual costs to construct and operate the selected resource, cost
32 recovery, or other issues reserved by the commission for decision in
33 a general rate case or other proceeding for recovery of the resource
34 or contract costs.

35 (6) An electrical company may account for and defer for later
36 consideration by the commission costs incurred in connection with a
37 long-term financial commitment, including operating and maintenance
38 costs, depreciation, taxes, and cost of invested capital. The
39 deferral begins with the date on which the power plant begins
40 commercial operation or the effective date of the power purchase

1 agreement and continues for a period not to exceed twenty-four
2 months; provided that if during such period the company files a
3 general rate case or other proceeding for the recovery of such costs,
4 deferral ends on the effective date of the final decision by the
5 commission in such proceeding. Creation of such a deferral account
6 does not by itself determine the actual costs of the long-term
7 financial commitment, whether recovery of any or all of these costs
8 is appropriate, or other issues to be decided by the commission in a
9 general rate case or other proceeding for recovery of these costs.
10 For the purpose of this subsection (6) only, the term "long-term
11 financial commitment" also includes an electric company's ownership
12 or power purchase agreement with a term of five or more years
13 associated with an eligible renewable resource as defined in RCW
14 19.285.030.

15 (7) The commission shall consult with the department to apply the
16 procedures adopted by the department to verify the emissions of
17 greenhouse gases from baseload electric generation under RCW
18 80.80.040. The department shall report to the commission whether
19 baseload electric generation will comply with the greenhouse gas
20 emissions performance standard for the duration of the period the
21 baseload electric generation is supplied to the electrical company.

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

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

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

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