

HB 2129 - S COMM AMD

By Committee on Environment, Water & Energy

ADOPTED 04/09/2009

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 80.80.010 and 2007 c 307 s 2 are each amended to read  
4 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 consumer-owned utilities under its jurisdiction; or  
11 (b) an independent auditor selected by a consumer-owned utility that is  
12 not under the jurisdiction of the state auditor.

13 (3) "Average available greenhouse ((~~gases~~[gas])) gas emissions  
14 output" means the level of greenhouse ((~~gases~~[gas])) gas emissions as  
15 surveyed and determined by the energy policy division of the department  
16 of community, trade, and economic development under RCW 80.80.050.

17 (4) "Baseload electric generation" means electric generation from  
18 a power plant that is designed and intended to provide electricity at  
19 an annualized plant capacity factor of at least sixty percent.

20 (5) "Cogeneration facility" means a power plant in which the heat  
21 or steam is also used for industrial or commercial heating or cooling  
22 purposes and that meets federal energy regulatory commission standards  
23 for qualifying facilities under the public utility regulatory policies  
24 act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

25 (6) "Combined-cycle natural gas thermal electric generation  
26 facility" means a power plant that employs a combination of one or more  
27 gas turbines and steam turbines in which electricity is produced in the  
28 steam turbine from otherwise lost waste heat exiting from one or more  
29 of the gas turbines.

1 (7) "Commission" means the Washington utilities and transportation  
2 commission.

3 (8) "Consumer-owned utility" means a municipal utility formed under  
4 Title 35 RCW, a public utility district formed under Title 54 RCW, an  
5 irrigation district formed under chapter 87.03 RCW, a cooperative  
6 formed under chapter 23.86 RCW, a mutual corporation or association  
7 formed under chapter 24.06 RCW, or port district within which an  
8 industrial district has been established as authorized by Title 53 RCW,  
9 that is engaged in the business of distributing electricity to more  
10 than one retail electric customer in the state.

11 (9) "Department" means the department of ecology.

12 (10) "Distributed generation" means electric generation connected  
13 to the distribution level of the transmission and distribution grid,  
14 which is usually located at or near the intended place of use.

15 (11) "Electric utility" means an electrical company or a consumer-  
16 owned utility.

17 (12) "Electrical company" means a company owned by investors that  
18 meets the definition of RCW 80.04.010.

19 (13) "Governing board" means the board of directors or legislative  
20 authority of a consumer-owned utility.

21 (14) "Greenhouse gases" includes carbon dioxide, methane, nitrous  
22 oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

23 (15) "Long-term financial commitment" means:

24 (a) Either a new ownership interest in baseload electric generation  
25 or an upgrade to a baseload electric generation facility; or

26 (b) A new or renewed contract for baseload electric generation with  
27 a term of five or more years for the provision of retail power or  
28 wholesale power to end-use customers in this state.

29 (16) "Plant capacity factor" means the ratio of the electricity  
30 produced during a given time period, measured in kilowatt-hours, to the  
31 electricity the unit could have produced if it had been operated at its  
32 rated capacity during that period, expressed in kilowatt-hours.

33 (17) "Power plant" means a facility for the generation of  
34 electricity that is permitted as a single plant by ~~((the energy  
35 facility site evaluation council or a local jurisdiction))~~ a  
36 jurisdiction inside or outside the state.

37 (18) "Upgrade" means any modification made for the primary purpose  
38 of increasing the electric generation capacity of a baseload electric

1 generation facility. "Upgrade" does not include routine or necessary  
2 maintenance, installation of emission control equipment, installation,  
3 replacement, or modification of equipment that improves the heat rate  
4 of the facility, or installation, replacement, or modification of  
5 equipment for the primary purpose of maintaining reliable generation  
6 output capability that does not increase the heat input or fuel usage  
7 as specified in existing generation air quality permits as of July 22,  
8 2007, but may result in incidental increases in generation capacity.

9 **Sec. 2.** RCW 80.80.040 and 2007 c 307 s 5 are each amended to read  
10 as follows:

11 (1) Beginning July 1, 2008, the greenhouse (~~(gases)~~) gas emissions  
12 performance standard for all baseload electric generation for which  
13 electric utilities enter into long-term financial commitments on or  
14 after such date is the lower of:

15 (a) One thousand one hundred pounds of greenhouse gases per  
16 megawatt-hour; or

17 (b) The average available greenhouse (~~(gases)~~) gas emissions output  
18 as determined under RCW 80.80.050.

19 (2) This chapter does not apply to long-term financial commitments  
20 with the Bonneville power administration.

21 (3) All baseload electric generation facilities in operation as of  
22 June 30, 2008, are deemed to be in compliance with the greenhouse  
23 (~~(gases)~~) gas emissions performance standard established under this  
24 section until the facilities are the subject of long-term financial  
25 commitments. All baseload electric generation that commences operation  
26 after June 30, 2008, and is located in Washington, must comply with the  
27 greenhouse (~~(gases)~~) gas emissions performance standard established in  
28 subsection (1) of this section.

29 (~~(+3)~~) (4) All electric generation facilities or power plants  
30 powered exclusively by renewable resources, as defined in RCW  
31 19.280.020, are deemed to be in compliance with the greenhouse  
32 (~~(gases)~~) gas emissions performance standard established under this  
33 section.

34 (~~(+4)~~) (5) All cogeneration facilities in the state that are  
35 fueled by natural gas or waste gas or a combination of the two fuels,  
36 and that are in operation as of June 30, 2008, are deemed to be in

1 compliance with the greenhouse (~~gases~~) gas emissions performance  
2 standard established under this section until the facilities are the  
3 subject of a new ownership interest or are upgraded.

4 ~~((+5))~~ (6) In determining the rate of emissions of greenhouse  
5 gases for baseload electric generation, the total emissions associated  
6 with producing electricity shall be included.

7 (7) In no case shall a long-term financial commitment be determined  
8 to be in compliance with the greenhouse gas emissions performance  
9 standard if the commitment includes more than twelve percent of  
10 electricity from unspecified sources.

11 (8) For a long-term financial commitment with multiple power  
12 plants, each specified power plant must be treated individually for the  
13 purpose of determining the annualized plant capacity factor and net  
14 emissions, and each power plant must comply with subsection (1) of this  
15 section, except as provided in subsections (3) through (5) of this  
16 section.

17 ~~((+6))~~ (9) The department shall establish an output-based  
18 methodology to ensure that the calculation of emissions of greenhouse  
19 gases for a cogeneration facility recognizes the total usable energy  
20 output of the process, and includes all greenhouse gases emitted by the  
21 facility in the production of both electrical and thermal energy. In  
22 developing and implementing the greenhouse (~~gases~~) gas emissions  
23 performance standard, the department shall consider and act in a manner  
24 consistent with any rules adopted pursuant to the public utilities  
25 regulatory policy act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

26 ~~((+7))~~ (10) The following greenhouse (~~gases~~) gas emissions  
27 produced by baseload electric generation owned or contracted through a  
28 long-term financial commitment shall not be counted as emissions of the  
29 power plant in determining compliance with the greenhouse (~~gases~~) gas  
30 emissions performance standard:

31 (a) Those emissions that are injected permanently in geological  
32 formations;

33 (b) Those emissions that are permanently sequestered by other means  
34 approved by the department; and

35 (c) Those emissions sequestered or mitigated as approved under  
36 subsection ~~((+13))~~ (16) of this section.

37 ~~((+8))~~ (11) In adopting and implementing the greenhouse (~~gases~~)  
38 gas emissions performance standard, the department of community, trade,

1 and economic development energy policy division, in consultation with  
2 the commission, the department, the Bonneville power administration,  
3 the western electricity coordination council, the energy facility site  
4 evaluation council, electric utilities, public interest  
5 representatives, and consumer representatives, shall consider the  
6 effects of the greenhouse (~~(gases)~~) gas emissions performance standard  
7 on system reliability and overall costs to electricity customers.

8 ~~((+9))~~ (12) In developing and implementing the greenhouse  
9 (~~(gases)~~) gas emissions performance standard, the department shall,  
10 with assistance of the commission, the department of community, trade,  
11 and economic development energy policy division, and electric  
12 utilities, and to the extent practicable, address long-term purchases  
13 of electricity from unspecified sources in a manner consistent with  
14 this chapter.

15 ~~((+10))~~ (13) The directors of the energy facility site evaluation  
16 council and the department shall each adopt rules under chapter 34.05  
17 RCW in coordination with each other to implement and enforce the  
18 greenhouse (~~(gases)~~) gas emissions performance standard. The rules  
19 necessary to implement this section shall be adopted by June 30, 2008.

20 ~~((+11))~~ (14) In adopting the rules for implementing this section,  
21 the energy facility site evaluation council and the department shall  
22 include criteria to be applied in evaluating the carbon sequestration  
23 plan, for baseload electric generation that will rely on subsection  
24 (~~((+7))~~) (10) of this section to demonstrate compliance, but that will  
25 commence sequestration after the date that electricity is first  
26 produced. The rules shall include but not be limited to:

27 (a) Provisions for financial assurances, as a condition of plant  
28 operation, sufficient to ensure successful implementation of the carbon  
29 sequestration plan, including construction and operation of necessary  
30 equipment, and any other significant costs;

31 (b) Provisions for geological or other approved sequestration  
32 commencing within five years of plant operation, including full and  
33 sufficient technical documentation to support the planned  
34 sequestration;

35 (c) Provisions for monitoring the effectiveness of the  
36 implementation of the sequestration plan;

37 (d) Penalties for failure to achieve implementation of the plan on  
38 schedule;

1 (e) Provisions for an owner to purchase emissions reductions in the  
2 event of the failure of a sequestration plan under subsection (~~(13)~~)  
3 (16) of this section; and

4 (f) Provisions for public notice and comment on the carbon  
5 sequestration plan.

6 (~~(12)~~) (15)(a) Except as provided in (b) of this subsection, as  
7 part of its role enforcing the greenhouse (~~(gases)~~) gas emissions  
8 performance standard, the department shall determine whether  
9 sequestration or a plan for sequestration will provide safe, reliable,  
10 and permanent protection against the greenhouse gases entering the  
11 atmosphere from the power plant and all ancillary facilities.

12 (b) For facilities under its jurisdiction, the energy facility site  
13 evaluation council shall contract for review of sequestration or the  
14 carbon sequestration plan with the department consistent with the  
15 conditions under (a) of this subsection, consider the adequacy of  
16 sequestration or the plan in its adjudicative proceedings conducted  
17 under RCW 80.50.090(3), and incorporate specific findings regarding  
18 adequacy in its recommendation to the governor under RCW 80.50.100.

19 (~~(13)~~) (16) A project under consideration by the energy facility  
20 site evaluation council by July 22, 2007, is required to include all of  
21 the requirements of subsection (~~(11)~~) (14) of this section in its  
22 carbon sequestration plan submitted as part of the energy facility site  
23 evaluation council process. A project under consideration by the  
24 energy facility site evaluation council by July 22, 2007, that receives  
25 final site certification agreement approval under chapter 80.50 RCW  
26 shall make a good faith effort to implement the sequestration plan. If  
27 the project owner determines that implementation is not feasible, the  
28 project owner shall submit documentation of that determination to the  
29 energy facility site evaluation council. The documentation shall  
30 demonstrate the steps taken to implement the sequestration plan and  
31 evidence of the technological and economic barriers to successful  
32 implementation. The project owner shall then provide to the energy  
33 facility site evaluation council notification that they shall implement  
34 the plan that requires the project owner to meet the greenhouse  
35 (~~(gases)~~) gas emissions performance standard by purchasing verifiable  
36 greenhouse (~~(gases)~~) gas emissions reductions from an electric  
37 generating facility located within the western interconnection, where  
38 the reduction would not have occurred otherwise or absent this

1 contractual agreement, such that the sum of the emissions reductions  
2 purchased and the facility's emissions meets the standard for the life  
3 of the facility.

4 **Sec. 3.** RCW 80.80.060 and 2007 c 307 s 8 are each amended to read  
5 as follows:

6 (1) No electrical company may enter into a long-term financial  
7 commitment unless the baseload electric generation supplied under such  
8 a long-term financial commitment complies with the greenhouse gases  
9 emissions performance standard established under RCW 80.80.040.

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

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

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

29 (5) Upon application by an electrical company, the commission shall  
30 determine whether the company's proposed decision to acquire electric  
31 generation or enter into a power purchase agreement for electricity  
32 complies with the greenhouse gases emissions performance standard  
33 established under RCW 80.80.040 ~~((, whether the company has a need for~~  
34 ~~the resource, and whether the specific resource selected is~~  
35 ~~appropriate. The commission shall take into consideration factors such~~  
36 ~~as the company's forecasted loads, need for energy, power plant~~  
37 ~~technology, expected costs, and other associated investment~~

1 decisions)). The commission shall not decide in a proceeding under  
2 this subsection (5) issues involving the actual costs to construct and  
3 operate the selected resource, cost recovery, or other issues reserved  
4 by the commission for decision in a general rate case or other  
5 proceeding for recovery of the resource or contract costs. ((A  
6 proceeding under this subsection (5) shall be conducted pursuant to  
7 chapter 34.05 RCW (part IV). The commission shall adopt rules to  
8 provide that the schedule for a proceeding under this subsection takes  
9 into account both (a) the needs of the parties to the proposed resource  
10 acquisition or power purchase agreement for timely decisions that allow  
11 transactions to be completed; and (b) the procedural rights to be  
12 provided to parties in chapter 34.05 RCW (part IV), including  
13 intervention, discovery, briefing, and hearing.))

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

33 (7) The commission shall consult with the department to apply the  
34 procedures adopted by the department to verify the emissions of  
35 greenhouse gases from baseload electric generation under RCW 80.80.040.  
36 The department shall report to the commission whether baseload electric  
37 generation will comply with the greenhouse gases emissions performance

1 standard for the duration of the period the baseload electric  
2 generation is supplied to the electrical company.

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

7 (9) The commission shall adopt rules necessary to implement this  
8 section by December 31, 2008.

9 **Sec. 4.** RCW 80.80.070 and 2007 c 307 s 9 are each amended to read  
10 as follows:

11 (1) No consumer-owned utility may enter into a long-term financial  
12 commitment unless the baseload electric generation supplied under such  
13 a long-term financial commitment complies with the greenhouse (~~((gases))~~)  
14 gas emissions performance standard established under RCW 80.80.040.

15 (2) The governing board shall review and make a determination on  
16 any long-term financial commitment by the utility, pursuant to this  
17 chapter and after consultation with the department, to determine  
18 whether the baseload electric generation to be supplied under that  
19 long-term financial commitment complies with the greenhouse (~~((gases))~~)  
20 gas emissions performance standard established under RCW 80.80.040. No  
21 consumer-owned utility may enter into a long-term financial commitment  
22 unless the baseload electric generation to be supplied under that long-  
23 term financial commitment complies with the greenhouse (~~((gases))~~) gas  
24 emissions performance standard established under RCW 80.80.040.

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

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

1 (5) The governing board shall apply the procedures adopted by the  
2 department to verify the emissions of greenhouse gases from baseload  
3 electric generation under RCW 80.80.040, and may request assistance  
4 from the department in doing so.

5 (6) For consumer-owned utilities, the auditor is responsible for  
6 auditing compliance with this chapter and rules adopted under this  
7 chapter that apply to those utilities and the attorney general is  
8 responsible for enforcing that compliance."

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By Committee on Environment, Water & Energy

**ADOPTED 04/09/2009**

9 On page 1, line 2 of the title, after "80.80 RCW;" strike the  
10 remainder of the title and insert "and amending RCW 80.80.010,  
11 80.80.040, 80.80.060, and 80.80.070."

EFFECT: Keeps the provisions in the underlying bill. Changes the definition of "power plant," which currently means a single plant sited by EFSEC or a local jurisdiction, to mean a facility for the generation of electricity that is permitted a single plant by a jurisdiction inside or outside the state. Exempts long-term financial commitments with the Bonneville Power Administration from the emissions performance standard. Specifies that no more than 12 percent of emissions in a long-term financial commitment may be from unspecified sources of power. Allows the WUTC and the governing boards of consumer-owned utilities to provide case-by-case exemptions for extraordinary cost impacts on utility ratepayers. Clarifies that in a long-term financial commitment with multiple power plants, the emissions of each power plant must comply with the emissions performance standard, except for commitments already deemed to be in compliance under current law: Baseload generation facilities in operation as of June 30, 2008, facilities powered exclusively by renewable resources, and certain cogeneration facilities using natural or waste gas. Makes technical changes.

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