

SENATE BILL REPORT

SB 5874

As of February 18, 2015

Title: An act relating to regulatory and financial mechanisms and means to promote the retirement of coal-fired electric generation facilities.

Brief Description: Concerning regulatory and financial mechanisms and means to promote the retirement of coal-fired electric generation facilities.

Sponsors: Senators Ericksen and Ranker.

Brief History:

Committee Activity: Energy, Environment & Telecommunications: 2/11/15.

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Staff: William Bridges (786-7416)

Background: Investor-Owned Utilities (IOUs). Three electric IOUs serve Washington customers: Avista, Puget Sound Energy (PSE), and PacificCorp. Of the three, only PSE has customers limited to Washington.

Washington Utilities and Transportation Commission (UTC). The UTC is a three-member commission that has broad authority to regulate the rates, services, and practices of a variety of businesses in the state, including electric IOUs. In a typical rate case, the petitioner must prove a requested action is in the public interest by preponderance of the evidence or a reasonable basis test.

As part of the ratemaking process for electric IOUs, the UTC considers whether, and to what extent, an IOU should recover the cost of a resource acquisition or the cost of an investment in a new generating facility. The UTC's decision is made on a case-by-case basis, taking into consideration such factors as the utility's need for the energy, public policies regarding resource preferences, and the cost of risks associated with the environmental effects of carbon dioxide.

Integrated Resource Plan (IRP). All electric IOUs and consumer-owned electric utilities in the state with more than 25,000 customers must develop IRPs. All other utilities in the state, including those that essentially receive all their power from the Bonneville Power Administration, must file either an IRP or a less-detailed resource plan.

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An IRP must describe the mix of generating resources and conservation and efficiency resources that will meet current and projected needs at the lowest reasonable cost to the utility and its ratepayers. When determining the lowest reasonable cost for resources identified in its IRP, a utility must consider state and federal policies regarding resource preference, among other factors.

According to IRPs filed in 2013, the IOUs serving customers in the state currently own or partially own 12 coal-fired generation facilities throughout several western states, including Montana, Utah, and Wyoming. One of those facilities, the four-unit Colstrip generating plant in Montana, is owned by six entities, three of whom are Avista, Puget Sound Energy (PSE), and PacificCorp.

Eminent Domain. The power of a government to take private property for public use is called eminent domain. A condemnation is the judicial proceeding used for the exercise of eminent domain. Numerous political subdivisions and private corporations in the state have been delegated the power of eminent domain, including municipalities, public utility districts, and electric power companies.

Initiative 937 (I-937). Also called the Energy Independence Act, I-937 requires electric utilities with 25,000 or more customers to meet targets for energy conservation and for using eligible renewable resources. Utilities that must comply with I-937 are called qualifying utilities.

Utility Service Territories. Unlike most states, Washington does not issue state-level franchises or certificates to provide electric service. While they may need local permits to construct facilities, most electric providers may serve any customer in the state, regardless of their historic service territory. Providers are allowed by state law to enter into voluntary contractual service territories and obligations. The participation of any electric IOU in a service territory agreement must be approved by the UTC.

Greenhouse Gas Emissions Performance Standard (EPS) for Electric Generation Plants. Electric utilities may not enter into a long-term financial commitment for baseload electric generation on or after July 1, 2008, unless the generating plant's emissions are the lower of:

- 1100 pounds of greenhouse gas (GHG) per megawatt hour (MWh); or
- the average available GHG output as updated by the Department of Commerce, which is currently set at 970 pounds per MWh.

Baseload electric generation means electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least 60 percent. Long-term financial commitment means (1) either a new ownership interest in baseload electric generation or an upgrade to a baseload electric generation facility; or (2) a new or renewed contract for baseload electric generation with a term of five or more years for the provision of retail power or wholesale power to end-use customers in this state.

EPS and Coal Transition Power. In 2011 the Legislature established a schedule for applying the EPS to the Centralia coal-fired electric generation facility. In addition the EPS was amended to allow long-term contracts for Centralia's generated electricity, called coal

transition power. Furthermore, a process was created to allow electric IOUs to petition the UTC for approval of a power purchase agreement for coal transition power.

Summary of Bill: Creating Favorable Regulatory Conditions for the Purchase of an Eligible Coal Plant (Plant). If an electric IOU acquires a Plant, the UTC must follow a number of specified actions, such as: (1) deem the acquisition costs and expenses to be reasonably and prudently incurred; (2) approve the acquisition as requested by the IOU; and (3) allow all acquisition costs to be included in the IOU's rates. A Plant is generally a coal-fired electric generating facility that provides a portion of its load to retail customers in the state and is owned, in whole or in part, by an electric IOU in the state.

Creating the Washington State Coal Generation Retirement Program (Program). The Program is designed to give regulatory and financial certainty to electric IOUs that seek to retire eligible coal plants. The Program is expressly intended to preempt any inconsistent regulation or order issued by any political subdivision of the state.

Regulatory and Financial Mechanisms. The Program contains a number of regulatory and financial mechanisms to encourage the retirement of Plants, such as accelerated depreciation and amortization, specified rates of return, mandatory recovery of retirement costs in rates – including current and future carbon reductions costs, the creation of specified subsidiaries without UTC approval, and limitations on UTC authority to alter or diminish the value of any regulatory or financial mechanism authorized by the Program.

Program Limits. The cost of retiring an eligible coal plant may not exceed 9.8 percent of the electric IOU's rate base as of the effective date of the Program. The program limit must be adjusted for inflation. In addition the UTC may increase the program limit if it is in the public interest.

Carbon Reduction Bonds (Bonds). The Program allows an electric IOU or its subsidiary to issue Bonds to finance retirement of a Plant upon approval by the UTC of a financing order. An application for a financing order must meet specified criteria, including a description of the retirement plan and associated costs, and a methodology for allocating carbon reduction charges among customer classes. The UTC must approve the Bond application within 120 days of its receipt, unless it finds the following:

- the retirement plan is inconsistent with applicable law;
- the estimated carbon reduction costs are not supported by substantial evidence; or
- the financed carbon reduction costs lead to exceeding the program limit.

The UTC may not alter the terms and conditions of an application, nor may the UTC approve an application on terms or conditions other than the terms and conditions in the application.

While the state or its subdivisions may invest in Bonds, the state is not liable on Bonds and Bonds are not a debt of the state. However, the state pledges to bondholders that it will not take any action to impair the terms of the UTC's financing order regarding carbon reduction charges.

Binding Notice (Notice). Participation in the Program begins with a utility filing a Notice with the UTC. The Notice sets forth the financial and regulatory mechanisms the utility

requires to irrevocably commit to the retirement of one or more eligible coal plants. The Notice must include a number of specified criteria, including a description of the plant, a preliminary retirement plan, and a statement if carbon reduction bonds will be used to finance the retirement.

Acceptance of a Notice. Upon receiving a Notice, the UTC has 30 days to decide if it is complete and may request additional information; however the UTC must accept a Notice within 120 days unless it finds there is clear and convincing evidence that:

- the plant is not an eligible coal plant;
- the identified regulatory and financial mechanisms are not authorized;
- the utility is commercially unable to fulfill its retirement obligation by the date identified in the Notice; or
- the utility's program investment exceeds the program limit.

Irrevocable Commitment. There is no prejudice to a utility if a Notice is rejected. However, once accepted by the UTC, a Notice irrevocably commits the utility and the state to its terms, including the retirement of the identified coal plant within 20 years of the date of its acceptance.

Exceptions to the Irrevocable Commitment. A utility is relieved of its obligation to retire an eligible coal plant if: (1) the utility must install new or additional emission control measures as required by state or federal law and (2) the cost of the measures exceed 10 percent of the net book value of the plant. In addition a plant retirement may be deferred for purposes of reliability if the UTC concurs.

Mitigation Costs. An electric IOU required to pay another state for measures that mitigate the retiring of a Plant is entitled to recover those costs from its ratepayers. Mitigation costs may include such things as financial assistance to affected communities, financial assistance to retrain displaced workers, and any new tax or fee imposed upon the IOU. In addition an IOU is entitled to petition the UTC to recover in rates any transmission costs associated with the retirement of a Plant.

Condemnation Authority. If an electric IOU is damaged or impaired by any threatened or actual condemnation by the state or any of its political subdivisions, the IOU is entitled to recover full compensation for any severance damages.

Qualifying Utilities Under I-937. Any electric utility that acquires territory or customers from a Qualifying Utility in violation of a service area defined by agreement or the UTC, is defined as a Qualifying Utility under I-937 and is subject to the act's conservation and acquisition targets.

Service Territory Agreements. The UTC must approve all service territory agreements between a cooperative and an electric IOU, PUD, or municipally owned electric utility (public utilities). If two or more cooperatives or public utilities with adjoining service areas are unable to determine boundaries, the UTC may do so by order within 180 days of receiving a boundary petition. Unless provided by agreement, no public utility or cooperative may serve an adjoining service area that is served by any other public utility or cooperative.

EPS. The EPS does not apply to long-term financial commitments in acquiring a Plant if the acquiring electrical company files a Notice under the Program within ten years of the effective date of the bill.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This is a big piece of legislation that is a work in progress. The prime sponsor's goal is to move forward in a responsible manner that protects ratepayers. The co-sponsor has been working on the issue for last four years and believes a temporary increase in coal power must be outweighed by total reductions of coal power at the end of the transition process. The bill is the beginning of a long process where everything will be on the table, and its success will be judged by the avoidance of multiple health hazards associated with coal power. The Colstrip facility has four units: 1 and 2 were built in the 1970s and 3 and 4 were built in the 1980s. Puget Sound Energy (PSE) owns 50 percent of both units 1 and 2. Units 1 and 2 face regulatory challenges from current federal clean air requirements, which may affect their future economic viability. PSE has done an economic analysis on units 1 and 2 and believes ratepayers would benefit from a glide path to replace the units. The UTC's traditional regulatory framework will not work with the complex problem of transitioning PSE off units 1 and 2, although PSE wants the UTC's support in developing new regulatory tools. The EPS exclusion is needed to move forward, as well as the mechanism for low-cost, private funding from bonds. The bill needs to recognize the complex, multi-jurisdictional environment that PacifiCorp faces, and it also needs to protect service territories. The bill might affect PacifiCorp's Jim Bridger facility in Wyoming. Avista's analysis shows its share of Colstrip units 3 and 4 will be cost effective for the next 20 years. The closure of Colstrip will have major implications for Montana.

CON: While it is pleasing and exciting to hear about retiring coal plants, 30 years, which is the expected life of a coal plant, is too long. Clean replacement power must be stipulated in the bill. UTC must retain its power to protect ratepayers. The goals of the bill are supported but ratepayers should not be stuck with staggering clean-up costs. The timelines in the bill are too long and should be around 2020 when the Boardman coal plant in Oregon is scheduled to close or 2025 when Centralia is scheduled to close. Considering increasing fuel costs, coal-ash pollution problems, the pending closure of the J.E. Corette coal-fired power plant in Billings, and stricter federal air regulations, the 2017-18 timeframe is more realistic for the closure of Colstrip. In many instances, this bill overturns the statutory and regulatory framework of the state's electric industry that has developed over the last 80 to 100 years, all for the sake of possibly retiring, over the next 30 years, what may be one or more uneconomic coal plants. This bill should not opportunistically try to roll back the rights or authorities of PUDs.

OTHER: The goals are appreciated but the provisions protecting service territories impose undue restrictions on the choice of consumers and the provisions have no nexus to the rest of the bill. The creativity and ambition of the bill are appreciated but it is clearly a work in progress. Replacement power should be provided by independent power producers. It is difficult to see how Wall Street expectations of certainty will match up with traditional UTC prudence review. The bill should be narrowed by removing service territory provisions and multi-jurisdiction issues should be kept out of the bill. There should be no blank checks handed out to utilities. There should be cost caps on mitigation costs. Washington ratepayers support clean air but they also want fair, just, and reasonable rates, so the UTC needs to have the authority to balance these interests. The current low-interest rates provide an opportunity to finance the retirement of coal plants. The bill gives limited authority to do its usual oversight so it is very important to get the bill right.

Persons Testifying: PRO: Senator Ericksen, prime sponsor; Senator Ranker; Senator McCoy; Nancy Atwood, Ken Johnson, PSE; Scott Bolton, Kathleen Collins, PacifiCorp; John Rothlin, Avista.

CON: Doug Howell, Sierra Club, Senior Campaign Representative; Dave Warren, WA PUD Assn.; Kelly Hall, Renewable NW; Joni Bosh, NW Energy Coalition; Rebecca Johnson, Climate Solutions; Ronald Snell, Laurel Baum, Sierra Club; Bob Forgrave, citizen.

OTHER: Kent Lopez, WA Rural Electric Cooperative Assn., General Manager; Simon ffitch, Public Counsel WA Attorney General; Robert Kahn, NW & Intermountain Power Producers Coalition; Tim Boyd, Industrial Customers of NW Utilities; David Danner, Chair, UTC.