

SENATE BILL REPORT

SB 6132

As of June 26, 2015

Title: An act relating to the retirement of electric generation facilities.

Brief Description: Relating to the retirement of electric generation facilities.

Sponsors: Senator Ericksen.

Brief History:

Committee Activity: Energy, Environment & Telecommunications: 6/22/15 [DPF].

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 Plans (IRP) and Coal-Fired Generation Facilities. 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.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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 electric 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 which are Avista, PSE, and PacificCorp.

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: The bill as referred to committee not considered.

Summary of Bill (Proposed First Substitute): Creating a Regulatory Process for Acquiring and Retiring Units of an Eligible Coal-Fired Electric Generating Facility. The EPS is amended and a regulatory process is created to allow an electric IOU (electrical company) in the state to acquire and ultimately retire one or more units in an eligible coal plant. If approved by the UTC, the acquisition would be a capital investment recoverable in rates and any decommissioning or remediation costs associated with an acquired unit would be financed through Coal Plant Retirement Bonds to be secured by coal plant retirement charges, which are charges made to the company's retail electric customers.

Defining Eligible Facilities that May be Acquired. *Eligible coal plant* means a coal-fired electric generating facility that (1) had two or less generating units as of January 1, 1980, and three or more generating units as of the effective date of this act; (2) has multiple owners; and (3) a portion of its load serves retail customers in Washington.

Eligible coal generating unit means (1) any commonly owned eligible coal generating unit or (2) any wholly owned eligible coal generating unit.

Wholly owned eligible coal generating unit means any generating unit of an eligible coal plant that (1) has a nameplate capacity of less than 400 MW; and (2) is owned exclusively by one electrical company as a result of a new UTC approval process.

Commonly owned eligible coal generating unit means any generating unit of an eligible coal plant that (1) has a nameplate capacity of 700 MW or greater; (2) is owned in common by multiple electrical companies, entities, or persons; and (3) in which operations are governed under a contract with all the owners.

Describing the Petition to Acquire an Increased Interest in an Eligible Coal Generating Unit (Eligible Unit). By December 31, 2018, an electrical company may petition the UTC to acquire an increased interest in one or more eligible units. Among other things, the petition must include the following:

- Proposed agreement to acquire an increased interest in both wholly owned and commonly owned eligible coal generating units and their acquisition costs;
- Proposed decommissioning and remediation plan, including such information as closure dates consistent with the remaining useful life of any unit, third-party cost-estimates prepared within one year before the filing of the plan; and how the activities will be funded;
- Proposed resource replacement plan, including the acquisition or development of resources functionally equivalent to the EPS;
- Complete description of all pending litigation, orders, or judgments regarding the eligible coal plant;
- Description of all federal, state, or local regulatory or enforcement actions regarding the eligible coal plant;
- Studies, reports, or analyses conducted regarding the economic and environmental costs and benefits of eligible coal plant acquisition, decommissioning, and remediation; and
- Proposed customer notice to inform the utility's customers of the filing.

Setting Timelines to Decide a Petition to Acquire an Eligible Unit. Within ten months of receiving the petition, the UTC must hold an adjudicative proceeding and issue a final order approving, conditionally approving, or disapproving the petition and the accompanying plans. The time limit may be extended for good cause. A petition may be withdrawn with leave to refile.

Setting the Standard for Reviewing the Petition. The UTC may approve the petition and the accompanying plans only if it determines that the approval is in the public interest and that a number of factors will result in the least-cost, least-risk outcome for customers (including low-income customers) considering the facts and circumstances associated with the acquisition existing at the time of review, as compared with absence of the acquisition.

Among other things, any UTC approval must be based on a finding that the electrical company has not assumed decommissioning and remediation cost obligations from the seller

of the eligible coal plant, and that the acquisition, decommissioning, and remediation proposal in the petition will result in savings to customers as compared to the absence of the acquisition.

Describing the Effect of an Approved Petition and Accompanying Plans. Once the petition and accompanying plans are approved, the acquiring electrical company is responsible for all costs and liabilities that are associated with the closing of an eligible coal plant that is wholly owned by the electrical company.

By April 1 of each year, each electrical company with an approved decommissioning and remediation plan must report the adequacy of the plan to the UTC. Each report must include specified information, including charges to ratepayers, which may not exceed the decommissioning and remediation costs approved by the UTC; however, the company may seek to amend the decommissioning and remediation plan for costs that were not reasonably foreseeable.

Recognizing Impracticability to Perform. An electrical company subject to a final order approving the acquisition of an eligible coal generating unit may declare circumstances have rendered the performance of the order impracticable to perform. Upon making the declaration, the order is immediately terminated. No company is subject to penalties or costs for declaring impracticability of performance of a final order. The declaration of impracticability of performance is not subject to commission or judicial review.

Authorizing a Study of the Potential Effects of Closing an Eligible Coal Plant. The Governor, in cooperation with the Legislature and the UTC, is authorized to convene a working group and process, in cooperation with a state in which an eligible coal plant is located, to examine and address the potential effects on workers and communities resulting from a decommissioning and remediation plan approved by the commission.

Authorizing Financing Orders and Coal Plant Retirement Bonds (Bonds). An electrical company may apply to the UTC for a financing order that may include Bonds. For a wholly owned eligible coal generating unit, the application must be filed after the UTC approves the petition to acquire the unit. For a commonly owned eligible coal generating unit, the application must be filed after the owners of the unit have established a date to retire the unit and the UTC has approved the associated decommissioning and remediation plan and resource replacement plan.

The application for a financing order must contain detailed information, including the following:

- A description of current and future decommissioning and remediation activities;
- Whether the electrical company proposes to finance all or a portion of the decommissioning and remediation costs with Bonds or other financing mechanism, including the expected terms of the Bonds, their estimated financing costs, and any cost adjustment mechanisms;
- An estimate of the charges necessary to recover the decommissioning and remediation costs and financing costs estimated in the application;
- A description of the coal plant retirement property that is created and that may be used to pay or secure the Bonds; and

- A cost comparison between financing decommissioning and remediation costs with Bonds as opposed to alternative financing methods, including an estimate of any savings to customers.

Setting Timelines for Deciding an Application for a Financing Order. Within eight months of receiving the application, the UTC must hold an adjudicative proceeding and issue a final order approving, conditionally approving, or disapproving the application. The time limit may be extended an additional 60 days for good cause.

Setting the Standard for Reviewing the Application for a Financing Order. The UTC must issue a financing order if the proposed Bonds are just and reasonable, consistent with the public interest, and constitute a prudent, reasonable, and appropriate mechanism for the financing of the decommissioning and remediation activities described in the application. In addition, the proposed bonds will result in overall costs to customers of the electrical company that are lower than traditional utility financing mechanisms and will not harm the company's bond rating or financial integrity.

Several findings and requirements must be included in any financing order, including a determination of the maximum amount of retirement costs that may be financed, a description of the coal plant retirement charges used to secure the Bonds, and the creation of an adjustment mechanism for the coal plant retirement charges.

Describing the Effect of a Financing Order. A financing order is irrevocable and, among other things, the UTC may not reduce, impair, postpone, or terminate the coal plant retirement charges approved in the financing order. Coal plant retirement charges may not be avoided by any retail customer of the electrical company or its successors. The UTC may not consider the Bonds to be the debt or equity of the electrical company, the coal plant retirement charges to be revenue of the electrical company, or the decommissioning and remediation costs or financing costs specified in the financing order to be the costs of the electrical company.

While the state, the Washington State Investment Board, and public officers (other than members of the UTC) may invest in Bonds, the Bonds are not public debt. However, to the maximum extent permitted by law, the state pledges to bondholders that it will not take any action to impair the coal plant retirement charges.

Creating an Exception to the EPS. The following is exempt from the EPS: A long-term financial commitment made pursuant to an approved acquisition of an increased interest in an eligible coal generating unit.

Appropriation: None.

Fiscal Note: Requested on June 19, 2015.

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: PSE's goal is to find that spot where the customers benefit most from the Colstrip facility, the costs of closing the facility are predictable and reasonable, and that PSE is a good steward of the environment. The best way to accomplish the goal is for PSE to do the following (1) acquire Talen's 50 percent share of Colstrip Units 1 & 2 and its 30 percent share of Colstrip Unit 3; (2) offset and mitigate the inevitable decommissioning and remediation costs for Units 1 & 2 through the power from Talen's current share of Units 1, 2, and 3; (3) plan for the closure of Units 1 & 2 over time in a predictable manner through the use of UTC proceedings; (4) avoid potentially harming PSE customers with significant new pollution control equipment investments of about \$460 million; and (5) use low-interest bonds to fund the inevitable decommissioning and remediation costs at a far lower cost to customers than the traditional utility model. Taken as a whole, PSE's strategy will result in customer bills that would be \$170 million lower than under the status quo, and potentially \$1.9 billion lower than if PSE faced a sudden legal mandate to close the facilities from a ballot initiative or other ban on coal power.

CON: There is a concern the state pledge to not impair the Bonds is an unconstitutional limitation on future Legislatures and an unconstitutional credit enhancement for private benefit. Also the Bonds would not be a constitutional investment for local governments. The provision allowing for the unilateral termination of a final order is unacceptable. UTC should be required to thoroughly assess and account for long-term economic, climate, and environmental impacts when considering a petition to acquire an increased interest in Colstrip. 2018 is too late for Colstrip owners to submit their plans to the UTC. The provision allowing wholesale customers to avoid cleanup costs related to Colstrip closure is unacceptable. If a court finds Colstrip owners are not in compliance with environmental regulations but do not classify the fines as "malfeasance" or unlawful," then this cost could unfairly be paid by ratepayers. A more rigorous process is needed to ensure a just transition for the affected workers and communities in Montana. The bill is complex, a moving target, and may not be the right path. The bill should exempt certain large and wholesale users of electricity from coal plant retirement charges because they either have previous agreements with PSE not to cover stranded costs or because they seek cleaner electricity. The bill changes the traditional meaning of used and useful. The bill could diminish PUD authority and harm the PUD customers of PSE, such as pumping operators. This bill is unprecedented in that it allows rate recovery for the purchase of a merchant plant, and it begs the question of where this power will be going considering the low load-growth in the region. The provision requiring PSE to assume all decommissioning and remediation liability of a previous owner limits PSE's negotiating ability and means all those costs will be covered by PSE's ratepayers.

OTHER: A fundamental consideration for closing Colstrip is whether there can be a meaningful reduction in carbon emissions accomplished in a manner that minimizes rate impacts to consumers. Any legislation needs to do two things: First, give the company the tools to develop a plan that could achieve a low-cost transition from its older coal plants to cleaner forms of replacement power; and second, give the UTC the ability to assess that plan and approve it -- if approval is warranted. Without legislation, PSE cannot acquire additional coal resources, and it cannot obtain low-cost bond financing that would allow it to transition off that coal at the lowest cost to consumers. With legislation, it can do those things -- but only if doing so would be cleaner, faster, and cheaper. The bill should include precise language that the interests of the other owners of Colstrip units 3 and 4 are not to be affected.

The bill should not result in costs being shifted onto customers of other utilities. It should be made clear how replacement power is to be obtained and how greenhouse gas calculations will be made.

Persons Testifying: PRO: Brandon Lohse, Ken Johnson, Puget Sound Energy.

CON: Scott Merriman, Office of State Treasurer; Simon Ffitch, Public Counsel, AGO; Dave Warren, WA PUD Association; Tim Boyd, Industrial Customers of NW Utilities; Craig Engelking, Sierra Club.

OTHER: David Danner, Chairman, UTC; Mark Soutter, Invenergy, Manager, Regulatory Affairs; Scott Richards, Invenergy; John Rothlin, Avista.

Persons Signed in to Testify But Not Testifying:

PRO: David Giuliani, Washington Business Alliance, co-founder.

OTHER: Steve Johnson, Bainbridge Island.