
SUBSTITUTE SENATE BILL 6248

State of Washington

64th Legislature

2016 Regular Session

By Senate Energy, Environment & Telecommunications (originally sponsored by Senators Ericksen and Ranker)

READ FIRST TIME 02/05/16.

1 AN ACT Relating to risk mitigation plans to promote the
2 transition of eligible coal units; amending RCW 80.80.060; adding a
3 new chapter to Title 80 RCW; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires
7 otherwise.

8 (1) "Closure date" means the date on which an eligible coal unit
9 that commenced commercial operations before January 1, 1980, ceases
10 to generate electricity and is permanently retired from service.

11 (2) "Decommissioning" means the series of activities undertaken
12 to retire an eligible coal unit from service and to ensure that the
13 decontamination, dismantlement, removal, and disposal of the eligible
14 coal unit, including the sites and any components and materials
15 directly associated with the eligible coal unit, and the final
16 disposition of sites associated with the eligible coal unit is
17 accomplished safely and in compliance with all applicable state and
18 federal laws.

19 (3) "Decommissioning and remediation cost recovery fund" means an
20 interest-bearing reserve account to which an electrical company has
21 made an irrevocable pledge of amounts of one or more regulatory

1 liabilities, the funds of which are designated for decommissioning
2 and remediation of eligible coal units.

3 (4) "Decommissioning and remediation cost recovery plan" means a
4 plan of an electrical company for the recovery of decommissioning and
5 remediation costs for eligible coal units decommissioned and
6 remediated pursuant to a decommissioning and remediation plan.
7 However, such a plan may not allow an electrical company to earn a
8 return on equity on decommissioning and remediation costs.

9 (5) "Decommissioning and remediation costs" means any cost or
10 expense incurred, or to be incurred, by an electrical company in
11 connection with the decommissioning and remediation of an eligible
12 coal unit. Decommissioning and remediation costs may be incurred by
13 an electrical company prior to, and may be incurred by an electrical
14 company from and after, the date on which an eligible coal unit
15 ceases to generate electricity and is permanently retired from
16 service. Further, if the commission determines it to be appropriate,
17 decommissioning and remediation costs may include carrying costs from
18 the date on which an electrical company books decommissioning and
19 remediation costs to a deferral or other appropriate account until
20 the date that the commission determines that these costs are
21 prudently incurred decommissioning and remediation costs.

22 (6) "Decommissioning and remediation plan" means a plan of an
23 electrical company for the decommissioning and remediation of
24 eligible coal units that commenced commercial operations before
25 January 1, 1980.

26 (7) "Eligible coal plant" means a coal-fired electric generation
27 facility that: (a) Had two or fewer generating units as of January 1,
28 1980, and four generating units as of January 1, 2016; (b) is owned
29 by more than one electrical company as of January 1, 2016; and
30 (c) provides, as a portion of the load served by the coal-fired
31 electric generation facility, electricity paid for in rates by
32 ratepayers in the state of Washington.

33 (8) "Eligible coal unit" means any generating unit of an eligible
34 coal plant.

35 (9) "Eligible coal unit acquisition agreement" means an agreement
36 for the acquisition by an electrical company of an increased interest
37 of not more than two hundred fifty megawatts of nameplate capacity of
38 an eligible coal unit that commenced commercial operations on or
39 after January 1, 1980.

1 (10) "Eligible coal unit acquisition costs" means the amount paid
2 or to be paid by an electrical company pursuant to an eligible coal
3 unit acquisition agreement.

4 (11) "Eligible coal unit risk mitigation plan" means a plan of an
5 electrical company for: (a) The decommissioning and remediation of
6 more than three hundred megawatts of nameplate capacity of the
7 electrical company's interest in eligible coal units that commenced
8 commercial operations before January 1, 1980; and (b) the replacement
9 of the capacity and energy needed by the electrical company after the
10 closure of eligible coal units that commenced operations before
11 January 1, 1980.

12 (12) "Nameplate capacity" means the manufacturer's rated capacity
13 of a facility to generate electricity as expressed in megawatts,
14 including fractions of a megawatt.

15 (13) "Prudently incurred decommissioning and remediation costs"
16 means decommissioning and remediation costs determined by the
17 commission to be prudent, reasonable, and appropriate costs incurred
18 by the electrical company.

19 (14) "Premature closure date" means a closure date prior to
20 December 31, 2022.

21 (15) "Remediation" means the identification, assessment,
22 handling, storage, minimization, containment, cleanup, removal,
23 transportation, or disposal of any substance, material, circumstance,
24 or condition that presents a threat or potential threat to human
25 health or the environment. Remediation includes activities undertaken
26 to prepare and perform the final disposition of an eligible coal
27 unit, to monitor and maintain it after it has been permanently
28 retired from service, and to effect the final disposition of any
29 components of the eligible coal unit.

30 (16) "Resource replacement plan" means a plan for the acquisition
31 or development of a portfolio of electric generation facilities to
32 replace the capacity and energy of eligible coal generating units to
33 be decommissioned and remediated pursuant to a decommissioning and
34 remediation plan. However, any acquisition, if applicable, by the
35 electrical company of an increased interest of not more than two
36 hundred fifty megawatts of nameplate capacity of additional interest
37 in an eligible coal unit that commenced operations after January 1,
38 1980, must occur simultaneously with, or subsequent to, the closure
39 date in the decommissioning and remediation plan approved by the

1 commission and must result in a net reduction of coal-fired electric
2 generation for the electrical company.

3 NEW SECTION. **Sec. 2.** (1) On or before December 31, 2017, an
4 electrical company may file a petition with the commission for
5 approval of an eligible coal unit risk mitigation plan, which shall
6 consist of: (a) An eligible coal unit acquisition agreement, if
7 applicable; (b) a decommissioning and remediation plan; (c) a
8 decommissioning and remediation cost recovery plan; and (d) a
9 resource replacement plan. In support of such a petition, the
10 electrical company must file supporting testimony and exhibits.

11 (2) Any decommissioning and remediation plan must include the
12 following:

13 (a) A planned closure date of eligible coal units that commenced
14 commercial operations before January 1, 1980;

15 (b) A description of the stages by which decommissioning and
16 remediation of eligible coal units that commenced commercial
17 operations before January 1, 1980, are intended to be accomplished;
18 and

19 (c) Any other relevant information that the commission requests
20 or requires to be disclosed.

21 (3) Any decommissioning and remediation cost recovery plan must
22 include the following:

23 (a) An estimate of the decommissioning and remediation costs
24 associated with the decommissioning and remediation of eligible coal
25 units that commenced commercial operations before January 1, 1980,
26 expressed in dollars current in the year the plan is prepared, and
27 based, in part, on an engineering report issued by a reputable and
28 independent third party no more than one year before the date the
29 decommissioning and remediation cost recovery plan is submitted to
30 the commission;

31 (b) A proposal for the accounting treatment for tracking and
32 specifying decommissioning and remediation costs;

33 (c) A proposal for the recovery of prudently incurred
34 decommissioning and remediation costs, which may include a proposal
35 for a decommissioning and remediation cost recovery fund;

36 (d) Any decommissioning and remediation cost recovery fund
37 established by an electrical company pursuant to a decommissioning
38 and remediation cost recovery plan: (i) Must not be used for any
39 purpose other than the funding and recovery of prudently incurred

1 decommissioning and remediation costs for eligible coal units
2 decommissioned and remediated pursuant to a decommissioning and
3 remediation plan; (ii) except as provided in RCW 80.04.350, must not
4 be reduced, altered, impaired, or limited from the date of commission
5 approval of the inclusion of the regulatory liabilities in the
6 decommissioning and remediation cost recovery fund until all
7 prudently incurred decommissioning and remediation costs for eligible
8 coal units decommissioned and remediated pursuant to a
9 decommissioning and remediation plan are recovered or paid in full;
10 and (iii) must provide that any remaining funds in the
11 decommissioning and remediation cost recovery fund, after recovery by
12 the electrical company of all prudently incurred decommissioning and
13 remediation costs for eligible coal units decommissioned and
14 remediated pursuant to a decommissioning and remediation plan
15 incurred by the electrical company, be returned to customers;

16 (e) A statement of the accumulated reserve of the electrical
17 company for the decommissioning and remediation of eligible coal
18 units as of the date of submission of the plan; and

19 (f) Any other relevant information that the commission requests
20 or requires to be disclosed.

21 (4) Nothing in this section may be construed to diminish the
22 ability of an electrical company to propose or of the commission to
23 approve the use of regulatory liabilities for any purpose.

24 (5) Any resource replacement plan must include: (a) An eligible
25 coal unit acquisition agreement, if applicable, of an increased
26 interest of not more than two hundred fifty megawatts of nameplate
27 capacity of an eligible coal unit that commenced commercial
28 operations on or after January 1, 1980; and (b) an acquisition or
29 development strategy to replace the capacity and energy needs of the
30 electrical company to replace the operations of eligible coal unit
31 dates as of the closure date.

32 (6) Upon receipt of a petition for approval of an eligible coal
33 unit risk mitigation plan, the commission shall provide notice to the
34 public and potentially affected parties and set the petition for
35 hearing as an adjudicative proceeding under chapters 34.05 and 80.04
36 RCW. The commission shall issue a final order that approves, approves
37 subject to conditions, or disapproves the petition within two hundred
38 forty days after receipt of the petition. However, the commission may
39 extend the time on a showing of good cause for a period not to exceed
40 sixty days if such an extension does not prejudice the ability of the

1 electrical company to take any action contemplated in the eligible
2 coal unit risk mitigation plan.

3 (7) If an electrical company submits an eligible coal unit risk
4 mitigation plan proposing a premature closure date or the electrical
5 company retires from service an eligible coal unit that commenced
6 commercial operations before January 1, 1980, prior to a premature
7 closure date, then the commission may not authorize the electrical
8 company to use more than fifty percent of the regulatory liabilities
9 or funds in the decommissioning and remediation cost recovery fund.
10 In such a case, the commission may authorize the electrical company
11 to use the remainder of the regulatory liabilities or funds in the
12 decommissioning and remediation cost recovery fund after December 31,
13 2022.

14 (8) The commission may approve an eligible coal unit risk
15 mitigation plan pursuant to this section if the commission determines
16 that the terms of such a plan are prudent, reasonable, and provide
17 adequate protection at the lowest reasonable cost to ratepayers and
18 the electrical company, considering: (a) The need of the electrical
19 company for capacity and energy to serve ratepayers; (b) the
20 reasonableness of the eligible coal unit acquisition costs, if any;
21 (c) the ability of the electrical company to meet the needs
22 identified in the resource replacement plan in a cost-effective
23 manner as determined under the lowest reasonable cost resource
24 standards under chapter 19.280 RCW; and (d) the overall costs and
25 benefits of the eligible coal unit risk mitigation plan.

26 (9) If the commission finds that an eligible coal unit risk
27 mitigation plan does not meet the criteria under subsection (8) of
28 this section, then the commission shall reject the petition or make
29 its approval contingent upon satisfaction of certain conditions. If
30 the commission conditions approval of the petition, the commission
31 shall direct the electrical company to accept the modification within
32 a time specified by the commission or withdraw the petition with
33 leave to refile.

34 (10)(a) Upon approval of an eligible coal unit risk mitigation
35 plan by the commission, all eligible coal unit acquisition costs are
36 deemed to be prudent, reasonable, and appropriate costs and expenses
37 incurred, or to be incurred, by an electrical company, except as
38 provided in this section. The commission may not approve costs
39 incurred as a result of an electrical company's acquisition of an
40 additional interest in an eligible coal unit that commenced

1 commercial operations on or after January 1, 1980, as part of a
2 general rate case until the closure date of eligible coal units that
3 commenced commercial operations before January 1, 1980, identified in
4 the eligible coal unit risk mitigation plan.

5 (b) Approval of an eligible coal unit risk mitigation plan does
6 not constitute a prudence determination for decommissioning and
7 remediation costs of any eligible coal unit and does not authorize
8 recovery of such costs in rates. The prudence of decommissioning and
9 remediation costs and recovery of such costs in rates must be
10 determined by the commission in a general rate case or other
11 adjudication established by the commission under this title.
12 Notwithstanding commission approval of an eligible coal unit risk
13 mitigation plan, an electrical company bears the burden of proof that
14 decommissioning and remediation costs related to any eligible coal
15 unit are prudent.

16 (11) Notwithstanding commission approval of an eligible coal unit
17 risk mitigation plan, an electrical company may propose and the
18 commission must consider a modified eligible coal unit risk
19 mitigation plan if the "clean power plan," adopted pursuant to
20 section 111(d) of the federal clean air act (42 U.S.C. Sec. 7411(d)),
21 is repealed or becomes invalid or unenforceable as a result of
22 judicial action or other federal action. If the commission rejects
23 the modified eligible coal unit risk mitigation plan submitted under
24 this subsection, then the electrical company is no longer required to
25 comply with any eligible coal unit risk mitigation plan.

26 (12) Notwithstanding commission approval of an eligible coal unit
27 risk mitigation plan, an electrical company may propose and the
28 commission must consider a modified eligible coal unit risk
29 mitigation plan if the people of the state of Washington enact any
30 measure restricting the use of electricity from coal-fired electric
31 generation facilities located outside of Washington. If the
32 commission rejects the modified eligible coal unit risk mitigation
33 plan submitted under this subsection, then the electrical company is
34 no longer required to comply with any eligible coal unit risk
35 mitigation plan.

36 **Sec. 3.** RCW 80.80.060 and 2011 c 180 s 104 are each amended to
37 read as follows:

38 (1) No electrical company may enter into a long-term financial
39 commitment unless the baseload electric generation supplied under

1 such a long-term financial commitment complies with the greenhouse
2 gas emissions performance standard established under RCW 80.80.040.

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

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

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

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

33 (6) An electrical company may account for and defer for later
34 consideration by the commission costs incurred in connection with a
35 long-term financial commitment, including operating and maintenance
36 costs, depreciation, taxes, and cost of invested capital. The
37 deferral begins with the date on which the power plant begins
38 commercial operation or the effective date of the power purchase
39 agreement and continues for a period not to exceed twenty-four
40 months; provided that if during such period the company files a

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

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

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

24 (9) This section does not apply to: (a) A long-term financial
25 commitment for the purchase of coal transition power with termination
26 dates consistent with the applicable dates in RCW 80.80.040(3)(c); or
27 (b) a long-term financial commitment for the acquisition of an
28 additional interest in an eligible coal unit pursuant to an eligible
29 coal unit risk mitigation plan approved by the commission. For the
30 purposes of this subsection (9), the terms "eligible coal unit" and
31 "eligible coal unit risk mitigation plan" have the same meaning as
32 defined in section 1 of this act.

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

35 NEW SECTION. Sec. 4. This act may be known and cited as the
36 Washington state eligible coal unit risk mitigation act.

1 NEW SECTION. **Sec. 5.** Sections 1 and 2 of this act constitute a
2 new chapter in Title 80 RCW.

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