

HOUSE BILL REPORT

ESSB 6248

As Passed House:

March 4, 2016

Title: An act relating to risk mitigation plans to promote the transition of eligible coal units.

Brief Description: Regarding a pathway for a transition of eligible coal units.

Sponsors: Senate Committee on Energy, Environment & Telecommunications (originally sponsored by Senators Ericksen and Ranker).

Brief History:

Committee Activity:

Technology & Economic Development: 2/23/16, 2/26/16 [DP];

General Government & Information Technology: 2/29/16 [DP].

Floor Activity:

Passed House: 3/4/16, 92-5.

Brief Summary of Engrossed Substitute Bill

- Provides that regulatory liabilities placed into a retirement account to cover prudently incurred decommissioning and remediation costs of an eligible coal plant may only be used for these costs and may not be altered or impaired until such costs are recovered or paid in full.

HOUSE COMMITTEE ON TECHNOLOGY & ECONOMIC DEVELOPMENT

Majority Report: Do pass. Signed by 11 members: Representatives Morris, Chair; Tarleton, Vice Chair; Smith, Ranking Minority Member; DeBolt, Assistant Ranking Minority Member; Fey, Hudgins, Magendanz, Nealey, Rossetti, Wylie and Young.

Staff: Jasmine Vasavada (786-7301).

HOUSE COMMITTEE ON GENERAL GOVERNMENT & INFORMATION TECHNOLOGY

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.

Majority Report: Do pass. Signed by 7 members: Representatives Hudgins, Chair; Kuderer, Vice Chair; MacEwen, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Johnson, Morris and Senn.

Staff: Lily Sobolik (786-7157).

Background:

Utilities and Transportation Commission.

The Washington Utilities and Transportation Commission (Commission) is a three-member board that regulates the rates, services, and practices of privately owned utilities. The Commission sets rates that are fair, just, reasonable, and sufficient. In approving and setting rates, the Commission examines costs incurred by the utility and determines if these costs were prudently incurred, considering cost-effectiveness, reliability, and availability of alternatives. The prudence standard generally considers what the utility knew or could have known at the time of the decision. Costs determined to be imprudent are costs ultimately paid by the utility's shareholders, not ratepayers. Investment decisions made between ratemaking proceedings generally are not examined for their prudence as an investment until a ratemaking proceeding occurs.

Depreciation and Retirement Accounts.

The Commission may require public service companies, including electrical companies, to carry proper and adequate depreciation or retirement accounts for all property, and may fix depreciation and retirement rates by order.

Electrical Company.

An electrical company is an investor-owned utility whose rates and services are regulated by the Commission. Washington has three electrical companies: Puget Sound Energy, Avista, and PacifiCorp.

Coal-Fired Generation Facilities.

According to Integrated Resource Plans filed by electric utilities in 2013, the electrical companies 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 is the four-unit Colstrip generating plant in Montana, which has two units that are jointly owned by six entities, including each of Washington's three electrical companies.

Regulatory Liabilities.

Regulatory liabilities are liabilities recorded on a utility's financial statements resulting from a requirement by the regulator that certain amounts are to be paid by the utility in the future. An example is revenue collected by the utility that has been ordered to be refunded to customers. Regulatory liabilities are the reverse of regulatory assets.

Decommissioning Cost.

Decommissioning cost, as a regulatory accounting term, refers to the cost of removing a utility asset from service.

Remediation of Coal-Fired Generation Facilities.

Environmental laws likely to require remediation at the site of a coal-fired generating facility include water quality laws and the Resource Conservation and Recovery Act (RCRA), which regulates coal combustion residuals (CCR) as a nonhazardous waste. The United States Environmental Protection Agency (EPA) adopted the CCR Rule in December 2014 to address solid wastes that result from burning coal in a power plant, including fly ash, bottom ash, boiler slag, and flue gas desulfurization materials. The CCR Rule establishes standards for CCR landfills and surface impoundments, and requires operators of CCR units to install a system of monitoring wells to detect groundwater contamination. The CCR Rule is self-implementing, meaning that is enforced by citizen suits, not by regulatory oversight by the EPA.

Summary of Bill:

Placing Regulatory Liabilities in a Retirement Account.

The Commission may authorize an electrical company to place regulatory liabilities into a retirement account to cover decommissioning and remediation costs of eligible coal units that commenced operation before January 1, 1980. Such authorization may only be made after conducting an adjudicative proceeding in accordance with the Administrative Procedures Act.

An "eligible coal unit" is any generating unit of an eligible coal plant. An "eligible coal plant" means a coal-fired electric generation facility that: (1) had two or less generating units as of January 1, 1980, and four generating units as of January 1, 2016; (2) has multiple owners; and (3) serves retail customers in Washington with a portion of its load.

Restriction on Use of Regulatory Liabilities Placed in a Retirement Account.

Regulatory liabilities in a retirement account must not be used for any purpose other than to fund and recover prudently incurred decommissioning and remediation costs for eligible coal units. Regulatory liabilities in the account must not be reduced, altered, impaired, or limited from the date of the Commission's approval of inclusion until all decommissioning and remediation costs are recovered or paid in full. Any remaining funds in the retirement account, after the electrical company recovers all prudently incurred decommissioning and remediation costs, must be returned to customers.

The Commission may not authorize the electrical company to use regulatory liabilities in the retirement account for decommissioning and remediation costs under certain circumstances. If, prior to December 31, 2022, an electrical company proposes a closure date or retires from service an eligible coal unit that commenced operations before January 1, 1980, then regulatory liabilities in the account may only be used if the electrical company demonstrates to the Commission that a decision to close the eligible coal unit prior to December 31, 2022:

1. is prudent, as determined by evidence showing the continued operation of an eligible coal unit is economically or technologically unfeasible, requires a capital investment that is outside the scope of a prudent improvement or investment, or the eligible coal unit has reached the end of its useful life; or
2. is attributable to the actions of a co-owner or operator of the eligible coal unit.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Technology & Economic Development):

(In support) This provides legislative authority to place regulatory liabilities in a retirement account and ensures durability of those funds. Putting regulatory liabilities in a retirement account is a straightforward financial tool to facilitate decommissioning and cleanup. It will provide intergenerational equity for customers and minimize overall risks. This is cost-effective for ratepayers, in that shareholders will forgo millions of dollars that they would be entitled to recover under conventional financing methods. Rate oscillations will be avoided by avoiding bill fluctuations that would occur if the utility were required to pass liabilities back to customers and then charge customers for the decommissioning and remediation costs.

It is important to set aside the funding to send a signal to Montana that Washington is going to take care of cleaning up the mess. This does not require retirement of a facility or allow acquisition of an additional interest in coal. The utility does not control when retirement will be prudent, but this allows the utility to plan for costs that will be incurred when the facility has reached the end of its useful life.

It is important to provide a process that allows the Commission to be fair and thorough, assess the costs and benefits, and determine the best interests of providing fair, just, sufficient, and reasonable power to the utility's ratepayers. Using regulatory liabilities is a good way to ensure the costs are low and to avoid undue rate increases.

(Opposed) None.

(Other) The ratepayer advocate for customers of regulated utilities has been involved in extensive negotiations and is neutral on the bill in its current form. It would not be productive to reintroduce other issues that were not resolved through the stakeholder process. The funds in the retirement account are ratepayer funds and if there is excess money it will be returned to ratepayers. The bill does not address the possibility that Montana may pass retaliatory fees or taxes. Such fees or taxes should not be borne by ratepayers. This is not the forum to address the authority of Public Utility Districts (PUDs). Several PUDs have surplus renewable energy and want to ensure that they can compete for replacement power in an open process.

Staff Summary of Public Testimony (General Government & Information Technology):

(In support) This bill allows Puget Sound Energy (PSE), with approval of the Utilities and Transportation Commission (UTC), to set up a funding mechanism to eventually close the Colstrip plants one and two in Montana. The bill would allow PSE to set up an account using federal tax credits from renewable energy projects to fund the decommissioning of the Colstrip plants one and two. No state dollars would be used. This would give certainty to PSE customers about decommissioning the Colstrip plants. Puget Sound Energy would not

be allowed to earn on the account, so it decreases the cost of decommissioning and remediation.

The fiscal note shows expenditures of \$180,000 from the Public Service Revolving Account, which is supported by fees from regulated utilities. For example, the PSE annual fees for electricity were about \$4.1 million, and gas fees were about \$2 million. The Senate budget does fund this bill at \$280,000. There are some concerns about the cost that the UTC reports in its fiscal note, since the bill has changed numerous times. The narrowness of this bill is appropriate given the long stakeholder negotiations. This bill sends a good message to Montana—the mess that was made will be cleaned up.

(Opposed) None.

(Other) This bill is not a significant change to existing law. Less is more after the long and difficult negotiations. Section 2 of the bill is already within current authority of the UTC so it is uncertain that any additional costs would be incurred. This would provide additional certainty for recovery of costs for decommissioning. The bill does limit ratepayers', which includes Washington State, responsibility for decommissioning costs to those prudently incurred. It also solves the intergenerational issue as to those customers who receive benefits. It prevents the UTC from sweeping the account for other purposes, and it returns any remaining funds to ratepayers. There are some concerns, from a policy perspective, based on how Section 3 of the bill is going to function.

Persons Testifying (Technology & Economic Development): (In support) Joni Bosh, Northwest Energy Coalition; Nancy Atwood and Steve Secrist, Puget Sound Energy; Doug Howell, Sierra Club; and Dave Danner, Washington Utilities and Transportation Commission.

(Other) Simon ffitch, Office of the Attorney General; Tim Boyd, Industrial Customers of Northwest Utilities; and Dave Warren, Washington Public Utility Districts Association.

Persons Testifying (General Government & Information Technology): (In support) Nancy Atwood, Puget Sound Energy; and Doug Howell, Sierra Club.

(Other) Tim Boyd, Industrial Customers of Northwest Utilities.

Persons Signed In To Testify But Not Testifying (Technology & Economic Development): None.

Persons Signed In To Testify But Not Testifying (General Government & Information Technology): None.