H-1921.2

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SUBSTITUTE HOUSE BILL 2002**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 64th Legislature 2015 Regular Session**

**By** House Technology & Economic Development (originally sponsored by Representatives Morris, Magendanz, and Fitzgibbon)

AN ACT Relating to regulatory and financial mechanisms and means to promote the retirement of coal-fired electric generation facilities; amending RCW 80.80.060; adding new sections to chapter 80.82 RCW; creating a new section; and recodifying RCW 80.82.010 and 80.82.020.

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

NEW SECTION. **Sec.**  RCW 80.82.010 and 80.82.020 are each recodified as sections in chapter 80.82 RCW under the subchapter heading "Closure of Certain Coal-Fired Electric Generation Facilities."

NEW SECTION. **Sec.**  Sections 3 through 5 and 7 through 11 of this act are each added to chapter 80.82 RCW and codified under the subchapter heading of "Washington State Coal Generation Retirement Program."

NEW SECTION. **Sec.**  This act may be known and cited as the Washington state coal generation retirement program act.

NEW SECTION. **Sec.**  (1) The legislature finds that:

(a) Washington state citizens benefit from the reduction of greenhouse gas emissions and from reliable and environmentally sound generation resources that are sufficient to provide economic opportunities and employment in a manner consistent with the state's energy priorities;

(b) Over a period of years, significant investments have been made in coal-fired electric generation facilities by electrical companies serving retail electric load within the state;

(c) Promotion of the early retirement of certain coal-fired electric generation facilities requires secure and predicable regulatory and financial mechanisms that encourage such early retirement; and

(d) Such retirement of certain coal-fired electric generation facilities should be done in a prudent and cost-effective manner.

(2) To assure Washington state citizens the benefits of reduced greenhouse gas emissions associated with the transition away from certain coal-fired electricity generation facilities, the legislature intends by this act to establish the Washington state coal generation retirement program whereby:

(a) Specific regulatory and financial mechanisms defined by the legislature are available to electrical companies that commit to or that are impacted by the retirement of coal-fired electric generation facilities;

(b) Electrical companies or financing subsidiaries are authorized by the legislature to facilitate the issuance of carbon reduction bonds, secured by revenues from the customers of electrical companies that commit to retire coal-fired electric generation facilities, for purposes of financing carbon reduction costs incurred in connection with the retirement of coal-fired electric generation facilities; and

(c) The transition away from certain coal-fired electric generation facilities shall be done in a prudent and cost-effective manner.

NEW SECTION. **Sec.**  DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Binding notice" means a notice, filed with the commission by an electrical company as set forth in section 8 of this act, to irrevocably commit to the retirement of an eligible coal plant within twenty years of the date of the commission's acceptance of a binding notice.

(2) "Carbon reduction bonds" means bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidences of indebtedness that are issued by an electrical company or a financing subsidiary to recover, finance, or refinance carbon reduction costs and that are secured by or payable from carbon reduction property.

(3) "Carbon reduction charge" means a prudent and cost-effective charge paid by customers of an electrical company or its successors to recover carbon reduction costs.

(4) "Carbon reduction costs" means any cost or expense incurred, or to be incurred, by an electrical company directly related to the retirement of an eligible coal plant. Carbon reduction costs may be incurred by an electrical company prior to, and may be incurred by an electrical company from and after, the date of retirement of an eligible coal plant. Carbon reduction costs include cost-effective and prudently incurred costs and expenses incurred or to be incurred in connection with the following:

(a) The permanent decommissioning, reduction, termination, severance, unamortized investment of plant, assets, equipment, facilities, property, rights-of-way, easements, operations, labor, personnel, contracts, and agreements, including any and all cost-effective and prudently incurred costs or expenses in connection with the acquisition, extension, modification, alteration, or surrender of any permits, licenses, approvals, consents, orders, or authorizations required with respect to any such actions or interests;

(b) The identification, assessment, handling, storage, minimization, containment, cleanup, removal, remediation, transportation, or disposal of any substance, material, circumstance, or condition that presents a threat or potential threat to human health or the environment, including all cost-effective and prudently incurred costs or expenses in connection with: (i) Analyses, tests, studies, or investigations conducted or required in connection with such matters; and (ii) permits, licenses, approvals, consents, orders, or authorizations required in connection with such matters;

(c) Capital costs, construction work in progress, and the unamortized investment of the property that is retired, including any demolition or similar cost that exceeds the salvage value of the property;

(d) Financing costs; and

(e) Mitigation costs under section 11 of this act.

(5) "Carbon reduction property" means all of the following:

(a) The right specified in a financing order to impose, collect, or receive carbon reduction charges, or to obtain adjustments to carbon reduction charges as provided in section 9 of this act, and any interest in such right;

(b) All revenues and proceeds arising from the rights and interests specified in section 9(2)(a) of this act.

(6) "Commission" means the Washington utilities and transportation commission.

(7) "Electrical company" means a company owned by investors that meets the definition of electrical company set forth in RCW 80.04.010.

(8) "Eligible coal plant" means a coal-fired electric generation facility that: (a) Is owned, controlled, or operated, in whole or in part, by an electrical company serving a retail electric load within the state of Washington; (b) provides, as a portion of the load served by the coal-fired electric generation facility, electricity to retail electric customers in the state of Washington; and (c) is located in Rosebud county, Montana. An eligible coal plant includes, and may be limited to, for purposes of a binding notice, one or more operating units of an eligible coal plant that collectively comprise a larger facility.

(9) "Eligible coal plant acquisition costs" means all cost-effective and prudently incurred costs and expenses incurred by an electrical company in connection with the acquisition of an additional or increased interest in any one or more eligible coal plants. Eligible coal plant acquisition costs include all cost-effective and prudently incurred costs and expenses incurred by an electrical company to secure, finance, purchase, and acquire an additional or increased interest in any one or more such eligible coal plants, together with any and all rights and obligations related to the ownership, operation, and control of such interest, and includes any and all transaction costs, closing costs, legal fees, taxes, charges, expenses, and other amounts incurred by an electrical company in connection with such acquisitions.

(10) "Financing cost" means any of the following:

(a) Interest and redemption premiums that are payable on carbon reduction bonds;

(b) A reasonable payment required under an ancillary agreement, including any amount required to fund a reserve account, made in connection with the issuance or servicing of carbon reduction bonds;

(c) The reasonable cost of retiring or refunding existing debt and equity securities issued by or for the benefit of an electrical company to finance such electrical company's investment in an eligible coal plant to be retired, including the full payment, when due under the terms thereof or upon redemption prior to maturity, of all the principal of and interest on any redemption premium, if applicable;

(d) Any other reasonable cost related to issuing and servicing carbon reduction bonds or the retiring or refunding of existing debt and equity securities issued by or for the benefit of an electrical company to finance such electrical company's investment in an eligible coal plant to be retired, including servicing fees, trustee fees, legal fees, administrative fees, placement fees, capitalized interest, and rating agency fees;

(e) Any taxes and license fees imposed on the revenues to the electric utility generated from the collection of carbon reduction charges.

(11) "Financing order" means an order, issued by the commission pursuant to section 9 of this act, that allows for the issuance of carbon reduction bonds, the collection of carbon reduction charges, and the creation of carbon reduction property.

(12) "Financing subsidiary" means a wholly owned subsidiary of an electrical company that has no direct or indirect interest in the business of the electrical company and its other affiliates and was formed for the limited purpose of:

(a) Issuing, facilitating, or administering carbon reduction bonds;

(b) Facilitating or administering carbon reduction property;

(c) Entering into mortgages, notes, loans, or other contractual obligations secured by carbon reduction property for the purpose of financing carbon reduction costs; or

(d) Any other business as may be reasonably incidental to those described in (a) and (c) of this subsection, including the ownership and use of carbon reduction property in connection therewith.

(13) "Program" means the Washington state coal generation retirement program established by this act.

(14) "Program investment" means, for any eligible electrical company that retires any one or more eligible coal plants under the program, an amount, which such amount in the aggregate is the sum of all of the following: (a) The amount of the eligible electrical company's net plant investment allowed and approved by the commission for purposes of section 7(1) of this act; (b) the amount of the eligible electrical company's net plant investment allowed and approved by the commission for purposes of section 7(2) of this act; and (c) the amount of the carbon reduction costs to be incurred and paid by such electrical company. An electrical company's program investment is subject to its program limit.

(15) "Program limit" means a dollar amount, determined for each electrical company that retires any one or more eligible coal plants under the program, and is the amount that is equal to nine and eight-tenths percent of such electrical company's Washington state rate base as of the effective date of this section. The program limit may be subject to adjustment by the commission in accordance with section 8(7)(b) of this act.

(16) "Retirement" or "retire" means the complete and permanent closure of an eligible coal plant as a coal-fired electric generation facility. Closure shall be deemed to have occurred upon the date that the eligible coal plant shall permanently cease operations as a coal-fired electric generation facility.

NEW SECTION. **Sec.**  (1) Before December 1, 2015, the utilities and transportation commission shall assess the liabilities, risks, and costs to ratepayers associated with the rehabilitation, maintenance, expansion, and continued operation of impoundment ponds of each eligible coal plant that is currently included in an electrical company's resource portfolio.

(2) This assessment must include, but is not limited to, a broad examination of the following:

(a) Identification of potential risks, including but not limited to damage to human health, the environment, and property interests, and liabilities associated with existing contaminated groundwater plumes and failure of the impoundment ponds;

(b) Estimation of capital expenditures that may be necessary to address any structural deficiencies in impoundment ponds due to current and anticipated federal regulations, including closure of existing wet impoundments and conversion to dry handling facilities;

(c) Analysis of the extent to which any of the liabilities, risks, and costs to ratepayers can be mitigated or avoided by early retirement or decreased operation of a plant or plants; and

(d) Any other information that the commission deems relevant in determining the impact of impoundment pond liabilities on a decision to continue to operate and make capital investments in an eligible coal plant.

(3) By December 1, 2015, the utilities and transportation commission shall report the results of the assessment to the governor and the legislature.

NEW SECTION. **Sec.**  REGULATORY MECHANISMS. The following regulatory mechanisms are available to an electrical company under the program:

(1) Regulatory asset. For each eligible coal plant designated in a binding notice for retirement by an eligible electrical company, the electrical company may petition the commission for authority to place all or a portion of its net plant investment in an eligible coal plant into a regulatory asset account. Any request by an electrical company to place all or a portion of its net plant investment in a retired eligible coal plant into a regulatory asset account shall be subject to a prudence review by the commission, which shall include a review of the costs the electrical company seeks to include in the regulatory asset account and a determination that the creation of a regulatory asset account represents the least-cost alternative for customers. The net plant investment shall include the net book value of the retired eligible coal plant as of the date of retirement, any and all transmission or other costs related to the eligible coal plant and traditionally included in an electrical company's rate base, and any carbon reduction costs associated with the eligible coal plant that are not otherwise recovered by a carbon reduction charge. The electrical company shall be allowed to earn a reasonable rate of return on such investment, as determined by the commission. The amount recoverable in the regulatory asset account may be amortized and recovered in rates over a period not to exceed twenty years. Charges among customer classes shall be allocated over such time and among such customers consistent with the allocation methodology for utility production plants accepted by the commission in the electrical company's most recent rate proceeding.

(2) Accelerated depreciation and amortization. For each eligible coal plant designated in a binding notice for retirement by an eligible electrical company, the electrical company shall have the right to accelerated depreciation and amortization of all or a portion of the electrical company's net plant investment in such eligible coal plant, subject to a determination by the commission that such accelerated depreciation and amortization is in the public interest and represents the least-cost alternative for customers. Such accelerated depreciation and amortization shall not exceed the three percent cost cap identified in subsection (7) of this section. The net plant investment so allowed and approved may, if requested by the electrical company, be fully depreciated by the retirement date subject to a finding by the commission that such depreciation and amortization schedule is in the public interest and contributes to rates that are fair, just, reasonable, and sufficient. The net plant investment in such coal plant shall include its net book value as of the date of the binding notice, all transmission or other costs traditionally included in the electrical company's rate base, and any carbon reduction costs that are not otherwise recovered by a carbon reduction charge. The electrical company shall be allowed to earn a reasonable and sufficient rate of return on such net plant investment. Charges among customer classes shall be allocated over such time and among such customers consistent with the allocation methodology for utility production plants accepted by the commission in the electrical company's most recent rate proceeding.

(3) Any eligible coal plant acquisition costs incurred by an eligible electrical company are only allowed in the electrical company's rates upon a finding by the commission that such eligible coal plant acquisition costs were reasonably and prudently incurred. Upon a commission finding that eligible coal plant acquisition costs were reasonably and prudently incurred, an electrical company may designate eligible coal plant acquisition costs in a financing order issued by the commission pursuant to section 9(1)(c) of this act as carbon reduction costs to be recovered by carbon reduction charges.

(4) Creation of subsidiaries. Each eligible electrical company may create or acquire one or more subsidiaries with commission approval to accomplish the acquisition or retirement of one or more eligible coal plants.

(5) Timing of mechanisms. If requested by the eligible electrical company, and the commission finds it to be reasonable and prudent, an order by the commission establishing and implementing the regulatory and financial mechanisms authorized and approved by this act may provide for such mechanisms to be implemented in phases to better correspond with the timing and implementation of the electrical company's retirement plan.

(6) Commission authority. The commission shall, upon petition, issue such orders as may be necessary to implement any and all of the regulatory and financial mechanisms hereby authorized and approved by this act.

(7) In no event shall the regulatory mechanisms specified in this section result in an average annual rate increase for an eligible electrical company's Washington customers of more than three percent of the eligible electrical company's revenue requirement.

NEW SECTION. **Sec.**  BINDING NOTICE. (1) Binding notice. An eligible electrical company must file a binding notice with the commission that sets forth the financial and regulatory mechanisms the electrical company requires to irrevocably commit the electrical company to the retirement of one or more eligible coal plants. A binding notice may include one or more eligible coal plants. A binding notice must state with particularity the following information:

(a) As to any eligible coal plant to be retired, the name and location of the plant, the identity of the owners and operators of such plant, documentation that the plant to be retired is an eligible plant for purposes of this chapter, a preliminary retirement plan, a preliminary estimate of the cost to implement the retirement plan, the electrical company's program limit, and the date certain by which the eligible coal plant shall permanently cease operations as a coal-fired electric generation facility.

(b) The date, which shall not be more than ten years after the date that an eligible plant is retired, on or before which the eligible electrical company must petition the commission for any regulatory asset accounts to be established for the net plant investment of an electrical company in a retired eligible plant as set forth in section 7(1) of this act.

(c) A statement of whether the eligible electrical company or financing subsidiary anticipates issuing carbon reduction bonds under a financing order to be issued by the commission in accordance with section 9(1)(c) of this act.

(d) A statement regarding any obligations the electrical company has assumed to conduct environmental clean up at the retired coal plant facilities; the electrical company's plans to finance any clean-up operations; and a request that the commission assess any potential impacts to ratepayers associated with the environmental clean-up obligations.

(2) Commission authority. Within thirty days of the commission's receipt of a binding notice, the commission shall determine if the binding notice is complete and may request further or additional information as the commission may reasonably request to accept or reject the binding notice. Not less than one hundred twenty days from the date of an electrical company's submittal of a binding notice, the commission shall accept the binding notice unless the commission finds, based upon a preponderance of the evidence, that:

(a) The plant designated for retirement is not an eligible coal plant for purposes of this chapter;

(b) The regulatory and financial mechanisms identified in the binding notice are not authorized by this chapter or any other applicable law;

(c) Retirement, based on the electrical company's preliminary retirement plan and preliminary estimate of the cost to implement the retirement plan, is not in the public interest;

(d) The eligible electrical company is unable, through commercially feasible means, to fulfill its obligation to retire an eligible plant on or before the date set forth in the binding notice;

(e) The eligible electrical company's program investment will exceed the electrical company's program limit; or

(f) The eligible electrical company's retirement plan is not cost-effective or prudent.

(3) Rejection of binding notice. If the commission rejects a binding notice as set forth in subsection (2) of this section, the rejection shall be without prejudice to the electrical company's right to refile the same, subject to any further direction as the commission may provide with respect to any deficiencies in the binding notice.

(4) Enforceable obligation. Upon the commission's acceptance of a binding notice, the electrical company shall be legally bound and irrevocably committed to the retirement of an eligible coal plant, as set forth in the terms and conditions set forth in the binding notice, which terms and conditions shall be enforceable obligations of the electrical company and its respective successors and assigns.

(5) New emission control technology.

(a) An eligible electrical company is relieved of its obligation to retire an eligible coal plant if, subsequent to the date of the commission's acceptance of a binding notice with respect to an eligible coal plant, the electrical company is required by state or federal law to reduce emissions, such that: (i) The plant must install or provide any new or additional emission control measures or technology at the eligible coal plant; and (ii) the cost of implementing any one or more of state or federal requirements, individually or in the aggregate, is an amount that exceeds ten percent of the net book value of the electric utility's interest in the eligible coal plant. For purposes of this subsection (5)(a), the net book value of an eligible coal plant shall be determined as of the date the requirement to install additional emission control measures becomes binding.

(b) Notwithstanding the provisions of (a) of this subsection, an eligible electrical company may elect, by written notice to the commission, to proceed with the retirement of an eligible coal plant. Such decision shall be subject to a prudence review at the time the electrical company seeks cost recovery.

(6) Reliability.

(a) An eligible electrical company may defer its obligation to retire an eligible coal plant if, subsequent to the date of the commission's acceptance of a binding notice with respect to an eligible coal plant, the eligible coal plant to be retired is needed for purposes of reliability.

(b) An eligible electrical company that is irrevocably committing to the retirement of an eligible coal plant pursuant to subsection (4) of this section may petition the commission for an order to defer its retirement obligation. Any such petition shall identify: (i) The change in circumstances occurring, from and after the date of the commission's acceptance of the electrical company's binding notice, that give rise to the need to maintain the eligible coal plant in operation for purposes of reliability; and (ii) any resource alternatives considered by the electrical company for purposes of reliability, and why such alternatives are insufficient or unsuitable. The electrical company shall bear the burden of proof in establishing that the eligible coal plant to be retired is needed for purposes of reliability.

(c) Based upon the petition and such other evidence as may be presented to the commission, the commission may: (i) Grant the petition and defer the retirement date of the eligible coal plant to a date that is later than the date established by the binding notice; or (ii) reject the petition and decline to defer the retirement obligation of the electrical company.

(7) Regulatory and financial mechanisms program limits.

(a) The amount of an eligible electrical company's program investment may at any time equal, but shall not exceed, such electrical company's then applicable program limit.

(b) An eligible electrical company may, at any time, petition the commission for an order to increase its program limit. Any such petition shall: (i) Identify the change in circumstances occurring, from and after the date of the commission's acceptance of the electrical company's binding notice, that give rise to the need to increase the electric company's program limit; and (ii) include an update to the retirement plan that the electrical company proposes to undertake in connection with the retirement of an eligible coal plant that necessitates an increase in the electrical company's program limit. Based upon the petition and such other evidence as may be presented to the commission, the commission may grant, in whole or in part, the electrical company's petition to increase its program limit if the commission finds that such increase is in the public interest.

(c) If an eligible electrical company shall incur carbon reduction costs in excess of such electrical company's program limit, the electrical company may seek to recover any and all such costs in rates consistent with the principles of ratemaking that are traditionally applied in the determination of rates that are just, fair, reasonable, and sufficient. Nothing in this subsection (7)(c) shall: (i) Limit or impair the commission's general investigative authority; or (ii) preclude the commission's consideration of any evidence the commission deems relevant to the determination of rates that are just, fair, reasonable, and sufficient. The electrical company shall bear the burden of proof to demonstrate that the excess carbon reduction costs were appropriately and prudently incurred and that such excess costs were not reasonably foreseeable such that the electrical company could have petitioned under (b) of this subsection the commission for an increase in its program limit to include such excess costs.

NEW SECTION. **Sec.**  CARBON REDUCTION BONDS. (1) Carbon reduction bonds.

(a) An eligible electrical company or a financing subsidiary may issue carbon reduction bonds as a financing mechanism authorized by this act upon approval by the commission of a financing order in accordance with this section. An application for a financing order under this section shall include the following:

(i) A copy of the commission's order accepting the electrical company's binding notice irrevocably committing the electrical company to the retirement of an eligible coal plant;

(ii) A description of the retirement plan that the electrical company proposes to undertake in connection with the retirement of an eligible coal plant, which may include one or more phases of retirement scheduled to be undertaken over a period of time;

(iii) A description of the current or anticipated legal obligations that establish the retirement requirements applicable to the retirement of an eligible coal plant;

(iv) An estimate of the carbon reduction costs associated with the retirement described in the application, including an estimate of the financing costs associated with each series of carbon reduction bonds proposed to be issued;

(v) An estimate of the amount of the carbon reduction charges necessary to recover the carbon reduction costs to be financed, which estimate and calculation should take into account the estimated date of issuance and estimated principal amount of each series of carbon reduction bonds proposed to be issued;

(vi) An estimate of the date on which the carbon reduction bonds are expected to be issued and the expected term over which the financing costs associated with the issuance are expected to be recovered and, if the bonds are expected to be issued in more than one series, the estimated issuance date and expected term for each bond issuance;

(vii) A proposed adjustment mechanism for making any adjustments necessary to correct for any over-collection or under-collection of carbon reduction charges or otherwise to ensure the timely and complete payment and recovery of carbon reduction costs;

(viii) A description of the carbon reduction property that is created and that may be used to pay or secure carbon reduction bonds;

(ix) A methodology for allocating carbon reduction charges among customer classes that maintains consistency with the allocation methodology for utility production plants accepted by the commission in the electrical company's most recent rate proceeding; and

(x) A description of the trust instrument, including the proposed terms and conditions thereof, to be used to establish a carbon reduction trust pursuant to (h) of this subsection.

(b) The commission shall, within one hundred twenty days of its receipt thereof, review an application for a financing order to determine the sufficiency thereof with respect to the requirements set forth in (a) of this subsection. The commission shall approve the application unless the commission finds:

(i) The retirement plan that the electrical company proposes to undertake in connection with the retirement of an eligible coal plant is inconsistent with applicable law;

(ii) The estimated carbon reduction costs described in the application are not supported by substantial evidence;

(iii) The carbon reduction costs to be financed from proceeds of carbon reduction bonds to be authorized by the financing order will cause the electrical company's program investment to exceed the electrical company's program limit;

(iv) The issuance of carbon reduction bonds is not the least-cost method for customers of financing the retirement of an eligible coal plant; or

(v) The application is not in the public interest as filed.

(c) If an application is found by the commission to satisfy (b)(i) through (v) of this subsection, the commission shall issue a financing order on the terms and conditions proposed in the application, and the financing order shall state:

(i) The carbon reduction costs to be financed from proceeds of carbon reduction bonds authorized by the financing order;

(ii) The carbon reduction charges necessary to recover carbon reduction costs that shall be imposed on and collected from customers of the electrical company, for as long as the carbon reduction bonds are outstanding;

(iii) The adjustment mechanism to be applied for making any necessary adjustments to carbon reduction charges;

(iv) The carbon reduction property that is created and that may be used to pay or secure carbon reduction bonds; and

(v) The methodology for allocating carbon reduction charges among customer classes.

(d) In issuing a financing order, the commission may not alter the terms and conditions of an application, nor may the commission approve an application on terms or conditions other than the terms and conditions set forth in the application.

(e) A financing order may authorize the issuance of more than one series of carbon reduction bonds for the retirement of an eligible coal plant. If so authorized, the electrical company will not subsequently be required to secure a separate financing order for each issuance of carbon reduction bonds or for each scheduled phase of the retirement approved in the financing order.

(f) A financing order shall remain in effect until the carbon reduction bonds issued pursuant to the financing order have been paid in full and all carbon reduction costs relating to the carbon reduction bonds have been paid in full. For so long as carbon reduction bonds issued pursuant to a financing order are outstanding and the related carbon reduction costs have not been paid in full, the carbon reduction charges authorized to be imposed in the financing order shall apply to all customers of the electrical company.

(g) If the commission issues a financing order authorizing the issuance of carbon reduction bonds, the commission may not, in exercising its powers and carrying out its duties regarding regulation and ratemaking, consider: (i) Carbon reduction bonds issued pursuant to the financing order to be the debt of the electrical company; (ii) the carbon reduction charges paid under the financing order to be revenue of the electrical company; or (iii) the carbon reduction costs specified in the financing order to be the costs of the electrical company, nor shall the commission determine that any action taken by an electrical company that is consistent with the financing order is unjust or unreasonable from a regulatory or ratemaking perspective. The commission shall, as of any given time of determination, exclude the effect of the issuance of carbon reduction bonds or the write-down of discontinued operations of an eligible coal plant in calculating the equity ratio of an electrical company. An electrical company shall not issue carbon reduction bonds if doing so would result in any of the major credit rating agencies imputing the carbon reduction bonds as debt on the utility's balance sheet.

(h) Based upon semiannual reports filed by an eligible electrical company with the commission, the commission shall apply the adjustment mechanism approved in the financing order to correct for any over-collection or under-collection of the carbon reduction charges and to provide for timely payment of scheduled principal of and interest on the carbon reduction bonds and the payment and recovery of other financing costs in accordance with the financing order. Application of the adjustment mechanism shall occur at least annually or more frequently as provided in the financing order.

(i) An eligible electrical company or a financing subsidiary may issue carbon reduction bonds pursuant to a financing order. The issuer shall establish and maintain an irrevocable carbon reduction trust with a bank or trust company as trustee. The proceeds of any carbon reduction bonds issued shall be placed in such carbon reduction trust. The carbon reduction trust shall indemnify an electrical company for carbon reduction costs approved by a financing order and for no other purpose. The trustee shall furnish yearly to the commission a financial report in a form designated by the commission with respect to the carbon reduction trust.

(j) The assets of a carbon reduction trust shall be invested and reinvested subject to all the terms, conditions, limitations, and restrictions imposed by the laws of the state upon executors and trustees regarding the making and depositing of investments with trust moneys pursuant to chapter 11.100 RCW. Subject to said terms, conditions, limitations, and restrictions, the trustee of the carbon reduction trust shall have full power to hold, purchase, sell, assign, transfer, reinvest, and dispose of any of the securities and investments in which any of the assets of said fund are invested, including proceeds of investments.

(k) To protect the customer interest, the commission shall oversee the creation, structuring, and marketing of carbon reduction bonds, regardless of whether they are issued by the electrical company or a financing subsidiary. Additionally, representatives of the customer interest are also eligible to oversee the creation, structuring, and marketing of carbon reduction bonds.

(l) Upon satisfaction of all terms of the carbon reduction bonds, any assets remaining in the carbon reduction trust shall be refunded to customers and allocated over such time and among such customers consistent with the allocation methodology for utility production plants accepted by the commission in the electrical company's most recent rate proceeding.

(2) Carbon reduction property.

(a) In general.

(i) Carbon reduction property that is specified in a financing order shall constitute a present property right notwithstanding that the imposition and collection of carbon reduction charges depend on the electrical company to which the order is issued performing its servicing functions relating to the collection of carbon reduction charges and on future energy consumption. Such property is considered to exist whether or not the revenues or proceeds arising from the property have accrued and whether or not the value of the property is dependent on the receipt of service by customers of an electrical company.

(ii) Carbon reduction property specified in a financing order shall continue to exist until the carbon reduction bonds issued pursuant to the order are paid in full and all financing costs of the bonds have been recovered in full.

(iii) Carbon reduction property specified in a financing order issued to an electrical company may be transferred, sold, conveyed, or assigned to any person, including a financing subsidiary. Carbon reduction property may be pledged to secure carbon reduction bonds issued pursuant to the order. Each such transfer, sale, conveyance, assignment, or pledge by an electrical company or financing subsidiary is considered to be a transaction in the ordinary course of business.

(iv) If an eligible electrical company or financing subsidiary defaults on any required payment of revenues arising from carbon reduction property specified in a financing order, a court, upon application by an interested party, and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the revenues. Any such order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the electrical company or financing subsidiary.

(v) The interest of an assignee or pledgee in carbon reduction property specified in a financing order issued to an electrical company, and in the revenue and collections arising from that property, is not subject to setoff, counterclaim, surcharge, or defense by the electrical company, a financing subsidiary, or any other person or in connection with the bankruptcy of the electrical company, a financing subsidiary, or any other entity.

(vi) Any successor to an eligible electrical company or a financing subsidiary, whether pursuant to any bankruptcy, reorganization, or other insolvency proceeding or pursuant to any merger or acquisition, sale, or transfer by operation of law, as a result of such electrical company or financing subsidiary restructuring or otherwise, shall perform and satisfy all obligations of, and have the same rights under a financing order as, the electrical company or financing subsidiary under the financing order in the same manner and to the same extent as the electrical company or financing subsidiary, including collecting and paying to the person entitled to receive them revenues with respect to the carbon reduction property.

(b) Security interests. Except as otherwise provided in this subsection (2)(b), the creation, perfection, and enforcement of security interests in carbon reduction property to secure carbon reduction bonds are governed by chapter 62A.9A RCW. Notwithstanding chapter 62A.9A RCW, with regard to creating, perfecting, and enforcing a valid security interest in carbon reduction property to secure carbon reduction bonds, all of the following apply:

(i) The description of carbon reduction property in a security agreement is sufficient if the description refers to this subsection (2)(b) and the financing order creating the carbon reduction property.

(ii) A security interest is created, valid, binding, and perfected at the time a security agreement is made and attaches without any physical delivery of collateral or other act, and the lien of such security interest shall be valid, binding, and perfected against all parties having claims of any kind in tort, contract, or otherwise against the person granting the security interest, regardless of whether such parties have notice of the lien. The filing or recording of a financial statement or instrument in which such a security interest is created is not required.

(iii) A security interest in carbon reduction property is a continuously perfected security interest and has priority over any other lien created by operation of law or otherwise, which subsequently attaches to the carbon reduction property.

(iv) The priority of a security interest created under this subsection (2)(b) is not affected by the commingling of proceeds arising from carbon reduction property with other amounts.

(v) Any changes that the commission makes to a financing order that creates the carbon reduction property does not affect the validity, perfection, or priority of a security interest in the carbon reduction property.

(c) Sales. The sale, assignment, and transfer of carbon reduction property are governed by this subsection (2)(c). All of the following apply to a sale, assignment, or transfer under this subsection (2)(c):

(i) The sale, assignment, or transfer is an absolute transfer of, and not a pledge of or secured transaction relating to, the seller's right, title, and interest in, to, and under the carbon reduction property, if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer. After such a transaction, the carbon reduction property is not subject to any claims of the seller or the seller's creditors, other than creditors holding a prior security interest in the carbon reduction property perfected under (b) of this subsection.

(ii) The characterization of the sale, assignment, or transfer as an absolute transfer under (a) of this subsection and the corresponding characterization of the purchaser's property interest are not affected by any of the following factors:

(A) Commingling of amounts arising with respect to the carbon reduction property with other amounts;

(B) The retention by the seller of a partial or residual interest, including an equity interest, in the carbon reduction property, whether direct or indirect or whether subordinate or otherwise;

(C) Any recourse that the purchaser may have against the seller;

(D) Any indemnifications, obligations, or repurchase rights made or provided by the seller;

(E) The responsibility of the seller to collect carbon reduction charges; and

(F) The treatment of the sale, assignment, or transfer for tax, financial reporting, or other purposes.

(3) Carbon reduction bonds not public debt The state is not liable on carbon reduction bonds and the bonds are not a debt of the state. An issue of carbon reduction bonds does not, directly or indirectly or contingently, obligate the state or a political subdivision of the state to levy any tax or make any appropriation for payment of the bonds.

(4) Carbon reduction bonds as legal investments. Except for any owner, subsidiary, or other affiliate of an eligible electrical company, any of the following may legally invest any sinking funds, moneys, or other funds belonging to them or under their control in carbon reduction bonds:

(a) The state, municipal corporations, political subdivisions, public bodies, and public officers except for members of the commission;

(b) Banks and bankers, savings and loan associations, credit unions, trust companies, savings banks and institutions, investment companies, insurance companies, insurance associations, and other persons carrying on a banking or insurance business; and

(c) Personal representatives, guardians, trustees, and other fiduciaries.

(5) State pledge.

(a) In this subsection (5), "bondholder" means a person who holds a carbon reduction bond.

(b) The state pledges to and agrees with bondholders that the state will not do any of the following:

(i) Take or permit any action that impairs the value of carbon reduction property; or

(ii) Except as allowed under this section, reduce, alter, or impair carbon reduction charges that are imposed, collected, and remitted for the benefit of the bondholders until any principal, interest, premium, or other charge incurred, or contract to be performed, in connection with carbon reduction bonds held by the bondholders is paid or performed in full.

(c) Any person who issues carbon reduction bonds is allowed to include the pledge specified in (b) of this subsection in the bonds and relating documentation.

(6) Effect of invalidity on actions. Effective on the date that carbon reduction bonds are first issued under this section, if any provision of this section is held to be invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence shall not affect any action allowed under this section that is taken by an electrical company, a financing subsidiary, an assignee, a collection agent, or a party to a transaction, and any such action shall remain in full force and effect.

NEW SECTION. **Sec.**  CONFLICTS OF LAW. In the event of conflict between section 9 of this act and any other law regarding the attachment, assignment, or perfection, or the effect of perfection, or priority of any security interest in carbon reduction property, section 9 of this act to the extent of the conflict shall govern and control.

NEW SECTION. **Sec.**  RECOVERY OF COSTS ASSOCIATED WITH RETIREMENT OF AN ELIGIBLE COAL PLANT. (1) For the purposes of this section:

(a) "Impacted electrical company" means an eligible electrical company that incurs mitigation costs as a result of the retirement of an eligible coal plant.

(b) "Memorandum of agreement" means an agreement between an impacted electrical company and a state other than the state of Washington which includes obligations accepted by the impacted electrical company to mitigate for the impacts of the retirement of an eligible coal plant. The obligations of a memorandum of agreement may include, but may not be limited to, payment of mitigation costs and the development of replacement electrical generation facilities, other than coal-fired generation facilities.

(c) "Mitigation costs" means payments made by an impacted electrical company to another state either under a memorandum of agreement, or as a requirement of law for: (i) Financial assistance to a community affected by the retirement of an eligible coal plant; (ii) financial assistance to retrain workers who will be displaced as a result of the retirement of an eligible coal plant; and (iii) any other cash or in-kind payment made pursuant to a memorandum of agreement entered into between an electrical company and another state regarding the retirement of an eligible coal plant.

(2) An impacted electrical company shall be entitled to recover prudently incurred mitigation costs from its customers. No replacement electric generation facilities shall be recoverable in an impacted electrical company's Washington rates unless the impacted electrical company can demonstrate that the replacement electric generation facilities provide benefits to its Washington customers. An impacted electrical company must file a petition with the commission to recover mitigation costs within ten years of the retirement of an eligible coal plant. No mitigation costs incurred subsequent to this date shall be allowed in the impacted electrical company's rates. An impacted electrical company may file a petition with the commission to recover mitigation costs at any time, and an impacted electrical company may file more than one petition for the recovery of mitigation costs.

(3) An impacted electrical company shall be entitled to petition the commission to recover in rates any investments made and expenses incurred to restore any loss of transfer capacity on, and to maintain the efficient operation of, the transmission system used to deliver electrical energy from an eligible coal plant to retail electric customers in Washington, when the transfer capacity or efficient operation of the transmission system are affected by the retirement of portions of an eligible coal plant and other units of the eligible coal plant remain in operation.

NEW SECTION. **Sec.**  SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

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

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

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

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

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

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

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

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

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

(9) This section does not apply to: (a) A long-term financial commitment for the purchase of coal transition power with termination dates consistent with the applicable dates in RCW 80.80.040(3)(c); or (b) a long-term financial commitment pursuant to which an electrical company incurs eligible coal plant acquisition costs; provided, however, that an electrical company that incurs eligible coal plant acquisition costs shall, within ten years of the effective date of this section, file a binding notice to retire one or more eligible coal plants under the Washington state coal generation retirement program within chapter 80.82 RCW.

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

**--- END ---**