

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

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

NEW SECTION. **Sec. 1.** This act may be known and cited as the Washington state eligible coal unit risk mitigation act.

NEW SECTION. **Sec. 2.** Sections 3 and 4 of this act constitute a new chapter in Title 80 RCW.

NEW SECTION. **Sec. 3.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Acquisition costs" means the amount paid by an electrical company to acquire an increased interest in an eligible coal unit.

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

(3) "Decommissioning" means the reduction, termination, severance, stranding, or closure of assets, equipment, facilities, property, rights-of-way, easements, operations, labor, personnel, contracts, agreements, franchises, or any other interest of an electrical company in one or more eligible coal units.

(4) "Decommissioning and remediation costs" means any cost or expense incurred, or to be incurred, by an electrical company in connection with the decommissioning and remediation of one or more eligible coal units, including costs or expenses in connection with: (A) the acquisition, extension, modification, monitoring, alteration, or surrender of any permits, licenses, approvals, consents, orders, or authorizations required with respect to any such actions or interests; (B) any damages, fees, charges, or other expenses incurred in any legal, judicial, administrative, or regulatory proceedings, or any settlements thereof, arising in connection with any such actions or interests, not including any damages, penalties, fees, charges, settlement payments, or other expenses resulting from malfeasance or other unlawful conduct; and (C) capital costs, construction work in progress, and the unamortized cost of the property that is decommissioned, including any demolition or similar cost that exceeds the salvage value of the property. Decommissioning and remediation costs may be incurred by an electrical company prior to, and may be incurred by an electrical company from and after, the date of decommissioning of one or more eligible coal units.

(5) "Decommissioning and remediation plan" means a plan of an electrical company for the decommissioning and remediation of one or more eligible coal units.

(6) "Eligible coal plant" means a coal-fired electric generating facility that: (a) had two or less generating units as of January 1, 1980, and three or more generating units as of January 1, 2016; (b) is owned by more than one electrical company as of January 1, 2016; and (c) provides, as a portion of the load served by the coal-fired electric generating facility, electricity paid for in rates by ratepayers in the state of Washington.

(7) "Eligible coal unit" means any generating unit of an eligible coal plant.

(8) "Eligible coal unit risk mitigation plan" means a plan of an electrical company for (a) the decommissioning of more than 300 megawatts of capacity of interest in one or more eligible coal units, and (b) the acquisition of less than 250 megawatts of capacity of additional interest in an eligible coal unit, which acquisition shall occur simultaneous with or subsequent to the decommissioning pursuant to part (a).

(9) "Remediation" means the identification, assessment, handling, storage, minimization, containment, cleanup, removal, transportation, or disposal of any substance, material, circumstance, or condition that presents a threat or potential threat to human health or the environment.

NEW SECTION. **Sec. 4.** ELIGIBLE COAL UNIT RISK MITIGATION PLAN.

(1) On or before December 31, 2017, an electrical company may file a petition with the commission for approval of an eligible coal unit risk mitigation plan. In support of such

petition, the electrical company must file supporting testimony and exhibits that include, at a minimum, the following: (a) a proposed decommissioning and remediation plan for the decommissioning of not less than 300 megawatts of capacity of one or more eligible coal units; and (b) the proposed agreement for the acquisition of an increased interest of not more than 250 megawatts of capacity of an eligible coal unit, which acquisition shall occur simultaneous with or subsequent to the decommissioning pursuant to part (a).

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

(a) A planned date of decommissioning of one or more eligible coal units by the electrical company;

(b) An estimate of the decommissioning and remediation costs associated with the decommissioning and remediation of one or more eligible coal unit(s), expressed in dollars current in the year the plan is prepared, and based, in part, on an engineering report issued by a reputable third party no less than one year before the date the plan is submitted to the commission;

(c) The accounting treatment for tracking and specifying decommissioning and remediation costs for one or more eligible coal unit(s), which may include the use of a reserve account, the funds of which (i) shall include an irrevocable pledge of amounts of any regulatory liability to such account, (ii) shall be used only to fund and recover decommissioning and remediation costs for one or more eligible coal unit(s), (iii) shall not be used for any purpose other than the funding and recovery of decommissioning and remediation costs for one or more eligible coal unit(s), and (iv) shall not be reduced, altered, impaired, or limited from the date of commission approval of the inclusion of such funds in the reserve account until all decommissioning

and remediation costs for all eligible coal units are recovered or paid in full;

(d) A statement of the accumulated reserve of the electrical company for the decommissioning and remediation of one or more eligible coal unit(s) as of the date of submission of the plan;

(e) A description of the stages by which decommissioning and remediation are intended to be accomplished; and

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

(3) Upon receipt of a petition for approval of an eligible coal unit risk mitigation plan, the commission shall provide notice to the public and potentially affected parties and set the petition for hearing as an adjudicative proceeding under chapters 34.05 and 80.04 RCW. Any party may request that the commission expedite the hearing of the petition. An administrative law judge of the commission may enter an initial order including findings of fact and conclusions of law, as provided in RCW 80.01.060(3). The commission shall issue a final order that approves, approves subject to conditions, or disapproves the petition within one hundred eighty days after receipt of the petition.

(4) The commission must approve an eligible coal unit risk mitigation plan pursuant to this section if and only if the commission determines that the terms of such a plan are reasonable and provide adequate protection to ratepayers and the electrical company, considering (i) the need of the electrical company for baseload generation to serve ratepayers, (ii) the reasonableness of the acquisition costs, and (iii) the overall costs and benefits of the decommissioning and remediation plan. If the commission finds that an eligible coal unit risk mitigation plan does not meet the criteria under this

subsection (4), then the commission shall reject the petition or make its approval contingent upon satisfaction of certain conditions. If the commission conditions approval of the petition, it shall direct the electric company to accept the modification within a time specified by the commission or withdraw the petition with leave to refile.

**Sec. 5.** 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 for the acquisition of an additional interest in an eligible coal unit pursuant to an eligible coal unit risk mitigation plan. For the purposes of this subsection (9), the terms "eligible coal unit" and "eligible coal unit risk mitigation plan" have the same meanings as in section 3 of this act.

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

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