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**BILL REQUEST - CODE REVISER'S OFFICE**

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BILL REQ. #: S-3292.1/15

ATTY/TYPIST: AA:lcl

BRIEF DESCRIPTION: Concerning the retirement of electric generation facilities.

1 AN ACT Relating to the retirement of electric generation  
2 facilities; amending RCW 80.80.060; adding a new chapter to Title 80  
3 RCW; and creating new sections.

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

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

7 NEW SECTION. **Sec. 2.** Sections 5 through 8 of this act  
8 constitute a new chapter in Title 80 RCW.

9 NEW SECTION. **Sec. 3.** Sections 6 and 7 of this act are each  
10 codified in the new chapter created in section 2 of this act under  
11 the subchapter heading "eligible coal generating unit acquisitions."

12 NEW SECTION. **Sec. 4.** Section 8 of this act is codified in the  
13 new chapter created in section 2 of this act under the subchapter  
14 heading "coal plant retirement bonds."

15 NEW SECTION. **Sec. 5.** DEFINITIONS. The definitions in this  
16 section apply throughout this chapter unless the context clearly  
17 requires otherwise.

1 (1) "Closing" means the time at which a wholly owned eligible  
2 coal generating unit is decommissioned.

3 (2) "Commonly owned eligible coal generating unit" means any  
4 generating unit of an eligible coal plant that: (a) Has a nameplate  
5 capacity of seven hundred megawatts or greater; (b) is owned in  
6 common by an electrical company and one or more other electrical  
7 companies, entities, or persons; and (c) whose operations are  
8 governed under a contract to which all owners are parties.

9 (3) "Decommissioning and remediation" means:

10 (a) The series of activities undertaken beginning at the time of  
11 closing of an eligible coal generating unit to ensure that the final  
12 disposition of the site or components or materials associated with  
13 the unit is accomplished safely and in compliance with all applicable  
14 federal, state, and local laws; and

15 (b) The series of activities that are necessary or advisable to  
16 identify, eliminate, or minimize any threat or potential threat to  
17 human health or the environment.

18 (4)(a) "Decommissioning and remediation costs" means any prudent,  
19 reasonable, and appropriate cost or expense approved by the  
20 commission pursuant to section 6 of this act and incurred, or to be  
21 incurred, by an electrical company in connection with the  
22 decommissioning and remediation of an eligible coal generating unit.  
23 Decommissioning and remediation costs may be incurred by an  
24 electrical company prior to, and may be incurred by an electrical  
25 company from and after, the date of decommissioning of an eligible  
26 coal generating unit. Decommissioning and remediation costs may  
27 include prudent, reasonable, and appropriate costs and expenses  
28 incurred or to be incurred in connection with the following:

29 (i) The permanent decommissioning, reduction, termination,  
30 severance, stranding, or closure of assets, equipment, facilities,  
31 property, rights-of-way, easements, operations, labor, personnel,  
32 contracts, agreements, franchises, or any other interest in an  
33 eligible coal generating unit, including costs or expenses in  
34 connection with: (A) The acquisition, extension, modification,  
35 alteration, or surrender of any permits, licenses, approvals,  
36 consents, orders, or authorizations required with respect to any such  
37 actions or interests; and (B) any damages, fees, charges, or other  
38 expenses incurred in any legal, judicial, administrative, or  
39 regulatory proceedings, or any settlements thereof, arising in  
40 connection with any such actions or interests. Decommissioning and

1 remediation costs do not include any damages, penalties, fees,  
2 charges, settlement payments, or other expenses resulting from  
3 malfeasance or other unlawful conduct;

4 (ii) The remediation, identification, assessment, handling,  
5 storage, minimization, containment, cleanup, removal, transportation,  
6 or disposal of any substance, material, circumstance, or condition  
7 that presents a threat or potential threat to human health or the  
8 environment, including costs or expenses in connection with:

9 (A) Analyses, tests, studies, or investigations conducted or required  
10 in connection with such matters; (B) permits, licenses, approvals,  
11 consents, orders, or authorizations required in connection with such  
12 matters; and (C) any damages, fees, charges, or other costs and  
13 expenses incurred in any legal, judicial, administrative, or  
14 regulatory actions or proceedings, or any settlements thereof,  
15 arising in connection with any such matters, not including any  
16 damages, penalties, fees, charges, settlement payments, or other  
17 expenses resulting from malfeasance or other unlawful conduct; and

18 (iii) Capital costs and the unamortized cost of the property that  
19 is decommissioned, including any demolition or similar cost that  
20 exceeds the salvage value of the property.

21 (b) In no case does "decommissioning and remediation costs"  
22 include monetary or in-kind payments, or any unlawful, unreasonable,  
23 or punitive tax payment, made by an electrical company to another  
24 state or its political subdivisions, either by agreement or as a  
25 requirement of law, to mitigate for impairment of economic or  
26 societal conditions, revenue loss, or other impacts resulting from  
27 the closure of an eligible coal generating unit.

28 (c) "Decommissioning and remediation costs" do not include costs  
29 that were the obligation of the previous owner of an eligible coal  
30 plant whose ownership interest has been transferred to an electrical  
31 company in an acquisition approved under section 6 of this act.

32 (5) "Decommissioning and remediation plan" means a plan for the  
33 decommissioning and remediation of a wholly owned eligible coal  
34 generating unit.

35 (6) "Eligible coal generating unit" means any commonly owned  
36 eligible coal generating unit or any wholly owned eligible coal  
37 generating unit.

38 (7) "Eligible coal generating unit acquisition costs" means all  
39 prudent, reasonable, and appropriate costs and expenses approved by  
40 the commission pursuant to section 6 of this act and incurred, or to

1 be incurred, by an electrical company in connection with the  
2 acquisition of an increased interest in any one or more eligible coal  
3 generating units that provides, as a portion of the load served by  
4 such unit, electricity paid for in rates by retail electric customers  
5 in the state of Washington. Eligible coal generating unit acquisition  
6 costs include prudent, reasonable, and appropriate costs and expenses  
7 incurred by an electrical company to secure, finance, purchase, and  
8 acquire an increased interest in any one or more such eligible coal  
9 generating units, together with any and all rights and obligations,  
10 not including decommissioning and remediation obligations,  
11 contractual or otherwise, related to the ownership, operation, and  
12 control of such interest, and includes transaction costs, closing  
13 costs, legal fees, taxes, charges, expenses, and other amounts  
14 incurred by an electrical company in connection with such  
15 acquisitions, but does not include any unlawful, unreasonable, or  
16 punitive tax. In addition, "eligible coal generating unit acquisition  
17 costs" do not include any costs or expenses related in any manner to  
18 the closure of an eligible coal generating unit.

19 (8) "Eligible coal plant" means a coal-fired electric generating  
20 facility that: (a) Had two or less generating units as of January 1,  
21 1980, and three or more generating units as of the effective date of  
22 this section; (b) is owned by more than one electrical company as of  
23 the effective date of this section; and (c) provides, as a portion of  
24 the load served by the coal-fired electric generating facility,  
25 electricity paid for in rates by retail electric customers in the  
26 state of Washington.

27 (9) "Nameplate capacity" means the manufacturer's rated capacity  
28 of a facility to generate electricity as expressed in megawatts,  
29 including fractions of a megawatt.

30 (10) "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 a wholly owned eligible coal  
33 generating unit to be decommissioned pursuant to a decommissioning  
34 and remediation plan.

35 (11) "Wholly owned eligible coal generating unit" means any  
36 generating unit of an eligible coal plant that: (a) Has a nameplate  
37 capacity of less than four hundred megawatts; and (b) is owned  
38 exclusively by one electrical company as a result of an approval by  
39 the commission under this chapter.

1           NEW SECTION.           **Sec. 6.**           ACQUISITION, DECOMMISSIONING, AND

2 REMEDIATION OF AN ELIGIBLE COAL GENERATING UNIT. (1) On the petition  
3 of an electrical company, the commission may approve, disapprove, or  
4 otherwise make approval contingent upon the satisfaction of certain  
5 conditions: (a) The acquisition of an increased interest in any one  
6 or more eligible coal generating units; (b) the recovery of eligible  
7 coal generating unit acquisition costs; (c) one or more  
8 decommissioning and remediation plans; and (d) one or more resource  
9 replacement plans. A petition filed under this section may only be  
10 filed on or before December 31, 2018.

11           (2) The electrical company must file supporting testimony and  
12 exhibits together that includes, at a minimum, the following: (a) The  
13 proposed agreement for the acquisition of an increased interest in  
14 both the wholly owned and commonly owned eligible coal generating  
15 units and all associated eligible coal generating unit acquisition  
16 costs; (b) a proposed decommissioning and remediation plan; (c) a  
17 proposed resource replacement plan; (d) a complete description of all  
18 pending litigation, orders, or judgments regarding the eligible coal  
19 plant; (e) a complete description of all federal, state, or local  
20 regulatory or enforcement actions regarding the eligible coal plant;  
21 (f) all studies, reports, or analyses conducted by or for the  
22 electrical company, or in possession of the electrical company,  
23 regarding the economic and environmental costs and benefits of  
24 eligible coal plant acquisition, decommissioning, and remediation;  
25 and (g) a proposed customer notice designed to inform the electrical  
26 company's customers of the filing.

27           (3) The decommissioning and remediation plan filed pursuant to  
28 this section shall include the following:

29           (a) A planned date of closing of the unit that would be  
30 consistent with its remaining useful life based on a proposed  
31 schedule for the full depreciation of the unit by the electrical  
32 company;

33           (b) A planned date of closing of the unit by the electrical  
34 company;

35           (c) An estimate of the decommissioning and remediation costs  
36 associated with the unit, expressed in dollars current in the year  
37 the plan is prepared, and based, in part, on an engineering report  
38 issued by a reputable third party no less than one year before the  
39 date the plan is submitted to the commission;

1 (d) A plan for funding the decommissioning and remediation of the  
2 unit;

3 (e) The accumulated reserve of the electrical company for the  
4 decommissioning and remediation of the unit as of the date of  
5 submission of the plan, as well as identification of any sinking fund  
6 or other funding source of any kind available for the payment of  
7 decommissioning and remediation costs;

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

10 (g) An analysis of the costs and benefits of insurance products  
11 to limit the exposure of the electrical company to decommissioning  
12 and remediation costs; and

13 (h) Any other information which the commission requests or  
14 requires to be disclosed.

15 (4) The resource replacement plan filed pursuant to this section  
16 shall include a plan of the electrical company to acquire or develop  
17 a portfolio of electric generation facilities, the combination of  
18 which is functionally equivalent to an emissions level of nine  
19 hundred seventy pounds of greenhouse gases per megawatt-hour;  
20 provided, however, that for purposes of calculating the greenhouse  
21 gas emissions level of such portfolio, the electrical company shall  
22 be entitled to a credit in an amount equal to one-sixth of the annual  
23 average greenhouse gas emissions of the wholly owned eligible coal  
24 generating unit to be decommissioned pursuant to a decommissioning  
25 and remediation plan. The commission shall direct the electrical  
26 company to: (a) Retire any renewable energy credits associated with  
27 resource replacement undertaken pursuant to a resource replacement  
28 plan approved under this section; and (b) not use the renewable  
29 energy credits for compliance with any other state statute.

30 (5) When a petition is filed, the commission shall provide notice  
31 to the public and potentially affected parties and set the petition  
32 for hearing as an adjudicative proceeding under chapters 34.05 and  
33 80.04 RCW. Any party may request that the commission expedite or  
34 continue the hearing of the petition for good cause. An  
35 administrative law judge of the commission may enter an initial order  
36 including findings of fact and conclusions of law, as provided in  
37 RCW 80.01.060(3). The commission shall issue a final order that  
38 approves, disapproves, or otherwise makes approval contingent upon  
39 satisfaction of certain conditions, the petition within ten months  
40 after an electrical company files the petition, or within ninety days

1 after an initial order by an administrative law judge. The commission  
2 may for good cause, on its own motion, or on the request of a party,  
3 extend the time for issuance of a final order if necessary to obtain  
4 a full record and allow sufficient time for review. Information  
5 provided by the facility owner to the purchasing electrical company  
6 related to the costs and benefits associated with acquisition of one  
7 or more eligible coal generating units must be made available to  
8 other parties to the petition and, if confidential, must be provided  
9 under a protective order entered by the commission.

10 (6) The commission may approve a petition filed pursuant to this  
11 section for the acquisition of an increased interest in any one or  
12 more eligible coal generating units, the recovery of eligible coal  
13 generating unit acquisition costs, a decommissioning and remediation  
14 plan, and a resource replacement plan only if the commission  
15 determines that the approval is in the public interest and that each  
16 of the following will result in the least-cost, least-risk outcome  
17 for customers, including low-income customers, considering the facts  
18 and circumstances associated with the acquisition existing at the  
19 time of review, as compared with absence of the acquisition: (a) The  
20 acquisition of an increased interest in the wholly owned and commonly  
21 owned eligible coal generating units; (b) the recovery of prudent,  
22 reasonable, and appropriate eligible coal generating unit acquisition  
23 costs; (c) the proposed date for closing of a wholly owned eligible  
24 coal generating unit in a decommissioning and remediation plan  
25 earlier than in the absence of the acquisition; and (d) the proposed  
26 acquisition or development of a portfolio of electric generation  
27 facilities to replace the capacity and energy of a wholly owned  
28 eligible coal generating unit to be decommissioned pursuant to a  
29 decommissioning and remediation plan. In addition, any approval must  
30 be based on a finding that the electrical company has not assumed  
31 decommissioning and remediation cost obligations from the seller of  
32 the eligible coal plant, and that the acquisition, decommissioning,  
33 and remediation proposal in the petition will result in savings to  
34 customers as compared to the absence of the acquisition. Commission  
35 approval must include a determination with respect to the obligation  
36 of shareholders of the electrical company for any costs under this  
37 act.

38 (7) If the commission finds that a proposed agreement for  
39 acquisition of an increased interest in any one or more eligible coal  
40 generating units, a proposed decommissioning and remediation plan

1 filed pursuant to this section, or a proposed resource replacement  
2 plan filed pursuant to this section does not meet the criteria under  
3 this section, then the commission shall reject the petition or make  
4 its approval contingent upon satisfaction of certain conditions and  
5 consistent with the criteria under this section. If the commission  
6 conditions approval of the petition, it shall direct the electric  
7 company to accept the modification within a time specified by the  
8 commission or withdraw the petition with leave to refile.

9 (8) No agreement for an electrical company's acquisition of an  
10 increased interest in any one or more eligible coal generating units  
11 takes effect until the commission approves the petition pursuant to  
12 this section.

13 (9) Upon approval by the commission of a petition for the  
14 acquisition of an increased interest in any one or more eligible coal  
15 generating units and the recovery of eligible coal generating unit  
16 acquisition costs, a decommissioning and remediation plan, and a  
17 resource replacement plan, the eligible coal generating units shall  
18 be deemed used and useful in the provision of public utility service  
19 until closing, and the eligible coal generating unit acquisition  
20 costs shall be deemed to be prudent, reasonable, and appropriate  
21 costs and expenses incurred, or to be incurred, by an electrical  
22 company; provided, however, that such costs may not exceed the costs  
23 approved by the commission pursuant to a petition under this section.

24 (10) Upon the acquisition of an increased interest in an eligible  
25 coal generating unit, all eligible coal generating unit acquisition  
26 costs that are capital in nature may be included in an electrical  
27 company's rate base; provided, however, that coal plant retirement  
28 bonds, as set forth in this chapter, shall not be used to purchase or  
29 otherwise capitalize such acquisition costs. The electrical company  
30 shall be allowed to earn a reasonable and sufficient rate of return  
31 on such capital investment.

32 (11) Upon the acquisition of an increased interest in an eligible  
33 coal plant, the electrical company acquiring such increased interest  
34 shall be responsible for all costs and liabilities that are in any  
35 way associated with the closing, or the effect of closing, an  
36 eligible coal plant that is wholly owned by the electrical company.

37 (12) Nothing in this section shall be construed to limit the  
38 commission's authority to conduct other proceedings under this title.  
39 The commission may conduct such proceedings concurrently with the  
40 review and disposition of a petition to acquire an eligible coal

1 generating unit under this section. Nothing in this section is  
2 intended to or shall in any way modify any existing agreement related  
3 to the operation of an eligible coal plant.

4 (13) An electrical company subject to a final order issued under  
5 this section may declare circumstances have rendered the performance  
6 of the order impracticable to perform. Upon making the declaration,  
7 the order is immediately terminated. No company shall be subject to  
8 penalties or costs for declaring impracticability of performance of a  
9 final order. The declaration of impracticability of performance is  
10 not subject to commission or judicial review.

11 (14) The governor, in cooperation with the legislature and the  
12 commission, is authorized to convene a working group and process, in  
13 cooperation with a state in which an eligible coal plant is located,  
14 to examine and address the potential effects on workers and  
15 communities resulting from a decommissioning and remediation plan  
16 approved by the commission under this chapter.

17 NEW SECTION. **Sec. 7.** DECOMMISSIONING AND REMEDIATION PLAN  
18 REPORTING AND AMENDMENT. (1) On or before April 1st of each year,  
19 each electrical company with a decommissioning and remediation plan  
20 approved under section 6 of this act shall report to the commission  
21 regarding the adequacy of such plan. Each report shall include the  
22 following information for the immediately preceding calendar year:

23 (a) The decommissioning and remediation activities undertaken by  
24 the electrical company and the reasons for such activities;

25 (b) The decommissioning and remediation costs incurred by the  
26 electrical company; and

27 (c) The amount of money that customers of such electrical company  
28 were charged for the decommissioning and remediation of the wholly  
29 owned eligible coal generating unit, including charges by customer  
30 class and average bill impact for residential customers. Such amount  
31 shall not exceed the decommissioning and remediation costs approved  
32 in the application under section 6 of this act or additional costs,  
33 if any, approved under this section.

34 (2) An electrical company shall make reports required in this  
35 section available to its customers on the company web site, through a  
36 bill insert, or by other appropriate means.

37 (3) An electrical company may not recover decommissioning and  
38 remediation costs of a wholly owned eligible coal generating unit  
39 that exceed the estimate of the decommissioning and remediation costs

1 approved in the decommissioning and remediation plan for such unit  
2 without obtaining commission approval of an amendment to such plan.  
3 An electrical company may file a petition for amendment of an  
4 approved decommissioning and remediation plan approved by the  
5 commission pursuant to section 6 of this act. The procedure and  
6 standards for approval or disapproval of a petition for amendment of  
7 a plan is the same procedure and standards as provided for the  
8 initial approval of a plan in section 6 of this act; provided,  
9 however, that an electrical company may not petition for an amendment  
10 of a plan which has the effect of increasing the decommissioning and  
11 remediation costs approved in the initial plan, unless such costs  
12 were not reasonably foreseeable and were reasonable and prudently  
13 incurred.

14 NEW SECTION.           **Sec. 8.**           COAL PLANT RETIREMENT BONDS.

15 (1) Definitions. The definitions in this subsection apply throughout  
16 this section unless the context clearly requires otherwise.

17       (a) "Adjustment mechanism" means a formula-based mechanism  
18 approved by the commission for making any adjustments to the amount  
19 of the coal plant retirement charges that are necessary to correct  
20 for any over collection or under collection of the coal plant  
21 retirement charges or otherwise to ensure the timely and complete  
22 payment and recovery of coal plant retirement costs and financing  
23 costs. The adjustment mechanism is not to be used as a means to  
24 authorize the issuance of coal plant retirement bonds in a principal  
25 amount greater, or the payment or recovery of coal plant retirement  
26 costs in an amount greater, than the amount that was authorized in  
27 the financing order which established the adjustment mechanism.

28       (b) "Affiliated interest" has the same meaning as in  
29 RCW 80.16.010.

30       (c) "Ancillary agreement" means any bond insurance policy, letter  
31 of credit, reserve account, surety bond, swap arrangement, hedging  
32 arrangement, liquidity or credit support arrangement, or other  
33 similar agreement or arrangement entered into in connection with the  
34 issuance of coal plant retirement bonds that is designed to promote  
35 the credit quality and marketability of the bonds or to mitigate the  
36 risk of an increase in interest rates.

37       (d) "Bondholder" means any holder or owner of a coal plant  
38 retirement bond.

1 (e) "Consumer-owned utility" means a municipal utility formed  
2 under Title 35 RCW, a public utility district formed under  
3 Title 54 RCW, an irrigation district formed under chapter 87.03 RCW,  
4 a cooperative formed under chapter 23.86 RCW, a mutual corporation or  
5 association formed under chapter 24.06 RCW, or port district within  
6 which an industrial district has been established as authorized by  
7 Title 53 RCW that is engaged in the business of distributing  
8 electricity to more than one retail electric customer in the state.

9 (f) "Financing cost" means the costs to issue, service, repay, or  
10 refinance coal plant retirement bonds, whether incurred or paid upon  
11 issuance of the bonds or over the life of the bonds, and approved for  
12 recovery by the commission in a financing order. "Financing cost" may  
13 include any of the following:

14 (i) Principal, interest, and redemption premiums that are payable  
15 on coal plant retirement bonds.

16 (ii) Any payment required under an ancillary agreement and any  
17 amount required to fund or replenish a reserve account or other  
18 account established under any indenture, ancillary agreement, or  
19 other financing document relating to the coal plant retirement bonds.

20 (iii) Any taxes, franchise fees or license fees, imposed on coal  
21 plant retirement revenues.

22 (iv) Any cost related to issuing and servicing coal plant  
23 retirement bonds or the application for a financing order including,  
24 but not limited to, servicing fees and expenses, trustee fees and  
25 expenses, legal fees and expenses, administrative fees, placement  
26 fees, capitalized interest, rating agency fees, and any other related  
27 cost that is approved for recovery in the financing order.

28 (g) "Financing order" means an order of the commission pursuant  
29 to subsection (3) of this section that grants, in whole or in part,  
30 an application filed pursuant to subsection (2) of this section and  
31 that authorizes the issuance of coal plant retirement bonds in one or  
32 more series, the imposition, charging, and collection of coal plant  
33 retirement charges, and the creation of coal plant retirement  
34 property. A financing order may set forth conditions or contingencies  
35 on the effectiveness of the relief authorized therein and may grant  
36 relief that is different from the relief requested in the  
37 application.

38 (h) "Financing parties" means:

39 (i) Any trustee, collateral agent, or other person acting for the  
40 benefit of any bondholder;

1 (ii) Any party to an ancillary agreement, the rights and  
2 obligations of which relate to or depend upon the existence of coal  
3 plant retirement property, the enforcement and priority of a security  
4 interest in coal plant retirement property, the timely collection and  
5 payment of coal plant retirement revenues, or a combination of these  
6 factors.

7 (i) "Financing statement" has the same meaning as in  
8 RCW 62A.9A-102(a)(39).

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

13 (i) Issuing, facilitating, or administering coal plant retirement  
14 bonds;

15 (ii) Facilitating or administering coal plant retirement  
16 property;

17 (iii) Entering into mortgages, notes, loans, or other contractual  
18 obligations secured by coal plant retirement property for the purpose  
19 of financing decommissioning and remediation costs; or

20 (iv) Any other business as may be reasonably incidental to those  
21 described in (j)(i), (ii), and (iii) of this subsection (1),  
22 including the ownership and use of coal plant retirement property in  
23 connection therewith.

24 (k) "Nonbypassable" means that the payment of coal plant  
25 retirement charges may not be avoided by any retail customer of an  
26 electrical company or its successors, and must be paid by any such  
27 retail customer that receives electric delivery service from such  
28 electrical company or its successors for as long as the coal plant  
29 retirement bonds are outstanding.

30 (l) "Coal plant retirement bonds" means bonds, debentures, notes,  
31 certificates of participation, certificates of beneficial interest,  
32 certificates of ownership, or other evidences of indebtedness or  
33 ownership that are issued by a financing subsidiary to recover,  
34 finance, or refinance decommissioning and remediation costs and  
35 financing costs and that are secured by or payable from coal plant  
36 retirement revenues.

37 (m) "Coal plant retirement charge" means a nonbypassable charge  
38 paid by a customer of an electrical company for the recovery of  
39 decommissioning and remediation costs and financing costs.

40 (n) "Coal plant retirement property" means all of the following:

1 (i) The rights and interests of an electrical company and a  
2 financing subsidiary under a financing order, including the right to  
3 impose, collect, and receive coal plant retirement charges in the  
4 amount necessary to provide for the full payment and recovery of all  
5 decommissioning and remediation costs and financing costs determined  
6 to be recoverable in the financing order and to obtain adjustments to  
7 the charges as provided in this chapter and any interest in the  
8 rights and interests; and

9 (ii) All revenues, receipts, collections, rights to payment,  
10 payments, moneys, claims, or other proceeds arising from the rights  
11 and interests specified in (n)(i) of this subsection (1).

12 (o) "Coal plant retirement revenues" means all revenues,  
13 receipts, collections, payments, moneys, claims, or other proceeds  
14 arising from coal plant retirement property.

15 (p) "Successor" means, with respect to any electrical company,  
16 another electrical company subject to regulation by the commission  
17 that succeeds by operation of law to the rights and obligations of  
18 the first electrical company pursuant to any bankruptcy,  
19 reorganization, restructuring, or other insolvency proceeding; any  
20 merger, acquisition, or consolidation; or any sale or transfer of  
21 assets.

22 (2) Application for financing order. An electrical company may  
23 apply to the commission for a financing order: (a) With respect to a  
24 wholly owned eligible coal generating unit, at a date after the  
25 commission's approval of a petition filed under section 6 of this  
26 act; or (b) with respect to a commonly owned eligible coal generating  
27 unit, after the owners of such commonly owned eligible coal  
28 generating unit have established a date by which such unit, in whole  
29 or in part, will cease to generate electricity and will be retired  
30 from service, and have received approval for a decommissioning and  
31 remediation plan and a resource replacement plan under section 6 of  
32 this act. In addition to any other information required by the  
33 commission, an electrical company shall do all of the following in an  
34 application:

35 (i) Describe the decommissioning and remediation activities that  
36 the electrical company has undertaken pursuant to the plan approved  
37 under section 6 of this act and proposes to undertake and describe  
38 the reasons for undertaking the activities;

39 (ii) Provide an updated estimate of the decommissioning and  
40 remediation costs of the activities described under (b)(i) of this

1 subsection and previously approved in the application under section 6  
2 of this act;

3 (iii) Indicate whether the electrical company proposes to finance  
4 all or a portion of the costs estimated under (b)(ii) of this  
5 subsection with coal plant retirement bonds. If the electrical  
6 company proposes to finance a portion of the costs with coal plant  
7 retirement bonds, the electrical company shall identify that portion  
8 in the application and provide detailed information regarding the  
9 financing for the other portion of costs;

10 (iv) Estimate the financing costs of the coal plant retirement  
11 bonds proposed under (b)(iii) of this subsection, including an  
12 estimate of the financing costs associated with each series of coal  
13 plant retirement bonds proposed to be issued and information  
14 establishing that bond issuance is the least-cost financing  
15 alternative available;

16 (v) Estimate the coal plant retirement charges necessary to  
17 recover the decommissioning and remediation costs and financing costs  
18 estimated in the application. The estimate and calculation should  
19 take into account the estimated date of issuance and estimated  
20 principal amount of each series of coal plant retirement bonds  
21 proposed to be issued;

22 (vi) Provide an estimate of the date on which the coal plant  
23 retirement bonds are expected to be issued, the expected term over  
24 which the financing costs associated with the issuance are expected  
25 to be recovered, and the estimated issuance date and expected term  
26 for each issuance. If the bonds are expected to be issued in more  
27 than one series, the electrical company shall apply for a new  
28 financing order as set forth in this subsection (2) for each bond  
29 series to be issued;

30 (vii) Provide a proposed adjustment mechanism for making any  
31 adjustments necessary to correct for any over collection or under  
32 collection of coal plant retirement charges or otherwise to ensure  
33 the timely and complete payment and recovery of decommissioning and  
34 remediation costs and financing costs;

35 (viii) Provide a description of the coal plant retirement  
36 property that is created and that may be used to pay or secure coal  
37 plant retirement bonds;

38 (ix) Provide a methodology for allocating coal plant retirement  
39 charges among customer classes that maintains consistency with the  
40 allocation methodology for utility production plants accepted by the

1 commission in the electrical company's most recent rate proceeding;  
2 and

3 (x) Provide a cost comparison between financing decommissioning  
4 and remediation costs with coal plant retirement bonds as opposed to  
5 alternative financing methods, including an estimate of any savings  
6 to customers.

7 (3) Commission review and issuance of financing order.

8 (a) When an application is filed under subsection (2) of this  
9 section, the commission shall provide notice to the public and  
10 potentially affected parties and set the application for hearing as  
11 an adjudicative proceeding under chapters 34.05 and 80.04 RCW. Any  
12 party may request that the commission expedite or continue the  
13 hearing of the application for good cause. An administrative law  
14 judge of the commission may enter an initial order including findings  
15 of fact and conclusions of law, as provided in RCW 80.01.060(3). The  
16 commission shall issue a final order that approves, disapproves, or  
17 makes its approval contingent upon satisfaction of certain  
18 conditions, the application within eight months after an electrical  
19 company files the petition. The commission may for good cause, on its  
20 own motion or on the request of a party, extend the time for issuance  
21 of a financing order for an additional sixty days.

22 (b) The commission shall issue a financing order if the  
23 commission finds all of the following:

24 (i) That the applicant is an electrical company;

25 (ii) That the proposed issuance of coal plant retirement bonds  
26 will result in overall costs to customers of the electrical company  
27 that: (A) Are lower than would result from the use of traditional  
28 utility financing mechanisms given then existing market conditions;  
29 and (B) are just and reasonable;

30 (iii) That the proposed issuance of coal plant retirement bonds,  
31 together with the imposition and collection of the coal plant  
32 retirement charges on customers of the electrical company, are just  
33 and reasonable and are otherwise consistent with the public interest  
34 and constitute a prudent, reasonable, and appropriate mechanism for  
35 the financing of the decommissioning and remediation activities  
36 described in the application; and

37 (iv) That the issuance of the requested bonds will not harm the  
38 electrical company's bond rating or otherwise impair its financial  
39 integrity.

1 (c) The commission shall include the following findings and  
2 requirements in a financing order:

3 (i) A determination of the maximum amount of coal plant  
4 retirement costs that may be financed from proceeds of coal plant  
5 retirement bonds authorized to be issued in the financing order;

6 (ii) A description of the financing costs that may be recovered  
7 through coal plant retirement charges and the period over which the  
8 costs may be recovered, subject to the application of the adjustment  
9 mechanism as provided in subsection (4) of this section. As part of  
10 this description, the commission may include qualitative or  
11 quantitative limitations on the financing costs authorized in the  
12 financing order;

13 (iii) A description of the adjustment mechanism and a finding  
14 that it is just and reasonable;

15 (iv) A description of the coal plant retirement property that is  
16 created and that may be used to pay, and secure the payment of, the  
17 coal plant retirement bonds and financing costs authorized to be  
18 issued in the financing order; and

19 (v) Any approvals or waivers of the commission necessary to  
20 permit an electrical company to create a financing subsidiary to  
21 implement the financing plan, to the extent consistent with  
22 electrical company obligations under existing commission orders.

23 (d) A financing order shall provide that the creation of coal  
24 plant retirement property shall be simultaneous with the sale of the  
25 coal plant retirement property to a financing subsidiary as provided  
26 in the application and the pledge of the coal plant retirement  
27 property to secure coal plant retirement bonds.

28 (e) A financing order shall require the electrical company to  
29 file with the commission a periodic report showing the receipt and  
30 disbursement of proceeds of coal plant retirement bonds. A financing  
31 order shall authorize the staff of the commission to review and audit  
32 the books and records of the electrical company to the receipt and  
33 disbursement of proceeds of coal plant retirement bonds. The  
34 provisions of this subsection shall not be construed to limit the  
35 authority of the commission under this chapter to investigate the  
36 practices of the electrical company or to audit the books and records  
37 of the electrical company.

38 (4) Application of adjustment mechanism.

39 (a) If the commission issues a financing order, the electrical  
40 company shall make periodic filings with the commission for the

1 limited purpose of reviewing the coal plant retirement charges  
2 specified in the financing order and to correct for any over  
3 collection or under collection of such charges, as set forth in the  
4 financing order. The electrical company shall make such filings at  
5 least annually or more frequently as provided in the financing order.

6 (b) On the same day the electrical company files with the  
7 commission its calculation of the adjustment, it shall cause notice  
8 of the filing to be given to its customers and to the public counsel  
9 unit of the office of the attorney general.

10 (c) Within thirty days or before the stated effective date of the  
11 proposed changes to the coal plant retirement charges pursuant to the  
12 adjustment mechanism specified in the financing order, whichever is  
13 later, the commission may suspend such proposed changes, either upon  
14 its own motion or upon complaint, to hold a hearing concerning such  
15 proposed changes. If the commission determines that a hearing is  
16 necessary, the commission may suspend the proposed changes for a  
17 period not exceeding ninety days from the time the same would  
18 otherwise go into effect, and the hearing shall be limited to the  
19 mathematical accuracy of the calculation and of the amount of the  
20 adjustment. After such hearing, the commission may make such order in  
21 reference thereto as would be provided in a hearing initiated after  
22 the same had become effective.

23 (d) No adjustment pursuant to this subsection, and no proceeding  
24 held pursuant to this subsection, shall in any way affect the  
25 irrevocability of the financing order as specified in subsection (5)  
26 of this section.

27 (5) Irrevocability of financing order.

28 (a) A financing order is irrevocable and the commission may not  
29 reduce, impair, postpone, or terminate the coal plant retirement  
30 charges approved in the financing order or impair the coal plant  
31 retirement property or the collection or recovery of coal plant  
32 retirement revenues.

33 (b) A financing order may be subsequently amended on or after the  
34 date of issuance of coal plant retirement bonds authorized thereunder  
35 only: (i) At the request of the electrical company; (ii) in  
36 accordance with any restrictions and limitations on amendment set  
37 forth in the financing order; and (iii) subject to the limitations  
38 set forth in (a) of this subsection.

1 (6) Judicial review. A financing order or an order rejecting an  
2 application under subsection (3)(a) of this section is reviewable by  
3 the superior court of Thurston county under RCW 80.04.170.

4 (7) Effect of financing orders.

5 (a) A financing order shall remain in effect until the coal plant  
6 retirement bonds issued pursuant to the financing order have been  
7 paid in full and all financing costs relating to the coal plant  
8 retirement bonds have been paid in full.

9 (b) A financing order shall remain in effect and unabated  
10 notwithstanding the bankruptcy, reorganization, or insolvency of the  
11 electrical company or any affiliate thereof or the commencement of  
12 any judicial or nonjudicial proceeding therefor.

13 (c) For so long as coal plant retirement bonds issued pursuant to  
14 a financing order are outstanding and the related coal plant  
15 retirement costs and financing costs have not been paid in full, the  
16 coal plant retirement charges authorized to be imposed in the  
17 financing order shall be nonbypassable.

18 (8) Limitations on jurisdiction of commission.

19 (a) If the commission issues a financing order, the commission  
20 may not, in exercising its powers and carrying out its duties  
21 regarding regulation and rate making, consider coal plant retirement  
22 bonds issued pursuant to the financing order to be the debt or equity  
23 of the electrical company, the coal plant retirement charges paid  
24 under the financing order to be revenue of the electrical company, or  
25 the decommissioning and remediation costs or financing costs  
26 specified in the financing order to be the costs of the electrical  
27 company, nor may the commission determine that any action taken by an  
28 electrical company that is prudent, reasonable, and consistent with  
29 the financing order, or order approving an acquisition and  
30 decommissioning and remediation plan, is unjust or unreasonable from  
31 a regulatory or rate-making perspective. Subject to the limitations  
32 set forth in subsection (12) of this section, nothing in this  
33 subsection shall: (i) Affect the authority of the commission to apply  
34 the adjustment mechanism as provided in subsection (4) of this  
35 section; (ii) prevent or preclude the commission from investigating  
36 the compliance of an electrical company with the terms and conditions  
37 of a financing order, or order approving an acquisition and  
38 decommissioning and remediation plan, and requiring compliance  
39 therewith; or (iii) prevent or preclude the commission from imposing  
40 regulatory sanctions against an electrical company for failure to

1 comply with the terms and conditions of a financing order or the  
2 requirements of this section.

3 (b) The commission may not order or otherwise require, directly  
4 or indirectly, any electrical company to use coal plant retirement  
5 bonds to finance any project, addition, plant, facility, extension,  
6 capital improvement, or any other expenditure.

7 (c) The commission may not refuse to allow the recovery of any  
8 decommissioning and remediation costs by an electrical company solely  
9 because the electrical company has elected or may elect to finance  
10 the performance of those activities through a financing mechanism  
11 other than the issuance of coal plant retirement bonds. An electrical  
12 company must include in its application for a financing order whether  
13 it intends to finance a portion of the decommissioning and  
14 remediation costs through a financing mechanism other than coal plant  
15 retirement bonds.

16 (9) Electrical company and financing subsidiary duties.

17 (a) A financing subsidiary shall place the proceeds of any coal  
18 plant retirement bonds issued pursuant to a financing order in a  
19 separate account. A financing subsidiary shall also place in a  
20 separate account all coal plant retirement revenues received from  
21 ratepayers for the benefit of bondholders and any financing parties.  
22 All such accounts held by a financing subsidiary shall be prudently  
23 managed, and any failure of the financing subsidiary to manage its  
24 accounts consistent with the intent of the financing order shall be  
25 the sole responsibility of the financing subsidiary.

26 (b) An electrical company may be reimbursed from the proceeds  
27 only for decommissioning and remediation costs and financing costs  
28 paid by the electrical company that are prudent, reasonable, and  
29 appropriate, and only if the electrical company has applied for and  
30 obtained all approvals from the commission under this chapter that  
31 are required for the decommissioning and remediation activities for  
32 which the decommissioning and remediation costs are incurred or  
33 expected to be incurred. If the commission finds that the proceeds  
34 have been used for decommissioning and remediation costs or financing  
35 costs that are not included in a decommissioning and retirement plan  
36 approved by or a financing order issued by the commission and are not  
37 otherwise prudent, reasonable, or appropriate, the commission may  
38 adjust or reduce the electrical company's revenue requirements in  
39 connection with charges other than coal plant retirement charges for

1 the purpose of ensuring that the electrical company's customers do  
2 not pay for such costs.

3 (c) An electrical company shall annually provide to its customers  
4 a concise explanation of the coal plant retirement charges approved  
5 in a financing order issued to the electrical company. The  
6 explanation may be made by bill inserts, web site information, or  
7 other appropriate means, and developed in consultation with the  
8 commission and consumer representatives.

9 (d) The failure of an electrical company to comply with this  
10 section shall not invalidate, impair, or affect any financing order,  
11 coal plant retirement property, coal plant retirement charge, coal  
12 plant retirement revenue, or coal plant retirement bonds.

13 (10) Coal plant retirement property.

14 (a) Coal plant retirement property that is specified in a  
15 financing order shall constitute an existing, present property right,  
16 notwithstanding the fact that the imposition and collection of coal  
17 plant retirement charges depend on the electrical company continuing  
18 to provide electric energy or continuing to perform its servicing  
19 functions relating to the collection of coal plant retirement charges  
20 or on the level of future energy consumption. Coal plant retirement  
21 property shall exist whether or not the coal plant retirement  
22 revenues have been billed, have accrued, or have been collected and  
23 notwithstanding the fact that the value or amount of the coal plant  
24 retirement property is dependent on the future provision of service  
25 to customers by the electrical company.

26 (b) All coal plant retirement property specified in a financing  
27 order shall continue to exist until the coal plant retirement bonds  
28 issued pursuant to a financing order are paid in full and all  
29 financing costs relating to the bonds have been paid in full.

30 (c) An electrical company shall transfer, sell, convey, or assign  
31 all coal plant retirement property to a financing subsidiary. All or  
32 any portion of coal plant retirement property may be pledged to  
33 secure the payment of coal plant retirement bonds, amounts payable to  
34 financing parties and bondholders, amounts payable under any  
35 ancillary agreement, and other financing costs. Any transfer, sale,  
36 conveyance, assignment, grant of a security interest in, or pledge of  
37 coal plant retirement property by an electrical company to a  
38 financing subsidiary, to the extent previously authorized in a  
39 financing order, does not require the prior consent and approval of  
40 the commission.

1 (d) If an electrical company defaults on any required payment of  
2 coal plant retirement revenues, a court, upon application by an  
3 interested party and without limiting any other remedies available to  
4 the applying party, shall order the sequestration and payment of the  
5 coal plant retirement revenues for the benefit of bondholders, any  
6 financing subsidiary, and any financing parties. The order shall  
7 remain in full force and effect notwithstanding any bankruptcy,  
8 reorganization, or other insolvency proceedings with respect to the  
9 electrical company or any affiliate thereof except the financing  
10 subsidiary.

11 (e) Coal plant retirement property and coal plant retirement  
12 revenues, and the interests of a financing subsidiary, bondholder, or  
13 financing party in coal plant retirement property and coal plant  
14 retirement revenues, are not subject to setoff, counterclaim,  
15 surcharge, or defense by the electrical company or any other person  
16 or in connection with the bankruptcy, reorganization, or other  
17 insolvency proceeding of the electrical company, any affiliate  
18 thereof, or any other entity.

19 (f) Any successor to an electrical company shall be bound by the  
20 requirements of this subsection and shall perform and satisfy all  
21 obligations of, and have the same rights under a financing order as,  
22 the electrical company under the financing order in the same manner  
23 and to the same extent as the electrical company, including but not  
24 limited to the obligation to collect and pay to the person entitled  
25 to receive the coal plant retirement revenues.

26 (11) Security interests. Except as otherwise provided in this  
27 subsection, the creation, perfection, and enforcement of any security  
28 interest in coal plant retirement property to secure the repayment of  
29 the principal of and interest on coal plant retirement bonds, amounts  
30 payable under any ancillary agreement, and other financing costs are  
31 governed by this subsection. All of the following shall apply:

32 (a) The description or indication of coal plant retirement  
33 property in a transfer or security agreement and a financing  
34 statement is sufficient only if the description or indication refers  
35 to this subsection and the financing order creating the coal plant  
36 retirement property. This subsection (11)(a) applies to all purported  
37 transfers of, and all purported grants of liens on or security  
38 interests in, coal plant retirement property, regardless of whether  
39 the related transfer or security agreement was entered into, or the

1 related financing statement was filed, before or after the effective  
2 date of this section.

3 (b) A security interest in coal plant retirement property is  
4 created, valid, and binding at the later of the time: (i) The  
5 financing order is issued; (ii) a security agreement is executed and  
6 delivered; or (iii) value is received for the coal plant retirement  
7 bonds. The security interest attaches without any physical delivery  
8 of collateral or other act and the lien of the security interest  
9 shall be valid, binding, and perfected against all parties having  
10 claims of any kind in tort, contract, or otherwise against the person  
11 granting the security interest, regardless of whether such parties  
12 have notice of the lien, upon the filing of a financing statement  
13 with the department of licensing. The department of licensing shall  
14 maintain any such financing statement in the same manner and in the  
15 same recordkeeping system it maintains for financing statements filed  
16 pursuant to chapter 62A.9A RCW. The filing of any financing statement  
17 under this subsection (11)(b) shall be governed by the provisions  
18 regarding the filing of financing statements in chapter 62A.9A RCW.

19 (c) A security interest in coal plant retirement property is a  
20 continuously perfected security interest and has priority over any  
21 other lien, created by operation of law or otherwise, which may  
22 subsequently attach to the coal plant retirement property unless the  
23 holder of any such lien has agreed in writing otherwise.

24 (d) The priority of a security interest in coal plant retirement  
25 property is not affected by the commingling of coal plant retirement  
26 revenues with other amounts. Any pledgee or secured party shall have  
27 a perfected security interest in the amount of all coal plant  
28 retirement revenues that are deposited in any cash or deposit account  
29 of the electrical company in which coal plant retirement revenues  
30 have been commingled with other funds and any other security interest  
31 that may apply to those funds shall be terminated when they are  
32 transferred to a segregated account for the financing subsidiary or a  
33 financing party.

34 (e) No subsequent order of the commission amending a financing  
35 order pursuant to subsection (5)(b) of this section, and no  
36 application of the adjustment mechanism as provided in subsection (4)  
37 of this section, will affect the validity, perfection, or priority of  
38 a security interest in or transfer of coal plant retirement property.

39 (12) Sales of coal plant retirement property.

1 (a) Any sale, assignment, or transfer of coal plant retirement  
2 property by an electrical company to a financing subsidiary shall be  
3 an absolute transfer and true sale of, and not a pledge of or secured  
4 transaction relating to, the electrical company's right, title, and  
5 interest in, to, and under the coal plant retirement property if the  
6 documents governing the transaction expressly state that the  
7 transaction is a sale or other absolute transfer. A transfer of an  
8 interest in coal plant retirement property may be created only when  
9 all of the following have occurred: (i) The financing order creating  
10 the coal plant retirement property has become effective; (ii) the  
11 documents evidencing the transfer of coal plant retirement property  
12 have been executed and delivered to the financing subsidiary; and  
13 (iii) value is received. Upon the filing of a financing statement  
14 with the department of licensing, a transfer of an interest in coal  
15 plant retirement property shall be perfected against all third  
16 persons, including any judicial lien or other lien creditors or any  
17 claims of the electrical company or creditors of the electrical  
18 company, other than creditors holding a prior security interest,  
19 ownership interest, or assignment in the coal plant retirement  
20 property previously perfected in accordance with this subsection or  
21 subsection (11) of this section. The department of licensing shall  
22 maintain any such financing statement in the same manner and in the  
23 same recordkeeping system it maintains for financing statements filed  
24 pursuant to chapter 62A.9A RCW.

25 (b) The characterization of the sale, assignment, or transfer as  
26 an absolute transfer and true sale and the corresponding  
27 characterization of the property interest of the financing subsidiary  
28 shall not be affected or impaired by, among other things, the  
29 occurrence of any of the following factors:

30 (i) Commingling of coal plant retirement revenues with other  
31 amounts;

32 (ii) The retention by the electrical company of: (A) A partial or  
33 residual interest, including an equity interest, in the coal plant  
34 retirement property, whether direct or indirect, or whether  
35 subordinate or otherwise; or (B) the right to recover costs  
36 associated with taxes, franchise fees, or license fees imposed on the  
37 collection of coal plant retirement revenues;

38 (iii) Any recourse that the financing subsidiary may have against  
39 the electrical company;

1 (iv) Any indemnification rights, obligations, or repurchase  
2 rights made or provided by the electrical company;

3 (v) The obligation of the electrical company to collect coal  
4 plant retirement revenues on behalf of a financing subsidiary;

5 (vi) The treatment of the sale, assignment, or transfer for tax,  
6 financial reporting, or other purposes;

7 (vii) Any subsequent order of the commission amending a financing  
8 order pursuant to subsection (5)(b) of this section; or

9 (viii) Any application of the adjustment mechanism as provided in  
10 subsection (4) of this section.

11 (13) Coal plant retirement bonds not public debt. Coal plant  
12 retirement bonds issued pursuant to a financing order and the  
13 provisions of this section shall not constitute a debt or a pledge of  
14 the faith and credit or taxing power of this state or of any county,  
15 municipality, or any other political subdivision of this state.  
16 Bondholders shall have no right to have taxes levied by the  
17 legislature or the taxing authority of any county, municipality, or  
18 any other political subdivision of this state for the payment of the  
19 principal thereof or interest thereon. The issuance of coal plant  
20 retirement bonds does not, directly, indirectly, or contingently,  
21 obligate the state or a political subdivision of the state to levy  
22 any tax, pay damages, or make any appropriation for payment of the  
23 principal of or interest on the bonds. All coal plant retirement  
24 bonds shall contain on their face a statement to the following  
25 effect: "Neither the full faith and credit nor the taxing power of  
26 the State of Washington is pledged to the payment of the principal  
27 of, or interest on, this bond."

28 (14) Coal plant retirement bonds as legal investments.

29 (a) Any of the following may legally invest any sinking funds,  
30 moneys, or other funds belonging to them or under their control in  
31 coal plant retirement bonds:

32 (i) The state, the Washington state investment board, and public  
33 officers except for members of the commission;

34 (ii) Banks and bankers, savings and loan associations, credit  
35 unions, trust companies, building and loan associations, savings  
36 banks and institutions, deposit guarantee associations, investment  
37 companies, insurance companies and associations, and other persons  
38 carrying on a banking or insurance business, including domestic for  
39 life and domestic not for life insurance companies; and

1 (iii) Personal representatives, guardians, trustees, and other  
2 fiduciaries.

3 (b) No affiliated interest of an electrical company may invest  
4 any sinking funds, moneys, or other funds belonging to it or under  
5 its control in coal plant retirement bonds.

6 (15) State pledge.

7 (a) To the maximum extent permitted by law, the state pledges to  
8 and agrees with the bondholders, any financing subsidiary, and any  
9 financing parties that the state will not take or permit any action  
10 that impairs the value of coal plant retirement property or, except  
11 as allowed under subsection (4) of this section, reduce, alter, or  
12 impair coal plant retirement charges that are imposed, collected, and  
13 remitted for the benefit of the bondholders, any financing  
14 subsidiary, and any financing parties, until any principal, interest,  
15 and redemption premium in respect of coal plant retirement bonds, all  
16 financing costs, and all amounts to be paid to a financing subsidiary  
17 or financing party under an ancillary agreement are paid or performed  
18 in full.

19 (b) Any person who issues coal plant retirement bonds is  
20 permitted to include the pledge specified in (a) of this subsection  
21 in the coal plant retirement bonds, ancillary agreements, and  
22 documentation related to the issuance and marketing of the coal plant  
23 retirement bonds.

24 (c) Nothing in this subsection shall preclude limitation or  
25 alteration if and when full compensation is made by law for the full  
26 protection of the coal plant retirement charges imposed, charged, and  
27 collected pursuant to a financing order and full protection of  
28 bondholders and any financing subsidiary or financing parties.

29 (16) No effect on consumer-owned utilities. Nothing in this  
30 section shall affect or impair any right, obligation, liability, or  
31 interest of a consumer-owned utility.

32 (17) Conflicts. In the event of conflict between this section and  
33 any other law regarding the attachment, assignment, or perfection, or  
34 the effect of perfection, or priority of any security interest in or  
35 transfer of coal plant retirement property, this section shall govern  
36 to the extent of the conflict.

37 (18) Effect of invalidity on actions. Effective on the date that  
38 coal plant retirement bonds are first issued under this section, if  
39 any provision of this section is held to be invalid or is  
40 invalidated, superseded, replaced, repealed, or expires for any

1 reason, that occurrence shall not affect any action allowed under  
2 this section that is taken by the commission, an electrical company,  
3 a financing subsidiary, a financing party, a bondholder, or a party  
4 to an ancillary agreement and any such action shall remain in full  
5 force and effect.

6 (19) Severability. If any provision of this section or its  
7 application to any person, circumstance, or transaction is held  
8 invalid, the remainder of the section or the application of the  
9 provision to other persons, circumstances, or transactions is not  
10 affected, including, but not limited to, the irrevocability of a  
11 financing order issued pursuant to this section, the validity of the  
12 issuance of coal plant retirement bonds, the imposition of coal plant  
13 retirement charges, the transfer or assignment of coal plant  
14 retirement property, or the collection and recovery of coal plant  
15 retirement revenues. To these ends, the legislature hereby declares  
16 that the provisions of this section are intended to be severable and  
17 that the legislature would have enacted this section even if any  
18 provision of this section held to be invalid had not been included in  
19 this section.

20 **Sec. 9.** RCW 80.80.060 and 2011 c 180 s 104 are each amended to  
21 read as follows:

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

26 (2) In order to enforce the requirements of this chapter, the  
27 commission shall review in a general rate case or as provided in  
28 subsection (5) of this section any long-term financial commitment  
29 entered into by an electrical company after June 30, 2008, to  
30 determine whether the baseload electric generation to be supplied  
31 under that long-term financial commitment complies with the  
32 greenhouse gas emissions performance standard established under RCW  
33 80.80.040.

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

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

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

17 (6) An electrical company may account for and defer for later  
18 consideration by the commission costs incurred in connection with a  
19 long-term financial commitment, including operating and maintenance  
20 costs, depreciation, taxes, and cost of invested capital. The  
21 deferral begins with the date on which the power plant begins  
22 commercial operation or the effective date of the power purchase  
23 agreement and continues for a period not to exceed twenty-four  
24 months; provided that if during such period the company files a  
25 general rate case or other proceeding for the recovery of such costs,  
26 deferral ends on the effective date of the final decision by the  
27 commission in such proceeding. Creation of such a deferral account  
28 does not by itself determine the actual costs of the long-term  
29 financial commitment, whether recovery of any or all of these costs  
30 is appropriate, or other issues to be decided by the commission in a  
31 general rate case or other proceeding for recovery of these costs.  
32 For the purpose of this subsection (6) only, the term "long-term  
33 financial commitment" also includes an electric company's ownership  
34 or power purchase agreement with a term of five or more years  
35 associated with an eligible renewable resource as defined in RCW  
36 19.285.030.

37 (7) The commission shall consult with the department to apply the  
38 procedures adopted by the department to verify the emissions of  
39 greenhouse gases from baseload electric generation under RCW  
40 80.80.040. The department shall report to the commission whether

1 baseload electric generation will comply with the greenhouse gas  
2 emissions performance standard for the duration of the period the  
3 baseload electric generation is supplied to the electrical company.

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

8 (9) This section does not apply to: (a) A long-term financial  
9 commitment for the purchase of coal transition power with termination  
10 dates consistent with the applicable dates in RCW 80.80.040(3)(c); or  
11 (b) a long-term financial commitment pursuant to which an electrical  
12 company incurs eligible coal generating unit acquisition costs  
13 approved by the commission pursuant to section 6 of this act. For the  
14 purposes of this subsection, "eligible coal generating unit  
15 acquisition costs" has the same meaning as in section 5 of this act.

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

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