

Effect:

- Clarifies that decommissioning and remediation costs do not include damages or penalties ordered by a final judicial opinion if the conduct resulted from gross negligence or willful misconduct of the electrical company.
- Strikes the provisions that decommissioning and remediation costs do not include obligations of the previous owner of an eligible coal plant.
- Strikes the provision that eligible coal generating unit acquisition costs does not include unlawful, unnecessary, or punitive laws.
- Provides that the decommissioning and remediation and resource plans and various studies accompanying the petition to acquire an eligible unit only applies to wholly owned eligible units.
- Clarifies that insurance analysis that is part of the decommissioning and remediation plan only applies to insurance products purchased by the electrical company.
- Shortens the period of UTC review of a petition from 10 months to 8 months and the review of a financing order application from 8 months to 6 months and strikes provisions allowing for continuances of the proceedings.
- Modifies notice requirement to UTC concerning cap on decommissioning and remediation costs.
- Clarifies that an approved petition does not require cost-shifting among the owners of a commonly owned unit.
- Provides that large and noncore customers do not have to pay coal plant retirement charges.
- Clarifies that a financing order analysis by the UTC consider that the issuance of bonds should not harm the company.
- Clarifies that judicial review of a financing order should be heard as expeditiously as possible.

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 ordered by a court of
3 competent jurisdiction in a final nonappealable judgment if such
4 judgment determined that such damages, penalties, fees, charges,
5 settlement payments, or other expenses result primarily from the
6 gross negligence or willful misconduct of the electrical company;

7 (ii) The remediation, identification, assessment, handling,
8 storage, minimization, containment, cleanup, removal, transportation,
9 or disposal of any substance, material, circumstance, or condition
10 that presents a threat or potential threat to human health or the
11 environment, including costs or expenses in connection with:
12 (A) Analyses, tests, studies, or investigations conducted or required
13 in connection with such matters; (B) permits, licenses, approvals,
14 consents, orders, or authorizations required in connection with such
15 matters; and (C) any damages, fees, charges, or other costs and
16 expenses incurred in any legal, judicial, administrative, or
17 regulatory actions or proceedings, or any settlements thereof,
18 arising in connection with any such matters, not including any
19 damages, penalties, fees, charges, settlement payments, or other
20 expenses ordered by a court of competent jurisdiction in a final
21 nonappealable judgment if such judgment determined that such damages,
22 penalties, fees, charges, settlement payments, or other expenses
23 result primarily from the gross negligence or willful misconduct of
24 the electrical company; and

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

28 (b) In no case does "decommissioning and remediation costs"
29 include monetary or in-kind payments made by an electrical company to
30 another state or its political subdivisions, either by agreement or
31 as a requirement of law, to mitigate for impairment of economic or
32 societal conditions, revenue loss, or other impacts resulting from
33 the closure of an eligible coal generating unit.

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

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

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

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

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

32 (10) "Resource replacement plan" means a plan for the acquisition
33 or development of a portfolio of electric generation facilities to
34 replace the capacity and energy of a wholly owned eligible coal
35 generating unit to be decommissioned pursuant to a decommissioning
36 and remediation plan.

37 (11) "Wholly owned eligible coal generating unit" means any
38 generating unit of an eligible coal plant that: (a) Has a nameplate
39 capacity of less than four hundred megawatts; and (b) is owned

1 exclusively by one electrical company as a result of an approval by
2 the commission under this chapter.

3 NEW SECTION. **Sec. 6.** ACQUISITION, DECOMMISSIONING, AND
4 REMEDIATION OF AN ELIGIBLE COAL GENERATING UNIT. (1) On the petition
5 of an electrical company, the commission may approve, disapprove, or
6 otherwise make approval contingent upon the satisfaction of certain
7 conditions: (a) The acquisition of an increased interest in any one
8 or more eligible coal generating units; (b) the recovery of eligible
9 coal generating unit acquisition costs; (c) one or more
10 decommissioning and remediation plans; and (d) one or more resource
11 replacement plans. A petition filed under this section may only be
12 filed on or before December 31, 2017.

13 (2) The electrical company must file supporting testimony and
14 exhibits together that includes, at a minimum, the following: (a) The
15 proposed agreement for the acquisition of an increased interest in
16 any one or more eligible coal generating units and all associated
17 eligible coal generating unit acquisition costs; (b) a proposed
18 decommissioning and remediation plan for the decommissioning and
19 remediation of a wholly owned eligible coal generating unit; (c) a
20 proposed resource replacement plan for the acquisition or development
21 of a portfolio of electric generation facilities to replace the
22 capacity and energy of a wholly owned eligible coal generating unit
23 to be decommissioned pursuant to a decommissioning and remediation
24 plan; (d) a proposed resource replacement plan; (e) a complete
25 description of all pending litigation, orders, or judgments regarding
26 the eligible coal plant; (f) a complete description of all federal,
27 state, or local regulatory or enforcement actions regarding the
28 eligible coal plant; (g) all studies, reports, or analyses conducted
29 by or for the electrical company, or in possession of the electrical
30 company, regarding the economic and environmental costs and benefits
31 of the acquisition of an increased interest in any one or more
32 eligible generating units and the decommissioning and remediation of
33 a wholly owned eligible coal generating unit; and (h) a proposed
34 customer notice designed to inform the electrical company's customers
35 of the filing.

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

38 (a) A planned date of closing of the unit that would be
39 consistent with its remaining useful life based on a proposed

1 schedule for the full depreciation of the unit by the electrical
2 company;

3 (b) A planned date of closing of the unit by the electrical
4 company;

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

10 (d) A plan for funding the decommissioning and remediation of the
11 unit;

12 (e) The accumulated reserve of the electrical company for the
13 decommissioning and remediation of the unit as of the date of
14 submission of the plan, as well as identification of any sinking fund
15 or other funding source of any kind available for the payment of
16 decommissioning and remediation costs;

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

19 (g) An analysis of the costs and benefits of insurance products
20 purchased by the electrical company to limit the exposure of the
21 electrical company to decommissioning and remediation costs; and

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

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

39 (5) When a petition is filed, the commission shall provide notice
40 to the public and potentially affected parties and set the petition

1 for hearing as an adjudicative proceeding under chapters 34.05 and
2 80.04 RCW. Any party may request that the commission expedite the
3 hearing of the petition. An administrative law judge of the
4 commission may enter an initial order including findings of fact and
5 conclusions of law, as provided in RCW 80.01.060(3). The commission
6 shall issue a final order that approves, disapproves, or otherwise
7 makes approval contingent upon satisfaction of certain conditions,
8 the petition within two hundred forty days after an electrical
9 company files the petition, or within ninety days after an initial
10 order by an administrative law judge. Information provided by the
11 facility owner to the purchasing electrical company related to the
12 costs and benefits associated with acquisition of one or more
13 eligible coal generating units must be made available to other
14 parties to the petition and, if confidential, must be provided under
15 a protective order entered by the commission.

16 (6) The commission may approve a petition filed pursuant to this
17 section for the acquisition of an increased interest in any one or
18 more eligible coal generating units, the recovery of eligible coal
19 generating unit acquisition costs, a decommissioning and remediation
20 plan, and a resource replacement plan only if the commission
21 determines that the approval is in the public interest and that each
22 of the following will result in the least-cost, least-risk outcome
23 for customers, including low-income customers, considering the facts
24 and circumstances associated with the acquisition existing at the
25 time of review, as compared with absence of the acquisition: (a) The
26 acquisition of an increased interest in any one or more eligible coal
27 generating units; (b) the recovery of prudent, reasonable, and
28 appropriate eligible coal generating unit acquisition costs; (c) the
29 proposed date for closing of a wholly owned eligible coal generating
30 unit in a decommissioning and remediation plan earlier than in the
31 absence of the acquisition; and (d) the proposed acquisition or
32 development of a portfolio of electric generation facilities to
33 replace the capacity and energy of a wholly owned eligible coal
34 generating unit to be decommissioned pursuant to a decommissioning
35 and remediation plan.

36 (7) If the commission finds that a proposed agreement for
37 acquisition of an increased interest in any one or more eligible coal
38 generating units, a proposed decommissioning and remediation plan
39 filed pursuant to this section, or a proposed resource replacement
40 plan filed pursuant to this section does not meet the criteria under

1 this section, then the commission shall reject the petition or make
2 its approval contingent upon satisfaction of certain conditions and
3 consistent with the criteria under this section. If the commission
4 conditions approval of the petition, it shall direct the electric
5 company to accept the modification within a time specified by the
6 commission or withdraw the petition with leave to refile.

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

11 (9) Upon approval by the commission of a petition for the
12 acquisition of an increased interest in any one or more eligible coal
13 generating units and the recovery of eligible coal generating unit
14 acquisition costs and a decommissioning and remediation plan and
15 resource replacement plan with respect to any wholly owned eligible
16 coal generating units the eligible coal generating units shall be
17 deemed used and useful in the provision of public utility service
18 until closing, and the eligible coal generating unit acquisition
19 costs shall be deemed to be prudent, reasonable, and appropriate
20 costs and expenses incurred, or to be incurred, by an electrical
21 company; provided, however, that such eligible coal generating unit
22 acquisition costs may not exceed the costs approved by the commission
23 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 by an electrical company, no electrical company other than
34 the electrical company acquiring such increased interest shall be
35 responsible for any and all costs and liabilities that are in any way
36 associated with the closing, or the effect of closing, of a wholly
37 owned eligible coal generating unit that is wholly owned by the
38 electrical company acquiring such increased interest. Nothing in this
39 subsection is intended to, or in any way modifies any existing
40 agreement related to the operation of an eligible coal plant.

1 (12) Nothing in this section shall be construed to limit the
2 commission's authority to conduct other proceedings under this title.
3 The commission may conduct such proceedings concurrently with the
4 review and disposition of a petition to acquire an eligible coal
5 generating unit under this section. Nothing in this section is
6 intended to or shall in any way modify any existing agreement related
7 to the operation of an eligible coal plant.

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

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

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

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

29 (b) The decommissioning and remediation costs incurred by the
30 electrical company; and

31 (c) The amount of money that customers of such electrical company
32 were charged for the decommissioning and remediation of the wholly
33 owned eligible coal generating unit, including charges by customer
34 class and average bill impact for residential customers.

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

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

1 that exceed the estimate of the decommissioning and remediation costs
2 approved in the decommissioning and remediation plan for such unit
3 without obtaining commission approval of an amendment to such plan.
4 An electrical company may file a petition for amendment of an
5 approved decommissioning and remediation plan approved by the
6 commission pursuant to section 6 of this act. The procedure and
7 standards for approval or disapproval of a petition for amendment of
8 a plan is the same procedure and standards as provided for the
9 initial approval of a plan in section 6 of this act; provided,
10 however, that an electrical company may not petition for an amendment
11 of a plan which has the effect of increasing the decommissioning and
12 remediation costs approved in the initial plan, unless such costs
13 were reasonable and prudently 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) "Large customer" means any customer of an electrical company
25 that purchased more than five hundred million kilowatt-hours of
26 electricity from such electrical company in calendar year 2014.

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

33 (m) "Noncore customer" means any Washington customer of an
34 electrical company who has, as of the effective date of this section,
35 forever released, relinquished, and discharged any right to, claim
36 to, or benefits of the electrical company's generation resources,
37 including the right to power produced by such resources, whether or
38 not priced at the electrical company's cost of producing such power,
39 at one or more locations.

1 (n) "Coal plant retirement bonds" means bonds, debentures, notes,
2 certificates of participation, certificates of beneficial interest,
3 certificates of ownership, or other evidences of indebtedness or
4 ownership that are issued by a financing subsidiary to recover,
5 finance, or refinance decommissioning and remediation costs and
6 financing costs and that are secured by or payable from coal plant
7 retirement revenues.

8 (o) "Coal plant retirement charge" means a nonbypassable charge
9 paid by a customer of an electrical company for the recovery of
10 decommissioning and remediation costs and financing costs.

11 (p) "Coal plant retirement property" means all of the following:

12 (i) The rights and interests of an electrical company and a
13 financing subsidiary under a financing order, including the right to
14 impose, collect, and receive coal plant retirement charges in the
15 amount necessary to provide for the full payment and recovery of all
16 decommissioning and remediation costs and financing costs determined
17 to be recoverable in the financing order and to obtain adjustments to
18 the charges as provided in this chapter and any interest in the
19 rights and interests; and

20 (ii) All revenues, receipts, collections, rights to payment,
21 payments, moneys, claims, or other proceeds arising from the rights
22 and interests specified in (p)(i) of this subsection (1).

23 (q) "Coal plant retirement revenues" means all revenues,
24 receipts, collections, payments, moneys, claims, or other proceeds
25 arising from coal plant retirement property.

26 (r) "Retail customer" means any Washington customer of an
27 electrical company. "Retail customer" does not include any customer
28 of an electrical company that is, as of the effective date of this
29 section, either a noncore customer or a large customer.

30 (s) "Successor" means, with respect to any electrical company,
31 another electrical company subject to regulation by the commission
32 that succeeds by operation of law to the rights and obligations of
33 the first electrical company pursuant to any bankruptcy,
34 reorganization, restructuring, or other insolvency proceeding; any
35 merger, acquisition, or consolidation; or any sale or transfer of
36 assets.

37 (2) Application for financing order. An electrical company may
38 apply to the commission for a financing order: (a) With respect to a
39 wholly owned eligible coal generating unit, at a date after the
40 commission's approval of a petition filed under section 6 of this

1 act; or (b) with respect to a commonly owned eligible coal generating
2 unit, after the owners of such commonly owned eligible coal
3 generating unit have established a date by which such unit, in whole
4 or in part, will cease to generate electricity and will be retired
5 from service. In addition to any other information required by the
6 commission, an electrical company shall do all of the following in an
7 application:

8 (i) Describe the decommissioning and remediation activities that
9 the electrical company has undertaken and proposes to undertake and
10 describe the reasons for undertaking the activities;

11 (ii) Provide an updated estimate of the decommissioning and
12 remediation costs of the activities described under (b)(i) of this
13 subsection;

14 (iii) Indicate whether the electrical company proposes to finance
15 all or a portion of the costs estimated under (b)(ii) of this
16 subsection with coal plant retirement bonds. If the electrical
17 company proposes to finance a portion of the costs with coal plant
18 retirement bonds, the electrical company shall identify that portion
19 in the application and provide detailed information regarding the
20 financing for the other portion of costs;

21 (iv) Estimate the financing costs of the coal plant retirement
22 bonds proposed under (b)(iii) of this subsection, including an
23 estimate of the financing costs associated with each series of coal
24 plant retirement bonds proposed to be issued and information
25 establishing that bond issuance is the least-cost financing
26 alternative available;

27 (v) Estimate the coal plant retirement charges necessary to
28 recover the decommissioning and remediation costs and financing costs
29 estimated in the application. The estimate and calculation should
30 take into account the estimated date of issuance and estimated
31 principal amount of each series of coal plant retirement bonds
32 proposed to be issued;

33 (vi) Provide an estimate of the date on which the coal plant
34 retirement bonds are expected to be issued, the expected term over
35 which the financing costs associated with the issuance are expected
36 to be recovered, and the estimated issuance date and expected term
37 for each issuance. If the bonds are expected to be issued in more
38 than one series, the electrical company shall apply for a new
39 financing order as set forth in this subsection (2) for each bond
40 series to be issued;

1 (vii) Provide a proposed adjustment mechanism for making any
2 adjustments necessary to correct for any over collection or under
3 collection of coal plant retirement charges or otherwise to ensure
4 the timely and complete payment and recovery of decommissioning and
5 remediation costs and financing costs;

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

9 (ix) Provide a methodology for allocating coal plant retirement
10 charges among customer classes that maintains consistency with the
11 allocation methodology for utility production plants accepted by the
12 commission in the electrical company's most recent rate proceeding;
13 and

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

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

19 (a) When an application is filed under subsection (2) of this
20 section, the commission shall provide notice to the public and
21 potentially affected parties and set the application for hearing as
22 an adjudicative proceeding under chapters 34.05 and 80.04 RCW. Any
23 party may request that the commission expedite the hearing of the
24 application. An administrative law judge of the commission may enter
25 an initial order including findings of fact and conclusions of law,
26 as provided in RCW 80.01.060(3). The commission shall issue a final
27 order that approves, disapproves, or makes its approval contingent
28 upon satisfaction of certain conditions, the application within one
29 hundred eighty days after an electrical company files the petition.

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

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

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

38 (iii) That the proposed issuance of coal plant retirement bonds,
39 together with the imposition and collection of the coal plant
40 retirement charges on customers of the electrical company, are just

1 and reasonable and are otherwise consistent with the public interest
2 and constitute a prudent, reasonable, and appropriate mechanism for
3 the financing of the decommissioning and remediation activities
4 described in the application; and

5 (iv) That the issuance of the requested bonds should not harm the
6 electrical company's bond rating or otherwise impair its financial
7 integrity.

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

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

13 (ii) A description of the financing costs that may be recovered
14 through coal plant retirement charges and the period over which the
15 costs may be recovered, subject to the application of the adjustment
16 mechanism as provided in subsection (4) of this section. As part of
17 this description, the commission may include qualitative or
18 quantitative limitations on the financing costs authorized in the
19 financing order;

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

22 (iv) A description of the coal plant retirement property that is
23 created and that may be used to pay, and secure the payment of, the
24 coal plant retirement bonds and financing costs authorized to be
25 issued in the financing order; and

26 (v) Any approvals or waivers of the commission necessary to
27 permit an electrical company to create a financing subsidiary to
28 implement the financing plan.

29 (d) A financing order shall provide that the creation of coal
30 plant retirement property shall be simultaneous with the sale of the
31 coal plant retirement property to a financing subsidiary as provided
32 in the application and the pledge of the coal plant retirement
33 property to secure coal plant retirement bonds.

34 (e) A financing order shall require the electrical company to
35 file with the commission a periodic report showing the receipt and
36 disbursement of proceeds of coal plant retirement bonds. A financing
37 order shall authorize the staff of the commission to review and audit
38 the books and records of the electrical company to the receipt and
39 disbursement of proceeds of coal plant retirement bonds. The
40 provisions of this subsection shall not be construed to limit the

1 authority of the commission under this chapter to investigate the
2 practices of the electrical company or to audit the books and records
3 of the electrical company.

4 (4) Application of adjustment mechanism.

5 (a) If the commission issues a financing order, the electrical
6 company shall make periodic filings with the commission for the
7 limited purpose of reviewing the coal plant retirement charges
8 specified in the financing order and to correct for any over
9 collection or under collection of such charges, as set forth in the
10 financing order. The electrical company shall make such filings at
11 least annually or more frequently as provided in the financing order.

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

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

29 (d) No adjustment pursuant to this subsection, and no proceeding
30 held pursuant to this subsection, shall in any way affect the
31 irrevocability of the financing order as specified in subsection (5)
32 of this section.

33 (5) Irrevocability of financing order.

34 (a) A financing order is irrevocable and the commission may not
35 reduce, impair, postpone, or terminate the coal plant retirement
36 charges approved in the financing order or impair the coal plant
37 retirement property or the collection or recovery of coal plant
38 retirement revenues.

39 (b) A financing order may be subsequently amended on or after the
40 date of issuance of coal plant retirement bonds authorized thereunder

1 only: (i) At the request of the electrical company; (ii) in
2 accordance with any restrictions and limitations on amendment set
3 forth in the financing order; and (iii) subject to the limitations
4 set forth in (a) of this subsection.

5 (6) Judicial review. A financing order or an order rejecting an
6 application under subsection (3)(a) of this section is reviewable by
7 the superior court of Thurston county under RCW 80.04.170, except
8 that the court shall proceed to hear and determine the action as
9 expeditiously as practicable.

10 (7) Effect of financing orders.

11 (a) A financing order shall remain in effect until the coal plant
12 retirement bonds issued pursuant to the financing order have been
13 paid in full and all financing costs relating to the coal plant
14 retirement bonds have been paid in full.

15 (b) A financing order shall remain in effect and unabated
16 notwithstanding the bankruptcy, reorganization, or insolvency of the
17 electrical company or any affiliate thereof or the commencement of
18 any judicial or nonjudicial proceeding therefor.

19 (c) For so long as coal plant retirement bonds issued pursuant to
20 a financing order are outstanding and the related coal plant
21 retirement costs and financing costs have not been paid in full, the
22 coal plant retirement charges authorized to be imposed in the
23 financing order shall be nonbypassable, except as otherwise provided
24 in (d) and (e) of this subsection.

25 (d) The rate reduction charges for any large customer shall be
26 established on a pro rata, per kilowatt-hour basis for any energy
27 that the large customer purchases during a billing period as a
28 customer of the electrical company or its successors; provided,
29 however, that rate reduction charges shall not apply to a large
30 customer's purchase of power pursuant to arrangements that the
31 customer has made with a power supplier other than the electrical
32 company or its successors.

33 (e) Rate reduction charges shall not be imposed on any noncore
34 customer of an electrical company.

35 (8) Limitations on jurisdiction of commission.

36 (a) If the commission issues a financing order, the commission
37 may not, in exercising its powers and carrying out its duties
38 regarding regulation and rate making, consider coal plant retirement
39 bonds issued pursuant to the financing order to be the debt or equity
40 of the electrical company, the coal plant retirement charges paid

1 under the financing order to be revenue of the electrical company, or
2 the decommissioning and remediation costs or financing costs
3 specified in the financing order to be the costs of the electrical
4 company, nor may the commission determine that any action taken by an
5 electrical company that is prudent, reasonable, and consistent with
6 the financing order, is unjust or unreasonable from a regulatory or
7 rate-making perspective. Subject to the limitations set forth in
8 subsection (12) of this section, nothing in this subsection shall:
9 (i) Affect the authority of the commission to apply the adjustment
10 mechanism as provided in subsection (4) of this section; (ii) prevent
11 or preclude the commission from investigating the compliance of an
12 electrical company with the terms and conditions of a financing
13 order, and requiring compliance therewith; or (iii) prevent or
14 preclude the commission from imposing regulatory sanctions against an
15 electrical company for failure to comply with the terms and
16 conditions of a financing order or the requirements of this section.

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

21 (c) The commission may not refuse to allow the recovery of any
22 decommissioning and remediation costs by an electrical company solely
23 because the electrical company has elected or may elect to finance
24 the performance of those activities through a financing mechanism
25 other than the issuance of coal plant retirement bonds. An electrical
26 company must include in its application for a financing order whether
27 it intends to finance a portion of the decommissioning and
28 remediation costs through a financing mechanism other than coal plant
29 retirement bonds.

30 (9) Electrical company and financing subsidiary duties.

31 (a) A financing subsidiary shall place the proceeds of any coal
32 plant retirement bonds issued pursuant to a financing order in a
33 separate account. A financing subsidiary shall also place in a
34 separate account all coal plant retirement revenues received from
35 ratepayers for the benefit of bondholders and any financing parties.
36 All such accounts held by a financing subsidiary shall be prudently
37 managed, and any failure of the financing subsidiary to manage its
38 accounts consistent with the intent of the financing order shall be
39 the sole responsibility of the financing subsidiary.

1 (b) An electrical company may be reimbursed from the proceeds
2 only for decommissioning and remediation costs and financing costs
3 paid by the electrical company that are prudent, reasonable, and
4 appropriate, and only if the electrical company has applied for and
5 obtained all approvals from the commission under this chapter that
6 are required for the decommissioning and remediation activities for
7 which the decommissioning and remediation costs are incurred or
8 expected to be incurred. If the commission finds that the proceeds
9 have been used for decommissioning and remediation costs or financing
10 costs that are not included in a decommissioning and retirement plan
11 approved by or a financing order issued by the commission and are not
12 otherwise prudent, reasonable, or appropriate, the commission may
13 adjust or reduce the electrical company's revenue requirements in
14 connection with charges other than coal plant retirement charges for
15 the purpose of ensuring that the electrical company's customers do
16 not pay for such costs.

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

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

27 (10) Coal plant retirement property.

28 (a) Coal plant retirement property that is specified in a
29 financing order shall constitute an existing, present property right,
30 notwithstanding the fact that the imposition and collection of coal
31 plant retirement charges depend on the electrical company continuing
32 to provide electric energy or continuing to perform its servicing
33 functions relating to the collection of coal plant retirement charges
34 or on the level of future energy consumption. Coal plant retirement
35 property shall exist whether or not the coal plant retirement
36 revenues have been billed, have accrued, or have been collected and
37 notwithstanding the fact that the value or amount of the coal plant
38 retirement property is dependent on the future provision of service
39 to customers by the electrical company.

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

5 (c) An electrical company shall transfer, sell, convey, or assign
6 all coal plant retirement property to a financing subsidiary. All or
7 any portion of coal plant retirement property may be pledged to
8 secure the payment of coal plant retirement bonds, amounts payable to
9 financing parties and bondholders, amounts payable under any
10 ancillary agreement, and other financing costs. Any transfer, sale,
11 conveyance, assignment, grant of a security interest in, or pledge of
12 coal plant retirement property by an electrical company to a
13 financing subsidiary, to the extent previously authorized in a
14 financing order, does not require the prior consent and approval of
15 the commission.

16 (d) If an electrical company defaults on any required payment of
17 coal plant retirement revenues, a court, upon application by an
18 interested party and without limiting any other remedies available to
19 the applying party, shall order the sequestration and payment of the
20 coal plant retirement revenues for the benefit of bondholders, any
21 financing subsidiary, and any financing parties. The order shall
22 remain in full force and effect notwithstanding any bankruptcy,
23 reorganization, or other insolvency proceedings with respect to the
24 electrical company or any affiliate thereof except the financing
25 subsidiary.

26 (e) Coal plant retirement property and coal plant retirement
27 revenues, and the interests of a financing subsidiary, bondholder, or
28 financing party in coal plant retirement property and coal plant
29 retirement revenues, are not subject to setoff, counterclaim,
30 surcharge, or defense by the electrical company or any other person
31 or in connection with the bankruptcy, reorganization, or other
32 insolvency proceeding of the electrical company, any affiliate
33 thereof, or any other entity.

34 (f) Any successor to an electrical company shall be bound by the
35 requirements of this subsection and shall perform and satisfy all
36 obligations of, and have the same rights under a financing order as,
37 the electrical company under the financing order in the same manner
38 and to the same extent as the electrical company, including but not
39 limited to the obligation to collect and pay to the person entitled
40 to receive the coal plant retirement revenues.

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

7 (a) The description or indication of coal plant retirement
8 property in a transfer or security agreement and a financing
9 statement is sufficient only if the description or indication refers
10 to this subsection and the financing order creating the coal plant
11 retirement property. This subsection (11)(a) applies to all purported
12 transfers of, and all purported grants of liens on or security
13 interests in, coal plant retirement property, regardless of whether
14 the related transfer or security agreement was entered into, or the
15 related financing statement was filed, before or after the effective
16 date of this section.

17 (b) A security interest in coal plant retirement property is
18 created, valid, and binding at the later of the time: (i) The
19 financing order is issued; (ii) a security agreement is executed and
20 delivered; or (iii) value is received for the coal plant retirement
21 bonds. The security interest attaches without any physical delivery
22 of collateral or other act and the lien of the security interest
23 shall be valid, binding, and perfected against all parties having
24 claims of any kind in tort, contract, or otherwise against the person
25 granting the security interest, regardless of whether such parties
26 have notice of the lien, upon the filing of a financing statement
27 with the department of licensing. The department of licensing shall
28 maintain any such financing statement in the same manner and in the
29 same recordkeeping system it maintains for financing statements filed
30 pursuant to chapter 62A.9A RCW. The filing of any financing statement
31 under this subsection (11)(b) shall be governed by the provisions
32 regarding the filing of financing statements in chapter 62A.9A RCW.

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

38 (d) The priority of a security interest in coal plant retirement
39 property is not affected by the commingling of coal plant retirement
40 revenues with other amounts. Any pledgee or secured party shall have

1 a perfected security interest in the amount of all coal plant
2 retirement revenues that are deposited in any cash or deposit account
3 of the electrical company in which coal plant retirement revenues
4 have been commingled with other funds and any other security interest
5 that may apply to those funds shall be terminated when they are
6 transferred to a segregated account for the financing subsidiary or a
7 financing party.

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

13 (12) Sales of coal plant retirement property.

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

38 (b) The characterization of the sale, assignment, or transfer as
39 an absolute transfer and true sale and the corresponding
40 characterization of the property interest of the financing subsidiary

1 shall not be affected or impaired by, among other things, the
2 occurrence of any of the following factors:

3 (i) Commingling of coal plant retirement revenues with other
4 amounts;

5 (ii) The retention by the electrical company of: (A) A partial or
6 residual interest, including an equity interest, in the coal plant
7 retirement property, whether direct or indirect, or whether
8 subordinate or otherwise; or (B) the right to recover costs
9 associated with taxes, franchise fees, or license fees imposed on the
10 collection of coal plant retirement revenues;

11 (iii) Any recourse that the financing subsidiary may have against
12 the electrical company;

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

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

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

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

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

23 (13) Coal plant retirement bonds not public debt. Coal plant
24 retirement bonds issued pursuant to a financing order and the
25 provisions of this section shall not constitute a debt or a pledge of
26 the faith and credit or taxing power of this state or of any county,
27 municipality, or any other political subdivision of this state.
28 Bondholders shall have no right to have taxes levied by the
29 legislature or the taxing authority of any county, municipality, or
30 any other political subdivision of this state for the payment of the
31 principal thereof or interest thereon. The issuance of coal plant
32 retirement bonds does not, directly, indirectly, or contingently,
33 obligate the state or a political subdivision of the state to levy
34 any tax, pay damages, or make any appropriation for payment of the
35 principal of or interest on the bonds. All coal plant retirement
36 bonds shall contain on their face a statement to the following
37 effect: "Neither the full faith and credit nor the taxing power of
38 the State of Washington is pledged to the payment of the principal
39 of, or interest on, this bond."

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

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

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

6 (ii) Banks and bankers, savings and loan associations, credit
7 unions, trust companies, building and loan associations, savings
8 banks and institutions, deposit guarantee associations, investment
9 companies, insurance companies and associations, and other persons
10 carrying on a banking or insurance business, including domestic for
11 life and domestic not for life insurance companies; and

12 (iii) Personal representatives, guardians, trustees, and other
13 fiduciaries.

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

17 (15) State pledge.

18 (a) To the maximum extent permitted by law, the state pledges to
19 and agrees with the bondholders, any financing subsidiary, and any
20 financing parties that the state will not take or permit any action
21 that impairs the value of coal plant retirement property or, except
22 as allowed under subsection (4) of this section, reduce, alter, or
23 impair coal plant retirement charges that are imposed, collected, and
24 remitted for the benefit of the bondholders, any financing
25 subsidiary, and any financing parties, until any principal, interest,
26 and redemption premium in respect of coal plant retirement bonds, all
27 financing costs, and all amounts to be paid to a financing subsidiary
28 or financing party under an ancillary agreement are paid or performed
29 in full.

30 (b) Any person who issues coal plant retirement bonds is
31 permitted to include the pledge specified in (a) of this subsection
32 in the coal plant retirement bonds, ancillary agreements, and
33 documentation related to the issuance and marketing of the coal plant
34 retirement bonds.

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

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

4 (17) Conflicts. In the event of conflict between this section and
5 any other law regarding the attachment, assignment, or perfection, or
6 the effect of perfection, or priority of any security interest in or
7 transfer of coal plant retirement property, this section shall govern
8 to the extent of the conflict.

9 (18) Effect of invalidity on actions. Effective on the date that
10 coal plant retirement bonds are first issued under this section, if
11 any provision of this section is held to be invalid or is
12 invalidated, superseded, replaced, repealed, or expires for any
13 reason, that occurrence shall not affect any action allowed under
14 this section that is taken by the commission, an electrical company,
15 a financing subsidiary, a financing party, a bondholder, or a party
16 to an ancillary agreement and any such action shall remain in full
17 force and effect.

18 (19) Severability. If any provision of this section or its
19 application to any person, circumstance, or transaction is held
20 invalid, the remainder of the section or the application of the
21 provision to other persons, circumstances, or transactions is not
22 affected, including, but not limited to, the irrevocability of a
23 financing order issued pursuant to this section, the validity of the
24 issuance of coal plant retirement bonds, the imposition of coal plant
25 retirement charges, the transfer or assignment of coal plant
26 retirement property, or the collection and recovery of coal plant
27 retirement revenues. To these ends, the legislature hereby declares
28 that the provisions of this section are intended to be severable and
29 that the legislature would have enacted this section even if any
30 provision of this section held to be invalid had not been included in
31 this section.

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

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

38 (2) In order to enforce the requirements of this chapter, the
39 commission shall review in a general rate case or as provided in

1 subsection (5) of this section any long-term financial commitment
2 entered into by an electrical company after June 30, 2008, to
3 determine whether the baseload electric generation to be supplied
4 under that long-term financial commitment complies with the
5 greenhouse gas emissions performance standard established under RCW
6 80.80.040.

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

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

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

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

1 financial commitment, whether recovery of any or all of these costs
2 is appropriate, or other issues to be decided by the commission in a
3 general rate case or other proceeding for recovery of these costs.
4 For the purpose of this subsection (6) only, the term "long-term
5 financial commitment" also includes an electric company's ownership
6 or power purchase agreement with a term of five or more years
7 associated with an eligible renewable resource as defined in RCW
8 19.285.030.

9 (7) The commission shall consult with the department to apply the
10 procedures adopted by the department to verify the emissions of
11 greenhouse gases from baseload electric generation under RCW
12 80.80.040. The department shall report to the commission whether
13 baseload electric generation will comply with the greenhouse gas
14 emissions performance standard for the duration of the period the
15 baseload electric generation is supplied to the electrical company.

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

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

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

--- END ---