

# HOUSE BILL REPORT

## HB 1854

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**As Reported by House Committee On:**  
Technology, Energy & Communications

**Title:** An act relating to the greenhouse gas emissions performance standard under chapter 80.80 RCW.

**Brief Description:** Modifying provisions of the greenhouse gas emissions standards under chapter 80.80 RCW.

**Sponsors:** Representatives Morris and Chase.

**Brief History:**

**Committee Activity:**

Technology, Energy & Communications: 2/11/09, 2/19/09 [DPS].

**Brief Summary of Substitute Bill**

- Requires the Department of Ecology, through rulemaking, to allow no more than 12 percent of delivered electricity from unspecified resources over the life of a long-term financial commitment.
- Specifies that electric generation facilities or power plants powered by renewable resources are in compliance with the greenhouse gases (GHG) emissions performance standard, provided that the renewable energy credits have not been sold separately for electricity produced by these facilities and plants.
- Allows electric utilities regulated by the Utilities and Transportation Commission to defer for later consideration certain costs related to meeting the GHG emissions performance standard.

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### HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives McCoy, Chair; Eddy, Vice Chair; Crouse, Ranking Minority Member; Haler, Assistant Ranking Minority Member; Carlyle, Finn, Hasegawa, Hudgins, Jacks, McCune, Morris, Takko and Van De Wege.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Minority Report:** Do not pass. Signed by 3 members: Representatives Condotta, Herrera and Hinkle.

**Staff:** Scott Richards (786-7156)

**Background:**

Greenhouse Gases Emissions Performance Standard.

The Greenhouse Gases (GHG) emissions performance standard for all baseload electric generation for which electric utilities enter into long-term financial commitments is the lower of:

- 1,100 pounds of GHG per megawatt-hour; or
- the average available GHG emissions output as updated by the Department of Community, Trade and Economic Development (CTED).

A long-term financial commitment is: (1) either a new ownership interest in or an upgrade to a baseload electric generation; or (2) a new or renewed contract for baseload electric generation with a term of five or more years.

All baseload electric generation that begins operation after June 30, 2008, and is located in Washington, must comply with the performance standard. The following facilities are deemed to be in compliance with the performance standard:

- all baseload electric generation facilities in operation as of June 30, 2008, until they are the subject of long-term financial commitments;
- all electric generation facilities or power plants powered exclusively by renewable resources; and
- all cogeneration facilities in the state that are fueled by natural gas or waste gas in operation as of June 30, 2008, until they are the subject of a new ownership interest or are upgraded.

The following emissions produced by baseload electric generation do not count against the performance standard:

- emissions that are injected permanently in geological formations;
- emissions that are permanently sequestered by other means approved by the Department of Ecology (DOE); and
- emissions sequestered or mitigated under a plan approved by the Energy Facility Site Evaluation Council (EFSEC).

Unspecified Sources.

In 2008 the EFSEC and the DOE adopted rules, in coordination with each other, to implement and enforce the GHG emissions performance standard. In developing and implementing the GHG emissions performance standard, the DOE was required by the Legislature, to the extent practicable, to address long-term purchases of electricity from unspecified sources. Electricity from unspecified sources is electricity that is delivered to Washington under a long-term financial commitment entered into by an electric utility, and

whose sources or origins of generation and expected average annual deliveries cannot be ascertained with reasonable certainty. The DOE adopted by rule a time-weighted average formula that assigns the default emission value of an average pulverized coal plant to an unspecified source of power.

Electrical Companies Regulated by the Utilities and Transportation Commission.

Electrical companies regulated by the Utilities and Transportation Commission (UTC) may account for and defer for later consideration by the UTC costs incurred in connection with the long-term financial commitment, including operating and maintenance costs, depreciation, taxes, and cost of invested capital.

Definitions.

"Renewable energy credit" is a tradable certificate of proof of at least one megawatt-hour of an eligible renewable resource where the generation facility is not powered by fresh water. The certificate must include all of the non-power attributes associated with that one megawatt-hour of electricity, and the certificate is verified by a renewable energy credit tracking system selected by the Department of Community, Trade and Economic Development.

"Renewable resources" means electricity generation facilities fueled by: (1) water; (2) wind; (3) solar energy; (4) geothermal energy; (5) landfill gas; (6) biomass energy utilizing animal waste, solid organic fuels from wood, forest, or field residues or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; (7) byproducts of pulping or wood manufacturing processes, including but not limited to bark, wood chips, sawdust, and lignin in spent pulping liquors; (8) ocean thermal, wave, or tidal power; or (9) gas from sewage treatment facilities.

"Non-power attributes" means all environmentally related characteristics, exclusive of energy, capacity reliability, and other electrical power service attributes, that are associated with the generation of electricity from a renewable resource, including but not limited to the facility's fuel type, geographic location, vintage, qualification as an eligible renewable resource, and avoided emissions of pollutants to the air, soil, or water, and avoided emissions of carbon dioxide and other greenhouse gases.

"Power plant" means a facility for the generation of electricity that is permitted as a single plant by the EFSEC or a local jurisdiction.

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**Summary of Substitute Bill:**

Unspecified Sources.

The DOE is required to update the rules to the GHG emissions performance standard by December 31, 2009. In updating the rules, the DOE must allow no more than 12 percent of delivered electricity from unspecified resources over the life of a long-term financial commitment.

### Renewable Energy Credits.

All electric generation facilities or power plants powered exclusively by renewable resources are deemed to be in compliance with the GHG emissions performance standard, provided that the renewable energy credits have not been sold separately for that electricity. A renewable energy credit is specified to mean a tradable certificate of proof of at least one megawatt-hour of a renewable resource where the certificate includes all of the non-power attributes associated with that one megawatt-hour of electricity.

### Electrical Companies Regulated by the Utilities and Transportation Commission.

An electrical company regulated by the UTC may account for and defer for up to 24 months consideration of all costs incurred in connection with the construction or acquisition of any facility, including operating and maintenance costs, depreciation, taxes, and cost of invested capital. During the deferral period, the electrical company must file either a general rate case or other proceeding for the recovery of these costs. The deferral period ends on the effective date of the final decision by the UTC of a general rate case or other proceeding. Creation of such a deferral account does not by itself determine the actual costs of the facility, whether recovery of any or all of these costs is appropriate, or other issues to be decided by the UTC in a general rate case or other proceeding for recovery of these costs.

For the purposes of accounting for and deferring costs incurred in construction or acquisition of a facility, the term "facility" means an electric generation plant, or a power purchase agreement with a term of five years or greater that is associated with the output of an electric generation plant, with GHG emissions that are the lower of: (1) 1,100 pounds of GHG per megawatt-hour; or (2) the average available GHG emissions output.

### Definition.

"Power plant" means a facility for the generation of electricity that includes one or more generating units at the same location.

### **Substitute Bill Compared to Original Bill:**

The definition of "baseload electric generation" is modified to mean electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least 60 percent and that regardless of ownership, is dispatched by an electric utility.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) After Engrossed Substitute Senate Bill 6001 was enacted by the Legislature in 2007, there were differing opinions on whether the Legislature intended to cover in-state generation only, or in-state and out-of-state generation. One of the purposes of this bill is to bring this issue back to the Legislature to make a conscious decision, rather than assume an unspoken one.

The definition of power plant is legally ambiguous on whether it is in-state or out-of-state power plants. The intent of the original bill was to stop dirty coal from in-state and out-of-state sources. The clarification in the bill addresses out-of-state dirty coal coming into Washington. Currently, the rules allow a utility to blend contracts of specified or unspecified resources. The blending is a big concern. It would allow a utility to get up to 46 percent of unspecified power, or coal power in a contract, if it is blended with a clean source of power such as hydroelectric power. Unspecified sources should be limited to 12 percent.

(With concerns) The cap on unspecified resources is a fair compromise and a reasonable cap. The term facility used in the bill is ambiguous. There is concern that if a utility sells a renewable energy credit from a renewable resource project, it may incur a carbon liability. This could potentially make a wind project exceed the GHG emissions performance standard. Baseload electric generation was not properly defined when this law was created. The definition should be modified to specify that baseload electric generation must be dispatched by a utility.

(Opposed) There is support to fix the in-state and out-of-state ambiguity in the bill, but it does more than that. This bill was modeled on a California law, which does not recognize the Bonneville Power Administration (BPA) system. The definition for baseload electric generation does not fit with the BPA system with its multiple series of hydroelectric and nuclear stations. Nevertheless, public utility districts voluntarily allowed their BPA contracts to come under the jurisdiction of the rulemaking. Through this rulemaking a compromise was reached to develop a formula for unspecified sources of power. The 12 percent from unspecified sources is too high. There may be another fix available to the Legislature, which would be to exempt BPA contracts from this requirement.

**Persons Testifying:** (In support) Representative Morris, prime sponsor; and Carrie Dolwick, Northwest Energy Coalition.

(With concerns) Sarah Rees, Washington State Department of Ecology; Collins Sprague, Avista Corporation; Kathleen Collins, PacifiCorp; and Ken Johnson, Puget Sound Energy.

(Opposed) Dave Warren, Washington Public Utilities District Association.

**Persons Signed In To Testify But Not Testifying:** None.