ESSB 6001 - H COMM AMD
By Committee on Technology, Energy & Communications

NOT CONSIDERED 04/12/2007

Strike everything after the enacting clause and insert the following:

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

(a) Washington is especially vulnerable to climate change because of the state's dependence on snow pack for summer stream flows and because the expected rise in sea levels threatens our coastal communities. Extreme weather, a warming Pacific Northwest, reduced snow pack, and sea level rise are four major ways that climate change is disrupting Washington's economy, environment, and communities;

(b) Washington's greenhouse gases emissions are continuing to increase, despite international scientific consensus that worldwide emissions must be reduced significantly below current levels to avert catastrophic climate change;

(c) Washington state greenhouse gases are substantially caused by the transportation sector of the economy;

(d) Washington has been a leader in actions to reduce the increase of greenhouse gases emissions, such as being the first state in the nation to adopt a carbon dioxide mitigation program for new thermal electric plants, mandating integrated resource planning for electric utilities to include life-cycle costs of carbon dioxide emissions, including the adoption of clean car standards, stronger appliance energy efficiency standards, increased production and use of renewable liquid fuels, and increased renewable energy sources by electrical utilities;

(e) A greenhouse gases emissions performance standard will work in unison with the state's carbon dioxide mitigation policy for fossil-fueled thermal electric generation facilities located in the state under chapter 80.70 RCW and its related rules;

(f) While these actions are significant, there is a need to assess the trend of greenhouse gases emissions statewide over the next several decades, and to take sufficient actions so that Washington meets its responsibility to contribute to the global actions needed to reduce the impacts and the pace of global warming;

(g) Actions to reduce greenhouse gases emissions will spur technology development and increase efficiency, thus resulting in benefits to Washington's economy and businesses; and

(h) The state of Washington has an obligation to provide clear guidance for the procurement of baseload electric generation to alleviate regulatory uncertainty while addressing risks that can affect the ability of electric utilities to make necessary and timely investments to ensure an adequate, reliable, and cost-effective supply of electricity.

(2) The legislature finds that companies that generate greenhouse gases emissions or manufacture products that generate such emissions are purchasing carbon credits from landowners and from other companies that provide carbon credits. Companies that are purchasing carbon credits would benefit from a program to trade and to bank carbon credits. Washington forests are one of the most effective resources that can absorb carbon dioxide from the atmosphere. Forests, and other planted lands and waters, provide carbon storage and mitigate greenhouse gases emissions. Washington contains the most productive forests in the world and both public and private landowners could benefit from a carbon storage trading and banking program.

(3) The legislature intends by this act to establish statutory goals for the statewide reduction in greenhouse gases emissions and to adopt the recommendations provided by the Washington climate change challenge stakeholder group, which is charged with designing and recommending a comprehensive set of policies to the legislature and the governor on how to achieve the goals. The legislature further intends by this act to authorize immediate actions in the electric power generation sector for the reduction of greenhouse gases emissions and to accelerate efficiency in the transportation sector.

(4) The legislature finds that:

(a) To the extent energy efficiency and renewable resources are unable to satisfy increasing energy and capacity needs, the state will rely on clean and efficient fossil fuel-fired generation and will encourage the development of cost-effective, highly efficient, and environmentally sound supply resources to provide reliability and consistency with the state's energy priorities;

(b) It is vital to ensure all electric utilities internalize the significant and underrecognized cost of emissions and to reduce Washington's exposure to costs associated with future regulation of these emissions, which is consistent with the objectives of integrated resource planning by electric utilities under chapter 19.280 RCW; and

(c) The state of California recently enacted a law establishing a greenhouse gases emissions performance standard for electric utility procurement of baseload electric generation that is based on the emissions of a combined-cycle thermal electric generation facility fueled by natural gas.

(5) The legislature finds that the climate change challenge stakeholder group provides a process for identifying the policies necessary to achieve the economic and emissions reduction goals in sections 3 and 4 of this act. The climate change challenge stakeholder group should seek emission reduction policies and strategies, to the maximum extent possible, that minimize economic disruptions and protect jobs for Washington state workers, citizens, and businesses, while avoiding policies and strategies that would result in the transfer or outsourcing of economic advantages or jobs to other states, regions, or nations.

NEW SECTION. **Sec. 2.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Attorney general" means the Washington state office of the attorney general.

(2) "Auditor" means: (a) The Washington state auditor's office or its designee for consumer-owned utilities under its jurisdiction; or (b) an independent auditor selected by a consumer-owned utility that is not under the jurisdiction of the state auditor.

(3) "Average available greenhouse gases emissions output" means the average greenhouse gases emissions from combined-cycle natural gas thermal electric generation turbines available for sale in the United States as surveyed and reported by the energy policy division of the department of community, trade, and economic development under section 7 of this act.

(4) "Baseload electric generation" means electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least sixty percent.

(5) "Climate change challenge stakeholder group" means the consultation group established by Executive Order 07-02 to consider and recommend policies for the state to adopt to achieve greenhouse gases emissions goals.

(6) "Cogeneration facility" means a power plant in which the heat or steam is also used for industrial or commercial heating or cooling purposes and that meets federal energy regulatory commission standards for qualifying facilities under the public utility regulatory policies act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

(7) "Combined-cycle natural gas thermal electric generation facility" means a power plant that employs a combination of one or more gas turbines and steam turbines in which electricity is produced in the steam turbine from otherwise lost waste heat exiting from one or more of the gas turbines.

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

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

(10) "Department" means the department of ecology.

(11) "Distributed generation" means electric generation connected to the distribution level of the transmission and distribution grid, which is usually located at or near the intended place of use.

(12) "Electrical company" means a company owned by investors that meets the definition of RCW 80.04.010.

(13) "Electric utility" means an electrical company or a consumer-owned utility.

(14) "Governing board" means the board of directors or legislative authority of a consumer-owned utility.

(15) "Greenhouse gases" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(16) "Long-term financial commitment" means:

(a) Either a new ownership interest in baseload electric generation or an upgrade to a baseload electric generation facility; or

(b) A new or renewed contract for baseload electric generation with a term of five or more years for the provision of retail power or wholesale power to end-use customers in this state.

(17) "Net emissions" means the formula for calculating total carbon dioxide emissions as determined according to chapter 173-407 WAC as it existed on July 1, 2007.

(18) "Plant capacity factor" means the ratio of the electricity produced during a given time period, measured in kilowatt-hours, to the electricity the unit could have produced if it had been operated at its rated capacity during that period, expressed in kilowatt-hours.

(19) "Power plant" means a facility for the generation of electricity that is permitted as a single plant by the energy facility site evaluation council or a local jurisdiction.

(20) "Upgrade" means any modification made for the primary purpose of increasing the electric generation capacity of a baseload electric generation facility. "Upgrade" does not include routine or necessary maintenance, installation of emission control equipment, installation, replacement, or modification of equipment that improves the heat rate of the facility, or installation, replacement, or modification of equipment for the primary purpose of maintaining reliable generation output capability that does not increase the heat input or fuel usage as specified in existing generation air quality permits as of the effective date of this section, but may result in incidental increases in generation capacity.

<u>NEW SECTION.</u> **Sec. 3.** (1) The following greenhouse gases emissions reduction and clean energy economy goals are established for Washington state:

(a) By 2020, reduce overall greenhouse gases emissions in the state to 1990 levels, which equals seventy-eight million five hundred thousand metric tons of carbon dioxide equivalent emissions;

(b) By 2035, reduce overall greenhouse gases emissions in the state to twenty-five percent below 1990 levels, which equals fifty-eight million eight hundred eighty thousand metric tons of carbon dioxide equivalent emissions;

(c) By 2050, the state will do its part to reach global climate stabilization levels by reducing overall emissions to fifty percent below 1990 levels, which equals thirty-nine million two hundred fifty thousand million metric tons of carbon dioxide equivalent emissions, or seventy percent below the state's expected emissions that year; and

(d) By 2020, increase the number of clean energy sector jobs to twenty-five thousand from the eight thousand four hundred jobs the state had in 2004.

(2) By December 31st of each even-numbered year beginning in 2010, the departments of ecology and community, trade, and economic development shall report to the governor and the appropriate committees of the senate and house of representatives the total greenhouse gases emissions for the preceding two years, and totals in each major source sector.

NEW SECTION. **Sec. 4.** (1) The following greenhouse gases emissions reduction goals with respect to electricity generation are established for the electricity sector in Washington state:

(a) By 2020, reduce greenhouse gases emissions in the state to 1990 levels, which equals seven million four hundred thirty thousand metric tons of carbon dioxide equivalent emissions;

(b) By 2035, reduce greenhouse gases emissions in the state to twenty-five percent below 1990 levels, which equals five million five hundred seventy thousand metric tons of carbon dioxide equivalent emissions; and

(c) By 2050, the state will do its part to reach global climate stabilization levels by reducing emissions to fifty percent below 1990 levels, which equals three million seven hundred twenty thousand metric tons of carbon dioxide equivalent emissions, or seventy percent below the state's expected emissions that year.

(2) By December 31st of each even-numbered year beginning in 2010, the departments of ecology and community, trade, and economic development shall report to the governor and the appropriate committees of the senate and house of representatives the total greenhouse gas

emissions for the preceding two years, and totals in each major source sector.

<u>NEW SECTION.</u> **Sec. 5.** The climate change challenge stakeholder group shall develop policy recommendations to the governor and the legislature as to what policies must be put in place in order for the state to meet the greenhouse gases emissions reduction standards established in sections 3 and 4 of this act. These recommendations must be submitted to the legislature and the governor by December 1, 2007.

<u>NEW SECTION.</u> **Sec. 6.** (1) Beginning July 1, 2008, the greenhouse gases emissions performance standard for all baseload electric generation for which electric utilities enter into long-term financial commitments on or after such date is the lower of:

(a) One thousand one hundred pounds of greenhouse gases per megawatt-hour; or

(b) The average available greenhouse gases emissions output as determined by the department of community, trade, and economic development under section 7 of this act.

(2) Even if their actual emissions are higher than the greenhouse gases emissions performance standard, all baseload electric generation facilities in operation as of June 30, 2008, are deemed to be in compliance with the greenhouse gases emissions performance standard established under this section until the facilities are the subject of long-term financial commitments.

(3) All electric generating facilities or power plants powered by renewable resources, as defined in RCW 19.280.020, are deemed to be in compliance with the greenhouse gases emissions performance standard established under this section. For the purposes of this section, "renewable resources" include, but are not limited to, hydroelectric generation.

(4) Even if their actual emissions are higher than the greenhouse gases emissions performance standard, all baseload electric generation facilities that begin operation after June 30, 2008, are deemed to be in compliance with the greenhouse gases emissions performance standard established under this section provided that the baseload electric

generation facility mitigates its total carbon dioxide emissions under RCW 80.70.020.

(5) In determining the rate of emissions of greenhouse gases for baseload electric generation, the net emissions resulting from the production of electricity by the baseload electric generation must be included.

(6) Carbon dioxide that is sequestered so as to prevent releases into the atmosphere, which is in compliance with applicable laws and regulations, may not be counted as net emissions of the power plant in determining compliance with the greenhouse gases emissions performance standard.

(7) In adopting and implementing the greenhouse gases emissions performance standard, the department, in consultation with the commission, the Bonneville power administration, the western electricity coordination council, the energy facility site evaluation council, the department of community, trade, and economic development energy policy division, electric utilities, public interest representatives, and consumer representatives shall consider the effects of the greenhouse gases emissions performance standard on system reliability and overall costs to electricity customers.

(8) In developing and implementing the greenhouse gases emissions performance standard, the department shall to the extent practicable, with assistance of the commission, the department of community, trade, and economic development energy policy division, and electric utilities, address electricity from unspecified sources in a manner consistent with this chapter.

(9) By December 1, 2007, the climate change challenge stakeholder group shall develop policy recommendations to the governor and the legislature on implementation of the greenhouse gases emissions performance standards established in this section. These recommendations must include, but not be limited to:

(a) Procedures regarding verification and enforcement of the greenhouse gases emissions performance standard;

(b) Whether existing mechanisms for carbon sequestration under chapter 80.70 RCW and its related rules are sufficient;

(c) A transition plan for phasing out carbon dioxide mitigation under chapter 80.70 RCW as a means of achieving the goals of this act;

(d) A process for replacing the highest emitting thermal electric plants that have exceeded their expected useful life with newer technologies that have lower greenhouse gases emission levels; and

(e) Methods to utilize indigenous resources, such as landfill gas, geothermal resources, and other assets that might reduce greenhouse gases emissions consistent with the purposes of this act.

NEW SECTION. **Sec. 7.** The energy policy division of the department of community, trade, and economic development shall survey combined-cycle natural gas thermal electric generation facilities available for sale in the United States and determine an average rate of emission of greenhouse gases for these facilities. The department of community, trade, and economic development shall report the results of its survey to the legislature on a biennial basis, starting June 30, 2008.

Sec. 8. RCW 80.70.020 and 2004 c 224 s 2 are each amended to read as follows:

(1) The provisions of this chapter apply to:

(a) New fossil-fueled thermal electric generation facilities with station-generating capability of three hundred fifty thousand kilowatts or more and fossil-fueled floating thermal electric generation facilities of one hundred thousand kilowatts or more under RCW 80.50.020(14)(a), for which an application for site certification is made to the council after July 1, 2004;

(b) New fossil-fueled thermal electric generation facilities with station-generating capability of more than twenty-five thousand kilowatts, but less than three hundred fifty thousand kilowatts, except for fossil-fueled floating thermal electric generation facilities under the council's jurisdiction, for which an application for an order of approval has been submitted after July 1, 2004;

(c) Fossil-fueled thermal electric generation facilities with station-generating capability of three hundred fifty thousand kilowatts or more that have an existing site certification agreement and, after July 1, 2004, apply to the council to increase the output of carbon dioxide emissions by fifteen percent or more through permanent changes in facility operations or modification or equipment; and

(d) Fossil-fueled thermal electric generation facilities with station-generating capability of more than twenty-five thousand kilowatts, but less than three hundred fifty thousand kilowatts, except for fossil-fueled floating thermal electric generation facilities under the council's jurisdiction, that have an existing order of approval and, after July 1, 2004, apply to the department or authority, as appropriate, to permanently modify the facility so as to increase its station-generating capability by at least twenty-five thousand kilowatts or to increase the output of carbon dioxide emissions by fifteen percent or more, whichever measure is greater.

(2)(a) A proposed site certification agreement submitted to the governor under RCW 80.50.100 and a final site certification agreement issued under RCW 80.50.100 shall include an approved carbon dioxide mitigation plan.

(b) For fossil-fueled thermal electric generation facilities not under jurisdiction of the council, the order of approval shall require an approved carbon dioxide mitigation plan.

(c) Site certification agreement holders or order of approval holders may request, at any time, a change in conditions of an approved carbon dioxide mitigation plan if the council, department, or authority, as appropriate, finds that the change meets all requirements and conditions for approval of such plans.

(3) An applicant for a fossil-fueled thermal electric generation facility shall include one or a combination of the following carbon dioxide mitigation options as part of its mitigation plan:

(a) Payment to a third party to provide mitigation;

(b) Direct purchase of permanent carbon credits; or

(c) Investment in applicant-controlled carbon dioxide mitigation projects, including combined heat and power (cogeneration).

(4) Fossil-fueled thermal electric generation facilities that receive site certification approval or an order of approval shall provide mitigation ((~~for twenty percent of~~)) to reduce the total carbon dioxide emissions produced by the facility to one thousand one hundred pounds of greenhouse gases per megawatt-hour or the average available greenhouse gases emissions output as determined under section 7 of this act, whichever is lower.

(5) If the certificate holder or order of approval holder chooses to pay a third party to provide the mitigation, the mitigation rate

shall be one dollar and sixty cents per metric ton of carbon dioxide to be mitigated. For a cogeneration plant, the monetary amount is based on ((~~the difference between twenty percent of~~)) the total carbon dioxide emissions ((~~and~~)) minus one thousand one hundred pounds of greenhouse gases per megawatt-hour or the average available greenhouse gases emissions output as determined under section 7 of this act, whichever is lower, minus the cogeneration credit.

(a) Through rule making, the council may adjust the rate per ton biennially as long as any increase or decrease does not exceed fifty percent of the current rate. The department or authority shall use the adjusted rate established by the council pursuant to this subsection for fossil-fueled thermal electric generation facilities subject to the provisions of this chapter.

(b) In adjusting the mitigation rate the council shall consider, but is not limited to, the current market price of a ton of carbon dioxide. The council's adjusted mitigation rate shall be consistent with RCW 80.50.010(3).

(6) The applicant may choose to make to the third party a lump sum payment or partial payment over a period of five years.

(a) Under the lump sum payment option, the payment amount is determined by ((~~multiplying the total carbon dioxide emissions by the twenty percent mitigation requirement under subsection (4) of this section and~~)) calculating the difference between the total carbon dioxide emissions and one thousand one hundred pounds of greenhouse gases per megawatt-hour or the average available greenhouse gases emissions output as determined under section 7 of this act, whichever is lower, multiplied by the per ton mitigation rate established under subsection (5) of this section.

(b) No later than one hundred twenty days after the start of commercial operation, the certificate holder or order of approval holder shall make a one-time payment to the independent qualified organization for the amount determined under subsection (5) of this section.

(c) As an alternative to a one-time payment, the certificate holder or order of approval holder may make a partial payment of twenty percent of the amount determined under subsection (5) of this section no later than one hundred twenty days after commercial operation and a payment in the same amount or as adjusted according to subsection

(5)(a) of this section, on the anniversary date of the initial payment in each of the following four years. With the initial payment, the certificate holder or order of approval holder shall provide a letter of credit or other comparable security acceptable to the council or the department for the remaining eighty percent mitigation payment amount including possible changes to the rate per metric ton from rule making under subsection (5)(a) of this section.

(7)(a) All electric utilities that enter into long-term financial commitments for baseload generation located outside the state shall meet the greenhouse gases emissions performance standard under chapter 80.-- RCW (sections 1 through 7 and 9 through 11 of this act). Electric utilities shall provide mitigation for greenhouse gases emissions in excess of the greenhouse gases emissions standard established in section 6 of this act.

(b) The electric utility shall choose one or a combination of the following carbon dioxide mitigation options to mitigate for carbon dioxide emissions:

(i) Payment to a third party to provide mitigation;

(ii) Direct purchase of permanent carbon credits as specified under RCW 80.70.030; or

(iii) Investment in load-serving utility-controlled carbon dioxide mitigation projects, including combined heat and power (cogeneration).

NEW SECTION. **Sec. 9.** (1) No electrical company may enter into a long-term financial commitment unless the baseload electric generation supplied under such a long-term financial commitment complies with the greenhouse gases emissions performance standard established under section 6 of this act.

(2) In order to enforce the requirements of this chapter, the commission shall review in a general rate case or as provided in subsection (5) of this section any long-term financial commitment entered into by an electrical company after June 30, 2008, to determine whether the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse gases emissions performance standard established under section 6 of this act.

(3) In determining whether a long-term financial commitment is for baseload electric generation, the commission shall consider:

(a) The design of the power plant and its intended use, based upon the electricity purchase contract, if any;

(b) Permits necessary for the operation of the power plant; and

(c) Any other matter the commission determines is relevant under the circumstances.

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

(5) Upon application by an electrical company, the commission shall make a determination regarding the company's proposed decision to acquire electric generation or enter into a power purchase agreement for electricity that complies with the greenhouse gases emissions performance standard established under section 6 of this act, as to the need for the resource, and the appropriateness of the specific resource selected. The commission shall take into consideration each electric company's most recent integrated resource plan. In addition, the commission shall provide for recovery of the prudently incurred capital and operating cost of these resources and may impose such conditions as it finds necessary to ensure that rates are fair, just, reasonable, and sufficient, coincident with the in-service date of the project or the effective date of the power purchase agreement.

(6) An electrical company may account for and defer for later consideration by the commission costs incurred in connection with the long-term financial commitment, including operating and maintenance costs, depreciation, taxes, and cost of invested capital. The deferral begins with the date on which the power plant begins commercial operation or the effective date of the power purchase agreement and ends on the effective date of the final decision by the commission regarding recovery in rates of these deferred costs. Creation of such a deferral account does not by itself determine whether recovery of any or all of these costs is appropriate.

(7) The commission shall adopt procedures to verify net emissions of greenhouse gases from baseload electric generation under section 6 of this act.

(8) The commission shall adopt rules for the enforcement of this

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

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

NEW SECTION. **Sec. 10.** (1) No consumer-owned utility may enter into a long-term financial commitment unless the baseload electric generation supplied under such a long-term financial commitment complies with the greenhouse gases emissions performance standard established under section 6 of this act.

(2) The governing board of a consumer-owned utility shall review and make a determination on any long-term financial commitment by the utility, pursuant to this chapter, to determine whether the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse gases emissions performance standard established under section 6 of this act. No consumer-owned utility may enter into a long-term financial commitment unless the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse gases emissions performance standard established under section 6 of this act.

(3) In confirming that a long-term financial commitment is for baseload electric generation, the governing board shall consider: (a) The design of the power plant and the intended use of the power plant based upon the electricity purchase contract, if any; (b) permits necessary for the operation of the power plant; and (c) any other matter the governing board determines is relevant under the circumstances.

(4) The governing board may provide a case-by-case exemption from the greenhouse gases emissions performance standard to address: (a) Unanticipated electric system reliability needs; or (b) catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances.

(5) The governing board shall adopt procedures to verify net emissions of greenhouse gases from baseload electric generation under section 6 of this act, and may request assistance from the department in doing so.

(6) For consumer-owned utilities, the auditor is responsible for auditing compliance under this chapter and rules adopted under this chapter that apply to those utilities and the attorney general is responsible for enforcing that compliance.

NEW SECTION. **Sec. 11.** For the purposes of sections 6, 7, 9, and 10 of this act and RCW 80.70.020, the department, in consultation with the commission and the governing boards of consumer-owned utilities, shall review the greenhouse gases emission performance standard established in this chapter to determine need, applicability, and effectiveness no less than every five years following the effective date of this section, or upon implementation of a federal or state law or rule regulating carbon dioxide emissions of electrical utilities, and report to the legislature.

NEW SECTION. **Sec. 12.** Sections 1 through 7 and 9 through 11 of this act constitute a new chapter in Title 80 RCW."

Correct the title.

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