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**SUBSTITUTE HOUSE BILL 1854**

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**State of Washington                      61st Legislature                      2009 Regular Session**

**By** House Technology, Energy & Communications (originally sponsored by Representatives Morris and Chase)

READ FIRST TIME 02/23/09.

1            AN ACT Relating to the greenhouse gas emissions performance  
2 standard under chapter 80.80 RCW; and amending RCW 80.80.010,  
3 80.80.040, and 80.80.060.

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

5            **Sec. 1.** RCW 80.80.010 and 2007 c 307 s 2 are each amended to read  
6 as follows:

7            The definitions in this section apply throughout this chapter  
8 unless the context clearly requires otherwise.

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

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

15            (3) "Average available greenhouse ((~~gases~~-[gas])) gas emissions  
16 output" means the level of greenhouse ((~~gases~~-[gas])) gas emissions as  
17 surveyed and determined by the energy policy division of the department  
18 of community, trade, and economic development under RCW 80.80.050.

1 (4) "Baseload electric generation" means electric generation from  
2 a power plant that is designed and intended to provide electricity at  
3 an annualized plant capacity factor of at least sixty percent and that,  
4 regardless of ownership, is dispatched by an electric utility.

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

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

15 (7) "Commission" means the Washington utilities and transportation  
16 commission.

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

25 (9) "Department" means the department of ecology.

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

29 (11) "Electric utility" means an electrical company or a consumer-  
30 owned utility.

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

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

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

37 (15) "Long-term financial commitment" means:

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

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

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

10 (17) "Power plant" means a facility for the generation of  
11 electricity that (~~is permitted as a single plant by the energy~~  
12 ~~facility site evaluation council or a local jurisdiction~~) includes one  
13 or more generating units at the same location.

14 (18) "Upgrade" means any modification made for the primary purpose  
15 of increasing the electric generation capacity of a baseload electric  
16 generation facility. "Upgrade" does not include routine or necessary  
17 maintenance, installation of emission control equipment, installation,  
18 replacement, or modification of equipment that improves the heat rate  
19 of the facility, or installation, replacement, or modification of  
20 equipment for the primary purpose of maintaining reliable generation  
21 output capability that does not increase the heat input or fuel usage  
22 as specified in existing generation air quality permits as of July 22,  
23 2007, but may result in incidental increases in generation capacity.

24 **Sec. 2.** RCW 80.80.040 and 2007 c 307 s 5 are each amended to read  
25 as follows:

26 (1) Beginning July 1, 2008, the greenhouse (~~gases~~) gas emissions  
27 performance standard for all baseload electric generation for which  
28 electric utilities enter into long-term financial commitments on or  
29 after such date is the lower of:

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

32 (b) The average available greenhouse (~~gases~~) gas emissions output  
33 as determined under RCW 80.80.050.

34 (2) All baseload electric generation facilities in operation as of  
35 June 30, 2008, are deemed to be in compliance with the greenhouse  
36 (~~gases~~) gas emissions performance standard established under this  
37 section until the facilities are the subject of long-term financial

1 commitments. All baseload electric generation that commences operation  
2 after June 30, 2008, and is located in Washington, must comply with the  
3 greenhouse ((~~gases~~)) gas emissions performance standard established in  
4 subsection (1) of this section.

5 (3) All electric generation facilities or power plants powered  
6 exclusively by renewable resources, as defined in RCW 19.280.020, where  
7 renewable energy credits have not been sold separately for that  
8 electricity, are deemed to be in compliance with the greenhouse  
9 ((~~gases~~)) gas emissions performance standard established under this  
10 section. As referenced in this subsection, a renewable energy credit  
11 is a tradable certificate of proof of at least one megawatt-hour of a  
12 renewable resource where the certificate includes all of the nonpower  
13 attributes, as defined in RCW 19.285.030, associated with that one  
14 megawatt-hour of electricity.

15 (4) All cogeneration facilities in the state that are fueled by  
16 natural gas or waste gas or a combination of the two fuels, and that  
17 are in operation as of June 30, 2008, are deemed to be in compliance  
18 with the greenhouse ((~~gases~~)) gas emissions performance standard  
19 established under this section until the facilities are the subject of  
20 a new ownership interest or are upgraded.

21 (5) In determining the rate of emissions of greenhouse gases for  
22 baseload electric generation, the total emissions associated with  
23 producing electricity shall be included.

24 (6) The department shall establish an output-based methodology to  
25 ensure that the calculation of emissions of greenhouse gases for a  
26 cogeneration facility recognizes the total usable energy output of the  
27 process, and includes all greenhouse gases emitted by the facility in  
28 the production of both electrical and thermal energy. In developing  
29 and implementing the greenhouse ((~~gases~~)) gas emissions performance  
30 standard, the department shall consider and act in a manner consistent  
31 with any rules adopted pursuant to the public utilities regulatory  
32 policy act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

33 (7) The following greenhouse ((~~gases~~)) gas emissions produced by  
34 baseload electric generation owned or contracted through a long-term  
35 financial commitment shall not be counted as emissions of the power  
36 plant in determining compliance with the greenhouse ((~~gases~~)) gas  
37 emissions performance standard:

1 (a) Those emissions that are injected permanently in geological  
2 formations;

3 (b) Those emissions that are permanently sequestered by other means  
4 approved by the department; and

5 (c) Those emissions sequestered or mitigated as approved under  
6 subsection (13) of this section.

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

16 (9) Commencing on the effective date of this section, in developing  
17 and implementing the greenhouse ((gases)) gas emissions performance  
18 standard, the department shall~~((, with assistance of the commission,~~  
19 ~~the department of community, trade, and economic development energy~~  
20 ~~policy division, and electric utilities, and to the extent practicable,~~  
21 ~~address long term purchases of electricity from unspecified sources in~~  
22 ~~a manner consistent with this chapter)) allow no more than twelve~~  
23 ~~percent of delivered electricity from unspecified resources over the~~  
24 ~~life of a long-term financial commitment.~~

25 (10) The directors of the energy facility site evaluation council  
26 and the department shall each adopt rules under chapter 34.05 RCW in  
27 coordination with each other to implement and enforce the greenhouse  
28 ((gases)) gas emissions performance standard. The rules necessary to  
29 implement this section shall be adopted by June 30, 2008, and updated  
30 by December 31, 2009.

31 (11) In adopting the rules for implementing this section, the  
32 energy facility site evaluation council and the department shall  
33 include criteria to be applied in evaluating the carbon sequestration  
34 plan, for baseload electric generation that will rely on subsection (7)  
35 of this section to demonstrate compliance, but that will commence  
36 sequestration after the date that electricity is first produced. The  
37 rules shall include but not be limited to:

1 (a) Provisions for financial assurances, as a condition of plant  
2 operation, sufficient to ensure successful implementation of the carbon  
3 sequestration plan, including construction and operation of necessary  
4 equipment, and any other significant costs;

5 (b) Provisions for geological or other approved sequestration  
6 commencing within five years of plant operation, including full and  
7 sufficient technical documentation to support the planned  
8 sequestration;

9 (c) Provisions for monitoring the effectiveness of the  
10 implementation of the sequestration plan;

11 (d) Penalties for failure to achieve implementation of the plan on  
12 schedule;

13 (e) Provisions for an owner to purchase emissions reductions in the  
14 event of the failure of a sequestration plan under subsection (13) of  
15 this section; and

16 (f) Provisions for public notice and comment on the carbon  
17 sequestration plan.

18 (12)(a) Except as provided in (b) of this subsection, as part of  
19 its role enforcing the greenhouse (~~(gases)~~) gas emissions performance  
20 standard, the department shall determine whether sequestration or a  
21 plan for sequestration will provide safe, reliable, and permanent  
22 protection against the greenhouse gases entering the atmosphere from  
23 the power plant and all ancillary facilities.

24 (b) For facilities under its jurisdiction, the energy facility site  
25 evaluation council shall contract for review of sequestration or the  
26 carbon sequestration plan with the department consistent with the  
27 conditions under (a) of this subsection, consider the adequacy of  
28 sequestration or the plan in its adjudicative proceedings conducted  
29 under RCW 80.50.090(3), and incorporate specific findings regarding  
30 adequacy in its recommendation to the governor under RCW 80.50.100.

31 (13) A project under consideration by the energy facility site  
32 evaluation council by July 22, 2007, is required to include all of the  
33 requirements of subsection (11) of this section in its carbon  
34 sequestration plan submitted as part of the energy facility site  
35 evaluation council process. A project under consideration by the  
36 energy facility site evaluation council by July 22, 2007, that receives  
37 final site certification agreement approval under chapter 80.50 RCW  
38 shall make a good faith effort to implement the sequestration plan. If

1 the project owner determines that implementation is not feasible, the  
2 project owner shall submit documentation of that determination to the  
3 energy facility site evaluation council. The documentation shall  
4 demonstrate the steps taken to implement the sequestration plan and  
5 evidence of the technological and economic barriers to successful  
6 implementation. The project owner shall then provide to the energy  
7 facility site evaluation council notification that they shall implement  
8 the plan that requires the project owner to meet the greenhouse  
9 (~~gases~~) gas emissions performance standard by purchasing verifiable  
10 greenhouse (~~gases~~) gas emissions reductions from an electric  
11 generating facility located within the western interconnection, where  
12 the reduction would not have occurred otherwise or absent this  
13 contractual agreement, such that the sum of the emissions reductions  
14 purchased and the facility's emissions meets the standard for the life  
15 of the facility.

16 **Sec. 3.** RCW 80.80.060 and 2007 c 307 s 8 are each amended to read  
17 as follows:

18 (1) No electrical company may enter into a long-term financial  
19 commitment unless the baseload electric generation supplied under such  
20 a long-term financial commitment complies with the greenhouse (~~gases~~)  
21 gas emissions performance standard established under RCW 80.80.040.

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

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

35 (4) Upon application by an electric utility, the commission may  
36 provide a case-by-case exemption from the greenhouse (~~gases~~) gas  
37 emissions performance standard to address: (a) Unanticipated electric

1 system reliability needs; or (b) catastrophic events or threat of  
2 significant financial harm that may arise from unforeseen  
3 circumstances.

4 (5) Upon application by an electrical company, the commission shall  
5 determine whether the company's proposed decision to acquire electric  
6 generation or enter into a power purchase agreement for electricity  
7 complies with the greenhouse ((gases)) gas emissions performance  
8 standard established under RCW 80.80.040, whether the company has a  
9 need for the resource, and whether the specific resource selected is  
10 appropriate. The commission shall take into consideration factors such  
11 as the company's forecasted loads, need for energy, power plant  
12 technology, expected costs, and other associated investment decisions.  
13 The commission shall not decide in a proceeding under this subsection  
14 (5) issues involving the actual costs to construct and operate the  
15 selected resource, cost recovery, or other issues reserved by the  
16 commission for decision in a general rate case or other proceeding for  
17 recovery of the resource or contract costs. A proceeding under this  
18 subsection (5) shall be conducted pursuant to chapter 34.05 RCW (part  
19 IV). The commission shall adopt rules to provide that the schedule for  
20 a proceeding under this subsection takes into account both (a) the  
21 needs of the parties to the proposed resource acquisition or power  
22 purchase agreement for timely decisions that allow transactions to be  
23 completed; and (b) the procedural rights to be provided to parties in  
24 chapter 34.05 RCW (part IV), including intervention, discovery,  
25 briefing, and hearing.

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



1 itself determine the actual costs of the ((~~long-term financial~~  
2 ~~commitment~~)) facility, whether recovery of any or all of these costs is  
3 appropriate, or other issues to be decided by the commission in a  
4 general rate case or other proceeding for recovery of these costs.

5 (b) For the purposes of this subsection (6), "facility" means an  
6 electric generation plant, or a power purchase agreement with a term of  
7 five years or greater that is associated with the output of an electric  
8 generation plant, with greenhouse gas emissions that are the lower of  
9 (i) one thousand one hundred pounds of greenhouse gas per megawatt-  
10 hour; or (ii) the average available greenhouse gas emissions output as  
11 determined under RCW 80.80.050.

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

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

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

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