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SENATE BILL 6090

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State of Washington

61st Legislature

2009 Regular Session

By Senator Pridemore

Read first time 02/24/09. Referred to Committee on Environment, Water & Energy.

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 after June 30, 2008, and is located in Washington, must comply with the  
2 greenhouse (~~(gases)~~) gas emissions performance standard established in  
3 subsection (1) of this section.

4 (3) All electric generation facilities or power plants powered  
5 exclusively by renewable resources, as defined in RCW 19.280.020, are  
6 deemed to be in compliance with the greenhouse (~~(gases)~~) gas emissions  
7 performance standard established under this section.

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

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

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

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

31 (a) Those emissions that are injected permanently in geological  
32 formations;

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

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

37 (8) In adopting and implementing the greenhouse (~~(gases)~~) gas  
38 emissions performance standard, the department of community, trade, and

1 economic development energy policy division, in consultation with the  
2 commission, the department, the Bonneville power administration, the  
3 western electricity coordination council, the energy facility site  
4 evaluation council, electric utilities, public interest  
5 representatives, and consumer representatives, shall consider the  
6 effects of the greenhouse ((~~gases~~)) gas emissions performance standard  
7 on system reliability and overall costs to electricity customers.

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

14 (10) The directors of the energy facility site evaluation council  
15 and the department shall each adopt rules under chapter 34.05 RCW in  
16 coordination with each other to implement and enforce the greenhouse  
17 ((~~gases~~)) gas emissions performance standard. The rules necessary to  
18 implement this section shall be adopted by June 30, 2008.

19 (11) In adopting the rules for implementing this section, the  
20 energy facility site evaluation council and the department shall  
21 include criteria to be applied in evaluating the carbon sequestration  
22 plan, for baseload electric generation that will rely on subsection (7)  
23 of this section to demonstrate compliance, but that will commence  
24 sequestration after the date that electricity is first produced. The  
25 rules shall include but not be limited to:

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

30 (b) Provisions for geological or other approved sequestration  
31 commencing within five years of plant operation, including full and  
32 sufficient technical documentation to support the planned  
33 sequestration;

34 (c) Provisions for monitoring the effectiveness of the  
35 implementation of the sequestration plan;

36 (d) Penalties for failure to achieve implementation of the plan on  
37 schedule;

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

4 (f) Provisions for public notice and comment on the carbon  
5 sequestration plan.

6 (12)(a) Except as provided in (b) of this subsection, as part of  
7 its role enforcing the greenhouse ((gases)) gas emissions performance  
8 standard, the department shall determine whether sequestration or a  
9 plan for sequestration will provide safe, reliable, and permanent  
10 protection against the greenhouse gases entering the atmosphere from  
11 the power plant and all ancillary facilities.

12 (b) For facilities under its jurisdiction, the energy facility site  
13 evaluation council shall contract for review of sequestration or the  
14 carbon sequestration plan with the department consistent with the  
15 conditions under (a) of this subsection, consider the adequacy of  
16 sequestration or the plan in its adjudicative proceedings conducted  
17 under RCW 80.50.090(3), and incorporate specific findings regarding  
18 adequacy in its recommendation to the governor under RCW 80.50.100.

19 (13) A project under consideration by the energy facility site  
20 evaluation council by July 22, 2007, is required to include all of the  
21 requirements of subsection (11) of this section in its carbon  
22 sequestration plan submitted as part of the energy facility site  
23 evaluation council process. A project under consideration by the  
24 energy facility site evaluation council by July 22, 2007, that receives  
25 final site certification agreement approval under chapter 80.50 RCW  
26 shall make a good faith effort to implement the sequestration plan. If  
27 the project owner determines that implementation is not feasible, the  
28 project owner shall submit documentation of that determination to the  
29 energy facility site evaluation council. The documentation shall  
30 demonstrate the steps taken to implement the sequestration plan and  
31 evidence of the technological and economic barriers to successful  
32 implementation. The project owner shall then provide to the energy  
33 facility site evaluation council notification that they shall implement  
34 the plan that requires the project owner to meet the greenhouse  
35 ((gases)) gas emissions performance standard by purchasing verifiable  
36 greenhouse ((gases)) gas emissions reductions from an electric  
37 generating facility located within the western interconnection, where  
38 the reduction would not have occurred otherwise or absent this

1 contractual agreement, such that the sum of the emissions reductions  
2 purchased and the facility's emissions meets the standard for the life  
3 of the facility.

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

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

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

17 (3) In determining whether a long-term financial commitment is for  
18 baseload electric generation, the commission shall consider the design  
19 of the power plant and its intended use, based upon the electricity  
20 purchase contract, if any, permits necessary for the operation of the  
21 power plant, and any other matter the commission determines is relevant  
22 under the circumstances.

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

29 (5) Upon application by an electrical company, the commission shall  
30 determine whether the company's proposed decision to acquire electric  
31 generation or enter into a power purchase agreement for electricity  
32 complies with the greenhouse ((~~gases~~)) gas emissions performance  
33 standard established under RCW 80.80.040, whether the company has a  
34 need for the resource, and whether the specific resource selected is  
35 appropriate. The commission shall take into consideration factors such  
36 as the company's forecasted loads, need for energy, power plant  
37 technology, expected costs, and other associated investment decisions.

1 The commission shall not decide in a proceeding under this subsection  
2 (5) issues involving the actual costs to construct and operate the  
3 selected resource, cost recovery, or other issues reserved by the  
4 commission for decision in a general rate case or other proceeding for  
5 recovery of the resource or contract costs. A proceeding under this  
6 subsection (5) shall be conducted pursuant to chapter 34.05 RCW (part  
7 IV). The commission shall adopt rules to provide that the schedule for  
8 a proceeding under this subsection takes into account both (a) the  
9 needs of the parties to the proposed resource acquisition or power  
10 purchase agreement for timely decisions that allow transactions to be  
11 completed; and (b) the procedural rights to be provided to parties in  
12 chapter 34.05 RCW (part IV), including intervention, discovery,  
13 briefing, and hearing.

14 (6)(a) An electrical company may account for and defer for later  
15 consideration by the commission costs incurred in connection with the  
16 (~~long term financial commitment~~) construction or acquisition of any  
17 facility, including operating and maintenance costs, depreciation,  
18 taxes, and cost of invested capital. The deferral begins with the date  
19 on which the (~~power plant~~) facility begins commercial operation or  
20 the effective date of (~~the~~) a power purchase agreement and continues  
21 for a period not to exceed twenty-four months; provided that if during  
22 such period the company files a general rate case or other proceeding  
23 for the recovery of such costs, deferral ends on the effective date of  
24 the final decision by the commission in such proceeding. Creation of  
25 such a deferral account does not by itself determine the actual costs  
26 of the (~~long term financial commitment~~) facility, whether recovery of  
27 any or all of these costs is appropriate, or other issues to be decided  
28 by the commission in a general rate case or other proceeding for  
29 recovery of these costs.

30 (b) For the purposes of this subsection (6), "facility" means an  
31 electric generation plant, or a power purchase agreement of at least  
32 five years in length, associated with the output of an electric  
33 generation plant, with greenhouse gas emissions that are the lower of  
34 (i) one thousand one hundred pounds of greenhouse gas per megawatt-  
35 hour; or (ii) the average available greenhouse gas emissions output as  
36 determined under RCW 80.80.050.

37 (7) The commission shall consult with the department to apply the  
38 procedures adopted by the department to verify the emissions of



1 greenhouse gases from baseload electric generation under RCW 80.80.040.  
2 The department shall report to the commission whether baseload electric  
3 generation will comply with the greenhouse (~~gases~~) gas emissions  
4 performance standard for the duration of the period the baseload  
5 electric generation is supplied to the electrical company.

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

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

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