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**SENATE BILL 5874**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators Ericksen and Ranker

AN ACT Relating to regulatory and financial mechanisms and means to promote the retirement of coal-fired electric generation facilities; amending RCW 19.285.030, 54.48.030, and 80.80.060; adding new sections to chapter 80.82 RCW; and recodifying RCW 80.82.010 and 80.82.020.

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

NEW SECTION. **Sec.**  RCW 80.82.010 and 80.82.020 are each recodified as sections in chapter 80.82 RCW under the subchapter heading "Closure of Coal-Fired Electric Generation Facilities."

NEW SECTION. **Sec.**  Sections 3 through 10 of this act are each added to chapter 80.82 RCW and codified under the subchapter heading of "Washington State Coal Generation Retirement Program."

NEW SECTION. **Sec.**  This act may be known and cited as the Washington state coal generation retirement program act.

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

(1) "Binding notice" means a notice, filed with the commission by an electrical company as set forth in section 6 of this act, to irrevocably commit to the retirement of an eligible coal plant within twenty years of the date of the commission's acceptance of a binding notice.

(2) "Carbon reduction bonds" means bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidences of indebtedness that are issued by an electrical company or a financing subsidiary to recover, finance, or refinance carbon reduction costs and that are secured by or payable from carbon reduction property.

(3) "Carbon reduction charge" means a charge paid by customers of an electrical company or its successors to recover carbon reduction costs.

(4) "Carbon reduction costs" means any cost or expense incurred, or to be incurred, by an electrical company in connection with the retirement of an eligible coal plant. Carbon reduction costs may be incurred by an electrical company prior to, and may be incurred by an electrical company from and after, the date of retirement of an eligible coal plant. Carbon reduction costs may include costs and expenses incurred or to be incurred in connection with following:

(a) The permanent decommissioning, reduction, termination, severance, stranding, or closure of plant, assets, equipment, facilities, property, rights-of-way, easements, operations, labor, personnel, contracts, agreements, franchises, or any other interest in an eligible coal plant, including any and all costs or expenses in connection with: (i) The acquisition, extension, modification, alteration, or surrender of any permits, licenses, approvals, consents, orders, or authorizations required with respect to any such actions or interests; and (ii) any damages, fees, charges or other cost and expenses incurred in any legal, judicial, administrative, or regulatory proceedings, or any settlements thereof, arising in connection with any such actions or interests;

(b) The identification, assessment, handling, storage, minimization, containment, cleanup, removal, remediation, transportation, or disposal of any substance, material, circumstance, or condition that presents a threat or potential threat to human health or the environment, including any and all costs or expenses in connection with: (i) Analyses, tests, studies, or investigations conducted or required in connection with such matters; (ii) permits, licenses, approvals, consents, orders, or authorizations required in connection with such matters; and (iii) any damages, fees, charges, or other cost and expenses incurred in any legal, judicial, administrative, or regulatory actions or proceedings, or any settlements thereof, arising in connection with any such matters;

(c) Capital costs, construction work in progress, and the unrecovered value of property that is retired, including any demolition or similar cost that exceeds the salvage value of the property; and

(d) Financing costs.

(5) "Carbon reduction property" means all of the following:

(a) The right specified in a financing order to impose, collect, or receive carbon reduction charges, or to obtain adjustments to carbon reduction charges as provided in section 7 of this act, and any interest in such right;

(b) All revenues and proceeds arising from the rights and interests specified in section 7(2)(a) of this act.

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

(7) "Electrical company" means a company owned by investors that meets the definition of electrical company set forth in RCW 80.04.010.

(8) "Eligible coal plant" means a coal-fired electric generating facility that: (a) Is owned, controlled, or operated, in whole or in part, by an electrical company serving a retail electric load within the state of Washington; and (b) provides, as a portion of the load served by the coal-fired electric generating facility, electricity to retail electric customers in the state of Washington. An eligible coal plant includes, and may be limited to, for purposes of a binding notice, one or more operating units of an eligible coal plant that collectively comprise a larger facility.

(9) "Eligible coal plant acquisition costs" means all costs and expenses incurred by an electrical company in connection with the acquisition of an additional or increased interest in any one or more eligible coal plants which, as of the effective date of this section, provide electricity to retail electric customers in the state of Washington. Eligible coal plant acquisition costs include all costs and expenses incurred by an electrical company to secure, finance, purchase, and acquire an additional or increased interest in any one or more such eligible coal plants, together with any and all rights and obligations related to the ownership, operation, and control of such interest, and includes any and all transaction costs, closing costs, legal fees, taxes, charges, expenses, and other amounts incurred by an electrical company in connection with such acquisitions.

(10) "Financing cost" means any of the following:

(a) Interest and redemption premiums that are payable on carbon reduction bonds;

(b) A payment required under an ancillary agreement, including any amount required to fund a reserve account, made in connection with the issuance or servicing of carbon reduction bonds;

(c) The cost of retiring or refunding existing debt and equity securities issued by or for the benefit of an electrical company to finance such electrical company's investment in an eligible coal plant to be retired, including the full payment, when due under the terms thereof or upon redemption prior to maturity, of all the principal of and interest on any redemption premium, if applicable;

(d) Any other reasonable cost related to issuing and servicing carbon reduction bonds or the retiring or refunding of existing debt and equity securities issued by or for the benefit of an electrical company to finance such electrical company's investment in an eligible coal plant to be retired, including servicing fees, trustee fees, legal fees, administrative fees, placement fees, capitalized interest, and rating agency fees;

(e) Any taxes and license fees imposed on the revenues generated from the collection of carbon reduction charges.

(11) "Financing order" means an order, issued by the commission pursuant to section 7 of this act, that allows for the issuance of carbon reduction bonds, the collection of carbon reduction charges, and the creation of carbon reduction property.

(12) "Financing subsidiary" means a wholly owned subsidiary of an electrical company that has no direct or indirect interest in the business of the electrical company and its other affiliates and was formed for the limited purpose of:

(a) Issuing, facilitating, or administering carbon reduction bonds;

(b) Facilitating or administering carbon reduction property;

(c) Entering into mortgages, notes, loans, or other contractual obligations secured by carbon reduction property for the purpose of financing carbon reduction costs; or

(c) Any other business as may be reasonably incidental to those described in (a) and (c) of this subsection, including the ownership and use of carbon reduction property in connection therewith.

(13) "Program" means the Washington state coal generation retirement program established by this act.

(14) "Program investment" means, for any electrical company that retires any one or more eligible coal plants under the program, an amount, which such amount in the aggregate is the sum of all of the following: (a) The amount of the electrical company's net plant investment allowed and approved by the commission for purposes of section 5(1) of this act; (b) the amount of the electrical company's net plant investment allowed and approved by the commission for purposes of section 5(2) of this act; and (c) the amount of the carbon reduction costs to be incurred and paid by such electrical company from proceeds of carbon reduction bonds authorized by a financing order issued by the commission pursuant to section 7(1)(c) of this act.

(15) "Program limit" means a dollar amount, determined for each electrical company that retires any one or more eligible coal plants under the program, and is the amount that is equal to nine and eight-tenths percent of such electrical company's rate base as of the effective date of this section. The program limit shall be subject to adjustment by the commission in accordance with section 6(7) (b) and (c) of this act.

(16) "Retirement" or "retire" means the complete and permanent closure of an eligible coal plant as a coal-fired electric generating facility. Closure shall be deemed to have occurred upon the date that the eligible coal plant shall permanently cease operations as a coal-fired electric generation facility.

NEW SECTION. **Sec.**  REGULATORY MECHANISMS. The following regulatory mechanisms are available to an electrical company under the program:

(1) Regulatory asset. For each eligible coal plant designated in a binding notice for retirement by an electrical company, the electrical company shall have the right to place all or a portion of its net plant investment in an eligible coal plant into a regulatory asset account. Any request by an electrical company to place all or a portion of its net plant investment in a retired eligible coal plant into a regulatory asset account shall be allowed and approved by the commission. The net plant investment shall include the net book value of the retired eligible coal plant as of the date of retirement, any and all transmission or other costs related to the eligible coal plant and traditionally included in an electrical company's rate base, and any carbon reduction costs associated with the eligible coal plant that are not otherwise recovered by a carbon reduction charge. The electrical company shall be allowed to earn a reasonable and sufficient rate of return on such investment, and in no event shall the rate of return on such investment be less than the rate of return authorized by the commission in the electrical company's most recent rate proceeding. The amount recoverable in the regulatory asset account may be amortized and recovered in rates over a period not to exceed twenty years. All revenues required to recover the cost of the electrical company's investment in such regulatory asset account, and all revenues required to provide the electrical company its allowed rate of return on such investment, shall be included in the electrical company's rates. Charges among customer classes shall be allocated over such time and among such customers consistent with the allocation methodology for utility production plants accepted by the commission in the electrical company's most recent rate proceeding.

(2) Accelerated depreciation and amortization. For each eligible coal plant designated in a binding notice for retirement by an electrical company, the electrical company shall have the right to accelerated depreciation and amortization of all or a portion of the electrical company's net plant investment in such eligible coal plant. Any accelerated depreciation and amortization of the electrical company's net plant investment requested by the electrical company shall be allowed and approved by the commission. The net plant investment so allowed and approved may, if requested by the electrical company, be fully depreciated by the retirement date. The net plant investment in such coal plant shall include its net book value as of the date of the binding notice, all subsequent capital investments required to keep such plant in service prior to retirement, all transmission or other costs traditionally included in the electrical company's rate base, and any carbon reduction costs that are not otherwise recovered by a carbon reduction charge. The electrical company shall be allowed to earn a reasonable and sufficient rate of return on such net plant investment, and in no event shall the rate of return on such net plant investment be less than the rate of return authorized by the commission in the electrical company's most recent rate proceeding. All revenues required to recover the cost of the electrical company's net plant investment, and all revenues required to provide the electrical company its allowed rate of return on such net plant investment, shall be included in the electrical company's rates. Charges among customer classes shall be allocated over such time and among such customers consistent with the allocation methodology for utility production plants accepted by the commission in the electrical company's most recent rate proceeding.

(3) Any eligible coal plant acquisition costs incurred by an electrical company shall be deemed by the commission to be costs and expenses that were reasonably and prudently incurred by the electrical company. An electrical company shall have the right to the following regulatory treatment of eligible coal plant acquisition costs, which shall be allowed and approved by the commission upon and as requested by the electrical company:

(a) Upon the acquisition of an interest in an eligible coal plant, all eligible coal plant acquisition costs may be included in an electrical company's rate base. The electrical company shall be allowed to earn a reasonable and sufficient rate of return on such investment, and in no event shall the rate of return on such investment be less than the rate of return authorized by the commission in the electrical company's most recent rate proceeding. All revenues required to recover the cost of the electrical company's investment in such eligible coal plant, and all revenues required to provide the electrical company its allowed rate of return on such investment, shall be included in the electrical company's rates.

(b) If the electrical company shall file a binding notice with respect to any eligible coal plant acquired during the program, eligible coal plant acquisition costs may, at the electrical company's option, thereafter in whole or in part be: (i) Depreciated and amortized under section 5(2) of this act; or (ii) removed from rate base and designated in a financing order issued by the commission pursuant to section 7(1)(c) of this act as carbon reduction costs to be recovered by carbon reduction charges.

(c) If the electrical company shall retire any eligible coal plant acquired during the program, any unrecovered eligible coal plant acquisition costs may, at the electrical company's option, thereafter in whole or in part be: (i) Removed from rate base and designated in a financing order issued by the commission pursuant to section 7(1)(c) of this act as carbon reduction costs to be recovered by carbon reduction charges; or (ii) transferred to a regulatory asset account established by section 5(1) of this act.

(4) Creation of subsidiaries. Each electrical company may create or acquire one or more subsidiaries without commission approval to accomplish the acquisition or retirement of one or more eligible coal plants. Chapter 80.16 RCW shall not apply to any contracts or other arrangements between an electrical company and any subsidiary that are made or undertaken in order to accomplish the acquisition or retirement of an eligible coal plant.

(5) Timing of mechanisms. If requested by the electrical company, an order by the commission establishing and implementing the regulatory and financial mechanisms authorized and approved by this act may provide for such mechanisms to be implemented in phases to better correspond with the timing and implementation of the electrical company's retirement plan. If so authorized, no further or additional orders from the commission shall be required to establish and implement such phased regulatory and financial mechanisms.

(6) Commission authority. The commission shall, upon petition, issue such orders as may be necessary to implement any and all of the regulatory and financial mechanisms hereby authorized and approved by this act. The commission shall not, at any time, take any action to directly or indirectly disallow, alter, modify, condition, offset, or diminish the value of any of the regulatory or financial mechanisms authorized and approved by this act.

NEW SECTION. **Sec.**  BINDING NOTICE. (1) Binding notice. An electrical company may file a binding notice with the commission that sets forth the financial and regulatory mechanisms the electrical company requires to irrevocably commit the electrical company to the retirement of one or more eligible coal plants. A binding notice may include one or more eligible coal plants. A binding notice must state with particularity the following information:

(a) As to any eligible coal plant to be retired, the name and location of the plant, the identity of the owners and operators of such plant, documentation that the plant to be retired is an eligible plant for purposes of this chapter, a preliminary retirement plan, a preliminary estimate of the cost to implement the retirement plan, the electrical company's program limit (which may be projected over the term of the retirement plan), and the date certain by which the eligible coal plant shall permanently cease operations as a coal-fired electric generation facility.

(b) The date, which shall not be more than ten years after the date that an eligible plant is retired, on or before which the electrical company must petition the commission for any regulatory asset accounts to be established for the net plant investment of an electrical company in a retired eligible plant as set forth in section 5(1) of this act.

(c) A statement of whether the electrical company or financing subsidiary anticipates issuing carbon reduction bonds under a financing order to be issued by the commission in accordance with section 7(1)(c) of this act.

(2) Commission authority. Within thirty days of the commission's receipt of a binding notice, the commission shall determine if the binding notice is complete and may request further or additional information as the commission may reasonably request to accept or reject the binding notice. Not less than one hundred twenty days from the date of an electrical company's submittal of a binding notice, the commission shall accept the binding notice unless the commission finds, based upon clear and convincing evidence, that:

(a) The plant designated for retirement is not an eligible coal plant for purposes of this chapter;

(b) The regulatory and financial mechanisms identified in the binding notice are not authorized by this chapter or any other applicable law;

(c) The electrical company is unable, through commercially feasible means, to fulfill its obligation to retire an eligible plant on or before the date set forth in the binding notice; or

(d) The electrical company's program investment will exceed the electrical company's program limit.

(3) Rejection of binding notice. If the commission rejects a binding notice as set forth in subsection (2) of this section, the rejection shall be without prejudice to the electrical company's right to refile the same, subject to any further direction as the commission may provide with respect to any deficiencies in the binding notice.

(4) Enforceable obligation. Upon the commission's acceptance of a binding notice, the electrical company shall be:

(a) Legally bound and irrevocably committed to the retirement of an eligible coal plant, as set forth in the terms and conditions set forth in the binding notice, which terms and conditions shall be enforceable obligations of the electrical company and its respective successors and assigns; and

(b) Legally entitled to the regulatory and financial mechanisms provided by this chapter, and the mechanisms shall be binding and enforceable obligations of the state and each of its departments, agencies, divisions, bureaus, commissions, boards, and political subdivisions, and their respective successors and assigns.

(5) New emission control technology.

(a) An electrical company is relieved of its obligation to retire an eligible coal plant if, subsequent to the date of the commission's acceptance of a binding notice with respect to an eligible coal plant: (i) The electrical company is required by state or federal law to reduce emissions, such that the plant must install or provide any new or additional emission control measures or technology at the eligible coal plant; and (ii) the cost of implementing any one or more of state or federal requirements, individually or in the aggregate, is an amount that exceeds ten percent of the net book value of the eligible coal plant. For purposes of this subsection (5)(a), the net book value of an eligible coal plant shall be determined as of the date of the binding notice.

(b) Notwithstanding the provisions of (a) of this subsection, an electrical company may elect, by written notice to the commission, to proceed with the retirement of an eligible coal plant.

(c) Any investment in new or additional emission control measures or technology by an electrical company at an eligible coal plant is a carbon reduction cost recoverable pursuant to section 5 or 7 of this act.

(6) Reliability.

(a) An electrical company may defer its obligation to retire an eligible coal plant if, subsequent to the date of the commission's acceptance of a binding notice with respect to an eligible coal plant, the eligible coal plant to be retired is needed for purposes of reliability.

(b) An electrical company that is irrevocably committing to the retirement of an eligible coal plant pursuant to subsection (4) of this section may petition the commission for an order to defer its retirement obligation. Any such petition shall identify: (i) The change in circumstances occurring, from and after the date of the commission's acceptance of the electrical company's binding notice, that give rise to the need to maintain the eligible coal plant in operation for purposes of reliability; and (ii) any resource alternatives considered by the electrical company for purposes of reliability, and why such alternatives are insufficient or unsuitable. The electrical company shall bear the burden of proof in establishing that the eligible coal plant to be retired is needed for purposes of reliability.

(c) Based upon the petition and such other evidence as may be presented to the commission, the commission may: (i) Grant the petition and defer the retirement date of the eligible coal plant to a date that is later than the date established by the binding notice; or (ii) reject the petition and decline to defer the retirement obligation of the electrical company.

(7) Regulatory and financial mechanisms program limits.

(a) The amount of an electrical company's program investment may at any time equal, but shall not exceed, such electrical company's then applicable program limit.

(b) An electrical company's program limit shall adjust to account for inflation in accordance with an index and an adjustment mechanism to be established by the commission. In no event, however, shall the amount of an electrical company's program limit ever be less than the amount that is equal to nine and eight-tenths percent of the electrical company's rate base as of the effective date of this section.

(c) An electrical company may, at any time, petition the commission for an order to increase its program limit. Any such petition shall: (i) Identify the change in circumstances occurring, from and after the date of the commission's acceptance of the electrical company's binding notice, that give rise to the need to increase the electric company's program limit; and (ii) include an update to the retirement plan that the electrical company proposes to undertake in connection with the retirement of an eligible coal plant that necessitates an increase in the electrical company's program limit. Based upon the petition and such other evidence as may be presented to the commission, the commission may grant, in whole or in part, the electrical company's petition to increase its program limit if the commission finds that such increase is in the public interest.

(d) If an electrical company shall incur carbon reduction costs in excess of such electrical company's program limit, no presumption shall be applied by the commission as to whether such excess carbon reduction costs were appropriately and prudently incurred. In such event, the electrical company may seek to recover any and all such costs in rates consistent with the principles of ratemaking that are traditionally applied in the determination of rates that are just, fair, reasonable, and sufficient. Nothing in this subsection (7)(d) shall: (i) Limit or impair the commission's general investigative authority; or (ii) preclude the commission's consideration of any evidence the commission deems relevant to the determination of rates that are just, fair, reasonable, and sufficient.

NEW SECTION. **Sec.**  CARBON REDUCTION BONDS. (1) Carbon reduction bonds.

(a) An electrical company or a financing subsidiary may issue carbon reduction bonds as a financing mechanism authorized by this act upon approval by the commission of a financing order in accordance with this section. An application for a financing order under this section shall include the following:

(i) A copy of the commission's order accepting the electrical company's binding notice irrevocably committing the electrical company to the retirement of an eligible coal plant;

(ii) A description of the retirement plan that the electrical company proposes to undertake in connection with the retirement of an eligible coal plant, which may include one or more phases of retirement scheduled to be undertaken over a period of time;

(iii) A description of the current or anticipated legal obligations that establish the retirement requirements applicable to the retirement of an eligible coal plant;

(iv) An estimate of the carbon reduction costs associated with the retirement described in the application, including an estimate of the financing costs associated with each series of carbon reduction bonds proposed to be issued;

(v) An estimate of the amount of the carbon reduction charges necessary to recover the carbon reduction costs to be financed, which estimate and calculation should take into account the estimated date of issuance and estimated principal amount of each series of carbon reduction bonds proposed to be issued;

(vi) An estimate of the date on which the carbon reduction bonds are expected to be issued and the expected term over which the financing costs associated with the issuance are expected to be recovered and, if the bonds are expected to be issued in more than one series, the estimated issuance date and expected term for each bond issuance;

(vii) A proposed adjustment mechanism for making any adjustments necessary to correct for any over-collection or under-collection of carbon reduction charges or otherwise to ensure the timely and complete payment and recovery of carbon reduction costs;

(viii) A description of the carbon reduction property that is created and that may be used to pay or secure carbon reduction bonds;

(ix) A methodology for allocating carbon reduction charges among customer classes that maintains consistency with the allocation methodology for utility production plants accepted by the commission in the electrical company's most recent rate proceeding; and

(x) A description of the trust instrument, including the proposed terms and conditions thereof, to be used to establish a carbon reduction trust pursuant to subsection (1)(h) of this section.

(b) The commission shall, within one hundred twenty days of its receipt thereof, review an application for a financing order to determine the sufficiency thereof with respect to the requirements set forth in subsection (1)(a) of this section. The commission shall approve the application unless the commission finds:

(i) The retirement plan that the electrical company proposes to undertake in connection with the retirement of an eligible coal plant is inconsistent with applicable law;

(ii) The estimated carbon reduction costs described in the application are not supported by substantial evidence; or

(iii) The carbon reduction costs to be financed from proceeds of carbon reduction bonds to be authorized by the financing order will cause the electrical company's program investment to exceed the electrical company's program limit.

(c) If an application is found by the commission to satisfy (b)(i), (ii), and (iii) of this subsection, the commission shall issue a financing order on the terms and conditions proposed in the application, and the financing order shall state:

(i) The carbon reduction costs to be financed from proceeds of carbon reduction bonds authorized by the financing order;

(ii) The carbon reduction charges necessary to recover carbon reduction costs that shall be imposed on and collected from customers within the electrical company's service area, for as long as the carbon reduction bonds are outstanding;

(iii) The adjustment mechanism to be applied for making any necessary adjustments to carbon reduction charges;

(iv) The carbon reduction property that is created and that may be used to pay or secure carbon reduction bonds; and

(v) The methodology for allocating carbon reduction charges among customer classes.

(d) In issuing a financing order, the commission may not alter the terms and conditions of an application, nor may the commission approve an application on terms or conditions other than the terms and conditions set forth in the application.

(e) A financing order may authorize the issuance of more than one series of carbon reduction bonds for the retirement of an eligible coal plant. If so authorized, the electrical company will not subsequently be required to secure a separate financing order for each issuance of carbon reduction bonds or for each scheduled phase of the retirement approved in the financing order.

(f) A financing order shall remain in effect until the carbon reduction bonds issued pursuant to the financing order have been paid in full and all carbon reduction costs relating to the carbon reduction bonds have been paid in full. For so long as carbon reduction bonds issued pursuant to a financing order are outstanding and the related carbon reduction costs have not been paid in full, the carbon reduction charges authorized to be imposed in the financing order shall apply to:

(i) All customers of the electrical company located within its service area, whether or not the customers may become entitled by law to purchase electric generation, transmission, or distribution services from a provider of such services other than the electrical company; and

(ii) Any person or legal entity located within the utility service area that may subsequently receive electric generation, transmission, or distribution services from another provider of such services operating in the same service area.

(g) If the commission issues a financing order authorizing the issuance of carbon reduction bonds, the commission may not, in exercising its powers and carrying out its duties regarding regulation and ratemaking, consider: (i) Carbon reduction bonds issued pursuant to the financing order to be the debt of the electrical company; (ii) the carbon reduction charges paid under the financing order to be revenue of the electrical company; or (iii) the carbon reduction costs specified in the financing order to be the costs of the electrical company, nor shall the commission determine that any action taken by an electrical company that is consistent with the financing order is unjust or unreasonable from a regulatory or ratemaking perspective. The commission shall, as of any given time of determination, exclude the effect of the issuance of carbon reduction bonds or the write-down of discontinued operations of an eligible coal plant in calculating the equity ratio of an electrical company.

(h) Based upon semiannual reports filed by an electrical company with the commission, the commission shall apply the adjustment mechanism approved in the financing order to correct for any over-collection or under-collection of the carbon reduction charges and to provide for timely payment of scheduled principal of and interest on the carbon reduction bonds and the payment and recovery of other financing costs in accordance with the financing order. Application of the adjustment mechanism shall occur at least annually or more frequently as provided in the financing order.

(i) An electrical company or a financing subsidiary may issue carbon reduction bonds pursuant to a financing order. The issuer shall establish and maintain an irrevocable carbon reduction trust with a bank or trust company as trustee. The proceeds of any carbon reduction bonds issued shall be placed in such carbon reduction trust. The carbon reduction trust shall indemnify an electrical company for carbon reduction costs approved by a financing order and for no other purpose. The trustee shall furnish yearly to the commission a financial report in a form designated by the commission with respect to the carbon reduction trust.

(j) The assets of a carbon reduction trust shall be invested and reinvested subject to all the terms, conditions, limitations, and restrictions imposed by the laws of the state upon executors and trustees regarding the making and depositing of investments with trust moneys pursuant to chapter11.100RCW. Subject to said terms, conditions, limitations, and restrictions, the trustee of the carbon reduction trust shall have full power to hold, purchase, sell, assign, transfer, reinvest, and dispose of any of the securities and investments in which any of the assets of said fund are invested, including proceeds of investments.

(2) Carbon reduction property.

(a) In general.

(i) Carbon reduction property that is specified in a financing order shall constitute a present property right notwithstanding that the imposition and collection of carbon reduction charges depend on the electrical company to which the order is issued performing its servicing functions relating to the collection of carbon reduction charges and on future energy consumption. Such property is considered to exist whether or not the revenues or proceeds arising from the property have accrued and whether or not the value of the property is dependent on the receipt of service by customers of an electrical company.

(ii) Carbon reduction property specified in a financing order shall continue to exist until the carbon reduction bonds issued pursuant to the order are paid in full and all financing costs of the bonds have been recovered in full.

(iii) Carbon reduction property specified in a financing order issued to an electrical company may be transferred, sold, conveyed, or assigned to any person, including a financing subsidiary. Carbon reduction property may be pledged to secure carbon reduction bonds issued pursuant to the order. Each such transfer, sale, conveyance, assignment, or pledge by an electrical company or financing subsidiary is considered to be a transaction in the ordinary course of business.

(iv) If an electrical company or financing subsidiary defaults on any required payment of revenues arising from carbon reduction property specified in a financing order, a court, upon application by an interested party, and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the revenues. Any such order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the electrical company or financing subsidiary.

(v) The interest of an assignee or pledgee in carbon reduction property specified in a financing order issued to an electrical company, and in the revenue and collections arising from that property, is not subject to setoff, counterclaim, surcharge, or defense by the electrical company, a financing subsidiary, or any other person or in connection with the bankruptcy of the electrical company, a financing subsidiary, or any other entity.

(vi) Any successor to an electrical company or a financing subsidiary, whether pursuant to any bankruptcy, reorganization, or other insolvency proceeding or pursuant to any merger or acquisition, sale, or transfer by operation of law, as a result of such electrical company or financing subsidiary restructuring or otherwise, shall perform and satisfy all obligations of, and have the same rights under a financing order as, the electrical company or financing subsidiary under the financing order in the same manner and to the same extent as the electrical company or financing subsidiary, including collecting and paying to the person entitled to receive them revenues with respect to the carbon reduction property.

(b) Security interests. Except as otherwise provided in this subsection (2)(b), the creation, perfection, and enforcement of security interests in carbon reduction property to secure carbon reduction bonds are governed by chapter 62A.9A RCW. Notwithstanding chapter 62A.9A RCW, with regard to creating, perfecting, and enforcing a valid security interest in carbon reduction property to secure carbon reduction bonds, all of the following apply:

(i) The description of carbon reduction property in a security agreement is sufficient if the description refers to this subsection (2)(b) and the financing order creating the carbon reduction property.

(ii) A security interest is created, valid, binding, and perfected at the time a security agreement is made and attaches without any physical delivery of collateral or other act, and the lien of such security interest shall be valid, binding, and perfected against all parties having claims of any kind in tort, contract, or otherwise against the person granting the security interest, regardless of whether such parties have notice of the lien. The filing or recording of a financial statement or instrument in which such a security interest is created is not required.

(iii) A security interest in carbon reduction property is a continuously perfected security interest and has priority over any other lien created by operation of law or otherwise, which subsequently attaches to the carbon reduction property.

(iv) The priority of a security interest created under this subsection (2)(b) is not affected by the commingling of proceeds arising from carbon reduction property with other amounts.

(v) Any changes that the commission makes to a financing order that creates the carbon reduction property does not affect the validity, perfection, or priority of a security interest in the carbon reduction property.

(c) Sales. The sale, assignment, and transfer of carbon reduction property are governed by this subsection (2)(c). All of the following apply to a sale, assignment, or transfer under this subsection (2)(c):

(i) The sale, assignment, or transfer is an absolute transfer of, and not a pledge of or secured transaction relating to, the seller's right, title, and interest in, to, and under the carbon reduction property, if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer. After such a transaction, the carbon reduction property is not subject to any claims of the seller or the seller's creditors, other than creditors holding a prior security interest in the carbon reduction property perfected under (b) of this subsection.

(ii) The characterization of the sale, assignment, or transfer as an absolute transfer under (a) of this subsection and the corresponding characterization of the purchaser's property interest are not affected by any of the following factors:

(A) Commingling of amounts arising with respect to the carbon reduction property with other amounts;

(B) The retention by the seller of a partial or residual interest, including an equity interest, in the carbon reduction property, whether direct or indirect or whether subordinate or otherwise;

(C) Any recourse that the purchaser may have against the seller;

(D) Any indemnifications, obligations, or repurchase rights made or provided by the seller;

(E) The responsibility of the seller to collect carbon reduction charges; and

(F) The treatment of the sale, assignment, or transfer for tax, financial reporting, or other purposes.

(3) Carbon reduction bonds not public debt The state is not liable on carbon reduction bonds and the bonds are not a debt of the state. An issue of carbon reduction bonds does not, directly or indirectly or contingently, obligate the state or a political subdivision of the state to levy any tax or make any appropriation for payment of the bonds.

(4) Carbon reduction bonds as legal investments. Any of the following may legally invest any sinking funds, moneys, or other funds belonging to them or under their control in carbon reduction bonds:

(a) The state, municipal corporations, political subdivisions, public bodies, and public officers except for members of the commission;

(b) Banks and bankers, savings and loan associations, credit unions, trust companies, savings banks and institutions, investment companies, insurance companies, insurance associations, and other persons carrying on a banking or insurance business; and

(c) Personal representatives, guardians, trustees, and other fiduciaries.

(5) State pledge.

(a) In this subsection (5), "bondholder" means a person who holds a carbon reduction bond.

(b) The state pledges to and agrees with bondholders that the state will not do any of the following:

(i) Take or permit any action that impairs the value of carbon reduction property; or

(ii) Except as allowed under this section, reduce, alter, or impair carbon reduction charges that are imposed, collected, and remitted for the benefit of the bondholders until any principal, interest, premium, or other charge incurred, or contract to be performed, in connection with carbon reduction bonds held by the bondholders is paid or performed in full.

(c) Any person who issues carbon reduction bonds is allowed to include the pledge specified in (b) of this subsection in the bonds and relating documentation.

(6) Effect of invalidity on actions. Effective on the date that carbon reduction bonds are first issued under this section, if any provision of this section is held to be invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence shall not affect any action allowed under this section that is taken by an electrical company, a financing subsidiary, an assignee, a collection agent, or a party to a transaction, and any such action shall remain in full force and effect.

NEW SECTION. **Sec.**  CONFLICTS OF LAW. (1) In the event of conflict between section 7 of this act and any other law regarding the attachment, assignment, or perfection, or the effect of perfection, or priority of any security interest in carbon reduction property, section 7 of this act to the extent of the conflict shall govern and control.

(2) The provisions of this act and the implementation thereof are expressly intended to be preemptive and controlling of any inconsistent or conflicting rule, regulation, order, policy, authorization, or approval now or hereafter issued, promulgated, granted, or made by any departments, agencies, divisions, bureaus, commissions, boards, or political subdivisions of the state.

NEW SECTION. **Sec.**  RECOVERY OF COSTS ASSOCIATED WITH RETIREMENT OF AN ELIGIBLE COAL PLANT. (1) For the purposes of this section:

(a) "Impacted electrical company" means an electrical company that incurs mitigation costs as a result of the retirement of an eligible coal plant.

(b) "Memorandum of agreement" means an agreement between an impacted electrical company and a state other than the state of Washington which includes obligations accepted by the impacted electrical company to mitigate for the impacts of the retirement of an eligible coal plant. The obligations of a memorandum of agreement may include, but may not be limited to, payment of mitigation costs and the development of replacement electrical generation facilities, other than coal-fired generation facilities.

(c) "Mitigation costs" means payments made by an impacted electrical company to another state either under a memorandum of agreement, or as a requirement of law for: (i) Financial assistance to a community affected by the retirement of an eligible coal plant; (ii) financial assistance to retrain workers who will be displaced as a result of the retirement of an eligible coal plant; (iii) any tax or fee imposed upon an electrical company that had not been imposed as of the effective date of this section; and (iv) any other cash or in-kind payment made pursuant to a memorandum of agreement entered into between an electrical company and another state regarding the retirement of an eligible coal plant.

(d) "Tax" includes, but is not limited to, an increase in the rate at which a tax is imposed above the rate that had been charged on the effective date of this section.

(2) An impacted electrical company that incurs mitigation costs shall be entitled to recover its mitigation costs from its customers. All revenues required to recover mitigation costs shall be included in the impacted electrical company's rates. Mitigation costs shall be deemed by the commission to be costs and expenses that were reasonably and prudently incurred by the impacted electrical company. An impacted electrical company may file a petition with the commission to recover mitigation costs at any time, and an impacted electrical company may file more than one petition for the recovery of mitigation costs.

(3) An impacted electrical company shall be entitled to petition the commission to recover in rates any investments made and expenses incurred to restore any loss of transfer capacity on, and to maintain the efficient operation of, the transmission system used to deliver electrical energy from an eligible coal plant to retail electric customers in Washington, when the transfer capacity or efficient operation of the transmission system are affected by the retirement of portions of an eligible coal plant and other units of the eligible coal plant remain in operation.

(4) Any costs that are recoverable by an impacted electrical company pursuant to this section may, in lieu of such recovery, be recovered by an electrical company as carbon reduction costs if and to the extent such costs are incurred by an electrical company that files a binding notice to retire an eligible coal plant.

NEW SECTION. **Sec.**  CONDEMNATION. Should any one or more of the rights, benefits, and privileges accruing to an electrical company under this act be limited, damaged, or impaired by reason of any threatened or actual condemnation by the state, or any political subdivision thereof, of any generation, transmission, or distribution facilities owned or operated by such electrical company, then any such limitation, damage, or impairment of such rights, benefits, and privileges shall be deemed to be a severance damage attributable to such threatened or actual condemnation, and the electrical company shall be entitled to recover full, just, and fair compensation for any and all such severance damages.

NEW SECTION. **Sec.**  SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**Sec.**  RCW 19.285.030 and 2014 c 45 s 1 are each amended to read as follows:

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 qualifying utilities under its jurisdiction that are not investor‑owned utilities; or (b) an independent auditor selected by a qualifying utility that is not under the jurisdiction of the state auditor and is not an investor‑owned utility.

(3)(a) "Biomass energy" includes: (i) Organic by-products of pulping and the wood manufacturing process; (ii) animal manure; (iii) solid organic fuels from wood; (iv) forest or field residues; (v) untreated wooden demolition or construction debris; (vi) food waste and food processing residuals; (vii) liquors derived from algae; (viii) dedicated energy crops; and (ix) yard waste.

(b) "Biomass energy" does not include: (i) Wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; (ii) wood from old growth forests; or (iii) municipal solid waste.

(4) "Coal transition power" has the same meaning as defined in RCW 80.80.010.

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

(6) "Conservation" means any reduction in electric power consumption resulting from increases in the efficiency of energy use, production, or distribution.

(7) "Cost-effective" has the same meaning as defined in RCW 80.52.030.

(8) "Council" means the Washington state apprenticeship and training council within the department of labor and industries.

(9) "Customer" means a person or entity that purchases electricity for ultimate consumption and not for resale.

(10) "Department" means the department of commerce or its successor.

(11) "Distributed generation" means an eligible renewable resource where the generation facility or any integrated cluster of such facilities has a generating capacity of not more than five megawatts.

(12) "Eligible renewable resource" means:

(a) Electricity from a generation facility powered by a renewable resource other than freshwater that commences operation after March 31, 1999, where: (i) The facility is located in the Pacific Northwest; or (ii) the electricity from the facility is delivered into Washington state on a real‑time basis without shaping, storage, or integration services;

(b) Incremental electricity produced as a result of efficiency improvements completed after March 31, 1999, to hydroelectric generation projects owned by a qualifying utility and located in the Pacific Northwest where the additional generation does not result in new water diversions or impoundments;

(c) Hydroelectric generation from a project completed after March 31, 1999, where the generation facility is located in irrigation pipes, irrigation canals, water pipes whose primary purpose is for conveyance of water for municipal use, and wastewater pipes located in Washington where the generation does not result in new water diversions or impoundments;

(d) Qualified biomass energy; or

(e) For a qualifying utility that serves customers in other states, electricity from a generation facility powered by a renewable resource other than freshwater that commences operation after March 31, 1999, where: (i) The facility is located within a state in which the qualifying utility serves retail electrical customers; and (ii) the qualifying utility owns the facility in whole or in part or has a long-term contract with the facility of at least twelve months or more.

(13) "Investor-owned utility" has the same meaning as defined in RCW 19.29A.010.

(14) "Load" means the amount of kilowatt-hours of electricity delivered in the most recently completed year by a qualifying utility to its Washington retail customers.

(15)(a) "Nonpower 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.

(b) "Nonpower attributes" does not include any aspects, claims, characteristics, and benefits associated with the on-site capture and destruction of methane or other greenhouse gases at a facility through a digester system, landfill gas collection system, or other mechanism, which may be separately marketable as greenhouse gas emission reduction credits, offsets, or similar tradable commodities. However, these separate avoided emissions may not result in or otherwise have the effect of attributing greenhouse gas emissions to the electricity.

(16) "Pacific Northwest" has the same meaning as defined for the Bonneville power administration in section 3 of the Pacific Northwest electric power planning and conservation act (94 Stat. 2698; 16 U.S.C. Sec. 839a).

(17) "Public facility" has the same meaning as defined in RCW 39.35C.010.

(18) "Qualified biomass energy" means electricity produced from a biomass energy facility that: (a) Commenced operation before March 31, 1999; (b) contributes to the qualifying utility's load; and (c) is owned either by: (i) A qualifying utility; or (ii) an industrial facility that is directly interconnected with electricity facilities that are owned by a qualifying utility and capable of carrying electricity at transmission voltage.

(19) "Qualifying utility" means an electric utility, as the term "electric utility" is defined in RCW 19.29A.010, that serves more than twenty‑five thousand customers in the state of Washington, and any electric utility that acquires, in violation of a service area agreement or commission-determined service area as authorized by RCW 54.48.040, service territory or customers from an electric utility that serves more than twenty-five thousand customers in the state of Washington. The number of customers served may be based on data reported by a utility in form 861, "annual electric utility report," filed with the energy information administration, United States department of energy.

(20) "Renewable energy credit" means a tradable certificate of proof of at least one megawatt-hour of an eligible renewable resource where the generation facility is not powered by freshwater. The certificate includes all of the nonpower 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.

(21) "Renewable resource" means: (a) Water; (b) wind; (c) solar energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or tidal power; (g) gas from sewage treatment facilities; (h) biodiesel fuel as defined in RCW 82.29A.135 that is not derived from crops raised on land cleared from old growth or first-growth forests where the clearing occurred after December 7, 2006; or (i) biomass energy.

(22) "Rule" means rules adopted by an agency or other entity of Washington state government to carry out the intent and purposes of this chapter.

(23) "Year" means the twelve-month period commencing January 1st and ending December 31st.

**Sec.**  RCW 54.48.030 and 1969 c 102 s 3 are each amended to read as follows:

(1) In aid of the foregoing declaration of policy, any public utility and any cooperative is hereby authorized to enter into agreements with any one or more other public utility or one or more other cooperative for the designation of the boundaries of adjoining service areas which each such public utility or each such cooperative shall observe, for the establishment of procedures for orderly extension of service in adjoining areas not currently served by any such public utility or any such cooperative and for the acquisition or disposal by purchase or sale by any such public utility or any such cooperative of duplicating utility facilities, which agreements shall be for a reasonable period of time not in excess of twenty-five years: PROVIDED, That the participation in such agreement of any cooperative and any public utility which is an electrical company under RCW 80.04.010((~~, excepting cities and towns,~~)) shall be approved by the Washington utilities and transportation commission.

(2) If any two or more public utilities or cooperatives with adjoining service areas are unable to reach an agreement designating service area boundaries pursuant to subsection (1) of this section, then upon the petition of any such public utility or cooperative, the commission shall issue an order determining the service area boundaries of each public utility or cooperative in dispute within one hundred eighty days, and the commission shall thereafter prepare or cause to be prepared a map or maps to accurately and clearly designate the service area boundaries of each such public utility or cooperative. A public utility or a cooperative shall have the right, to the exclusion of other public utilities or cooperatives, to provide retail electric service within its designated service area.

(3) Except as may be otherwise provided by an agreement designating the boundaries of adjoining service areas authorized by subsection (1) of this section, no public utility or cooperative is authorized to extend or shall extend service into an adjoining service area if the adjoining service area is served by any other public utility or cooperative.

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

(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 gas emissions performance standard established under RCW 80.80.040.

(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 gas emissions performance standard established under RCW 80.80.040.

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

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

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

(6) An electrical company may account for and defer for later consideration by the commission costs incurred in connection with a 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 continues for a period not to exceed twenty-four months; provided that if during such period the company files a general rate case or other proceeding for the recovery of such costs, deferral ends on the effective date of the final decision by the commission in such proceeding. Creation of such a deferral account does not by itself determine the actual costs of the long-term financial commitment, whether recovery of any or all of these costs is appropriate, or other issues to be decided by the commission in a general rate case or other proceeding for recovery of these costs. For the purpose of this subsection (6) only, the term "long-term financial commitment" also includes an electric company's ownership or power purchase agreement with a term of five or more years associated with an eligible renewable resource as defined in RCW 19.285.030.

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

(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) This section does not apply to: (a) A long-term financial commitment for the purchase of coal transition power with termination dates consistent with the applicable dates in RCW 80.80.040(3)(c); or (b) a long-term financial commitment pursuant to which an electrical company incurs eligible coal plant acquisition costs; provided, however, that an electrical company that incurs eligible coal plant acquisition costs shall, within ten years of the effective date of this section, file a binding notice to retire one or more eligible coal plants under the Washington state coal generation retirement program within chapter 80.82 RCW.

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

**--- END ---**