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**SUBSTITUTE SENATE BILL 6248**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Senate Energy, Environment & Telecommunications (originally sponsored by Senators Ericksen and Ranker)

AN ACT Relating to risk mitigation plans to promote the transition of eligible coal units; amending RCW 80.80.060; adding a new chapter to Title 80 RCW; and creating a new section.

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

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

(1) "Closure date" means the date on which an eligible coal unit that commenced commercial operations before January 1, 1980, ceases to generate electricity and is permanently retired from service.

(2) "Decommissioning" means the series of activities undertaken to retire an eligible coal unit from service and to ensure that the decontamination, dismantlement, removal, and disposal of the eligible coal unit, including the sites and any components and materials directly associated with the eligible coal unit, and the final disposition of sites associated with the eligible coal unit is accomplished safely and in compliance with all applicable state and federal laws.

(3) "Decommissioning and remediation cost recovery fund" means an interest-bearing reserve account to which an electrical company has made an irrevocable pledge of amounts of one or more regulatory liabilities, the funds of which are designated for decommissioning and remediation of eligible coal units.

(4) "Decommissioning and remediation cost recovery plan" means a plan of an electrical company for the recovery of decommissioning and remediation costs for eligible coal units decommissioned and remediated pursuant to a decommissioning and remediation plan. However, such a plan may not allow an electrical company to earn a return on equity on decommissioning and remediation costs.

(5) "Decommissioning and remediation costs" means any cost or expense incurred, or to be incurred, by an electrical company in connection with the decommissioning and remediation of an eligible coal unit. Decommissioning and remediation costs may be incurred by an electrical company prior to, and may be incurred by an electrical company from and after, the date on which an eligible coal unit ceases to generate electricity and is permanently retired from service. Further, if the commission determines it to be appropriate, decommissioning and remediation costs may include carrying costs from the date on which an electrical company books decommissioning and remediation costs to a deferral or other appropriate account until the date that the commission determines that these costs are prudently incurred decommissioning and remediation costs.

(6) "Decommissioning and remediation plan" means a plan of an electrical company for the decommissioning and remediation of eligible coal units that commenced commercial operations before January 1, 1980.

(7) "Eligible coal plant" means a coal-fired electric generation facility that: (a) Had two or fewer generating units as of January 1, 1980, and four generating units as of January 1, 2016; (b) is owned by more than one electrical company as of January 1, 2016; and (c) provides, as a portion of the load served by the coal-fired electric generation facility, electricity paid for in rates by ratepayers in the state of Washington.

(8) "Eligible coal unit" means any generating unit of an eligible coal plant.

(9) "Eligible coal unit acquisition agreement" means an agreement for the acquisition by an electrical company of an increased interest of not more than two hundred fifty megawatts of nameplate capacity of an eligible coal unit that commenced commercial operations on or after January 1, 1980.

(10) "Eligible coal unit acquisition costs" means the amount paid or to be paid by an electrical company pursuant to an eligible coal unit acquisition agreement.

(11) "Eligible coal unit risk mitigation plan" means a plan of an electrical company for: (a) The decommissioning and remediation of more than three hundred megawatts of nameplate capacity of the electrical company's interest in eligible coal units that commenced commercial operations before January 1, 1980; and (b) the replacement of the capacity and energy needed by the electrical company after the closure of eligible coal units that commenced operations before January 1, 1980.

(12) "Nameplate capacity" means the manufacturer's rated capacity of a facility to generate electricity as expressed in megawatts, including fractions of a megawatt.

(13) "Prudently incurred decommissioning and remediation costs" means decommissioning and remediation costs determined by the commission to be prudent, reasonable, and appropriate costs incurred by the electrical company.

(14) "Premature closure date" means a closure date prior to December 31, 2022.

(15) "Remediation" means the identification, assessment, handling, storage, minimization, containment, cleanup, removal, transportation, or disposal of any substance, material, circumstance, or condition that presents a threat or potential threat to human health or the environment. Remediation includes activities undertaken to prepare and perform the final disposition of an eligible coal unit, to monitor and maintain it after it has been permanently retired from service, and to effect the final disposition of any components of the eligible coal unit.

(16) "Resource replacement plan" means a plan for the acquisition or development of a portfolio of electric generation facilities to replace the capacity and energy of eligible coal generating units to be decommissioned and remediated pursuant to a decommissioning and remediation plan. However, any acquisition, if applicable, by the electrical company of an increased interest of not more than two hundred fifty megawatts of nameplate capacity of additional interest in an eligible coal unit that commenced operations after January 1, 1980, must occur simultaneously with, or subsequent to, the closure date in the decommissioning and remediation plan approved by the commission and must result in a net reduction of coal-fired electric generation for the electrical company.

NEW SECTION. **Sec.**  (1) On or before December 31, 2017, an electrical company may file a petition with the commission for approval of an eligible coal unit risk mitigation plan, which shall consist of: (a) An eligible coal unit acquisition agreement, if applicable; (b) a decommissioning and remediation plan; (c) a decommissioning and remediation cost recovery plan; and (d) a resource replacement plan. In support of such a petition, the electrical company must file supporting testimony and exhibits.

(2) Any decommissioning and remediation plan must include the following:

(a) A planned closure date of eligible coal units that commenced commercial operations before January 1, 1980;

(b) A description of the stages by which decommissioning and remediation of eligible coal units that commenced commercial operations before January 1, 1980, are intended to be accomplished; and

(c) Any other relevant information that the commission requests or requires to be disclosed.

(3) Any decommissioning and remediation cost recovery plan must include the following:

(a) An estimate of the decommissioning and remediation costs associated with the decommissioning and remediation of eligible coal units that commenced commercial operations before January 1, 1980, expressed in dollars current in the year the plan is prepared, and based, in part, on an engineering report issued by a reputable and independent third party no more than one year before the date the decommissioning and remediation cost recovery plan is submitted to the commission;

(b) A proposal for the accounting treatment for tracking and specifying decommissioning and remediation costs;

(c) A proposal for the recovery of prudently incurred decommissioning and remediation costs, which may include a proposal for a decommissioning and remediation cost recovery fund;

(d) Any decommissioning and remediation cost recovery fund established by an electrical company pursuant to a decommissioning and remediation cost recovery plan: (i) Must not be used for any purpose other than the funding and recovery of prudently incurred decommissioning and remediation costs for eligible coal units decommissioned and remediated pursuant to a decommissioning and remediation plan; (ii) except as provided in RCW 80.04.350, must not be reduced, altered, impaired, or limited from the date of commission approval of the inclusion of the regulatory liabilities in the decommissioning and remediation cost recovery fund until all prudently incurred decommissioning and remediation costs for eligible coal units decommissioned and remediated pursuant to a decommissioning and remediation plan are recovered or paid in full; and (iii) must provide that any remaining funds in the decommissioning and remediation cost recovery fund, after recovery by the electrical company of all prudently incurred decommissioning and remediation costs for eligible coal units decommissioned and remediated pursuant to a decommissioning and remediation plan incurred by the electrical company, be returned to customers;

(e) A statement of the accumulated reserve of the electrical company for the decommissioning and remediation of eligible coal units as of the date of submission of the plan; and

(f) Any other relevant information that the commission requests or requires to be disclosed.

(4) Nothing in this section may be construed to diminish the ability of an electrical company to propose or of the commission to approve the use of regulatory liabilities for any purpose.

(5) Any resource replacement plan must include: (a) An eligible coal unit acquisition agreement, if applicable, of an increased interest of not more than two hundred fifty megawatts of nameplate capacity of an eligible coal unit that commenced commercial operations on or after January 1, 1980; and (b) an acquisition or development strategy to replace the capacity and energy needs of the electrical company to replace the operations of eligible coal unit dates as of the closure date.

(6) Upon receipt of a petition for approval of an eligible coal unit risk mitigation plan, the commission shall provide notice to the public and potentially affected parties and set the petition for hearing as an adjudicative proceeding under chapters 34.05 and 80.04 RCW. The commission shall issue a final order that approves, approves subject to conditions, or disapproves the petition within two hundred forty days after receipt of the petition. However, the commission may extend the time on a showing of good cause for a period not to exceed sixty days if such an extension does not prejudice the ability of the electrical company to take any action contemplated in the eligible coal unit risk mitigation plan.

(7) If an electrical company submits an eligible coal unit risk mitigation plan proposing a premature closure date or the electrical company retires from service an eligible coal unit that commenced commercial operations before January 1, 1980, prior to a premature closure date, then the commission may not authorize the electrical company to use more than fifty percent of the regulatory liabilities or funds in the decommissioning and remediation cost recovery fund. In such a case, the commission may authorize the electrical company to use the remainder of the regulatory liabilities or funds in the decommissioning and remediation cost recovery fund after December 31, 2022.

(8) The commission may approve an eligible coal unit risk mitigation plan pursuant to this section if the commission determines that the terms of such a plan are prudent, reasonable, and provide adequate protection at the lowest reasonable cost to ratepayers and the electrical company, considering: (a) The need of the electrical company for capacity and energy to serve ratepayers; (b) the reasonableness of the eligible coal unit acquisition costs, if any; (c) the ability of the electrical company to meet the needs identified in the resource replacement plan in a cost-effective manner as determined under the lowest reasonable cost resource standards under chapter 19.280 RCW; and (d) the overall costs and benefits of the eligible coal unit risk mitigation plan.

(9) If the commission finds that an eligible coal unit risk mitigation plan does not meet the criteria under subsection (8) of this section, then the commission shall reject the petition or make its approval contingent upon satisfaction of certain conditions. If the commission conditions approval of the petition, the commission shall direct the electrical company to accept the modification within a time specified by the commission or withdraw the petition with leave to refile.

(10)(a) Upon approval of an eligible coal unit risk mitigation plan by the commission, all eligible coal unit acquisition costs are deemed to be prudent, reasonable, and appropriate costs and expenses incurred, or to be incurred, by an electrical company, except as provided in this section. The commission may not approve costs incurred as a result of an electrical company's acquisition of an additional interest in an eligible coal unit that commenced commercial operations on or after January 1, 1980, as part of a general rate case until the closure date of eligible coal units that commenced commercial operations before January 1, 1980, identified in the eligible coal unit risk mitigation plan.

(b) Approval of an eligible coal unit risk mitigation plan does not constitute a prudence determination for decommissioning and remediation costs of any eligible coal unit and does not authorize recovery of such costs in rates. The prudence of decommissioning and remediation costs and recovery of such costs in rates must be determined by the commission in a general rate case or other adjudication established by the commission under this title. Notwithstanding commission approval of an eligible coal unit risk mitigation plan, an electrical company bears the burden of proof that decommissioning and remediation costs related to any eligible coal unit are prudent.

(11) Notwithstanding commission approval of an eligible coal unit risk mitigation plan, an electrical company may propose and the commission must consider a modified eligible coal unit risk mitigation plan if the "clean power plan," adopted pursuant to section 111(d) of the federal clean air act (42 U.S.C. Sec. 7411(d)), is repealed or becomes invalid or unenforceable as a result of judicial action or other federal action. If the commission rejects the modified eligible coal unit risk mitigation plan submitted under this subsection, then the electrical company is no longer required to comply with any eligible coal unit risk mitigation plan.

(12) Notwithstanding commission approval of an eligible coal unit risk mitigation plan, an electrical company may propose and the commission must consider a modified eligible coal unit risk mitigation plan if the people of the state of Washington enact any measure restricting the use of electricity from coal-fired electric generation facilities located outside of Washington. If the commission rejects the modified eligible coal unit risk mitigation plan submitted under this subsection, then the electrical company is no longer required to comply with any eligible coal unit risk mitigation plan.

**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 for the acquisition of an additional interest in an eligible coal unit pursuant to an eligible coal unit risk mitigation plan approved by the commission. For the purposes of this subsection (9), the terms "eligible coal unit" and "eligible coal unit risk mitigation plan" have the same meaning as defined in section 1 of this act.

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

NEW SECTION. **Sec.**  This act may be known and cited as the Washington state eligible coal unit risk mitigation act.

NEW SECTION. **Sec.**  Sections 1 and 2 of this act constitute a new chapter in Title 80 RCW.

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