

SENATE BILL REPORT

SB 6248

As Reported by Senate Committee On:
Energy, Environment & Telecommunications, February 4, 2016

Title: An act relating to risk mitigation plans to promote the transition of eligible coal units.

Brief Description: Concerning risk mitigation plans to promote the transition of eligible coal units.

Sponsors: Senators Ericksen and Ranker.

Brief History:

Committee Activity: Energy, Environment & Telecommunications: 1/20/16, 1/21/16, 2/04/16 [DPS-WM, DNP, w/oRec].

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Majority Report: That Substitute Senate Bill No. 6248 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Ericksen, Chair; Braun, Cleveland, Habib and Ranker.

Minority Report: Do not pass.

Signed by Senators Sheldon, Vice Chair; Brown and Honeyford.

Minority Report: That it be referred without recommendation.

Signed by Senator McCoy, Ranking Minority Member.

Staff: Kimberly Cushing (786-7421)

Background: Washington Utilities and Transportation Commission (UTC). The UTC is a three-member commission that has broad authority to regulate the rates, services, and practices of a variety of businesses in the state, including electric investor-owned utilities (IOUs). In a typical rate case, the petitioner must prove a requested action is in the public interest by preponderance of the evidence or a reasonable basis test.

As part of the ratemaking process for electric IOUs, the UTC considers whether, and to what extent, an IOU should recover the cost of a resource acquisition or the cost of an investment in a new generating facility. The UTC's decision is made on a case-by-case basis, taking into consideration such factors as the utility's need for the energy, public policies regarding

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resource preferences, and the cost of risks associated with the environmental effects of carbon dioxide.

Coal-Fired Generation Facilities. According to Integrated Resource Plans (IRPs) filed in 2013, the IOUs serving customers in the state currently own or partially own 12 coal-fired electric generation facilities throughout several western states, including Montana, Utah, and Wyoming. One of those facilities, the four-unit Colstrip generating plant in Montana, is owned by six entities, three of which are Avista, Puget Sound Energy, and PacificCorp.

Greenhouse Gas Emissions Performance Standard (EPS) for Electric Generation Plants. Electric utilities may not enter into a long-term financial commitment for baseload electric generation on or after July 1, 2008, unless the generating plant's emissions are the lower of:

- 1100 pounds of greenhouse gas (GHG) per megawatt hour (MWh); or
- the average available GHG output as updated by the Department of Commerce, which is currently set at 970 pounds per MWh.

Baseload electric generation means electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least 60 percent. Long-term financial commitment means (1) either a new ownership interest in baseload electric generation or an upgrade to a baseload electric generation facility; or (2) a new or renewed contract for baseload electric generation with a term of five or more years for the provision of retail power or wholesale power to end-use customers in this state.

EPS and Coal Transition Power. In 2011 the Legislature established a schedule for applying the EPS to the Centralia coal-fired electric generation facility. In addition the EPS was amended to allow long-term contracts for Centralia's generated electricity, called coal transition power. Furthermore, a process was created to allow electric IOUs to petition the UTC for approval of a power purchase agreement for coal transition power.

Summary of Bill (Recommended Substitute): Defining Eligible Coal Plant and Unit. An eligible coal plant means a coal-fired electric generation facility that (1) had two or less generating units as of January 1, 1980, and four generating units as of January 1, 2016; (2) has multiple owners; and (3) serves retail customers in Washington with a portion of its load. An eligible coal unit is any generating unit of an eligible coal plant.

Creating a Process to Petition the UTC for Approval of an Eligible Coal Unit Risk Mitigation Plan. By December 31, 2017, an electrical company may petition the UTC for the approval of an eligible coal unit risk mitigation plan (risk mitigation plan), which must consist of (1) an eligible coal unit acquisition agreement, if applicable; (2) a decommissioning and remediation plan; (3) a decommissioning and remediation cost recovery plan; and (4) a resource replacement plan.

Any decommissioning and remediation plan (D&R plan) must include the following:

- planned date to decommission one or more eligible coal units;
- description of the intended stages for the D&R; and
- any other relevant information the UTC requests or requires to be disclosed.

Any decommissioning and remediation (D&R) cost recovery plan must include the following:

- estimated D&R costs, in current dollars, based in part on an engineering report issued by a reputable third party;
- a proposal for accounting for tracking and specifying D&R costs;
- a proposal for the recover of prudently incurred D&R costs;
- any D&R cost recovery fund, which must not be used for any other purpose than for prudently incurred D&R costs of for eligible coal units decommissioned and remediated pursuant to a D&R plan; must not be reduced, altered, impaired, or limited from the date of UTC approval until all costs are recovered or paid in full; and must provide that any remaining funds be returned to customers;
- statement of accumulated reserve of the electrical company for the decommissioning and remediation;

Any resource replacement plan must include an eligible coal unit acquisition agreement, if applicable, of an increased interest of not more than 250 MW of nameplate capacity of an eligible coal unit that commenced operations on or after January 1, 1980, and an acquisition or development strategy to replace the capacity and energy needs to replace closed eligible coal units.

Upon receipt of a petition for approval of a risk mitigation plan, the UTC may hold an adjudicative proceeding. The UTC has 240 days to issue a final order that approves, approves subject to conditions, or disapproves the petition. The UTC may extend the time period up to 60 days for a showing of good cause if the extension does not prejudice the ability of the electrical company to take action in the risk mitigation plan.

If an electrical company submits a risk mitigation plan proposing a closure date prior to December 31, 2022, then the UTC may not authorize the electrical company to use more than 50 percent of the regulatory liabilities or funds in the D&R cost recovery fund.

After considering an electrical company's need for capacity and energy, reasonableness of acquisition costs, the ability to meet the needs identified in the resource replacement plan in a cost-effective manner under the lowest reasonable cost resource standards, and overall costs and benefits of the risk mitigation plan, the UTC may approve a risk mitigation plan if it determines that the terms are prudent, reasonable, and provide adequate protection at the lowest reasonable cost to ratepayers and the electrical company. If not, the UTC must reject the petition or make its approval contingent upon satisfaction of certain conditions. If the UTC conditions approval of the petition, the electrical company must accept the modification within a time specified or withdraw the petition with leave to refile.

Approval of risk mitigation plan does not constitute a prudence determination for D&R costs of any eligible coal unit and does not authorize recovery of such costs in rates. The prudence of these costs must be determined prudent in a general rate case or other adjudication by the UTC, and the burden of proof is on the electrical company.

If the federal Clean Power Plan is repealed or invalidated, or any measure is passed by the people of Washington to restrict the use of electricity from coal-fired electric generation facilities outside of Washington, then an electrical company may propose a modified plan,

which must be considered by the UTC. If the commission rejects a modified plan, the electrical company does not have to comply with the approved risk mitigation plan.

Creating an Exception to the EPS. A long-term financial commitment for acquisition of an increased interest in an eligible coal unit pursuant to a risk mitigation plan is exempt from the EPS.

EFFECT OF CHANGES MADE BY ENERGY, ENVIRONMENT & TELECOMMUNICATIONS COMMITTEE (Recommended Substitute): Clarifies that the Risk Mitigation Plan includes a plan for the D&R of an eligible coal unit that commenced operations on or after January 1, 1980. Clarifies that the resource replacement plan is for the development or portfolio of electric generation facilities to replace the capacity and energy of eligible coal generation units to be decommissioned and remediated pursuant to a D&R plan, and any acquisition if applicable, of an increased interest of not more than 250 MW of nameplate capacity of an eligible coal unit that commenced operation on or after January 1, 1980, must be simultaneous or subsequent to the closure date in a D&R plan approved by the commission.

Renames the "Regulatory Liability Reserve Account" as the "D&R Cost Recovery Fund," which is an interest-bearing account designated D&R, and contains regulatory liabilities. Lengthens from 180 days to 240 days the time the UTC has to issue a final order that approves, approves subject to conditions, or disapproves the risk mitigation plan. Specifies that the UTC may approve the Risk Mitigation Plan, if it determines that the terms of the Plan are prudent, reasonable, and provide adequate protection at the lowest reasonable cost to ratepayers and the electrical company. Directs that if an eligible coal unit that commenced operations on or after January 1, 1980, is closed prior to December 31, 2022, then only 50 percent of existing regulatory liabilities may be used to fund D&R costs. Directs that if (a) the Clean Power Plan is repealed or invalidated or (b) any measure is passed by the people of Washington to restrict the use of electricity from coal-fired electric generation facilities outside of Washington, then an electrical company may propose a modified plan, which must be considered by the UTC. If the commission rejects the modification, the electrical company does not have to comply with the approved risk mitigation plan.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: Puget Sound energy (PSE) seeks two things: (1) a limited waiver from the GHG Emissions standard; and (2) a framework for UTC to develop a plan. PSE owns 677 MW of the four units at the Colstrip plant. PSE wants a plan to work jointly with its co-owner to close units 1 and 2, and purchase an interest in unit 3. Closing units 1 and 2 will help to meet environmental regulations. The bill seeks UTC's approval to apply regulatory assets - tax credits - against existing liabilities - decommissioning and remediation costs - instead of returning the tax

credits to customers over a period of time. This avoids rate fluctuation and allows customers who have benefited from low-cost energy to help pay for remediation, which is generational equity. PSE intends to look at renewable resources to close the gap. No layoffs at this time. Economic models estimate economic impact to Montana's industrial customers would increase wholesale market prices by 0.5 percent. PSE has listened to numerous stakeholders, and is working on an amendment to the bill. PSE is asking the Legislature to plan for the future.

In 2013, the UTC asked PSE to assess the cost of units 1 and 2 in an IRP. PSE ran many models. Some showed the units were cost effective and some did not, depending on assumptions. Since 2013, there has been low load growth, historically low gas prices, and more uncertainty surrounding environmental regulations. If units are not viable, PSE has to find cost-effective future power. The bill provides a roadmap for PSE to negotiate and implement a plan. PSE will have to prove that its costs are prudent. The UTC commences a fair and thorough adjudicative process with testimony under oath of all interested parties, including Montana. This is not a closure bill, but a process bill. If the UTC finds PSE's plan results in increased costs or undue risks, it can't approve it. The overall framework is sound.

CON: The bill directly affects our Montana constituents. The revenue generated by taxes from coal funds schools, libraries, parks, and regional water systems. Montana and Washington are neighbors. Colstrip was built in response to the energy crisis in the 1970s. Federal partners helped build the power line out to Washington, and Montana can't shut power off to Washington. Washington has benefited from low-cost reliable electricity. It has allowed farmers and ranchers in both states to increase agricultural production. The bill has no date for closing and decommissioning units 1 and 2. There is no plan on how to sequester carbon. Montana needs a plan with a timeframe and an opportunity to minimize impacts. If Colstrip is shut down, it would require baseload generation immediately available to remediate. Washington would be down 80 MW, but Montana would lose 525 MW of cheap electricity. Big industries will have to compete with residential customers and energy prices will go up.

The bill would not shift PSE's load off coal but would transfer to Unit 3. It is surprising Washington would consider such legislation. Natural gas has replaced coal as fuel. It is more effective and a cleaner option. Purchasing power from the Grays Harbor Energy Center is more effective than more coal. Any and all replacement power should be required to be competitively procured. The bill isn't needed because it is just a matter of time before units 1 and 2 will be closed. All existing customer classes should be protected. The bill should expressly say plan approval does not equate to cost approval. Costs must be prudently incurred in decommissioning and remediation, and should exclude costs that were the obligation of previous owners. The bill should not increase risks or shift new risks to customers. Costs imposed by Montana as taxes and fees should not be borne by PSE customers.

OTHER: This bill is an opportunity to put forth an orderly process and ensures that approach is fair for customers and the environment. Economics put coal-fired electric generation at risk. Current or future ratepayers should not pay more than they would have but for this bill. Acquisition of additional shares for replacement should only happen if paid for by consumers, or otherwise shareholders. Current negotiations should be conducted in good

faith. The bill does not address replacement power. Washington has excess zero-carbon resources in the state. PUDs should be able to compete on an equal basis. PUDs have excess hydro and wind power. Renewable resources should be encouraged.

Persons Testifying on Original Bill: PRO: Nancy Atwood, Ken Johnson, Roger Garrett, Puget Sound Energy; Dave Danner, WA Utilities & Transportation Commission.

CON: Kris Zadlo, Mark Soutter, Invenergy; Jim Keane, Duane Ankney, Rick Ripley, Cliff Larsen, Montana Legislature; Mike Web for Simon Fitch, Office of the Attorney General, Public Counsel Unit; Robert Kahn, NW & Intermountain Power Producers Coalition (NIPPC); Tim Boyd, Industrial Customers of NW Utilities.

OTHER: Dave Warren, WA PUD Association; Nancy Hirsh, NW Energy Coalition; Shaun Seaman, Chelan County PUD.

Persons Signed In To Testify But Not Testifying on Original Bill: No One.