
HOUSE BILL 1854

State of Washington

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By Representatives Morris and Chase

Read first time 01/30/09. Referred to Committee on Technology, Energy & Communications.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (a) Those emissions that are injected permanently in geological
38 formations;

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

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

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

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

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

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

36 (a) Provisions for financial assurances, as a condition of plant
37 operation, sufficient to ensure successful implementation of the carbon

1 sequestration plan, including construction and operation of necessary
2 equipment, and any other significant costs;

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

7 (c) Provisions for monitoring the effectiveness of the
8 implementation of the sequestration plan;

9 (d) Penalties for failure to achieve implementation of the plan on
10 schedule;

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

14 (f) Provisions for public notice and comment on the carbon
15 sequestration plan.

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

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

29 (13) A project under consideration by the energy facility site
30 evaluation council by July 22, 2007, is required to include all of the
31 requirements of subsection (11) of this section in its carbon
32 sequestration plan submitted as part of the energy facility site
33 evaluation council process. A project under consideration by the
34 energy facility site evaluation council by July 22, 2007, that receives
35 final site certification agreement approval under chapter 80.50 RCW
36 shall make a good faith effort to implement the sequestration plan. If
37 the project owner determines that implementation is not feasible, the
38 project owner shall submit documentation of that determination to the

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

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

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

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

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

33 (4) Upon application by an electric utility, the commission may
34 provide a case-by-case exemption from the greenhouse (~~gases~~) gas
35 emissions performance standard to address: (a) Unanticipated electric
36 system reliability needs; or (b) catastrophic events or threat of

1 significant financial harm that may arise from unforeseen
2 circumstances.

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

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

1 ~~commitment~~) facility, whether recovery of any or all of these costs is
2 appropriate, or other issues to be decided by the commission in a
3 general rate case or other proceeding for recovery of these costs.

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

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

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

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

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