S-2099.1

SUBSTITUTE SENATE BILL 6090

State of Washington 61st Legislature 2009 Regular Session

By Senate Environment, Water & Energy (originally sponsored by Senator Pridemore)

READ FIRST TIME 02/25/09.

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

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

Sec. 1. RCW 80.80.010 and 2007 c 307 s 2 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 consumer-owned utilities under its jurisdiction; or (b) an independent auditor selected by a consumer-owned utility that is not under the jurisdiction of the state auditor.

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

(4) "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 sixty percent.

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

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

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

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

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

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

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

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

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

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

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

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

(b) 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.

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

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

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

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

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

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

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

(2) Long-term financial commitments with the Bonneville power administration are exempt from this chapter.

(3) All baseload electric generation facilities in operation as of June 30, 2008, are deemed to be in compliance with the greenhouse ((~~gases~~)) gas emissions performance standard established under this section until the facilities are the subject of long-term financial

commitments. All baseload electric generation that commences operation after June 30, 2008, and is located in Washington, must comply with the greenhouse ((~~gases~~)) gas emissions performance standard established in subsection (1) of this section.

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

((~~(4)~~)) (5) All cogeneration facilities in the state that are fueled by natural gas or waste gas or a combination of the two fuels, and that are in operation as of June 30, 2008, are deemed to be in compliance with the greenhouse ((~~gases~~)) gas emissions performance standard established under this section until the facilities are the subject of a new ownership interest or are upgraded.

((~~(5)~~)) (6) In determining the rate of emissions of greenhouse gases for baseload electric generation, the total emissions associated with producing electricity shall be included.

((~~(6)~~)) (7) The department shall establish an output-based methodology to ensure that the calculation of emissions of greenhouse gases for a cogeneration facility recognizes the total usable energy output of the process, and includes all greenhouse gases emitted by the facility in the production of both electrical and thermal energy. In developing and implementing the greenhouse ((~~gases~~)) gas emissions performance standard, the department shall consider and act in a manner consistent with any rules adopted pursuant to the public utilities regulatory policy act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

((~~(7)~~)) (8) The following greenhouse ((~~gases~~)) gas emissions produced by baseload electric generation owned or contracted through a long-term financial commitment shall not be counted as emissions of the power plant in determining compliance with the greenhouse ((~~gases~~)) gas emissions performance standard:

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

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

(c) Those emissions sequestered or mitigated as approved under subsection ((~~(13)~~)) (14) of this section.

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

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

((~~(10)~~)) (11) The directors of the energy facility site evaluation council and the department shall each adopt rules under chapter 34.05 RCW in coordination with each other to implement and enforce the greenhouse ((~~gases~~)) gas emissions performance standard. The rules necessary to implement this section shall be adopted by June 30, 2008.

((~~(11)~~)) (12) In adopting the rules for implementing this section, the energy facility site evaluation council and the department shall include criteria to be applied in evaluating the carbon sequestration plan, for baseload electric generation that will rely on subsection ((~~(7)~~)) (8) of this section to demonstrate compliance, but that will commence sequestration after the date that electricity is first produced. The rules shall include but not be limited to:

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

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

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

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

(e) Provisions for an owner to purchase emissions reductions in the event of the failure of a sequestration plan under subsection ((~~(13)~~)) (14) of this section; and

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

((~~(12)~~)) (13)(a) Except as provided in (b) of this subsection, as part of its role enforcing the greenhouse ((~~gases~~)) gas emissions performance standard, the department shall determine whether sequestration or a plan for sequestration will provide safe, reliable, and permanent protection against the greenhouse gases entering the atmosphere from the power plant and all ancillary facilities.

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

((~~(13)~~)) (14) A project under consideration by the energy facility site evaluation council by July 22, 2007, is required to include all of the requirements of subsection ((~~(11)~~)) (12) of this section in its carbon sequestration plan submitted as part of the energy facility site evaluation council process. A project under consideration by the energy facility site evaluation council by July 22, 2007, that receives final site certification agreement approval under chapter 80.50 RCW shall make a good faith effort to implement the sequestration plan. If the project owner determines that implementation is not feasible, the project owner shall submit documentation of that determination to the energy facility site evaluation council. The documentation shall demonstrate the steps taken to implement the sequestration plan and evidence of the technological and economic barriers to successful implementation. The project owner shall then provide to the energy facility site evaluation council notification that they shall implement the plan that requires the project owner to meet the greenhouse ((~~gases~~)) gas emissions performance standard by purchasing verifiable greenhouse ((~~gases~~)) gas emissions reductions from an electric

generating facility located within the western interconnection, where the reduction would not have occurred otherwise or absent this contractual agreement, such that the sum of the emissions reductions purchased and the facility's emissions meets the standard for the life of the facility.

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