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Montana Legislative Services Division

Legislative Environmental Policy Office

December 23, 2015

TO: Environmental Quality Council and Energy and Telecommunications Interim Committee
FR: Legislative Environmental Policy Staff
RE: Draft Legislation proposed in State of Washington

The Washington State Legislature begins its 2016 session on January 11. Puget Sound Energy (PSE) owns 50% of Colstrip Generating Units 1 and 2 and 25% of Units 3 and 4. It is the largest single owner of the Colstrip facility. The utility intends to introduce legislation in Washington to address its continued use of coal-fired generation from the Colstrip Generating Station, and draft legislation provided by PSE is attached.

PSE is under pressure to reduce its reliance on Colstrip from the Washington state utility commission, the Washington governor, and others who are concerned about the environmental impacts and economic costs of coal-fired generation. In response to the pressure and economic realities in the energy industry, PSE, a Washington state energy utility providing electrical power and natural gas in the Puget Sound region of the Northwest, indicated it is pursuing the attached legislation.

In 2015, the Washington Legislature considered establishing a process for an electrical company to petition the Washington Public Utility and Transportation Commission for a plan to acquire and decommission one or more coal-fired generating units and to secure ratepayer funds for environmental remediation. Because of Colstrip's complicated ownership structure, a single owner of the plant can't simply retire one of the units. The Washington legislation would have enabled PSE to buy Talen Energy's (formerly PPL Montana) share of Units 1 and 2 and retire those units. The legislation did not pass.

The 2016 legislation crafted by PSE, the "Washington State Eligible Coal Unit Risk Mitigation Act", allows PSE to acquire a new interest in Colstrip, whichexceed certain greenhouse gas emission performance standards in Washington in order to acquire a greater interest in Colstrip. PSE would essentially be granted the ability to file plans with the Washington Public Utility Commission to buy out Talen Energy's share of Unit 3 (PSE would then own 55% of Unit 3), as long as efforts were simultaneously made to decommission other units - like Units 1 and 2, based on an early draft of the PSE legislation. The draft legislation directs PSE to file a plan in Washington on or before December 31, 2017 to facilitate the mitigation.

Members of the ETIC and the EQC met in Spokane in late October with members of the Washington Legislature. The Oct. 28 meeting was hosted by the Washington Legislature's Senate Energy, Environment and Telecommunications Committee, led by Sen. Doug Ericksen, R-Ferndale. The ETIC in September selected Sens. Ankney and Cliff Larsen to attend the meeting, and the Environmental Quality Council selected Sens. Keane and Rick Ripley to participate. Representatives of Montana's Public Service Commission and the Montana Governor's Office also participated in the meeting.

Sen. Ericksen, who carried the 2015 bill to close Units 1 and 2, admitted that a dialogue with Montana did not occur prior to the introduction of legislation in 2015. He encouraged Washington and Montana to have a "reasoned and rational discussion" about Colstrip Units 1 and 2. Montana legislators discussed the economic and social impacts closure of Colstrip would have on Montana and Rosebud County. The legislators asked Washington to cooperate with Montana, to consider the impacts to the employees at the facilities and associated mine, and to consider the overall economic impacts to Montana. Sen. Ericksen said he wants to hear from Montana legislators in 2016.

Sen. Ericksen has indicated that a PSE bill may be heard in the Senate committee on Jan. 21. ETIC and EQC members may wish to discuss whether they would like to provide comments to the Washington Legislature on the bill draft proposed and whether the interim committees would like to have representatives testify via conference call or send representatives to Olympia to testify on the legislation.

The draft legislation is anticipated to change in the coming weeks. As updated drafts become available, staff will provide those to the EQC and ETIC.

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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 new sections.

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

NEW SECTION. **Sec. 1.** This act may be known and cited as the Washington state eligible coal unit risk mitigation act.

NEW SECTION. **Sec. 2.** Sections 3 and 4 of this act constitute a new chapter in Title 80 RCW.

NEW SECTION. **Sec. 3.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Acquisition costs" means the amount paid by an electrical company to acquire an increased interest in an eligible coal unit.

(2) “Capacity” means the manufacturer’s rated capacity of a facility to generate electricity as expressed in megawatts, including fractions of a megawatt.

(3) “Decommissioning” means the reduction, termination, severance, stranding, or closure of assets, equipment, facilities, property, rights-of-way, easements, operations, labor, personnel, contracts, agreements, franchises, or any other interest of an electrical company in one or more eligible coal units.

(4) “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 one or more eligible coal units, including costs or expenses in connection with: (A) the acquisition, extension, modification, monitoring, alteration, or surrender of any permits, licenses, approvals, consents, orders, or authorizations required with respect to any such actions or interests; (B) any damages, fees, charges, or other expenses incurred in any legal, judicial, administrative, or regulatory proceedings, or any settlements thereof, arising in connection with any such actions or interests, not including any damages, penalties, fees, charges, settlement payments, or other expenses resulting from malfeasance or other unlawful conduct; and (C) capital costs, construction work in progress, and the unamortized cost of the property that is decommissioned, including any demolition or similar cost that exceeds the salvage value of the property. 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 of decommissioning of one or more eligible coal units.

(5) "Decommissioning and remediation plan" means a plan of an electrical company for the decommissioning and remediation of one or more eligible coal units.

(6) "Eligible coal plant" means a coal-fired electric generating facility that: (a) had two or less generating units as of January 1, 1980, and three or more 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 generating facility, electricity paid for in rates by ratepayers in the state of Washington.

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

(8) "Eligible coal unit risk mitigation plan" means a plan of an electrical company for (a) the decommissioning of more than 300 megawatts of capacity of interest in one or more eligible coal units, and (b) the acquisition of less than 250 megawatts of capacity of additional interest in an eligible coal unit, which acquisition shall occur simultaneous with or subsequent to the decommissioning pursuant to part (a).

(9) "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.

NEW SECTION. **Sec. 4.** ELIGIBLE COAL UNIT RISK MITIGATION PLAN.

(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. In support of such

petition, the electrical company must file supporting testimony and exhibits that include, at a minimum, the following: (a) a proposed decommissioning and remediation plan for the decommissioning of not less than 300 megawatts of capacity of one or more eligible coal units; and (b) the proposed agreement for the acquisition of an increased interest of not more than 250 megawatts of capacity of an eligible coal unit, which acquisition shall occur simultaneous with or subsequent to the decommissioning pursuant to part (a).

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

(a) A planned date of decommissioning of one or more eligible coal units by the electrical company;

(b) An estimate of the decommissioning and remediation costs associated with the decommissioning and remediation of one or more eligible coal unit(s), expressed in dollars current in the year the plan is prepared, and based, in part, on an engineering report issued by a reputable third party no less than one year before the date the plan is submitted to the commission;

(c) The accounting treatment for tracking and specifying decommissioning and remediation costs for one or more eligible coal unit(s), which may include the use of a reserve account, the funds of which (i) shall include an irrevocable pledge of amounts of any regulatory liability to such account, (ii) shall be used only to fund and recover decommissioning and remediation costs for one or more eligible coal unit(s), (iii) shall not be used for any purpose other than the funding and recovery of decommissioning and remediation costs for one or more eligible coal unit(s), and (iv) shall not be reduced, altered, impaired, or limited from the date of commission approval of the inclusion of such funds in the reserve account until all decommissioning

and remediation costs for all eligible coal units are recovered or paid in full;

(d) A statement of the accumulated reserve of the electrical company for the decommissioning and remediation of one or more eligible coal unit(s) as of the date of submission of the plan;

(e) A description of the stages by which decommissioning and remediation are intended to be accomplished; and

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

(3) 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. Any party may request that the commission expedite the hearing of the petition. An administrative law judge of the commission may enter an initial order including findings of fact and conclusions of law, as provided in RCW 80.01.060(3). The commission shall issue a final order that approves, approves subject to conditions, or disapproves the petition within one hundred eighty days after receipt of the petition.

(4) The commission must approve an eligible coal unit risk mitigation plan pursuant to this section if and only if the commission determines that the terms of such a plan are reasonable and provide adequate protection to ratepayers and the electrical company, considering (i) the need of the electrical company for baseload generation to serve ratepayers, (ii) the reasonableness of the acquisition costs, and (iii) the overall costs and benefits of the decommissioning and remediation plan. If the commission finds that an eligible coal unit risk mitigation plan does not meet the criteria under this

subsection (4), 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, it shall direct the electric company to accept the modification within a time specified by the commission or withdraw the petition with leave to refile.

Sec. 5. 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. For the purposes of this subsection (9), the terms "eligible coal unit" and "eligible coal unit risk mitigation plan" have the same meanings as in section 3 of this act.

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

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