

October 25, 2007

HAND-DELIVERED

Mr. Allen J. Fiksdal
Manager
Energy Facility Site Evaluation Council
PO Box 43172
Olympia, WA 98504-3172

Re: Pacific Mountain Energy Center, Application No. 2006-01
Greenhouse Gas Plan Opening Brief

Dear Mr. Fiksdal:

Enclosed are the original and 15 copies on Energy Northwest's Opening Brief for the Greenhouse Gas Plan and a Certificate of Service. An electronic disk is also enclosed.

Please call me at (206) 370-8024 if you have any questions.

Very truly yours,

KIRKPATRICK & LOCKHART PRESTON GATES ELLIS LLP



By
Denise M. Lietz

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cc: Service List

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BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of Application No. 2006-01:
ENERGY NORTHWEST;
PACIFIC MOUNTAIN ENERGY CENTER.

ENERGY NORTHWEST'S OPENING
BRIEF - GREENHOUSE GAS PLAN

INTRODUCTION

Climate change is in the news. Many believe that federal climate change legislation will come within the next few years. In the absence of federal legislation, some states have enacted legislation intended to mitigate the effects of climate change by controlling greenhouse gas emissions. Energy generation, particularly energy generation using fossil fuels, produces a large proportion of the world's greenhouse gases, and yet, the world's demand for energy increases every day. Given that coal is cheap and plentiful, it is likely to remain a dominant fuel for power generation in developing nations such as China and India for the foreseeable future. As a result,

1 many are seeking new technologies – technologies like Integrated Gasification Combined Cycle
2 (“IGCC”) generation and Carbon Capture and Sequestration (“CCS”) – that will reduce the effects of
3 the greenhouse gases associated with coal-based energy production and provide a method to dispose
4 of refinery and industrial wastes that would otherwise be burned in industrial furnaces or boilers
5 with less ability to capture and control carbon dioxide emissions. In addition, IGCC is an enabling
6 technology solution for carbon sequestration because of its proven effectiveness in carbon dioxide
7 capture. It is in this environment that the Washington Legislature enacted Engrossed Substitute
8 Senate Bill (“ESSB”) 6001, a wide-ranging bill designed to address climate change. This is also the
9 environment that prompted Energy Northwest to propose development of the Pacific Mountain
10 Energy Center (“PMEC”). The Pacific Northwest needs power. Under chapter 80.50 RCW, this
11 need is not subject to debate. After examining all commercially viable generation options, Energy
12 Northwest chose the IGCC process as the best technology to produce the baseload energy that
13 Washington will need while making a significant step forward in an effort to advance a technology
14 that may be key in the effort to reduce greenhouse gas emissions.

15 Energy Northwest understands that there is debate associated with its choice of the IGCC
16 technology. However, the Legislature has already taken a clear position in the debate – PMEC,
17 subject to its compliance with state and federal requirements including chapter 80.80 RCW, may
18 proceed. As a result, this round of briefing should focus on the sufficiency of PMEC’s Greenhouse
19 Gas Reduction Plan (“GHG Plan”) and not on any policy debate about Energy Northwest’s choice to
20 deploy the IGCC technology for PMEC. Also, through its adoption of section 5(13) of ESSB 6001,
21 the Legislature expressed a clear intent that the requirements for PMEC would differ from those of
22 later proposals. Moreover, the inclusion of section 5(13) surely means that the Legislature could not
23 have intended that it would be impossible for PMEC to move forward.

1 Energy Northwest's GHG Plan complies with ESSB 6001 and chapter 80.70 RCW. Energy
2 Northwest respectfully requests that the Council find that the GHG Plan is legally sufficient and
3 proceed with the balance of the adjudicative process for PMEC.

4 BACKGROUND

5 Energy Northwest submitted an application to the Energy Facility Site Evaluation Council
6 ("EFSEC" or the "Council") on September 12, 2006 seeking approval to construct and operate
7 PMEC on property owned by the Port of Kalama in Cowlitz County near the City of Kalama. In its
8 application, Energy Northwest described how it would comply with the then-existing law addressing
9 the greenhouse gas carbon dioxide, chapter 80.70 RCW. Halfway through PMEC's permitting
10 process, the Legislature enacted additional greenhouse gas regulation through ESSB 6001. Energy
11 Northwest submitted its GHG Plan to EFSEC on July 30, 2007 to comply with the requirements of
12 ESSB 6001 and chapter 80.70 RCW.

13 ESSB 6001 became effective on July 22, 2007 and was recently codified. Laws of 2007, ch.
14 307; ch. 80.80 RCW. Chapter 80.80 RCW sets forth a plan to reduce greenhouse gases in
15 Washington. Among other things, the law requires that all baseload generation located in
16 Washington that begins operation after June 30, 2008 meet a greenhouse gas emissions performance
17 standard. RCW 80.80.040(1), (2). EFSEC and the Department of Ecology ("Ecology") must adopt
18 rules to implement and enforce the emissions performance standard by June 30, 2008. RCW
19 80.80.040(10). EFSEC and Ecology have begun the rulemaking effort. *See* St. Reg. 07-16-024
20 (July 20, 2007); St. Reg. 07-15-084 (July 18, 2007).

21 RCW 80.80.040(13) sets out requirements that are only applicable to a "project under
22 consideration by the energy facility site evaluation council by July 22, 2007." PMEC was the only
23 thermal generating plant under EFSEC consideration on July 22, 2007. Thus this section applies
24 only to PMEC and requires Energy Northwest to submit a carbon sequestration plan "as part of the
25 energy facility site evaluation process." RCW 80.80.040(13). The carbon sequestration plan "is
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1 required to include all of the requirements of subsection (11) of this section. ..." *Id.* RCW
2 80.80.040(11) specifies provisions related to the "criteria to be applied in evaluating the carbon
3 sequestration plan" for facilities that propose to sequester greenhouse gases after power is initially
4 produced at the facility. Chapter 80.80 RCW did not amend chapter 80.50 RCW or otherwise
5 modify EFSEC's authority to site energy facilities.

6 As Energy Northwest prepared PMEC's GHG Plan, it reviewed the current status of geologic
7 and other methods of sequestration.¹ *See* GHG Plan at 13-20. Based on this review, Energy
8 Northwest concluded that, at present, sequestration is not technologically or economically feasible
9 for PMEC's expected greenhouse gas emissions.² The experts that testified on Energy Northwest's
10 behalf in its prefiled testimony agreed with this conclusion. *See* Ex. __ (JRT-T), John R. Talbott
11 Prefiled Testimony at 8; Ex. __ (TLM-T), Travis L. McLing Prefiled Testimony at 5-6. However,
12 Energy Northwest also concluded that geologic sequestration is likely to be feasible during PMEC's
13 operating life. GHG Plan at 13. As a result, Energy Northwest intends to invest \$50 million to
14 design and install carbon dioxide capture technology at PMEC and \$10 million to characterize and
15 assess the sequestration potential associated with the geologic formations located in the Kalama area
16 before commercial operation of the plant. *Id.* Energy Northwest will also monitor the technological
17 and economic feasibility of geologic and other sequestration for PMEC's greenhouse gas emissions
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19 ¹ As Energy Northwest uses the term, sequestration includes both geologic sequestration (also called
20 carbon capture and storage, or "CCS") and other forms of sequestration, such as forestry emission
21 reduction and agricultural emission reduction projects. Energy Northwest has concluded that neither
22 form of sequestration is technologically or economically feasible to reduce all of the greenhouse
23 gases necessary to comply with the emissions performance standard for PMEC. However, PMEC,
in consultation with The Climate Trust, may propose some sequestration projects as verifiable
emission reductions for a portion of PMEC's required emission reductions. *See* Ex. __ (MSB-T),
Mike Burnett Prefiled Testimony at 9 (explaining that "verifiable greenhouse gas reductions"
include sequestration activities).

24 ² Greenhouse gases include "carbon dioxide, methane, nitrous oxide, hydrofluorocarbons,
25 perfluorocarbons, and sulfur hexafluoride." RCW 80.80.010(14). Although PMEC is expected to
26 emit several greenhouse gases, including methane and nitrous oxide, carbon dioxide will be PMEC's
most prevalent greenhouse gas emission by far. *See* GHG Plan at 9. Because of this, the GHG Plan
primarily addresses PMEC's carbon dioxide emissions. *Id.*

1 on an ongoing basis. *Id.* at 23. Once Energy Northwest determines that sequestration is feasible as
2 defined by the GHG Plan, it will implement one or more sequestration projects approved by EFSEC.
3 *Id.*

4 This process of monitoring and evaluation is found in the Plan Compliance Program of
5 PMEC's GHG Plan. The Plan Compliance Program implements the concept of adaptive
6 management, which is a method to deal with scientific uncertainty over time.³ The Plan Compliance
7 Program was modeled after a similar program in the EFSEC-approved Greenhouse Gas Offset
8 Strategy and Plan for the Chehalis Generation Facility. Chehalis Power Greenhouse Gas Plan (Sept.
9 9, 2002). The Site Certification Agreement for the Cherry Point Cogeneration Project implements a
10 similar program, in which a variety of mitigation options are available to the facility operator, who
11 may provide funding to an approved organization or may implement offset projects approved in
12 advance by EFSEC. *See* Site Certification Agreement between the State of Washington and BP
13 West Coast Products, LLC, at 35-37 (Dec. 21, 2004, as amended Oct. 10, 2006).

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18 ³ There are various definitions of adaptive management. The Department of the Interior's NEPA
19 guidance includes the following definition of adaptive management:

20 Adaptive management is a system of management practices based on clearly identified
21 outcomes, monitoring to determine if management actions are meeting outcomes, and,
22 if not, facilitating management changes that will best ensure that outcomes are met or to
re-evaluate the outcomes. Adaptive management recognizes that knowledge about
natural resource systems is sometimes uncertain and is the preferred method of
management in these cases.

23 Department of the Interior, *Department Manual, Environmental Quality Programs, National*
24 *Environmental Policy Act of 1969*, 516 DM 4.16 (2004).

25 The Department of Community, Trade and Economic Development has defined adaptive
26 management in conjunction with its guidance of best available science for critical areas: "An
adaptive management program is a formal and deliberate approach to taking action and obtaining
information in the face of uncertainty." WAC 365-195-920.

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ARGUMENT

I. Rulemaking.

A. EFSEC is not required to stay PMEC's adjudicative proceeding until the completion of the rulemaking required by chapter 80.80 RCW.

Under chapter 80.80 RCW itself and the state's Administrative Procedure Act ("APA"), chapter 34.05 RCW, the Council is not required to complete the formal rule making process prior to its approval of a carbon sequestration plan under RCW 80.80.040(13). As discussed above, PMEC was the only proposed thermal generating facility under consideration by EFSEC on the effective date of chapter 80.80 RCW. As a result, the terms of RCW 80.80.040(13) apply only to PMEC and require PMEC to submit a carbon sequestration plan that includes "all of the requirements of subsection (11) of this section." Subsection (11) in turn specifies "criteria to be applied in evaluating the carbon sequestration plan" for facilities that propose to sequester greenhouse gases after electricity is initially produced at the facility. RCW 80.80.040(10) calls for rulemaking – by June 30, 2008 – to implement RCW 80.80.040(11). These rules must address certain aspects of carbon sequestration plans, such as "[p]rovisions for geological and other approved sequestration" and "[p]rovisions for an owner to purchase emissions reductions in the event of the failure of a sequestration plan under subsection (13) of this section." RCW 80.80.040(11). Chapter 80.50 RCW contemplates that EFSEC will issue a final order on site certification within twelve months of its receipt of an application. RCW 80.50.100(1). Chapter 80.80 RCW does not modify this twelve-month clock.

Under APA, state agencies such as EFSEC must comply with formal rule making procedures in order to adopt a rule. *See Simpson Tacoma Kraft Co. v. Dep't of Ecology*, 119 Wn.2d 640, 650, 835 P.2d 1030 (1992). Under the APA, a rule is "any agency order, directive, or regulation of general applicability...." RCW 34.05.010(16) (emphasis added). Rule making is not required when agency action does not have general applicability, but instead applies only to a specific entity. *See Orsi v. Aetna Ins. Co.*, 41 Wn. App. 233, 244 n.4, 703 P.2d 1053 (1985) (finding that an insurance

1 commissioner's action did not require the formal rule making process because it applied to only one
2 insurance company). Moreover, Washington courts recognize that statutes may be self-executing.
3 *See, e.g., Ord v. Kitsap County*, 84 Wn. App. 602, 605-07, 929 P.2d 1172 (1997) (holding that when
4 a statute directly grants authority to a local government, that local government does not need to
5 adopt an ordinance to exercise that authority). In Washington, while the APA favors rule making,
6 not all statutory interpretations must proceed through rule making. *See Budget Rent A Car Corp. v.*
7 *Dep't of Licensing*, 144 Wn.2d 889, 899, 31 P.3d 1174 (2001) (stating that "the APA's provisions
8 were not designed to serve as the straitjacket of administrative action").

9 Under the APA, EFSEC's approval of a carbon sequestration plan for PMEC will not be
10 agency action that has general applicability because this approval will apply only to a single facility
11 – PMEC. As a result, no rule is needed for EFSEC to approve PMEC's carbon sequestration plan.

12 The legislative history and structure of RCW 80.80.040 support this interpretation. When
13 considering ESSB 6001, the Legislature was aware that the PMEC application was pending before
14 EFSEC.⁴ Further, the Legislature is presumed to be aware of existing laws, such as the twelve-
15 month provision of RCW 80.50.100(1). *See Savlesky v. Washington Sch. for the Deaf*, 139 Wn.
16 App. 245, 253, 136 P.3d 152 (2006) ("We presume the legislature considered its prior enactments
17 when enacting new legislation.") (citing *State v. Roth*, 78 Wn.2d 711, 715, 479 P.2d 55 (1971);
18 *Dep't of Fisheries v. Chelan County Pub. Util. Dist. No. 1*, 91 Wn.2d 378, 383, 588 P.2d 1146
19 (1979)). The legislature did not amend that twelve-month provision in any way, but instead adopted
20 RCW 80.80.040(13) for applications pending before EFSEC. Under RCW 80.50.100, EFSEC's site
21 certification recommendation for any facility under consideration when chapter 80.80 RCW was
22 enacted would have been due before the June 30, 2008 deadline for rulemaking, and EFSEC would
23 have needed a carbon sequestration plan months in advance of its decision in order to include it in
24 the adjudicative process. Had the Legislature intended that EFSEC complete rule making prior to

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26 ⁴ *See, e.g.,* House Bill Report on ESSB 6001 at 6-7.

1 acting on PMEC's sequestration plan under RCW 80.80.040(13), it would have amended the
2 statutory time limit of RCW 80.50.100 or otherwise made express provision for the approximately
3 twelve-month delay that would have resulted from deferral pending rulemaking.

4 Moreover, under RCW 80.80.040(13), PMEC must submit a carbon sequestration plan that
5 includes all of the requirements of RCW 80.80.040(11). This provision would have been
6 unnecessary if the Legislature had thought EFSEC would defer action on PMEC until rulemaking
7 under RCW 80.80.040(10) and (11) was complete. To give meaning to RCW 80.80.040(13)
8 requires reading it to be a self-executing provision and to apply in advance of rulemaking.

9 **B. The GHG Plan addresses all of the requirements of RCW 80.80.040(11).**

10 Section II of the GHG Plan lists each element of RCW 80.80.040(11) and describes how
11 PMEC will comply with each requirement. While the sufficiency of each of these elements is
12 discussed below, the GHG Plan does "include all of the requirements" of RCW 80.80.040(11) as
13 required by RCW 80.80.040(13). The following table sets out the pages of the GHG Plan that
14 address these requirements:

Requirements	GHG Plan Reference
Financial Assurances	Page 5
Sequestration	Pages 5, 12 to 20
Monitoring	Pages 5-6
Penalties	Page 6
Emissions Reductions	Pages 21-22
Public Notice and Comment	Page 6

23 **II. PMEC's GHG Plan complies with the requirements of chapter 80.80 RCW.**

24 For most new resources, chapter 80.80 RCW generally offers a single method to offset
25 greenhouse gas emissions in excess of the emissions performance standard set out in RCW
26

1 80.80.040(1) – permanent geologic or other sequestration. RCW 80.80.040(7). However,
2 recognizing that sequestration science is still in its early stages, the Legislature enacted a provision
3 specifically applicable to PMEC. This provision allows PMEC to offset its greenhouse gas
4 emissions by “purchasing verifiable greenhouse emissions reductions from an electric generating
5 facility located within the western interconnection.” RCW 80.80.040(13). As a result, PMEC is
6 allowed to meet the emissions performance standard through sequestering its greenhouse gas
7 emissions or through purchasing verifiable greenhouse gas reductions.

8 Accordingly, as discussed above, Energy Northwest prepared and submitted the GHG Plan in
9 order to comply with the requirements of these sections. Because RCW 80.80.005(1)(e) provides
10 that the “greenhouse gases emissions performance standard will work in unison with” chapter 80.70
11 RCW, Energy Northwest also included provisions to comply with that chapter in the GHG Plan.

12 Because Energy Northwest determined that geologic sequestration is not technologically or
13 economically feasible at this time and that geologic sequestration is not likely to be technologically
14 or economically feasible until long after PMEC expects to begin commercial operations,⁵ Energy
15 Northwest struggled to determine how to address chapter 80.80 RCW, which expresses a clear
16 preference for geologic sequestration, when sequestration science is so uncertain. In addition, the
17 scientific uncertainty, as well as undefined state injection criteria and liability standards, makes it
18 impossible at this time to provide “full and sufficient technical documentation to support the planned
19 sequestration” as required by RCW 80.80.040(11)(b).

20 **A. The GHG Plan is legally sufficient.**

21 To address the tension between the goals of chapter 80.80 RCW and the current state of
22 scientific uncertainty surrounding geologic sequestration, Energy Northwest adopted an approach
23 designed to deal with scientific uncertainty – an approach sometimes called “adaptive management.”
24

25 _____
26 ⁵ See the GHG Plan for an extensive discussion of the current status of geologic sequestration
technology.

1 In the Plan Compliance Program section of the GHG Plan, Energy Northwest proposed a program
2 designed to ensure that EFSEC and, as necessary, Ecology, receive the technical information
3 required by chapter 80.80 RCW as that information becomes available over time. GHG Plan at 23-
4 24. This approach, by requiring Energy Northwest to assess the feasibility of geologic sequestration
5 prior to facility operation and every five years thereafter, preserves the opportunity to implement
6 geologic sequestration for PMEC when it becomes technologically and economically feasible. In the
7 meantime, PMEC will mitigate its emissions as necessary to comply with both chapter 80.80 RCW's
8 emissions performance standard and chapter 80.70 RCW using verifiable greenhouse gas emissions
9 reductions.

10 The Washington Supreme Court has recognized the validity of using adaptive management to
11 "mitigate inherent uncertainty." *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn.2d 568,
12 605-06, 90 P.3d 659 (2004) (upholding Ecology's use of adaptive management to ensure that the
13 mitigation projects associated with Seattle-Tacoma Airport's third runway would provide
14 "reasonable assurances" that the project would not violate water quality standards in the future). As
15 demonstrated in the GHG Plan, there is a considerable amount of inherent uncertainty related to the
16 feasibility of geologic sequestration. However, rather than giving up on geologic sequestration,
17 Energy Northwest has proposed an adaptive management system designed to ensure (1) that EFSEC
18 receives technical documentation as that information becomes available and (2) that sequestration
19 can be implemented when geologic sequestration becomes feasible. Under the reasoning of *Port of*
20 *Seattle*, it is reasonable for EFSEC to allow Energy Northwest to implement this approach.
21 Moreover, this approach is consistent with the EFSEC-approved GHG mitigation plans for the
22 Chehalis Generation Facility and for the BP Cherry Point Cogeneration Project. As the Council has
23 stated, "we note that the Council maintains on-going authority to review plans, evaluate monitoring
24 data, and adapt mitigation requirements to ensure that the public interest is protected." EFSEC,
25 Council Order No. 768, Application No. 99-01, Second Revised Application, Sumas Energy 2
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1 Generation Facility 45 (May 24, 2002) (citing RCW 80.50.040(9); RCW 80.50.071(1)(c); additional
2 citations omitted). In addition, this approach is consistent with EFSEC's approach taken to the
3 NPDES permit for the Satsop Combustion Turbine Project. See EFSEC, Fact Sheet, Satsop
4 Combustion Turbine Project, NPDES Permit WA-002496-1, Appendix C, Response to Comments 3
5 (Dec. 9, 2002). There, EFSEC states:

6 It is customary for the authorized administrator to issue an NPDES permit for
7 facilities with no history of discharge to include conditions that require early
8 verification of data used to develop effluent limits and permit condition assumptions.
9 ... [The permit contains conditions that] have compliance schedules intended to
10 provide the administrator and the permittee with information as early as possible to
11 avoid water quality violations and lead to further conditions, as necessary.

12 *Id.* Likewise, it is wholly appropriate to condition GHG Plan approval on a monitoring and
13 evaluation process that can lead to changes in operational conditions.

14 **B. The GHG Plan works "in unison" with chapter 80.70 RCW.**

15 RCW 80.80.005(1)(e) states that the "greenhouse gases emissions performance standard will
16 work in unison with the state's carbon dioxide mitigation policy, chapter 80.70 RCW and its related
17 rules, for fossil-fueled thermal electric generation facilities located in the state." According to the
18 American Heritage Dictionary "in unison" means "1. In complete agreement; harmonizing exactly.
19 2. At the same time; at once." The American Heritage Dictionary of the English Language 1882
20 (4th ed. 2000). The term "in unison" must be compared to the term "complement," which was the
21 term used in ESSB 6001 when it was introduced. Senate Bill 6001.⁶ Under general rules of
22 statutory construction, the Legislature's selection of a different word or words is presumed to be
23 significant. See *Tingey v. Haisch*, 159 Wn.2d 652, 661-64, 152 P.3d 1020 (2007) (examining the
24 legislative history associated with a revision in a bill's language to determine the meaning of an
25 undefined term). "Complement" means "1a. Something that completes, makes up a whole, or brings
26 to perfection. b. The quantity or number needed to make up a whole: *shelves with a full complement*

⁶ See Appendix A for the original bill as well as other key legislative documents.

1 *of books. c. Either of two parts that complete the whole or mutually complete each other.” American*
2 *Heritage Dictionary at 377 (italics in original).*

3 Logically, the term “in unison” means that greenhouse gas reduction projects that comply
4 with the requirements of both statutes should work toward compliance with both statutes.⁷ This is
5 especially true when this term is compared to the term “complement,” which implies that, as
6 originally proposed, the statutes would have worked separately to complete the Legislature’s
7 regulatory design.

8 Energy Northwest expects that once it achieves full operations, it will need to reduce
9 greenhouse emissions by more than twenty percent to meet chapter 80.80 RCW’s emissions
10 performance standard. GHG Plan at 10.⁸ Chapter 80.70 RCW requires a carbon dioxide reduction
11 of twenty percent. RCW 80.70.020(4). PMEC will meet the twenty percent requirement in the
12 course of meeting the requirements of chapter 80.80 RCW.

13 **C. The GHG Plan provides a good faith demonstration of compliance.**

14 RCW 80.80.040(13) requires Energy Northwest to “make a good faith effort to implement
15 the sequestration plan.”⁹ PMEC has committed to spend at least \$60 million as its good faith effort
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⁷ Under the GHG Plan Compliance Program, EFSEC will approve Energy Northwest’s proposals for
18 sequestration and emission reduction projects and can, thus, ensure that such projects comply with
19 both statutes.

20 ⁸ When PMEC is operating on coal or petroleum coke it is expected to emit 1500 to 1700 pounds of
21 greenhouse gases per Megawatt-hour. This will require reductions of 400 to 600 pounds of
22 greenhouse gases per Megawatt-hour to meet the emissions performance standard – a reduction that
23 ranges between approximately twenty-six to thirty-five percent. GHG Plan at 10.

24 ⁹ This provision is somewhat ambiguous: in addition to provisions for sequestration, the plan must
25 include provisions “for an owner to purchase emissions reductions in the event of a failure of a
26 sequestration plan under subsection (13) of this section.” RCW 80.80.040(11)(e). As a result, the
sequestration plan must include provisions for both sequestration and emission reductions.
However, the provisions for emission reductions only become effective when the sequestration *plan*
fails. Yet, if PMEC is successfully conducting the emission reduction activities specified by its plan
to meet the emissions performance standard, the sequestration plan is not failing. Energy Northwest
believes that the logical resolution of this ambiguity in a manner consistent with chapter 80.80
RCW’s preference for sequestration, is that the required good faith effort is to implement
sequestration.

1 to implement sequestration at the facility. It will spend \$50 million to install carbon capture
2 equipment at the facility and invest \$10 million prior to commercial operation to investigate specific
3 designs and test underground conditions for geologic sequestration. This, along with the
4 commitment in the Plan Compliance Program to continue to evaluate the technological and
5 economic feasibility of sequestration throughout P MEC's operating life, honors the chapter 80.80
6 RCW's preference for sequestration and represents a real, good faith effort to implement
7 sequestration during P MEC's operating life.

8 **D. The GHG Plan includes all the elements of RCW 80.80.040(11).**

9 1. Financial assurances. Energy Northwest must provide financial assurances
10 "sufficient to ensure successful implementation of the carbon sequestration plan, including
11 construction and operation of necessary equipment, and any other significant costs." RCW
12 80.80.040(11)(a). Energy Northwest proposes to spend \$50 million to install carbon capture
13 equipment during construction, to reserve property for expansion of capture capability as CCS
14 development proceeds, and to provide a reserve of an additional \$200 million for implementation of
15 the sequestration or mitigation required for compliance with chapter 80.80 RCW and chapter 80.70
16 RCW. Energy Northwest commits its bonding capacity for any additional financial assurance
17 required under the GHG Plan. 40 CFR § 258.74 sets out financial assurance requirements for local
18 governments that operate solid waste landfills. Under this regulation, a local government with
19 sufficient bonding capacity and a good credit rating may rely on its bonding capacity instead of
20 having to establish a trust fund or issue a letter of credit. *See* Financial Assurance Mechanisms for
21 Local Government Owners and Operators of Municipal Solid Waste Landfill Facilities, 61 Fed. Reg.
22 60,327-39 (Nov. 27, 1996). Under this regulation, the Environmental Protection Agency ("EPA")
23 determined that a local government that meets certain financial criteria is likely to be financially
24 capable of meeting its obligations to conduct closure, post-closure and corrective actions associated
25 with a municipal landfill it owns or operates. *Id.* at 60,330. Similarly, Energy Northwest's bonding
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1 capacity will ensure that it is financially capable of meeting its obligations under chapter 80.80 RCW
2 in the future.

3 Energy Northwest believes that the \$200 million reserve, together with the commitment of
4 bonding capacity, will ensure successful implementation of its GHG Plan and, thus, complies with
5 the requirements of RCW 80.80.040(11)(a).

6 2. Sequestration. The GHG Plan must provide “for geological or other approved
7 sequestration commencing within five years of plant operation, including full and sufficient
8 technical documentation to support the planned sequestration.” RCW 80.80.040(11)(b). As
9 discussed in the GHG Plan and the prefiled testimony, Energy Northwest has taken a number of
10 investigative steps to implement sequestration, and as a result has determined that geologic and other
11 sequestration is not currently technologically or economically feasible for all of the greenhouse gas
12 emissions that P MEC must reduce. Energy Northwest has also determined that sequestration of
13 P MEC’s anticipated greenhouse gas emissions is unlikely to be feasible for many years after P MEC
14 begins operating. RCW 80.80.040(13) clearly places the responsibility for this determination with
15 Energy Northwest: “If the project owner determines that implementation is not feasible, the project
16 owner shall submit documentation of that determination to the energy facility site evaluation
17 council.” The statute does not expressly address the timing of Energy Northwest’s determination. It
18 is both appropriate and realistic to make that determination now. The GHG Plan, together with
19 supporting prefiled testimony, fully documents the determination. See Ex. __ (JRT-T), John R.
20 Talbott Prefiled Testimony at 8; Ex. __ (TLM-T), Travis L. McLing Prefiled Testimony at 5-6; Ex.
21 __ (JLB-T), Jerry L. Bobo Prefiled Testimony.

22 Others may argue that RCW 80.80.040(13) requires a failed attempt to sequester before
23 Energy Northwest can make a determination of infeasibility. Energy Northwest disagrees. When it
24 is already obvious that sequestration is not feasible, why should Energy Northwest spend time and
25 money, and perhaps cause environmental impacts, in advance of a formal determination? Even if
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1 this alternative interpretation were reasonable, it would simply mean that the provisions of RCW
2 80.80.040(13) are ambiguous as to the timing of the feasibility determination. "Where the plain
3 language of the statute is subject to more than one reasonable interpretation, it is ambiguous." *State*
4 *v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007) (quoting *Cockle v. Dep't of Labor &*
5 *Indus.*, 142 Wn.2d 801, 808, 16 P.3d 583 (2001)). When a statute is ambiguous, the legislative
6 history of that statute may be examined in order to determine the intent of the legislature. *Id.* at 110-
7 11. In addition, authoritative administrative agency interpretation of ambiguous statutory language
8 is persuasive. *Id.* at 111 (quoting *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn.2d 568,
9 593, 90 P.3d 659 (2004)).

10 When Senate Bill 6001 was introduced, it did not expressly address facilities in the EFSEC
11 permitting process. In addition, the original bill provided geologic sequestration as the only method
12 to offset power plant emissions in excess of the emissions performance standard. When the Senate
13 passed its engrossed substitute bill, it then expressly addressed facilities in the EFSEC permitting
14 process by requiring those facilities to submit a sequestration plan for EFSEC's review during the
15 permitting process. Geologic sequestration remained the only method available to offset power plant
16 emissions. The House of Representatives materially modified the bill on April 12, 2007.
17 Representative Morris introduced a striker bill into which the House adopted several amendments.
18 Following adoption of those amendments, the House passed the bill the same day.

19 The final engrossed substitute bill included every one of the provisions codified in chapter
20 80.80 RCW, including the authority of a facility under EFSEC consideration to determine
21 infeasibility and then to use verifiable emissions reductions to meet the emissions performance
22 standard. The Senate then passed the same bill.¹⁰

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25 ¹⁰ The legislative history summarized here was developed using the bills and amendments on the
26 Legislature's website at <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=6001&year=2007>. Key legislative documents are included in Appendix A.

1 Here, the legislative history – specifically the inclusion of section 5(13) – demonstrates that
2 the Legislature intended that EFSEC proceed with the permitting process for PMEC and that the
3 permitting process for PMEC should not be impossible. If PMEC had to attempt sequestration now,
4 given the current and future technological and economic barriers to implementation, PMEC would
5 be in a Catch 22, unable to proceed with development. That would contravene the legislative intent
6 behind section 5(13). Moreover, a requirement to attempt sequestration now would introduce so
7 much financial uncertainty that PMEC could not obtain the partners and financing necessary to
8 proceed with the facility. *See Ex. __ (JLB-T), Jerry L. Bobo Prefiled Testimony.* As a result, if
9 EFSEC required Energy Northwest to proceed further with sequestration prior to making its
10 determination of infeasibility, EFSEC would defeat the Legislature’s intent by effectively precluding
11 the permitting, construction and operation of PMEC.

12 The Legislature is presumed to intend to enact effective laws. *See Washington v. Royal*, 123
13 Wn.2d 451, 460-61, 869 P.2d 56 (1994). “Courts will presume that the legislature did not engage in
14 vain and useless acts and that some significant purpose or object is implicit in every legislative
15 enactment.” *Oak Harbor Sch. Dist. v. Oak Harbor Ed. Ass’n*, 86 Wn.2d 497, 500, 545 P.2d 1197
16 (1976) (citation omitted); *see also Tingey v. Haisch*, 159 Wn.2d 652, 663-64, 152 P.3d 1020 (2007)
17 (“A reading [of a statute] that produces absurd results must be avoided because ‘it will not be
18 presumed that the legislature intended absurd results.’”) (citations omitted). The Legislature’s
19 addition of section 5(13) shows it intended that EFSEC proceed with PMEC’s permitting; it would
20 be absurd to read the section so as to make permitting impossible. Therefore, even if the language of
21 section 5(13) were ambiguous, the legislative history of ESSB 6001 demonstrates that Energy
22 Northwest may make the determination of infeasibility now.

23 As discussed above, the adaptive management approach of the GHG Plan Compliance
24 Program provides a vehicle to revisit, and as appropriate, reverse the determination of infeasibility.
25 Thus the present determination of infeasibility does not forever close the door on sequestration.
26

1 3. Monitoring. The adaptive management approach of the Plan Compliance Program
2 also ensures compliance with RCW 80.80.040(11)(c)'s requirement for monitoring. Under the Plan
3 Compliance Program, all emission reduction projects will be subject to verification by an
4 independent third party such as The Climate Trust. GHG Plan at 23-24; Ex. __ (MSB-T), Mike
5 Burnett Prefiled Testimony at 13-14. For any proposed future sequestration projects, Energy
6 Northwest will obtain prior EFSEC approval of a project plan that includes long-term monitoring to
7 ensure permanent storage of greenhouse gases.

8 4. Penalties. RCW 80.80.040(11)(d) requires “[p]enalties for failure to achieve
9 implementation of the plan on schedule.” EFSEC has broad authority to impose penalties for
10 noncompliance with its site certification agreement. RCW 80.50.150. Further, Energy Northwest
11 has proposed, as an additional penalty for a failure to implement the GHG Plan on schedule a
12 prohibition against use of fuels other than natural gas. Operating PMEC on natural gas is expected
13 to produce greenhouse gas emissions below the emissions performance standard.¹¹ However, natural
14 gas is expected to be much more expensive than the petroleum coke or coal that Energy Northwest
15 generally intends to use as fuel for PMEC. *See, e.g.,* Department of Energy, Energy Information
16 Administration, *Cost and Quality of Fuels for Electric Plants: 2004 and 2005*, at 3 (Dec. 2006)
17 (showing that the average delivered cost of natural gas for 2005 was \$8.34/MMBtu as compared to
18 \$1.53/MMBtu for coal and \$1.29/MMBtu for petroleum coke). As a result, requiring PMEC to
19 operate on natural gas will ensure compliance with the emissions performance standard and
20 eliminate the need to sequester while imposing a considerable financial burden on Energy
21 Northwest.

22 5. Purchase of Offsets. RCW 80.80.040(11)(e) requires a plan under RCW
23 80.80.040(13) to include provisions for the purchase of offsets in the event “of a failure of a
24

25 _____
26 ¹¹ Operations on natural gas are projected to emit between 800 and 900 pounds of greenhouse gases
per Megawatt-hour. GHG Plan at 10.

1 sequestration plan.” Energy Northwest interprets this to mean that its GHG Plan must provide for
2 offset purchases if sequestration cannot be done, or is not being done. Energy Northwest’s GHG
3 Plan meets the requirement of RCW 80.80.040(11)(e) because it contains detailed provisions for
4 offset purchases. GHG Plan at 21-22 (describing its contract with The Climate Trust, how it will
5 calculate emission reduction, and sectors from which reductions can be purchased); *see also* Ex. ___
6 (MSB-T), Mike Burnett Prefiled Testimony at 9-14.

7 6. Notice and Comment. RCW 80.80.040(11)(f) requires a sequestration plan to provide
8 for public notice and comment. Energy Northwest’s GHG Plan meets this requirement in two ways.
9 First, Energy Northwest has submitted the Plan for consideration in the EFSEC process. In addition,
10 the Plan was the subject of public comment at EFSEC’s recent meeting in Kalama. *See* EFSEC,
11 September 20, 2007 Special Meeting Agenda (Sept. 17. 2007). Ongoing notice and comment
12 opportunities are provided through periodic reporting and the process for EFSEC consideration of
13 specific sequestration and mitigation projects. *See* GHG Plan at 23-24.

14 **E. The GHG plan accounts for the uncertainty associated with sequestration by**
15 **ensuring that Energy Northwest will provide “full and sufficient documentation”**
16 **as that information becomes available.**

17 As discussed above, sequestration is impossible at this time. If and when sequestration
18 becomes feasible, Energy Northwest will provide “full and sufficient technical documentation to
19 support the planned sequestration” pursuant to RCW 80.80.040(11)(b). Energy Northwest has
20 already submitted “full and sufficient documentation to support” both its GHG Plan and its decision
21 not to attempt sequestration now. Energy Northwest’s adaptive management system ensures that
22 EFSEC will receive any additional technical documentation required by chapter 80.80 RCW when
23 that information becomes available. Likewise, Energy Northwest will implement sequestration
24 when geologic sequestration becomes feasible.
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F. PMEC's proposed natural gas operations will comply with both chapter 80.80 RCW and chapter 80.70 RCW.

Energy Northwest anticipates that commercial operation on natural gas can be achieved about a year before completion of construction for the gasification process. *See* GHG Plan at 4. Energy Northwest only intends to operate on natural gas until the gasification process is available. It does not intend to run on natural gas indefinitely. Even if it did operate exclusively as a natural gas-fired facility, under the provisions of the GHG Plan, PMEC must comply with both chapter 80.80 RCW and chapter 80.70 RCW.

As discussed above, PMEC's greenhouse gas emissions while operating on natural gas are expected to be below the emissions performance standard. *See* GHG Plan at 10. Energy Northwest will provide an annual report of PMEC's actual greenhouse gas emissions to EFSEC. *Id.* at 23. As a result, if PMEC's emissions do exceed the emissions performance standard, the terms of the GHG Plan require PMEC to either sequester or mitigate its greenhouse gas emissions to meet the standard. Compliance with chapter 80.70 RCW is ensured in the same way. In addition, the GHG Plan requires Energy Northwest to comply with the mitigation requirements of chapter 80.70 RCW while it operates on natural gas prior to the commercial operation of the gasification process.¹² *Id.* at 7.

III. Timing of GHG Plan Support.

A. No provision of chapter 80.80 RCW or the Council's statutory or regulatory authority requires or allows delay of PMEC's adjudicative process based on the adequacy of the GHG Plan.

An applicant must submit a carbon sequestration plan "as part of the energy facility site evaluation process." RCW 80.80.040(13). Neither RCW 80.80.040(13), nor any other provision of chapter 80.80 RCW, dictates the process that EFSEC may use to implement an applicant's sequestration plan. As a result, it is clear that EFSEC retains the discretion to review the terms and

¹² Energy Northwest anticipates satisfying chapter 80.70 RCW for the period prior to commercial operation of the gasifier by paying a third party to provide mitigation under RCW 80.70.020(3)(a). Energy Northwest intends to revise the GHG Plan to incorporate this commitment.

1 conditions of a carbon sequestration plan as part and parcel of the adjudicative process, just as it
2 does for other plans necessary to comply with state and federal laws. There is no suggestion that the
3 GHG Plan can somehow be made a precursor to the balance of the adjudicative process. Such
4 treatment would impermissibly attenuate the EFSEC process.

5 Moreover, as discussed above, chapter 80.80 RCW does not modify the twelve-month period
6 generally applicable to EFSEC's review of energy facilities. RCW 80.50.100(1). This implies that
7 the Legislature did not contemplate a halt to EFSEC's site certification process while EFSEC and
8 other parties review a carbon sequestration plan. As a result, the review and approval of a carbon
9 sequestration plan must occur within an site certification process that will still "ensure that decisions
10 are made timely and without unnecessary delay." RCW 80.50.010(5).

11 Recognizing the importance of the new issues associated with chapter 80.80 RCW, Energy
12 Northwest requested and EFSEC granted a six-month delay of the site certification review process
13 for PMEC in order to evaluate the impact of the new requirements. *See* Letter from Allen Fiksdal,
14 EFSEC Manager to Jack Baker, Vice President, Energy Northwest (Sept. 13, 2007). However,
15 Energy Northwest is still entitled to chapter 80.50 RCW's commitment to timely siting decisions. A
16 delay of the adjudicative process based on chapter 80.80 RCW's requirements for PMEC's GHG
17 Plan is not consistent with this commitment. This is particularly true when the adjudicative process
18 itself is ideally suited to evaluate the adequacy of the GHG Plan.

19 **B. Even if there is doubt as to the GHG Plan's sufficiency, processing should**
20 **proceed because under WAC 463-60-116, Energy Northwest may modify the**
21 **Plan in response to commitments and stipulations made during the adjudicative**
22 **process.**

23 The GHG Plan is on the same footing as other aspects of the PMEC proposal: Energy
24 Northwest may modify it to meet the concerns of the Council and parties. WAC 463-60-116 applies
25 to applications for site certification and provides, "Within thirty days after the conclusion of the
26 hearings, the applicant shall submit to the council, application amendments which include all
commitments and stipulations made by the applicant during the adjudicative hearings." WAC 463-

1 60-116(3). However, while RCW 80.80.040(13) does require an applicant to submit a carbon
2 sequestration plan “as part of the energy facility site evaluation process,” it does not provide that a
3 carbon sequestration plan will be part of a facility’s application.

4 Chapter 463-60 WAC sets out the requirements for an application for site certification. Not
5 all plans required for a facility are required as part of the application. For example, chapter 80.70
6 RCW requires that any “proposed site certification agreement submitted to the governor under RCW
7 80.50.010 and a final site certification agreement issued under RCW 80.50.100 shall include an
8 approved carbon dioxide mitigation plan.” RCW 80.70.020(2)(a). Yet chapter 463-60 WAC does
9 not require this plan as a part of its site certification application. This is true even though the
10 Legislature adopted chapter 80.70 RCW in the 2004 legislative session and EFSEC adopted chapter
11 463-60 WAC late in 2004. *Compare* Laws of 2004, ch. 224 (adopting chapter 80.70 RCW) to St.
12 Reg. 04-21-013 (adopting chapter 463-60 WAC). As a result, the terms of WAC 463-60-116(3),
13 which apply to applications only, do not apply directly to PMEC’s GHG Plan.

14 WAC 463-60-116(3) does provide clear support for Energy Northwest to make, and for
15 EFSEC to accept, additional commitments regarding the GHG Plan in the adjudicative process. If
16 an applicant can change the terms of its application based on “commitments and stipulations made . .
17 . during the adjudicative proceedings,” there is no reason to bar an applicant from taking the same
18 action with respect to other materials at issue during the adjudicative hearings. As a result, Energy
19 Northwest can agree to modify its GHG Plan during the hearing process.

20 **C. Even if the GHG Plan were facially deficient, the provisions of RCW**
21 **80.80.040(13) would apply to PMEC.**

22 RCW 80.80.040(13) applies to a “project under consideration by the energy facility site
23 evaluation council” on July 22, 2007. If the Council determined that the GHG Plan was inadequate,
24 this determination would not change the status of PMEC as a facility “under consideration” by
25 EFSEC on July 22, 2007. As a result, the terms of RCW 80.80.040(13) would continue to apply to
26 PMEC even if EFSEC determined that its GHG Plan is inadequate.

1 The Washington Legislature has a strong tradition of vesting development applications to the
2 regulations in effect at the time the application was complete. *See, e.g.,* RCW 58.17.033; *see also*
3 *Ass'n of Rural Residents v. Kitsap County*, 141 Wn.2d 185, 193, 4 P.3d 115 (2000) (explaining the
4 vesting doctrine as applied in Washington). Nevertheless, except to the limited extent that RCW
5 80.80.040(13) applies to facilities under consideration by EFSEC, the Legislature chose to apply
6 chapter 80.80 RCW to energy facilities with a complete application in front of EFSEC. On the other
7 hand, neither chapter 80.80 RCW, nor chapter 80.50 RCW, provide that an applicant subject to the
8 terms of RCW 80.80.040(13) will lose the protection of that section if EFSEC initially determines
9 that its carbon sequestration plan is deficient.

10 While the relevant requirements do not directly address vesting for facilities subject to RCW
11 80.80.040(13), an analogy to local development regulations supports EFSEC's authority to apply
12 RCW 80.80.040(13) to PMEC even if the GHG Plan is inadequate. Generally speaking, when a
13 proposed development project changes beyond a certain point (usually specified by ordinance), a
14 new application is required and the applicant must comply with any new requirements in place at the
15 time of the new application (in other words, the applicant loses its vested status). *See, e.g.,* Kenmore
16 Municipal Code 17.20.030 (providing that substantial changes to a preliminary subdivision approval
17 will be "treated as a new application for purposes of vesting"). Here, however, the requirement to
18 submit a GHG Plan does not affect PMEC's underlying design. As a result, this analogy supports
19 the continued application of RCW 80.80.040(13) to PMEC even if EFSEC determines that the GHG
20 Plan is inadequate or requires modifications to PMEC's site certification application.

21 Moreover, chapter 80.80 RCW and chapter 80.50 RCW do not require a new application if
22 EFSEC determines that a carbon sequestration plan is inadequate. Instead, chapter 80.50 RCW and
23 EFSEC's regulations implement a flexible process by which an applicant can change its application
24 in response to information developed during the application process. The provision of WAC 463-
25 60-116(3) for changes to an application in response to commitments and stipulations made during
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1 the adjudicative process is only one example of this flexibility. None of the provisions of chapters
2 80.50 or 80.80 RCW or EFSEC's regulations require the submission of a whole new application. In
3 fact, the only provision that addresses a requirement for a new application is RCW 80.50.100(3),
4 which allows an applicant to submit a "subsequent application" for the same site based on new
5 information or changed conditions when the Governor rejects an initial application. As a result,
6 RCW 80.80.040(13) would continue to apply to PMEC even if EFSEC determined that the GHG
7 Plan were deficient and that Energy Northwest should modify its application.

8 **IV. Conditional Permit Possibility.**

9 **A. EFSEC may condition PMEC's operation upon obtaining EFSEC approval of**
10 **components of a GHG Plan subsequent to issuance of a site certification**
11 **agreement.**

12 Chapter 80.50 RCW allows EFSEC to impose conditions in a site certification agreement:

13 "The council shall include conditions in the draft certification agreement to implement the
14 provisions of this chapter, including but not limited to, conditions to protect state or local
15 governmental or community interests affected by the construction or operation of the energy
16 facility...." RCW 80.50.100(1). Those conditions are binding on the applicant. RCW 80.50.120(2).

17 EFSEC does typically include conditions requiring the later submission of plans intended to
18 ensure compliance with other laws in its site certification agreements. For example, EFSEC
19 conditioned the construction of the Cherry Point Cogeneration Project on, among other things, the
20 submission of a construction stormwater pollution prevention plan and a spill prevention, control and
21 countermeasures program. *See* Site Certification Agreement between the State of Washington and
22 BP West Coast Products, LLC, at 28-29 (Dec. 21, 2004, as amended Oct. 10, 2006). Both of these
23 requirements are necessary to comply with the facility's National Pollution Discharge Elimination
24 System ("NPDES") permit. *Id.* There is nothing in chapter 80.80 RCW that prevents EFSEC from
25 conditioning PMEC's draft site certification agreement on a carbon sequestration plan in the same
26 manner.

1 RCW 80.80.040(13) requires a carbon sequestration plan to be “submitted as part of the
2 energy facility site evaluation process.” RCW 80.80.040(12)(b) requires the Council to “consider
3 the adequacy of sequestration or the plan in its adjudicative proceedings” and incorporate its findings
4 in its recommendation to the governor. Neither of these provisions prevents EFSEC from exercising
5 its authority to impose binding conditions on an applicant. As a result, the structure of the GHG
6 Plan, when combined with EFSEC’s authority to impose binding conditions on an applicant, ensure
7 that the Plan is “adequate” to meet the requirements of chapter 80.80 RCW and that EFSEC may
8 make the findings necessary to comply with the requirements of RCW 80.80.040(12)(b).

9 Moreover, the authority to include binding conditions in the site certification agreement also
10 supports EFSEC’s authority to implement a carbon sequestration plan that, like the GHG Plan,
11 includes adaptive management provisions. The design of the Plan Compliance Program allows
12 Energy Northwest and EFSEC to monitor the technological and economic feasibility of sequestration
13 on an on-going basis. EFSEC’s authority to condition site certification means that it has the
14 authority to approve PMEC’s future path of compliance with the requirements of chapter 80.80
15 RCW and the authority to enforce PMEC’s compliance with the approved path.

16 **B. Consideration of “final gas reduction” compliance with chapter 80.80 RCW is**
17 **not premature because PMEC’s financing and construction depend upon the**
18 **finalization of some matters prior to site certification.**

19 While the Council’s authority to issue site certification agreements with conditions supports
20 the adaptive management approach of PMEC’s GHG Plan, practically, PMEC’s financing and
21 construction depend on a level of certainty regarding its compliance with chapter 80.80 RCW. As
22 PMEC’s GHG Plan explains, significant uncertainties inhere in the future feasibility of geologic and
23 other sequestration methods for PMEC’s expected greenhouse emissions. As a result, the potential
24 costs of sequestering PMEC’s emissions are difficult to estimate even at an order of magnitude level.
25 Nevertheless, chapter 80.80 RCW requires that PMEC either sequester or mitigate the greenhouse
26 gases it emits in excess of the emission performance standard. Leaving all of PMEC’s compliance

1 requirements for the future would mean that the undefined, and potentially large, costs of
2 sequestering all of PMEC's greenhouse gas emissions would make financing the construction of
3 PMEC impossible. *See* Ex. __ (JLB-T), Jerry L. Bobo Prefiled Testimony.

4 Rather than leaving completion of the GHG Plan for the future, Energy Northwest proposed
5 a GHG Plan that sets parameters for PMEC's compliance with chapter 80.80 RCW. This allows
6 Energy Northwest to define the costs associated with that compliance to the degree necessary to
7 obtain financing. And, yet, by using the Plan's adaptive management approach, Energy Northwest
8 has honored the Legislature's preference for sequestration by keeping that possibility open for the
9 future.

10 **CONCLUSION**

11 Energy Northwest's GHG Plan complies with chapters 80.70 RCW and 80.80 RCW. Energy
12 Northwest respectfully requests that the Council find that the GHG Plan is legally sufficient and
13 proceed with the balance of the adjudicative process for PMEC.

14
15 DATED this 25th day of October, 2007.

16
17 KIRKPATRICK & LOCKHART
18 PRESTON GATES ELLIS LLP

19 By 
20 Elizabeth Thomas, WSBA # 11344
21 Denise M. Lietz, WSBA #33021
22 Attorneys for Applicant
23 Energy Northwest
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Appendix A

Key Legislative Documents

SB 6001 - 2007-08**Mitigating the impacts of climate change.****History of Bill**

as of Thursday, October 25, 2007 8:33 AM

Sponsors: Senators Pridemore, Poulsen, Rockefeller, Brown, Eide, Oemig, Hargrove, Marr, Fraser, Kohl-Welles, Keiser, Regala, Franklin, Fairley, Jacobsen, Shin, Haugen, Berkey, Spanel, Kline, Weinstein

2007 REGULAR SESSION

- Feb 12 First reading, referred to Water, Energy & Telecommunications. (View Original Bill)
- Feb 14 Public hearing in the Senate Committee on Water and Energy & Telecommunications at 3:30 PM.
- Feb 28 Executive action taken in the Senate Committee on Water and Energy & Telecommunications at 3:30 PM.
WET - Majority; 1st substitute bill be substituted, do pass. (View 1st Substitute)
Minority; do not pass.
Passed to Rules Committee for second reading.
- Mar 6 Made eligible to be placed on second reading.
- Mar 8 Placed on second reading by Rules Committee.
- Mar 10 **1st substitute bill substituted.** (View 1st Substitute)
Floor amendment(s) adopted.
Rules suspended. Placed on Third Reading.
Third reading, passed; yeas, 35; nays, 13; absent, 0; excused, 1. (View Roll Calls) (View 1st Engrossed)

IN THE HOUSE

- Mar 13 First reading, referred to Technology, Energy & Communications.
- Mar 27 Public hearing in the House Committee on Technology and Energy & Communications at 10:00 AM.
- Mar 30 Executive action taken in the House Committee on Technology and Energy & Communications at 8:00 AM.
TEC - Executive action taken by committee.
TEC - Majority; do pass with amendment(s).
Minority; do not pass.
Referred to Appropriations.
- Mar 31 Public hearing in the House Committee on Appropriations at 9:00 AM.
Executive action taken in the House Committee on Appropriations at 7:30 PM.
Executive action taken in the House Committee on Appropriations at 9:00 AM.
APP - Executive action taken by committee.
APP - Majority; do pass with amendment(s) but without amendment(s) by Technology, Energy & Communications.
Minority; do not pass.
- Apr 2 Passed to Rules Committee for second reading.
- Apr 6 Placed on second reading.
- Apr 12 Committee amendment not adopted.
Floor amendment(s) adopted.
Rules suspended. Placed on Third Reading.
Third reading, passed; yeas, 84; nays, 14; absent, 0; excused, 0. (View Roll Calls)

IN THE SENATE

- Apr 17 Senate concurred in House amendments.
Passed final passage; yeas, 37; nays, 10; absent, 0; excused, 2. (View Roll Calls)

Apr 18 President signed.

IN THE HOUSE

Speaker signed.

OTHER THAN LEGISLATIVE ACTION

Apr 20 Delivered to Governor. (View Bill as Passed Legislature)

May 3 Governor partially vetoed.

Chapter 307, 2007 Laws PV. (View Session Law)

Effective date 7/22/2007.

SENATE BILL 6001

State of Washington

60th Legislature

2007 Regular Session

By Senators Pridemore, Poulsen, Rockefeller, Brown, Eide, Oemig, Hargrove, Marr, Fraser, Kohl-Welles, Keiser, Regala, Franklin, Fairley, Jacobsen, Shin, Haugen, Berkey, Spanel, Kline and Weinstein

Read first time 02/12/2007. Referred to Committee on Water, Energy & Telecommunications.

1 AN ACT Relating to mitigating the impacts of climate change; adding
2 a new section to chapter 43.19 RCW; adding a new section to chapter
3 35.92 RCW; adding a new section to chapter 54.04 RCW; adding a new
4 section to chapter 82.16 RCW; adding a new chapter to Title 43 RCW;
5 adding a new chapter to Title 80 RCW; and creating a new section.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

8 (a) Washington is especially vulnerable to climate change because
9 of the state's dependence on snow pack for summer stream flows and
10 because the expected rise in sea levels threatens our coastal
11 communities. Extreme weather, a warming Pacific Northwest, reduced
12 snow pack, and sea level rise are four major ways that climate change
13 is disrupting Washington's economy, environment, and communities;

14 (b) Washington's greenhouse gas emissions are continuing to
15 increase, despite international scientific consensus that worldwide
16 emissions must be reduced significantly below current levels to avert
17 catastrophic climate change;

18 (c) Washington has been a leader in actions to reduce the increase
19 of emissions, including the adoption of clean car standards, stronger

1 appliance energy efficiency standards, increased production and use of
2 renewable liquid fuels, and increased renewable energy sources by
3 electrical utilities;

4 (d) Washington has participated with other Western states in
5 designing regional approaches to reduce greenhouse gas emissions, and
6 a regional cap and trade mechanism will be more effective than if
7 implemented separately in each state;

8 (e) While these actions are significant, there is a need to assess
9 the trend of emissions statewide over the next several decades, and to
10 take sufficient actions so that Washington meets its responsibility to
11 contribute to the global actions needed to reduce the impacts and the
12 pace of global warming;

13 (f) Actions to reduce greenhouse gas emissions will spur technology
14 development and increase efficiency, thus resulting in benefits to
15 Washington's economy and businesses; and

16 (g) Numerous states and nations have adopted emission reduction
17 goals to assist emission sources with planning for changes in practices
18 and technologies.

19 (2) The legislature further finds that companies that generate
20 greenhouse gas emissions or manufacture products that generate such
21 emissions are purchasing carbon credits from landowners and from other
22 companies in order to provide carbon credits. Companies that are
23 purchasing carbon credits would benefit from a program to trade and to
24 bank carbon credits. Washington forests are one of the most effective
25 resources that can absorb carbon dioxide from the atmosphere. Forests,
26 and other planted lands and waters, provide carbon storage and mitigate
27 greenhouse gas emissions. Washington contains the most productive
28 forests in the world and both public and private landowners could
29 benefit from a carbon storage trading and banking program. The
30 legislature further finds that catastrophic forest fires are a major
31 source of greenhouse gas emissions, and that federal and state forest
32 land management should seek to manage forests to reduce the risk of
33 such fires.

34 (3) The legislature intends by this act to establish goals for the
35 statewide reduction in greenhouse gas emissions and reduction in
36 petroleum use, and to adopt the governor's mechanism in Executive Order
37 No. 07-02 to design and recommend a comprehensive set of measures to
38 accomplish the goals. The legislature further intends by this act to

1 authorize immediate actions in the electric power generation sector for
2 the reduction of greenhouse gas emissions and to accelerate efficiency
3 in the transportation sector.

4 NEW SECTION. **Sec. 2.** (1) By January 1, 2020, the annual statewide
5 greenhouse gas emission levels must be no greater than the emission
6 levels in 1990.

7 (2) By January 1, 2035, the annual statewide greenhouse gas
8 emission levels must be twenty-five percent below the emission levels
9 in 1990.

10 (3) By January 1, 2050, the annual statewide greenhouse gas
11 emission levels must be the lesser of:

12 (a) Fifty percent below the emission levels in 1990; or

13 (b) Seventy percent below the projected annual emission levels for
14 2050.

15 (4) By January 1, 2020, the total number of jobs in the clean
16 energy sector in the state must be increased from the estimated eight
17 thousand four hundred in 2004 to not less than twenty-five thousand
18 jobs.

19 (5) By January 1, 2020, the total expenditures for petroleum fuels
20 imported to the state shall be reduced twenty percent from the nine
21 billion six hundred million dollars expended in 2006.

22 NEW SECTION. **Sec. 3.** Executive Order No. 07-02 shall provide the
23 mechanisms for identifying the policies and strategies necessary to
24 achieve the economic and emission reduction goals of section 2 of this
25 act.

26 NEW SECTION. **Sec. 4.** By December 31st of each even-numbered year
27 beginning in 2010, the departments of ecology and community, trade, and
28 economic development shall report to the governor and the appropriate
29 committees of the senate and house of representatives the total
30 greenhouse gas emissions for the preceding two years, and totals in
31 each major source sector.

32 NEW SECTION. **Sec. 5.** (1) The legislature finds that:

33 (a) The United Nation's intergovernmental panel on climate change
34 report, released February 2, 2007, states that evidence of the

1 climate's warming "is unequivocal, as is now evident from observations
2 of increases in global average air and ocean temperatures, widespread
3 melting of snow and ice, and rising global mean sea level";

4 (b) Global warming will have serious adverse consequences on the
5 economy, health, and environment of Washington;

6 (c) During the last several years, the state has taken significant
7 strides towards implementing an environmentally and economically sound
8 energy policy through reliance on energy efficiency, conservation, and
9 renewable energy resources in order to promote a sustainable energy
10 future that ensures an adequate and reliable energy supply at
11 reasonable and stable prices;

12 (d) The governor, in Executive Order No. 07-02, has called for the
13 reduction of Washington's emission of greenhouse gases to 1990 levels
14 by 2020;

15 (e) To the extent energy efficiency and renewable resources are
16 unable to satisfy increasing energy and capacity needs, the state will
17 rely on clean and efficient fossil fuel fired generation and will
18 encourage the development of cost-effective, highly efficient, and
19 environmentally sound supply resources to provide reliability and
20 consistency with the state's energy priorities;

21 (f) It is vital to ensure all electric utilities internalize the
22 significant and underrecognized cost of emissions and to reduce
23 Washington's exposure to costs associated with future federal
24 regulation of these emissions;

25 (g) A greenhouse gases emissions performance standard for new long-
26 term financial commitments to electric generating resources will reduce
27 potential exposure of Washington's consumers to future reliability
28 problems in electricity supplies;

29 (h) To the extent energy efficiency and renewable resources are
30 unable to satisfy increasing energy and capacity needs, the state must
31 rely on clean and efficient fossil-fuel generation;

32 (i) The state of California recently enacted a law establishing a
33 greenhouse gases emissions performance standard for electric utility
34 procurement of baseload electric generation that is based on the
35 emissions of a combined-cycle thermal electric generation facility
36 fueled by natural gas; and

37 (j) The state of Washington has an obligation to provide clear
38 guidance for the procurement of baseload electric generation to

1 alleviate regulatory uncertainty while addressing risks that can affect
2 the ability of electric utilities to make necessary and timely
3 investments to ensure an adequate, reliable, and cost-effective supply
4 of electricity.

5 (2) The legislature declares that:

6 (a) A greenhouse gases emissions performance standard for new
7 long-term financial commitments for baseload electric generation should
8 reduce financial risk to electric utilities and their customers from
9 future pollution-control costs, without jeopardizing the state's
10 commitment to lowest reasonable cost resources and the need to maintain
11 a reliable regional electric system.

12 (b) A greenhouse gases emissions performance standard will
13 complement the state's carbon dioxide mitigation policy for
14 fossil-fueled thermal electric generation facilities under chapter
15 80.70 RCW.

16 (c) The need for long-term financial commitments for new baseload
17 electric generation can be reduced over time through the deployment by
18 electric utilities of technologies that improve the efficiency of
19 electricity production, transmission, distribution, and consumption.

20 NEW SECTION. **Sec. 6.** The definitions in this section apply
21 throughout this chapter unless the context clearly requires otherwise.

22 (1) "Attorney general" means the Washington state office of the
23 attorney general.

24 (2) "Auditor" means: (a) The Washington state auditor's office or
25 its designee for qualifying utilities under its jurisdiction that are
26 not investor-owned utilities; or (b) an independent auditor selected by
27 a qualifying utility that is not under the jurisdiction of the state
28 auditor and is not an investor-owned utility.

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

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

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

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

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

16 (8) "Council" means the energy facility site evaluation council
17 created in RCW 80.50.030.

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

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

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

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

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

27 (14) "Long-term financial commitment" means either a new ownership
28 investment in baseload electric generation, or a new or renewed
29 contract for baseload electric generation with a term of five or more
30 years.

31 (15) "Output-based methodology" means a greenhouse gases emissions
32 performance standard that is expressed in pounds of greenhouse gases
33 emitted per megawatt-hour and factoring in the useful thermal energy
34 employed for purposes other than the generation of electricity.

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

1 (17) "Power plant" means a facility for the generation of
2 electricity that includes one or more generating units at the same
3 location.

4 NEW SECTION. **Sec. 7.** (1) On or before July 1, 2008, the
5 department, in consultation with the council, shall establish a
6 greenhouse gases emissions performance standard for all baseload
7 electric generation of electric utilities, at a rate of emissions of
8 greenhouse gases that is no higher than the rate of emissions of
9 greenhouse gases for a commercially available combined-cycle natural
10 gas thermal electric generation facility that provides baseload
11 electric generation. All combined-cycle natural gas thermal electric
12 generation facilities that are in operation, or that are permitted to
13 operate as of June 30, 2008, are deemed to be in compliance with the
14 greenhouse gases emissions performance standard established under this
15 section. In determining the rate of emissions of greenhouse gases for
16 baseload electric generation, the department shall include the net
17 emissions resulting from the production of electricity by the baseload
18 electric generation.

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

28 (3) Carbon dioxide that is injected in geological formations, so as
29 to prevent releases into the atmosphere, in compliance with applicable
30 laws and regulations may not be counted as emissions of the power plant
31 in determining compliance with the greenhouse gases emissions
32 performance standard.

33 (4) In adopting and implementing the greenhouse gases emissions
34 performance standard, the department, in consultation with the
35 commission, council, the Bonneville power administration, the western
36 electricity coordination council, and electric utilities shall consider

1 the effects of the greenhouse gases emissions performance standard on
2 system reliability and overall costs to electricity customers.

3 (5) In developing and implementing the greenhouse gases emissions
4 performance standard, the department shall, to the extent practicable,
5 address long-term purchases of electricity from unspecified sources in
6 a manner consistent with this chapter.

7 (6) The department shall adopt the greenhouse gases emissions
8 performance standard by rule pursuant to chapter 34.05 RCW, the
9 administrative procedure act. The department shall adopt rules to
10 enforce the requirements of this section, and adopt procedures to
11 verify the emissions of greenhouse gases from any baseload electric
12 generation supplied under a contract subject to the greenhouse gases
13 emissions performance standard to ensure compliance with the standard.
14 Enforcement of the greenhouse gases emissions performance standard must
15 begin immediately upon the establishment of the standard.

16 (7) The department shall adopt the rules necessary to implement
17 this section by June 30, 2008.

18 **NEW SECTION. Sec. 8.** (1) No electrical company may enter into a
19 long-term financial commitment unless the baseload electric generation
20 supplied under such a long-term financial commitment complies with the
21 greenhouse gases emissions performance standard established under
22 section 7 of this act.

23 (2) In order to enforce the requirements of this chapter, the
24 commission shall review and approve any long-term financial commitment
25 proposed to be entered into by an electrical company to determine
26 whether the baseload electric generation to be supplied under that
27 long-term financial commitment complies with the greenhouse gases
28 emissions performance standard established under section 7 of this act.
29 No electrical company may enter into a long-term financial commitment
30 unless the baseload electric generation to be supplied under that
31 long-term financial commitment complies with the greenhouse gases
32 emissions performance standard established under section 7 of this act.

33 (3) In determining whether a long-term financial commitment is for
34 baseload electric generation, the commission shall consider the design
35 of the power plant and its intended use, based upon the electricity
36 purchase contract, if any, permits necessary for the operation of the

1 power plant, and any other matter the commission determines is relevant
2 under the circumstances.

3 (4) Upon application by an electric utility, the commission may
4 provide a case-by-case exemption from the greenhouse gases emissions
5 performance standard to address: (a) Unanticipated electric system
6 reliability needs; or (b) extraordinary circumstances, catastrophic
7 events, or threat of significant financial harm that may arise from
8 unforeseen circumstances.

9 (5) Upon application by an electrical company, the commission shall
10 make a determination regarding the company's proposed decision to
11 acquire electric generation or enter into a power purchase agreement
12 for electricity that complies with the greenhouse gases emissions
13 performance standard established under section 7 of this act, as to the
14 need for the resource, and the appropriateness of the specific resource
15 selected. The commission shall take into consideration factors such as
16 the company's forecasted loads, need for energy, power plant
17 technology, expected costs, and other associated investment decisions.
18 In addition, the commission shall provide for recovery of the cost of
19 these resources, including full recovery of related fuel expense,
20 coincident with the in-service date of the project or the effective
21 date of the power purchase agreement.

22 (6) The commission shall add an increment of two percent to the
23 rate of return on common equity permitted on an electrical company's
24 other investments for: (a) The company's cost-effective investment in
25 energy efficiency end use measures that exceed the requirements of RCW
26 19.285.040(1); and (b) energy efficiency technologies, including any
27 device, instrument, machine, appliance, or process related to the
28 production, transmission, distribution, and consumption of electricity
29 to increase energy efficiency, including but not limited to smart grid
30 technology, smart meters, and demand response technologies. The rate
31 of return increment must be allowed for a period not to exceed thirty
32 years after the investment is first placed in the rate base.

33 (7) The commission shall apply the procedures adopted by the
34 council to verify the emissions of greenhouse gases from baseload
35 electric generation under section 7 of this act.

36 (8) The commission shall adopt rules for the enforcement of this
37 chapter with respect to electrical companies and adopt procedural rules

1 for approving costs incurred by an electrical company under subsection
2 (4) of this section.

3 (9) The commission shall adopt the rules necessary to implement
4 this section by June 30, 2008.

5 NEW SECTION. **Sec. 9.** (1) No consumer-owned utility may enter into
6 a long-term financial commitment unless the baseload electric
7 generation supplied under such a long-term financial commitment
8 complies with the greenhouse gases emissions performance standard
9 established under section 7 of this act.

10 (2) The governing board of a consumer-owned utility shall review
11 and approve any long-term financial commitment proposed to be entered
12 into by the utility to determine whether the baseload electric
13 generation to be supplied under that long-term financial commitment
14 complies with the greenhouse gases emissions performance standard
15 established under section 7 of this act. No consumer-owned utility may
16 enter into a long-term financial commitment unless the baseload
17 electric generation to be supplied under that long-term financial
18 commitment complies with the greenhouse gases emissions performance
19 standard established under section 7 of this act.

20 (3) In confirming that a long-term financial commitment is for
21 baseload electric generation, the governing board shall consider the
22 design of the power plant and the intended use of the power plant based
23 upon the electricity purchase contract, if any, permits necessary for
24 the operation of the power plant, and any other matter the governing
25 board determines is relevant under the circumstances.

26 (4) The governing board may provide a case-by-case exemption from
27 the greenhouse gases emissions performance standard to address: (a)
28 Unanticipated electric system reliability needs; or (b) extraordinary
29 circumstances, catastrophic events, or threat of significant financial
30 harm that may arise from unforeseen circumstances.

31 (5) The governing board shall apply the procedures adopted by the
32 council to verify the emissions of greenhouse gases from baseload
33 electric generation pursuant to section 7 of this act, and may request
34 assistance from the council in doing so.

35 (6) For consumer-owned utilities, the auditor is responsible for
36 auditing compliance with this chapter and rules adopted under this

1 chapter that apply to those utilities and the attorney general is
2 responsible for enforcing that compliance.

3 NEW SECTION. **Sec. 10.** A new section is added to chapter 43.19 RCW
4 to read as follows:

5 (1) During the biennium ending June 30, 2009, the department of
6 general administration is authorized to purchase at least one hundred
7 plug-in electric hybrid vehicles for state agency light duty vehicle
8 uses, when commercially available at comparable life costs to other
9 vehicles. At least twenty-five of the vehicles must be assigned for
10 use by state agency directors. The vehicles must bear a prominent
11 designation as a plug-in electric hybrid vehicle. The department of
12 general administration shall develop a purchasing contract under which
13 state agencies and local governments may purchase plug-in electric
14 hybrid vehicles.

15 (2) By December 31, 2009, the department of general administration
16 shall provide a report to the transportation and energy committees of
17 the senate and house of representatives on the acquisition of these
18 vehicles and their operational and maintenance performance.

19 NEW SECTION. **Sec. 11.** The legislature finds and declares that
20 offset contracts and other greenhouse gases mitigation efforts are a
21 recognized utility purpose that confers a direct benefit on the
22 utility's ratepayers. The legislature declares that sections 12 and 13
23 of this act are intended to reverse the result of *Okeson v. City of*
24 *Seattle*, No. 77888-4 (January 18, 2007), by expressly granting
25 municipal utilities and public utility districts the statutory
26 authority to engage in mitigation activities to offset their utility's
27 impact on the environment.

28 NEW SECTION. **Sec. 12.** A new section is added to chapter 35.92 RCW
29 to read as follows:

30 (1) A city or town authorized to acquire and operate utilities for
31 the purpose of furnishing the city or town and its inhabitants and
32 other persons with electricity for lighting and other purposes may
33 develop and make publicly available a plan for the utility to reduce
34 greenhouse gases up to and including a plan to achieve no-net emissions

1 from all sources of greenhouse gases it owns, leases, uses, contracts
2 for, or otherwise controls.

3 (2) A city or town authorized to acquire and operate utilities for
4 the purpose of furnishing the city or town and its inhabitants and
5 other persons with electricity for lighting and other purposes may, as
6 part of its utility operation, mitigate the environmental impacts of
7 its operation and any power purchases, such as greenhouse gases
8 emissions. The mitigation may include all greenhouse gases mitigation
9 mechanisms recognized by independent, qualified organizations with
10 proven experience in emissions mitigation activities. Mitigation
11 mechanisms may include the purchase, trade, and banking of carbon
12 offsets or credits. Any carbon offset or credit purchased after the
13 effective date of this section must be recognized by any greenhouse
14 gases registry developed by the state.

15 NEW SECTION. **Sec. 13.** A new section is added to chapter 54.04 RCW
16 to read as follows:

17 (1) A public utility district may develop and make publicly
18 available a plan for the district to reduce greenhouse gases up to and
19 including a plan to achieve no-net emissions from all sources of
20 greenhouse gases it owns, leases, uses, contracts for, or otherwise
21 controls.

22 (2) A public utility district may, as part of its utility
23 operation, mitigate the environmental impacts of its operation and any
24 power purchases, such as greenhouse gases emissions. The mitigation
25 may include all greenhouse gases mitigation mechanisms recognized by
26 independent, qualified organizations with proven experience in
27 emissions mitigation activities. Mitigation mechanisms may include the
28 purchase, trade, and banking of carbon offsets or credits. Any carbon
29 offset or credit purchased after the effective date of this section
30 must be recognized by any greenhouse gases registry developed by the
31 state.

32 NEW SECTION. **Sec. 14.** (1) The office of Washington state
33 climatologist is created.

34 (2) The office of Washington state climatologist consists of the
35 director of the office, who is the state climatologist, and appropriate

1 staff and administrative support as necessary to carry out the powers
2 and duties of the office as enumerated in section 15 of this act.

3 (3) The director of the office of Washington state climatologist
4 must be appointed jointly by the president of Washington State
5 University and the president of the University of Washington. The
6 office of Washington state climatologist is administered as determined
7 jointly by these two presidents.

8 NEW SECTION. **Sec. 15.** The office of Washington state
9 climatologist has the following powers and duties:

10 (1) To serve as a credible and expert source of climate and weather
11 information for state and local decision makers and agencies working on
12 drought, flooding, climate change, and other related issues;

13 (2) To gather and disseminate, and where practicable archive, in
14 the most cost-effective manner possible, all climate and weather
15 information that is or could be of value to policy and decision makers
16 in the state;

17 (3) To act as the representative of the state in all climatological
18 and meteorological matters, both within and outside of the state, when
19 requested by the legislative or executive branches of the state
20 government;

21 (4) To prepare, publish, and disseminate climate summaries for
22 those individuals, agencies, and organizations whose activities are
23 related to the welfare of the state and are affected by climate and
24 weather;

25 (5) To supply critical information for drought preparedness and
26 emergency response as needed to implement the state's drought
27 contingency response plan maintained by the department of ecology under
28 RCW 43.83B.410, and to serve as a member of the state's drought water
29 supply and emergency response committees as may be formed in response
30 to a drought event;

31 (6) To conduct and report on studies of climate and weather
32 phenomena of significant socioeconomic importance to the state; and

33 (7) To evaluate the significance of natural and man-made changes in
34 important features of the climate affecting the state, and to report
35 this information to those agencies and organizations in the state who
36 are likely to be affected by these changes.

1 NEW SECTION. **Sec. 16.** A new section is added to chapter 82.16 RCW
2 to read as follows:

3 (1) Subject to the limitations in this section, an eligible light
4 and power business may claim a credit against the tax imposed under
5 this chapter.

6 (2) The amount of credit is equal to two percent annually, for a
7 period of thirty years, of the cost of: (a) Cost-effective investments
8 in energy efficiency end use measures that exceed the requirements of
9 RCW 19.285.040(1); and (b) energy efficiency technologies, including
10 any device, instrument, machine, appliance, or process related to the
11 production, transmission, distribution, and consumption of electricity
12 to increase energy efficiency, including but not limited to smart grid
13 technology, smart meters, and demand response technologies.

14 (3) For purposes of this section, "eligible light and power
15 business" means a municipal utility formed under Title 35 RCW, a public
16 utility district formed under Title 54 RCW, an irrigation district
17 formed under chapter 87.03 RCW, a cooperative formed under chapter
18 23.86 RCW, a mutual corporation or association formed under chapter
19 24.06 RCW, or port district within which an industrial district has
20 been established as authorized by Title 53 RCW, that is engaged in the
21 business of distributing electricity to more than one retail electric
22 customer in the state.

23 NEW SECTION. **Sec. 17.** Sections 1 through 4, 14, and 15 of this
24 act constitute a new chapter in Title 43 RCW.

25 NEW SECTION. **Sec. 18.** Sections 5 through 9 of this act constitute
26 a new chapter in Title 80 RCW.

--- END ---

ENGROSSED SUBSTITUTE SENATE BILL 6001

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Water, Energy & Telecommunications
(originally sponsored by Senators Pridemore, Poulsen, Rockefeller,
Brown, Eide, Oemig, Hargrove, Marr, Fraser, Kohl-Welles, Keiser,
Regala, Franklin, Fairley, Jacobsen, Shin, Haugen, Berkey, Spanel,
Kline and Weinstein)

READ FIRST TIME 02/28/07.

1 AN ACT Relating to mitigating the impacts of climate change; adding
2 a new section to chapter 43.19 RCW; adding a new section to chapter
3 35.92 RCW; adding a new section to chapter 36.01 RCW; adding a new
4 section to chapter 54.04 RCW; adding new chapters to Title 43 RCW;
5 adding a new chapter to Title 80 RCW; and creating a new section.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

8 (a) Washington is especially vulnerable to climate change because
9 of the state's dependence on snow pack for summer stream flows and
10 because the expected rise in sea levels threatens our coastal
11 communities. Extreme weather, a warming Pacific Northwest, reduced
12 snow pack, and sea level rise are four major ways that climate change
13 is disrupting Washington's economy, environment, and communities;

14 (b) Washington's greenhouse gas emissions are continuing to
15 increase, despite international scientific consensus that worldwide
16 emissions must be reduced significantly below current levels to avert
17 catastrophic climate change;

18 (c) Washington has been a leader in actions to reduce the increase
19 of emissions, including the adoption of clean car standards, stronger

1 appliance energy efficiency standards, increased production and use of
2 renewable liquid fuels, and increased renewable energy sources by
3 electrical utilities;

4 (d) Washington has participated with other Western states in
5 designing regional approaches to reduce greenhouse gas emissions, and
6 a regional cap and trade mechanism will be more effective than if
7 implemented separately in each state;

8 (e) While these actions are significant, there is a need to assess
9 the trend of emissions statewide over the next several decades, and to
10 take sufficient actions so that Washington meets its responsibility to
11 contribute to the global actions needed to reduce the impacts and the
12 pace of global warming;

13 (f) Actions to reduce greenhouse gas emissions will spur technology
14 development and increase efficiency, thus resulting in benefits to
15 Washington's economy and businesses; and

16 (g) Numerous states and nations have adopted emission reduction
17 goals to assist emission sources with planning for changes in practices
18 and technologies.

19 (2) The legislature further finds that companies that generate
20 greenhouse gas emissions or manufacture products that generate such
21 emissions are purchasing carbon credits from landowners and from other
22 companies in order to provide carbon credits. Companies that are
23 purchasing carbon credits would benefit from a program to trade and to
24 bank carbon credits. Washington forests are one of the most effective
25 resources that can absorb carbon dioxide from the atmosphere. Forests,
26 and other planted lands and waters, provide carbon storage and mitigate
27 greenhouse gas emissions. Washington contains the most productive
28 forests in the world and both public and private landowners could
29 benefit from a carbon storage trading and banking program. The
30 legislature further finds that catastrophic forest fires are a major
31 source of greenhouse gas emissions, and that federal and state forest
32 land management should seek to manage forests to reduce the risk of
33 such fires.

34 (3) The legislature intends by this act to establish goals for the
35 statewide reduction in greenhouse gas emissions and reduction in
36 petroleum use, and to adopt the governor's mechanism in Executive Order
37 No. 07-02 to design and recommend a comprehensive set of measures to
38 accomplish the goals. The legislature further intends by this act to

1 authorize immediate actions in the electric power generation sector for
2 the reduction of greenhouse gas emissions and to accelerate efficiency
3 in the transportation sector.

4 NEW SECTION. **Sec. 2.** The following greenhouse gas emissions
5 reduction and clean energy economy goals are established for Washington
6 state:

7 (1) By 2020, reduce greenhouse gas emissions in the state to 1990
8 levels;

9 (2) By 2035, reduce greenhouse gas emissions in the state to
10 twenty-five percent below 1990 levels;

11 (3) By 2050, the state will do its part to reach global climate
12 stabilization levels by reducing emissions to fifty percent below 1990
13 levels or seventy percent below the state's expected emissions that
14 year;

15 (4) By 2020, increase the number of clean energy sector jobs to
16 twenty-five thousand from the eight thousand four hundred jobs the
17 state had in 2004; and

18 (5) By 2020, reduce expenditures by twenty percent on fuel imported
19 into the state by developing Washington resources and supporting
20 efficient energy use.

21 NEW SECTION. **Sec. 3.** Executive Order No. 07-02 shall provide the
22 mechanisms for identifying the policies and strategies necessary to
23 achieve the economic and emission reduction goals of section 2 of this
24 act. Consistent with the Executive Order's directive to seek a
25 healthier and more prosperous future for Washington state, agency and
26 stakeholder representatives participating in the Washington climate
27 change challenge shall also seek emission reduction policies and
28 strategies that, to the maximum extent possible, minimize economic
29 disruptions and protect jobs for Washington state workers, citizens,
30 and businesses, while avoiding policies and strategies that would
31 result in the transfer or outsourcing of economic advantages or jobs to
32 other states, regions, or nations.

33 NEW SECTION. **Sec. 4.** By December 31st of each even-numbered year
34 beginning in 2010, the departments of ecology and community, trade, and
35 economic development shall report to the governor and the appropriate

1 committees of the senate and house of representatives the total
2 greenhouse gas emissions for the preceding two years, and totals in
3 each major source sector.

4 NEW SECTION. **Sec. 5.** (1) The legislature finds that:

5 (a) The United Nation's intergovernmental panel on climate change
6 report, released February 2, 2007, states that evidence of the
7 climate's warming "is unequivocal, as is now evident from observations
8 of increases in global average air and ocean temperatures, widespread
9 melting of snow and ice, and rising global mean sea level";

10 (b) Global warming will have serious adverse consequences on the
11 economy, health, and environment of Washington;

12 (c) During the last several years, the state has taken significant
13 strides towards implementing an environmentally and economically sound
14 energy policy through reliance on energy efficiency, conservation, and
15 renewable energy resources in order to promote a sustainable energy
16 future that ensures an adequate and reliable energy supply at
17 reasonable and stable prices;

18 (d) The governor, in Executive Order No. 07-02, has called for the
19 reduction of Washington's emission of greenhouse gases to 1990 levels
20 by 2020;

21 (e) To the extent energy efficiency and renewable resources are
22 unable to satisfy increasing energy and capacity needs, the state will
23 rely on clean and efficient fossil fuel fired generation and will
24 encourage the development of cost-effective, highly efficient, and
25 environmentally sound supply resources to provide reliability and
26 consistency with the state's energy priorities;

27 (f) It is vital to ensure all electric utilities internalize the
28 significant and underrecognized cost of emissions and to reduce
29 Washington's exposure to costs associated with future regulation of
30 these emissions;

31 (g) A greenhouse gases emissions performance standard for new long-
32 term financial commitments to electric generating resources will reduce
33 potential exposure of Washington's consumers to future reliability
34 problems in electricity supplies;

35 (h) The state of California recently enacted a law establishing a
36 greenhouse gases emissions performance standard for electric utility

1 procurement of baseload electric generation that is based on the
2 emissions of a combined-cycle thermal electric generation facility
3 fueled by natural gas;

4 (i) The legislature recognizes that state or federal legislation
5 may be enacted and federal regulation may occur that would provide
6 standards or programs that would preempt, make inconsistent, or render
7 unnecessary emission standards or schedules established in this act;
8 and

9 (j) The state of Washington has an obligation to provide clear
10 guidance for the procurement of baseload electric generation to
11 alleviate regulatory uncertainty while addressing risks that can affect
12 the ability of electric utilities to make necessary and timely
13 investments to ensure an adequate, reliable, and cost-effective supply
14 of electricity.

15 (2) The legislature declares that:

16 (a) A greenhouse gases emissions performance standard for new
17 long-term financial commitments for baseload electric generation should
18 reduce financial risk to electric utilities and their customers from
19 future pollution-control costs, without jeopardizing the state's
20 commitment to lowest reasonable cost resources and the need to maintain
21 a reliable regional electric system.

22 (b) A greenhouse gases emissions performance standard will
23 complement the state's carbon dioxide mitigation policy for
24 fossil-fueled thermal electric generation facilities under chapter
25 80.70 RCW.

26 (c) The need for long-term financial commitments for new baseload
27 electric generation can be reduced over time through the deployment by
28 electric utilities of technologies that improve the efficiency of
29 electricity production, transmission, distribution, and consumption.

30 NEW SECTION. **Sec. 6.** The definitions in this section apply
31 throughout this chapter unless the context clearly requires otherwise.

32 (1) "Attorney general" means the Washington state office of the
33 attorney general.

34 (2) "Auditor" means: (a) The Washington state auditor's office or
35 its designee for qualifying utilities under its jurisdiction that are
36 not investor-owned utilities; or (b) an independent auditor selected by

1 a qualifying utility that is not under the jurisdiction of the state
2 auditor and is not an investor-owned utility.

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

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

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

16 (6) "Commission" means the Washington utilities and transportation
17 commission.

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

26 (8) "Department" means the department of ecology.

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

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

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

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

35 (13) "Long-term financial commitment" means:

36 (a) Either a new ownership interest in baseload electric generation
37 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 (14) "Output-based methodology" means a greenhouse gases emissions
5 performance standard that is expressed in pounds of greenhouse gases
6 emitted per net megawatt-hour produced, factoring in the electrical
7 equivalent of useful thermal energy employed for purposes other than
8 the generation of electricity.

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

13 (16) "Power plant" means a facility for the generation of
14 electricity that includes one or more generating units at the same
15 location.

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

26 NEW SECTION. **Sec. 7.** (1) Beginning July 1, 2008, the greenhouse
27 gases emissions performance standard for all baseload electric
28 generation for which electric utilities enter into long-term financial
29 commitments on or after such date is the lower of one thousand one
30 hundred pounds of greenhouse gases per megawatt-hour or the rate of
31 emissions of greenhouse gases for a commercially available
32 combined-cycle natural gas thermal electric generation facility that
33 provides baseload electric generation. Even if their actual emissions
34 are higher than the greenhouse gas emissions performance standard, all
35 baseload electric generation facilities in operation as of June 30,
36 2008, are deemed to be in compliance with the greenhouse gas emissions
37 performance standard established under this section until the

1 facilities are the subject of long-term financial commitments. All
2 electric generating facilities or power plants powered by renewable
3 resources, as defined in RCW 19.285.030, are deemed to be in compliance
4 with the greenhouse gas emissions performance standard established
5 under this section. For the purposes of this subsection, "commercially
6 available" means that at least one hundred plants of substantially the
7 same design, specifications, and performance characteristics have been
8 in commercial operation for at least three years. In determining the
9 rate of emissions of greenhouse gases for baseload electric generation,
10 the net emissions resulting from the production of electricity by the
11 baseload electric generation shall be included.

12 (2) The department shall establish an output-based methodology to
13 ensure that the calculation of emissions of greenhouse gases for a
14 cogeneration facility recognizes the total usable energy output of the
15 process, and includes all greenhouse gases emitted by the facility in
16 the production of both electrical and thermal energy. In developing
17 and implementing the greenhouse gases emissions performance standard,
18 the department shall consider and act in a manner consistent with any
19 rules adopted pursuant to the public utilities regulatory policy act of
20 1978 (16 U.S.C. Sec. 824a-3), as amended.

21 (3) Carbon dioxide that is injected permanently in geological
22 formations, so as to prevent releases into the atmosphere, in
23 compliance with applicable laws and regulations may not be counted as
24 emissions of the power plant in determining compliance with the
25 greenhouse gases emissions performance standard.

26 (4) In adopting and implementing the greenhouse gases emissions
27 performance standard, the department, in consultation with the
28 commission, the Bonneville power administration, the western
29 electricity coordination council, electric utilities, public interest
30 representatives, and consumer representatives shall consider the
31 effects of the greenhouse gases emissions performance standard on
32 system reliability and overall costs to electricity customers.

33 (5) In developing and implementing the greenhouse gases emissions
34 performance standard, the department shall, with assistance of the
35 commission and electric utilities, and to the extent practicable,
36 address long-term purchases of electricity from unspecified sources in
37 a manner consistent with this chapter.

1 (6) The department shall adopt the greenhouse gases emissions
2 performance standard by rule pursuant to chapter 34.05 RCW, the
3 administrative procedure act. The department shall adopt rules to
4 enforce the requirements of this section, and adopt procedures to
5 verify the emissions of greenhouse gases from any baseload electric
6 generation supplied directly or under a contract subject to the
7 greenhouse gases emissions performance standard to ensure compliance
8 with the standard. Enforcement of the greenhouse gases emissions
9 performance standard must begin immediately upon the establishment of
10 the standard.

11 (7) In adopting the rules for implementing this section, the
12 department shall include criteria to be applied in evaluating the
13 carbon sequestration plan. The rules shall include:

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

18 (b) Provisions for geological sequestration to commence within five
19 years of plant operation;

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

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

24 (e) Provisions for public notice and comment on the carbon
25 sequestration plan.

26 (8) A project under consideration by the energy facility site
27 evaluation council before the adoption of rules in subsection (7) of
28 this section is required to include all of the requirements of
29 subsection (7) of this section in its carbon sequestration plan
30 submitted to the department as part of the energy facility site
31 evaluation council process. The department shall provide for timely
32 hearings and public comment on the carbon sequestration plan.

33 (9) The department shall adopt the rules necessary to implement
34 this section by June 30, 2008.

35 NEW SECTION. **Sec. 8.** (1) No electrical company may enter into a
36 long-term financial commitment unless the baseload electric generation

1 supplied under such a long-term financial commitment complies with the
2 greenhouse gases emissions performance standard established under
3 section 7 of this act.

4 (2) In order to enforce the requirements of this chapter, the
5 commission shall review in a general rate case or as provided in
6 subsection (5) of this section any long-term financial commitment
7 entered into by an electrical company after June 30, 2008, to determine
8 whether the baseload electric generation to be supplied under that
9 long-term financial commitment complies with the greenhouse gases
10 emissions performance standard established under section 7 of this act.

11 (3) In determining whether a long-term financial commitment is for
12 baseload electric generation, the commission shall consider the design
13 of the power plant and its intended use, based upon the electricity
14 purchase contract, if any, permits necessary for the operation of the
15 power plant, and any other matter the commission determines is relevant
16 under the circumstances.

17 (4) Upon application by an electric utility, the commission may
18 provide a case-by-case exemption from the greenhouse gases emissions
19 performance standard to address: (a) Unanticipated electric system
20 reliability needs; or (b) catastrophic events or threat of significant
21 financial harm that may arise from unforeseen circumstances.

22 (5) Upon application by an electrical company, the commission shall
23 make a determination regarding the company's proposed decision to
24 acquire electric generation or enter into a power purchase agreement
25 for electricity that complies with the greenhouse gases emissions
26 performance standard established under section 7 of this act, as to the
27 need for the resource, and the appropriateness of the specific resource
28 selected. The commission shall take into consideration factors such as
29 the company's forecasted loads, need for energy, power plant
30 technology, expected costs, and other associated investment decisions.
31 In addition, the commission shall provide for recovery of the prudently
32 incurred capital and operating cost of these resources and may impose
33 such conditions as it finds necessary to ensure that rates are fair,
34 just, reasonable, and sufficient, coincident with the in-service date
35 of the project or the effective date of the power purchase agreement.

36 (6) An electrical company may account for and defer for later
37 consideration by the commission costs incurred in connection with the
38 long-term financial commitment, including operating and maintenance

1 costs, depreciation, taxes, and cost of invested capital. The deferral
2 begins with the date on which the power plant begins commercial
3 operation or the effective date of the power purchase agreement and
4 ends on the effective date of the final decision by the commission
5 regarding recovery in rates of these deferred costs. Creation of such
6 a deferral account does not by itself determine whether recovery of any
7 or all of these costs is appropriate.

8 (7) In establishing rates for each electrical company regulated
9 under chapter 80.28 RCW, the commission shall adopt policies allowing
10 an additional return on investments to encourage meeting energy
11 requirements through distributed generation as defined in RCW
12 19.285.030, and to accelerate efficiencies in electric transmission and
13 distribution systems that increase reliability and reduce energy losses
14 or otherwise increase the efficiency of energy delivery to end-use
15 consumers. These policies shall include but are not limited to adding
16 an increment of two percent to the rate of return on common equity
17 permitted on an electrical company's other investments for prudently
18 incurred investments in distributed generation, and in measures that
19 improve, as measured in kilowatt-hour savings, the overall efficiency
20 of transmission, distribution, and end-use consumption of electricity
21 through energy efficiency technologies, including any device,
22 instrument, machine, appliance, or process related to the transmission,
23 distribution, and consumption of electricity to increase energy
24 efficiency, including but not limited to smart grid technology, smart
25 meters, and demand response technologies. The rate of return increment
26 must be allowed for a period, at the commission's discretion, of at
27 least seven but not more than thirty years after the investment is
28 first placed in the rate base. Measures or projects encouraged under
29 this section are those for which construction or installation is begun
30 after July 1, 2007, and before January 1, 2017, and which, at the time
31 they are placed in the rate base, are reasonably expected to save,
32 produce, or generate energy at a total incremental system cost per unit
33 of energy delivered to end use that is less than or equal to the
34 incremental system cost per unit of energy delivered to end use from
35 new baseload or peaking electric generation and that the electrical
36 company could acquire to meet energy demand in the same time period.

37 (8) The commission shall apply the procedures adopted by the

1 department to verify the emissions of greenhouse gases from baseload
2 electric generation under section 7 of this act.

3 (9) The commission shall adopt rules for the enforcement of this
4 section with respect to electrical companies and adopt procedural rules
5 for approving costs incurred by an electrical company under subsection
6 (4) of this section.

7 (10) The commission shall adopt the rules necessary to implement
8 this section by June 30, 2008.

9 NEW SECTION. **Sec. 9.** (1) No consumer-owned utility may enter into
10 a long-term financial commitment unless the baseload electric
11 generation supplied under such a long-term financial commitment
12 complies with the greenhouse gases emissions performance standard
13 established under section 7 of this act.

14 (2) The governing board of a consumer-owned utility shall review
15 and make a determination on any long-term financial commitment by the
16 utility, pursuant to this chapter, to determine whether the baseload
17 electric generation to be supplied under that long-term financial
18 commitment complies with the greenhouse gases emissions performance
19 standard established under section 7 of this act. No consumer-owned
20 utility may enter into a long-term financial commitment unless the
21 baseload electric generation to be supplied under that long-term
22 financial commitment complies with the greenhouse gases emissions
23 performance standard established under section 7 of this act.

24 (3) In confirming that a long-term financial commitment is for
25 baseload electric generation, the governing board shall consider the
26 design of the power plant and the intended use of the power plant based
27 upon the electricity purchase contract, if any, permits necessary for
28 the operation of the power plant, and any other matter the governing
29 board determines is relevant under the circumstances.

30 (4) The governing board may provide a case-by-case exemption from
31 the greenhouse gases emissions performance standard to address: (a)
32 Unanticipated electric system reliability needs; or (b) catastrophic
33 events or threat of significant financial harm that may arise from
34 unforeseen circumstances.

35 (5) The governing board shall apply the procedures adopted by the
36 department to verify the emissions of greenhouse gases from baseload

1 electric generation pursuant to section 7 of this act, and may request
2 assistance from the department in doing so.

3 (6) For consumer-owned utilities, the auditor is responsible for
4 auditing compliance with this chapter and rules adopted under this
5 chapter that apply to those utilities and the attorney general is
6 responsible for enforcing that compliance.

7 NEW SECTION. **Sec. 10.** A new section is added to chapter 43.19 RCW
8 to read as follows:

9 (1) During the biennium ending June 30, 2009, the department of
10 general administration is authorized to purchase at least one hundred
11 plug-in electric hybrid vehicles for state agency light duty vehicle
12 uses, when commercially available at comparable life costs to other
13 vehicles. The department of general administration shall assign these
14 vehicles to departments and job functions that on average log the most
15 miles driving light duty vehicles. The vehicles must bear a prominent
16 designation as a plug-in electric hybrid vehicle. The department of
17 general administration shall develop a purchasing contract under which
18 state agencies and local governments may purchase plug-in electric
19 hybrid vehicles.

20 (2) The use of hybrid vehicles shall include an economic analysis
21 of the total life-cycle cost to the state over the vehicle's estimated
22 useful life, including energy inputs into the production of the
23 vehicle, fuel usage, and all related costs of selection, acquisition,
24 operation, maintenance, and disposal, as far as these costs can
25 reasonably be determined, minus the salvage value at the end of the
26 vehicle's estimated useful life.

27 (3) By December 31, 2009, the department of general administration
28 shall provide a report to the transportation and energy committees of
29 the senate and house of representatives on the acquisition of these
30 vehicles and their operational and maintenance performance.

31 NEW SECTION. **Sec. 11.** The legislature finds and declares that
32 greenhouse gases offset contracts, credits, and other greenhouse gases
33 mitigation efforts are a recognized utility purpose that confers a
34 direct benefit on the utility's ratepayers. The legislature declares
35 that sections 1 and 2 of this act are intended to reverse the result of
36 *Okeson v. City of Seattle*, No. 77888-4 (January 18, 2007), by expressly

1 granting municipal utilities, public utility districts, and counties
2 the statutory authority to engage in mitigation activities to offset
3 their utility's impact on the environment from electric generation.

4 NEW SECTION. **Sec. 12.** A new section is added to chapter 35.92 RCW
5 to read as follows:

6 (1) A city or town authorized to acquire and operate utilities for
7 the purpose of furnishing the city or town and its inhabitants and
8 other persons with water, with electricity for lighting and other
9 purposes, or with service from sewerage, storm water, surface water, or
10 solid waste handling facilities, may develop and make publicly
11 available a plan to reduce its greenhouse gases emissions or achieve
12 no-net emissions from all sources of greenhouse gases resulting from
13 power generation that the utility owns, leases, uses, contracts for, or
14 otherwise controls.

15 (2) A city or town authorized to acquire and operate utilities for
16 the purpose of furnishing the city or town and its inhabitants and
17 other persons with water, with electricity for lighting and other
18 purposes, or with service from sewerage, storm water, surface water, or
19 solid waste handling facilities, may, as part of its power generating
20 operation, mitigate the environmental impacts, such as greenhouse gases
21 emissions, of its operation, including any power purchases. The
22 mitigation may include, but is not limited to, those greenhouse gases
23 mitigation mechanisms recognized by independent, qualified
24 organizations with proven experience in emissions mitigation
25 activities. Mitigation mechanisms may include the purchase, trade, and
26 banking of greenhouse gases offsets or credits. If a state greenhouse
27 gases registry is established, a utility that has purchased, traded, or
28 banked greenhouse gases mitigation mechanisms under this section shall
29 receive credit in the registry.

30 NEW SECTION. **Sec. 13.** A new section is added to chapter 36.01 RCW
31 to read as follows:

32 (1) A county may develop and make publicly available a plan for the
33 county to reduce its greenhouse gases emissions or achieve no-net
34 emissions from all power generating sources of greenhouse gases it
35 owns, operates, leases, uses, contracts for, or otherwise controls.

1 (2) Any county may reduce or mitigate the environmental impacts of
2 its power generating operations, such as emissions of greenhouse gases.
3 The mitigation may include, but is not limited to, all greenhouse gases
4 mitigation mechanisms recognized by independent, qualified
5 organizations with proven experience in emissions mitigation
6 activities. Mitigation mechanisms may include the purchase, trade, and
7 banking of carbon offsets or credits. Ratepayer funds, fees, or other
8 revenue dedicated to a power generating function performed by a county
9 may be spent to reduce or mitigate the environmental impact of
10 greenhouse gases emitted as a result of that function. If a state
11 greenhouse gases registry is established, the county that has
12 purchased, traded, or banked greenhouse gases mitigation mechanisms
13 under this section shall receive credit in the registry.

14 NEW SECTION. **Sec. 14.** A new section is added to chapter 54.04 RCW
15 to read as follows:

16 (1) A public utility district may develop and make publicly
17 available a plan for the district to reduce its greenhouse gases
18 emissions or achieve no-net emissions from all sources of greenhouse
19 gases resulting from power generation that the district owns, leases,
20 uses, contracts for, or otherwise controls.

21 (2) A public utility district may, as part of its utility power
22 generating operation, mitigate the environmental impacts, such as
23 greenhouse gases emissions, of its power generating operation and any
24 power purchases. Mitigation may include, but is not limited to, those
25 greenhouse gases mitigation mechanisms recognized by independent,
26 qualified organizations with proven experience in emissions mitigation
27 activities. Mitigation mechanisms may include the purchase, trade, and
28 banking of greenhouse gases offsets or credits. If a state greenhouse
29 gases registry is established, a public utility district that has
30 purchased, traded, or banked greenhouse gases mitigation mechanisms
31 under this section shall receive credit in the registry.

32 NEW SECTION. **Sec. 15.** For the purposes of sections 5 through 9 of
33 this act, the department and the commission shall review the greenhouse
34 gases emission performance standard established in this chapter to
35 determine need, applicability, and effectiveness no less than every
36 five years following the effective date of this section, or upon

1 implementation of a federal or state law or rule regulating carbon
2 dioxide emissions of electrical utilities, and report to the
3 legislature.

4 NEW SECTION. **Sec. 16.** (1) The office of Washington state
5 climatologist is created.

6 (2) The office of Washington state climatologist consists of the
7 director of the office, who is the state climatologist, and appropriate
8 staff and administrative support as necessary to carry out the powers
9 and duties of the office as enumerated in section 17 of this act.

10 (3) The director of the office of Washington state climatologist
11 must be appointed jointly by the president of Washington State
12 University and the president of the University of Washington. The
13 office of Washington state climatologist is administered as determined
14 jointly by these two presidents.

15 NEW SECTION. **Sec. 17.** The office of Washington state
16 climatologist has the following powers and duties:

17 (1) To serve as a credible and expert source of climate and weather
18 information for state and local decision makers and agencies working on
19 drought, flooding, climate change, and other related issues;

20 (2) To gather and disseminate, and where practicable archive, in
21 the most cost-effective manner possible, all climate and weather
22 information that is or could be of value to policy and decision makers
23 in the state;

24 (3) To act as the representative of the state in all climatological
25 and meteorological matters, both within and outside of the state, when
26 requested by the legislative or executive branches of the state
27 government;

28 (4) To prepare, publish, and disseminate climate summaries for
29 those individuals, agencies, and organizations whose activities are
30 related to the welfare of the state and are affected by climate and
31 weather;

32 (5) To supply critical information for drought preparedness and
33 emergency response as needed to implement the state's drought
34 contingency response plan maintained by the department of ecology under
35 RCW 43.83B.410, and to serve as a member of the state's drought water

1 supply and emergency response committees as may be formed in response
2 to a drought event;

3 (6) To conduct and report on studies of climate and weather
4 phenomena of significant socioeconomic importance to the state; and

5 (7) To evaluate the significance of natural and man-made changes in
6 important features of the climate affecting the state, and to report
7 this information to those agencies and organizations in the state who
8 are likely to be affected by these changes.

9 NEW SECTION. **Sec. 18.** Sections 1 through 4 of this act constitute
10 a new chapter in Title 43 RCW.

11 NEW SECTION. **Sec. 19.** Sections 5 through 9 and 15 of this act
12 constitute a new chapter in Title 80 RCW.

13 NEW SECTION. **Sec. 20.** Sections 16 and 17 of this act constitute
14 a new chapter in Title 43 RCW.

--- END ---

ESSB 6001 - H AMD 775

By Representative Morris

ADOPTED 04/12/2007

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that:

4 (a) Washington is especially vulnerable to climate change because
5 of the state's dependence on snow pack for summer stream flows and
6 because the expected rise in sea levels threatens our coastal
7 communities. Extreme weather, a warming Pacific Northwest, reduced
8 snow pack, and sea level rise are four major ways that climate change
9 is disrupting Washington's economy, environment, and communities;

10 (b) Washington's greenhouse gases emissions are continuing to
11 increase, despite international scientific consensus that worldwide
12 emissions must be reduced significantly below current levels to avert
13 catastrophic climate change;

14 (c) Washington state greenhouse gases are substantially caused by
15 the transportation sector of the economy;

16 (d) Washington has been a leader in actions to slow the increase of
17 greenhouse gases emissions, such as being the first state in the nation
18 to adopt a carbon dioxide mitigation program for new thermal electric
19 plants, mandating integrated resource planning for electric utilities
20 to include life-cycle costs of carbon dioxide emissions, adopting clean
21 car standards and stronger appliance energy efficiency standards,
22 increasing production and use of renewable liquid fuels, and increasing
23 renewable energy sources by electric utilities;

24 (e) A greenhouse gases emissions performance standard will work in
25 unison with the state's carbon dioxide mitigation policy, chapter 80.70
26 RCW and its related rules, for fossil-fueled thermal electric
27 generation facilities located in the state;

28 (f) While these actions are significant, there is a need to assess
29 the trend of greenhouse gases emissions statewide over the next several

1 decades, and to take sufficient actions so that Washington meets its
2 responsibility to contribute to the global actions needed to reduce the
3 impacts and the pace of global warming;

4 (g) Actions to reduce greenhouse gases emissions will spur
5 technology development and increase efficiency, thus resulting in
6 benefits to Washington's economy and businesses; and

7 (h) The state of Washington has an obligation to provide clear
8 guidance for the procurement of baseload electric generation to
9 alleviate regulatory uncertainty while addressing risks that can affect
10 the ability of electric utilities to make necessary and timely
11 investments to ensure an adequate, reliable, and cost-effective supply
12 of electricity.

13 (2) The legislature finds that companies that generate greenhouse
14 gases emissions or manufacture products that generate such emissions
15 are purchasing carbon credits from landowners and from other companies
16 that provide carbon credits. Companies that are purchasing carbon
17 credits would benefit from a program to trade and to bank carbon
18 credits. Washington forests are one of the most effective resources
19 that can absorb carbon dioxide from the atmosphere. Forests, and other
20 planted lands and waters, provide carbon storage and mitigate
21 greenhouse gases emissions. Washington contains the most productive
22 forests in the world and both public and private landowners could
23 benefit from a carbon storage trading and banking program.

24 (3) The legislature intends by this act to establish statutory
25 goals for the statewide reduction in greenhouse gases emissions and to
26 adopt the recommendations provided by the Washington climate change
27 challenge stakeholder group, which is charged with designing and
28 recommending a comprehensive set of policies to the legislature and the
29 governor on how to achieve the goals. The legislature further intends
30 by this act to authorize immediate actions in the electric power
31 generation sector for the reduction of greenhouse gases emissions.

32 (4) The legislature finds that:

33 (a) To the extent energy efficiency and renewable resources are
34 unable to satisfy increasing energy and capacity needs, the state will
35 rely on clean and efficient fossil fuel-fired generation and will
36 encourage the development of cost-effective, highly efficient, and
37 environmentally sound supply resources to provide reliability and
38 consistency with the state's energy priorities;

1 (b) It is vital to ensure all electric utilities internalize the
2 significant and underrecognized cost of emissions and to reduce
3 Washington consumers' exposure to costs associated with future
4 regulation of these emissions, which is consistent with the objectives
5 of integrated resource planning by electric utilities under chapter
6 19.280 RCW; and

7 (c) The state of California recently enacted a law establishing a
8 greenhouse gases emissions performance standard for electric utility
9 procurement of baseload electric generation that is based on the
10 emissions of a combined-cycle thermal electric generation facility
11 fueled by natural gas.

12 (5) The legislature finds that the climate change challenge
13 stakeholder group provides a process for identifying the policies
14 necessary to achieve the economic and emissions reduction goals in
15 section 3 of this act in a manner that maximizes economic opportunities
16 and job creation in Washington.

17 NEW SECTION. **Sec. 2.** The definitions in this section apply
18 throughout this chapter unless the context clearly requires otherwise.

19 (1) "Attorney general" means the Washington state office of the
20 attorney general.

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

25 (3) "Average available greenhouse gases emissions output" means the
26 level of greenhouse gases emissions as surveyed and determined by the
27 energy policy division of the department of community, trade, and
28 economic development under section 7 of this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (17) "Power plant" means a facility for the generation of
2 electricity that is permitted as a single plant by the energy facility
3 site evaluation council or a local jurisdiction.

4 (18) "Upgrade" means any modification made for the primary purpose
5 of increasing the electric generation capacity of a baseload electric
6 generation facility. "Upgrade" does not include routine or necessary
7 maintenance, installation of emission control equipment, installation,
8 replacement, or modification of equipment that improves the heat rate
9 of the facility, or installation, replacement, or modification of
10 equipment for the primary purpose of maintaining reliable generation
11 output capability that does not increase the heat input or fuel usage
12 as specified in existing generation air quality permits as of the
13 effective date of this section, but may result in incidental increases
14 in generation capacity.

15 NEW SECTION. **Sec. 3.** (1) The following greenhouse gases emissions
16 reduction and clean energy economy goals are established for Washington
17 state:

18 (a) By 2020, reduce overall greenhouse gases emissions in the state
19 to 1990 levels;

20 (b) By 2035, reduce overall greenhouse gases emissions in the state
21 to twenty-five percent below 1990 levels;

22 (c) By 2050, the state will do its part to reach global climate
23 stabilization levels by reducing overall emissions to fifty percent
24 below 1990 levels, or seventy percent below the state's expected
25 emissions that year; and

26 (d) By 2020, increase the number of clean energy sector jobs to
27 twenty-five thousand from the eight thousand four hundred jobs the
28 state had in 2004.

29 (2)(a) By December 31, 2007, the departments of ecology and
30 community, trade, and economic development shall report to the
31 appropriate committees of the senate and house of representatives the
32 total greenhouse gases emissions for 1990 and the totals in each major
33 sector for 1990.

34 (b) By December 31st of each even-numbered year beginning in 2010,
35 the departments of ecology and community, trade, and economic
36 development shall report to the governor and the appropriate committees

1 of the senate and house of representatives the total greenhouse gases
2 emissions for the preceding two years, and totals in each major source
3 sector.

4 NEW SECTION. **Sec. 4.** (1) The governor shall develop policy
5 recommendations to the legislature on how the state can achieve the
6 greenhouse gases emissions reduction goals established under section 3
7 of this act. These recommendations must include, but are not limited
8 to:

9 (a) How market mechanisms, such as a load-based cap and trade
10 system, would assist in achieving the greenhouse gases emissions
11 reduction goals;

12 (b) How geologic injection, forest sequestration, and other carbon
13 sequestration options could be used to achieve state greenhouse gases
14 emissions reduction goals;

15 (c) A process for replacing the highest emitting thermal electric
16 plants that have exceeded their expected useful life with newer
17 technologies that have lower greenhouse gases emissions levels; and

18 (d) Methods to utilize indigenous resources, such as landfill gas,
19 geothermal resources, and other assets that might reduce greenhouse
20 gases emissions consistent with the purposes of this act.

21 (2) Recommendations under subsection (1) of this section shall be
22 submitted to the appropriate committees of the house of representatives
23 and the senate for consideration in the 2008 legislative session.

24 NEW SECTION. **Sec. 5.** (1) Beginning July 1, 2008, the greenhouse
25 gases emissions performance standard for all baseload electric
26 generation for which electric utilities enter into long-term financial
27 commitments on or 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 emissions output as
31 determined by the department of community, trade, and economic
32 development under section 7 of this act.

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

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

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

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

17 (6) The following greenhouse gases emissions produced by baseload
18 electric generation owned or contracted through a long-term financial
19 commitment shall not be counted as emissions of the power plant in
20 determining compliance with the greenhouse gases emissions performance
21 standard:

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

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

26 (c) Those emissions sequestered or mitigated as approved under
27 subsection (12) of this section.

28 (7) In adopting and implementing the greenhouse gases emissions
29 performance standard, the department of community, trade, and economic
30 development energy policy division, in consultation with the
31 commission, the department, the Bonneville power administration, the
32 western electricity coordination council, the energy facility site
33 evaluation council, electric utilities, public interest
34 representatives, and consumer representatives, shall consider the
35 effects of the greenhouse gases emissions performance standard on
36 system reliability and overall costs to electricity customers.

37 (8) In developing and implementing the greenhouse gases emissions
38 performance standard, the department shall, with assistance of the

1 commission, the department of community, trade, and economic
2 development energy policy division, and electric utilities, and to the
3 extent practicable, address long-term purchases of electricity from
4 unspecified sources in a manner consistent with this chapter.

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

10 (10) In adopting the rules for implementing this section, the
11 energy facility site evaluation council and the department shall
12 include criteria to be applied in evaluating the carbon sequestration
13 plan. The rules shall include but not be limited to:

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

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

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

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

26 (e) Provisions for public notice and comment on the carbon
27 sequestration plan.

28 (11)(a) Except as provided in (b) of this subsection, as part of
29 its role enforcing the greenhouse gases emissions performance standard,
30 the energy facility site evaluation council and the department shall
31 determine whether a plan for sequestration will provide safe, reliable,
32 and permanent protection against the greenhouse gases entering the
33 atmosphere from the power plant and all ancillary facilities.

34 (b) For facilities under its jurisdiction, the energy facility site
35 evaluation council shall contract for review of the carbon
36 sequestration plan with the department, consider the adequacy of the
37 plan in its adjudicative proceedings conducted under RCW 80.50.090(3),

1 and incorporate specific findings regarding adequacy in its
2 recommendation to the governor under RCW 80.50.100.

3 (12) A project under consideration by the energy facility site
4 evaluation council by the effective date of this section is required to
5 include all of the requirements of subsection (10) of this section in
6 its carbon sequestration plan submitted as part of the energy facility
7 site evaluation council process. A project under consideration by the
8 energy facility site evaluation council by the effective date of this
9 section that receives final site certification agreement approval under
10 chapter 80.50 RCW may apply to the energy facility site evaluation
11 council to amend the carbon sequestration plan if the project owner
12 determines that implementation is not feasible following a good faith
13 attempt to implement the plan. The application shall demonstrate the
14 steps taken to implement the sequestration plan and evidence of the
15 technological and economic barriers to successful implementation. The
16 energy facility site evaluation council must review this application
17 and make a recommendation to the governor as to whether the
18 sequestration plan as incorporated into the site certification
19 agreement is feasible. The energy facility site evaluation council
20 shall contract with the department in reviewing the application. If
21 the energy facility site evaluation council recommends the plan as no
22 longer feasible, the energy facility site evaluation council may
23 recommend other conditions consistent with (a) and (b) of this
24 subsection to the governor. The governor may:

25 (a) Deny the request;

26 (b) Approve an amendment to the plan and site certification to
27 allow up to an additional five years for the sequestration to commence;
28 or

29 (c) Approve other methods by which the project is required to fully
30 and permanently mitigate for the emissions in excess of the performance
31 standard adopted in this section, for the operating life of the plant.
32 Such mitigation shall be in addition to any mitigation required upon
33 site certification under RCW 80.70.020 and that section shall not limit
34 the conditions for mitigation under this subsection. The required
35 mitigation shall be enforced through conditions upon the amended site
36 certification.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 80.50 RCW
2 to read as follows:

3 The governor may issue an amendment to a site certification under
4 the provisions of section 5 of this act.

5 NEW SECTION. **Sec. 7.** The energy policy division of the department
6 of community, trade, and economic development shall survey new
7 combined-cycle natural gas thermal electric generation turbines
8 commercially available and offered for sale by manufacturers in the
9 United States to determine an average rate of emissions of greenhouse
10 gases for these turbines. The department of community, trade, and
11 economic development shall report the results of its survey to the
12 legislature on a biennial basis, starting June 30, 2008.

13 NEW SECTION. **Sec. 8.** (1) No electrical company may enter into a
14 long-term financial commitment unless the baseload electric generation
15 supplied under such a long-term financial commitment complies with the
16 greenhouse gases emissions performance standard established under
17 section 5 of this act.

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

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

31 (4) Upon application by an electric utility, the commission may
32 provide a case-by-case exemption from the greenhouse gases emissions
33 performance standard to address: (a) Unanticipated electric system
34 reliability needs; or (b) catastrophic events or threat of significant
35 financial harm that may arise from unforeseen circumstances.

1 (5) Upon application by an electrical company, the commission shall
2 make a determination regarding the company's proposed decision to
3 acquire electric generation or enter into a power purchase agreement
4 for electricity that complies with the greenhouse gases emissions
5 performance standard established under section 5 of this act, as to the
6 need for the resource, and the appropriateness of the specific resource
7 selected. The commission shall take into consideration factors such as
8 the company's forecasted loads, need for energy, power plant
9 technology, expected costs, and other associated investment decisions.
10 In addition, the commission shall provide for recovery of the prudently
11 incurred capital and operating cost of these resources and may impose
12 such conditions as it finds necessary to ensure that rates are fair,
13 just, reasonable, and sufficient, coincident with the in-service date
14 of the project or the effective date of the power purchase agreement.

15 (6) An electrical company may account for and defer for later
16 consideration by the commission costs incurred in connection with the
17 long-term financial commitment, including operating and maintenance
18 costs, depreciation, taxes, and cost of invested capital. The deferral
19 begins with the date on which the power plant begins commercial
20 operation or the effective date of the power purchase agreement and
21 ends on the effective date of the final decision by the commission
22 regarding recovery in rates of these deferred costs. Creation of such
23 a deferral account does not by itself determine whether recovery of any
24 or all of these costs is appropriate.

25 (7) In establishing rates for each electrical company regulated
26 under chapter 80.28 RCW, the commission may adopt policies allowing an
27 additional return on investments to encourage meeting energy
28 requirements through distributed generation to accelerate efficiencies
29 in electric transmission and distribution systems that reduce energy
30 losses and increase the efficiency of energy delivery to end-use
31 consumers. These policies may include but are not limited to adding an
32 increment of two percent to the rate of return on common equity
33 permitted on an electrical company's other investments for prudently
34 incurred investments in distributed generation, and in measures that
35 improve, as measured in kilowatt-hour savings, the overall efficiency
36 of transmission, distribution, and end-use consumption of electricity
37 through energy efficiency technologies, including any device,
38 instrument, machine, appliance, or process related to the transmission,

1 distribution, and consumption of electricity to increase energy
2 efficiency, including but not limited to smart grid technology, smart
3 meters, and demand response technologies. The rate of return increment
4 must be allowed for a period, at the commission's discretion, of at
5 least seven but not more than thirty years after the investment is
6 first placed in the rate base. Measures or projects encouraged under
7 this section are those for which construction or installation is begun
8 after July 1, 2007, and before January 1, 2017, and which, at the time
9 they are placed in the rate base, are reasonably expected to save,
10 produce, or generate energy at a total incremental system cost per unit
11 of energy delivered to end use that is less than or equal to the
12 incremental system cost per unit of energy delivered to end use from
13 new baseload or peaking electric generation and that the electrical
14 company could acquire to meet energy demand in the same time period.

15 (8) The commission shall apply the procedures adopted by the
16 department to verify the emissions of greenhouse gases from baseload
17 electric generation under section 5 of this act.

18 (9) 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 (10) The commission shall adopt rules necessary to implement this
23 section by December 31, 2008.

24 NEW SECTION. **Sec. 9.** (1) No consumer-owned utility may enter into
25 a long-term financial commitment unless the baseload electric
26 generation supplied under such a long-term financial commitment
27 complies with the greenhouse gases emissions performance standard
28 established under section 5 of this act.

29 (2) The governing board shall review and make a determination on
30 any long-term financial commitment by the utility, pursuant to this
31 chapter, to determine whether the baseload electric generation to be
32 supplied under that long-term financial commitment complies with the
33 greenhouse gases emissions performance standard established under
34 section 5 of this act. No consumer-owned utility may enter into a
35 long-term financial commitment unless the baseload electric generation
36 to be supplied under that long-term financial commitment complies with

1 the greenhouse gases emissions performance standard established under
2 section 5 of this act.

3 (3) In confirming that a long-term financial commitment is for
4 baseload electric generation, the governing board shall consider the
5 design of the power plant and the intended use of the power plant based
6 upon the electricity purchase contract, if any, permits necessary for
7 the operation of the power plant, and any other matter the governing
8 board determines is relevant under the circumstances.

9 (4) The governing board may provide a case-by-case exemption from
10 the greenhouse gases emissions performance standard to address: (a)
11 Unanticipated electric system reliability needs; or (b) catastrophic
12 events or threat of significant financial harm that may arise from
13 unforeseen circumstances.

14 (5) The governing board shall apply the procedures adopted by the
15 department to verify the emissions of greenhouse gases from baseload
16 electric generation under section 5 of this act, and may request
17 assistance from the department in doing so.

18 (6) For consumer-owned utilities, the auditor is responsible for
19 auditing compliance with this chapter and rules adopted under this
20 chapter that apply to those utilities and the attorney general is
21 responsible for enforcing that compliance.

22 (7) In establishing rates, a governing board of a consumer-owned
23 utility may collect a surcharge for costs in excess of individual rate
24 categories to meet the greenhouse gases emissions performance standard
25 established under section 5 of this act.

26 NEW SECTION. **Sec. 10.** For the purposes of sections 5 through 10
27 of this act and RCW 80.70.020, the department, in consultation with the
28 department of community, trade, and economic development energy policy
29 division, the energy facility site evaluation council, the commission,
30 and the governing boards of consumer-owned utilities, shall review the
31 greenhouse gases emissions performance standard established in this
32 chapter to determine need, applicability, and effectiveness no less
33 than every five years following the effective date of this section, or
34 upon implementation of a federal or state law or rule regulating carbon
35 dioxide emissions of electric utilities, and report to the legislature.

1 NEW SECTION. **Sec. 11.** Sections 1 through 5 and 7 through 10 of
2 this act constitute a new chapter in Title 80 RCW."

3 Correct the title.

EFFECT: Strikes the underlying bill.

Establishes greenhouse gases emissions reduction for 2020, 2035, and 2050 and clean energy job goals for the state.

Requires the Departments of Ecology and Community, Trade, and Economic Development to report to the Legislature by December 31, 2007 state greenhouse gases emissions for 1990 in total and by major sector.

Requires the Departments of Ecology and Community, Trade, and Economic Development to report to the Governor and Legislature every two years beginning in 2010, state greenhouse gases emissions in total and by major section for the previous two years.

Requires the governor to develop policy recommendations on how the state can achieve the greenhouse gases emissions reduction goals and submit these recommendations to the legislature for consideration during the 2008 legislative session.

Establishes a greenhouse gases emissions performance standard, beginning July 1, 2008, for all baseload electric generation for which electric utilities enter into long-term financial commitments.

Specifies that the greenhouse gases emissions performance standard shall be the lower of 1,100 pounds of greenhouse gases per megawatt-hour or the average available greenhouse gases emissions output.

Requires the Department of Community, Trade, and Economic Development's Energy Policy Division to determine the average available greenhouse gases emissions output by conducting a survey of new combined-cycle natural gas thermal electric generation turbines commercially available and offered for sale by manufacturers in the United States and to report the results of the survey to the legislature on a biennial basis.

Prohibits electric companies and consumer-owned electric utilities from entering into a long-term financial commitment for baseload electric generation that does not comply with the greenhouse gases emissions performance standard.

Authorizes the Utilities and Transportation Commission to adopt policies allowing for an additional return on investment to encourage meeting energy requirements through distributed generation and increased efficiency of energy delivery.

Permits the Utilities and Transportation Commission to add an increment of two percent to the rate of return on common equity permitted on an electric company's other investments for prudently incurred investments in distributed generation and other measures.

Requires the Utilities and Transportation Commission to make a determination regarding an electric company's proposed decision to acquire electric generation for electricity that complies with the greenhouse gases emissions performance standard.

Authorizes consumer-owned electric utilities to collect a surcharge

for costs in excess of individual rate categories to meet the greenhouse gases emissions performance standard.

Requires the Directors of the Energy Facility Site Evaluation Council and the Department of Ecology to each adopt rules in coordination with each other to implement and enforce the greenhouse gases emissions performance standard by June 30, 2008.

Specifies all baseload electric generation facilities in operation as of June 30, 2008, are deemed to be in compliance with the greenhouse gases emissions performance standard until the facilities are the subject of long-term financial commitments.

Specifies all electric generating facilities or power plants powered by renewable resources, as defined in RCW 19.280.020, are deemed to be in compliance with the greenhouse gases emissions performance standard established under this section.

Provides that the total emissions associated with producing electricity shall be included in determining the rate of emissions of greenhouse gases for baseload electric generation.

Requires the Department of Ecology to 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.

Specifies which greenhouse gases emissions produced by baseload electric generation are not counted as emissions of the power plant in determining compliance with the greenhouse gases emissions performance standard:

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

(b) Those that are permanently sequestered by other means approved by the Department of Ecology; and

(c) Those emissions sequestered or mitigated as part of a project under consideration by the Energy Facility Site Evaluation Council on the effective date of this act.

Specifies that in adopting rules to implement the greenhouse gases emissions performance standard, the Energy Facility Site Evaluation Council and the Department of Ecology shall include criteria to be applied in evaluating carbon sequestration plans.

Provides that a project under consideration by the Energy Facility Site Evaluation Council by the effective date of this act may request amendments to the project's carbon sequestration plan, if the project owner determines that the carbon sequestration plan cannot be implemented.

Authorizes the Energy Facility Site Evaluation Council to recommend to the Governor for action other carbon sequestration plan conditions such as allowing an additional five years for sequestration to begin or other methods to fully and permanently mitigate for the emissions in excess of the greenhouse gases emissions performance standard.

Requires the Department of Ecology, in consultation with the Department of Community, Trade, and Economic Development Energy Policy Division, the Energy Facility Site Evaluation Council, the Utilities and Transportation Commission, and the governing boards of consumer-owned electric utilities, to review at least every five years, or upon implementation of a federal or state law or rule regulating carbon dioxide emissions of electric utilities, the greenhouse gases emissions performance standard to determine need, applicability, and effectiveness.

--- END ---

ESSB 6001 - H AMD TO H AMD (H3547.1) 847
By Representative Morris

ADOPTED 4/12/2007

1 On page 8, line 25 of the amendment, after "schedule;" insert
2 the following:

3 "(e) Provisions for an owner to purchase emissions reductions
4 in the event of the failure of a sequestration plan under
5 subsection (12);"

6 Renumber the subsections consecutively and correct any internal
7 references accordingly.

8 On page 9, line 10 of the amendment, after "chapter 80.50 RCW"
9 strike all material through "certification" on line 36 and insert
10 the following:

11
12 "shall make a good faith effort to implement the sequestration
13 plan. If the project owner determines that implementation is not
14 feasible, the project owner shall submit documentation of that
15 determination to the energy facility site evaluation council. The
16 documentation shall demonstrate the steps taken to implement the
17 sequestration plan and evidence of the technological and economic
18 barriers to successful implementation. The project owner shall
19 then provide to the energy facility site evaluation council
20 notification that they shall implement the plan that requires the
21 project owner to meet the greenhouse gases emissions performance
22 standard by purchasing verifiable greenhouse gases emissions
23 reductions from an electric generating facility located within the
24 western interconnection, where the reduction would not have
25 occurred otherwise or absent this contractual agreement, such that
26 the sum of the emissions reductions purchased and the facility's
27 emissions meets the standard for the life of the facility"

EFFECT: Removes provisions relating to procedures a project owner is required to take to amend a site certification agreement following a good faith effort to implement a sequestration plan that the owner determines is infeasible.

Requires the project owner to submit documentation to the Energy Facility Site Evaluation Council of the project owners determination that implementation of the sequestration plan is not feasible.

Specifies that the documentation demonstrate the steps taken to implement the sequestration plan and evidence of the technological and economic barriers to successful implementation of the sequestration plan.

Requires the project owner to 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 emissions performance standard by purchasing verifiable greenhouse gases 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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BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of
Application No. 2006-01

CERTIFICATE OF SERVICE

ENERGY NORTHWEST;

PACIFIC MOUNTAIN ENERGY CENTER
POWER PROJECT.

I hereby certify under penalty of perjury of the laws of the State of Washington that a true and correct copy of ENERGY NORTHWEST'S OPENING BRIEF -- GREENHOUSE GAS PLAN was served by U.S. Mail on each of the parties listed on the attached Service List. In addition, the original and fifteen (15) copies were delivered by messenger to EFSEC Manager, Allen Fiksdal. Courtesy copies were also sent by electronic mail.

DATED at Seattle, Washington this 25th day of October, 2007.


Mia M. Wiltse

Service List

Energy Northwest v. Pacific Mountain Energy Center Power Project Energy Facility Site Evaluation Council Application No. 2006-01

Energy Facility Site Evaluation Council		
Allen J. Fiksdal (original and 15 copies) EFSEC Manager Energy Facility Site Evaluation Council P.O. Box 43172 Olympia, WA 98504-3172 Ph: (360) 956-2152 Fax: (360) 956-2158 allenf@cted.wa.gov stephenp@cted.wa.gov	Kyle Crews Assistant Attorney General PO Box 40108 Olympia, WA 98504 Ph: (360) 664-2510 Fax: (360) 586-3593 kylec@atg.wa.gov C. Robert Wallis (Bob) Administrative Law Judge c/o EFSEC PO Box 43172 Olympia, WA 98504-3172 Ph: (360) 956-2121 Fax: (360) 956-2158 crw@juno.com	
Applicant – Energy Northwest		
Ted Beatty Tom Krueger Energy Northwest PO Box 968 Richland, WA 99352 Ph: (509) 372-5531 Fax: (509) 377-8124 tbeatty@energy-northwest.com tkrueger@energy-northwest.com	Katy Chaney URS Corporation 1501 4 th Avenue, Suite 1400 Seattle, WA 98101 Ph: (206) 438-2061 Fax: (866) 489-8791 katychaney@urscorp.com	
Department of Ecology		Counsel for the Environment
Laura J. Watson Assistant Attorney General Department of Ecology P.O. Box 40117 Olympia, WA 98504-0117 Ph: (360) 586-4614 LauraW2@atg.wa.gov ecyolyef@atg.wa.gov		Michael S. Tribble Assistant Attorney General Counsel for the Environment P.O. Box 40100 Olympia, WA 98504-0100 Phone: (360) 753-2711 Fax: (360) 664-0229 MichalT1@atg.wa.gov NicoleT@atg.wa.gov

Washington State Department of Community, Trade and Economic Development		
<p>Alice Blado Assistant Attorney General CTED PO Box 40109 Olympia, WA 98504-0117 Ph: (360) 753-6216 aliceb@atg.wa.gov</p>	<p>Tony Usibelli, Assistant Director, Energy Policy Division Mark Anderson, Senior Energy Policy Specialist CTED P.O. Box 43173 Olympia, WA 98504-3173 Phone: (360) 725-3110 Fax: (360) 586-0049 tonyu@cted.wa.gov marka@cted.wa.gov</p>	
Port of Kalama	City of Kalama	Cowlitz County
<p>Mark Wilson, Manager of Planning Port of Kalama 380 W. Marine Drive Kalama, WA 98625 Ph: (360) 673-2325 markwilson@portofkalama.com</p>	<p>Pete Poulsen, Mayor City of Kalama PO Box 1007 Kalama, WA 98625 Ph: (360) 673-4561 Fax: (360) 673-4560 cityofkalama@kalama.com</p>	<p>Mike Wojtowicz, Director Dept. of Building & Planning Cowlitz County 207 4th Avenue Kelso, WA 98626 Ph: (360) 577-3052 Fax: (360) 414-5550 wojtowiczm@co.cowlitz.wa.us</p>
Columbia Riverkeepers		
<p>Brett VandenHeuvel Columbia Riverkeeper 917 SW Oak St., Suite 414 Portland, OR 97205 Ph: (503) 224-3240 Fax: brett@lawofficebv.com</p>	<p>Scott Jerger Field Jerger LLP 610 SW Alder Street, Suite 910 Portland, OR 97205 Ph: (503) 228-9115 scott@fieldjerger.com</p>	
NW Energy Coalition		
<p>Nancy Hirsch, Policy Director NW Energy Coalition 219 1st Avenue South, Suite 100 Seattle, WA 98104 Ph: (206) 621-0094 Fax: (206) 621-0097 nancy@nwenergy.org</p>	<p>Stephen D. Mashuda Joshua Osborne-Klein Jan Hasselman Earthjustice 705 Second Avenue, Suite 203 Seattle, WA 98104 Phone: (206) 343-7340 Fax: (206) 343-1526 smashuda@earthjustice.org josborne-klein@earthjustice.org jhasselman@earthjustice.org</p>	