

SENATE FILE NO. SF0159

New opportunities for Wyoming coal fired generation.

Sponsored by: Senator(s) Dockstader, Bebout, Driskill,
Perkins, Von Flatern and Wasserburger and
Representative(s) Barlow, Crank, Harshman and
Simpson

A BILL

for

1 AN ACT AN ACT relating to public utilities; limiting the
2 recovery of costs for the retirement of coal fired electric
3 generation facilities; providing a process for the sale of an
4 otherwise retiring coal fired electric generation facility;
5 exempting a person purchasing an otherwise retiring coal
6 fired electric generation facility from regulation as a
7 public utility; requiring purchase of electricity generated
8 from purchased retiring coal fired electric generation
9 facility as specified; and providing for an effective date.

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11 *Be It Enacted by the Legislature of the State of Wyoming:*

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13 **Section 1.** W.S. 37-2-133 and 37-3-116 are created to
14 read:

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2 **37-2-133. Exemption for purchase of coal fired**
3 **generation facilities that would otherwise have been retired;**
4 **public utility purchase requirements; conditions for**
5 **exemption.**

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7 (a) The provisions of this chapter and chapters 1 and
8 3 of this title shall not apply to a person who operates a
9 coal fired electric generation facility purchased under an
10 agreement approved by the commission under W.S. 37-3-116.

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12 (b) Electric public utilities, other than cooperative
13 electric utilities, shall be obligated to purchase
14 electricity generated from a coal fired electric generation
15 facility purchased under agreement approved by the commission
16 under W.S. 37-3-116 provided that:

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18 (i) The person purchasing the otherwise retiring
19 coal fired electric generation facility offers to sell some
20 or all of the electricity from the facility to an electric
21 public utility;

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1 (ii) The electricity is sold at a price that is no
2 greater than the purchasing electric utility's avoided cost
3 as may be determined by the commission;

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5 (iii) The electricity is sold under a power
6 purchase agreement with a specified term length and such other
7 terms and conditions as may be approved by the commission;
8 and

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10 (iv) The commission approves a one hundred percent
11 (100%) cost recovery in rates for the cost of the power
12 purchase agreement and the agreement is one hundred percent
13 (100%) allocated to the public utility's Wyoming customers
14 unless otherwise agreed to by the public utility.

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16 (c) In determining an electric public utility's avoided
17 costs under this section, the commission may consider:

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19 (i) The value of the electric energy and capacity
20 generated from the facility;

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22 (ii) The value of any reliability benefits
23 associated with the operation of the facility; and

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2 (iii) Any other factor deemed appropriate by the
3 commission.

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5 (d) The commission may elect to set the avoided cost
6 price and other terms and conditions for the purchase of
7 electricity from an otherwise retiring coal fired electric
8 generation facility in advance of the facility's proposed
9 retirement date to permit potential purchasers to know the
10 avoided cost price and other terms and conditions for sales
11 from that facility prior to entering into an agreement to
12 purchase the facility.

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14 (e) As used in this section, "avoided cost" means the
15 incremental costs to an electric utility of electric energy
16 or capacity or both which, but for the purchase from the
17 otherwise retiring coal fired electric generation facility,
18 the utility would generate itself or incur in a purchase from
19 another source. As may be determined by the commission,
20 avoided costs may change over the course of an approved power
21 purchase agreement at specified intervals set forth in the
22 power purchase agreement.

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1 **37-3-116. Limitation for recovery of costs associated**
2 **with electric generation built to replace retiring coal fired**
3 **generation facility.**

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5 (a) Notwithstanding any other provision of this
6 chapter, the rates charged by an electric public utility,
7 other than a cooperative electric utility, shall not include
8 any recovery of or earnings on the capital costs associated
9 with new electric generation facilities built, in whole or in
10 part, to replace the electricity generated from one (1) or
11 more coal fired electric generating facilities located in
12 Wyoming and retired on or after January 1, 2022, unless the
13 commission has determined that the public utility that owned
14 the retired coal fired electric generation facility made a
15 good faith effort to sell the facility to another person prior
16 to its retirement and that the public utility did not refuse
17 a reasonable offer to purchase the facility or the commission
18 determines that, if a reasonable offer was received, the sale
19 was not completed for a reason beyond the reasonable control
20 of the public utility.

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22 (b) In determining whether the public utility made a
23 good faith effort to sell the retired coal fired electric

1 generation facility under this section the commission shall
2 consider:

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4 (i) Whether the public utility provided sufficient
5 time prior to the facility's retirement for potential
6 purchasers to evaluate purchasing the facility;

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8 (ii) Whether the public utility used reasonable
9 efforts to make potential purchasers aware of the opportunity
10 to purchase the facility;

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12 (iii) Whether the public utility reasonably
13 evaluated any offers received by the public utility for the
14 purchase of the facility; and

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16 (iv) Any other factor deemed appropriate by the
17 commission.

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19 (c) In determining whether an offer to purchase a coal
20 fired electric generation facility under this section was
21 reasonable the commission shall consider:

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1 (i) Whether accepting the offer to purchase the
2 retired facility would have reduced costs to the public
3 utility's customers as compared to retiring the facility;

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5 (ii) Whether accepting the offer to purchase the
6 retired facility would have reduced risks to the public
7 utility's customers as compared to retiring the facility
8 including any diminished environmental remediation risks; and

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10 (iii) Whether accepting the offer to purchase the
11 retired facility would have been in the public interest.

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13 (d) Upon application by a public utility, the
14 commission may approve procedures for the solicitation and
15 review of offers to purchase an otherwise retiring electric
16 generation facility in advance of a proposed retirement. If
17 the public utility follows the procedures approved by the
18 commission to solicit and review offers to purchase an
19 otherwise retiring electric generation facility under this
20 subsection, there shall be no limitation under this section
21 for recovery of costs or earnings associated with electric
22 generation built to replace a retired coal fired electric
23 generation facility.

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2 (e) Any agreement between a public utility and another
3 person for the sale of an otherwise retiring coal fired
4 electric generation facility shall not be effective until
5 approved by the commission. In reviewing the agreement the
6 commission shall consider:

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8 (i) Whether the proposed purchaser has, or has
9 contracted for, financial, technical and managerial abilities
10 sufficient to reasonably operate and maintain the facility;

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12 (ii) Whether the proposed purchaser has, or has
13 contracted for, financial, technical and managerial abilities
14 sufficient to reasonably decommission and retire the facility
15 if and to the extent the facility is decommissioned and
16 retired;

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18 (iii) Whether the proposed purchaser has, or has
19 contracted for, financial, technical and managerial abilities
20 sufficient to reasonably satisfy any environmental
21 obligations associated with the operation, maintenance or
22 potential retirement of the facility;

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1 (iv) If the coal fired electric generation
2 facility is comprised of one (1) or more generation units at
3 a larger power plant where the public utility will continue
4 to own and operate one (1) or more generation units, whether
5 the proposed purchaser and the public utility have made
6 reasonable contractual arrangements for the sharing of the
7 costs associated with any joint or common facilities at the
8 plant;

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10 (v) Whether the proposed purchaser has agreed to
11 reasonable terms and conditions for environmental
12 remediation;

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14 (vi) Whether the proposed purchase agreement
15 contains a provision allowing the public utility, with
16 commission approval, to revoke the sale in the event the
17 purchaser is unable to timely obtain all necessary local,
18 state and federal permits;

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20 (vii) Whether the proposed purchase agreement
21 contains a provision to allow the public utility, with
22 commission approval, to revoke the sale in the event the

1 purchaser is unable to timely enter into any necessary
2 operational and labor agreements;

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4 (viii) Whether the proposed purchaser has agreed
5 in the purchase agreement to obtain commission approval prior
6 to transferring, in whole or in part, the facility to any
7 other person so that the commission may ensure that the
8 proposed new purchaser and the new purchase agreement meet
9 the requirements of this section; and

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11 (ix) Any other factor deemed appropriate by the
12 commission.

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14 **Section 2.** This act is effective July 1, 2019.

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(END)

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