

ENROLLED ACT NO. 74, SENATE

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2019 GENERAL SESSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The commission may elect to set the avoided cost price and other terms and conditions for the purchase of electricity from an otherwise retiring coal fired electric generation facility in advance of the facility's proposed retirement date to permit potential purchasers to know the avoided cost price and other terms and conditions for sales

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from that facility prior to entering into an agreement to purchase the facility.

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

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

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

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(b) In determining whether the public utility made a good faith effort to sell the retired coal fired electric generation facility under this section the commission shall consider:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vii) Whether the proposed purchase agreement contains a provision to allow the public utility, with commission approval, to revoke the sale in the event the purchaser is unable to timely enter into any necessary operational and labor agreements;

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

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

ORIGINAL SENATE
FILE NO. SF0159

ENGROSSED

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

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk