

SENATE FILE NO. SF0142

Carbon capture and sequestration.

Sponsored by: Senator(s) Scott, Barlow, Boner, Dockstader and Landen and Representative(s) Allemand, Allred, Banks, Berger, Chadwick, Haroldson, Harshman, Heiner, Olsen, Strock, Walters and Zwonitzer, Dn

A BILL

for

1 AN ACT relating to public utilities; providing requirements
2 for the capture and use of carbon dioxide from coal-fired
3 electric generation facilities; requiring public utilities
4 to offer coal-fired electric generation facilities for sale
5 for purposes of carbon capture for enhanced oil and gas
6 recovery; specifying requirements for the sale of
7 byproducts from carbon dioxide streams; specifying
8 purposes; requiring bonding for already incurred and future
9 liabilities for decommissioning and cleanup of coal-fired
10 electric generation facilities as specified; specifying
11 intent for the reduction of waste of carbon dioxide;
12 providing penalties for violations; providing definitions;
13 making conforming amendments; requiring rulemaking;

1 requiring studies; requiring reports; specifying
2 applicability; and providing for an effective date.

3

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

5

6 **Section 1.** 37-18-201 through 37-18-209 are created to
7 read:

8

9

ARTICLE 2

10

UTILITY REQUIREMENTS AND CARBON CAPTURE

11

PROCEDURES FOR PUBLIC UTILITIES

12

13 **37-18-201. Definitions.**

14

15 (a) As used in this article:

16

17 (i) "Carbon capture, utilization and
18 sequestration technology" means technology that has the
19 principal purpose of capturing, reusing, storing,
20 sequestering or using carbon dioxide emissions to prevent
21 carbon dioxide from entering the atmosphere whether
22 constructed integral or adjacent to a coal-fired generation
23 facility;

1

2 (ii) "Carbon capture customer" means any person
3 who purchases or has an economically and technically
4 realistic prospect of purchasing a carbon dioxide stream
5 from a coal-fired electric generation facility, including
6 any person who is using or plans to use the carbon dioxide
7 stream for enhanced oil or gas recovery or sequestration;

8

9 (iii) "Carbon capture party" means:

10

11 (A) A public utility or person that
12 generates carbon dioxide through the production of
13 electricity;

14

15 (B) Any carbon capture, utilization and
16 sequestration technology customer, including any person
17 with a realistic prospect of purchasing and using part or
18 all of a carbon dioxide stream;

19

20 (C) Any person who owns, alters or creates
21 a carbon dioxide stream between a generator of carbon
22 dioxide and customers of the person;

23

1 (D) The Wyoming oil and gas conservation
2 commission;

3

4 (E) The office of consumer advocate.

5

6 (iv) "Carbon dioxide stream" means a flow or
7 unit of carbon dioxide and any other related gases,
8 materials or contaminants within carbon dioxide that is
9 going to a carbon capture unit or from a carbon capture
10 unit to a carbon dioxide customer. "Carbon dioxide stream"
11 does not include any flow of gases that is intended for
12 release into the atmosphere;

13

14 (v) "Coal-fired electric generation facility" or
15 "facility" means any electric generation facility that uses
16 coal to generate electricity and shall include any unit or
17 portion of a facility;

18

19 (vi) "Commission" means the public service
20 commission;

21

22 (vii) "Marginal cost" means the additional cost
23 of creating a byproduct that is not incurred in the

1 creation of a principal product. For purposes of this
2 article, if the creation of a byproduct alters the cost of
3 producing the principal product, any increase in the
4 resulting cost shall be considered a marginal cost and any
5 decrease in the resulting cost shall reduce the marginal
6 cost. "Marginal cost" shall not include any allocation of
7 any costs or investments incurred for the production of the
8 principal product;

9

10 (viii) "Net salvage value" means the value of
11 any land sold, plus the value of the components of the
12 unit, less any decommissioning costs and decommissioning
13 and reclamation costs that the purchaser may be liable for.
14 The commission may adjust the net salvage value to include
15 any amounts necessary to comply with state and federal
16 constitutional requirements associated with takings. "Net
17 salvage value" shall not include any unrecovered capital
18 costs unless those costs are constitutionally required to
19 be included in rates paid by customers after the retirement
20 or abandonment of the unit;

21

22 (ix) "Output reduction" means a reduction of
23 output of a coal-fired electric generation facility into a

1 range of percentages of the nameplate capacity of the
2 facility as determined by the commission in accordance with
3 this article;

4

5 (x) "Parasitic load" means the steam and related
6 heat from a coal-fired electric generation facility that
7 are used to capture carbon dioxide from the flue gas
8 created by the facility.

9

10 **37-18-202. Implementation by the public service**
11 **commission and state agencies; carbon capture in public**
12 **interest.**

13

14 (a) This article is enacted to seek and promote
15 carbon capture, utilization and sequestration technology
16 associated with the continued and prolonged operation of
17 coal-fired electric generation facilities. To the extent
18 practical and not otherwise inconsistent with law, the
19 commission and other state agencies required to implement
20 this article shall seek to:

21

22 (i) Reduce the amount of carbon dioxide that is
23 released into the atmosphere because of electric power

1 generation and satisfy demands from electricity customers
2 and from other states while accomplishing this reduction;

3

4 (ii) Reduce the waste of a valuable natural
5 resource by reducing the amount of carbon dioxide that is
6 released into the atmosphere;

7

8 (iii) Make carbon dioxide streams available to
9 customers in the oil and gas industry who wish to use
10 carbon dioxide streams to produce additional oil or gas by
11 using enhanced oil recovery techniques as a result of
12 recovering and utilizing those valuable natural resources;

13

14 (iv) Allow potential customers of the carbon
15 dioxide stream to earn federal or other subsidies
16 associated with carbon sequestration;

17

18 (v) Enhance the revenue of the state of Wyoming
19 and its political subdivisions through existing taxes,
20 leases and royalties;

21

1 (vi) Ensure that decommissioning and reclamation
2 costs caused by past activities are adequately funded and
3 are not passed on to current and future customers;

4
5 (vii) Improve the reliability of the electric
6 grid serving Wyoming and other western states;

7
8 (viii) Prevent carbon capture from causing
9 material rate increases for electric customers;

10
11 (ix) Give interested parties not associated with
12 Wyoming government an opportunity to earn a profit and
13 incentivize their participation in carbon capture,
14 utilization and sequestration efforts;

15
16 (x) Retain and improve employment opportunities
17 for Wyoming residents.

18
19 (b) The commission shall consider carbon capture,
20 utilization and sequestration and the use of any resulting
21 carbon dioxide stream for enhanced oil and gas recovery to
22 be in the public interest.

23

1 **37-18-203. Carbon dioxide stream regulation;**
2 **considerations.**

3

4 Except as otherwise provided in this subsection; no public
5 utility subject to this article shall intentionally alter a
6 carbon dioxide stream within its generating facility or
7 unit or alter a generating facility with the effect of
8 making the use of carbon dioxide captured impractical or
9 materially more expensive. The prohibition specified in
10 this subsection may be waived by agreement between the
11 public utility and carbon capture customers for
12 seventy-five percent (75%) of the available carbon dioxide.
13 Any party aggrieved by the actions of the public utility
14 under this subsection may apply to the commission for an
15 order directing the utility to comply with this subsection.
16 The commission may issue an order to correct any violation
17 of this subsection after considering W.S. 37-18-202, the
18 relative expense of correcting the problem at the power
19 plant level or the customer level, and any relevant federal
20 regulations.

21

22 **37-18-204. Reclamation and decommissioning costs;**
23 **bonding requirements; identification of costs already**

1 **recovered in rates; protection of current and new customers**
2 **from costs incurred serving previous customers.**

3

4 (a) Except as otherwise provided in this section, for
5 each coal-fired electric generation unit slated for
6 retirement or closure before 2034 that is specified in a
7 public utility's integrated resource plan submitted to the
8 commission before July 1, 2022, a public utility shall
9 provide a decommissioning and reclamation bond in
10 accordance with the following:

11

12 (i) A bond for each facility subject to this
13 subsection shall be filed not later than December 31 of the
14 fourth year before the year of the scheduled retirement or
15 closure of the facility or any one (1) unit of the
16 facility;

17

18 (ii) Subject to paragraph (iii) of this
19 subsection, the bond shall be in an amount sufficient to
20 cover the expected net costs of decommissioning all units
21 of the facility and reclaiming the site at the facility,
22 including but not limited to any fly ash, hazardous waste
23 or other solid or liquid waste disposal sites for which the

1 present or any future owner of the facility site may be
2 liable for damages and cleanup costs;

3

4 (iii) The initial amount of the bond shall be
5 one million dollars (\$1,000,000.00) for every one (1)
6 megawatt of nameplate capacity of each unit at the
7 facility;

8

9 (iv) The bond shall be filed with the state
10 treasurer;

11

12 (v) Upon request of any interested party, the
13 environmental quality council shall review and may change
14 the amount of the bond required under this subsection to
15 provide for the full amount of decommissioning and
16 reclamation costs for the facility;

17

18 (vi) Any bond submitted under this subsection
19 shall include adequate allowances for inflation and other
20 contingencies, as determined by the environmental quality
21 council in consultation with the department of
22 environmental quality;

23

1 (vii) In no case shall the amount of the bond be
2 less than the amount determined under subsection (b) of
3 this section by the commission that is equal to the amount
4 charged to customers for decommissioning and reclamation;

5
6 (viii) The costs of furnishing the bond required
7 under this subsection shall not be assessed to current or
8 future customers except to the extent that the commission
9 determines that continuing to serve those customers is
10 contributing to the costs that the bonds are intended to
11 defray.

12
13 (b) For facilities subject to subsection (a) of this
14 section, the commission shall undertake an analysis of the
15 extent to which rates charged by the public utility before
16 the effective date of this article included an allowance
17 for decommissioning and reclamation costs. The commission
18 shall consider rates charged in Wyoming and all other
19 states where power generated by the facility was sold. For
20 power sold outside of Wyoming, the commission may impute a
21 share of the rate for decommissioning and reclamation
22 similar to that charged in Wyoming if the rate-setting
23 practices of the relevant state or an applicable

1 multi-state protocol justify this treatment. The commission
2 may, to the extent useful, hire outside consultants and
3 assess their costs to the utility involved. If the
4 commission is unable to reasonably separate the amounts
5 charged to customers receiving power from the facility or a
6 unit thereof from those charged for all Wyoming facilities
7 or units of the public utility, the total for all units and
8 facilities owned by the public utility in Wyoming shall be
9 used to determine the minimum bond amount required by this
10 section until an adequate formula can be developed and
11 approved by the commission. At the request of any
12 interested party, the commission shall hold a hearing and
13 take testimony and written information on the actions under
14 this subsection from the public and any interested party.

15

16 (c) In the event of a sale of a facility or a unit of
17 the facility to comply with this article, the commission
18 shall, if practical given the needs of the new owner to
19 operate the facility or unit, segregate the lands with
20 waste and fly ash disposal from the facilities required to
21 be sold under this article and require that those disposal
22 facilities remain with the public utility. For facilities
23 required to remain with the public utility under this

1 subsection, the bond shall be divided between the area
2 retained by the public utility and the facilities and area
3 sold by the utility in proportion to the expected
4 reclamation costs. Unless the purchaser and public utility
5 reach an agreement concerning bond requirements under this
6 subsection, the commission may require the purchaser to
7 provide a bond in accordance with this section.

8

9 (d) If a unit or facility subject to this section is
10 sold to any person independent of the public utility
11 selling the facility or unit, an operating cash flow may be
12 substituted for all or a portion of the cash bond required
13 in subsection (a) of this section, subject to the
14 following:

15

16 (i) The new owner of the facility or unit shall
17 commit to the installation and operation of carbon capture
18 technology or capability on any purchased units with a
19 nameplate capacity of not less than three hundred (300)
20 megawatts, excluding any units for which a binding
21 agreement for retirement to reduce environmental pollution
22 had been entered into with the United States or an
23 applicable federal agency before July 1, 2022. Construction

1 of the installation of carbon capture technology or
2 components shall substantially commence not later than July
3 1, 2025;

4

5 (ii) The new owner shall commit to operate the
6 plant with carbon capture technology for not less than
7 twenty (20) years unless the commission relieves the new
8 owner of this obligation because continued operation with
9 carbon capture technology would be economically
10 unreasonable;

11

12 (iii) The new owner shall have in place not less
13 than one (1) contract with carbon capture customers who
14 intend to use not less than fifty-one percent (51%) of the
15 carbon dioxide captured for enhanced oil recovery. Any
16 contract entered into under this paragraph may include a
17 graduated implementation schedule and a provision allowing
18 the captured carbon dioxide to be sent to deep
19 sequestration if the per barrel price of oil falls below
20 the operating cost of recovering the oil or if the per
21 barrel price falls below a specific price set in the
22 contract, provided that the price set in the contract shall
23 not exceed sixty dollars (\$60.00) per barrel using the West

1 Texas Intermediate spot price. The contract may provide for
2 damages if the plant operator is unable to continue
3 operations for the agreed period of the project and may
4 expressly provide for damages if the electric generating
5 unit is relieved of the obligation to continue under
6 paragraph (ii) of this subsection;

7

8 (iv) The maximum amount of the cash flow
9 operating value of the facility or unit that may be
10 substituted for the bond required under subsection (a) of
11 this section shall be twenty percent (20%) of the expected
12 revenue of the facility or unit, including both electricity
13 and carbon dioxide sales for the planned life of the carbon
14 capture operation, not to exceed twenty (20) years. The
15 amount of the bond substitution authorized under this
16 subsection shall be governed by contract between the public
17 utility selling the facility or unit and the purchaser,
18 provided that the commission may review the amount to
19 ensure compliance with this section and for the
20 reasonableness of the projections used to determine the
21 amount of the bond substitution under this subsection;

22

1 (v) Determining which party is responsible for
2 decommissioning and reclamation shall be governed by the
3 contract between the public utility selling the facility or
4 unit and the purchaser, provided that no contract shall be
5 represented as relieving any party to a contract of any
6 liability that the party may have under federal law if a
7 party fails to perform under the contract between the
8 purchaser and the public utility that is entered into
9 pursuant to this subsection;

10

11 (vi) Parties entering into a contract under this
12 subsection shall be independent. For purposes of this
13 paragraph, parties are independent if they have not more
14 than twenty-five percent (25%) common ownership.

15

16 (e) The environmental quality council may, upon
17 request from an interested party, reduce the amount of the
18 bond appropriately upon satisfactory completion of a
19 substantial portion of the reclamation and decommissioning
20 of the unit or facility, provided that the remaining bond
21 is sufficient to address any remaining decommissioning and
22 reclamation costs with adequate allowances for
23 contingencies and inflation.

1

2 (f) Notwithstanding W.S. 35-11-417 through 35-11-424
3 and upon satisfactory completion of all decommissioning and
4 reclamation requirements, the environmental quality council
5 shall release any remaining bond posted under this section.

6

7 (g) To be eligible for a bond substitution under
8 paragraph (d)(iv) of this section, the contract for the
9 sale of the unit shall be signed and submitted to the
10 commission not later than December 15 of the year in which
11 the unit is first offered for sale as required by this
12 article. The commission shall hold as confidential the
13 portions of the contract designated as confidential by the
14 parties and the portions of the contract not relevant to
15 the performance of the parties under this section. Not
16 later than January 10 of the year following submission of a
17 contract under this subsection, the commission shall report
18 to the joint corporations, elections and political
19 subdivisions interim committee if the deadline in this
20 subsection needs an extension and the length of extension
21 if needed.

22

1 **37-18-205. Output reductions and retirements;**
2 **regulation; prohibitions on output reductions.**

3
4 (a) No public utility owning or operating a
5 coal-fired electric generation facility or unit with a
6 capacity of three hundred (300) megawatts or more shall
7 close, retire or complete an output reduction at the
8 facility or unit without first giving the commission notice
9 not less than four (4) years before the intended closure,
10 retirement or output reduction of the public utility's
11 intention to close, retire or complete an output reduction
12 at the facility or unit. For purposes of this subsection,
13 including the unit or facility to be retired, closed or
14 subject to an output reduction in an integrated resource
15 plan submitted to the commission before July 1, 2022 shall
16 be construed to satisfy the notice requirement of this
17 subsection unless the public utility, not later than July
18 1, 2023, gives the commission notice that it does not wish
19 to have the statement in the integrated resource plan
20 construed as satisfying the notice requirement of this
21 subsection, in which case the four (4) year period
22 preceding a closure, retirement or output reduction shall

1 commence upon the public utility providing notice as
2 required by this subsection.

3

4 (b) No public utility owning or operating a
5 coal-fired electric generation facility shall close, retire
6 or complete an output reduction at the facility without
7 first making a good faith effort to sell the facility for
8 not less than one (1) year, commencing not later than July
9 1, of the fourth year before the year of the planned
10 closure or retirement or July 1, 2023, whichever is later,
11 to persons willing to purchase and continue operating the
12 facility with carbon capture, utilization and sequestration
13 technology. Any public utility required to offer a facility
14 for sale under this subsection shall report any purchase
15 offer received to the commission within five (5) days.

16

17 (c) A lease of not less than twenty (20) years of a
18 facility or unit for purposes of installing and operating
19 carbon capture technology complying with this section shall
20 be construed as a sale for purposes of subsection (b) of
21 this section.

22

1 (d) A public utility selling a coal-fired electric
2 generation facility under this article shall, before
3 offering the facility for sale, provide to the commission
4 adequate notice of the sale and how an interested party may
5 contact the public utility for further information. The
6 commission shall post the information provided under this
7 subsection not later than the day on which the public
8 utility offers the facility for sale.

9

10 (e) In addition to making a good faith effort to sell
11 a coal-fired electric generation facility as required under
12 this article, a public utility required to offer a facility
13 for sale shall provide to a potential purchaser upon
14 request:

15

16 (i) Access to the maintenance records for the
17 unit or facility for sale and access to employees who
18 understand the physical condition of the facility or unit
19 for sale and likely future maintenance needs;

20

21 (ii) A description of the reclamation and
22 decommissioning needs and obligations that may affect the

1 sale and access to employees who understand these needs and
2 obligations;

3

4 (iii) A description of the current procedure for
5 the disposal of fly ash and chemicals and other substances
6 used by or generated by the facility or unit offered for
7 sale and access to employees who understand these
8 procedures;

9

10 (iv) Information regarding whether the contracts
11 for coal used by the facility and its transportation to the
12 facility are transferable to any purchaser and, if so, the
13 content of those contracts;

14

15 (v) The arrangements for the transmission of
16 electricity to customers and what changes, if any, would be
17 contemplated as a result of a sale of the facility;

18

19 (vi) Any other information that a prudent buyer
20 approaching an arms-length transaction should know,
21 including information relevant to the operation of the
22 facility, its sources of inputs and the facility's ability
23 to reach customers.

1

2 (f) Public utilities subject to this section shall
3 comply with the provisions of W.S. 37-2-133 and 37-3-117 in
4 addition to complying with this section.

5

6 (g) The commission may define by rule what qualifies
7 as an output reduction at a coal-fired electric generation
8 facility in accordance with the following:

9

10 (i) This subsection shall apply only to
11 facilities with a nameplate capacity of not less than three
12 hundred (300) megawatts;

13

14 (ii) Unless the commission has otherwise
15 specified in accordance with this paragraph, an output
16 reduction occurs if a facility operates at thirty-five
17 percent (35%) or less of the nameplate capacity on an
18 annual basis. The commission may adjust the percentage
19 specified in this paragraph by not more than twenty-five
20 (25) percentage points above or below the percentage
21 specified in this paragraph in order to achieve the
22 purposes specified in W.S. 37-18-202;

23

1 (iii) Upon petition by any interested carbon
2 capture party, or upon the commission's own motion, and
3 after notice and a hearing, the commission may modify any
4 percentage established in paragraph (ii) of this subsection
5 for any one (1) coal-fired electric generation unit,
6 subject to the following:

7
8 (A) A different percentage may be
9 established if it is useful to fit the particular
10 circumstances of that facility and its potential market for
11 use of a carbon dioxide stream if the facility were fitted
12 with carbon capture, utilization and sequestration
13 technology;

14
15 (B) The separate percentage for the
16 coal-fired electric generation facility is necessary to
17 achieve the purposes specified in W.S. 37-18-202;

18
19 (C) A different percentage may be
20 established to trigger reclamation requirements if the
21 public utility is not satisfactorily proceeding to clean up
22 and reclaim or dispose of any fly ash or other waste
23 disposal site where contaminants are moving and posing a

1 threat to public health or safety or are increasing the
2 cost of future reclamation and decommissioning; and

3

4 (D) The percentage established under this
5 subsection shall not exceed the percentage needed to
6 reasonably support carbon capture on the specific unit.

7

8 (h) Any person aggrieved by a public utility's
9 rejection of an offer to purchase a facility under this
10 article may petition the commission for review of the
11 rejection.

12

13 (j) In reviewing purchase offers, reviews of a
14 rejection of a purchase and a public utility's efforts to
15 offer a coal-fired electric generation facility for sale
16 under subsection (a) of this section, the commission shall:

17

18 (i) Consider the purposes and goals specified in
19 W.S. 37-18-202;

20

21 (ii) Consider traditional public utility
22 regulatory public-interest concerns and the compensation
23 requirements of the United States constitution and the

1 Wyoming constitution in the taking of private property for
2 public purposes;

3

4 (iii) Consider any practical factors
5 facilitating or impeding implementation of actions
6 necessary to allow for the purchase of a coal-fired
7 electric generation facility to allow continued operation
8 with carbon capture, utilization and sequestration
9 technology;

10

11 (iv) Give priority for purchasing the facility
12 to carbon capture customers and potential carbon capture
13 customers who will use not less than fifty-one percent
14 (51%) of a resulting carbon dioxide stream for enhanced oil
15 or gas recovery or production;

16

17 (v) Subject to paragraph (iv) of this
18 subsection, give priority to those persons or entities with
19 actual previous experience with carbon dioxide
20 sequestration, either for enhanced oil or gas recovery or
21 deep sequestration;

22

1 (vi) Extend, for good cause shown, the time in
2 which the sale of the facility must be offered, provided
3 that the extension or combination of extensions under this
4 paragraph shall continue until the facility or unit is
5 retired or closed.

6

7 (k) In reviewing purchase offers and a public
8 utility's efforts to offer a coal-fired electric generation
9 facility for sale under subsection (a) of this section, the
10 commission may:

11

12 (i) Determine the minimum bid that the facility
13 shall be sold for, provided that nothing shall prevent a
14 public utility from accepting a good-faith purchase offer
15 for a higher or lower amount. The minimum bid shall be not
16 less than the net salvage value of the facility or unit;

17

18 (ii) Permit, for good cause shown, an output
19 reduction for a specified time during the period in which
20 the facility is offered for sale in accordance with
21 subsection (a) of this section;

22

1 (iii) Order the rejection of any purchase offer
2 for a facility that is not made in good faith or made by a
3 person who does not have a reasonable prospect of
4 successfully operating the facility with installed carbon
5 capture, utilization and sequestration technology;

6

7 (iv) Establish a deadline not to exceed three
8 (3) years after the purchaser takes possession of the
9 purchased facility for the installation of carbon capture
10 technology at the purchased facility and utilization and
11 sequestration of the captured carbon.

12

13 (m) If the public utility does not make a good faith
14 effort to sell the facility as required by this section,
15 the commission shall proceed to order the limitation of
16 recovering costs under W.S. 37-3-117.

17

18 **37-18-206. Sale of carbon dioxide stream byproducts;**
19 **requirements.**

20

21 (a) A public utility deciding to retain a coal-fired
22 electric generation facility in lieu of closure or
23 retirement or a public utility entering into an agreement

1 to buy a coal-fired electric generation facility from
2 another person in accordance with W.S. 37-18-205 shall
3 attempt to negotiate the terms of the sale of the carbon
4 dioxide stream with carbon capture customers.

5

6 (b) If an agreement is unable to be reached in
7 accordance with subsection (a) of this section in a
8 reasonable time, the commission shall, upon petition by any
9 carbon capture party, set the terms associated with the
10 sale of a carbon dioxide stream, including the price of the
11 use of the stream.

12

13 (c) In determining the costs that a public utility
14 may recover for producing a carbon dioxide stream as a
15 byproduct of electricity generation, the commission shall:

16

17 (i) Allow only the recovery of the marginal
18 costs of producing the carbon dioxide stream as a
19 byproduct;

20

21 (ii) Allow the generating utility a reasonable
22 profit as specified in subsection (e) of this section.

23

1 (d) In implementing this section, the commission
2 shall consider the purposes and goals specified in W.S.
3 37-18-202, traditional public interest considerations
4 associated with public utilities and any written comments
5 submitted to the commission.

6

7 (e) For purposes of this section, a public utility's
8 profits from the sale of a carbon dioxide stream or any
9 other byproduct shall be the difference between the revenue
10 the public utility receives from the sale of the carbon
11 dioxide stream or other byproduct and the marginal costs of
12 producing the stream or other byproduct. A public utility
13 receiving profits from the sale of carbon dioxide stream or
14 other byproduct:

15

16 (i) May use not more than fifty percent (50%) of
17 these profits for any purpose, including paying dividends
18 to shareholders or owners and bonuses to managers and
19 executives;

20

21 (ii) Shall use any remaining profits not used
22 under paragraph (i) of this subsection to reduce the costs
23 of power generation or consumption for its customers.

1

2 **37-18-207. Violations; penalties.**

3

4 (a) Except as otherwise provided in this section:

5

6 (i) Any carbon capture customer who agrees to
7 purchase a carbon dioxide stream, or a portion thereof, and
8 fails to purchase that stream or purchases the stream or
9 byproduct and subsequently vents the stream shall pay a
10 civil penalty to the state of one dollar (\$1.00) for every
11 one (1) ton of carbon dioxide that is not purchased or that
12 is purchased and subsequently vented, except as provided in
13 paragraph (ii) of this subsection;

14

15 (ii) Any carbon capture customer who agrees to
16 purchase a carbon dioxide stream and pledges in the
17 agreement or to the commission to use the stream for
18 purposes of enhanced oil or gas recovery shall pay a civil
19 penalty to the state of two dollars (\$2.00) for every one
20 (1) ton of carbon dioxide that is not purchased or that is
21 purchased and subsequently vented. No penalty shall be
22 imposed under this paragraph for a violation if the average

1 daily spot price for West Texas Intermediate (WTI) is less
2 than fifty dollars (\$50.00) per barrel.

3

4 (b) The penalties established in this section shall
5 not apply to a purchase agreement for a coal-fired electric
6 generation facility, carbon dioxide stream until three (3)
7 years after carbon capture, utilization and sequestration
8 technology begins operation at the coal-fired electric
9 generation facility.

10

11 (c) The commission shall enforce the requirements of
12 this section.

13

14 (d) Any penalties remitted to the state under this
15 section shall be transferred to the county treasury of the
16 applicable county to the credit of the public school fund
17 of the county.

18

19 (e) Any penalty under this section shall be in
20 addition to any penalties or payments required under
21 contract or a purchase agreement.

22

1 (f) The commission may, for good cause shown, waive
2 any penalty imposed under this section. For purposes of
3 this section, "good cause" includes but is not limited to:

4

5 (i) Venting of carbon dioxide for safety
6 purposes;

7

8 (ii) Releases of carbon dioxide that are caused
9 by a natural disaster;

10

11 (iii) A failure to timely complete necessary
12 construction of carbon capture, utilization and
13 sequestration technology, provided that the failure is not
14 negligent, reckless, knowing or intentional.

15

16 **37-18-208. Power sale agreements; reliability**
17 **requirements.**

18

19 (a) If a public utility subject to this article sells
20 a coal-fired electric generation facility to a carbon
21 capture customer or to another person who agrees to install
22 and operate carbon capture, utilization and sequestration
23 technology at the facility, the commission shall, after

1 notice and an opportunity for a hearing, require a power
2 purchase agreement between the public utility and the
3 purchaser if the commission finds that the agreement is
4 necessary to achieve or maintain a reliable power network
5 or to provide for the continuing commercial operation of
6 the facility or the carbon capture, utilization and
7 sequestration technology at the facility. Any power
8 purchase agreement required by this section shall be in
9 accordance with W.S. 37-2-133, the purposes and goals
10 provided in W.S. 37-18-202 and shall ensure that the public
11 utility's customers are not materially injured by the
12 purchase agreement or agreement for the installation and
13 operation of carbon capture, utilization and sequestration
14 technology at the facility. The commission's actions under
15 this section shall be subject to the following:

16

17 (i) The commission shall not, after December 31
18 of the year in which the facility is slated for retirement
19 as provided in an integrated resource plan submitted to the
20 commission before July 1, 2022, require any sale of
21 electricity that infringes on the operation of the carbon
22 capture process without the express consent of the public
23 utility and the carbon capture operator;

1

2 (ii) Electricity generated at a facility may be
3 used or sold for use or resale:

4

5 (A) Within the site of the facility;

6

7 (B) By the operator of the carbon capture
8 technology for use relevant to the capture and
9 sequestration of carbon;

10

11 (C) To the public utility for its use or
12 resale. Any sale under this subparagraph shall be in
13 addition to any requirements imposed by the commission
14 under this subsection;

15

16 (D) To any public utility for use or sale
17 within its certificated territory in Wyoming. Electricity
18 sold under this subparagraph may be resold by contract not
19 subject to commission price regulation to any retail
20 customer that is eligible to purchase electricity under
21 W.S. 37-2-133(f). If the public utility owns or partially
22 owns the facility selling electricity under this
23 subparagraph, the commission may regulate the sale of

1 electricity under this subparagraph to ensure that other
2 customers of the public utility within the certificated
3 territory are not harmed by the sale;

4

5 (E) To any municipal or joint powers
6 utility or to any electric cooperative as defined by W.S.
7 37-16-101(a)(iv), provided that any electricity purchased
8 under this subparagraph may be resold by contract to any
9 retail customer that is eligible to purchase electricity
10 under W.S. 37-2-133(f);

11

12 (F) To any customer for the carbon dioxide
13 captured from the facility or unit or to any other
14 commercial or industrial electric customer, provided that
15 the service is taken not more than forty (40) miles from
16 the facility or unit generating the electricity for sale
17 under this subparagraph and provided that the customer is
18 not in the certificated territory of any public utility
19 exempt under W.S. 37-1-101(a)(vi)(H);

20

21 (G) To any owner of not less than ten
22 percent (10%) of the facility, the carbon capture facility
23 or the unit on which the carbon capture technology is

1 installed, provided that electricity service provided under
2 this subparagraph is taken not more than forty (40) miles
3 from the facility selling the electricity;

4

5 (H) To any retail customer that is eligible
6 to purchase electricity under W.S. 37-2-133(f) that is
7 located in the certificated territory of the previous owner
8 of the facility.

9

10 (iii) In implementing this subsection, the
11 commission shall defer to or, if required to, implement any
12 relevant federal law or regulations governing the
13 transmission of electricity;

14

15 (iv) For sales of electricity under paragraph
16 (ii) of this subsection to a customer that is not a public
17 utility or an owner using the owner's transmission
18 facilities, the commission may regulate the sale only to
19 the extent necessary to ensure that the incumbent public
20 utility in its certificated service territory recovers
21 delivery costs and standby costs of any standby needs of
22 the customer. The utility selling electricity under this
23 section and the purchaser of electricity may waive the

1 requirements of this section except paragraph (iii) of this
2 subsection in a contract for the sale or use of electricity
3 under this section. The commission shall not waive any of
4 the requirements of this subsection before receiving a
5 contract from the parties that seek to waive those
6 requirements.

7

8 **37-18-209. Carbon capture agreement; profits applied**
9 **to stranded costs.**

10

11 If there is an agreement between a public utility selling a
12 facility and the purchaser as part of a sale or lease
13 agreement for the public utility and purchaser to share
14 future projects from the facility sold, the public
15 utility's share of those profits shall be construed as
16 being available to satisfy any recovery of stranded costs
17 that would otherwise be recovered from the public utility's
18 customers.

19

20 **Section 2.** W.S. 37-1-101(a)(vi)(N), 37-2-133 by
21 creating a new subsection (j), 37-2-134(b) and (e) and
22 37-3-117(a)(i) are amended to read:

23

1 **37-1-101. Definitions.**

2

3 (a) As used in chapters 1, 2, 3, 12, 17 and 18 of
4 this title:

5

6 (vi) "Public utility" means and includes every
7 person that owns, operates, leases, controls or has power
8 to operate, lease or control:

9

10 (N) The provisions of W.S. 37-18-101 and
11 37-18-102 and 37-18-201 through 37-18-209 shall not apply
12 to any public utility owned or operated by a municipality
13 or any cooperative electrical generation and transmission
14 association operating in interstate commerce whose rates
15 are not regulated by the Wyoming public service commission.

16

17 **37-2-133. Exemption for purchase of coal-fired**
18 **generation facilities that would otherwise have been**
19 **retired; public utility purchase requirements; conditions**
20 **for exemption.**

21

22 (j) Electric public utilities, other than cooperative
23 electric utilities, shall be obligated to purchase

1 electricity generated from a coal-fired electric generation
2 facility purchased under a power purchase agreement
3 required under W.S. 37-18-208 and in accordance with W.S.
4 37-18-201 through 37-18-209.

5

6 **37-2-134. Electric generation facility closures;**
7 **presumption; commission review.**

8

9 (b) Before authorizing or approving the retirement of
10 an electric generation facility as proposed in a rate case,
11 integrated resource plan or other submission to the
12 commission, the commission shall consider the effect on
13 available reliable, dispatchable electricity to Wyoming
14 customers, the feasibility of the installation of carbon
15 capture, utilization and sequestration technology at the
16 facility in accordance with W.S. 37-18-201 through
17 37-18-209 and the impact that any shortage of available
18 energy nationwide may have on Wyoming customers.

19

20 (e) Nothing in this section shall be construed to
21 relieve a public utility of the requirements to comply with
22 W.S. 37-2-133, ~~and~~ 37-3-117 and 37-18-201 through 37-18-209
23 before the retirement of an electric generation facility.

1

2 **37-3-117. Limitation for recovery of costs associated**
3 **with electric generation built to replace retiring**
4 **coal-fired generation facility; exemption.**

5

6 (a) Notwithstanding any other provision of this
7 chapter:

8

9 (i) Any electric public utility seeking to
10 retire a coal fired electric generation facility shall
11 first make a good faith effort to sell the facility for
12 continued use as a coal fired electric generation facility,
13 including continued use as a coal-fired electric generation
14 facility that uses carbon capture, utilization and
15 sequestration technology;

16

17 **Section 3.**

18

19 (a) The department of environmental quality shall
20 complete a study for each coal-fired electric generation
21 facility that is or potentially may be subject to this act
22 to determine the reclamation and decommissioning
23 obligations for closing or retiring the coal-fired electric

1 generation facility or each unit thereof. The study shall
2 identify the needs for reclamation and how those needs can
3 best be met without materially impeding the sale of the
4 facility or unit. The public service commission shall
5 assist with the study if requested by the department of
6 environmental quality.

7

8 (b) The department of environmental quality shall
9 submit an accounting of costs associated with completing
10 the study required under this section to the public service
11 commission. The public service commission shall assess the
12 costs of the study to each public utility subject to the
13 study under this section on a pro rata basis.

14

15 (c) The department of environmental quality shall
16 report to the joint minerals, business and economic
17 development interim committee and to the joint
18 corporations, elections and political subdivisions interim
19 committee:

20

21 (i) Not later than October 1, 2023 with a
22 preliminary report and status update on the study required
23 under this section;

1

2 (ii) Not later than July 1, 2024 with a final
3 report on the results of the study required under this
4 section.

5

6 **Section 4.**

7

8 (a) The office of consumer advocate shall study
9 whether a rate reduction should be granted to Wyoming
10 electricity customers to compensate for any failure by a
11 public utility to capture available revenue from the sale
12 of carbon dioxide created by the electricity generation
13 from coal-fired electric generation facilities. For
14 purposes of this study, the release of carbon dioxide whose
15 capture would be economically feasible shall be considered
16 the waste of a valuable natural resource. The study shall
17 not assume a rate reduction commencing before July 1, 2026.

18

19 (b) The office of consumer advocate shall report to
20 the joint corporations, elections and political
21 subdivisions interim committee and to the joint minerals,
22 business and economic development interim committee:

23

1 (i) Not later than October 1, 2023 with a
2 preliminary report and status update on the study required
3 under this section;

4

5 (ii) Not later than July 1, 2024 with a final
6 report on the results of the study required under this
7 section.

8

9 (c) The reports required under subsection (b) of this
10 section shall be made available to the public upon receipt.

11

12 **Section 5.** Nothing in this act shall be construed to
13 impair any contract entered into before the effective date
14 of this act.

15

16 **Section 6.** The public service commission shall
17 promulgate all rules necessary to implement this act.

18

1 **Section 7.** This act is effective immediately upon
2 completion of all acts necessary for a bill to become law
3 as provided by Article 4, Section 8 of the Wyoming
4 Constitution.

5

6

(END)