

SENATE BILL 5260

State of Washington

52nd Legislature

1991 Regular Session

By Senators Thorsness, Madsen and Barr; by request of Utilities & Transportation Commission.

Read first time January 25, 1991. Referred to Committee on Energy & Utilities.

1 AN ACT Relating to the regulatory authority of the utilities and
2 transportation commission over certain nonmunicipal systems; amending
3 RCW 80.04.010 and 80.24.010; and reenacting and amending RCW 80.04.110.

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

5 **Sec. 1.** RCW 80.04.010 and 1989 c 101 s 2 are each amended to read
6 as follows:

7 As used in this title, unless specifically defined otherwise or
8 unless the context indicates otherwise:

9 "Commission" means the utilities and transportation commission.

10 "Commissioner" means one of the members of such commission.

11 "Competitive telecommunications company" means a telecommunications
12 company which has been classified as such by the commission pursuant to
13 RCW 80.36.320.

14 "Competitive telecommunications service" means a service which has
15 been classified as such by the commission pursuant to RCW 80.36.330.

1 "Corporation" includes a corporation, company, association or joint
2 stock association.

3 "Person" includes an individual, a firm or partnership.

4 "Gas plant" includes all real estate, fixtures and personal
5 property, owned, leased, controlled, used or to be used for or in
6 connection with the transmission, distribution, sale or furnishing of
7 natural gas, or the manufacture, transmission, distribution, sale or
8 furnishing of other type gas, for light, heat or power.

9 "Gas company" includes every corporation, company, association,
10 joint stock association, partnership and person, their lessees,
11 trustees or receiver appointed by any court whatsoever, and every city
12 or town, owning, controlling, operating or managing any gas plant
13 within this state.

14 "Electric plant" includes all real estate, fixtures and personal
15 property operated, owned, used or to be used for or in connection with
16 or to facilitate the generation, transmission, distribution, sale or
17 furnishing of electricity for light, heat, or power for hire; and any
18 conduits, ducts or other devices, materials, apparatus or property for
19 containing, holding or carrying conductors used or to be used for the
20 transmission of electricity for light, heat or power.

21 "Electrical company" includes any corporation, company,
22 association, joint stock association, partnership and person, their
23 lessees, trustees or receivers appointed by any court whatsoever (other
24 than a railroad or street railroad company generating electricity
25 solely for railroad or street railroad purposes or for the use of its
26 tenants and not for sale to others), and every city or town owning,
27 operating or managing any electric plant for hire within this state.

28 "Electrical company" does not include a company or person employing a
29 cogeneration facility solely for the generation of electricity for its
30 own use or the use of its tenants or for sale to an electrical company,

1 state or local public agency, municipal corporation, or quasi municipal
2 corporation engaged in the sale or distribution of electrical energy,
3 but not for sale to others, unless such company or person is otherwise
4 an electrical company.

5 "LATA" means a local access transport area as defined by the
6 commission in conformance with applicable federal law.

7 "Private telecommunications system" means a telecommunications
8 system controlled by a person or entity for the sole and exclusive use
9 of such person, entity, or affiliate thereof, including the provision
10 of private shared telecommunications services by such person or entity.

11 "Private telecommunications system" does not include a system offered
12 for hire, sale, or resale to the general public.

13 "Private shared telecommunications services" includes the provision
14 of telecommunications and information management services and equipment
15 within a user group located in discrete private premises in building
16 complexes, campuses, or high-rise buildings, by a commercial shared
17 services provider or by a user association, through privately owned
18 customer premises equipment and associated data processing and
19 information management services and includes the provision of
20 connections to the facilities of a local exchange and to interexchange
21 telecommunications companies.

22 "Radio communications service company" includes every corporation,
23 company, association, joint stock association, partnership, and person,
24 their lessees, trustees, or receivers appointed by any court, and every
25 city or town making available facilities to provide radio
26 communications service, radio paging, or cellular communications
27 service for hire, sale, or resale.

28 "Telecommunications company" includes every corporation, company,
29 association, joint stock association, partnership and person, their
30 lessees, trustees or receivers appointed by any court whatsoever, and

1 every city or town owning, operating or managing any facilities used to
2 provide telecommunications for hire, sale, or resale to the general
3 public within this state.

4 "Noncompetitive telecommunications service" means any service which
5 has not been classified as competitive by the commission.

6 "Facilities" means lines, conduits, ducts, poles, wires, cables,
7 cross-arms, receivers, transmitters, instruments, machines, appliances,
8 instrumentalities and all devices, real estate, easements, apparatus,
9 property and routes used, operated, owned or controlled by any
10 telecommunications company to facilitate the provision of
11 telecommunications service.

12 "Telecommunications" is the transmission of information by wire,
13 radio, optical cable, electromagnetic, or other similar means. As used
14 in this definition, "information" means knowledge or intelligence
15 represented by any form of writing, signs, signals, pictures, sounds,
16 or any other symbols.

17 "Water system" includes all real estate, easements, fixtures,
18 personal property, dams, dikes, head gates, weirs, canals, reservoirs,
19 flumes or other structures or appliances operated, owned, used or to be
20 used for or in connection with or to facilitate the supply, storage,
21 distribution, sale, furnishing, diversion, carriage, apportionment or
22 measurement of water for power, irrigation, reclamation, manufacturing,
23 municipal, domestic or other beneficial uses for hire.

24 "Water company" includes every corporation, company, association,
25 joint stock association, partnership and person, their lessees,
26 trustees or receivers appointed by any court whatsoever, and every city
27 or town owning, controlling, operating, or managing any water system
28 for hire within this state: PROVIDED, That for purposes of commission
29 jurisdiction it shall not include any water system serving less than
30 one hundred customers where the average annual gross revenue per

1 customer does not exceed three hundred dollars per year, which revenue
2 figure may be increased annually by the commission by rule adopted
3 pursuant to chapter 34.05 RCW to reflect the rate of inflation as
4 determined by the implicit price deflator of the United States
5 department of commerce: AND PROVIDED FURTHER, That such measurement of
6 customers or revenues shall include all portions of water companies
7 having common ownership, regardless of location or corporate
8 designation. "Water company" also includes, for auditing purposes
9 only, nonmunicipal water systems which are referred to the commission
10 pursuant to an administrative order from the department, or the city or
11 county as provided in RCW 80.04.110. However, water companies exempt
12 from commission regulation shall be subject to the provisions of
13 chapter 19.86 RCW. A water company cannot be removed from regulation
14 except with the approval of the commission. Water companies subject to
15 regulation may petition the commission for removal from regulation if
16 the number of customers falls below one hundred or the average annual
17 revenue per customer falls below three hundred dollars. The commission
18 is authorized to maintain continued regulation if it finds that the
19 public interest so requires.

20 "Cogeneration facility" means any machinery, equipment, structure,
21 process, or property, or any part thereof, installed or acquired for
22 the primary purpose of the sequential generation of electrical or
23 mechanical power and useful heat from the same primary energy source or
24 fuel.

25 "Public service company" includes every gas company, electrical
26 company, telecommunications company, and water company. Ownership or
27 operation of a cogeneration facility does not, by itself, make a
28 company or person a public service company.

29 "Local exchange company" means a telecommunications company
30 providing local exchange telecommunications service.

1 "Department" means the department of (~~social and~~) health
2 (~~services~~).

3 The term "service" is used in this title in its broadest and most
4 inclusive sense.

5 **Sec. 2.** RCW 80.04.110 and 1989 c 207 s 2 and 1989 c 101 s 17 are
6 each reenacted and amended to read as follows:

7 Complaint may be made by the commission of its own motion or by any
8 person or corporation, chamber of commerce, board of trade, or any
9 commercial, mercantile, agricultural or manufacturing society, or any
10 body politic or municipal corporation, or by the public counsel section
11 of the office of the attorney general, or its successor, by petition or
12 complaint in writing, setting forth any act or thing done or omitted to
13 be done by any public service corporation in violation, or claimed to
14 be in violation, of any provision of law or of any order or rule of the
15 commission: PROVIDED, That no complaint shall be entertained by the
16 commission except upon its own motion, as to the reasonableness of the
17 schedule of the rates or charges of any gas company, electrical
18 company, water company, or telecommunications company, unless the same
19 be signed by the mayor, council or commission of the city or town in
20 which the company complained of is engaged in business, or not less
21 than twenty-five consumers or purchasers of such gas, electricity,
22 water or telecommunications service: PROVIDED, FURTHER, That when two
23 or more public service corporations, (meaning to exclude municipal and
24 other public corporations) are engaged in competition in any locality
25 or localities in the state, either may make complaint against the other
26 or others that the rates, charges, rules, regulations or practices of
27 such other or others with or in respect to which the complainant is in
28 competition, are unreasonable, unremunerative, discriminatory, illegal,
29 unfair or intending or tending to oppress the complainant, to stifle

1 competition, or to create or encourage the creation of monopoly, and
2 upon such complaint or upon complaint of the commission upon its own
3 motion, the commission shall have power, after notice and hearing as in
4 other cases, to, by its order, subject to appeal as in other cases,
5 correct the abuse complained of by establishing such uniform rates,
6 charges, rules, regulations or practices in lieu of those complained
7 of, to be observed by all of such competing public service corporations
8 in the locality or localities specified as shall be found reasonable,
9 remunerative, nondiscriminatory, legal, and fair or tending to prevent
10 oppression or monopoly or to encourage competition, and upon any such
11 hearing it shall be proper for the commission to take into
12 consideration the rates, charges, rules, regulations and practices of
13 the public service corporation or corporations complained of in any
14 other locality or localities in the state.

15 All matters upon which complaint may be founded may be joined in
16 one hearing, and no motion shall be entertained against a complaint for
17 misjoinder of complaints or grievances or misjoinder of parties; and in
18 any review of the courts of orders of the commission the same rule
19 shall apply and pertain with regard to the joinder of complaints and
20 parties as herein provided: PROVIDED, All grievances to be inquired
21 into shall be plainly set forth in the complaint. No complaint shall
22 be dismissed because of the absence of direct damage to the
23 complainant.

24 Upon the filing of a complaint, the commission shall cause a copy
25 thereof to be served upon the person or corporation complained of,
26 which shall be accompanied by a notice fixing the time when and place
27 where a hearing will be had upon such complaint. The time fixed for
28 such hearing shall not be less than ten days after the date of the
29 service of such notice and complaint, excepting as herein provided.
30 The commission shall enter its final order with respect to a complaint

1 filed by any entity or person other than the commission within ten
2 months from the date of filing of the complaint, unless the date is
3 extended for cause. Rules of practice and procedure not otherwise
4 provided for in this title may be prescribed by the commission. Such
5 rules may include the requirement that a complainant use informal
6 processes before filing a formal complaint.

7 The commission shall, as appropriate, (~~exercise auditing and~~
8 ~~accounting supervision or initiate a complaint~~) audit a nonmunicipal
9 water system upon receipt of an administrative order from the
10 department, or the city or county in which the water system is located,
11 finding that the water delivered by a system does not meet state board
12 of health standards adopted under RCW 43.20.050(2)(a) or standards
13 adopted under chapter 70.116 RCW and the results of the audit shall be
14 provided to the requesting department, city, or county. However, the
15 number of nonmunicipal water systems referred to the commission in any
16 one calendar year shall not exceed twenty percent of the water
17 companies subject to commission regulation as defined in RCW 80.04.010.

18 **Sec. 3.** RCW 80.24.010 and 1990 c 48 s 1 are each amended to read
19 as follows:

20 Every public service company subject to regulation by the
21 commission or nonmunicipal water systems referred to the commission for
22 audit pursuant to RCW 80.04.110 shall, on or before the date specified
23 by the commission for filing annual reports under RCW 80.04.080, file
24 with the commission a statement on oath showing its gross operating
25 revenue from intrastate operations for the preceding calendar year or
26 portion thereof and pay to the commission a fee equal to one-tenth of
27 one percent of the first fifty thousand dollars of gross operating
28 revenue, plus two-tenths of one percent of any gross operating revenue
29 in excess of fifty thousand dollars: PROVIDED, That the fee shall in

1 no case be less than one dollar. For nonmunicipal water systems
2 subject to audit the fee shall be based on the twelve-month audited
3 period only and such systems shall not be required to file a statement
4 on oath showing its gross operating revenue for the preceding calendar
5 year, but shall pay a fee to the commission as described in this
6 section.

7 The percentage rates of gross operating revenue to be paid in any
8 year may be decreased by the commission for any class of companies
9 subject to the payment of such fees, by general order entered before
10 March 1st of such year, and for such purpose such companies shall be
11 classified as follows:

12 Electrical, gas, water, telecommunications, and irrigation
13 companies shall constitute class one. Every other company subject to
14 regulation by the commission, for which regulatory fees are not
15 otherwise fixed by law shall pay fees as herein provided and shall
16 constitute additional classes according to kinds of businesses engaged
17 in.