

HOUSE BILL REPORT

HB 2179

As Reported by House Committee On:
Technology, Energy & Communications

Title: An act relating to the resolution of disputes between electrical suppliers regarding electrical service to customers.

Brief Description: Providing for the resolution of disputes between electrical suppliers regarding electrical service to customers.

Sponsors: Representative Morris.

Brief History:

Committee Activity:

Technology, Energy & Communications: 3/1/05 [DPS].

Brief Summary of Substitute Bill

- Provides procedures for resolving disputes between electric utilities regarding electrical service to customers.

HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Morris, Chair; Kilmer, Vice Chair; Ericks, Hudgins, Nixon, Takko and Wallace.

Minority Report: Without recommendation. Signed by 4 members: Representatives Crouse, Ranking Minority Member; Haler, Assistant Ranking Minority Member; P. Sullivan and Sump.

Staff: Sarah Dylag (786-7109).

Background:

Under current law, electric utilities and cooperatives can enter into agreements with other electric utilities and cooperatives for the designation of the boundaries of adjoining service areas, for establishing procedures to extend service in adjoining areas not currently served by either utility, and for purchase or sale of duplicating utility facilities. When an agreement involves an investor-owned utility, the agreement must be approved by the Washington Utilities and Transportation Commission (Commission).

In addition, under the Growth Management Act, certain counties and cities develop comprehensive land use plans outlining the coordinated land use policy of the county or city. The comprehensive land use planning process includes adopting development regulations, such as zoning ordinances, critical areas ordinances, and binding site plan ordinances. The state has three growth management hearings boards to hear matters related to the Growth Management Act. Each board can hear matters pertaining to the cities and counties located within its jurisdictional boundaries.

Summary of Substitute Bill:

When a dispute arises between electric utilities regarding an existing service entrance or a new service entrance, the dispute can be resolved by the Commission, if the dispute involves an investor-owned utility, or by the governing board of a consumer-owned utility, if the dispute involves only consumer-owned utilities.

When the dispute involves an investor-owned utility, either party to the dispute can request the Commission to conduct an investigation, and the Commission can resolve the dispute after a hearing. If either party objects to the dispute being heard by the Commission, the dispute can be submitted to arbitration. If the Commission determines that the disputed issue is already covered by an approved agreement, the Commission will issue an order based on that agreement.

Disputes submitted to an arbitration shall be heard by one qualified arbitrator, unless the parties agree to use three arbitrators. The arbitration panel is bound by the laws of the state. The parties and the arbitration panel shall use all reasonable efforts to complete the arbitration within three months of the date in which the dispute was referred to arbitration. The determination of the arbitration panel is final and binding upon both parties, subject to review in superior court, upon petition of either party, regarding whether the decision of the panel was arbitrary or capricious.

When a dispute arises that involves only consumer-owned utilities, either party may request the growth management hearings board where the service area in question is located to conduct an investigation, and the growth management hearings board can resolve the dispute after a hearing. The governing board must give consideration to policies set forth in a county or city's comprehensive land use plans, capital facility plans, and development regulations.

The Commission or the growth management hearings board may use alternative dispute resolution, including arbitration, mediation, or the assignment of settlement judges. The Commission or the growth management hearings board must also consider a number of other factors:

- the intent expressed in current law that duplication of electric lines and service is uneconomical and may affect public safety;
- the geographical boundaries of existing service lines and capacity;
- any safety issues involved with extending service to the customer;

- any visual or aesthetic impacts;
- the extent to which extending service will require uneconomic duplication of facilities;
- the length of time in which a utility has provided service in the area;
- any existing agreements approved by the Commission under current law;
- consistency with development of the region;
- any natural geographical boundaries;
- compatibility with the interests of all customers; and
- any other relevant factors.

Unless the above factors require otherwise, if the dispute is about providing new service and more than one electric utility is available to service the property, the utility with the closest service line is entitled to serve the property.

Substitute Bill Compared to Original Bill:

Provides that, when the dispute involves an investor-owned utility and another utility, if either party objects to the dispute being heard by the Commission, the dispute can be submitted to arbitration.

Establishes procedures for arbitration, including selection of arbitrators, number of arbitrators, and payment of arbitrator fees.

Under current law, the annexation of any territory will cancel, as of the date of annexation, any franchise or permit granted to a public utility to operate within that territory. The annexed territory can grant a franchise to continue business for a term of not less than seven years. The proposed substitute provides that, if the annexation of any territory has cancelled the franchise or permit of a public utility and the public utility has been granted a franchise to continue business within the annexed territory for a certain period of time, the provisions of the act do not apply until the expiration of the continued franchise.

Corrects definitions.

Appropriation: None.

Fiscal Note: Requested on February 27, 2005.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: Procedures for resolving these types of disputes will protect utility assets, create certainty in planning, promote safety, and avoid duplication of facilities. Without a method to resolve these disputes, planning and investment are discouraged. There are specific examples of where these disputes have arisen and a system is needed to help resolve the disputes. Resolution of these disputes is also a safety issue so there can be clarity about which utility needs to deal with safety issues that arise. The policy in current law is not enough to encourage resolution of these disputes and current law is not updated to account for growth.

Testimony Against: Voluntary service area agreements are sufficient for dealing with these disputes. This bill moves more towards creating exclusive service territories. This would harm competition and eliminate consumer options. Dispute resolution should not be required by legislation. Territory disputes are not an issue. Utilities can work these problems out themselves.

There are also concerns with letting the Commission resolve these types of disputes, especially for utilities who are not under the jurisdiction of the Commission.

The bill should not include full service municipalities. The bill also usurps local government control of local issues.

Legal issues also apply, including constitutional issues about imposing an ex post facto burden on a public entity and a question of whether the bill would have a retroactive effect. The bill impairs a local government's authority to enter into agreements. The bill also undermines the Growth Management Act and could compromise a city's ability to plan.

Persons Testifying: (In support) Representative Morris, prime sponsor; Randy Ray and Jim Sanders, Benton County Public Utility District; Marc Krasnowsky, Northwest Energy Coalition; Collins Sprague, Avista Corporation; Kathleen Collins, Bernie Bottomly, and Pete Pederson, PacifiCorp; Bill Miller, International Brotherhood of Electrical Workers; Mike Tracey, Puget Sound Energy; and Bob Mack, City of Tacoma.

(Opposed) Tim Boyd, Industrial Customers of Northwest Utilities; Craig Voegelé, Boise Cascade Corporation; Rob Welch and John Darrington, City of Richland; and Tom Husted, Columbia Renewable Energy Association.

Persons Signed In To Testify But Not Testifying: None.