

# SENATE BILL REPORT

## SB 5055

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As of February 5, 2009

**Title:** An act relating to protecting the interests of customers of public service companies in proceedings before the Washington utilities and transportation commission.

**Brief Description:** Protecting the interests of customers of public service companies in proceedings before the Washington utilities and transportation commission.

**Sponsors:** Senators Brown, Fraser, Ranker and Kline.

**Brief History:**

**Committee Activity:** Environment, Water & Energy: 1/21/09.

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### SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

**Staff:** William Bridges (786-7416)

**Background:** The Washington Utilities and Transportation Commission (WUTC) is a three-member commission that has broad authority to regulate the rates, services, and practices of privately-owned utilities and transportation companies. The commission regulates these utilities under a "rate of return" system, where a utility is generally allowed to charge rates that cover its costs, plus an opportunity to make a fair profit.

Tariffs. A tariff is a document that sets a regulated utility's rates and terms of service. A utility may seek a change in its rates by filing a tariff and giving 30-days notice to the commission. During those 30 days, the commission can either allow the rate request to go into effect or suspend it for further investigation. If a tariff is "suspended," the commission has an additional ten months to review the merits of the request.

Suspended Tariffs. A "suspended tariff" is a proposed tariff that the commission has decided to study further. According to commission rules, a utility may not make material changes to a suspended tariff. In the recent past, parties opposing proposed rate increases have argued that some utilities have supplemented their suspended tariffs in a manner that should have required the filing of a new tariff, thereby resetting the ten-month clock. These arguments have not always been accepted by the commission.

Annual Rate Increases. In the past few years, some gas and electric utilities have been seeking annual rate increases. In addition to opposing the resulting rate instability, some

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parties have opposed the annual increases because of the increased time and financial costs of participating in annual rate cases.

Changing the Ownership of a Utility. The commission has broad authority to approve and condition the sale, merger, or transfer of regulated utilities if the transaction is "consistent with the public interest." When analyzing these transactions, the commission applies a "no harm" test, which means the transaction will be approved if it does not harm customers or the public. Some states like Oregon apply a "net benefit" test, which means a transaction will be approved only if customers and the public will somehow benefit from the transaction.

**Summary of Bill:** Resetting the Ten-month Clock When Increasing a Revenue Request in a Suspended Tariff. If a regulated gas, electric, or water utility seeks to increase the level of its revenue request above the amount specified in its suspended tariff, the utility must file a new revised tariff for the increased amount. The revised tariff extends the suspension period for ten months from the date the new tariff was filed.

Creating a "Net Benefit" Test When Considering the Sale, Merger, or Transfer of a Utility. The commission must not approve the sale, merger, or transfer of any regulated gas, electric, telecommunications, or water utility that would result in an entity, directly or indirectly, acquiring substantial influence over the policies and actions of the utility without a finding that the transaction would provide a net benefit to the customers of the utility.

Limiting the Filing of Rate Increases to Once Every 24 Months. A regulated gas, electrical, or water utility may not propose an increase in its rates, charges, rentals, or tolls earlier than 24 months after the date of its most recent filing to increase such rate, charge, rental, or toll. Utilities may still request emergency rate relief at any time.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: The bill protects rate payers and constituents and is in the spirit of the new presidential administration of keeping a watchful eye on the market. For public utilities, the watchful eyes are the local voters. For the privately-owned utilities, the watchful eyes are at the WUTC. This bill will tell the commission to evaluate mergers using a higher standard. Other states like Oregon use this higher standard. Changing the ownership of a utility creates risks for the public, and customers and the net benefit standard helps compensate for those risks. By using such tools as negotiated clean energy funds, the net benefit standard will help advance clean energy, energy efficiency, and low-income programs. According to the prime sponsor, the heart of the bill is the net benefit standard and the other provisions may have unintended consequences. The net benefit standard has worked in Oregon. The net benefit standard allows customers to enjoy some of the benefits of a merger.

CON: Rate cases are about recovering costs and costs would still rise despite the 24-month limitation on filing a rate case. By only allowing rate cases every 24 months, the bill would create big rate increases every 24 months and inhibit investment. The bill would remove the flexibility that is required to accommodate fluctuating costs over an 11-month rate-making process. The net benefit standard is not required because the WUTC has broad authority to impose conditions on mergers, and the commission has successfully imposed conditions that protect the public. The change to a net benefit standard will have no effect in the real world for the interstate utilities because they already have to comply with that standard in many of the states where they operate. The bill could cause an unconstitutional taking if it does not allow a utility to recover its costs. Because telecommunications companies are subject to effective competition from internet telephone service and wireless service, they are no longer traditional monopolies that should be subject to higher merger standards.

OTHER: Twenty-four month filing provision needs to be narrowed to general rate cases. The net benefit standard would probably conform to current commission practice.

**Persons Testifying:** PRO: Senator Brown, prime sponsor; Michael Early, Industrial Customers of Northwest Utilities.

CON: Scott Bolton, PacifiCorp; Tom DeBoer, Puget Sound Energy; Milt Doumit, Verizon; Jim Jesernig, CenturyTel; Kelly Norwood, Collins Sprague, Avista; Tom Walker, Qwest.

OTHER: Dave Danner, WUTC; Charles Eberdt, The Energy Project; Nancy Hirsh, Northwest Energy Coalition.