

SENATE BILL REPORT

SB 5339

As of February 10, 2011

Title: An act relating to the environmental impact of certain gas and electrical company activities.

Brief Description: Incorporating environmental review into certain proceedings involving gas and electrical companies.

Sponsors: Senators Nelson, Rockefeller, Ranker, Hobbs, White and Kline.

Brief History:

Committee Activity: Environment, Water & Energy: 2/01/11.

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Staff: William Bridges (786-7416)

Background: Energy Facility Site Evaluation Council (EFSEC). Created in 1970, EFSEC is the permitting and certificating authority for the siting of major energy facilities in Washington. Its current jurisdiction includes the following: (1) large natural gas and oil pipelines; (2) thermal electric power plants 350 megawatts (MWs) or greater, and their dedicated transmission lines; (3) new oil refineries or large expansions of existing facilities; and (4) underground natural gas storage fields. In addition, energy facilities of any size that exclusively use alternative energy resources (wind, solar, geothermal, landfill gas, wave or tidal action, or biomass energy) can opt-in to the EFSEC process as well as certain electrical transmission lines. EFSEC's jurisdiction does not extend to hydro based power plants or thermal electric plants that are less than 350 MWs.

Counsel for the Environment. The legislation creating EFSEC also required the Attorney General to appoint a Counsel for the Environment, whose duty is to represent the public and its interest in protecting the quality of the environment in the EFSEC process. In 1977 a provision was added charging the costs of the Counsel for the Environment to the Attorney General.

Washington Utilities and Transportation Commission (WUTC). The 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

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

cover its costs, plus an opportunity to make a fair profit. The WUTC is funded by the Public Service Revolving Fund, which is funded by fees on regulated utilities.

As part of the ratemaking process, the WUTC considers whether, and to what extent, a utility should recover costs of its resource acquisitions. The decision is made on a case-by-case basis, taking into consideration such factors as the utility's need for the energy, public policies regarding resource preferences, and the cost of risks associated with the environmental effects of carbon dioxide.

Public Counsel. The Attorney General has the statutory duty to represent the people of the state in all proceedings before the WUTC. In 1983 the Attorney General formed the Public Counsel Section to represent the customers of investor-owned utilities in all WUTC proceedings. The Public Counsel Section is funded by the Public Service Revolving Fund.

Summary of Bill: Requiring the Counsel for the Environment to Participate in WUTC Proceedings. In addition to its duties before EFSEC, the Counsel for the Environment must represent the public's interest in protecting the environment in all WUTC proceedings involving gas or electric utilities. Expenses incurred by the Counsel for the Environment when participating in WUTC proceedings must be paid from the Public Service Revolving Fund.

Establishing Criteria for Reviewing Acquisitions in WUTC Ratemaking Proceedings. In reviewing a resource acquisition by an electrical or gas utility, the WUTC must consider, among other factors, the utility's need for capacity and energy, the availability and cost of other generators in the market at the time of acquisition, the environmental costs and benefits of the acquisition, and the overall impact of the selected generator on the utility's portfolio. The WUTC must consider state laws and policies when considering the environmental costs and benefits of an acquisition.

Appropriation: None.

Fiscal Note: Available.

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 will ensure that the public's interest is heard in WUTC proceedings. The bill requires broader WUTC review of renewable acquisitions, requiring consideration of environmental regulations and environmental benefits. The bill will help utilities hone down on risk that is present when making renewable acquisitions. The WUTC has no specific directive concerning the consideration of environmental policies adopted by the Legislature. The bill offers certainty that environmental policies will be given their proper weight and attention in a carbon constrained world.

CON: Adding the Counsel for the Environment to the WUTC process would increase costs to utilities and ratepayers. It would also be inequitable to require utilities to pay for an

adversary in such proceedings. The bill would create uncertainty because environmental benefits are speculative and unquantifiable, which would increase the risk that they would be disallowed for recovery by the WUTC. State laws and policies can change over time creating more uncertainty for utilities in rate proceedings. Environmental advocates already appear in WUTC proceedings so a Counsel for the Environment would be duplicative and costly. The bill's language is too broad and implies that the Counsel for the Environment could appear in non-WUTC proceedings, such as local hearings. Many of the factors specified in the bill are already considered by the WUTC, so it is unclear if the bill is supposed to supplement or supersede the WUTC's prudency standard. The bill is a hidden tax on consumers. The bill is unnecessary because the WUTC already takes greenhouse gas laws, I-937, integrated resource planning, and carbon risks into consideration. The bill is so broad that it subjects WUTC actions to judicial review if a particular law was not addressed. The current process is adequate and the fiscal note is too high.

Persons Testifying: PRO: Senator Nelson, prime sponsor; Danielle Dixon, Northwest Energy Coalition.

CON: Charlie Brown, Cascade Natural Gas; Kathleen Collins, PacifiCorp; Ken Johnson, PSE; Ann Rendahl, WUTC; Collins Sprague, Avista Corporation.