

SENATE BILL REPORT

ESHB 2839

As Reported by Senate Committee On:
Energy, Environment & Technology, February 22, 2018

Title: An act relating to authorizing an alternative form of regulation of electrical and natural gas companies.

Brief Description: Authorizing an alternative form of regulation of electrical and natural gas companies.

Sponsors: House Committee on Technology & Economic Development (originally sponsored by Representatives Morris, Slatter, Doglio and Fitzgibbon).

Brief History: Passed House: 2/09/18, 64-34.

Committee Activity: Energy, Environment & Technology: 2/21/18, 2/22/18 [DPA, DNP, w/oRec].

Brief Summary of Amended Bill

- Requires the Utilities and Transportation Commission (UTC) and electrical and gas companies to consider a greenhouse gas (GHG) planning adder when evaluating and establishing conservation policies, programs, and targets.
- Requires the UTC to use the GHG planning adder in evaluating integrated resource plan and intermediate-term and long-term resource options selected by electrical and gas companies.
- Authorizes the UTC to consider alternative forms of regulation (AFORs) when energy utilities seek to recover costs incurred on behalf of customers.

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TECHNOLOGY

Majority Report: Do pass as amended.

Signed by Senators Carlyle, Chair; Palumbo, Vice Chair; Hobbs, McCoy, Ranker, Sheldon and Wellman.

Minority Report: Do not pass.

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.

Signed by Senators Ericksen, Ranking Member; Brown.

Minority Report: That it be referred without recommendation.
Signed by Senator Hawkins.

Staff: Kimberly Cushing (786-7421)

Background: Investor-Owned Utilities (IOUs). Three electric IOUs serve Washington customers: Avista, Puget Sound Energy (PSE), and PacifiCorp. Of the three, only PSE has customers limited to Washington.

Washington UTC. The UTC is a three-member commission that has broad authority to regulate the rates, services, and practices of a variety of businesses in the state, including electric IOUs. In a typical rate case, the petitioner must prove a requested action is in the public interest by preponderance of the evidence or a reasonable basis test.

As part of the ratemaking process for electric IOUs, the UTC considers whether, and to what extent, an IOU should recover the cost of a resource acquisition or the cost of an investment in a new generating facility. The UTC's 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.

Integrated Resource Plan (IRP). All investor-owned and consumer-owned electric utilities in the state with more than 25,000 customers must develop IRPs. All other electric utilities in the state, including those that essentially receive all their power from the Bonneville Power Administration, must file either an IRP or a less-detailed resource plan.

An IRP must describe the mix of generating resources and conservation and efficiency resources that will meet current and projected needs at the lowest reasonable cost to the utility and its ratepayers. An IRP must include a number of components, such as an assessment of commercially available conservation and efficiency resources.

State of Emergency. The Governor may proclaim a state of emergency when a public disorder, disaster, energy emergency, or riot exists within the state that affects life, health, property, or public peace. The state of emergency is proclaimed for, and only effective within, the affected area which may be part or all of the state.

Summary of Bill: The bill as referred to committee not considered.

Summary of Amended Bill: Requiring a GHG Planning Adder. Electrical companies, gas companies, and the UTC must use the GHG planning adder when evaluating and selecting conservation policies, programs, and targets.

Electrical companies and gas companies must use the GHG planning adder in developing and evaluating IRPs and evaluating and selecting intermediate-term and long-term resource options. The UTC must use the GHG planning adder in evaluating IRPs and intermediate and long-term resource options selected by electrical and gas companies.

Intermediate-term resource options means a new or renewed contract of electricity or natural gas with a term of more than three, but less than five years for the provision of power to retail end-use customers in Washington. Long-term resource options means either a new ownership interest in an electric plant or an upgrade to an existing electric plant, or a new or renewed contract for electricity with a term of five or more years for the provision of power to retail end-use customers in Washington.

The implementation of GHG planning adder for multi-state electric companies with retail customers and generation located outside Washington is delayed until January 1, 2020. Electrical companies, gas companies, and the UTC must evaluate and quantify, to the extent practicable, potential ratepayer impacts of using the GHG planning adder.

GHG planning adder means a calculation of the economic impacts associated with an incremental increase in carbon dioxide (CO₂) emissions in a calendar year and must be an amount equal to the greater of:

- \$40 per metric ton of CO₂, for calendar year 2018, which must be increased each January 1 by 1.25 percent, rounded to the nearest dollar for calendar year 2018; or
- the applicable carbon tax rate, if any, as expressed in dollars per metric ton of CO₂ for the calendar year.

Authorizing an AFOR. The UTC may regulate an electrical or gas company (company) by authorizing an AFOR, and determining whether it is in the public interest to authorize an AFOR or all or individual utility services. The UTC shall consider the extent to which an AFOR is expected to:

- align utility regulatory incentives with the public interest;
- maintain and enhance the ability of the company to furnish safe, adequate, and efficient service to its customers;
- allow a company to support and participate in market transformation for enabling technologies without harming competition;
- allow a company to be financially indifferent to the ownership of the property necessary to furnish utility service to its customers, except where furnished to establish a person as a customer, or the quantity of electricity or gas sold to its customers;
- protect customers, especially low-income customers, from risks;
- ensure an appropriate level of consumer protection;
- support the achievement of state emissions reduction goals;
- consider adverse environmental impacts;
- provide the company with the opportunity to earn a reasonable rate of return on investment; and
- provide for broad customer engagement.

Either a company may initiate a petition or the UTC may initiate a motion to establish an AFOR. With the petition, the company must submit a plan that may include a reasonable range for rate of return on investment and must include a proposal for transition to the AFOR and the duration of the plan. The plan must include customer and stakeholder input, and contain a proposal for performance metrics and enforcement or remedial provisions if the company fails to meet the metrics.

After notice and hearing, the UTC must issue an order accepting, modifying, or rejecting the plan within 11 months after the petition or motion is filed, unless extended for good cause. Within 60 days of the order, the company must file with the UTC an election to either proceed or not to proceed with the AFOR authorized by the UTC.

The UTC may waive another regulatory requirement subject to an AFOR as long as it does not waive any previously granted legal rights to any person.

After a petition by a company, notice, and hearing, the UTC may rescind or modify an AFOR. The UTC or any person may file a complaint alleging that a company has not complied with the terms and conditions set forth in the AFOR. The complainant bears the burden of proving the complaint allegations. Additionally, the Governor may waive or suspend an AFOR under a declared state of emergency.

Expressing Legislative Findings and Intent. Various legislative findings are made and the intent of the Legislature is expressed concerning the authorization of the UTC to employ AFORs for electrical and gas companies to further the state's public policy goals.

EFFECT OF ENERGY, ENVIRONMENT & TECHNOLOGY COMMITTEE AMENDMENT(S):

- Requires electrical companies, gas companies, and the UTC to evaluate and quantify, to the extent practicable, potential ratepayer impacts of using the GHG planning adder.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Proposed Striking Amendment: *The committee recommended a different version of the bill than what was heard.* PRO: The planning adder provides certainty and will ensure today's investments become next year's assets. This bill provides a workable framework for AFOR. The change to regulatory practices will benefit customers looking for more dynamic products.

CON: AFOR for telecommunications consumers were for expanding options. But for electric utilities customers are captive. We need a robust regulatory framework. Rulemaking must be allowed for structuring regulation.

OTHER: AFOR is a major policy change and the bill needs new sidebars. Forty dollars should not be the minimum. There should be a trigger to allow industrial customers to drop out for direct access. We need reliable baseload generation. AFOR was modeled after

telecommunications provisions to address competition, but there is no competition for electric and natural gas companies. Robust regulation of a company is appropriate.

Persons Testifying: PRO: Amy Wheelless, NW Energy Coalition; Brandon Houskeeper , Puget Sound Energy; Vlad Gutman-Britten , Climate Solutions; John Rothlin, Avista.

CON: James King, Independent Business Association.

OTHER: Lisa Gafken, WA Attorney General's Office; Tim Boyd, Industrial Customers of NW Utilities & NW Industrial Gas Users.

Persons Signed In To Testify But Not Testifying: No one.