SENATE BILL REPORT
ESSB 5295

As Amended by House, April 7, 2021

Title: An act relating to transforming the regulation of gas and electrical companies toward multiyear rate plans and performance-based rate making.

Brief Description: Transforming the regulation of gas and electrical companies toward multiyear rate plans and performance-based rate making.

Sponsors: Senate Committee on Environment, Energy & Technology (originally sponsored by Senators Carlyle and Short).

Brief History:

Committee Activity: Environment, Energy & Technology: 1/27/21, 2/11/21 [DPS, DNP, w/oRec].

Floor Activity: Passed Senate: 3/5/21, 44-4.
Passed House: 4/7/21, 94-3.

Brief Summary of Engrossed First Substitute Bill

- Requires every general rate case filing of a gas or electrical company (utilities) to include a proposal for a multiyear rate plan (MYRP) that set rates and align cost recovery for several years at a time.
- Requires the Utilities and Transportation Commission to determine a set performance measures that will be used to assess a utility operating under a MYRP.
- Allows utilities to expand bill assistance programs through low-income discounts or grants provided in coordination with community-based organization in the utility's service territory.
- Allows utilities to provide financial assistance to organizations who represent broad customer interests in regulatory proceedings.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: That Substitute Senate Bill No. 5295 be substituted therefor, and the substitute bill do pass.
Signed by Senators Carlyle, Chair; Lovelett, Vice Chair; Das, Hobbs, Liias, Nguyen, Sheldon, Short, Stanford and Wellman.

Minority Report: Do not pass.
Signed by Senator Ericksen, Ranking Member.

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

Staff: Kimberly Cushing (786-7421)

Background: Utilities and Transportation Commission. The Utilities and Transportation Commission (UTC) is a three-member commission with broad authority to regulate the rates, services, and practices of a variety of businesses in the state, including electric investor-owned utilities. The UTC must ensure rates charged by these companies are fair, just, and reasonable.

Under current state statute, the UTC has the power to ascertain and determine the fair value of a public service company's property that is used and useful for service in Washington by or during the rate effective period for rate-making purposes.

Clean Energy Transformation Act. In 2019, the Legislature passed the Clean Energy Transformation Act (CETA), which requires Washington's electric utilities to meet 100 percent of their retail electric load using non-emitting and renewable resources by January 1, 2045. Additionally, CETA requires electric utilities to eliminate coal-fired resources from their allocation of electricity by December 31, 2025, and make all retail sales of electricity greenhouse gas (GHG) neutral by January 1, 2030.

Additionally, under CETA electric utilities must mitigate energy burden and consider the adequacy of energy assistance programs for low-income households. Energy burden means the share of annual household income used to pay annual home energy bills.

Summary of Engrossed First Substitute Bill: To provide clarity and certainty to stakeholders on the details of performance-based regulation, the UTC is directed to conduct a proceeding to develop a policy statement addressing alternatives to traditional cost of service rate making, including performance measures or goals, targets, performance incentives, and penalty mechanisms. As part of the proceeding, the UTC must consider specified factors and allow for participation and consultation with regulated utilities, the attorney general's office, and other interested stakeholders. The UTC must notify the appropriate committees of the Legislature by January 1, 2022, of the process and duration of the work plan to conduct this proceeding.

Multiyear Rate Plans. Beginning January 1, 2022, every general rate case filing of a gas or electric utility must include a proposal for a multiyear rate plan (MYRP). The UTC may by order after an adjudicative proceeding, approve, approve with conditions, or reject, a MYRP proposal made by a utility , an alternative proposal made by one or more parties, or any combination of these. The UTC's consideration of a proposal for a MYRP is subject to the same standards as other related filings, including the public interest and fair, just, reasonable, and sufficient rates.

The UTC may approve, disapprove, or approve with modifications any proposal to recover from ratepayers up to 5 percent of the total UTC revenue requirement for each year of a MYRP for tariffs that reduce the energy burden of low-income residential customers . The tariffs may include bill assistance programs or one or more special rates. For any approved MYRP resulting in a rate increase, the UTC must approve an increase in low-income bill assistance for each year there is a rate increase that is, at a minimum, equal to double the percentage increase for residential base rates. The UTC may approve a larger increase to low-income bill assistance based on an appropriate record.

If it approves a MYRP, the UTC must approve rates separately for the initial rate year, the second rate year, and, if applicable, the third and fourth rate years. Consistent with current law, the UTC must ascertain and determine the fair value for rate-making purposes of the property of a utility that has filed a MYRP that is or will be used and useful for service in Washington by or during each rate year for the MYRP. For the initial rate year, the UTC must, at a minimum, make this determination by the rate effective date. The UTC may order refunds to customers if property expected to be used and useful when the plan is approved is not used and useful by the rate effective date.

The UTC must ascertain and determine the revenues and operating expenses for rate-making purposes of any gas or electric utility for each rate year of the MYRP. The UTC may use any standard, formula, method, or theory of valuation reasonably calculated to arrive at fair, just, reasonable, and sufficient rates, when ascertaining and determining the fair value of property and projecting revenues and operating expenses for a utility under a MYRP. If the UTC approves a MYRP with a duration of three or four years, then an electric utility must update its power costs as of the rate effective date of the third rate year.

The gas or electric utility is bound by the terms of the UTC approved MYRP for the initial rate year and the second rate year. The utility may file a new MYRP for the third or fourth rate years, if any, of a MYRP. Subject to the terms of the MYRP, the UTC may by order establish terms, conditions, and procedures for a MYRP and ensure rates remain fair, just, reasonable, and sufficient during the course of the plan, including terms and procedures for rate adjustment during the term of the plan.

If the annual commission basis report demonstrates the reported rate of return for a utility is more than 0.5 percent higher than the rate of return authorized by the UTC in the MYRP, the utility must defer all revenues in excess of 0.5 percent higher than the rate of return for further determination in a subsequent adjudicative proceeding. The UTC must waive this requirement if a multi-state electrical company with fewer than 250,000 Washington customers files a MYRP that provides for no increases in base rates in consecutive years beyond the initial rate year, provided the waiver results in just and reasonable rates.

The UTC must determine a set of performance measures that will be used to assess a gas or electric utility operating under a MYRP. The performance measures may be based on proposals made by the utility or any other party to the proceeding in the response to the company's filing, or in the testimony and evidence admitted in the proceeding. The UTC may consider specific factors in developing performance measures, incentives, and penalty mechanisms.
The UTC must align, to the extent practical, the timing of approval of a MYRP of an electric utility with the clean energy implementation plan filed under CETA.

Nothing in this bill precludes any gas or electric utility from making filing required or permitted by the UTC nor may be construed to limit the existing rate-making authority of the UTC.

Rates for Low-Income Customers. Upon its own motion, or the request by a utility, or other party to a general rate case or hearing, or other proceeding to set rates, the UTC may approve rates, charges, services, or physical facilities at a discount or through grants for low-income seniors and low-income customers. The utility must use reasonable and good faith efforts to seek approval for low-income program design, eligibility, operation, outreach, and funding proposals from its low-income and equity advisory groups before filing with the UTC. Low-income discounts or grants must be provided in coordination with community-based organizations in the utility's service territory.

Eligibility for a low-income discount rate or grant may be established upon verification of a low-income customer's receipt of any means tested public benefit, or verification of eligibility for the low-income home energy assistance program, for which eligibility does not exceed the income definition set by the UTC under CETA. Public benefits that may determine eligibility are enumerated.

Each gas or electric utility must conduct substantial outreach efforts to make the low-income discounts or grants available to eligible customers and annually report to the UTC on outreach activities and results. Outreach must be made at least semiannually to inform customers of available rebates, discounts, credits, and other cost-saving mechanisms that can help them lower their monthly gas or electricity bills, and may be in the form of any customary and usual methods of communication or distribution.

Outreach may include establishing an automated program of matching customer accounts with lists of recipients of the means tested public benefit programs and presumptively offer a discount rate or grant to eligible customers. However, the gas or electric utility must within 60 days of the presumptive enrollment inform the low-income customer of the enrollment and all customer rights and obligations under the program, including the right to withdraw without penalty.

A residential customer eligible for a low-income discount rate must receive the service on demand.
A residential customer may not be charged for initiating or terminating low-income discount rates, grants, or any other form of energy assistance.

Agreement for Financial Assistance to Certain Organizations. A gas or electric utility may enter into one or more written agreements with organizations that represent broad customer interests in UTC regulatory proceedings. More than one gas utility, electric utility, or organization representing customer interests may join in a single agreement. Organizations representing vulnerable populations or highly impacted communities may be interpreted as organizations that represent broad customer interests.

The agreement must be approved by the UTC before financial assistance is provided and the UTC must consider whether the agreement is consistent with a reasonable allocation of financial assistance provided to organizations among classes of customers of the utility. The UTC, by rule or order, may determine:
- the amount of financial assistance to be provided to an organization;
- the manner in which the financial assistance is distributed;
- the manner in which the financial assistance is recovered in the rates of the gas or electric utility; and
- other matters necessary to administer the agreement.

Financial assistance made to an organization is limited to funds contributed by the customer class or classes represented by such an organization. If an organization receiving funds represents more than one class of customers of a utility, then the funding must be equitably apportioned between or among the customer classes.

The UTC must allow a gas or electric utility that provides financial assistance to recover the amount in rate. The UTC must allow a utility to defer including the amount of financial assistance rates. An agreement may not provide for payment to the UTC.

Organizations representing vulnerable populations or highly impacted communities must be prioritized for funding.

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 Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: We are in a period of profound transformation for our energy systems. Utilities and the UTC should have the ability to look holistically at long-term planning. Washington is a national leader in clean energy and the enactment of CETA will accelerate the adoption of new renewable energy and demand-side resources. The state regulatory environment must be structured to facilitate smooth implementation and ensure compliance is achieved efficiently and cost-effectively. The bill will provide predictable rates, spread rate increases over multiple years, and grant utilities more predictable revenues. The legislation connects the legal requirement to provide clean energy to customers with the ability to finance investments. Traditional regulation creates barriers. The bill helps vulnerable customers by authorizing to offer discounts to reduce energy burden and by offering split incentives in the rental market. The legislation is important for gas companies to be able to comply with new changes in the energy environment. It is a more forward looking, collaborative approach. It might provide more options for more renewable natural gas and lower carbon emissions. The legislation is timely and works in tandem with CETA, as well as a cap and invest program and low carbon fuels standard.

CON: The Legislature has already provided the tools needed for MYRPs. The utilities have yet to take advantage of the tools available. We would prefer to identify what is not working with these tools instead of making a holistic change that affects the final outcome of rate cases. The bill exposes customers to automatic annual rate creates for up to four years based on speculative forecasts. The provisions are tilted toward utility interests and shifts financial risk to customers. The proposal is tone deaf to economic challenges of COVID-19. The best approach is to give the UTC direction to develop MYRPs. The bill reduces regulator and public oversight.

OTHER: Utilities have been filing general rate cases (GRCs) on an annual cycle. They are highly complex filings that have to be completed within 11 months by statute. In 2020, all five utilities had pending rate cases. This revolving load of rate cases is heavy and unsustainable in addition to implementing CETA and other work. This bill makes work load more predictable and provides more certainty for customer rates and allows the UTC to pursue performance-based regulation. The UTC has traditionally relied on looking at historical costs and adjusting them. Under a MYRP, the UTC will still set baselines based on historical costs, but rely more on forecasts and trending analyses, which it will be able to evaluate accurately. Many details need to be addressed and significant aspects are missing in the bill. MYRPs only work with aggressive metrics, otherwise energy rates will be higher than they need to be. Benefits for rental housing should be addressed in another bill. Utility rate processes need to respond to changing dynamics.

Persons Testifying: PRO: Senator Reuven Carlyle, Prime Sponsor; Ken Johnson, Puget Sound Energy; Kevin Christie, Avista; Charlie Brown, NW Natural.

CON: Brandon Houskeeper, Alliance of Western Energy Consumers; Shawn Collins, Opportunity Council; Katrina Peterson, Puget Sound Sage.

OTHER: Dave Danner, Utilities and Transportation Commission; Joni Bosh, NW Energy Coalition; Kathleen Collins, PacifiCorp.

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

EFFECT OF HOUSE AMENDMENT(S):

- Requires a gas or electric company to defer all revenues in excess of 0.5 percent higher than the rate of return authorized by the UTC in a multiyear rate plan for refunds to customers or another determination by the UTC.
- Requires, rather than authorizes, a utility to, upon request, enter into one or more financial assistance agreements with organizations that represent broad customer interests in regulatory proceedings.
- Removes the provisions limiting financial assistance to an organization to funds contributed by the customer class or classes represented by the organization.
- Specifies that expenses and lost revenues as a result of a gas or electric company's low-income discount rate, grants, or other low-income assistance programs must be included in the company's cost of service and recovered in rates to other customers.
- Requires each gas or electric company to propose a low-income assistance program comprised of a discount rate for low-income senior customers and low-income customers as well as grants and other low-income assistance programs.
- Requires the UTC to approve, or approve with modifications, each company's low-income assistance discount rate and grant program.
- Amends a statement of statewide policy regarding the provision of energy services in the state by utilities to refer to "energy services" broadly rather than to "natural gas and electric services" specifically.