

# SENATE BILL REPORT

## SB 5055

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As Reported by Senate Committee On:  
Environment, Water & Energy, February 04, 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, 2/04/09 [DPS].

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### SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

**Majority Report:** That Substitute Senate Bill No. 5055 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rockefeller, Chair; Pridemore, Vice Chair; Delvin, Fraser, Hatfield, Holmquist, Marr and Ranker.

**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.

Changing the Ownership of a Utility. WUTC has broad authority to approve and condition the sale or purchase of regulated utilities if the transaction is "consistent with the public interest." When analyzing these transactions, WUTC applies a "no harm" test, which means the transaction will be approved if it does not harm customers or the public. Some states such as 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. There is no deadline for the denying or approving a sale or purchase of a regulated utility.

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*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.*

**Summary of Bill (Recommended Substitute):** Creating a "Net Benefit" Test When Considering the Sale, Merger, or Transfer of a Utility. WUTC must not approve the sale, merger, or transfer of any regulated gas or electric utility that would result in a person, directly or indirectly, acquiring a controlling interest in the utility without a finding that the transaction would provide a net benefit to the customers of the utility.

"Person" means an individual, partnership, joint venture, corporation, association, firm, public service company, or any other entity, however organized.

Creating an Eleven-Month Clock for Considering the Sale or Purchase of a Utility. WUTC must approve or deny a sale or purchase of a regulated utility within 11 months of the date of filing, which WUTC may extend up to four months for cause.

**EFFECT OF CHANGES MADE BY ENVIRONMENT, WATER & ENERGY COMMITTEE (Recommended Substitute):** The following elements in the underlying bill are removed: the requirement that a utility must file an amended tariff if the utility wants to increase a tariff that is still under consideration by the WUTC; and the provision limiting rate cases to every 24 months. The "net benefit" standard is narrowed to the sale of a Washington gas or electric utility. Technical changes are made to the "net benefit" standard. A provision is added specifying an 11-month clock for the consideration of mergers, which the commission may extend up to four months for cause.

**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 on Original Bill:** 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.