

# SENATE BILL REPORT

## SB 5816

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As of Third Reading

**Title:** An act relating to clarifying the valuation and determination of used and useful property for rate making purposes.

**Brief Description:** Clarifying the valuation and determination of used and useful property for rate making purposes.

**Sponsors:** Senators Carlyle and Ericksen.

**Brief History:**

**Committee Activity:** Environment, Energy & Technology: 2/19/19, 2/20/19 [DP].

**Brief Summary of Bill**

- Specifies the Utilities and Transportation Commission (UTC) may ascertain and determine the fair value of a regulated company's property that is used and useful for service in the state by or during the rate effective period for ratemaking purposes.
- Authorizes the UTC to provide changes to rates for up to 48 months after the rate effective date using any standard, formula, method, or theory of valuation reasonably calculated to arrive at fair, just, reasonable, and sufficient rates.
- Specifies the UTC's authority to consider and implement performance and incentive-based regulation, multiyear rate plans, and other flexible regulatory mechanisms.

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### SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

**Majority Report:** Do pass.

Signed by Senators Carlyle, Chair; Palumbo, Vice Chair; Ericksen, Ranking Member; Fortunato, Assistant Ranking Member, Environment; Sheldon, Assistant Ranking Member, Energy & Technology; Billig, Brown, Das, Hobbs, Liias, McCoy, Nguyen, Rivers, Short and Wellman.

**Staff:** Kimberly Cushing (786-7421)

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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.*

**Background:** 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 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 as part of the ratemaking process. In determining what property is used and useful for providing electric, gas, and other utility services, the UTC may include the reasonable costs of construction work in progress, to the extent the UTC finds that inclusion is in the public interest.

However, in 2018 Division Two of the Washington State Court of Appeals in *Office of Attorney General, Public Counsel Unit v. Washington Utilities and Transportation Commission* held that the used and useful standard only allows utilities to include the value of property used and useful for public service at the time changes to rates are considered by the UTC.

**Summary of Bill:** For ratemaking purposes, UTC is authorized to ascertain and determine the fair value of a utility's property that is used and useful for service in Washington by or during the rate effective period. The valuation may include the consideration of property acquired or constructed by or during the rate effective period, including the reasonable costs of construction work in progress, to the extent UTC finds the inclusion is in the public interest and will yield fair, just, reasonable, and sufficient rates.

UTC may make changes to these rates for up to 48 months after the rate effective date using any standard, formula, method, or theory of valuation reasonably calculated to arrive at fair, just, reasonable, and sufficient rates. UTC must establish a process to identify, review, and approve property that becomes used and useful after the rate effective date.

Nothing in the used and useful standard provisions limits UTC's authority to consider and implement performance and incentive-based regulation, multiyear rate plans, and other flexible regulatory mechanisms.

**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:** PRO: Traditional regulations served our industry well for decades but no longer provides the regulatory tools needed to support the transition to a cleaner economy and allow for the recovery of costs. Rate making was developed in an era when services were basic, equipment was simple, and utilities were investing in generation and transmission assets that had a 20 to 50-year useful life. Capital investments made now lean heavily toward technology that has a useful life of five years or less. The bill

will modernize UTC's toolbox while maintaining the consumer protections in place today. This is consensus language and is included in SB 5116. This bill stems from the appeals court decision related to how the UTC deems property used and useful during a rate period. Rather than appealing, the UTC pulled a group together to work out clarity in statute. We will be looking for the full complement of regulatory tools, such as alternative forms of regulation, as we work through transformational energy policies that are coming before the Legislature, but we appreciate this fix to put some of the regulatory pieces back in place.

**Persons Testifying:** PRO: Brandon Houskeeper, Puget Sound Energy; Tim Boyd, Alliance of Western Energy Consumers; John Rothlin, Avista.

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