HOUSE BILL REPORT
ESSB 5295

As Passed House - Amended:
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: 3/16/21, 3/26/21 [DPA].
Floor Activity:
Passed House: 4/7/21, 94-3.

Brief Summary of Engrossed Substitute Bill
(As Amended By House)

- Requires the Utilities and Transportation Commission (UTC) to conduct a proceeding to develop a policy statement addressing alternatives to traditional cost-of-service rate-making for gas and electrical companies.
- Requires every general rate case filing of a gas or electrical company to include a proposal for multiyear rate plans beginning January 1, 2022.
- Requires the UTC to determine a set of performance measures that will be used to assess the gas or electrical company operating under a multiyear rate plan.
- Authorizes the UTC to approve rates, charges, services, or physical facilities at a discount, or through grants, for low-income residential customers.

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

- Requires each gas or electrical company to propose a low-income assistance program comprised of a discount rate as well as grants and other low-income assistance programs.
- Requires a gas or electrical company to enter into one or more written agreements for the purpose of providing financial assistance to organizations that represent broad customer interests in regulatory proceedings conducted by the UTC.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: Do pass as amended. Signed by 13 members: Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Dye, Ranking Minority Member; Klicker, Assistant Ranking Minority Member; Abbarno, Berry, Boehnke, Fey, Goehner, Harris-Talley, Ramel, Shewmake and Slatter.

Staff: Nikkole Hughes (786-7156).

Background:

Regulated Utility Rate-Making.

The Utilities and Transportation Commission (UTC) regulates the rates, services, and practices of certain public service companies, including electrical companies, natural gas companies, and telecommunications companies. The UTC is required to ensure that rates charged by these companies are fair, just, reasonable, and sufficient.

Under traditional regulation of utilities by the UTC, rates are calculated from a company's rate base and the rate of return allowed on its rate base. A public service company's rate base is the total non-depreciated value of its property and equipment used to provide utility services to ratepayers. "Rate of return" is the level of profit and the cost of debt a company is allowed to return on its rate base through rates charged to utility customers.

In establishing rates, the UTC has the power to, upon complaint or upon its own motion, 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. The valuation may include consideration of any property acquired or constructed by or during the rate effective period, including the reasonable costs of construction work in progress, to the extent that the UTC finds that such inclusion is in the public interest and will yield fair, just, reasonable, and sufficient rates.

The UTC may 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. The UTC must establish an appropriate process to identify, review, and approve utility property that becomes used and useful for service in the state after the rate effective date.

Alternative Forms of Regulation.

The UTC is authorized to employ an alternative form of regulation of telecommunications companies if that alternative is better suited to achieve the state's policy goals than traditional rate of return, rate base regulation. A telecommunications company subject to traditional rate of return, rate base regulation may petition the UTC to establish an alternative form of regulation. A company pursuing this form of regulation must submit an alternative regulation plan with its petition. The UTC may waive regulatory requirements for a telecommunications company subject to an alternative form of regulation as may be appropriate to facilitate the implementation of the alternative form of regulation.

Low-Income Energy Assistance Under the Clean Energy Transformation Act.

Under the Clean Energy Transformation Act (CETA), each electric utility must make programs and funding available for energy assistance to low-income households by July 31, 2021. Each utility must demonstrate progress in providing energy assistance pursuant to an energy assistance needs assessment. To the extent practicable, priority must be given to low-income households with a higher energy burden.

Beginning July 31, 2020, the Department of Commerce (Commerce) must collect and aggregate data estimating the energy burden and energy assistance need and reported energy assistance for each electric utility, in order to improve agency and utility efforts to serve low-income households with energy assistance. Commerce must update the aggregated data on a biennial basis, make it publicly accessible on its Internet website, and to the extent practicable, include geographic attributes.

A consumer-owned utility may enter into an agreement with a public university, community-based organization, or joint operating agency to aggregate the disclosures required under the CETA.

Under the CETA, "energy assistance" includes, but is not limited to, weatherization, conservation and efficiency services, and monetary assistance intended to lower a household's energy burden. "Energy assistance" may also include direct customer ownership of distributed energy resources or other strategies if such strategies achieve a reduction in energy burden for the customer above other available conservation and demand-side measures.

Definitions.

"Energy burden" means the share of annual household income used to pay annual home energy bills.

"Highly impacted communities" means a community designated by the Department of Health based on cumulative impact analyses or a community located in census tracts that are fully or partially on "Indian country" as defined in 18 U.S.C. Sec. 1151.

"Low-income" means household incomes as defined by Commerce or the UTC, provided that the definition may not exceed the higher of 80 percent of area median household income or 200 percent of the federal poverty level, adjusted for household size.

"Vulnerable populations" means communities that experience a disproportionate cumulative risk from environmental burdens due to:
- adverse socioeconomic factors, including unemployment, high housing and transportation costs relative to income, access to food and health care, and linguistic isolation; and
- sensitivity factors, such as low birth weight and higher rates of hospitalization.

Summary of Amended Bill:

Policy Statement.

The UTC must conduct a proceeding to develop a policy statement addressing alternatives to traditional cost-of-service rate-making for electrical and gas companies. As part of the proceeding, the UTC must consider factors such as lowest reasonable cost planning, affordability, increases in energy burden, reliability, attainment of state energy and emissions reduction policies, and rapid integration of renewable energy resources.

In developing its policy statement, the UTC must allow for participation and consultation with regulated utilities, the Office of the Attorney General, and other interested stakeholders including, but not limited to, residential, industrial, commercial, and low-income customers and organizations, as well as environmental or community organizations and stakeholders.

By January 1, 2022, the UTC must notify the chairs and ranking members of the appropriate committees of the Legislature of the process to date, the expected duration of, and work plan associated with the proceeding.

Multiyear Rate Plans.

Beginning January 1, 2022, every general rate case filing of a gas or electrical company 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 gas or electrical company or an alternative proposal made by one or more parties. The UTC's consideration of a proposal for a MYRP is subject to the same standards applicable to other rate filings, including the public interest and fair, just, reasonable, and sufficient rates.

In determining the public interest, the UTC may consider factors including, but not limited to, environmental health and greenhouse gas emissions reductions, health and safety concerns, economic development, and equity, to the extent such factors affect the rates, services, and practices of a gas or electrical company.

The UTC may approve, disapprove, or approve with modifications any proposal to recover from ratepayers up to 5 percent of the total revenue requirement approved by the UTC for each year of a MYRP for tariffs that reduce the energy burden of low-income residential customers. For any approved MYRP that results in a rate increase, the UTC must approve an increase in the amount of low-income bill assistance to take effect in each year of the rate plan where there is a rate increase. At a minimum, the amount of such an increase in low-income assistance must be equal to double the percentage increase, if any, in the residential base rates approved for each year of the rate plan. The UTC may approve a larger increase in low-income bill assistance based on an appropriate record.

In approving a MYRP, the UTC must determine a set of performance measures that will be used to assess the gas or electrical company operating under a MYRP. The performance measures may be based on proposals made by the gas or electrical company in its initial application, by any other party to the proceeding in its response to the company's filing, or in the testimony and evidence admitted in the proceeding.

In developing performance measures, incentives, and penalty mechanisms, the UTC may consider factors such as customer satisfaction and engagement, reliability, conservation acquisition, rate stability, and fair compensation of utility employees.

Discounts for Low-Income Customers.

Upon its own motion or upon request by an electrical or gas company, or other party to a proceeding to set rates, the UTC may approve rates, charges, services, or physical facilities at a discount, or through grants, for low-income senior customers and low-income customers. Expenses and lost revenues as a result of these discounts, grants, and other low-income assistance programs must be included in the company's cost of service and recovered in rates to other customers. Each gas or electrical company must also 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. The UTC must approve, disapprove, or approve with modifications each gas or electrical company's low-income assistance discount rate and grant program.

The gas or electrical company 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 in advance of filing program proposals with the UTC. Any low-income discounts or grants approved by the UTC must be provided in coordination with community-based organizations in the gas or electrical company's service territory including, but not limited to, grantees of Commerce, community action agencies, and community-based nonprofit organizations.

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 federal Low-Income Home Energy Assistance Program, or its successor program, for which eligibility does not exceed the low-income definition set by the UTC pursuant to the CETA.

Each gas or electrical company must conduct substantial outreach efforts to make the low-income discounts or grants available to eligible customers and must provide annual reports to the UTC as to the company's outreach activities and results.

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.

Customer Interests in Regulatory Proceedings.

A gas or electrical company must, upon request, enter into one or more written agreements for the purpose of providing financial assistance to organizations that represent broad customer interests in regulatory proceedings conducted by the UTC, including but not limited to organizations representing low-income, commercial, and industrial customers, vulnerable populations, or highly impacted communities. The agreement must govern the manner in which financial assistance may be provided to the organization. Any agreement entered into by a gas or electrical company and a customer interest organization must be approved, approved with modifications, or rejected by the UTC. 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 gas or electrical company.

Before administering a financial assistance agreement, the UTC may determine, by rule or order:
- the amount of financial assistance, if any, that may be provided to any organization;
- the manner in which the financial assistance is distributed;
- the manner in which the financial assistance is recovered in rates; and
- other matters necessary to administer the agreement.

The UTC must allow a gas company or electrical company that provides financial assistance to a customer interest organization to recover the amounts provided in rates. The UTC must allow a gas or electrical company to defer inclusion of those amounts in rates if the company so elects.

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

Statewide Policy on the Provision of Energy Services.

It is the policy of the state to:
- preserve affordable energy services to the residents of the state;
- maintain and advance the efficiency and availability of energy services to the residents of the state;
- ensure that customers pay only reasonable charges for energy services; and
- permit flexible pricing of energy services.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Washington is recognized nationally as a leader in clean energy. Aligning the utilities' regulatory environment with the CETA will help utilities ensure that compliance is achieved equitably and cost-effectively. This bill brings greater clarity to the process of establishing customer rates in the future. Multiyear rate plans will provide customers with more predictable rates and utilities with more predictable revenues over the life of the plan. This bill provides funding to stakeholders who might not otherwise be able to afford to engage in the rate-making process. This bill represents a stakeholder compromise. This bill connects the utilities' legal requirement to supply clean energy to customers with the utilities' ability to make those investments and recover those costs. This bill allows for MYRPs so that utilities have certainty for when costs can be recovered. These changes in regulation are necessary to address the significant changes in energy policy in the state. The CETA requires the UTC to approve utilities' clean energy implementation plans in advance, which requires the UTC to approve certain investments in advance, rather than after the fact. This bill is needed to help the UTC manage an increase in workload. In 2020 all of the energy utilities that the UTC regulates filed rate cases, which the UTC must complete within 11 months under state law. This bill provides important direction to the UTC to modernize its regulation of electric and gas companies. Prior versions of the bill specifically provided for rebates to customers in the event that a utility was over-earning in any year of the rate plan. There is currently no state policy guiding decarbonization of the gas system. Ultimately, the UTC needs more resources to implement the energy transition. Allowing MYRPs will support the decarbonization of the gas sector.

(Opposed) Many homes and businesses are reducing energy consumption on their own. Local governments are also adding taxes on utilities, which increases the amount that seniors and low-income customers have to pay out of pocket for their utility bills. The application process for bill assistance is onerous. Because of the pandemic, many more people need energy assistance.

(Other) There is still more work that needs to be done on this bill. The policy in this bill is already available to both the utilities and the UTC to bring forward MYRPs and to consider MYRPs with a forward-looking view. This issue was addressed in the regulatory reforms included in the CETA. Those tools have not been test-run through the regulatory process to see what their outcomes may be. This bill does not provide the resources the UTC needs to complete its current scope of work. There is no guarantee that a utility will get a MYRP out of the process included in the bill. Industrial, commercial, and residential customers who do not qualify as low-income will bear the costs of rate increases associated with MYRPs.

Persons Testifying: (In support) Ken Johnson, Puget Sound Energy; Kevin Christie, Avista; Dave Danner, Utilities and Transportation Commission; Lauren McCloy, Northwest Energy Coalition; and Charlie Brown, Cascade Natural Gas and Northwest Natural.

(Opposed) Stacey Valenzuela.

(Other) Brandon Houskeeper, Alliance of Western Energy Consumers.

Persons Signed In To Testify But Not Testifying: Kelly Hall, Climate Solutions; and Shawn Collins, Opportunity Council.