

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

Rulemaking to Amend the Energy  
Independence Act (EIA) WAC 480-109

DOCKETS UE-190652

COMMENTS OF PUBLIC COUNSEL

1. The Public Counsel Unit of the Washington Attorney General’s Office (“Public Counsel”) submits the following comments pursuant to the Notice of Opportunity to File Written Comments on Proposed Rules dated March 27, 2020. Public Counsel appreciates the work and effort of the Washington Utilities and Transportation Commission (“Commission”) in amending the Energy Independence Act to reflect new legislation. While Public Counsel generally supports the amendments, we have a few select concerns remaining with the draft rules. Our concerns center on the definitions of “low income” and “energy burden.” Additionally, we provide additional data regarding energy burden in Appendix A to these comments.

**I. DEFINITION OF “LOW-INCOME” – WAC 480-109-060(22)**

2. The draft rules define “low-income” in WAC 480-109-060(22) as “household incomes that are two hundred percent of federal poverty level or less, adjusted for household size.” In Public Counsel’s Comments filed on November 4, 2019, we recommended that the Commission establish a more flexible definition of low-income.<sup>1</sup> Public Counsel recommended that the Commission’s definition reflect the maximum limit contained in the Clean Energy

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<sup>1</sup> Comments of Public Counsel, ¶¶ 9–10 (Nov. 4, 2019).

Transformation Act (CETA), Chapter 19.405 RCW. RCW 19.405.020(25) provides that the Commission and the Department of Commerce define “low-income,” but further provides that the definition set by the two agencies may not exceed the higher of 80 percent of area median household income or 200 percent of the federal poverty level (FPL), adjusted for household size.

3. CETA allows a more flexible definition than the definition set forth in the Commission’s draft rule. Limiting the definition to 200 percent of the FPL may unnecessarily exclude households who fall between 200 percent of the FPL and 80 percent of the area median household income. Additionally, adopting a more flexible definition would allow utilities and their partners to design programs that best suit their service territories.

4. Public Counsel understands Staff’s concern that the impact of using area median household income is not entirely known at this time. Indeed, allowing both area median household income and FPL could create complications for agencies administering low-income assistance. This supports the need for consistency across a service territory. However, the rule should include both measures to preserve the ability to use area median household income in the event that it becomes a better measure for low-income programs.

5. Therefore, Public Counsel continues to recommend that the Commission modify the definition of “low-income” to include the higher of 80 percent of the area median household income or 200 percent of the FPL, adjusted for household size.

## **II. ENERGY BURDEN AND ASSISTANCE NEED – WAC 480-109-020(14) AND (15)**

6. In draft rule WAC 480-109-020(15), the Commission establishes that “energy burden” is defined as the share of annual household income used to pay annual home energy bills.

Additionally, in draft rule WAC 480-109-020(14), the Commission defines “energy assistance need” as the amount of assistance necessary to achieve an energy burden equal to six percent.

**A. A Household’s Energy Burden Should Include Costs Associated with All Energy Sources**

7. Customers may receive their energy from multiple utilities or use different energy sources to heat their homes, such as propane or wood pellets. Agencies administering low-income assistance may have information about the customers’ energy sources, but Public Counsel believes that the rule definitions should clarify that energy burden considers the customer’s total energy expense.

8. As the rules are drafted, “utility customer” and “energy bills” could be broadly construed to include multiple energy sources and multiple utilities. However, a potential unintended consequence of not clarifying that energy burden measures a customer’s total energy expense is that a request for energy assistance could focus only on the particular energy source for which the customer is struggling to pay the bill. If this happens, the assistance received could be sufficient to only reduce energy burden for one utility service and not all sources of energy. This is inconsistent with the spirit of the rules. Public Counsel recommends the following edit to address this issue:

“Energy assistance need” means the amount of assistance necessary to achieve an energy burden, from all energy sources, equal to six percent for utility customers.<sup>2</sup>

“Energy burden” means the share of annual household income used to pay annual home energy bills from all energy sources.

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<sup>2</sup> Public Counsel offers a second edit to this definition in the next section that is not reflected here.

**B. The Definition of Energy Assistance Need Should Reflect Washington Data**

9. Six percent is commonly used to define an acceptable energy burden, but that number is based on a national standard. Energy burden experienced by customers in different localities vary across the United States. As a result, Public Counsel recommended in our initial comments that further discussion occur to consider local data on energy burden.<sup>3</sup> In our initial review, Public Counsel found low-income energy burdens varied from four to 14 percent nationwide.<sup>4</sup> We noted that most studies and information on energy burden were based on urban, not rural, data. Rural energy burden tends to be higher than urban energy burden.<sup>5</sup>
10. Public Counsel more recently reviewed energy burden data nationally and for Washington State.<sup>6</sup> Nationally, considering all income levels, the average energy burden ranges from two to four percent. Washington falls on the lower end of the spectrum at two percent.<sup>7</sup>
11. The data changes once income is considered. Figures 2 and 3 in Appendix A show the energy burden for lower income households between zero to 150 percent of the FPL and between zero and 200 of the FPL. Under both scenarios, low-income households experienced higher energy burdens than their general-population counterparts. Additionally, the eastern half of the United States generally experiences higher energy burden than the western half of the country.
12. For Washington households with income zero to 150 percent of the FPL, the average energy burden is eight percent.<sup>8</sup> This is higher than the proposed six percent threshold contained in the draft rule. As a result, the six percent threshold would provide measurable relief for many

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<sup>3</sup> Initial Comments of Public Counsel, ¶¶ 6–8 (Nov. 4, 2019).

<sup>4</sup> *Id.*, ¶ 6.

<sup>5</sup> *Id.*, ¶ 7.

<sup>6</sup> *See* Appendix A.

<sup>7</sup> Appendix A at 1–2.

<sup>8</sup> Appendix A at 3–4 and Figure 2.

customers under the current income qualifications used for bill assistance. For Washington households with income zero to 200 percent of the FPL, the average energy burden is six percent.<sup>9</sup> The proposed six percent threshold would provide less relief for this population. Compared to low income households in the eastern half of the United States, Washington households experience lower energy burden generally, calling into question the effectiveness of a six percent national standard.

13. Washington households also have varying levels of energy burden based on which county they are in.<sup>10</sup> When considering the general population, the average energy burden ranges from one to three percent across the state.<sup>11</sup> When lower income levels are considered, the energy burden increases to four to 10 percent for households with incomes from zero to 150 percent of the FPL.<sup>12</sup> Households with incomes from zero to 200 percent of the FPL have average energy burdens of three to eight percent.<sup>13</sup> These households are experiencing higher energy burden than their general-population counterparts.

14. It is also useful to consider the energy burden of Washingtonians at different income levels. Figure 7 of Appendix A shows the average energy burden across four income groupings: zero to 100 percent of FPL, 100 to 150 percent of FPL, 200–400 percent of FPL, and 400 percent and greater of FPL. As noted in the Appendix, it is not surprising that those with the lowest incomes incur the highest energy burden.

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<sup>9</sup> Appendix A at 4 and Figure 3.

<sup>10</sup> Appendix A at 4–6 and Figure 4, Figure 5, and Figure 6.

<sup>11</sup> Appendix A at 4–5 and Figure 4.

<sup>12</sup> Appendix A at 5–6 and Figure 5.

<sup>13</sup> Appendix A at 5–6 and Figure 6.

15. Flexibility is needed in setting an appropriate energy burden target for a particular energy assistance program. If the average local energy burden is lower than six percent, the draft rules could have the unintended consequence of excluding economically distressed households from accessing necessary bill assistance. This outcome would not be in the public interest.

16. Public Counsel supports establishing a cap on energy burden while allowing for flexibility in program design. We recommend that the definition of “energy assistance need” be modified from six percent to “six percent or less” such that the definition reads:

“Energy assistance need” means the amount of assistance necessary to achieve an energy burden, from all energy sources, equal to six percent or less for utility customers.<sup>14</sup>

This definition would allow programs to be developed that take into account localized data regarding energy assistance need and energy burden, and as a result, Public Counsel recommends that the Commission modify the definition before adopting the rule.

### III. CONCLUSION

17. Public Counsel believes the draft rules reflect the provisions of CETA overall. We believe the draft rules should incorporate maximum flexibility with respect to the definition of low-income. We also believe that the draft rules should allow for further development of local data regarding energy burden and the level of energy burden necessary for energy assistance need.

18. Public Counsel will attend the adoption hearing scheduled for June 2, 2020. We look forward to reviewing stakeholder comments and participating in the discussion at the hearing.

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<sup>14</sup> Public Counsel’s suggested language regarding “from all energy sources” is discussed in the section above.

Any questions regarding these comments should be directed to Lisa Gafken

([Lisa.Gafken@atg.wa.gov](mailto:Lisa.Gafken@atg.wa.gov)), Ann Paisner ([Ann.Paisner@atg.wa.gov](mailto:Ann.Paisner@atg.wa.gov)), or Corey Dahl

([Corey.Dahl@atg.wa.gov](mailto:Corey.Dahl@atg.wa.gov)).

Dated this 1st of May 2020.

ROBERT W. FERGUSON  
Attorney General

*/s/ Lisa W. Gafken*  
LISA W. GAFKEN, WSBA No. 31549  
Assistant Attorney General, Unit Chief  
ANN PAISNER, WSBA No. 50202  
Assistant Attorney General  
*Attorneys for Public Counsel Unit*  
[Lisa.Gafken@atg.wa.gov](mailto:Lisa.Gafken@atg.wa.gov)  
(206) 464-6595  
[Ann.Paisner@atg.wa.gov](mailto:Ann.Paisner@atg.wa.gov)  
(206) 573-1127

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DOCKET UE-190652

**APPENDIX A**

SUMMARY OF ENERGY BURDEN DATA

**May 1, 2018**

## **SUMMARY OF ENERGY BURDEN DATA**

In Docket UE-190652, Stakeholders have discussed setting an appropriate energy burden target for low-income rate relief through filed comments and thorough discussion during the January 28, 2020, workshop. In Public Counsel's initial comments, filed on November 4, 2019, we expressed the need to explore more granular data with respect to energy burden. Public Counsel understands that six percent of income is a national benchmark that is widely used to determine whether or not a household is considered energy burdened. Although this may be a useful benchmark for policy-making on a national level, home energy costs and other household costs vary from state to state. It may be more useful to understand energy burden on a statewide or county level when developing local policies.

### **COMPARISON OF WASHINGTON TO OTHER STATES**

The United States Department of Energy (DOE) has developed the Low-Income Energy Affordability Data (LEAD) tool to gain insights into energy burden on a national and local level. The LEAD tool uses data from the 2016 American Community Survey, a widely respected and recognized source of data for policymakers across the country. The intent of the tool, according to the DOE, is to help guide policymaking discussions.<sup>1</sup>

Figure 1 below compares the energy burden of states using data for all income levels. Washington has a statewide average energy burden of two percent of income.<sup>2</sup> As illustrated in Figure 1, Washington's average energy burden is at the low end of the national spectrum, with Maine and Puerto Rico having the highest overall average energy burden of four percent.<sup>3</sup>

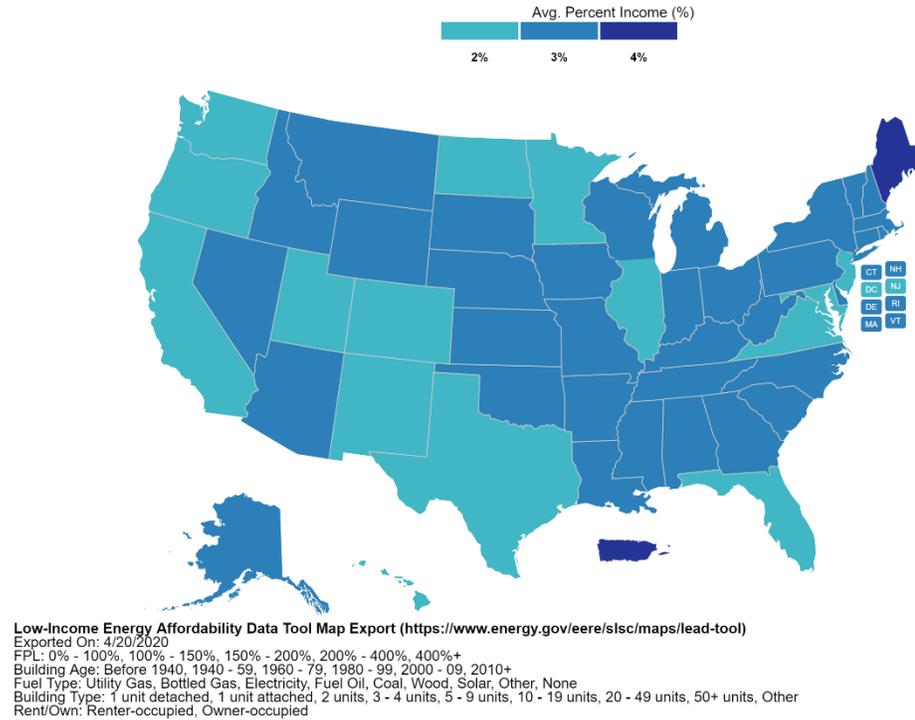
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<sup>1</sup> Off. of Energy Efficiency & Renewable Energy, *Low-Income Energy Affordability Data (LEAD) Tool*, U.S. Dept. of Energy (Apr. 2020), available at <https://lead.openci.org/assets/files/LEAD-Factsheet.pdf>.

<sup>2</sup> U.S. Dep't of Energy, *Low-Income Energy Affordability Data (LEAD) Tool*, available at <https://www.energy.gov/eere/slsc/maps/lead-tool> (Last Visited 5/1/2020) (US Data, average percent income, all income levels).

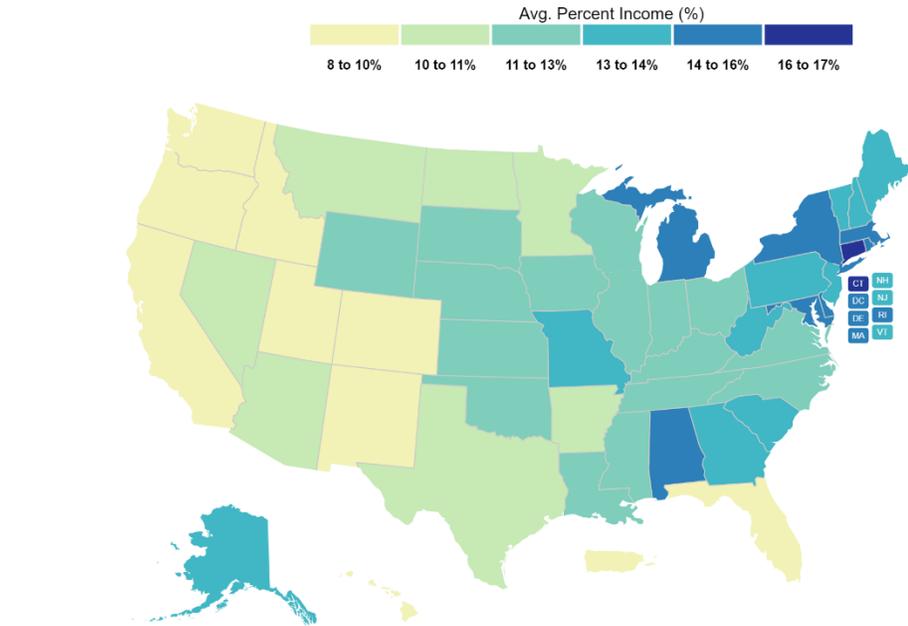
<sup>3</sup> *Id.*

**Figure 1: U.S. Map of Average Energy Burdens by State (All Income Levels)**



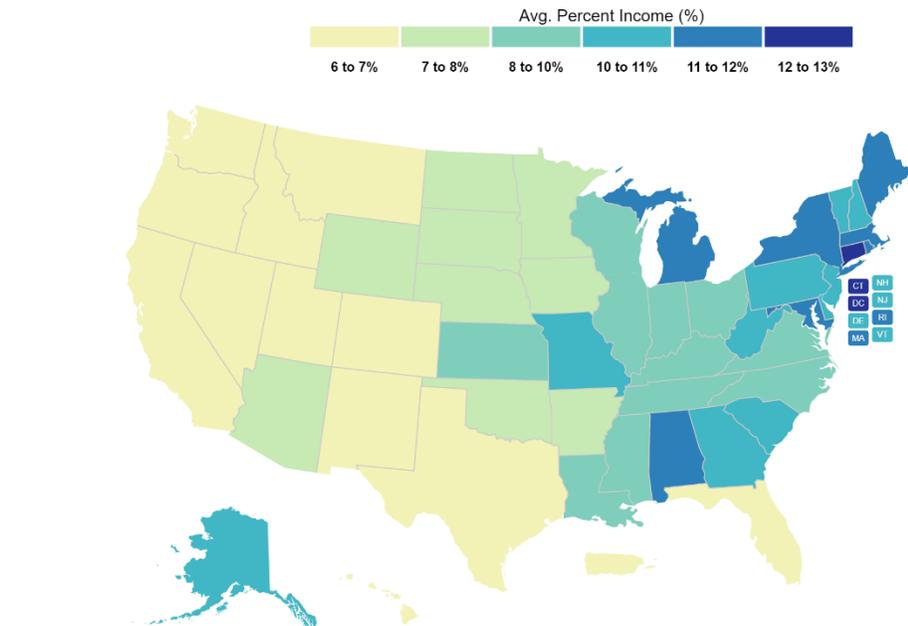
Figures 2 and 3 below provide energy burden based on lower income levels, which is germane to the discussion in this rulemaking. Figure 2 shows state-by-state average energy burden for households with incomes between zero and 150 percent of the federal poverty level (FPL). Figure 3 shows state-by-state average energy burden for households with incomes between zero to 200 percent of the FPL. Comparing Figures 2 and 3 to Figure 1 above, the range and variation of average energy burden among lower-income households is much more significant than the narrow band of average energy burden for all incomes. These income groupings are relevant to the rulemaking given that existing utility-funded bill assistance programs are inclusive of households earning up to 150 percent of the FPL, and the draft rules propose increasing eligibility up to 200 percent of FPL.

**Figure 2: U.S. Map of Average Energy Burdens by State for Incomes 0–150% of FPL**



Low-Income Energy Affordability Data Tool Map Export (<https://www.energy.gov/eere/slsc/maps/lead-tool>)  
Exported On: 4/20/2020  
FPL: 0% - 100%, 100% - 150%  
Building Age: Before 1940, 1940 - 59, 1960 - 79, 1980 - 99, 2000 - 09, 2010+  
Fuel Type: Utility Gas, Bottled Gas, Electricity, Fuel Oil, Coal, Wood, Solar, Other, None  
Building Type: 1 unit detached, 1 unit attached, 2 units, 3 - 4 units, 5 - 9 units, 10 - 19 units, 20 - 49 units, 50+ units, Other  
Rent/Own: Renter-occupied, Owner-occupied

**Figure 3: U.S. Map of Average Energy Burdens by State for Incomes 0–200% of FPL**



Low-Income Energy Affordability Data Tool Map Export (<https://www.energy.gov/eere/slsc/maps/lead-tool>)  
Exported On: 4/20/2020  
FPL: 0% - 100%, 100% - 150%, 150% - 200%  
Building Age: Before 1940, 1940 - 59, 1960 - 79, 1980 - 99, 2000 - 09, 2010+  
Fuel Type: Utility Gas, Bottled Gas, Electricity, Fuel Oil, Coal, Wood, Solar, Other, None  
Building Type: 1 unit detached, 1 unit attached, 2 units, 3 - 4 units, 5 - 9 units, 10 - 19 units, 20 - 49 units, 50+ units, Other  
Rent/Own: Renter-occupied, Owner-occupied

As generally shown in Figures 2 and 3, the average energy burden for lower income customers in Washington is comparatively lower than for households in the eastern half

of the United States. Among the subset of Washington households with incomes up to 150 percent of FPL, the average energy burden is eight percent.<sup>4</sup> The average energy burden for the eastern half of the United States ranges from eight to 17 percent, with Connecticut having the highest average energy burden among households in this income group at 17 percent.<sup>5</sup>

Among the subset of Washington households with incomes up to 200 percent of FPL, the average energy burden is six percent while households in the eastern half of the United States experience an average energy burden of eight to 13 percent. Energy burden distribution across the country for households earning up to 200 percent of FPL follows the pattern established among households earning up to 150 percent of FPL.

### **COMPARISON OF COUNTIES WITHIN WASHINGTON**

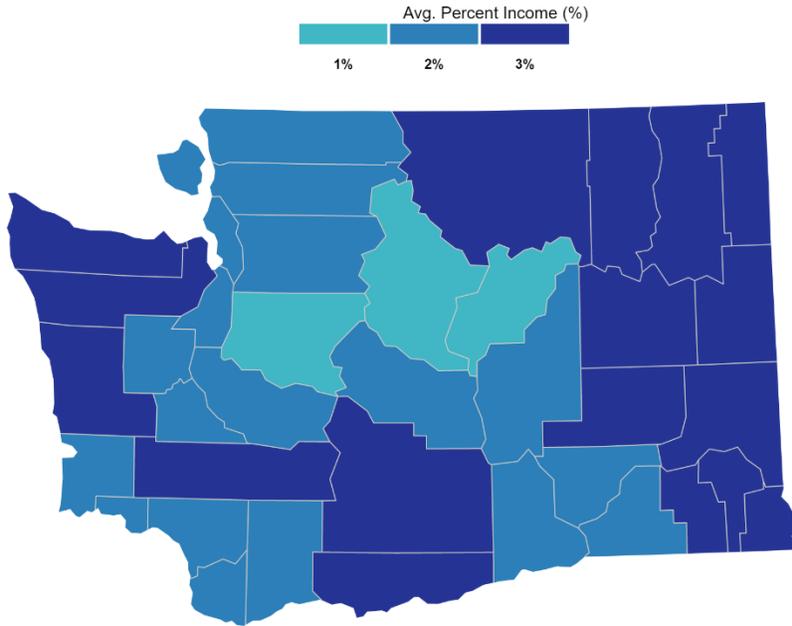
Washington residents face varying levels of energy burden based on locality. The differences relate, in part, to which utilities are providing service and localized income demographics. Figure 4, below, illustrates the statewide average energy burden by county, irrespective of income levels. Counties in the eastern, western coastal, and south central regions of the state have higher average energy burdens relative to other parts of the state.

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<sup>4</sup> U.S. Dep't of Energy, Low-Income Energy Affordability Data (LEAD) Tool, available at <https://www.energy.gov/eere/slsc/maps/lead-tool> (Last Visited 5/1/2020) (US Data, average percent income, 0–150 percent of FPL).

<sup>5</sup> *Id.*

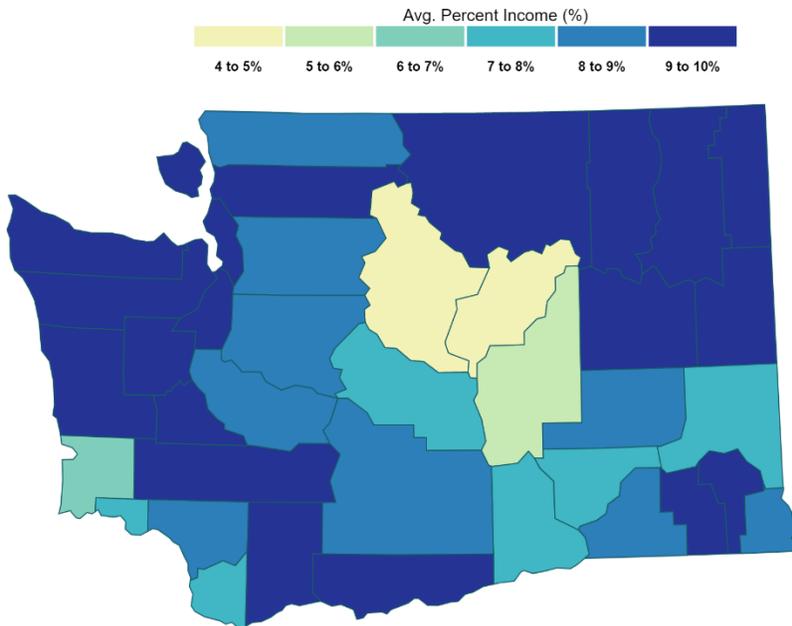
**Figure 4: Average Energy Burden in Washington Counties (All Income Levels)**



Low-Income Energy Affordability Data Tool Map Export (<https://www.energy.gov/eere/slsc/maps/lead-tool>)  
Exported On: 4/23/2020  
FPL: 0% - 100%, 100% - 150%, 150% - 200%, 200% - 400%, 400%+  
Building Age: Before 1940, 1940 - 59, 1960 - 79, 1980 - 99, 2000 - 09, 2010+  
Fuel Type: Utility Gas, Bottled Gas, Electricity, Fuel Oil, Coal, Wood, Solar, Other, None  
Building Type: 1 unit detached, 1 unit attached, 2 units, 3 - 4 units, 5 - 9 units, 10 - 19 units, 20 - 49 units, 50+ units, Other  
Rent/Own: Renter-occupied, Owner-occupied

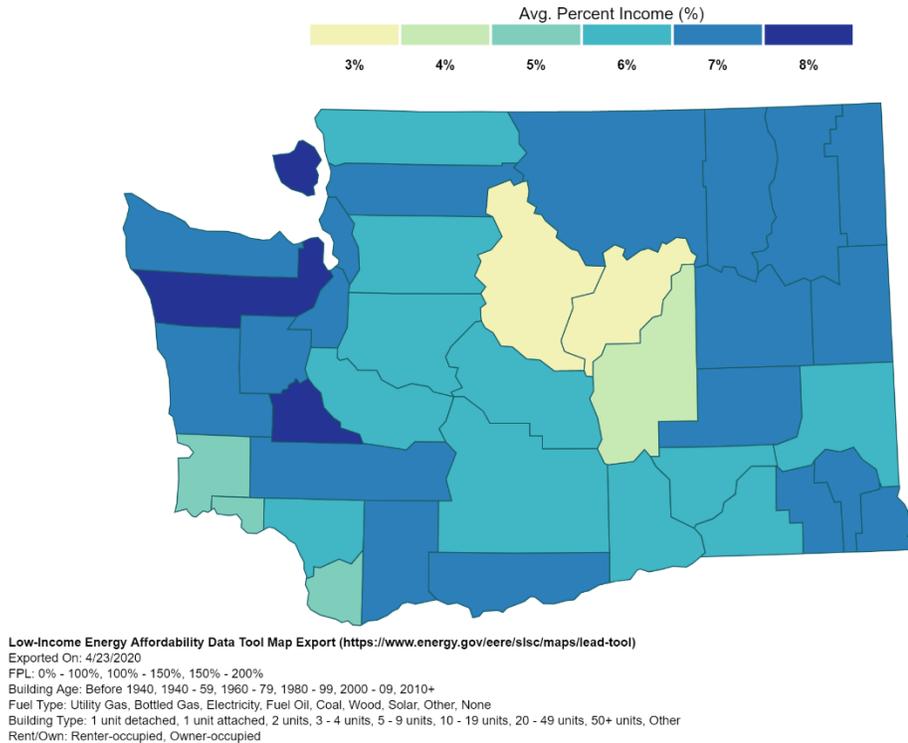
Figures 5 and 6 below provide energy burden based on lower income levels. Figure 5, shows the county-by-county average energy burden for Washingtonians earning up to 150 percent of the FPL. Figure 6 shows the same data for those earning up to 200 percent of the FPL.

**Figure 5: Average Energy Burden in Washington Counties (0–150% of FPL)**



Low-Income Energy Affordability Data Tool Map Export (<https://www.energy.gov/eere/slsc/maps/lead-tool>)  
Exported On: 4/23/2020  
FPL: 0% - 100%, 100% - 150%  
Building Age: Before 1940, 1940 - 59, 1960 - 79, 1980 - 99, 2000 - 09, 2010+  
Fuel Type: Utility Gas, Bottled Gas, Electricity, Fuel Oil, Coal, Wood, Solar, Other, None  
Building Type: 1 unit detached, 1 unit attached, 2 units, 3 - 4 units, 5 - 9 units, 10 - 19 units, 20 - 49 units, 50+ units, Other  
Rent/Own: Renter-occupied, Owner-occupied

**Figure 6: Average Energy Burden in Washington Counties (0–200% of FPL)**



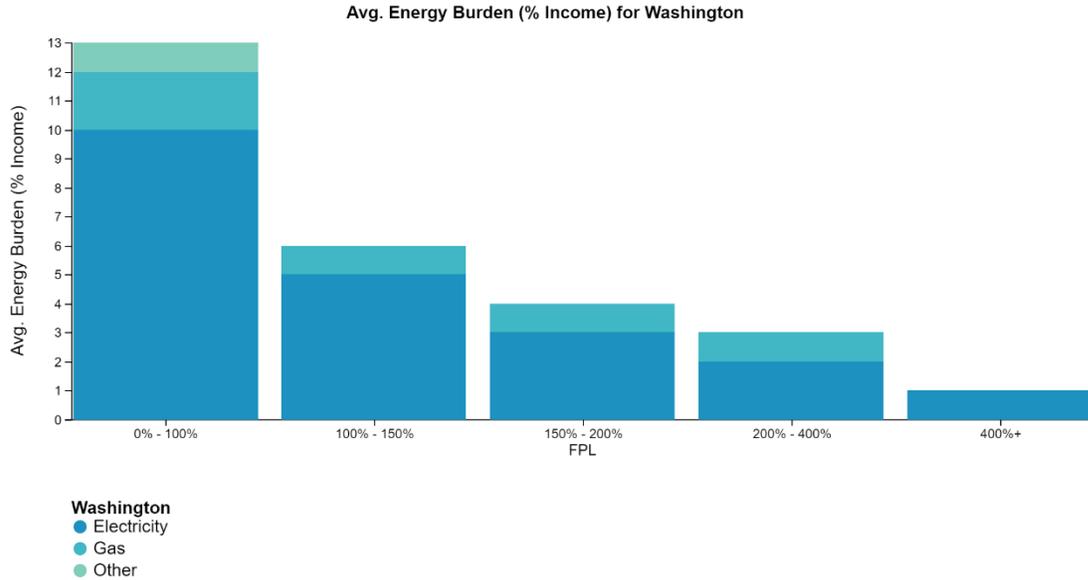
As shown in Figure 5 and Figure 6, energy burden for lower income households follow a similar pattern, with higher energy burdens experienced in eastern, coastal, and south central regions than in other areas of the state. The highest energy burden is nine to 10 percent in the zero to 150 percent FPL range, compared to the overall state average energy burden of two percent. The most energy burdened counties among Washington households earning zero to 150 percent of FPL face an average energy burden of 10 percent.<sup>6</sup> Among Washington households earning zero to 200 of FPL, the highest energy burdened counties face an average of eight percent.<sup>7</sup>

The average energy burden varies based on income as well, regardless of relative geography. Figure 7, below, illustrates the average energy burden of Washingtonians within four income groupings. Unsurprisingly, those who have the least income face the highest energy burdens. Furthermore, those who are in a slightly higher income group (150–200 percent of FPL) are still above the statewide average energy burden.

<sup>6</sup> U.S. Dep’t of Energy, Low-Income Energy Affordability Data (LEAD) Tool, available at <https://www.energy.gov/eere/slsc/maps/lead-tool> (Last Visited 5/1/2020) (WA Data, average percent income, 0–150 percent of FPL — For 0–150 percent of FPL, Jefferson, San Juan, Skagit, Island, Thurston Counties have an average energy burden of 10 percent).

<sup>7</sup> U.S. Dep’t of Energy, Low-Income Energy Affordability Data (LEAD) Tool, available at <https://www.energy.gov/eere/slsc/maps/lead-tool> (Last Visited 5/1/2020) (WA Data, average percent income, 0–200 percent of FPL — For 0–200 of FPL, Jefferson, San Juan, and Thurston Counties face an average energy burden of eight percent).

**Figure 7: Average Energy Burden of Washington residents by Income Level**



Low-Income Energy Affordability Data Tool Chart Export (<https://www.energy.gov/eere/slsc/maps/lead-tool>)  
Exported On: 4/23/2020  
FPL: 0% - 100%, 100% - 150%, 150% - 200%, 200% - 400%, 400%+  
Building Age: Before 1940, 1940 - 59, 1960 - 79, 1980 - 99, 2000 - 09, 2010+  
Fuel Type: Utility Gas, Bottled Gas, Electricity, Fuel Oil, Coal, Wood, Solar, Other, None  
Building Type: 1 unit detached, 1 unit attached, 2 units, 3 - 4 units, 5 - 9 units, 10 - 19 units, 20 - 49 units, 50+ units, Other  
Rent/Own: Renter-occupied, Owner-occupied

A wide range of need for energy exists across the state and the types of programs and the amount of assistance varies not only by level of income earned, but also based on locality. Washington's lower energy costs and lower average energy burden across income demographics compared to other states, coupled with wide variance within the State's average energy burden, suggests that flexibility in setting an energy burden target is necessary.