

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Energy Assistance in  
Section 12 of the Clean Energy  
Transformation Act

DOCKET UE-200629

INITIAL COMMENTS OF THE  
ENERGY PROJECT

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**OCTOBER 9, 2020**

**I. INTRODUCTION**

1           These Initial Comments of The Energy Project (TEP) are filed in response to the Commission's Notice of Opportunity To File Written Comments (Notice), issued September 15, 2020. The Comments respond to the specific questions stated in the Questions For Consideration portion of the Notice, as well as incorporating some general comments regarding RCW 19.405.120(2) within the specific responses. The Energy Project has previously addressed low-income issues in the Clean Energy Transformation Act (CETA), *inter alia*, in comments filed in the Commission's CETA/ Energy Independence Act (EIA) rulemaking.<sup>1</sup> These comments are initial responses to the issues raised. The Energy Project looks forward to hearing and considering views of other stakeholders and may have additional conclusions and recommendations as the docket moves forward.

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<sup>1</sup>See, e.g., *In the Matter of the Rulemaking For the Energy Independence Act, WAC 480- 480-109, Considering Revisions To Comply With The Clean Energy Transformation Act, Docket UE-190652,, Initial Comments of The Energy Project.*

## II. THE ENERGY PROJECT RESPONSES TO QUESTIONS FOR CONSIDERATION

- 1) a. **What does the term “programs” mean in the context of RCW 19.405.120(2)? Is a program the same or different than the four types of energy assistance included in the “energy assistance” definition in RCW 19.405.020(15):**
- monetary assistance;
  - conservation, weatherization, and efficiency services;
  - direct distributed energy ownership; and
  - other additional strategies.

2 The Energy Project interprets the term “programs” to mean the types of energy assistance included in the “energy assistance” definition in RCW 19.405.020(15). This interpretation is based on the plain meaning of the statutory language.<sup>2</sup> The language states: “An electric utility must make programs...available for energy assistance to low-income households[.]” This requirement must be read using the definitions of the terms used within the sentence, as prescribed by the legislature. “Programs...available for energy assistance” means programs available for “energy assistance” as defined in RCW 19.405.020(15). Energy assistance programs, therefore, as summarized in the Notice, are programs that provide “monetary assistance,” and “weatherization, conservation and efficiency services.” Energy assistance programs may also include “direct customer ownership in distributed energy resources” or “other strategies.” There does not appear to be ambiguity in the statute on this point.

- b. **How should the Commission determine whether a utility’s “programs” and “funding” comply with RCW 19.405.120(2)?**

3 RCW 19.405.120(2) has two main elements. The first sentence requires that programs and funding must be made available to low-income households by July 31, 2021. The

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<sup>2</sup> *Homestreet Inc. v State Dept. of Revenue*, 166 Wn.2d 444, 210 P.3d 297, 300 (Wash. 2009)(“When interpreting a statute, we first look to its plain language.”).

Commission can determine compliance with this part of the statute by examining whether each investor owned utility (IOU) demonstrates that the programs and funding for energy assistance have been made available to low-income customers by that date.<sup>3</sup> Based on the statutory definition, this includes, at a minimum, the availability of two categories of programs intended to reduce energy burden: (a) weatherization, conservation and efficiency services, and (b) monetary assistance, such as a grant program or discounts for lower-income households.<sup>4</sup> In addition, programs may include direct customer ownership in distributed energy resources or other strategies.<sup>5</sup>

4 As the Notice states, the Commission must determine compliance with the requirements of CETA pursuant to RCW 19.405.090(9).<sup>6</sup> The statute does not establish a clear procedure for either Commerce or the UTC to determine compliance specifically with regard to RCW 19.405.120(2) by July 31, 2021.<sup>7</sup> As a practical matter, since each of the regulated IOUs currently has tariffed monetary bill assistance and low-income weatherization programs with established budgets, and currently files reports about these programs, establishing compliance should be reasonably straightforward.<sup>8</sup> For the regulated IOUs, the Commission could require

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<sup>3</sup>The Energy Project does not view “programs” and “funding” as independent of each other.

<sup>4</sup> RCW 19.405.020(15)(a).

<sup>5</sup> RCW 19.405.020(15)(b).

<sup>6</sup> Notice, p. 2.

<sup>7</sup> Commerce has published a set of guidelines which sheds light on their view of compliance procedures. Guidelines For RCW 19.405.120, Version 03.09.2020 (Commerce Guidelines). The Energy Project has a concern about whether guidelines are adequate are whether adoption of rules would be more appropriate (see discussion below).

<sup>8</sup> Annual reports are filed for most bill assistance programs. Information regarding electric weatherization programs is included in filed EIA reports and plans. Tariff changes would be needed for some programs to adjust monetary assistance program eligibility to the new definitions.

that each utility make a compliance filing listing the programs offered, the budget for each program, and information about eligibility and availability.<sup>9</sup>

5           The Commission should also have available for review the information provided by the IOUs to Commerce under RCW 19.405.120(3)(b)(i), which requires disclosure of “the amount and type of energy assistance.” In addition, the biennial assessment filing with Commerce under RCW 19.405.120(4) in mid- 2021<sup>10</sup> will contain information on “programs and mechanisms” and funding levels.<sup>11</sup>

6           The second sentence of RCW 19.405.120(2) states that each utility must “demonstrate progress in providing energy assistance pursuant to the assessments and plans” filed by the IOUs with Commerce on a biennial basis under RCW 19.405.120(4). A demonstration of progress should be based on an evaluation by the Commission of whether there is relative improvement across a range of factors including number of households served by the programs, level of funding, status of outreach efforts, energy savings from efficiency programs, and reduction in energy burden. This is discussed further below.

- c.       **How does the meaning of “low-income” relate to the eligibility requirements for energy assistance programs and funding offered by utilities? Do you agree with any of the four interpretations, or parts of the interpretations, offered by stakeholders to date: The four interpretations are summarized below.**
- **A utility must offer at least one low-income program where the eligibility for the program does not exceed the income levels established in the low-income definition.**

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<sup>9</sup> The Commission could issue a request to the IOUs pursuant to its statutory authority to request information under RCW 80.04.070, 80.04.080, and 80.04.100. The IOU response could incorporate or make reference to information provided under RCW 19.405.120(3) and (4), as well as other reports ordinarily filed with the Commission, such as HELP or LIRAP annual reports.

<sup>10</sup> The Timeline of Upcoming Work in the Commerce Guidelines currently states that the first biennial assessment reports are “due to Commerce” by July 31, 2021.

<sup>11</sup> The information provided to Commerce must also be provided to the Commission by the IOUs pursuant to RCW 19.405.100(5).

- **A utility must have at least two programs that are available for all customers up to the income levels established in the low-income definition.**
- **The utility must serve all customers up to the income levels established in the low-income definition for all energy assistance programs offered by the utility.**

7           The Energy Project views the fourth interpretation contained in the Notice as most consistent with the plain meaning of the statutory terms, as well as the intent of the statute. The statute requires that programs and funding for energy assistance must be made available to “low-income households.” The term low-income is defined by statute, with further specificity provided by the UTC and Commerce. In other words, programs and funding must be made available to households with income that does not exceed eighty percent of area median household income (AMI) or two hundred percent of Federal Property Level (FPL) adjusted for household size, whichever is greater.<sup>12</sup> The phrase “available to low-income income households” contains no conditions, limits or restrictions and, therefore, has the plain meaning that programs must be available to “all” low-income households that meet the definition.<sup>13</sup>

8           The Energy Project reads the statute as requiring two categories of programs to be made available to all low-income customers, at a minimum: monetary assistance programs and energy efficiency programs (weatherization, conservation and efficiency), as specified in RCW 19.405.020(15)(a). Additionally, the utility may also make available the direct ownership of distributed energy resources or additional strategies. If offered, these must also be available to all.

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<sup>12</sup> *In the Matter of the Rulemaking For the Energy Independence Act, WAC 480- 480-109, Considering Revisions To Comply With The Clean Energy Transformation Act, Docket UE-190652, Proposed WAC 480- 109-060(22); The Commerce Guidelines state that “Commerce will establish a specific definition for low-income by December 31, 2020.”*

<sup>13</sup> *Homestreet Inc. v State Dept. of Revenue*, 210 P.3d 297, 300-301.

The fourth interpretation is the most consistent with the statutory intent to broadly provide assistance to keep costs reasonable for customers and insure that all customers benefit from the transition to clean energy.<sup>14</sup> This interpretation is consistent with the current provision of bill assistance and low-income weatherization programs, which are generally available to all low-income customers, assuming they meet eligibility requirements. Reading RCW 19.405.120(2) to allow compliance by providing only one low-income program would be taking a step backward from the pre-CETA level of service, rather than advancing CETA's stated intent to "demonstrate progress toward making energy assistance funds available to low-income households."<sup>15</sup> Allowing eligibility to be limited to income levels lower than those set by the UTC would not represent progress over the current level of service available to customers. Indeed, if the statutory intent was to allow flexibility to utilities to establish lower eligibility ceilings, there would have been no need for the agency definitions, since the statute already contains "many not exceed" language.<sup>16</sup>

There is, however, an implicit limit on availability of programs to all customers based on the availability of funding. The Clean Energy Transformation Act acknowledges that not all low-income customers are currently participating in energy assistance programs and, therefore, establishes aspirational targets for increased participation by 2030 and 2050 based on a review of relative funding levels.<sup>17</sup> Outreach requirements are included to encourage and increase

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<sup>14</sup> RCW 19.405.010(1) and (2).

<sup>15</sup> RCW 19.405.120(2). The use of the plural "programs" in RCW 19.405.120(2) also casts doubt on the argument that only one program need be offered.

<sup>16</sup> *Homestreet Inc. v State Dept. of Revenue*, 210 P.3d 297, 301. ("Each word of a statute is to be accorded meaning.").

<sup>17</sup> RCW 19.405.120(4)(a)(iii).

participation.<sup>18</sup> The stated intent of the statute to “demonstrate progress toward” providing assistance is an acknowledgement that the statute does not require a “flashcut” to 100 percent participation on July 31, 2021.

**d. Do utility programs that are primarily intended to avoid disconnection, such as emergency assistance that are not income qualified, reduce energy burden as defined in RCW 19.405.020(17)?**

11 Tariff-based ratepayer funded programs clearly meet the definition of energy assistance programs undertaken by a utility. On the other hand, independent donation-based programs do not fit within the CETA description of energy assistance. Sometimes referred to as “fuel funds,” their support is derived from private funds, not tariffed utility ratepayer funds. They are generally supported exclusively with private contributions from various sources, with eligibility and distribution beyond the regulatory jurisdiction of state agencies.

12 Donation-based programs, reflecting their independent status, have a variety of missions and modes of operation. Frequently funds are used to provide supplemental short-term emergency assistance when the federal Low-Income Heat Energy Assistance Program (LIHEAP) or ratepayer-funded assistance is exhausted. Such funds may vary in defining eligibility in terms of income or other factors, such as whether the household is facing emergency circumstances. Different donation-based funds are likely to impose different administrative requirements, such as whether or not the household must apply for energy assistance (e.g., LIHEAP) or make a minimum payment. Different fuel funds may impose different maximum grant levels, or have different limits on number of grants per year.

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<sup>18</sup> RCW 19.405.120(4)(a)(ii).

13 In general, resources from donation-based funds are substantially smaller than those available from utility-based ratepayer funded programs and fewer customers are served. While donation-based funds certainly have a place in helping customers in need, typically, the focus is emergency short-term bill assistance and crisis intervention, with the fuel fund grant calibrated to resolve the immediate household crisis rather than provide on-going affordability assistance and energy burden reduction.

14 The concept of “energy burden,” as defined in RCW 19.405.020(17) in terms of “annual household income” and “annual home energy bills.” Monetary assistance programs, such as the Avista Low-Income Rate Assistance Program (LIRAP), are designed to address need and affordability for at least the heating season, reducing energy burden over the long-term. The emergency or crisis fund payment is neither intended nor calibrated to address the longer term household energy burden.

### **Potential Need for Administrative Rules**

15 The Notice indicates that the expected outcome of the docket is issuance of a policy and interpretive statement.<sup>19</sup> A policy statement from the Commission is advisory only in nature and non-binding. The Energy Project recommends that the Commission and the docket participants consider whether this will be sufficient. Given the issues raised in the Notice, there may be a need for clarification by rule in some areas for the certainty of all parties.

16 For example, TEP is uncertain of the effect of having the Section 12 definitions which are fundamental to the issues discussed in this docket adopted in the Commission’s CETA/EIA

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<sup>19</sup> Notice, p. 2.



docket, UE-190652, as part of the WAC rules governing Energy Independence Act (EIA) filings. WAC 480-109-060 in the EIA rules states that the EIA definitions, which would include the energy assistance and low-income related definitions, are only applicable in the EIA context.<sup>20</sup> On the face of the rules, therefore, it is not clear how those definitions would be binding and enforceable by the Commission outside of the EIA context, for example in determining compliance with RCW 19.405.120(2) by July 31, 2021. If rules are needed, there is time sensitivity since, under RCW 19.405.100(9), “rules needed for the implementation of [CETA] must be adopted by January 1, 2021, unless specified otherwise [.]”

**2) What principles and information should the Commission consider when determining whether a utility has “demonstrated progress in providing energy assistance?” Are the principles and information the same or different for the three elements of energy assistance: effectiveness, outreach, and funding?**

17 The Clean Energy Transformation Act provides some general principles to be applied in reviewing whether progress is demonstrated in providing energy assistance. The broad legislative intent section of the statute states a goal of providing safeguards to ensure that clean energy policy “does not impose unreasonable costs on utility customers.”<sup>21</sup> It also the intent of the statute to achieve clean energy goals by maintaining “stable and affordable rates.”<sup>22</sup>

18 More specifically, as CETA states, it is the “intent of the legislature to demonstrate progress toward making energy assistance funds available to low-income households[.]”<sup>23</sup> This legislative intent and other provisions of CETA are promising for low-income customers because

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<sup>20</sup> See also WAC 480-109-010 (rules are for the purpose of compliance by electric utilities with EIA requirements).

<sup>21</sup> RCW 19.405.010(2).

<sup>22</sup> RCW 19.405.010(4).

<sup>23</sup> RCW 19.405.120(1).

they contemplate a more comprehensive process, with the goal of making progress toward reducing the energy burden of low-income households. Analysis undertaken by the utilities, with the assistance of their advisory groups, through the EIA and the Conservation Potential Assessment in their Integrated Resource Plan (IRP), has resulted in the development of energy efficiency measures and programs, including low-income energy efficiency programs, as outlined in the utilities' Biennial Conservation Plans. In addition, Washington IOUs have implemented energy assistance programs to provide bill assistance for low-income households.

19           In general, these two initiatives to provide assistance to low-income households have been developed and considered under separate processes. Under CETA, however, there is a framework to coordinate these efforts, along with other potential measures to assist low-income households such as demand response or other distributed energy resource efforts.

20           Ultimately, all of these efforts seek to reduce the energy burden for low-income households. RCW 19.405.120(4)(a)(i) requires utilities to submit a biennial assessment to Commerce of: "The programs and mechanisms used by the utility to reduce energy burden and the effectiveness of those programs and mechanisms in both short-term and sustained energy burden reductions." The biennial assessment must also include a "plan to improve the effectiveness of the assessed mechanisms and strategies toward meeting the energy assistance need."<sup>24</sup> Clean Energy Transformation Act, therefore, requires utilities (along with stakeholders), to undertake a review that examines the full panoply of all efforts in the utility purview that seek to reduce the energy burden for low-income households, and outline a plan to make progress to

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<sup>24</sup> RCW 19.405.120(4)(b).

meet the energy assistance need.

21           The requirement for a utility to “demonstrate progress” contained in the second sentence of RCW 19.405.120(2) is specifically tied to the assessment and plan that will be filed under RCW 19.405.120(4). That filing will assess three primary areas: (1) the effectiveness of the utility’s programs; (2) the outreach conducted to encourage participation in energy assistance programs; and (3) a review of funding levels needed to meet 60 percent of the need by 2030 and ninety percent by 2050.

22           The statute, therefore, appears to contemplate that progress should be evaluated in terms of these factors. The information provided in connection with the biennial assessments will provide a body of information for the Commission to use in evaluating progress. In addition, the Commission can also look at related information such as budget levels, number of participants and households served, weatherization evaluations, energy burden reductions, reduction in arrearage levels and numbers of disconnections for non-payment.

- 3)     **RCW 19.405.120(2) requires that, to the extent practicable, utilities prioritize energy assistance to low-income households with the highest energy burden.**
- a.     **What principles and information should the Commission consider when determining whether a utility has prioritized assistance to low-income households with the highest energy burden.**
  - b.     **How should the Commission evaluate what is practicable? How should the Commission’s evaluation differentiate between what is practicable in the short-term versus the long-term?**

23           As a general matter, existing state and federal low-income conservation programs for customers of IOUs currently take into account low-income households with higher energy burdens. Low-income Rate Assistance Program energy assistance and weatherization programs prioritize households that are comprised of tribal members, elderly, families with small children,

disabled household members and households with high energy burdens. As a 2005 LIHEAP energy burden study stated:

Given that limitation [need exceeding budget], the LIHEAP statute requires LIHEAP grantees to provide, in a timely manner, that the highest level of assistance will be furnished to those households that have the lowest incomes and the highest energy costs or needs in relation to income, taking into account family size. The LIHEAP statute identifies two groups of low-income households as having the highest home energy needs: vulnerable households and high burden households. Vulnerable households are those with at least one member that is a young child, an individual with disabilities, or a frail older individual. High burden households are those households with the lowest incomes and highest home energy costs.<sup>25</sup>

24 One way for the Commission to evaluate practicability is for the Commission to look at current and past program operations and parameters. Examples of what is already in place and working can answer many of these questions. For example, Avista's 2018 LIRAP annual report includes an analysis of the energy burden reductions resulting from that program at different income levels within the overall eligibility framework.<sup>26</sup> Utility and agency experience with these prioritization considerations and methodologies provides a platform to build on while developing approaches to CETA compliance.

### III. CONCLUSION

25 The Energy Project respectfully requests consideration of these initial comments by the Commission in this docket and looks forward to commenting further and to participating in workshops as the docket progresses.

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<sup>25</sup> LIHEAP Energy Burden Evaluation Study, Final Report, prepared for the United States Department of Health and Human Services (July 2005), Applied Public Policy Research Institute for Study and Evaluation.

<sup>26</sup> Dockets UE-010436/UG-010437, Avista LIRAP 2018 Annual Summary Report (2017-2018 program year), Table 6 Energy Burden (showing energy burden benefits for different groups of low-income customers at three levels of income).