

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

Rulemaking to consider potential long-term changes and improvements to customer notice, credit, and collection rules, including permanent elimination of late fees, disconnection and reconnection fees, and deposits.

DOCKET U-210800

INITIAL COMMENTS OF PUBLIC COUNSEL

April 29, 2022

I. INTRODUCTION

1. The Public Counsel Unit of the Washington Attorney General’s Office (Public Counsel) submits these comments pursuant to the Washington Utilities and Transportation Commission’s (Commission) Notice of Opportunity to File Written Comments dated March 18, 2022 (Notice). This rulemaking docket stems from the Commission’s important work in Docket U-200281, addressing impacts of the COVID-19 pandemic. In Order 01, the Commission required Commission Staff to “open a docket and prepare a CR-101 when reasonably practicable to consider potential long-term changes and improvements to customer notice, credit and collections rules, including permanent elimination of late fees, disconnection and reconnection fees, and deposits.”¹ The Commission noted that the docket “may or may not result in proposed rules, an interpretive and policy statement, or Commission action.”²

II. SCOPE OF RULEMAKING

2. The proposed term sheet approved by the Commission in Order 01 explained that the rulemaking docket would pay “particular attention to the experience of those limited English proficiency and customers of color.”³ Centering the experiences of Black people, Indigenous people, Latinx people, Asian people, and other people of color is largely important because the pandemic highlighted these communities’ disparate experiences. The Commission has an

¹ *In re: the Response to the COVID-19 Pandemic*, Docket U-200281, Order 01, ¶ 17 (Oct. 20, 2020).

² *Id.*

³ *In re: the Response to the COVID-19 Pandemic*, Docket U-200281, Order 01, UTC Staff Proposed COVID-19 Response Term Sheet, at 3 (Oct. 20, 2020) (‘Fees,’ subpart 3) (the page number refers to the PDF page since the original document does not contain pagination).

opportunity and obligation to evaluate current policies that impact customers' ability to maintain or reestablish service to ensure that the policies do not perpetuate inequities.

3. This rulemaking will consider potential amendments to customer notice rules, credit reporting rules, and collection rules. This rulemaking will also assess the future of customer fees, including late fees, disconnection fees, reconnection fees, and deposits. The Commission should further consider the impact of disconnections for non-payment on customers and the overall system and whether continuing this practice is in the public interest. Public Counsel believes that a close examination will demonstrate that disconnection harms customers, perpetuates inequities, and provides only temporary benefits to utilities.
4. Prior obligation currently provides strong protection for customers disconnected for non-payment. Under prior obligation, customers may reconnect with amounts owing, and utilities may not disconnect the customers for the arrearage going forward. If disconnection for nonpayment is disallowed, the Commission should review the role of prior obligation. Prior obligation may need to be reimagined and redesigned if the Commission decides to limit disconnection practices.
5. Further, Public Counsel recommends including data reporting to the scope of this rulemaking. Throughout the pandemic, electric and natural gas utilities have been required to report critical data regarding customer arrearages in Docket U-200281. This data has been vital in assessing the pandemic's impact on Washington utility customers. Looking forward, arrearage data will be useful to Commission Staff and other stakeholders to understand the relationship between customer arrearages, fees and deposits, and disconnection for non-payment.

Additionally, arrearage data will be central in assessing whether utilities are transitioning to non-

emitting and renewable energy in an affordable way for customers. As such, it is important to include arrearage and other data reporting requirements in this docket.

6. The CR-101 identifies Chapters 480-90 and 480-100 WAC, pertaining to natural gas and electric utilities, as the subject of this rulemaking. Topics identified in the CR-101 include “service applications, responsibilities, connections, disconnections, reconnections, refusals, interruptions, deposits, fees, payment arrangements and programs, customer information, billing requirements, billing payments, customer notice, credit, collections, and other related topics.” Public Counsel believes that these topics are relevant and should be thoroughly considered.

7. Although the CR-101 identifies electric and natural gas rules, the Commission should consider including Chapter 480-110 WAC, pertaining to water companies, in this rulemaking. The issues to be discussed are relevant with respect to water customers, and expanding the inquiry to water would be consistent with the work done in Docket U-200281. Docket U-200281 addressed natural gas, electric, and water utilities’ practices during the pandemic and offered protections to customers of those utility services. Natural gas, electricity, and water are essential services, and keeping customers connected to service provides individual, public, and system benefits.⁴

III. NOTICE QUESTIONS

8. Many of the notice questions are directed to utilities and ask for data related to utility practices. Where questions ask for data, Public Counsel does not provide comments and looks

⁴ Although Docket U-200281 did not specifically address telecommunication utilities, they were subject to Governor Inslee’s proclamation imposing a disconnection moratorium. To the extent the Commission continues to exercise authority over fees charged by telecommunication companies, Public Counsel believes those fees, credit and collection practices, and disconnection practices should be reviewed as well.

forward to reviewing the utilities' responses. Public Counsel provides responses to certain questions identified below.

9. Notice Question 2(d) asks, "If these disconnection fees and reconnection fees were removed from the company's tariff and recovered in base rates instead, how much would residential bills increase based on your company's currently approved rate spread? Please provide both a percentage increase and an average residential customer bill increase amount." Public Counsel challenges the assumption that costs associated with disconnection and reconnection are not currently recovered in base rates. Utilities include employee costs and operating costs in rates, causing Public Counsel to question whether base rates already contain costs associated with disconnection and reconnection. Specifically, would increasing base rates to account for elimination of disconnection and reconnection fees cause the utility to recover the same expenses twice? Public Counsel looks forward to examining the utilities' information provided in answer to Question 2(d).
10. Notice Question 6 asks about barriers to payment for low-income customers, members of highly-impacted communities, and vulnerable populations. Public Counsel will review the utilities' answers for whether customers have adequate access to customer service representatives who can take payment, whether utilities have adequate processes to allow unbanked customers to pay, and whether utilities are identifying and addressing language and access barriers.
11. Notice Question 18 asks about barriers in the process of providing notices to customers. The Commission's rules provide companies with various options on how to provide notice to

customers. Utilities may mail notices, hang notices on doors, and call customers.⁵ Public Counsel will review the utilities' responses with interest regarding whether they identify new, more effective methods of communicating with customers and whether traditional methods are more or less effective.

12. Notice Question 19 asks, “Are you aware of any policies, rules, or guidance concerning equity in developing or providing customer notice in use by other companies or state commissions? If so, please identify the policies, rules, or guidance, referencing the company or state commission that has adopted the policy, rule, or guidance.” Research from the National Consumer Law Center (NCLC) reveals that “Black and Latinx households ... are sent shutoff notices more frequently compared to white households with comparable income.”⁶ NCLC further iterates that the “goal should be to reduce the frequency of both disconnections and disconnection notices, while also improving overall rates of utility revenue collection by educating customers about all available assistance.”⁷ Public Counsel recommends that utilities, stakeholders, and other relevant experts to discuss ways to improve communication and education to reduce disconnection notices and disproportionate harm to marginalized communities. Public Counsel looks forward to ongoing discussions with all stakeholders to improve customer notice practices so they do not perpetuate historic inequities.

13. Notice Question 20 asks, “Are you aware of any best practices or examples from other jurisdictions or other utility sectors that the Commission should consider in the this proceeding

⁵ WAC 480-90-128(4) (natural gas); WAC 480-100-128(4) (electric); WAC 480-120-172(7) (water).

⁶ Anna Kowanko & Charlie Harak, *More Can and Must Be Done to Prevent Utility Consumers from Losing Service Due to Mounting COVID-Driven Arrearages in Massachusetts and Other States 2* (Nat'l Consumer L. Ctr. 2021), https://www.nclc.org/images/pdf/special_projects/covid-19/Rpt_More_Covid_Util_Arrearage_Svc.pdf.

⁷ *Id.*, at 4.

regarding late fees, disconnection fees, reconnection fees, deposits, credits and collection practices, and customer notices? If so, please identify these best practices or examples, referencing the company or jurisdiction that has adopted these practices.” In response to the disparities highlighted by the COVID-19 crisis, the NCLC published a Utility Customer Bill of Rights, establishing a roadmap to keeping people connected to essential utility services regardless of a customer’s economic status. Some relevant components of the Utility Customer Bill of Rights include:

- State laws, including those that direct the actions of public utility commissions and noncommission-regulated utilities, should explicitly recognize that utility service is essential to public health and safety, and that no customer should be disconnected based on the inability to afford essential utility service.
...
- Disconnections based on inability to pay for low-income households must be eliminated – not just reduced – to ensure access to essential utility service.
...
- Late payment and reconnection fees, deposits, and similar punitive charges, which often far exceed the utility’s cost of short-term borrowing, disproportionately penalize low-income households while providing a source of unwarranted profit for utilities, should be eliminated for qualified low-income customers, and in no case should exceed the true financial cost of service.
- Deposits to start service or re-establish service for residential customers should be eliminated.⁸

⁸ Nat’l Consumer L. Ctr., *Implementing a Roadmap to Utility Service as a Human Right 2–3* (2021), https://www.nclc.org/images/pdf/special_projects/covid-19/IB_UTILITY_Bill_of_Rights.pdf.

14. The NAACP also conducted comprehensive research on the disproportionate impacts of disconnections on communities of color in their 2017 report, *Lights Out in the Cold*.⁹ The NAACP's report also includes recommendations for customer notice practices and bill assistance as a means to reduce disconnection notices and disconnections for non-payment. Appendix B of the report also includes a comprehensive summary of state disconnection policies. This can serve as a basis for discussion among stakeholders in this docket.

15. Public Counsel looks forward to continuing discussions on the critical topics of utility fees, disconnection, and equity. Questions about Public Counsel's comments should be directed to Lisa Gafken, Lisa.Gafken@ATG.WA.GOV, or Corey Dahl, Corey.Dahl@ATG.WA.GOV.

Dated this 29th day of April 2022.

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⁹ Marcus Franklin & Caroline Kurtz, *Lights Out in the Cold* (NAACP 2017), <https://naacp.org/resources/lights-out-cold>.