

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of

Response to the COVID-19 Pandemic

DOCKET U-200281

STAFF'S ANSWER TO PUBLIC
COUNSEL'S PETITIONS FOR
RECONSIDERATION AND A STAY

I. INTRODUCTION

1 In May 2021, more than a year after the Governor prohibited utilities from disconnecting services to customers pursuant to the state of emergency declared due to the SARS-CoV-2 (COVID-19) pandemic, and after a lengthy process, the Commission entered Order 03 in this docket to, among other things, set out the process utilities must follow when resuming disconnection activities. When entering Order 03, the Commission declined to extend the moratorium on disconnections it instituted in parallel with the Governor's beyond its current expiration date, July 31, 2021, given the substantial consumer protections incorporated into Order 03.

2 Public Counsel asks the Commission to reconsider allowing utilities to resume disconnections after July 31, 2021, arguing that doing so (1) perpetuates social and economic inequalities by allowing disconnections before assistance dollars can reach customers in vulnerable and marginalized communities, and (2) allows for disconnections rather than outreach by utilities. Public Counsel also seeks reconsideration of the decision to allow utilities to resume pre-disconnection activities before July 31, 2021. Public Counsel further seeks a stay of Order 03 to prevent utilities from sending out to customers in early June notice that disconnections would resume after July 31, 2021.

3 The Commission should deny both Public Counsel’s petition for reconsideration and
its motion for stay. Public Counsel seeks to relitigate claims the Commission rejected when
entering Order 03. Although Order 03 does not apply the exact remedy requested by Public
Counsel on reconsideration, it addresses the concerns underlying Public Counsel’s petition.
And Public Counsel’s motion to stay Order 03 is moot.

II. BACKGROUND

4 In January 2020, the first case of COVID-19 appeared in Washington.¹ By early
March, authorities had confirmed the community spread of the disease and deaths from it.²
The Governor declared a state of emergency extending across all counties in Washington as
the outbreak broadened.³ Ultimately, in late March, the Governor ordered all non-essential
economic activity to cease and required people to stay in their homes to try to control the
spread of the virus before it overwhelmed the state’s healthcare system.⁴

5 A day after issuing the stay-at-home order, the Governor by proclamation waived
various statutory provisions related to utility service to facilitate ratepayer assistance.⁵ In the
proclamation, the Governor strongly encouraged utilities to:

take reasonable actions to mitigate the economic impacts of the COVID-19
pandemic on their utility customers caused by this crisis, including but not
limited to: acting to prevent disconnection of services due to non-payment
during the term of the statewide emergency declaration; waiving late
payments and fees; using payment plans to fulfill customers outstanding
balances; employing internal processes and procedures to facilitate social
distancing and proper hygiene practices; and closing facilities to the public.⁶

¹ Proclamation by Governor Jay Inslee, No. 20-05, at 1 (Feb. 29, 2020).

² Proclamation by Governor Jay Inslee, No. 20-06, at 1 (Mar. 10, 2020).

³ Proclamation by Governor Jay Inslee, No. 20-05, at 2.

⁴ Proclamation by Governor Jay Inslee, No. 20-25 “Stay Home – Stay Healthy” (March 23, 2020).

⁵ Proclamation by Governor Jay Inslee, No. 20-23 “UTC Ratepayer Assistance,” at 1-4 (Mar. 24, 2020).

⁶ *Id.* at 3-4.

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The Governor transformed this strong encouragement into a requirement of law with later extensions of the ratepayer assistance proclamation. Specifically, the Governor:

prohibit[ed] all energy, telecommunications, and water providers in Washington State from conducting the following activities from March 23, 2020, . . . until May 4, 2020: (1) disconnecting any residential customers from energy, telecommunications, or water service due to non-payment, except at the request of the customer, (2) refusing to reconnect any residential customer who has been disconnected due to non-payment, and (3) charging fees for late payment or reconnection of energy, telecommunications, or water service.⁷

The Governor repeatedly extended the disconnection moratorium by proclamation,⁸ and the currently effective extension expires on July 31, 2021.⁹

7

After the Governor prohibited disconnections, the Commission formed a workgroup to develop guidelines for protecting customers after the Governor’s disconnection moratorium expired.¹⁰ The group included Staff; representatives from the electric and natural gas companies regulated by the Commission; and ratepayer advocates, including the Public Counsel Unit of the Washington State Attorney General’s Office, The Energy Project, Front and Centered, the Northwest Energy Coalition, Puget Sound Sage, and the Sierra Club.¹¹ The workgroup agreed on some guidelines, but agreement on others proved elusive.¹²

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Based on the group’s work, Staff prepared a Term Sheet containing the agreed-to guidelines and Staff’s recommendation for resolving the remaining disputes.¹³ After an

⁷ Proclamation by Governor Jay Inslee, No. 20-23.2 “UTC Ratepayer Assistance and Preservation of Essential Services,” at 4 (Apr. 17, 2020).

⁸ Proclamation by Governor Jay Inslee, No. 20-23.15 “UTC Ratepayer Assistance and Preservation of Essential Services,” at 2 (Mar. 18, 2021).

⁹ *Id.* at 3.

¹⁰ *In re Response to the COVID-19 Pandemic*, Docket U-200281, Order 03, 1 ¶ 2 (May 18, 2021) (Order 03).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

Open Meeting hearing, the Commission adopted a revised version of Staff’s Term Sheet, with modifications.¹⁴ The Revised Term Sheet prohibited disconnections before April 30, 2021.¹⁵

9 In early April, the Commission held a technical conference with stakeholders to “discuss the equitable distribution of low-income assistance funding and communications strategies for reaching vulnerable populations.”¹⁶ At the conference, “[p]articipants reviewed utilities’ draft resumption notices and discussed required information and use of non-threatening language, and further identified best practices for design and content.”¹⁷ Participants “also discussed language access strategies and best practices to ensure communications are inclusive and accessible.”¹⁸

10 As the expiration date of the moratorium found in the Revised Term Sheet approached, the Commission reviewed whether to extend it.¹⁹ It did so, setting a new expiration date of July 31, 2021. The Governor followed suit, and matched the expiration date for the prohibition on disconnections.²⁰ When it extended the moratorium, the Commission stated that it would consider further extension of the moratorium at an Open Meeting in May, and it later invited comments on the subject.²¹

11 Before that open meeting, Staff submitted a Third Revised Term Sheet for the Commission’s consideration. The Third Revised Term Sheet contains numerous terms

¹⁴ *Id.*

¹⁵ *Id.* at 2 ¶ 4.

¹⁶ *In re Response to the COVID-19 Pandemic*, Docket U-200281, Open Meeting Memorandum, 4 (May 12, 2021).

¹⁷ *Id.*; accord Recessed Open Meeting, *In re Response to the COVID-19 Pandemic*, Docket U-200281 (May 12, 2021), at 50 min, 52 sec., available at <https://www.utc.wa.gov/documents-and-proceedings/events/video-archive> (last visited June 17, 2021) (comments of Bridgit Feeser explaining that Staff reviewed utility notices to ensure that they used “non-confrontational” and “non-threatening” language).

¹⁸ *Id.*

¹⁹ *Id.* at 2 ¶ 5.

²⁰ *Id.*

²¹ *Id.* at 2-3 ¶¶ 5-7.

intended to protect ratepayers, especially ratepayers who are members of vulnerable or marginalized communities, after the expiration of the disconnection moratorium. Before proceeding with disconnections, every utility must make “a good faith effort to contact” its customers to inform them “of flexible payment options, financial assistance programs, and other means to avoid disconnection.”²² Utilities must remove language barriers by providing translation services when communicating with their customers.²³ And utilities may not disconnect customers who are applying for, receiving, or participating in long-term payment arrangements, bill assistance, or medical certification protections.²⁴

12 At the May 12, 2021, Recessed Open Meeting, the Commission heard extensive comments from Staff, the utilities, ratepayer advocates, and the public.²⁵ After considering all the comments received, the Commission adopted the Third Revised Term Sheet, with modifications.²⁶

13 The modifications to the Third Revised Term Sheet ordered by the Commission bolster the consumer protections found in the document. Utilities may not disconnect “any” customer without first contacting Staff’s Assistant Director for Consumer Protection.²⁷ Upon receiving such a contact, Staff must open an informal complaint in the affected customer’s name. Staff must also make independent efforts to contact the customer.²⁸ The Commission also directed utilities to engage in “improved and robust outreach campaigns” and work with their low-income advisory and equity groups to “address systemic inequities.”²⁹ The

²² *Id.* at Appx. A at A.4.b.

²³ *Id.* at Appx. A at A.4.g.

²⁴ *Id.* 8-9 ¶ 37, 11 ¶ 53, Appx. A at A.4.f.

²⁵ *Id.* at 6 ¶ 24.

²⁶ *Id.* at 8-9 ¶ 37.

²⁷ *Id.* at 9 ¶ 39 (emphasis in original).

²⁸ *Id.* at 9 ¶ 39.

²⁹ *Id.*

Commission noted that the modifications to the Third Revised Term Sheet would “allow[] the Commission to intervene on behalf of the most marginalized ratepayers prior to a service interruption,” something that would help “protect[]” each utility’s “[v]ulnerable customers . . . from losing access to essential services.”³⁰

14 Data available at the May Open Meeting indicated that customers of Washington’s electric and natural gas companies had arrearages of approximately \$79 million.³¹ It also showed that available assistance funds totaled approximately \$104 million,³² meaning that the available assistance can cover the sum of all arrearages.

III. ARGUMENT

15 Public Counsel seeks reconsideration of the Commission’s decision to allow the moratorium to expire on July 31, 2021, and of its decision to allow utilities to send notices about that expiration before July 31, 2021. It also seeks to stay Order 03 pending reconsideration. The Commission should deny reconsideration on grounds both procedural and substantive, as described below, and it should deny the motion to stay as moot.

A. The Commission Should Deny Reconsideration Of Order 03

16 A party may petition for reconsideration to request that the Commission “change the outcome with respect to one or more determinations in a final order.”³³ To obtain relief, the petitioner “must demonstrate errors of law, or of facts not reasonably available to the petitioner at the time of entry of an order.”³⁴ Accordingly, “[a] petition that cites no evidence

³⁰ *Id.*

³¹ *In re Response to the COVID-19 Pandemic*, Docket U-200281, Open Meeting Memo, at 4 (May 12, 2021).

³² *Id.* at 2.

³³ WAC 480-07-850(1)(a); RCW 34.05.470.

³⁴ *In re Application of Avista Corp., In re Application of PacifiCorp, In re Application of Puget Sound Energy*, Docket Nos. UE-991255 & 991262, Fourth Supplemental Order, at 9 ¶ 40 (April 21, 2000).

that the Commission has not considered, and merely restates arguments the Commission thoroughly considered in its final order, states no basis for relief.”³⁵

1. Public Counsel’s disparate impact claim ignores the provisions in Order 03 intended to prevent any such disparate impacts.

17 Public Counsel first seeks reconsideration of the decision to allow the moratorium to expire on July 31, 2021, on the ground that allowing the disconnection moratorium to expire before assistance dollars can reach customers will disproportionately affect vulnerable and marginalized communities. The Commission should decline to reconsider its order on this ground because: (1) it has already considered and rejected the argument and (2) Public Counsel does not explain why the numerous provisions in Order 03 intended to prevent any disparate impact do not suffice.

18 Initially, Public Counsel does not raise a proper claim for reconsideration. Numerous individual commenters stated that disconnections would disproportionately affect vulnerable or marginalized communities before the Commission entered Order 03.³⁶ So did Public Counsel and the other consumer advocates.³⁷ And consumer advocates also raised concerns about allowing the disconnection moratorium to lapse before customers could receive assistance dollars.³⁸ The Commission, as discussed further below, addressed all those concerns when entering Order 03. Because it did so, it considered and decided the issue. Reconsideration is inappropriate.³⁹

19 Further, Staff was keenly aware of concerns like the ones Public Counsel raises here when forming its recommendation that the Commission allow the disconnection moratorium

³⁵ *Id.*

³⁶ *In re Response to COVID-19 Pandemic*, Docket U-200281, Order 03, 6, ¶ 25 (May 18, 2021).

³⁷ *Id.* at 5 ¶ 17 (Public Counsel); *id.* at 5 ¶ 18 (The Energy Project); *id.* at 6 ¶ 21; *id.* at 7 ¶ 31 (Public Counsel); *id.* at 7-8 ¶ 32; *id.* at 8 ¶ 34 (Front and Centered); *id.* at 8 ¶ 35 (Sierra Club).

³⁸ *Id.* at 7-8 ¶ 32.

³⁹ *Application of Avista Corp.*, Dockets UE-991255 & 991262, Fourth Supplemental Order, at 9 ¶ 40.

to expire, and the Commission was likewise aware of its concerns when adopting Staff's recommendation. Order 03 contains numerous terms intended to ensure that no customer, especially customers belonging to vulnerable or marginalized communities, experiences a service disconnection.

20 Order 03 adopts the Third Revised Term Sheet. The terms of that sheet should protect consumers, especially low-income and vulnerable or marginalized consumers, from disconnection. Utilities must make good faith efforts to communicate with their customers before disconnecting service. In these communications, the utilities must inform their customers about options for bill assistance programs and long-term payment plans intended to help them manage their arrearages. This communication must be meaningful, and utilities must provide translation services so that customers can understand what the utilities tell them and can make informed choices about their options. No utility may disconnect a customer who applies for or receives bill assistance or a medical certification; nor may any utility disconnect a customer who participates in a long-term payment arrangement.

21 The Commission's modifications to the Third Revised Term Sheet provide further protections for vulnerable and marginalized customers. Any utility that intends to disconnect a customer after following the required process must first inform Staff's Assistant Director of Consumer Protection. That contact triggers an informal complaint against the utility in the affected customer's name, and Staff's intervention on the customer's behalf. Staff must make additional attempts to contact the customer to ensure that he or she is aware of options for preventing the disconnection, and can inform the utility if the customer applies for assistance or to participate in a long-term payment plan, which will prevent any disconnection.

22 By adopting and incorporating the Third Revised Term Sheet into Order 03 with
modifications, the Commission gave its provisions the force and effect of law. Any utility
seeking to disconnect a customer must follow the process set out in Order 03.
Circumventing that process would subject the utility to penalties⁴⁰ and allow the
Commission to seek an injunction to prevent the violations of the Order.⁴¹

23 Public Counsel does not acknowledge the existence of these protections, let alone
explain why they will not suffice to prevent the disconnection of vulnerable or marginalized
customers. Given that lack of reasoned argument, the Commission should conclude that the
requisite process, and the availability of sufficient assistance to cover all existing arrearages,
should mean that no customer will lose service due to a disconnection. The Commission
should deny the petition.

**2. Public Counsel’s outreach claim ignores provisions in Order 03
requiring utilities to engage in outreach and stakeholder efforts to make
that outreach inclusive.**

24 Public Counsel next asks the Commission to reconsider Order 03 on the ground that
the moratorium should remain in place to because utilities should use outreach rather than
threats to connect customers to assistance. The Commission should deny reconsideration, for
two reasons.

25 Initially, Public Counsel again raises a claim inappropriate for reconsideration.
Public Counsel in its comments advanced the argument that utilities should engage in
outreach before the expiration of the disconnection moratorium.⁴² And both Public

⁴⁰ RCW 80.04.380-.405.

⁴¹ RCW 80.04.260.

⁴² *E.g., In re Response to the COVID-19 Pandemic*, Docket U-200281, Comments of the Office of the Attorney General, 13-14 ¶ 29 (Feb. 12, 2021).

Counsel⁴³ and the Sierra Club⁴⁴ noted the need for non-threatening communications between utilities and customers during the Recessed Open Meeting.⁴⁵ The Commissioners’ comments confirm that they heard those arguments but nevertheless entered Order 03.⁴⁶

Reconsideration is inappropriate.

26 Regardless, the Commission also addressed this concern in Order 03. The Third Revised Term Sheet, adopted by Order 03, requires utilities to engage in meaningful outreach before attempting to disconnect any customers. Staff and the other stakeholders have been keenly sensitive to the need for utilities to communicate with their customers in inclusive and accessible ways. To that end, stakeholders at the technical conference held in April discussed best practices for outreach as well as how utilities may best communicate with their customers. The participants reviewed the resumption notices at the heart of Public Counsel’s concerns to ensure they used “non-confrontational” and “non-threatening” language.⁴⁷ Order 03 requires exactly the kind of outreach that Public Counsel wants, and the Commission should deny reconsideration.

3. Public Counsel’s claim about the sending of the resumption notices does not warrant reconsideration.

27 Finally, Public Counsel asks the Commission to reconsider allowing utilities to send notices about the approaching end of the disconnection moratorium before the moratorium

⁴³ Recessed Open Meeting, *In re Response to the COVID-19 Pandemic*, Docket U-200281 (May 12, 2021), at 3 hours 16 min. 13 sec. (comments of Julian Aris).

⁴⁴ *Id.* at 2 hours 30 min. 55 sec. (comments of Lisa Gafken).

⁴⁵ Recessed Open Meeting, *In re Response to the COVID-19 Pandemic*, Docket U-200281 (May 12, 2021), at 50 min, 52 sec. (comments of Bridgit Feeser).

⁴⁶ Recessed Open Meeting, *In re Response to the COVID-19 Pandemic*, Docket U-200281 (May 12, 2021), at 3 hours 26 min. 58 sec. (deliberations of Chair Danner, Commissioner Rendahl, and Commissioner Balasbas).

⁴⁷ Recessed Open Meeting, *In re Response to the COVID-19 Pandemic*, Docket U-200281 (May 12, 2021), at 50 min, 52 sec. (comments of Bridgit Feeser).

expires. The Commission should again deny reconsideration on procedural and substantive grounds.

28 Public Counsel raised this argument at the Recessed Open Meeting.⁴⁸ Two of the Commissioners, a quorum,⁴⁹ rejected forbidding utilities from sending out disconnection notices during the Commissioners' deliberations,⁵⁰ and the Commissioners unanimously approved adoption of the Third Revised Term Sheet, which allowed utilities to send out resumption notices before the expiration of the moratorium.⁵¹ The Commission considered the issue and rejected Public Counsel's argument. It should not reconsider Order 03.

29 Further, allowing utilities to send the resumption notices prior to the expiration of the moratorium does not implicate the justifications for the moratorium. The Governor prohibited utility disconnections at the outset of the stay-at-home order as a public health and safety measure.⁵² The prohibition ensured that those who did not work in essential jobs could remain home at home, limiting the spread of COVID-19.⁵³ Under Order 03, no utility can disconnect its customers until after July 31, 2021, consistent with the Commission's order and the Governor's proclamation. And the Governor long-ago lifted the stay-at-home order, and has recently expressed confidence that large sectors of the state economy will be

⁴⁸ *Id.* at 2 hours 37 min, 59 sec.

⁴⁹ RCW 80.01.010, .050.

⁵⁰ Recessed Open Meeting, *In re Response to the COVID-19 Pandemic*, Docket U-200281 (May 12, 2021), at 3 hours, 29 min, 7 seconds (Commissioner Rendahl), available at <https://www.utc.wa.gov/documents-and-proceedings/events/video-archive>; *id.* at 3 hours 35 min. 1 sec. (Chair Danner).

⁵¹ Order 03 at Appx. A at A.2.

⁵² Proclamation by Governor Jay Inslee, No. 20-23.2 "Ratepayer Assistance and Preservation of Essential Services," at 4.

⁵³ Kristin Toussant, A Nationwide Halt to Evictions and Utilities Could Have Lowered the COVID-19 Death Count, FastCompany, March 8, 2021, available at <https://www.fastcompany.com/90601559/a-nationwide-halt-to-evictions-and-utilities-shutoffs-could-have-lowered-the-covid-19-death-count> (last visited June 17, 2021).

fully open by the date on which utilities may resume disconnections.⁵⁴ The resumption of disconnections thus does not impact the public health policies underlying the moratorium.

30 Public Counsel casts the moratorium as a means for reducing or eliminating stress, but that characterization of the prohibition cannot be squared with the plain text of the proclamations announcing and extending the moratorium. Those proclamations explicitly state that the prohibition does not relieve customers of their obligation to pay for utility service.⁵⁵ As a result, the proclamations leave customers afraid as their arrearages build because “they know what they owe.”⁵⁶ The pre-disconnection activities Public Counsel seeks to halt are intended to work with customers in a non-threatening, non-stressful way to help them navigate the process for obtaining bill assistance to deal with the arrearages.

B. The Commission Should Deny Public Counsel’s Motion To Stay Order 03 As Moot

31 Finally, Public Counsel moves the Commission to stay the effectiveness of Order 03 to prevent utilities from sending out in early June notices that the utilities are resuming disconnections. The Commission should deny that motion because events have mooted it.

32 The Commission will decline to resolve a moot motion.⁵⁷ A motion is moot when a tribunal can no longer provide effective relief by granting it.⁵⁸

33 The Commission cannot grant Public Counsel meaningful relief. Public Counsel sought a stay of Order 03 to prevent utilities from sending out resumption notices in early to

⁵⁴ Proclamation by Governor Jay Inslee, No. 20-25.13 “healthy Washington – Roadmap to Recovery,” at 2 (May 21, 2021).

⁵⁵ *E.g.*, Proclamation by Governor Jay Inslee, No. 20-23.15 “Ratepayer Assistance and Preservation of Essential Services,” at 3-4 (Mar. 18, 2021); Proclamation by Governor Jay Inslee, No. 20-23.2 “Ratepayer Assistance and Preservation of Essential Services,” at 5 (Apr. 17, 2020).

⁵⁶ Recessed Open Meeting, *In re Response to the COVID-19 Pandemic*, Docket U-200281 (May 12, 2021), at 51 min, 6 seconds (Comments of Bridget Feeser), available at <https://www.utc.wa.gov/documents-and-proceedings/events/video-archive> (last visited June 17, 2021).

⁵⁷ *E.g.*, *In re Joint Application of Qwest Commc’ns Int’l Inc. & CenturyTel, Inc.*, Docket UT-100820, Order 09, 4 ¶ 12, 10 ¶ 26 (Sept. 10, 2010).

⁵⁸ See *Ferguson Firm, PLLC v. Teller & Assocs., PLLC*, 178 Wn. App. 622, 630 n.4, 316 P.3d 509 (2013).

mid-June. That time has come and gone. Any utilities intending to send those notices out have already done so.

IV. CONCLUSION

34 The Commission should deny Public Counsel's petition for reconsideration and its motion to stay the effectiveness of Order 03 for the reasons described above.

DATED this 24th day of June 2021.

Respectfully submitted,

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