

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the matter of the

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 THE ENERGY PROJECT

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I. Introduction

The Energy Project (TEP) submits these comments in response to the Commission’s Notice of Opportunity to Comment dated March 18, 2022. TEP is pleased that the Commission is examining the impact on customers of its rules and utility practices concerning credit and collections. As Commission Staff aptly explained, “[n]ationally there is mounting concern that late fees and other similar fees contribute to the cycle of debt for many customers that are already struggling with unmanageable bills. There are also questions concerning the effectiveness of these fees and if they actually dissuade late payment.”¹ TEP recommends that this proceeding examine whether utility practices related to disconnection of service, late fees, deposits, disconnection/reconnection fees, arrearage management, medical certificates, credit scoring, and payments, promote equity.

TEP’s analysis of data reported by utilities in the COVID-19 docket shows that in this state arrearages are disproportionately clustered in zip codes with low-income customers and vulnerable populations and contain areas designated as highly impacted communities by the

¹ Dkt. U-200281, Commission Staff Open Meeting Memo, at 3 (March 24, 2022), citing: Lo, Jasen, *Food or power: Energy bill late fees force tough choices*, The Associated Press, <https://federalnewsnetwork.com/government-news/2022/03/major-power-utilities-charge-higher-than-average-late-fees/> (March 14, 2022).

Department of Health.² The Commission is aware of this due to its zip code-level COVID-19 reporting requirements and TEP's analysis of the data. The Commission should continue this transparency requirement so that stakeholders and policy makers can track financial impacts on specific geographic areas and communities.

Energy insecurity is now widely viewed as a public health concern. A recent national survey of over two thousand households with incomes at or below 200 percent of the Federal Poverty Level (FPL) found trends similar to those identified by TEP in Washington:

To summarize our findings, energy insecurity is highly prevalent among low-income American households, especially among households that identify as Black and Hispanic. We found that those who require use of an electronic medical device and live in poor or less-efficient housing conditions experience higher rates of energy insecurity. The COVID-19 pandemic has thus far deepened the prevalence of energy insecurity among low-income households, as some speculated may occur, with some indication of growing disparities.³

These peer reviewed findings also echo the conclusions of the National Association for the Advancement of Colored People (NAACP) regarding utility disconnections: “[u]tility disconnections can have a discriminatory impact on low-income people, people of color, elderly people, people with special health needs, and other socially vulnerable utility customers who disproportionately face potential violations of human rights.”⁴

² Dkt. U-200281, Thompson, C. & Kimball, M., *Summary of the Effects of the COVID-19 Pandemic on Washington's Investor-Owned Residential Utility Customers*, The Energy Project, (March 18, 2022). The Energy Project plans to update this analysis to include data through March 2022.

³ Memmott, T., Carley, S., Graff, M. & Konisky, D., “Sociodemographic disparities in energy insecurity among low-income households before and during the COVID-19 pandemic,” *Nature Energy*, volume 6, at p. 186 (February 2021).

⁴ Franklin, M. & Kurtz, C., *Lights Out in the Cold: Reforming Utility Shut-off Policies as if Human Rights Matter*, NAACP, at p. 9 (2017), <https://naacp.org/resources/lights-out-cold>.

This rulemaking comes at a critical juncture. Even in pre-pandemic times utility debt was common for low-income households. For example, a long-term study of the debt and financial lives of vulnerable households found that utility debt was the most common type of debt, reported by three-quarters of households.⁵ TEP’s analysis shows that while the number of Washington households carrying past due balances has not changed during the pandemic, the amounts owed by those households have ballooned. As of January 2022, total arrearages for the five investor-owned utilities (IOUs) had reached nearly \$70 million, a 78 percent increase over March 2020 arrearages of \$39 million.⁶ And this occurred while IOUs were prohibited from assessing certain fees. Our most vulnerable neighbors are clearly experiencing significantly higher levels of financial distress than before, so the time is ripe to evaluate whether the Commission’s disconnection, fee, credit, and collections practices promote equity.

II. The Commission should review and adopt best practices concerning equity in disconnections, late fees, disconnection/reconnection fees, deposits, and credit and collection practices (Questions 19 and 20).

The Energy Project thanks the Commission for asking parties to submit best practices concerning equity and encourages the Commission to consider incorporating these best practices into its rules. TEP reviewed numerous surveys of utility and regulatory practices. Several of the most informative resources we found are published by the National Consumer Law Center (NCLC), which houses leading experts in addressing equity through regulatory policy. NCLC worked with other consumer advocates to develop a thought-leading set of recommendations concerning equity for utility policymakers titled *Implementing a Roadmap to Utility Service as a*

⁵ Seefelt, K., “Constant Consumption Smoothing, Limited Investments and Few Repayments: The Role of Debt in the Financial Lives of Economically Vulnerable Families,” *Social Service Review*, The University of Chicago, at pp. 283-284 June 2015).

⁶ U-200281, Commission Staff Open Meeting Memo, Table 1 (March 24, 2022).

*Human Right.*⁷ Attachment A to these comments includes NCLC’s recommendations and well as an introduction.

A. The Commission should consider disconnection policies, including if allowing disconnections for residential customers promotes equity and the public interest, in this proceeding.

The Commission should expand the scope of this rulemaking to consider disconnection policies. Specifically, the Commission should consider if disconnections for residential or low-income customers are in the public interest. RCW 80.28.010 prevents the disconnection of utility service for residential space heating in the winter for inability to pay. The implication of this law is that a warm home in the winter is a human right which should not be revoked due to inability to pay. NCLC and its partners posit that utility service as a whole is also a human right essential to health, safety and daily life. They observe that:

Reliance on disconnections as a collections tool has the effect of punishing people for being poor, and ignores the longstanding racial and economic discrimination that have created the disparities that fuel poverty and the unaffordability of utility services.⁸

The NAACP similarly views utility service as a human rights issue, particularly since low-income communities and communities of color are likely to pay a higher proportion of their income toward utility bills, and since terminations have the harshest impact on vulnerable low-income populations, such as elderly persons and people with health problems.⁹

⁷ National Consumer Law Center, “Implementing a Road Map to Utility Service as a Human Right,” April 2021. https://www.nclc.org/images/pdf/special_projects/covid-19/IB_Utility_Bill_of_Rights.pdf (Attachment A). NCLC’s treatise *Access to Utility Service* also provides a helpful review of state disconnection and credit policies. National Consumer Law Center, *Access to Utility Service* (6th ed. 2018), updated at <http://www.nclc.org/library/aus>.

⁸ Attachment A at p. 1.

⁹ Franklin, M. & Kurtz, C., *Lights Out in the Cold: Reforming Utility Shut-off Policies as if Human Rights Matter*, National Association for the Advancement of Colored People (March 2017), <https://naacp.org/resources/lights-out-cold>.

Therefore, NCLC and its partners recommend that disconnections “based on inability to pay for low-income households must be eliminated – not just reduced – to ensure access to essential utility service.”¹⁰ In this rulemaking the Commission should consider if equity, and therefore the public interest, is advanced by allowing disconnections for residential or low-income customers.

B. The Commission should consider eliminating late fees, deposits, and disconnection/reconnection fees for residential or low-income customers.

Assessing late fees to customers in poverty is not only unfair, but unproductive and unlikely to lead to timely payment.¹¹ Households in financial distress are no more likely to make a utility payment as a result of a late fee. Consequently, many states established prohibitions or restrictions on late fees for utility service. Alabama, Colorado, and Vermont do not allow late fees for any customer classes.¹² Kentucky, Massachusetts, New Jersey, Rhode Island, and Texas do not allow late fees for residential customers. Illinois and Montana more narrowly prohibit late fees only for low-income customers.¹³ TEP recommends that the Commission follow the lead of these ten states and restrict the use of late fees in Washington. The Commission should consider eliminating late fees for all residential customers because it is difficult to identify low-income customers, and low-income customers are most harmed by late fees.

Deposits, disconnection fees, and reconnection fees should similarly not burden low-income customers. For example, Puget Sound Energy and perhaps other utilities charge a fee to

¹⁰ Attachment A at p. 2.

¹¹ Access to Utility Service, Section 5.6.3, Late Payment Charge Does Not Induce Prompt Payment.

¹² Access to Utility Service, Section 5.5.2, Are Late Charges Authorized by PUC? (TEP relies upon NCLC’s Access to Utility Service treatise, which is regularly updated, and has not independently verified the current status of each state’s late payment regulations.)

¹³ Access to Utility Service, Section 5.5.2, Are Late Charges Authorized by PUC?.

customers if a payment or payment arrangement is made at the premise to avoid disconnection. The Commission should review Puget Sound Energy's \$13 disconnection visit fee¹⁴ and any similar fees charged by other utilities in this proceeding. Any household that is eligible to participate in energy assistance programs should also be eligible for a waiver of deposit and fee requirements, and the Commission should revisit if these practices are appropriate for residential customers as a class. NCLC reasons that:

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 . . . should be eliminated for qualified low-income customers, and in no case should exceed the true financial cost of service.¹⁵

NCLC recommends following Massachusetts' lead and prohibiting utilities from requiring deposits as a condition of service to residential customers.¹⁶ TEP suggests that the Commission consider the need for deposits, disconnection fees, and reconnection fees for residential and low-income customers in this proceeding.

C. Utilities should provide alternative payment arrangements and arrearage management programs.

Alternative payment arrangements, plans in which customers agree to pay a certain amount to the utility regularly, should be widely available to all customers. Payment arrangements are offered in many states as a means of avoiding impending disconnection.¹⁷ The Commission's rules currently allow the use of payment programs in at least two areas: medical

¹⁴ Puget Sound Energy, Electric Residential Tariff, WN-U60, Schedule 80, Section 30.

¹⁵ Attachment A at p. 4.

¹⁶ 220 Code Mass. Reg. § 27.00.

¹⁷ Access to Utility Service, Section 5.2.5.7.2.

conditions or emergencies, and the winter low-income payment program.¹⁸ In other states, payment arrangements are more widely available to all customers experiencing difficulty paying their utility bill. For example, in Maine payment arrangements are flexible based upon a customer's circumstances and ability to pay. Maine's rules require: "If a customer and the utility cannot agree on the terms of a payment arrangement, including a customer's claim that the customer cannot afford to pay any amount towards the arrearage, the utility must refer the customer to the [Consumer and Safety Division] for assistance."¹⁹ The Consumer and Safety Division of the Maine Public Utility Commission is comparable to this Commission's Consumer Affairs Division. The Commission should modify its rules so that all customers can access payment arrangements.

One type of alternative payment arrangement that should be available for all low-income customers is an arrearage management program, or AMP. AMPs typically target low-income customers and forgive some of a past due balance after a certain number of regular bill payments.²⁰ Such programs provide flexibility to allow customers to make partial payments toward arrearages, or to pay a reasonable portion of their household income toward essential utility service. NCLC further describes the necessity of forgiveness of past due balances for vulnerable households:

¹⁸ WAC 480-100-128(8)(b) (medical emergencies); WAC 480-100-143 (winter low-income payment program).

¹⁹ Code Maine R. 65-407, Chapter 815, Section 9(F), at p. 23 (Residential Payment Arrangements), <https://www.maine.gov/sos/cec/rules/65/407/407c815.docx>.

²⁰ *See, e.g.*, Nat. Consumer Law Center, New D.C. Study Shows How Arrearage Management Programs Are a Win-Win for Companies and Customers Alike (accessed April 28, 2022), <https://www.nclc.org/issues/energy-utilities-a-communications/nclc-energy-utilities-telecom-blog/new-d-c-study-shows-how-arrearage-management-programs-are-a-win-win-for-companies-and-customers-alike.html>.

Arrearage forgiveness programs for economically disadvantaged customers who make affordable, consistent monthly payments must be universally available in all states, with arrearages forgiven after 12 months of current bill payments, with allowances for occasional late or missed payments within a designated time period.²¹

AMPs, when coupled with percentage of income payment plans or bill discounts (discussed below), show promise as a cornerstone strategy to reduce household energy insecurity and retain access to essential utility service in Washington. Avista recently implemented pilot programs for both and found them successful. The AMP participants could have 90 percent of their arrearages forgiven if they made consistent payments on the remaining 10 percent of the arrearage during the one-year pilot program.²² In its current general rate case, Avista proposes to expand its AMP, offering of arrearage forgiveness to all low-income customers eligible for a bill assistance program.²³

D. Low-income customers should have access to bill assistance programs, and certain low-income customers should have access to percentage of income payment plans.

All utility customers with incomes up to 80 percent of area median household income (AMI) or 200 percent of the FPL, should be eligible for a bill assistance program.²⁴ Customers most in need, with incomes up to 50 percent of FPL, should be eligible for a percentage of income payment plans that sets their bills based on their income. Such programs, including one

²¹ Attachment A at p. 2.

²² Dkt. UE-210077, Avista Corp., Revises Tariff WN-28, Schedule 92 - Low Income Rate Assistance Program, Adding a Percentage of Income Plan, an Arrearage Management Plan, and Past Due Payoff, Attachment A at p. 1 (filed February 18, 2021) (Evergreen Economics, Avista Income Based Payment Program / Balance Management Arrangement Pilot Program Evaluation Final Report, dated April 20, 2020).

²³ Dkt. UE-220053, Avista Corp. General Rate Case, Collins, Exh. SJB-1T at 15:26-32 (Jan. 21, 2022).

²⁴ See RCW 19.405.020(25).

piloted by Avista, are designed to reduce customers' energy burden to a reasonable level, typically 6 percent of the customers' income. When paired with an AMP, percentage of income payment plans are effective at reducing customers' energy burden. For example, Avista's pilot program included both and reduced customers' energy burden.²⁵ Prior to enrollment participants had an average energy burden of 28 percent.²⁶ After the pilot, 33 to 44 percent of participants had energy burdens at 6 percent or below, and virtually all of the remaining participants had energy burdens below 12 percent.²⁷ The pilot also significantly decreased the likelihood of both missed payments and disconnections.²⁸ Therefore, customers most in need should have access to percentage of income payment plans.

E. If the Commission allows disconnections for residential customers, it should consider several related customer protections.

1. Require a "last knock" premise visit for disconnection for non-payment.

The "last knock" at the customer's home is an extremely effective tool to keep utilities' most vulnerable customers connected to service. The requirement of a premise visit for non-payment helps a significant portion of customers remain connected to essential utility service, and provides the company with added revenues. In the past, the Commission's rules incorporated such a "last knock" requirement for disconnection for non-payment. A 2013 Commission Staff investigation of this issue determined that the ability to pay at the door to prevent a disconnection

²⁵ Dkt. UE-210077, Avista Corp., Revises Tariff WN-28, Schedule 92 - Low Income Rate Assistance Program, Adding a Percentage of Income Plan, an Arrearage Management Plan, and Past Due Payoff, Attachment A at p. 1 (filed February 18, 2021) (Evergreen Economics, Avista Income Based Payment Program / Balance Management Arrangement Pilot Program Evaluation Final Report, dated April 20, 2020).

²⁶ *Id.*, at p. 44.

²⁷ *Id.*, at p. 45.

²⁸ *Id.*, at p. 43.

“is a vital consumer protection that must be preserved particularly in light of the data showing that between one-third and one-half of all disconnections are prevented because this rule exists.”²⁹ However, in the Commission’s Automated Meter Infrastructure (AMI) rulemaking proceeding (UE-180525), the “last knock” requirement was narrowed to apply only to customers with medical certificates and known low-income customers.

Data provided by utilities in that AMI rulemaking proceeding demonstrates that the “last knock” premise visit offers a critical protection to avoid impending disconnection. Utilities provided data regarding the percentage of disconnection visits that result in the customer making a payment to stop the impending disconnection,³⁰ for example:

- PSE issued 376,821 disconnect notices in 2017, and made premise visits to 31 percent of those (about 116,814 disconnect visits). Among those disconnect visits, 33 percent of customers made payments to avoid disconnection (about 38,548 customers).³¹
- Northwest Natural provided data for 2017, stating that 24 percent of residential customers made payments to a service technician to avoid disconnection, and almost twice as many commercial customers did so, about 47 percent.³²

The data above pertains to a period when the Commission’s earlier and broader premise visit requirement was in effect. Avista indicates that in 2019, under the current, more narrowly tailored premise visit requirement, 1,873 customers made payments during such premise visits to avoid disconnection.³³

²⁹ Dks. UE-130545 and UE-131087, Staff Open Meeting Memorandum at p. 1 (Sept. 12, 2013).

³⁰ Dkt. U-180525, Notice of Opportunity to File Written Comments, Question 10 (July 10, 2018).

³¹ Dkt. U-180525, Comments of Puget Sound Energy, at p. 8 (September 7, 2018).

³² Dkt. U-180525, Comments of Northwest Natural Gas, at p. 2 (September 7, 2018).

³³ Dkts. UE-190334, Avista General Rate Case, Avista Disconnection Reduction Plan, Exhibit A, at p. 15 (March 2021).

The premise visit also provides a unique opportunity for the Company to learn about the customer's situation and thereby identify whether the customer is eligible for other relief. Customers may have a medical condition, in which case the utility can avoid disconnection. Elderly, non-English speaking, and other customers may be unaware of the impending disconnection or available assistance programs. In addition, as noted above, in a high percentage of cases the visit will identify customers who are able to make a payment to keep service. There is no real substitute for this in-person contact with the customer. If the Commission does not reinstate a broad premise visit requirement for disconnection for non-payment, TEP recommends that, at a minimum, this critical consumer protection should be extended to geographic areas including highly impacted communities and vulnerable populations.

2. Establish a minimum balance for disconnection.

Some states require minimum past-due balances before disconnection, and TEP recommends that the Commission consider this requirement if it retains disconnections for residential customers.³⁴ This policy prevents disconnection from essential utility service for relatively minor unpaid balances. Pursuing disconnection for *de minimis* past due balances is unreasonable. The impact on utilities would be mitigated by cost savings from avoided disconnection and related collection activity. The arrearage is still owed, but other resources can be brought to bear as alternatives to deal with unpaid amounts, including directing the customer to available energy assistance and AMPs.

³⁴ States with minimum balance requirements for disconnection include Maine, New Hampshire, New Jersey and Vermont, with minimum amounts ranging from \$50 to \$450. See, Dept. Of Health and Human Services, LIHEAP Clearinghouse, Disconnect Policies, <https://liheapch.acf.hhs.gov/Disconnect/disconnect.htm> (accessed April 28, 2022).

3. Require Commission approval prior to residential disconnections for non-payment.

The Commission should consider following the lead of states that require regulatory approval prior to disconnection for non-payment. For example, in Rhode Island utilities must obtain written approval prior to disconnecting elderly customers or those with disabilities.³⁵ This is similar to the Commission's temporary disconnection approval requirement adopted in U-200281. The Commission should consider continuing this policy for all residential customers, or low-income customers, vulnerable populations, and highly impacted communities.

4. Provide resources to disconnected customers.

The Commission should consider requiring utilities to provide resources to disconnected customers. For example, Maine requires that each year prior to the beginning of the winter moratorium on disconnections, utilities must send information to customers disconnected for non-payment during the prior six months that have not been subsequently reconnected. The utility must provide information about customer rights and protections, available assistance, and commission consumer affairs contact information.³⁶

5. Other policies.

Additional examples of procedural protections related to utility disconnection are provided by the Low Income Home Energy Assistance Program Clearinghouse website, which provides a description of disconnection policies for each state.³⁷

³⁵ Rules and Regulations Governing the Termination of Residential Electric, Gas and Water Utility Service, 810-RICR-10-00-1, Section 1.4(K)(3) (Insufficient Reasons for Termination), <https://rules.sos.ri.gov/regulations/part/810-10-00-1>.

³⁶ Code Maine R. 65-407 Chapter 815, Section L(5), at p. 35 (Disconnection procedures).

³⁷ See Dept. Of Health and Human Services, LIHEAP Clearinghouse, Disconnect Policies, <https://liheapch.acf.hhs.gov/Disconnect/disconnect.htm>.

III. Utilities should continue reporting zip-code level information on arrearages, disconnections, and related data.

The Energy Project recommends continuing regular utility reporting on arrearages, disconnections, payment arrangements and related credit and collections matters. In addition, there should be transparency regarding IOU credit and collections processes. Several recent research studies have underscored the critical importance of data reporting and data transparency. For example, a recent analysis by Lawrence Berkeley National Labs included these recommendations and observations:

- Utilities should report data on residential customer counts, billing, receipts, arrearages, disconnections, fees, deposits, disconnection notices, payment arrangements, and related credit and collections protocols to better understand the extent to which customers are able to maintain affordable access to essential utility service.³⁸
- Utilities should be required to report this data at the zip code-level. “Data-driven analysis at the zip code level is needed to design and deliver effective, targeted programs and policies to reverse existing electricity system inequities and historical discrimination.”³⁹
- “Without the data, home energy affordability challenges and their often-dire consequences remain invisible, and the effectiveness of utility credit and collections practices cannot be assessed.”⁴⁰

The National Consumer Law Center similarly recommends that regulators require disconnection data reporting by zip code, and pursue investigations and remedies when disconnections disproportionately impact communities of color:

State regulators should order utilities to collect and analyze data (including disconnections, reconnections, deferred payment arrangement activity, late fees, deposits, and other credit and collections data) by zip code; investigate when disconnections disproportionately impact communities of color or other specific

³⁸ Farley, C., Howat, J., Bosco, J. et al. *Advancing Equity in Utility Regulation*, Lawrence Berkeley National Laboratory, Future Electric Utility Regulation, Report No. 12, at pp. 27-29 (November 2, 2021), <https://doi.org/10.2172/1828753>.

³⁹ *Id.*, at p. 29.

⁴⁰ *Id.*, at p. 27.

populations; and remedy disproportionate disconnections and other inequitable credit and collections practices.⁴¹

The reporting that began in the COVID-19 proceeding should continue. The data provided during the past two years in the Commission’s COVID-19 docket has allowed stakeholders to gain greater insights into customer arrearages and related issues than ever before. Availability of this data at the zip code level has deepened our understanding about customer arrearages, fees, payment arrangements and related matters, as well as disproportionate impacts for BIPOC communities, vulnerable populations and members of highly impacted communities. Virtually every study or review of utility disconnection policies and energy insecurity we found highlighted the need for greater transparency and reporting on utility disconnections, as well as credit and collections issues.⁴² In this same vein, in 2019 the National Association of Regulatory Utility Commissions (NARUC) and the National Association of Utility Consumer Advocates (NASUCA) adopted a joint resolution regarding best practices in utility reporting of credit and collections data.⁴³

Moreover, in order to promote greater understanding and transparency surrounding disconnection policies and practices, it would be ideal if the Commission analyzes utility arrearage, disconnection, and related credit and collections data reporting, and shares that

⁴¹ Attachment A.

⁴² See, e.g., Attachment A; Lawrence Berkeley National Laboratory, *Advancing Equity in Utility Regulation*; Castillo, M. & Odom, C., *What do we know about utility shutoffs during COVID-19*, RMI, March 16, 2022, <https://rmi.org/what-do-we-know-about-utility-shutoffs-of-vulnerable-families-during-covid-19/>; Flaherty et. al., “Electric Utility Disconnection Policy and Vulnerable Populations,” *The Electricity Journal*, vol. 33 (2020).

⁴³ See National Association of Regulatory Utility Commissions, *Resolution on Best Practices in Data Collection and Reporting for Utility Services Delinquencies in Payments and Disconnections of Service*, (November, 19, 2019) (NARUC & NASUCA Joint Resolution), <https://pubs.naruc.org/pub/9392BD1E-D055-4A2C-9677-AAD00FEA7527>.

analysis publicly on the Commission’s website. Such a practice would be somewhat similar to the reliability data provided on the Commission’s website.⁴⁴ Research on best practices emphasizes the need for transparent access to this type of data, as well as analysis of that data.⁴⁵ The NARUC and NASUCA joint resolution mentioned above specifically highlights the need for this type of data to be analyzed and publicly available on the Commission’s website.⁴⁶

IV. Significant barriers to payment exist (Question 6).

Question 6 asks for identification of barriers to payment for low-income customers, members of highly impacted communities, and/or vulnerable populations. We identify several specific following barriers below; please note that these comments discuss many of these topics in more detail elsewhere.

- Language barriers. Disconnection notices, utility bills, and other important information from the utility may not be in the customer’s native language.
- Fees, including reconnection, disconnection, field visit and late fees represent a major barrier to payment of utility bills and arrearages as they create further financial hardship and larger arrearages to customers already struggling to pay their bills.
- Payment locations and payment options, including for unbanked customers.
- Lack of access to reasonable credit.
- Medical issues or emergencies.
- Deposit requirements for some customers may be onerous, making subsequent utility bill payments more difficult.

⁴⁴ The Commission’s Energy Industry page provides the past ten years of SAIDI & SAIFI data for each IOU, as well as links to most recent IOU reliability report. Washington Util. and Transp. Comm., Annual Reliability Reports of Electric Companies (accessed April 28, 2022), <https://www.utc.wa.gov/regulated-industries/utilities/energy/infrastructure-and-energy-planning/annual-reliability-reports-electric-companies>.

⁴⁵ See, e.g., Farley, C., Howat, J., Bosco, J. et al. Advancing Equity in Utility Regulation. Lawrence Berkeley National Laboratory, November 2, 2021, at p. 29.

⁴⁶ NARUC and NASUCA Joint Resolution, at p. 3.

- Availability of low-income energy assistance.
- As discussed throughout these comments and in research literature on this topic, vulnerable populations often face barriers to maintaining affordable utility service including low-income customers, BIPOC customers, elderly customers, households with children or individuals with disabilities.

This list is certainly not exhaustive. We look forward to continuing research on this issue and reviewing the comments of other stakeholders on this topic.

V. The Commission should expand the scope of this proceeding to include additional topics.

The Commission’s Notice raises many topics and appropriately requests information from the companies on a range of different topics related to credit and collections. However, there are a few additional topics that TEP believes are also relevant to consider as part of this rulemaking, as explained below.

- *Disconnection policies.* As explained in section II.A, this proceeding should include a holistic evaluation of the Commission’s disconnection policies.
- *Payment Plans and Arrearage Management Plans (AMPs).* As explained in section II.C above, payment plans and AMPs in particular can have a significant impact on reducing disconnections and keeping customers connected to critical utility service.
- *Medical certificates.* This is another topic that TEP recommends considering in this proceeding. Medical certificates are a critical customer protection, and also represent one of two instances in the Commission’s rules that provide for payment arrangements as a means of avoiding disconnection. WAC 480-100-128 requires that customers with medical conditions or emergencies be given an opportunity to make a payment of ten percent of the amount owed, or establish a payment arrangement for the balance owed over a period of 120 days.⁴⁷ Customers may have difficulty renewing the medical certificate, which is required every 60 days. The Commission should consider revising its medical certificate practices.

In addition, the Commission should request that utilities provide additional transparency and data concerning the following topics:

⁴⁷ WAC 480-100-128(8)(b).

- *Criteria for Deposit Requirements.* While the Notice asks companies to provide all references in tariffs governing residential customer deposits, it would also be helpful for companies to provide a narrative description of the criteria, factors, and relevant information used to determine whether customers are required to pay a deposit.
- *Credit Bureaus.* At the March 24, 2022 Commission Open Meeting, Avista indicated that the collection agencies that Avista works with have stopped sharing utility customer data with credit bureaus.⁴⁸ It would be helpful to learn about the historic and current practices in this regard for all of the IOUs, the collection agencies they contract with, and whether the policies on this matter are set forth in the IOU contracts with these collection agencies.
- *Credit scores.* To the extent any of the companies do not include this in the detailed narrative of the credit and collection process (question 14a), it will be important to understand whether and how the companies use customer credit scores for any purpose, such as whether a customer must pay a deposit. “Reliance on credit scores to determine access to utility services raises numerous questions of fairness and appropriateness,” according to NCLC.⁴⁹ Credit scores may not be a reliable predictor of the likelihood of utility bill payment, and their use may also have disparate and unfair impacts for BIPOC, low-income customers and vulnerable populations. Low-income and BIPOC customers are more likely to have insufficient credit history to generate a credit score, and thus are unfairly harmed by policies that require deposits based on credit scores.⁵⁰
- *Payment locations.* Utilities should provide information regarding availability of payment locations, including locations that will accept cash payments and whether any added fees are charged for making payments at any location. Reduction or closure of payment locations is likely to negatively impact unbanked customers and others making cash payments. These customers likely had greater challenges making payments during the pandemic due to payment location closures.
- *Premise visits and customer payments.* Utilities should provide data regarding premise visits for disconnection, which are required for those with prior medical certificates and known low-income customers. These “last knock” visits offer a crucial opportunity for payment that many customers utilize.
- *Liens.* Literature on utility disconnection policies and practices suggests that some companies use liens on residential property as part of a debt collection strategy. Utilities should provide an explanation as to whether this practice is used in Washington. NCLC

⁴⁸ Dkt. U-200281, UTC Open Meeting, March 24, 2022, Statements of Shawn Bonfield representing Avista Corporation.

⁴⁹ Access to Utility Service, Section 5.2.4.2.

⁵⁰ Access to Utility Service, Section 5.2.4.6.

recommends prohibiting this practice.⁵¹

VI. Conclusion

TEP looks forward to reviewing comments filed by other parties in this docket, including the utility responses to issues identified in the Notice, and to future participation in this proceeding.

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⁵¹ Attachment A at p. 3.

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ATTACHMENT A



National Consumer Law Center



Implementing a Roadmap to Utility Service as a Human Right

April 2021

Utility services, including electricity, heat, water, telecommunications, and internet access are essential to health, safety, and daily life. The vital need for uninterrupted utility service was evident before the coronavirus pandemic, but the COVID-19 public health emergency reinforced both the essential nature of utility service and the problem of energy and water insecurity or energy and water poverty.

Faced with these challenges, many states and utilities created temporary solutions to help struggling households during the early days of the crisis. But the underlying problem remains – essential utility service is unaffordable for too many.

Every struggling family knows that falling behind on utility bills comes with the risk of utility disconnection. Instead of ensuring that the most vulnerable in our society have access to essential utility services, state policies permit utility disconnections among medically and economically vulnerable households because of the customer’s inability to afford monthly utility bills. Other policies that impose additional late fees, deposits, liens, and other punitive charges compound the problem by increasing the amount struggling households must pay to access or maintain service.

Reliance on disconnections as a collections tool has the effect of punishing people for being poor, and ignores the longstanding racial and economic discrimination that have created the disparities that fuel poverty and the unaffordability of utility services. Available data indicate that utility service disconnections disproportionately harm people of color. When customers experience sudden loss of income or other financial hardships, they should not be forced to choose between paying a utility bill and affording rent, food, medicine, and other essentials. Attempts at purported free market solutions to the problem of affordable bills, such as introducing retail competitive energy supply markets for sales to individual residential customers, have only exacerbated the affordability problem.

Policy makers must develop alternatives to this punitive approach to utility debt collections, which leads each year to millions of disconnections nationwide, leaving physically and economically vulnerable populations without utility service. Utility service disconnections within our communities are a threat to the health and safety of the disconnected households, as well as public health and safety. State and federal policy makers must develop and fund programs that keep essential utility services affordable, taking into account the customer's ability to pay. Policy makers, utilities, and consumer advocates in all states have an obligation to take action to ensure that utility service is affordable for all, and that all have access to no-cost energy- and water-saving programs, particularly those with extremely limited income.

Obligations of State Policy Makers and Regulators, Publicly Owned Utility Providers, and Cooperative Boards

- Ensuring safe, reliable, and affordable universal utility service must be prioritized.
- State laws, including those that direct the actions of public utility commissions and non-commission-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.
- The cost of utility service should be based on a customer's income and ability to pay, through the use of equitably funded Percentage of Income Payment Plans (PIPP) for economically disadvantaged customers, which set rates for energy and water rates at an affordable level based on a person's income, and/or tiered discount rates, which provide significant discounts for income-eligible customers relative to their income level.
- Arrearage forgiveness programs for economically disadvantaged customers who make affordable, consistent monthly payments must be universally available in all states, with arrearages forgiven after 12 months of current bill payments, with allowances for occasional late or missed payments within a designated time period.
- Customers must have an opportunity to catch up when they fall behind on monthly utility bills, their participation in PIPP programs, Arrearage Management Programs (AMPs) and payment plans/deferred payment arrangements (DPAs), and should not be automatically terminated due to late payment. Customers who miss payments should be allowed to seek reinstatement under reasonable rules that reflect the customer's ability to pay.
- Disconnections based on inability to pay for low-income households must be eliminated – not just reduced – to ensure access to essential utility service.
- The cost of ensuring all residential customers can remain connected to utility service should be socialized among *all* rate classes, including commercial and industrial rate classes. Universal contribution to utility service cost recovery recognizes the societal benefit that follows universal access to utility service, including protection of public health and safety and reductions in homelessness.
- State regulators should order utilities to collect and analyze data (including disconnections, reconnections, deferred payment arrangement activity, late fees, deposits, and other credit and collections data) by zip code; investigate when disconnections disproportionately impact communities of color or other specific populations; and remedy disproportionate disconnections and other inequitable credit and collections practices.
- More transparency is needed in utility rate filings to allow stakeholders and regulators to track how utility revenues are invested, and to ensure that shareholder profits are not being prioritized over the delivery of safe, reliable, and affordable utility service, and that payments made by customers of publicly owned systems are not being diverted for non-utility purposes.

- The competitive supply of retail electric or gas service to residential customers on an individual basis should be prohibited, especially to low-income households.
- Utilities should be prohibited from imposing liens on non-vacant residential property as a debt collection tool.
- States should promote input by the most vulnerable consumers/ratepayers by funding participation by community organizations and consumer advocates in utility-related proceedings at public service commissions and municipal rate-setting proceedings through the creation of an intervenor funding mechanism.
- The adoption across the country of infrastructure trackers, formula rates, and other utility-favored regulatory models often shift financial risk to ratepayers. If an investor-owned utility's exposure to risk is reduced, then the level of profit it can collect must be reduced to reflect that lowered risk.
- Utility rates should be set in a manner that minimizes reliance on fixed monthly charges, which are regressive, punish low-users of energy and water, and minimize the ability of energy and water efficiency measures to reduce customers' monthly costs.
- New ethics laws should be enacted in all states to ensure that utilities do not offer jobs, appointments, or other favors to public policy makers, in an effort to secure enactment of utility-sponsored legislation and policies.
- Prepaid utility service, which requires customers to maintain a minimum balance in order to retain continuous utility service and is often marketed to financially struggling customers as a means to avoid expensive deposit requirements, constitutes second-class service and should not be approved by regulators.

Obligations of Federal Policy Makers

- A federally funded low-income water and sewer assistance program (similar in operation to the Low Income Home Energy Assistance Program) should be established by the U.S. Congress and adequately funded, as one part of a comprehensive federal approach to ensuring safe, affordable water and sanitation for all.
- The federal Lifeline program – the only existing federal program designed to help low-income consumers afford essential communications services – should be immediately expanded to provide a permanent, robust broadband benefit for low-income households.
- Wholesale market rates should be just and reasonable, and should not subsidize existing fossil fuel generation or erect barriers to renewable energy technologies.
- Federal policy makers should increase funding for low-income weatherization programs, which provide comprehensive weatherization to customers and lower energy bills to those most in need.

Obligations of Utilities to Ensure Customer Access to Essential Utility Service

- Public utilities must do their part to comply with the regulatory compact that provides them with monopoly franchises in exchange for serving *all customers* within that service territory. Municipal and rural cooperative utility service providers likewise have an obligation to equitably provide essential utility service to all within their service territories. Policies that lead to disconnection for customers who cannot afford to pay are inconsistent with that regulatory bargain and commitment to serve.

- Utility disconnection rates, payment plan/deferred payment arrangement activity, and other billing and collection data points, tracked by zip code, should be publicly filed regularly (monthly) with regulatory commissions so that stakeholders and regulators can monitor how consumers are faring under a utility's consumer protection policies.
- 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.
- Utility-administered, ratepayer-funded energy and water efficiency programs must prioritize low-income households, increase funding for whole-building weatherization, and be free of up-front payment requirements and financing repayments for qualifying customers.
- To the greatest extent practicable, utility-collected/ratepayer-funded weatherization funding, including health and safety funding, should be braided with existing state and federally funded weatherization programs to ensure comprehensive treatment, and coordination and efficiency of delivery.
- Utilities should limit fixed monthly charges for energy and water service to only those costs directly related to connecting a customer to the utility network. Higher fixed fees harm lower usage customers, who are disproportionately lower income and persons of color, and reduce incentives to adopt energy and water efficiency measures.
- Utility incentive compensation packages that are tied to utility parent company financial metrics should be eliminated and replaced with metrics that focus solely on improved safety, reliability environmental stewardship and affordability in the delivery of utility service.
- The cost of utility charitable contributions must be, at a minimum, matched by utility shareholders.

Obligations of Consumer Advocates

- State consumer advocates should create coalitions with community organizations working for policy change as partners in utility proceedings so the voices of those most impacted by utility credit and collection policies can be regularly heard.
- Consumer advocates should include, within their assessment of the justness and reasonableness of utility rates, an examination of how rate proposals impact low-income customers.
- Consumer advocates should embrace the potential for energy- and water-efficiency programs to lower customer bills, and advocate for program offerings and performance metrics to ensure that low-income customers directly benefit from on-premise efficiency improvements.
- Consumer advocates should monitor and assess utilities' credit and collections policies to ensure that customers are not being disconnected for inability to pay, and that those policies are not disproportionately impacting communities of color.

Additional Resource

[Essential Utility Services During the COVID-19 Pandemic and Beyond: A Roadmap to Utility Service as a Human Right](#), March 2021

A New Customer Bill of Rights: Affordable Utility Services

By Karen Lusson, National Consumer Law Center staff attorney.

Co-authored with Deron Lovaas and Larry Levine of the NRDC.

Utility services—electricity, heat, water, sanitation, telecommunications, and internet access—are essential to health, safety, and daily life. The vital need for uninterrupted utility service was evident before the coronavirus pandemic, but the COVID-19 public health emergency has reinforced the essential nature of utility service and the threats of energy and water poverty. This is why the National Consumer Law Center (NCLC), the Natural Resources Defense Council (NRDC), and our allies and partners have developed a fundamental set of customer bill of rights principles, and guidance for their implementation.

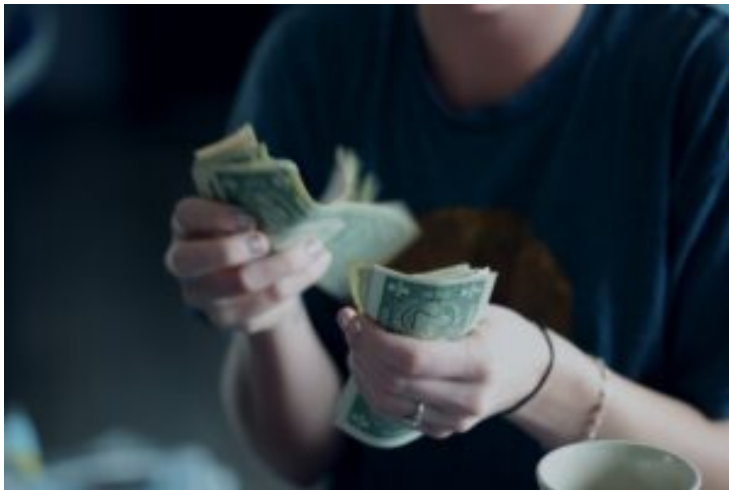


Photo by Sharon McCutcheon on Unsplash.

Every struggling family in America knows that falling behind on utility bills comes with the risk of service disconnections.

Washington Post reporter Greg Jaffe wrote an excellent article about the consequences, digging into the data about customers who are behind on their utility bills and facing disconnection and highlighting the stories of people whose income falls far short of covering ever-growing utility bills. He cites this new paper by Tufts University Assistant Professor Steve Cicala that describes the struggles among communities served by Illinois' two largest electric utilities:

Each month from September-December 2020, about 20% of all accounts were charged non-payment fees, and disconnection notices were served to 3.4% and 2.5% of residential and commercial/industrial accounts, respectively. For each of these outcomes there is a strong disproportionate burden on minority communities.

Nearly 1% of these utilities' residential accounts (and 72,000 families across Illinois) had their power shut off for nonpayment during just that four-month period. And the pain is not shared evenly across the state. For example, in one Peoria zip code, 300 homes, or 5.4% of all homes, were

disconnected. The most jarring example Jaffe lifts up is a 38-year-old woman living in that Peoria zip code, who earns \$300 a week washing dishes at a diner, lost electric and gas service last fall for four or five days because of unpaid bills, and now again faces an eye-popping \$4,242.44 in overdue utility bills.

Many states and utilities created temporary solutions to help struggling households during the early days of the crisis. One year later, many of these COVID-19 utility protections have lapsed. Yet, the underlying problem remains — essential utility service is unaffordable for too many.

Instead of ensuring that the most vulnerable in our society have access to essential utility services—during a pandemic or otherwise—many states allow utilities to disconnect even the most economically or medically vulnerable households when they cannot afford their monthly bills. Late fees, deposits, liens, and other punitive charges compound the problem by increasing the amount that struggling households must pay to access, maintain, or restore service.

Available data indicate that utility service disconnections disproportionately harm people of color and older people. Reliance on shutoffs as a collections tool has the effect of punishing people for being poor and ignores the longstanding racial and economic discrimination that has created the disparities that fuel poverty and the unaffordability of utility services.

We Need Post-2020 Policies to Protect People

Policymakers **must** develop alternatives to this punitive approach to utility debt collections, which leads each year to millions of shutoffs nationwide, leaving physically and economically vulnerable populations without water, heat, and light.

These utility shutoffs are a threat to the health and safety – both for people experiencing disconnections and for the community as a whole. The lives of medically vulnerable people, including people with asthma, infants, children, and the elderly, are particularly at risk without access to electricity. Lack of access to water for cooking and basic hygiene increases hunger and the spread of infectious disease. The threat of shutoffs can force people to choose between paying a utility bill and affording rent, food, medicine, and other life essentials. This is why policymakers, utilities, and consumer advocates in all states have an obligation to take action to ensure that utility service is affordable for all. In addition, everyone — particularly those with extremely limited incomes — should have access to free programs that can help them reduce their utility bills by saving energy and water.

Utility Consumer's Bill of Rights

The NCLC, NRDC, and other consumer advocates and community-based organizations from a variety of states have developed a utility consumer's bill of rights entitled a *Roadmap to Utility Service as a Human Right* that presents bedrock principles of universal, affordable utility service. It describes a set of responsibilities and action items for those who regulate and deliver utility service. Specifically, we describe clear obligations of state and federal policymakers, public utility commissions, investor owned and publicly owned utilities, and advocates — offering a set of regulatory and public policy changes needed to protect universal access to essential utility services.

Consumer advocates and community-based organizations can use – and adapt to their own circumstances – the bill of rights and its accompanying implementation guide to promote federal, state and local policies that protect affordable access to water, power, and broadband. Guided by these principles and policy solutions, utilities and policymakers alike should rethink and revise punitive credit and collection policies and adopt pro-active solutions that ensure essential utility

services are affordable to all.

The time is right for significant, permanent policy changes to address the unaffordability of utility services, and to end the punitive approach to utility revenue collection that threatens health and safety, and ultimately punishes people for being poor.