Davison Van Cleve PC
Attorneys at Law
TEL (503) 241-7242 • jlb@dvclaw.com
Suite 430
107 SE Washington St.
Portland, Oregon, 97214

August 21, 2025

Via Electronic Filing
Jeff Killip
Executive Director & Secretary
Washington Utilities & Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503

Re: Staff Investigation on Low-Income Cap Related to RCW 80.28.425
Docket A-250549

Dear Executive Director Killip:

Please find enclosed the Alliance of Western Energy Consumers' comments on the legal requirements of low-income funding in RCW 80.28.425(2).

Thank you for your assistance. Please do not hesitate to contact me if you have any questions.

Sincerely,

/s/ Julitta Brannon
Julitta Brannon
Paralegal

Enclosure

BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of	)	DOCKET A-250549
	)	
	)	COMMENTS OF THE ALLIANCE OF
Staff Investigation on Low-Income Cap Related to RCW 80.28.425.	)	WESTERN ENERGY CONSUMERS
	)	
	)	

I. INTRODUCTION

1 The Alliance of Western Energy Consumers ("AWEC") appreciates the opportunity to provide comment to the Washington Utilities and Transportation Commission ("Commission") on the legal requirements over low-income funding in RCW 80.28.425(2). Prior to the Open Meeting to consider this issue, stakeholders met to discuss positions and determined to develop an issues list to coordinate stakeholder comments for the Commission's benefit. That issues list is as follows:

1) Does the last sentence of Section 2, allowing a larger increase based on an appropriate record, apply to all of section 2 or the sentence before regarding the minimum required increase to bill assistance?

2) What does an appropriate record in the last sentence of Section 2 include?

3) How do the five percent threshold and the minimum doubling in the third sentence interact? Is the Commission required to approve a doubling above the five percent threshold?

4) How should the calculation of the five percent threshold be structured?

    a. Numerator includes:
        i. Direct service only
        ii. Community Action Agency program implementation costs

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107 SE Washington, Suite 430
Portland, OR 97214
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iii. Low-income weatherization
iv. Conservation education
v. Utility admin (labor & communications/outreach)
vi. Community Solar
vii. Credits funded by CCA no-cost allowances

b. Denominator
i. Use base or billed revenues?
ii. Which revenue requirement do we use?

5) Is there a burden of proof and if so who holds it?

AWEC's comments below address each of the above issues list items.

II. COMMENTS

A. Statutory Analysis of RCW 80.28.425(2)

2 This section of AWEC's comments addresses the following issues: (1) Does the last sentence of Section 2, allowing larger increased based on an appropriate record, apply to all of section 2 or the sentence before regarding the minimum required increase to bill assistance?; and (2) How do the five percent threshold and the minimum doubling in the third sentence interact? Is the Commission required to approve a doubling above the five percent threshold?

3 AWEC's interpretation of this statute, based on accepted legal principles, is either that: (1) a utility must increase low-income bill assistance by double the percentage of the residential base rate increase in each year of a multi-year rate plan ("MYRP") until total funding to reduce low-income energy burden reaches five percent of the utility's revenue requirement, at which point no further increases are allowed; or (2) a utility must increase low-income bill assistance by double the percentage of the residential base rate increase in each year of a multi-year rate plan and any amount that results in total funding to reduce low-income energy burden that exceeds five percent of the utility's revenue requirement must be borne by shareholders.

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DAVISON VAN CLEVE, P.C.
107 SE Washington, Suite 430
Portland, OR 97214
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4 RCW 80.28.425(2) reads in full:

> The commission may approve, disapprove, or approve with modifications any proposal to recover from ratepayers up to five percent of the total revenue requirement approved by the commission for each year of a multiyear rate plan for tariffs that reduce the energy burden of low-income residential customers including, but not limited to: (a) Bill assistance programs; or (b) one or more special rates. For any multiyear rate plan approved under this section resulting in a rate increase, the commission must approve an increase in the amount of low-income bill assistance to take effect in each year of the rate plan where there is a rate increase. At a minimum, the amount of such low-income assistance increase must be equal to double the percentage increase, if any, in the residential base rates approved for each year of the rate plan. The commission may approve a larger increase to low-income bill assistance based on an appropriate record.

The familiar and well-settled principles of statutory interpretation are principally to effectuate the legislature's intent.[1] This is done first by examining the plain language of the statute.[2] A court only looks outside of the plain language of the statute if it "is 'susceptible to two or more reasonable interpretations.'"[3] Simply because an alternative interpretation is "conceivable" is not sufficient to render a statute ambiguous – such an interpretation must be reasonable using only the language of the statute.[4] It is also axiomatic that "statutes must be interpreted 'so that all the language used is given effect, with no portion rendered meaningless or superfluous.'"[5]

5 Here, the language of the statute admits to two reasonable interpretations and is therefore ambiguous. The statute establishes several requirements and options. First, it allows the Commission to rule on "any proposal" to recover "up to five percent of the total revenue requirement approved by the commission for each year of a multiyear rate plan." Therefore, the

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1 *State v. Evans*, 177 Wn.2d 186, 192 (2013).
2 *Id.*
3 *Cerillo v. Esparza*, 158 Wn.2d 194, 201 (2006) (*quoting Agrilink Foods, Inc. v. Dep't of Revenue*, 153, Wn.2d 392 (2005)).
4 *Id.* at 203-04.
5 *State v. Larson*, 184 Wn.2d 843, 850 (2015).

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107 SE Washington, Suite 430
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Commission only has the authority to rule on a proposal that would recover up to five percent of revenue requirement and no more. Further, this authority applies to "any proposal," meaning such a proposal need not come only in the context of a multiyear rate plan, but anytime a utility seeks to recover the costs of low-income funding from ratepayers.

6 Next, the costs at issue that fall under this 5% cap are those associated with any "tariffs that reduce the energy burden of low-income residential customers." Thus, the costs at issue are not limited to bill assistance programs and special rates; they are any costs incurred by ratepayers collected through any tariff that reduces low-income energy burden.

7 Next, when a multiyear rate plan results in a rate increase, the Commission is required to approve an increase in low-income bill assistance. The minimum amount of such increase the Commission may approve is twice the level of the residential base rate increase. Finally, the Commission may approve a "larger increase" if it has an appropriate record to do so.

8 To effectuate all of the language as it appears in the statute, one reasonable interpretation of these various provisions is that the Commission must approve increases to low-income assistance by at least double the percentage of the residential base rate increase in a multi-year rate plan until those increases result in a utility collecting 5% of its revenue requirement for programs that reduce low-income energy burden. At that point, the Commission has no authority to approve further increases to low-income assistance that is recovered from ratepayers.

9 The other reasonable interpretation is that the Commission must approve double the percentage MYRP increase to low-income bill assistance, but that recovery from *ratepayers* is capped at 5% of revenue requirement. Under this interpretation, any costs that reduce low-income energy burden exceeding 5% of revenue requirement would be recovered from

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107 SE Washington, Suite 430
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shareholders. This is an equally reasonable interpretation of the statute that gives effect to all of its language, thus rendering the statute ambiguous.

10 Before attempting to resolve this ambiguity through additional statutory interpretation, it is worth noting that there may be other "conceivable" interpretations that are nevertheless not "reasonable" based on the statutory language and, therefore, do not meet the requirements of statutory interpretation. For instance, a reading in which the Commission is required to increase low-income bill assistance by double the base residential rate increase for each multi-year rate plan regardless of its impact on the utility's overall revenue requirement collected from ratepayers would plainly nullify the entire first sentence and its 5% limit. Again, this limit applies to all tariffs that reduce low-income energy burden, inclusive of bill assistance.

11 Another reading could be that the last sentence of the statute – "[t]he commission may approve a larger increase to low-income bill assistance based on an appropriate record" – applies to the 5% cap rather than, or in addition to, the directive to approve double the base rate increase. In other words, under this interpretation the Commission could exceed the 5% cap if it were presented with an appropriate record. This interpretation, however, also fails under scrutiny. First, this sentence immediately follows the statutory directive to approve, "[a]t a minimum," double the percentage increase of residential base rate increase. Thus, it is more naturally read as authorizing the Commission to approve more than double the residential base increase if it has an appropriate record, rather than applying to the 5% cap.[6] Additionally, this sentence's use of the

[6] *Watson v. City of Seattle*, 189 Wn.2d 149, 184 (2017) ("It is a well-settled principle of statutory interpretation that 'a single word in a statute should not be read in isolation' and that 'the meaning of words may be indicated or controlled by those with which they are associated'") (internal citations omitted); *see also*, *State v. JP*, 149 Wn.2d 444, 450 (2003) (using surrounding sentences to give effect to the meaning of specific terms in a statute).

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words "larger increase" is nonsensical as applied to the 5% cap. The 5% cap allows the Commission to approve "any proposal to recover from ratepayers up to five percent of the total revenue requirement" approved in a MYRP. The 5% cap is not itself an "increase" such that the Commission could approve a "larger" one. A proposal to recover "up to five percent of the total revenue requirement" could also be one to hold low-income assistance steady or even decrease it if the amount of assistance has exceeded 5% or a MYRP results in a rate decrease. In this context, approving a "larger increase" makes no sense and, thus, is not a reasonable interpretation of the statute.

12 When a statute is ambiguous, the next step is to review legislative history.[7] In addition to the legislative history, relevant case law and principles of statutory construction may also be used to discern the legislature's intent. Ultimately, as mentioned above, "[i]nterpretations must give meaning to every word in the statute."

13 AWEC's review of the legislative history of RCW 80.28.425, passed by Engrossed Second Substitute Bill 5295, reveals little guidance with respect to how subsection (2) of the statute should be read. In addition, case law and statutory construction do not provide any further aid. To the best of AWEC's knowledge, there is no case law regarding the statute section at question here. Additionally, other rules of construction do not offer a better tactic for explanation – the rule of lenity[8] and dictionary definitions are not likely to aid in discerning the ambiguity present.

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7 *See State v. Evans*, 177 Wn.2d 186, 199 (2013).

8 The rule of lenity is a method of statutory interpretation for criminal statutes where an ambiguity "requires [the court] to interpret the statute in favor of the defendant absent legislative intent to the contrary." *City of Seattle v. Winebrenner*, 167 Wn.2d 451, 462 (WA 2009).

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14 Accordingly, AWEC takes no position on which of the two readings of RCW 80.28.425(2) identified above – that low-income assistance must double by the residential base rate impact until a utility reaches the 5% cap, or that low-income assistance must double by the residential base rate impact but customers are only responsible for costs up to the 5% cap and remaining costs must be borne by shareholders – is most reasonable and defers to the Commission's interpretation.

B. What does an appropriate record in the last sentence of RCW 80.28.425(2) include?

15 AWEC recommends that the Commission decline to address this issue at the Open Meeting. What constitutes an appropriate record that would justify approving more than double the residential base rate increase for low-income assistance is necessarily fact-specific that should be determined at the time a proposal for such an increase is made. Establishing parameters in a vacuum could result in parties being required to submit evidence that may not otherwise be relevant in the particular docket and will prejudge the importance of particular types of evidence to support a request to increase low-income assistance, regardless of the proposal and the context in which it is made.

C. How should calculation of the 5% threshold be structured?

16 This question relates to what costs and programs are included in the numerator of the equation to establish the 5% revenue requirement cap and what revenue requirement to use as the denominator in the equation. AWEC's response to this question is guided by the language of the statute. Specifically, the numerator must include the cost of *any* tariffed rate that recovers costs from customers to reduce the energy burden of low-income customers. The statutory language on this matter is broadly worded and should, in turn, be broadly interpreted.

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17 To be clear, however, AWEC does not view rate credits provided to low-income customers funded from the sale of no-cost allowances under the Climate Commitment Act to be implicated in the numerator of the 5% cap calculation.[9] The statute makes clear that the costs subject to the 5% cap must be "recover[ed] from ratepayers." The revenues used to mitigate the cost burden of the CCA on low-income customers come from no-cost allowance sales, not from costs collected from ratepayers.

18 The denominator relates to whether a utility should use base revenues or billed revenues as the revenue requirement. The statute makes it clear that, with respect to the requirement to double the percentage of low-income assistance for each year of a MYRP, the percentage relates to the base residential rate increase, not the billed rate increase. With respect to the 5% cap, however, the statute is not specific. Accordingly, AWEC takes no position on whether utilities should use base or billed revenues against which to calculate the 5% cap.

D. Who holds the burden of proof to establish that the Commission should approve an increase to low-income assistance by more than double the base residential rate increase in a MYRP?

19 This question relates to the circumstance in which, in a rate filing, a utility proposes to increase low-income assistance by double the base residential rate increase and another party recommends that the Commission approve a larger increase. Under RCW 80.04.130(4), the utility always has the burden of proof to show that a rate increase is just and reasonable. This burden never shifts to another party.[10] Accordingly, in a circumstance in which an intervening party proposes a larger increase to low-income bill assistance, the utility continues to carry the burden to demonstrate that a doubling of the increase remains fair, just, reasonable, and

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[9] *See* RCW 70A.65.120(4); RCW 70A.65.130(2)(b).

[10] Docket No. UG-041515, Order 06 ¶ 22 (Dec. 7, 2004).

DAVISON VAN CLEVE, P.C.
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sufficient, despite the recommendation and any supporting evidence provided by the intervening party.

III. CONCLUSION

20 For the foregoing reasons, AWEC recommends that the Commission interpret RCW 80.28.425(2) to require that a utility increase low-income bill assistance by twice the percentage of the residential base rate increase for each year of a MYRP until total costs collected from customers to reduce low-income energy burden reach 5% of the utility's revenue requirement, at which point either: (1) no further increases are allowed; or (2) shareholders must assume any incremental costs above the 5% cap.

Dated this 21st day of August, 2025.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Tyler C. Pepple
Tyler C. Pepple, WA State Bar No. 50475
Michelle N. Madsen, OR State Bar No. 233642
107 SE Washington St., Suite 430
Portland, Oregon 97214
Telephone: (503) 241-7242
tcp@dvclaw.com
mnm@dvclaw.com

Attorneys for the Alliance of Western Energy Consumers