BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RE: INQUIRY TO CONSIDER WHETHER CHANGES TO WAC 480-100-128(6)(K) AND WAC 480-90-128 (6)(K) ARE WARRANTED	DOCKET NO. U-131087

COMMENTS OF PUBLIC COUNSEL

AUGUST 1, 2013

I. INTRODUCTION

1. Pursuant to the Commission's Notice of Opportunity to File Written Comments (July 1, 2013), Public Counsel files these Comments.

2. The primary question raised in the Commission's Notice is whether any modifications to WACs 480-100-128(6)(k) and 480-90-128 (6)(k) are warranted. These rules require that electric and natural gas utility representatives dispatched to disconnect service must accept payment to prevent disconnection. The Notice states that the rulemaking inquiry is based on PacifiCorp's pending request for waiver of this requirement (UE-130545).

3. Public Counsel recommends the Commission retain the existing requirements because they provide a critical consumer protection. We appreciate the work of Commission Staff to submit information requests and prepare a summary of company responses to those requests. We have not seen any compelling evidence to support any modification or weakening of this

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requirement. For the reasons discussed in our comments below, we do not believe any change to these electric and natural gas rules are necessary or desirable at this time.

II. COMMENTS

A. Payment at Time of Disconnect Visit is a Critical Consumer Protection

4. The existing requirement provides customers with a critical consumer protection – an opportunity to make payment to prevent disconnection from electric or natural gas service. For some utilities, a significant portion of customers facing disconnection are able to avoid disconnection as a result of this payment opportunity. For example, for every Puget Sound Energy (PSE) customer disconnected for non-payment, there is another PSE customer who prevented disconnection by making a payment to a company representative at the time of the premise visit. In 2012, disconnections prevented by payment at the premise were almost equivalent to the number of disconnections for non-payment, at about 63,000 each.[1] Similarly, Avista and Northwest Natural Gas have a significant number of customers able to avoid disconnection by making payment during a disconnection premise visit.[2,3]

5. Importantly, this process benefits the utility as well, by minimizing bad debt, and avoiding expenses related to disconnection and subsequent reconnection for customers that otherwise would have been disconnected. PSE has collected about $11 million to $16 million

[1] Staff Summary of Company Data Responses, July 30, 2013, p. 1. In 2011, disconnections prevented by making a payment at the customer premise actually exceeded disconnections for non-payment (71,151 vs. 65,776). *Id.*

[2] *Id.* Some of the companies provided supplemental responses to Staff, clarifying the number of disconnections for non-payment. At the time of preparing these comments, supplemental data had been provided by Avista, Cascade Natural Gas, and Northwest Natural Gas.

[3] The supplemental data provided to Commission Staff indicates that while Avista disconnects about 8,000 to 9,000 customers each year for non-payment, over 5,000 customers each year are able to avoid disconnection by making a payment at a disconnection field visit. In 2012, for example, 5,821 customers avoided disconnection by making a payment, while 9,122 were disconnected for non-payment. *Id.*; Supplemental Data provided by Avista, July 31, 2013.

per year from customers during disconnection visits, since 2009. In this regard, the existing requirement provides very clear benefits to both customers and the utility.

6. It also appears that the companies which allow customers to make payments in cash at the time of a disconnection visit are much more successful at preventing disconnections. At PSE and Northwest Natural, the trend the past few years is that for every disconnection for non-payment, there is almost one disconnection prevented as a result of payment during a disconnection field visit. Avista, too, has a high rate of disconnections avoided because of customer payments during a field visit. However, Cascade Natural Gas has a much lower rate of disconnections avoided. In 2012, 444 Cascade customers avoided disconnection by making a payment during a disconnection premise visit, but about 10 times as many customers (4,983) were disconnected for non-payment.[4] This significant difference in disconnections prevented may be due to the fact that Cascade does not currently accept cash from customers during a disconnection field visit. This suggests that the utility's collection practices can be enhanced, and bad debt may potentially be reduced, when cash is accepted during a disconnection premise visit. Many households transact almost exclusively in cash, as discussed below.

7. The current rule also promotes the public interest by helping customers maintain electric and natural gas service, which are vital public goods. Public Counsel is not aware of any compelling reason to modify the rule at this time. We respect the concerns expressed by PacifiCorp regarding the safety of utility employees and representatives. We certainly share the general concern that companies should adopt policies and practices to promote employee safety. However, documented threats, robberies, or assaults to utility employees or representatives

[4] Staff summary of Company Data Responses, July 30, 2013, p. 1, and Supplemental Cascade Data on Disconnections for Non-payment. As noted earlier, Cascade and some other companies provided supplemental data to Staff on or about July 31, 2013, to clarify the number of customers disconnected for non-payment.

during field visits have been extremely rare. PacifiCorp, for example, has only two documented threats to employees since 2009, a rate of about 0.001% of premise visits.[5] PSE, Cascade, and NW Natural all reported fewer than ten in-person threats since 2009.[6] While Avista reported more threats to employees (90), the company reported a much higher number of premise visits, which Staff attributed to meter reading practices.[7] Given that, the rate of threats was similarly very low at Avista, occurring at 0.0006% of visits.

8. Any weakening of existing requirements would be harmful to customers who face disconnection for nonpayment. In addition, utility collections efforts may be negatively impacted by a weakening of this requirement, which would negatively impact the utility and ratepayers if bad debt rises and expenses increase due to elevated levels of disconnection and subsequent reconnection.

B. Alternative Payment Locations are not Comparable to Making Payment at Time of Disconnection Visit

9. As described in the Commission's CR-101 Notice, PacifiCorp has argued that the availability of alternative methods of payment for its customers is another reason to no longer require that utilities accept payment at the time of a disconnection visit. Public Counsel disagrees with this argument. A review of PacifiCorp's alternative payment stations, discussed below, shows that such stations are automated and thus presumably are not staffed by utility representatives. Also, such pay stations are not necessarily widespread or easily accessible.

10. PacifiCorp currently has five pay stations in the company's Washington service territory where customers can make payments without an additional fee. All five locations are described

[5] Staff summary of Company Data Responses, July 30, 2013, p. 3.
[6] *Id.*
[7] *Id.*

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by the Company as "automated pay stations," and are typically located at a local grocery store or market.[8] PacifiCorp has fewer alternative payment locations than every other company, and is the only utility that charges a fee at the majority of its pay stations.[9] Of the 20 pay stations that PacifiCorp has in Washington, only 5 (20%) do not charge a fee.

11. Public Counsel very much appreciates company efforts to provide customers with opportunities to make payment at pay stations, in compliance with WAC 480-100-188 and 480-90-188. However, the existence of such pay stations should not be viewed as a comparable alternative to making payment at the time of a disconnection visit. Because of processing delays associated with payments made at pay stations, an imminent disconnection may not be avoided. PacifiCorp's website indicates that payments at automated pay stations will be posted to the customer's account the following business day. Under current disconnection notice requirements, a utility could mail a second disconnection notice and then disconnect service three business days later.[10] If the customer received the notice in the mail two days after mailing, and was able to make a payment at an alternative pay station the following day, it would not be posted until four days after the mailing of the second notice. By then, the utility may have already disconnected service.

12. Avista's website lists several pay stations and drop boxes at various locations, but similarly states that customers must bring their billing statement "and be aware your payment

[8] PacifiCorp's website shows the five automated pay stations are located at: Dayton Mercantile, Sunnyside Cash Mart, Toppenish Quick Pick, Walla Walla Harvest Foods #2, and Yakima Albertson's. http://www.pacificpower.net/ya/wtp/psdb.html. PacifiCorp has 15 additional automated pay stations in Washington, but those locations currently charge a $1.00 cash fee for processing payments. Public Counsel has not found this fee in a PacifiCorp tariff. We will seek clarification regarding this from the company.

[9] WAC 480-90-188(1) and WAC 480-100-188(1) state only that a utility must provide payment agencies that allow customers to pay their bills at no charge. The rules do not affirmatively state that utilities may charge a fee at other locations.

[10] WAC 480-100-128 (6)(d)(ii).

could take a few days to post to your account."[11] PacifiCorp also has nine drop box locations in Washington, but warns customers that "payments may take up to five business days to be posted to your account."[12] Because of these delays, as well as challenges customers may face finding and making payments at drop boxes, automated pay stations, or staffed pay stations, in our view these options are not comparable to the existing requirement in terms of preventing an imminent disconnection.

13. Moreover, such pay stations may not necessarily be widespread and easily accessible to all customers. The rule is fairly vague, requiring utilities to "provide payment agencies in locally accessible locations..."[13] Public Counsel's understanding is that PacifiCorp, for example, has reduced the number of pay stations available to accept customer payment without any fees.

C. Requirement to Accept Payment at the Service Location at the Time of Disconnection has Largely been Uncontroversial in Washington

14. The "pay-at-the-door" rule first appeared in 1976 in 480-100-071(2)(d),[14] and each provision provided as follows:

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[11] http://www.avistautilities.com/account/payoptions/person/_layouts/avista/PayStationSearch.aspx
[12] http://www.pacificpower.net/ya/wtp/psdb.html
[13] WAC 480-100-188(1) and WAC 480-90-188(1).
[14] *In the Matter of Amending WAC 480-100-041 et al., and Repealing WAC 480-100-106 Relating to Electric Companies*, Cause No. U-76-27, Order No. R-84 (June 30, 1976).

> When a utility employee is dispatched to disconnect service, that person *shall be required to accept payment of a delinquent account at the service address if tendered in cash, but shall not be required to dispense change for cash tendered in excess of the amount due and owing.* Any excess payment shall be credited to the customer's account. The utility shall be permitted to assess a reasonable fee as provided for in the tariff of the utility for the disconnection visit to the service address. Notice of the amount of such fee, if any, shall be provided with the notice of disconnection.[15]

The Commission made no changes to the pay-at-the-door rule from 1976 until 2001, even though it revised WAC 480-100-071 five times over this time period.

15. In 1999, Governor Gary Locke issued Executive Order 97-02, directing agencies to revise rules and regulations using several criteria including necessity, reasonableness, clarity, and effectiveness.[16] In response, the Commission opened rulemaking dockets to review the rules governing gas and electric utilities.[17] These proceedings lasted two years and in 2001, the Commission adopted the current pay-at-the-door-rule in WAC 480-90-128(6)(k) and WAC 480-100-128(6)(k):

> A utility representative dispatched to disconnect service *must accept payment of a delinquent account at the service address, but will not be required to give change for cash paid in excess of the amount due and owing.* The utility must credit any over-payment to the customer's account. The utility may charge a fee for the disconnection visit to the service address if provided for in the utility's tariff.[18]

16. The stakeholders in the 1999 rulemaking only once commented on the pay-at-the-door rule, and none proposed substantive changes.[19] In response to the Commission's proposal to change the word "utility" to "company," a utility objected, arguing "utility representative" was

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[15] WAC 480-100-071(2)(d) (1976) (repealed 2001)(emphasis added).
[16] *In re the Rulemaking Proceeding on Chapters 480-90 and 480-100 WAC--Rules Related to Electricity and Natural Gas Companies*, Docket Nos. UG-990294, UE-990473, Memo re Issues in Dockets UG-990294 and UE-990473, p. 2-3, (August 20, 1999).
[17] *In re the Rulemaking Proceeding on Chapters 480-90 and 480-100 WAC--Rules Related to Electricity and Natural Gas Companies*, Docket Nos. UE-990473, UG-990294
[18] WAC 480-90/100-128(6)(k) (emphasis added).
[19] *In re the Rulemaking Proceeding on Chapters 480-90 and 480-100 WAC--Rules Related to Electricity and Natural Gas Companies*, Docket Nos. UG-990294, UE-990473, First Draft of Proposed Rules, p. 17 (July 17, 1999).

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the necessary term because companies often hired contractors to perform disconnections.[20] Instead of deliberating the pay-at-the-door rule, the stakeholders discussed several other consumer protection issues including the prior obligation regulation, the payment locations rule, the various reasons for disconnecting service without notice, allowing extra time for bills or notices originating out-of-state, requiring additional notice to assisted-living facilities, reconciling medical information requirements that conflicted with privacy issues, and the time frame in which utilities were required to connect or restore service.[21]

17. The primary change in the rule was to move from mandatory cash payments at the door, as provided for in the 1976 version of the rule, to allow additional forms of payment in the current version of the rule. The intent appears not to be to remove cash as a method of payment, but instead to allow customers to pay using other means as well. Today, cash remains an important method of payment, as demonstrated by the data provided by companies in this docket and as discussed more fully below.

18. Notably, the pay-at-the-door rule has never been substantively challenged or objected to since its inception in Washington, with the exception of Cascade Natural Gas's tariff revision to remove the collection of cash payments at the time of disconnection in 2004,[22] and PacifiCorp's pending petition for waiver of the requirement in Docket UE-130545.

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[20] *In re the Rulemaking Proceeding on Chapters 480-90 and 480-100 WAC--Rules Related to Electricity and Natural Gas Companies*, Docket Nos. UG-990294, UE-990473, Comments by Northwest Natural Gas, p. 19 (August 2, 1999).

[21] *In re the Rulemaking Proceeding on Chapters 480-90 and 480-100 WAC--Rules Related to Electricity and Natural Gas Companies*, Docket Nos. UG-990294, UE-990473, Meeting Agenda Issues, p. 3 (May 20, 1999).

[22] Cascade's tariff revision was permitted to go into effect by operation of law via the Commission's "no action" Open Meeting agenda on December 29, 2004. *In re: Cascade Natural Gas Corporation's Seventh Revision Sheet No. 9*, Docket No. UG-042096, filed December 1, 2004.

D. Customer Protections in Other States

19. Public Counsel submitted an inquiry to the Consumer Protection Committee of NASUCA to learn whether other states have similar customer protections, and whether similar requirements have been modified recently. We received feedback from several states. Some states, including New Hampshire and Michigan, have rules that provide an opportunity for customers to make a payment at the time of a disconnect visit to avoid losing service.[23] In North Carolina, utility may accept payment at time of disconnect visit, or shall postpone the disconnection for 24 hours if the customer "is prepared to pay."[24]

20. In several states, Commissions have been concerned with remote disconnects for nonpayment, and therefore protections have been instituted to require a premise visit before the utility disconnects service. The following states require a premise visits prior to disconnection for non-payment: Maine, New York, Ohio, Illinois, Maryland, Massachusetts, and the District of Columbia.[25] The premise visit is important for health and safety reasons, and allows the utility

[23] New Hampshire Code of Administration Rules, Section PUC 1203.11(p)(1); Michigan Public Service Commission Rule 460.141 Manner of Shutoff, Rule 41(4). Michigan does also allow remote disconnections.
[24] North Carolina Utilities Commission Rule R12-11(m)(2), which states in part: "Immediately prior to the actual termination of service, the utility's representative shall attempt to personally contact the customer on the premises. At that time, the utility's representative shall either receive payment from the customer, or postpone termination for another 24 hours if the customer is prepared to pay but the utility has determined that its representatives should not be required to accept payments from customers on the premises…." *Id.*
[25] The Illinois Commerce Commission has recently upheld the requirement of a premise visit and "knock on the door" prior to disconnection for non-payment. "The Commission wishes to make clear that in cases of disconnection for non-payment regardless of the technical capabilities of a meter, the on-site contact and premises visit shall be retained, given the existing language of Section 280.130(d). The Commission continues to believe that Section 280.130(d) is an important consumer protection that can prevent dangerous health and safety conditions due to the loss of essential electricity service." *Commonwealth Edison Company Petition for Statutory Approval of a Smart Grid Advanced Metering Infrastructure Deployment Plan pursuant to Section 16-108.6 of the Public Utilities Act,* ICC Docket No. 12-0298, Order of June 22, 2013, at p. 62.

to respond to customer statements, detect medical conditions, or observe other conditions that may cause the utility to postpone disconnection.[26]

E. Allowing Payments in Cash at the Time of Disconnection for Nonpayment is of Critical Importance to Certain Customers

21. The households that tend to be affected by the ability to pay at the time of disconnection are often some of the most vulnerable households in our communities, facing difficult choices regarding how to exist on very low incomes. In Washington, the state-average of households living below the poverty level is 12.5 percent. In King and Thurston Counties, 10.5 percent of all households live below the poverty level. In Spokane County, 14.4 percent of households live below the poverty level. In Walla Walla and Yakima Counties, 18.2 percent and 21.4 percent, respectively, live below the poverty level.[27] For these households, the choice often becomes whether they can afford food versus medication versus utility service. It also means that they run the risk of not having access to traditional banking and credit options.

22. Low income households have a high likelihood of being "unbanked" or "underbanked."[28] According to the FDIC, 28.2 percent of low income households nationwide are unbanked and 21.6 percent are underbanked.[29] Compare this with the percentages for *all* households: 28.3 percent of *all* households are either unbanked or underbanked. Of *all* households, 8.2 percent are

[26] *The Need for Essential Consumer Protections: Smart Metering Proposals and the Move to Time-Based Pricing,* AARP, National Consumer Law Center, National Association of State Utility Consumer Advocates, Consumers Union, and Public Citizen, (August, 2010), pp. 17-18.

[27] United States Census Bureau, State and County QuickFacts. Available at : http://quickfacts.census.gov/qfd/states/53000.html.

[28] "Unbanked" means a household in which no one holds a bank account. "Underbanked" means a household that has a bank account, but also has used alternative forms of banking in the last 12 months. Alternative forms of banking include payday loans, non-bank money orders, non-bank check cashing services (one example is Walmart), rent-to-own services, pawn shops, or refund anticipation loans. *2011 FDIC National Survey of Unbanked and Underbanked Households*, Executive Summary at fn. 2; available online at the following website: http://www.fdic.gov/householdsurvey/2012_unbankedreport_execsumm.pdf.

[29] *Id.* at p. 4 (Table 1.1).

unbanked (1 in twelve households, or 10 million nationwide), and one-half of those households have never held a bank account.[30] In Washington for 2011, 23.9 percent of all households were either unbanked or underbanked, with 4.5 percent unbanked and 19.4 percent underbanked. This was an increase from 2009, when 21.4 percent of Washington households were either unbanked or underbanked, with 3.8 percent unbanked and 17.4 percent underbanked.[31]

23. Reasons given for not having a bank account include not having enough money, not needing or wanting an account, and high bank fees and high minimum balance requirements.[32] The ability to transact in cash is critical to people who are either unbanked or underbanked.

24. Avista reports that approximately 70 percent of the payments it collects to avoid disconnection are made in cash.[33] PacifiCorp collects approximately 44 percent of payments in cash, and the percentage amount has steadily increased from 2009 to 2013.[34] The data shows that collecting cash from customers at the time of disconnection to avoid disconnection has not significantly compromised the safety of utility workers. Moreover, as discussed above, those companies that accept cash payments at the time of a disconnection visit have a substantially higher rate of customers able to prevent disconnection. That outcome is beneficial not only for customers facing disconnection, but also for the utility and all ratepayers by improving collections. Therefore, the Commission should retain this important consumer protection.

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[30] *Id.* at p. 3 and 4.

[31] *2011 FDIC National Survey of Unbanked and Underbanked Households*, Detailed State and MSA Tables (Appendices H-I) at pages 4 and 5; available online at the following website: http://www.fdic.gov/householdsurvey/2012_unbankedreport_app_h-i.pdf.

[32] *2011 FDIC National Survey of Unbanked and Underbanked Households* (Full Report) at p. 26-27; available online at the following website: http://www.fdic.gov/householdsurvey/2012_unbankedreport.pdf.

[33] Average of percentages of payments collected by Avista in cash from 2010 to 2013 as shown in Staff summary of Company Data Responses, July 30, 2013, p. 1-2.

[34] Average of percentages of payments collected by PacifiCorp in cash from 2009 to 2013 as shown in Staff Summary of Company Data Responses, July 30, 2013, p. 2. At the beginning of this period, PacifiCorp collected 36 percent of payments in cash. At the end of the period, the percentage of cash payments had increased to 54.4 percent.

F. PacifiCorp's Pending Waiver Petition and Cascade's Existing Tariff

25. PacifiCorp's recent petition for waiver of WAC 480-100-128(6)(k) is still pending in Docket UE-130545. PacifiCorp cited safety concerns as the basis for its petition, and at the Open Meeting on May 30, 2013, referenced incidences of threatening behavior experienced in person and by phone. The data PacifiCorp provided in this docket does not support the references made at the Commission's Open Meeting. The data in this docket shows that PacifiCorp employees have experienced two documented threats and one robbery of personal property (as opposed to company property) between 2009 and 2013.[35] The information provided in this rulemaking indicates that the Commission's requirement that utilities accept payment at the service location to avoid disconnection for nonpayment is a good policy, one that should be retained, and that utilities are not experiencing significant negative effects from the rule. As such, Public Counsel strongly recommends that the proceeding in UE-130545 be resolved with the Commission denying PacifiCorp's petition.

26. In addition, Cascade Natural Gas currently has a tariff that allows the company to refuse cash payment at the service location to avoid disconnection. According to data provided in response to the Commission's request for information, Cascade experienced nine documented threats to company personnel in Washington between 2009 and 2013, all related to disconnections.[36] This number is not significantly high, especially in comparison to the experiences of the other regulated utilities. Additionally, the ability to transact in cash is vital to the low-income families most affected by WAC 480-90-128(6)(k) and WAC 480-100-128(6)(k), as demonstrated by the high percentages of cash being collected by Avista, PacifiCorp, and

[35] Staff Summary of Company Data Responses, July 30, 2013, p. 3.
[36] *In re Inquiry to Evaluate Changes to WAC 480-100-128(6)(k) and WAC 480-90-128(6)(k)*, Docket No. U-131087, Summary of Company Data Provided to Staff at page 3 (July 30, 2013).

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likely PSE. In light of the information provided in this rulemaking, Public Counsel recommends that the Commission initiate a proceeding to evaluate whether Cascade's tariff allowing it to refuse cash payments should be modified.

III. CONCLUSION

27. In summary, Public Counsel recommends the Commission retain existing requirements that utility representatives dispatched to disconnect service accept payments. Any weakening of existing requirements would be harmful to customers who face disconnection for nonpayment. In addition, utility collections efforts may be negatively impacted by a weakening of this requirement, which would negatively impact the utility and ratepayers if bad debt rises or expenses increase due to elevated levels of disconnection and subsequent reconnection.

28. Public Counsel looks forward to discussing the issues in this rulemaking proceeding with other stakeholders and the Commission and will have representatives participating in the August 15, 2013 workshop.