

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

RULEMAKING TO MODIFY EXISTING  
CONSUMER PROTECTION AND METER  
RULES TO INCLUDE ADVANCED  
METERING INFRASTRUCTURE

DOCKET U-180525

**FOURTH COMMENTS OF PUBLIC COUNSEL**

**September 16, 2019**

**I. INTRODUCTION**

*I.* Pursuant to the Commission’s Notice of Opportunity to File Written Comments filed on August 14, 2019, Public Counsel respectfully submits the following comments on the Commission’s proposed Draft Rules regarding its consumer protection and meter-related rules to accommodate regulated utility deployment of Advanced Metering Infrastructure (AMI). Public Counsel largely supports the latest revision of the Draft Rules, but we have a few remaining issues with remote disconnection, charges associated with remote reconnection and disconnections, the sale of customer information, and utility privacy policies. Public Counsel has submitted three previous sets of comments in this proceeding, and while we do not reiterate all of our previous comments here, we continue to support our previous positions and recommendations.<sup>1</sup>

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<sup>1</sup> These comments apply to both natural gas WAC 480-90 and electric WAC 480-100, except when stated otherwise.

## II. PUBLIC COUNSEL SUPPORTED AMENDMENTS

2. Public Counsel would like to highlight the following amendments to the Draft Rules, which we support.

**WAC 480-100-023 Definitions:** Public Counsel appreciates and supports the significant amendments that have been made to the definitions affecting customer information and data privacy rules. These amendments harmonize the gas and electric rules, clarify ambiguities, and addresses the potential confusion between definitions in the WAC and RCW.

**WAC 480-100-128(4)(b):**

Each disconnection notice must include all relevant information about the disconnection action including:

- (i) The cause for disconnection, the amount owed for regulated electric service, and how to avoid disconnection, including the availability of a payment plan as required under WAC 480- 100-138, Payment arrangements;
- (ii) All relevant information about any charges that the utility is assessing or that it may assess;
- (iii) The utility's name, address, and toll-free telephone number by which a customer may contact the utility to discuss the pending disconnection of service;
- (iv) If the notices are for nonpayment and the utility is scheduling disconnection between November 15 and March 15 of the following year, the utility must advise the customer of the payment plan option in WAC 480-100-143, Winter low-income payment program; and

If the utility will be disconnecting service via a remote disconnection device, the notice must include a statement that utility personnel will not come to the premises to perform the disconnection.

**WAC 480-100-128(4)(j)(iii):**

A utility may not remotely disconnect customers who the utility is aware provide the services described in (j)(i) and (j)(ii) of this subsection, and the utility must take reasonable precautions to prevent any unauthorized disconnection.

**WAC 480-100-128(6)(a), (6)(b), (6)(d), (6)(e):** Public Counsel continues to support and applaud the Commission for its dedication and additions to consumer protection rules regarding remote disconnections. We fully support the following subsections:

- (a) Section 6(a) limiting of remote disconnections per 24 hour period and disabling remote disconnect for medical facilities and other critical infrastructure, as stated in Section 6(a),
- (b) Section 6(b)'s limits remote disconnections between 8 a.m. to noon and only if the Company can reconnect service that same day.
- (c) Section 6(d) requires a premise visit and provides an opportunity for last payment to avoid disconnection for customers who have received low-income assistance in the prior two years
- (d) Section 6(e) disconnections after a site visit are not remote disconnections.

**WAC 480-100-153(2):**

A utility may only collect and retain customer information that is reasonably necessary for the utility to perform duties directly related to the utility's primary purpose unless the utility has first obtained and documented the customer's written consent to collect and retain customer information for another purpose.

**WAC 480-100-153(4):**

A utility may disclose customer information to third-party vendors only to the extent necessary for the utility to perform duties directly related to the utility's primary purpose unless the utility has first obtained the customer's written consent to disclose customer information to third-party vendors for other specified purposes. The utility must require all third-party vendors that have access to customer information to have policies, procedures, and technological safeguards in place to protect customer information that are no less stringent than the utility's own standards.

### III. RECANTED POSITIONS

3. **WAC 480-100-128(4)(a) Disconnection Notification Requirements:** In our second set of comments, Public Counsel recommended the Commission extend the disconnection notice rules. Specifically, we recommended a longer disconnection notice period, such as 15 days.<sup>2</sup> While the latest version of the Draft Rules does not incorporate our recommendation, it does incorporate a new requirement for providing at least two written disconnection notices (and an electronic copy, if the information is known)<sup>3</sup> in addition to at least two telephone attempts.<sup>4</sup> We believe this addition is a crucial consumer protection and provides sufficient notice to customers regarding a possible disconnection. As a result, Public Counsel recants its recommendation concerning a longer disconnection period and agrees with the additional disconnection notifications proposed in the Draft Rules.

4. **WAC 480-100-128(11) Disconnecting service during inclement weather:** The current set of Draft Rules proposes the following, “A utility must establish conditions in its tariff(s) under which the utility will cease non-voluntary service disconnections during inclement weather events.” In our initial and second set of comments, Public Counsel recommended the Commission establish a cold weather moratorium at 32 degrees Fahrenheit and below.<sup>5</sup> However, after the discussions at the workshop on March 13, 2019, regarding the weather and temperature variances in each IOUs’ service territory, Public Counsel believes that the latest version of Draft Rules offers a sufficient compromise from Public Counsel’s position and the

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<sup>2</sup> Second Comments of Public Counsel ¶ 6 (Jan. 31, 2019).

<sup>3</sup> Draft Rule WAC 480-100-128(4)(a) (filed Aug. 14, 2019).

<sup>4</sup> Draft Rule WAC 480-100-128(4)(a)(ii)(C) (filed Aug. 14, 2019).

<sup>5</sup> Initial Comments of Public Counsel ¶ 48 (Sept. 7, 2018) and Second Comments of Public Counsel ¶¶ 7-9.

current procedures of the IOUs concerning temperature moratoriums. Hence, Public Counsel recants its original proposal and supports the language included in the Draft Rules.

5. **WAC 480-100-153(21) Protection and Disclosure of Customer Information:** The current version of the Draft Rules states the following:

The utility may collect and release aggregate data to the extent reasonably necessary for the utility to perform duties directly related to the utility's primary purpose but must have sufficient policies, procedures, and safeguards in place to ensure that the aggregated information does not allow any specific customer to be identified.

Public Counsel has previously discussed its concerns with the release of aggregate customer data and appreciates the modifications to the Draft Rules that significantly limits the disclosure of aggregate data only to the extent necessary to perform duties related to the utility's primary purpose. Public Counsel supports this modification as a reasonable compromise that allows the utility companies to use aggregate customer data for its own primary purposes, but does not allow the disclosure of such data for otherwise vague "business purposes." To support this version of the rule, Public Counsel recommends that policies regarding the handling of aggregate customer data be added to the utility privacy policies that are posted on company websites and provided to customers upon initiation of utility service and, additionally, recommends that the rules governing utility privacy policies reflect this requirement. Public Counsel looks forward to continued discussions with Staff and stakeholders regarding the handling of aggregate customer data.

#### IV. CONTINUED COMMENTS AND RECOMMENDATIONS

6. Public Counsel continues to have some concerns regarding specific sections of the Draft Rules concerning AMI deployment. Specifically, we disagree with aspects of the latest revisions of the Draft Rules proposed disconnection policies, fees associated with remote disconnection and reconnection, the sale of customer data, and customer's privacy policies.

**WAC 480-100128(6)(c):** Prior to disconnecting a customer who has an active medical certificate in accordance with subsection (8) of this section, visit the customer's premises and provide the customer with an opportunity to pay via appropriate methods including providing payment to the dispatched utility representative.

7. Public Counsel does not support the proposed language in this subsection. First, it is not clear what an "active medical certificate" refers to in relation to the disconnection policy. We believe this language should be reworded or defined in the rules for clarity.

8. Second, while Public Counsel supports the medical facilities inclusion in WAC 480-100-128(4)(j)(iii), we believe further protections are necessary for those customers who do not require specific medical facilities, but have a medical necessity. We believe that the original language in the Draft Rules offered this indispensable extra protection. As we have stated before, these customers are vulnerable customers and should have a premise visit before a disconnection occurs.<sup>6</sup> We do not believe it is difficult or burdensome to track those customers that have utilized a medical certificate or have informed the utility that there is lifesaving medical equipment on the premise (in the prior two years).

9. Finally, we believe the key protection for vulnerable customers with a medical necessity is the extended protection of requiring a premise visit for *two years* if the customer has had a

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<sup>6</sup> Initial Comments of Public Counsel ¶¶ 46 and 51 (Sept. 7, 2018).  
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medical emergency, pursuant to WAC 480-100-128(8). These customers can face life-threatening situations, if the utility does not provide a premise visit prior to a disconnection. By requiring a premise visit for these customers, a utility representative can assess the situation at hand, as well as allow the customer a last opportunity payment to avoid disconnection. We believe these premise visits provided for two years, and not for the duration of an “active medical certificate,” provide an extra vital protection for those with a medical necessity. As a result, Public Counsel continues to support the following language regarding customers with medical necessities,

Visit the customer’s premises and provide the customer with an opportunity to pay via appropriate methods including providing payment to the dispatched utility representative prior to disconnecting a customer who has had a medical emergency verified in the prior two years, in accordance with subsection (8) of this section.<sup>7</sup>

Public Counsel appreciates the discussions and attention the Commission and stakeholders have given to the disconnection policies in Washington State. However, we are mindful of the concerns The Energy Project raised regarding the tracking of utility disconnections and monitoring whether AMI remote disconnections dramatically increases with the employment of this new technology and whether additional consumer protections are warranted.<sup>8</sup> We also share these concerns and believe reporting requirements on utility disconnections should be mandatory. At this time, Public Counsel is open to whether this information should be required in the AMI Draft Rules, or whether reporting should be required elsewhere. We look forward to continued discussion on disconnections, generally, as well as on disconnection reporting requirements.

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<sup>7</sup> Draft Rules WAC-480-100-128(6)(c) (filed Dec. 21, 2018).

<sup>8</sup> Second Comments of The Energy Project ¶ 10 (filed on Jan. 31, 2019).

**WAC 480-100-128(6)(f) and WAC 480-100-133(3):**

**WAC 480-100-128(6)(f):** If a site visit is not required to disconnect the service, the utility may not charge any fees for the disconnection unless the utility’s tariff includes a specific charge for remote disconnection.

**WAC 480-100-133(3):** If a site visit is not required to reconnect service, the utility may not charge any fees for the reconnection unless the utility’s tariff includes a specific charge for remote reconnection.

10. As we mentioned in our second comments, Public Counsel does not agree that utilities should be able to charge fees when the utility is employing remote disconnection and reconnections.<sup>9</sup> Since no site visit is required and the labor and other associated costs with the use of AMI for disconnection and reconnection are removed, the fees should be eliminated.
11. **WAC 480-90-153(6)/WAC 480-100-153(6):** The last iteration of this rule for gas utilities previously stated, “A gas utility may not disclose or sell private consumer information.” In this round of edits, the rule has been modified to state, “A utility may not disclose customer information ...,” but the prohibition against selling customer information has been removed. In contrast, the analogous rule for electric utilities, WAC 480-100-153(6) originally stated, “An electric utility may not disclose or sell customer information...” and has been modified to clearly state that “An electric utility may not sell customer information. A utility may not otherwise disclose customer information...” Public Counsel supports the electric version of the rule, but recommends the gas rule be modified.
12. Public Counsel is concerned that WAC 480-90-153(6) now appears to implicitly allow gas utilities to sell private customer information. In the comment matrix, Staff stated it agreed with Public Counsel’s recommendation to remove the option for utilities to sell customer

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<sup>9</sup> Second Comments of Public Counsel ¶ 14 (Jan. 31, 2019).



information, and appeared to apply this to both gas and electric utilities by removing the possibility of the selling customer information from subsections 153(8) for both gas and electric utilities. The amendments to WAC 480-90-153(6), however, appear to contradict that action.

13. Public Counsel does not support any amendments that allow utilities to sell customer information. Public Counsel recognizes that the prohibition against selling utility customer information contained in RCW 19.29.100(1) only applies to electric utilities, but it is in the public interest to afford the same privacy protections to both gas and electric customers equally. Public Counsel, therefore, recommends the gas version of the rule be modified to mirror the language in the electric version to explicitly prohibit the sale of customer information for gas utilities.

14. If Staff's modifications to WAC 480-90-153(6) were intended to allow gas utilities to sell customer information, Public Counsel recommends that the section be further modified to apply to only "A gas utility" again so that there is no confusion that the rule, and the permission to sell customer information, may apply to electric utilities as well.

15. **WAC 480-100-153(11):** Public Counsel adamantly disagrees with the revisions made in this version of the Draft Rules regarding customers' privacy policies. The current version of the rule states:

The utility must post and maintain its privacy policy on its website in a prominent location.

(a) The utility must notify new customers how they can access a copy of the privacy policy upon the initiation of utility service.

(b) Whenever the utility amends its privacy policy it must notify existing customers by whatever method the utility uses to transmit the customers' bills.

(c) The utility must provide a written copy of its privacy policy upon customer request.

(d) Any notice regarding the utility's privacy policy must include a customer service phone number and website address where customers can direct additional questions or obtain additional information.

16. Public Counsel believes these modifications remove essential customer protections and requirements regarding these policies, such as the right for a customer to access their own data and be informed of the type of data a utility intends on collecting from customers. These types of protections should be required by rule, *not* by internal utility policy and procedures.

17. Furthermore, Public Counsel understands that the specifics of privacy policies may change and shift over time, however, the fundamental aspects of a privacy policy is invariable. Thus, a list of minimum provisions to be incorporated in a privacy policy *should* be included in rule.

18. Public Counsel recommends the following sections removed from the previous revision of the Draft Rules<sup>10</sup> be re-included in the current Draft Rules:

(16) Customers are entitled to access their own personally identifiable information within a reasonable time after the utility collects and verifies the data. The utility must make reasonable efforts to ensure that customers may choose how they receive such information without being required to share private information, including electrical consumption data, with a third party.

(19) Customers have the right to know what private information the utility maintains about the customer and the retention period of such information.

19. Additionally, we recommend the Draft Rules include the following subsection which lists the minimum information that must be included in utility privacy policies:

(xx) At a minimum, utilities must include the following information in their privacy policies:

(i) An explanation of the specific types of information being collected by the utility and how the data is collected (e.g., meters);

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<sup>10</sup> Draft Rules WAC 480-100 and WAC 480-90 (filed Dec. 21, 2018).

- (ii) An explanation about how the data is being used including an explanation of primary purpose;
- (iii) An explanation of the circumstances under which personally identifying information will be disclosed without additional consent (e.g., disclosure to support primary purpose);
- (iv) An explanation of the circumstances under which personally identifying information will be disclosed only with customer consent;
- (v) An explanation that the data may be used in conjunction with or merged with other data to create aggregated and anonymized data;
- (vi) A statement that customers have a right to access their data and an explanation of how customers can access their data;
- (vii) An explanation of the process by which a customer can identify possible inaccuracies and request correction.
- (viii) An explanation of utility data retention and disposal policies.

## V. CONCLUSION

20. Public Counsel appreciates the opportunity to submit these comments. If you have any questions regarding these comments, please contact Carla Colamonici at [Carla.Colamonici@atg.wa.gov](mailto:Carla.Colamonici@atg.wa.gov) or at (206) 389-3040.