

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Rulemaking To
Modify Existing Consumer Protection and
Meter Rules To Include Advanced
Metering Infrastructure

DOCKET U-180525

THIRD COMMENTS OF THE ENERGY PROJECT

September 16, 2019

I. INTRODUCTION

1 The Energy Project (TEP) files these comments in response to the CR 101 and the
Commission's Notice of Opportunity To File Written Comments, dated August 14, 2019. The
Notice solicited stakeholder feedback on a set of revised informal consumer protection and meter
related rule (Revised Draft Rules).

2 The Energy Project filed Initial Comments on September 7, 2018, and Second Comments
on January 31, 2019, regarding the implications of Advanced Metering Infrastructure (AMI) for
Washington's current customer protections, emphasizing concerns regarding remote
disconnection, premise visits, and prepaid service.

3 While TEP supports a number of the proposed changes in the Revised Draft Rules, TEP
has remaining concerns with the rules as currently drafted:

- The draft rules would ultimately allow the elimination of premise visits prior to
disconnection for the majority of customers, resulting in a direct reduction in an existing
customer protection, contrary to universal service and health and safety policy goals.

- Elimination of the premise visit eliminates two well-documented benefits: (1) significant disconnection prevention; and (2) revenue to the company and reduction of uncollectibles.
- The retention of premise visits for certain customers in the Revised Draft Rules is helpful but does not go far enough.
- The data provided to date in the docket does not establish a sufficient record upon which to base a major change in the premise visit requirement.

II. COMMENTS REGARDING PREMISE VISITS

A. **The Commission Should Continue to Require A Premise Visit At The Time of A Remote Disconnection For Non-payment.**

1. **The available data and Commission precedent strongly support the value of the premise visit.**

4 In this rulemaking TEP has focused its advocacy on the preservation of the “last knock” premise visit by company personnel prior to disconnection for service for non-payment. The compelling practical and policy considerations supporting this recommendation bear repeating. Washington UTC Staff concluded just six years ago when this issue was last examined in detail that it “strongly believes that the ability to pay at the door to prevent a disconnection 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.”¹

5 Essentially all the available evidence to date establishes that the premise visit is highly effective in accomplishing two important positive objectives: (1) preventing a high percentage,

¹ Staff Open Meeting Memorandum for September 12, 2013, Dockets UE-130545 and UE-131087 (Item Number A1, p. 1.

as much as 40 percent, of disconnections²; and (2) generating payment of delinquent accounts, allowing the utility to gain revenue and avoid administrative and collection expense. The Commission described this “last chance opportunity to bring delinquent accounts current and to avoid disconnection” as an “important protection for the utility’s most vulnerable customers.”³ This protection remains in place today for thousands of Washington customers, including all PSE and Avista customers who do not have automated meters, all Pacific Power customers, and all natural gas customers. Wherever the technical ability to disconnect remotely exists, however, customers face the loss of that protection.

6 The elimination of the “last knock” requirement is not a simple administrative or neutral change in procedure, instead, it would indisputably cause a tangible reduction in an effective consumer protection to the detriment of thousands of customers, to the companies themselves, and to the broader class of residential customers who help bear the cost of uncollected revenues and collection activity.

2. The “Last Knock” requirement helps advance universal service goals.

7 The issues raised in TEP’s comments have been long-recognized as a concern for consumers when AMI is deployed. In 2010, AARP, Consumers Union, Public Citizen, the National Consumer Law Center, and the National Association of State Utility Consumer Advocates issued a Smart Meter White Paper⁴ which included the recommendation that:

² *Id.*, p. 2.

³ *In the Matter of the Petition of PacifiCorp d/b/a Pacific Power & Light Co. Seeking Exemption From the Provisions of WAC 480-100-128(6)(k) Relating to Accepting Payments from Customers at Disconnection Service Address*, Docket UE-130545, Order 01, ¶¶ 8, 10.

⁴ *The Need For Essential Consumer Protections, Smart Metering Proposals and the Move To Time-Based Pricing*, AARP, Consumers Union, National Consumer Law Center, Public Citizen, National Association of State

“Smart meter investments should not result in reduced levels of consumer protections, especially relating to the implementation of remote disconnection, and traditional billing and dispute rights should be retained.”⁵

Significantly, the White Paper addressed premise visits specifically:

Furthermore, it is important to ensure that the use of this feature does not eliminate the standard practice in many states of an attempt to contact the customer at the time of disconnection. A utility’s premise visit to the customer’s dwelling at the time of disconnection which is required in some states is for the purpose of allowing the utility to respond to customer statements at the time of disconnection, detect a medical emergency, or other conditions that may result in forbearance by the utility from effectuating the disconnection of service, and consider the customer’s dispute allegations if made orally at that time.⁶

8 The “last knock” at the customer’s home is an extremely effective tool for advancing universal service policy – keeping the utilities’ most vulnerable customers connected. Because electricity is an essential service, disconnection should only occur as a last resort. Loss of service creates serious hardship for households, especially those with young children, elderly and disabled members, and creates very real health and safety threats. Families without electricity may use other sources of energy in the home that in turn create fire, carbon monoxide and other life-threatening risks for the household members.⁷ As disconnections increase, these risks increase.

9 Another important concern is that, absent regulatory action, the availability of remote disconnection may result in an increase in the rate of disconnection of service, since disconnection becomes simpler and faster for the utility. In addition, to the extent the business

Utility Consumer Advocates (Smart Meter White Paper), August 2010.

https://www.energy.gov/sites/prod/files/oeprod/DocumentsandMedia/AARP_Attachment.pdf

⁵ Smart Meter White Paper, p. 2.

⁶ Smart Meter White Paper, p. 18.

⁷ Smart Meter White Paper, p. 17.

case for AMI is built on the savings from remote disconnection, utilities are justifying the new technology in part by eliminating customer protections. This is an undesirable dynamic from a universal service policy perspective.

3. Staff comments re the TEP recommendation do not address the core justifications for the rule.

10 In the most recent Comment Matrix for this docket, the Staff response to TEP's premise visit recommendation states that "Staff recognizes that allowing disconnection without a site visit in all cases is a change to current practice but is satisfied that the utilities' provision of payment options and the ability to reconnect service promptly, in conjunction with repeated prior notice adequately address concerns [.]"⁸

11 The Energy Project does not agree that the factors cited by Staff adequately address the issues raised in our comments. Staff's comment does not directly respond to the key justifications for premise visits: (1) the data showing the significant number of disconnections avoided; (2) the revenues and cost savings to the utility; and (3) the "health and safety" and universal service benefits. The payment options and the prior notice requirements are pre-existing rule protections that operate in conjunction with the premise visit and remain essentially unchanged under the Revised Draft Rules. There is no enhancement of payment options or notice that compensates for the loss of the "last knock" protection. The ability to reconnect more promptly does not eliminate the disruption and cost of disconnection. There is simply a net loss to the prior suite of protections that has helped thousands of customers to retain essential utility service.

⁸ Advanced Metering Infrastructure, Second Comment Matrix, August 14, 2019, p. 8.

4. There is a lack of data in this docket to support ending premise visits.

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The Energy Project respectfully repeats its recommendation in its earlier comments that the Commission issue an updated Industry Data Request building on the request issued in the 2013 rulemaking docket. It is critical that this docket be used as an opportunity to gather more comprehensive data to fully evaluate remote disconnection related issues, including the premise visit. That data gathering has not occurred so far, but could still be pursued. Without more information, the Commission does not presently have the ability to analyze a number of important questions, including:

- Shut-off statistics for the current period and trends since 2013.
- Additional more complete data for disconnections avoided by premise payments (including total numbers, data since 2013).
- Revenue produced by payments at the time of disconnection.
- Cost savings (avoided costs of collection, reduced uncollectibles) of premise visits.
- Cost comparison of using customer service representative for a premise visit as opposed to electrician/technical employees and “truck rolls.”
- The mode of payment used by customers at disconnection.
- Information regarding employee injuries related to premise visits.
- Data regarding numbers, location, and fees, if any, of pay stations.
- AMI business case data regarding remote disconnection.

Without such data there is not a reasonable basis for changing the current requirement, particularly given that the data in the prior Commission docket does not support a change. Even the limited data provided in this docket to date supports retaining the premise visit. PSE, Avista, and NW Natural Gas all reported substantial percentages of customers avoiding disconnection by payment at the time of the premise visit (33 percent, 24 percent and 13 percent respectively). The rulemaking presents a major opportunity for the Commission to collect and comprehensively evaluate the data regarding disconnection at a time when technology and policy are changing. Gathering this data will allow the Commission, Staff, and stakeholders to have a baseline to measure the impact on disconnection going forward as CETA and other regulatory changes are implemented.

5. Company responses to Bench Request No. 1 in this docket illustrate the value of premise visits.

Avista's Customer Assistance Referral and Evaluation (CARES) department, described in the Company's response to Bench Request No. 1 in this docket, exemplifies the value of the premise visit. CARES works with "customers experiencing circumstances such as medical crisis, unemployment, family hardships or other special conditions that may impact the customers ability to pay."⁹ For such customers, Avista only approves disconnection if all other options have been exhausted. The CARES worker can put a hold on the disconnect and may send a service person to the premise to leave a notice for payment. As a practical matter, therefore, the Avista program recognizes the benefit of direct contact with vulnerable customers facing special conditions that impact the ability to pay. Avista's program demonstrates the

⁹ Avista Response to Bench Request No. 1, March 29, 2019, p. 2, n.1.

importance of the premise visit and the benefits of a customized approach for vulnerable customers.

15 In Pacific Power’s response to the Bench Request, PacifiCorp describes the practice of a premise visit by a manager and a collector to meet with the household and evaluate the situation where a medical or life support situation is involved. The premise visit performs a “health and safety” function that allows the utility to identify vulnerable customers who should not be disconnected and who can take advantage of other alternatives.¹⁰

16 These company practices are commendable means of advancing the universal service policy goal of keeping customers connected. Their responses illustrate the value and lend support to preservation of the practice.

B. Premise Visits for Customers With Medical Conditions.

1. The proposed rule versus the prior draft.

17 The prior Draft Informal Rule, issued December 21, 2018, would have required a premise visit for a customer who “had a medical emergency verified in the prior two years” under WAC.¹¹ The Revised Draft Rule of August 14, 2019, narrows the scope of the protection, and now would only require a premise visit in the case of a customer with an “active medical certificate” under the WAC. As a practical matter, this exposes a greater number of customers who may have medical needs for power in the home to disconnection without the protection of the “last knock rule.” The Energy Project does not support this change and recommends retaining the original draft language.

¹⁰ Pacific Power Response to Bench Request No. 1, March 29, 2019, p. 2.

¹¹ WAC 480-100-128 (5).

2. Electricity disconnection can be life threatening.

18 The importance of the premise visit where medical needs are involved is illustrated by
two recent cases where tragic, preventable deaths have occurred due to disconnection.

19 In New Jersey, Linda Daniels, a 68-year-old Newark woman who used an oxygen tank
died after the utility company, Public Service Electric & Gas (PSE&G), turned off electricity to
her home due to an overdue bill. Ms. Daniels' family had notified the utility of her medical
issues, had recently paid \$500 toward her account to maintain service, but PSE&G nevertheless
disconnected Ms. Daniels electric service on a day with high temperatures of 91 degrees.¹² In
response New Jersey enacted new legislation, labeled "Linda's Law" to prevent such service
terminations in future. "Being late on your bills should not be life threatening," state Sen.
Joseph Vitale, one of the law's sponsors said in a statement."¹³ The new law requires New Jersey
utilities to request information to determine whether they have customers with medical
conditions on a semi-annual basis, and also bans shut offs for 90 days for medical customers.¹⁴

20 In Arizona, 72-year-old Stephanie Pullman of Sun City died after her service was
disconnected by Arizona Public Service (APS) on a day with 107-degree heat. Ms. Pullman
reportedly owed \$51, and APS had left a "door hanger" warning of potential disconnection
through what the utility described as a "personal visit." However, during a September, 2019
hearing before the Arizona Corporation Commission, APS executives were unable to confirm

¹² "Newark Woman on Oxygen Dies After Utility Company Shuts Off Power," *New York Times*, Matthew Haag, July 9, 2018, p. A19.

¹³ Press Release of New Jersey Governor Phil Murphy, July 5, 2019, "Governor Signs Linda's Law," <https://www.nj.gov/governor/news/news/562019/approved/20190705b.shtml> [last accessed September 16, 2019]

¹⁴ *Id.*

that Ms. Pullman had seen the door hanger notice.¹⁵ In response to Ms. Pullman's death, the Arizona Corporation Commission in June, 2019 adopted an emergency rule to temporarily ban disconnections until October 15 and is reviewing its disconnection rules.¹⁶ On September 4, 2019, the Arizona Commission had a hearing about Ms. Pullman's death with probing questions to APS executives regarding its disconnection practices. Commissioner Justin Olson indicated he was not satisfied with answers from APS as to why customers with medical issues were being disconnected, despite Arizona codes prohibiting such disconnections, and that investigations into these issues was ongoing.¹⁷

21 In this docket, the UTC has the opportunity to be forward thinking and to preserve a rule framework that can help prevent a similar tragedy from occurring in Washington. Narrowing of the proposed Draft Informal Rule on medical emergencies to cover fewer customers is a move in the wrong direction in TEP's view.

3. Other state rules go farther than Washington to protect vulnerable customers.

22 To put the discussion in this docket in context, it is worth noting that many other states provide more protection than Washington's medical emergency rule, often with a broader scope of vulnerable customers, and include seasonal disconnection restrictions. Examples include:¹⁸

¹⁵ "In All-Day Hearing, Arizona Regulators Struggle to Hold APS Execs Accountable," *Phoenix New Times*, Elizabeth Whitman, September 5, 2019.

¹⁶ "Arizona bans power shutoffs until Oct 15 after death of Sun City West woman," *Arizona Republic*, Ryan Randasso, June 20, 2019.

¹⁷ "In All-Day Hearing, Arizona Regulators Struggle to Hold APS Execs Accountable," *Phoenix New Times*, Elizabeth Whitman, September 5, 2019.

¹⁸ LIHEAP Clearinghouse, State Disconnect Policies
<https://liheapch.acf.hhs.gov/Disconnect/disconnect.htm#w>

- Maryland requires the utility to provide an affidavit to the Commission that disconnection from November through March will not endanger the health of any household member.
- Idaho has a seasonal disconnection ban for households with children under 18, elderly age 62 or over, or infirm customers, from December 1 through February 28.
- Massachusetts has protections for low-income, households with infants under 12 months, or seriously ill customers.
- Michigan provides year-round protection for shut-offs to all residential customers regardless of income with an initial down payment of 10 percent and monthly budget plan.
- Missouri has protection for registered elderly and disabled customers meeting certain income guidelines who make a minimum payment.
- Montana has a seasonal prohibition if a household member is 62 or older or disabled. Regulated utilities must get Commission approval to disconnect.
- New Hampshire requires Commission approval to shut-off customers 65 or older. New Jersey bans disconnection for customers unable to pay due to medical expenses or recent death of a spouse.
- New York prohibits disconnection if a household has a life support system, and also has disconnection limits where a health or safety impairment would occur, for elderly over age 62, household members under age 18, blind, or disabled.
- North Carolina bars disconnection for elderly and disabled customers.

- Oregon delays disconnection up to 12 months for chronic medical conditions, or six months for non-chronic, and bars disconnection for customers on a deferred payment plan.
- Rhode Island has seasonal protections for elderly, handicapped, and for those with children under 2 years old.

23 The Energy Project is not presently advocating a broader seasonal disconnection restriction beyond the winter low-income payment program in WAC 480-100-143, for disconnecting vulnerable customers. A disconnection moratorium can cause some customers to build up large arrearages which can be challenging to address once the moratorium ends. The point of this state review is to show that rules designed to prevent disconnection for vulnerable customers, more broadly defined than in Washington, are common across the country. In Washington, without such broadly framed seasonal disconnection bans, the premise visit has been an existing alternative tool proven to substantially reduce disconnections.

4. Specific recommended rule amendments.

24 The Energy Project recommends three changes to the rules to improve the medical emergency protection.

a. Restore broader premise visit requirement.

25 For the reasons discussed above, TEP recommends the language in the Staff's prior informal draft rule be restored. A premise visit should be required for customers who have had a medical emergency within the past two years. The issuance of a medical certificate in that time frame makes it reasonable to have a "health and safety" check of the household.

b. Certificate validity.

26 The current rule only allows a validity period of 60 days for a medical emergency certification, unless renewed, and only allows a customer to “claim medical emergency” twice within a 120 day period.¹⁹ While TEP supports the proposal in the Revised Draft Rules to eliminate the 120 day limitation, the renewable 60 day requirement is still unnecessarily limiting. For customers with serious medical conditions, requiring frequent and repetitive contact with medical professionals and the utility to renew certification is unduly burdensome, inefficient, and may cause customers to lose protection if they are inattentive to or unable to manage the “paperwork” of the certification. Customers requiring oxygen, for example, similar to Linda Daniels in New Jersey, are likely to have a permanent or long-term need. PSE’s response to the bench request indicates that PSE’s practice is to allow customers to apply for a “life support” flag that can be renewed annually.²⁰

27 As noted above, many states offer much more extensive protection once certification has occurred. For example, Oregon allows disconnection to be delayed up to 12 months for chronic medical conditions, or six months for non-chronic.²¹ The Energy Project recommends that the rules be amended to allow the medical professional to state the amount of time needed, up to a maximum 12 months for chronic, or 6 months for non-chronic conditions, with a right to renew.

¹⁹ WAC 480-100-128(5)(b).

²⁰ PSE Response to Bench Request No. 1, March 29, 2019, p. 1.

²¹ LIHEAP Clearing House, State Disconnection Policies

<https://liheapch.acf.hhs.gov/Disconnect/disconnect.htm#w>

c. Notice content.

28 The current rules do not require the utility company to explicitly inform customers of
their right to avoid disconnection under the medical emergency rule. The Energy Project
recommends that the disconnection notice be required to clearly and conspicuously provide this
information.

d. Website information.

29 Companies should be required to clearly and conspicuously inform their customer of the
medical emergency rule on their websites.

C. Premise Visits for Low-income Customers.

1. The Energy Project is supportive of the new draft conceptually but the proposal still rolls back protections for most low-income customers.

30 The Energy Project is generally supportive of the Revised Draft Rule which would
require premise visits for “a customer who the utility is aware has received low-income
assistance in the prior two years.” The Energy Project does have two areas of concern, however.
First, the rule only helps recent energy assistance recipients, at most 25 percent of low-income
customers, while withdrawing the premise visit requirement for the majority. In PSE’s case
alone, for example, as previously noted, this would represent loss of protection for approximately
200,000 or more customers.²²

31 The Energy Project understands companies’ reasonable concern that they cannot readily
identify low-income customers, as a practical matter, unless those customers participate in a bill-
assistance program. The simplest remedy for that concern is to continue premise visits for all

²² Second Comments of The Energy Project, ¶ 12.

non-payment disconnections. One major benefit of the premise visit is that customers can be directly and personally informed of the availability of bill-assistance programs in their area and connected with the right agency. The customer therefore has the opportunity both to avoid disconnection by a payment to the utility representative, and to establish eligibility for assistance to help with bills going forward, decreasing future risk of disconnection. This would have the added benefit of increasing enrollment in bill assistance programs, a goal of the utilities, local agencies, the Commission and customer advocates alike.

32 The inclusion of the “awareness” requirement in the new draft is somewhat problematic to the extent it appears to introduce some subjectivity into the rule. It is TEP’s understanding that companies have the ability to flag customers in their billing systems who use energy assistance. It should not be burdensome to check for the flag prior to issuing a disconnection order. The Energy Project would prefer the more direct language in the prior draft, which puts the burden on the company to check for participation. Approach in other states.

2. **Protections in other states.**

33 As in the case of medical certificates, many states have broad protections for customers facing economic hardship, barring disconnections entirely in many situations, at least on a seasonal basis, for customers facing financial crises.²³ For example:

- Indiana has seasonal protections for customers who qualify for public assistance, even if the customer does not receive it.
- Massachusetts has seasonal protections for low-income customers.

²³ LIHEAP Clearing House, State Disconnection Policies
<https://liheapch.acf.hhs.gov/Disconnect/disconnect.htm#w>

- Montana has seasonal protections for customers receiving public assistance.
- New Hampshire has protection for “financial hardship” customers.
- New Jersey has seasonal disconnection restrictions for customers receiving Lifeline, LIHEAP, TANF, SSI, GA, and other public assistance, and for customers unable to pay due to unemployment.
- Pennsylvania has a seasonal prohibition on disconnection for low-income customers based on Federal Poverty Level (250 percent of FPL).
- Rhode Island has seasonal protection for low-income customers.

34

By contrast, other than the winter low-income payment program, Washington primarily relies on the premise visit to provide a practical and powerful disconnection avoidance tool. As stated earlier, TEP prefers retaining premise visits and does not advocate broadening the seasonal disconnection rule at this stage, due to the risk of developing unmanageable arrearages. Premise visits can help identify customers with mitigating circumstances such as unemployment or health problems that could justify holding off on disconnection. The point of this state review, again, is to show that practices designed to prevent disconnection for vulnerable customers, more broadly defined than in Washington, are common across the country. The premise visit is an effective tool that avoids the disadvantages of an outright ban or moratorium, but still has proven to substantially reduce disconnections.

3. Recommended amendments.

35 The Energy Project supports the proposed amendment to require notice of the payment
arrangement rule, WAC 480-100-138, year-round. The Energy Project also recommends that the
disconnection notice rule specifically require that customers be informed of the availability of
low-income bill assistance through LIHEAP and the utility/ratepayer funded program such as
PSE's HELP or Avista's LIRAP. While companies are in many cases today informing
customers that low-income bill assistance is available, the rules do not currently require that
information to be part of the disconnection notice.

36 The Energy Project also recommends that in lieu of the "awareness" language, the rule
revert to the prior draft language.

37 The Energy Project recommends that the remote disconnection provision be clarified to
be consistent with WAC 480-100-128(4)(i) by specifying that cash payment is one appropriate
method of payment at the premise to avoid disconnection.

38 Finally, TEP recommends adoption of a minimum arrearage level to avoid disconnections
for relatively minor unpaid balances. While the appropriate limit could reasonably be set at
different levels, TEP proposes that no disconnection be permitted for amounts owing below
\$200, an approximation of two months billing.

III. SUMMARY OF TEP PROPOSED CHANGES TO DISCONNECTION RULES

39 The Energy Project proposes the following changes to the Revised Draft Rules

consistent with a policy favoring universal service, in which disconnection from essential utility service is disfavored and is to be employed only as a last resort.²⁴

- Preserve the premise visit requirement for all customers facing disconnection for non-payment.
- Add disconnection notice content regarding medical emergencies and bill assistance.
- Expand medical emergency certification to 6 months maximum for non-chronic, 12 months for chronic, with renewal allowed.
- Medical emergency – premise visit if within two years.
- Medical emergency – clear and conspicuous information on company website.
- Include “cash” as appropriate form of payment in remote disconnection rule.
- Establish a minimum arrearage for disconnection.

IV. ADDITIONAL ISSUES

40 The Energy Project supports the Revised Draft Rule provisions limiting remote disconnections to between 8 A.M. and noon, for the reasons previously addressed in our comments. The Energy Project also supports the inclusion of an inclement weather provision in the rules. As mentioned earlier, many states have inclement weather disconnection restrictions and this is a modest step in that direction. A review of company tariffs on this issue, and further experience will determine if there is a need for more detail in the rule.

41 The Energy Project continues to recommend that the Commission prohibit prepaid service. If the Commission does not develop a specific rule prohibiting prepaid service, we again encourage the Commission to consider providing guidance or language in any rule

²⁴ TEP will submit specific recommended rule language in a supplemental filing.

adoption order expressing concerns with prepaid service and disfavoring introduction of prepaid service programs.

V. CONCLUSION

42 The Energy Project respectfully requests consideration of these comments. The Energy Project looks forward to working with the Commission and other stakeholders in the future as these important rules are developed.