FRONT AND CENTERED

November 4, 2019

RE: Rulemaking for Energy Independence Act (EIA), WAC 480-109, Docket UE-190652

Docket U-190652

Mark Johnson, Executive Director/Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. S.W., P.O. Box 47250
Olympia, Washington 98504-7250

Dear Mr. Johnson:

Thank you for the opportunity to participate in the process of rulemaking to address amendments to the EIA enacted by Laws of 2019, Chapter 288, and Laws of 2017, Chapter 315. This letter constitutes our response to the notice of opportunity to file written comments on the draft rules, Docket U-190652.

Front and Centered is a statewide coalition of organizations and groups rooted in communities of color and people with lower incomes. Our mission is to advocate for and represent these communities in connection with economic and environmental change, because communities of color and people with lower incomes are the first hit by extraction, pollution, and climate change, which exacerbates existing health and economic disparities. Frontline communities are often left out of or are the last to be included in the transition to a healthy, resilient, and sustainable future. We appreciate being included in this process.

The UTC's mission is to ensure investor-owned utility services are safe, available, reliable, and fairly priced. Energy assistance programs will likely play an important role in the future of utility companies and there are important steps the Commission can take to ensure fairness.

Front and Centered has the following comments on the draft rule language:

1. Response to UTC Question One: Definitions of "energy assistance" and "energy burden" should be added to WAC 480-109-060 and broadened.

We support the addition of definitions for both "energy assistance" and "energy burden" in WAC 480-109-060. Defining these terms now can prevent potential future issues from arising that would inhibit low-income households from receiving necessary energy assistance.

We propose removing the word "annual" from the definition of the energy burden or interpreting it as annualized. While removing the word "annual"would not substantively impact the number of households eligible as the proposed definition language, it would make assistance more accessible to homes with different income types. Removing the word "annual," from the definition increases the accessibility of energy assistance programs to families with multiple and/or nontraditional incomes, who might struggle to prove a full year's income but still face an energy burden that would qualify them for energy assistance.

Further, without the word "annual,"or as "annualized" the definition more closely reflects the definition of "energy burden" in industry literature and the reports of other state governments. In its 2016 report on energy efficiency and low-income and underserved communities, the American Council for an Energy-Efficient Economy (ACEEE) and Energy Efficiency for All defined energy burden as "the percentage of household income that is spent on energy bills."[1] Oregon's Housing and Community Services Department calculated energy burdened households by "using the percentage of household income spent on home energy, such as utility bills and other heating costs."[2] Both definitions calculate energy burden in the same substantive way as the proposed definition, as a balance of income and energy costs. However, neither definition requires that income be restricted to solely an annual measure and doing so reduces the ability of low income families to access energy assistance they qualify for.

In addition, we recommend that "home energy bills" be clarified to include capture the total household cost of energy sources used for home electricity and home heating.

In regards to Energy Assistance, we propose that shut-offs be considered in regards to energy assistance as contradictory. Lower income households that may face shut-offs should be considered as part of energy assistance. Energy assistance should include the right all households have to energy sufficiency and reducing shut-offs for customers with lower incomes for nonpayment.[3]

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[1] Drehobl, A., and L. Ross. 2016. *Lifting the High Energy Burden in America's largest Cities: How Energy Efficiency Can Improve Low-Income and Underserved Communities*, at 17. https://aceee.org/research-report/u1602.

[2] Oregon Department of Energy, 2018. *Biennial Energy Report*, Chapter 7. https://energyinfo.oregon.gov/ber.

[3] *The International Energy Agency defines "access to modern electricity" at 500 kWh per year (or 1.4 KW daily), for which "consumption might also include an efficient refrigerator, a second mobile telephone per household and another appliance, such as a small television or a computer. An alternative is curtailment, such as structuring rates based off of a flat fee for the first xx kilowatt used and then higher rates over that first KW with a potential waiver for those with lower incomes.*

Energy assistance should also acknowledge and include complementary strategies for ensuring the equitable distribution of energy and nonenergy benefits and reduction of burdens to vulnerable populations and highly impacted communities; long-term and short-term public health and environmental benefits and reduction of costs and risks; and energy security and resiliency.[4] For example, the Department of Commerce Weatherization Plus Health programs recognizes the opportunity to pursue indoor air quality and other household improvements alongside the opportunity to achieve energy burden reductions.[5]

We propose the definition of "energy burden" to mean "the share of household income used to pay home energy bills, including all energy costs for heating, cooling, and electricity."

We propose the definition of "energy assistance" to mean: a program undertaken by a utility to reduce the household energy burden of its customers.

(a) Energy assistance includes, but is not limited to, weatherization, conservation and efficiency services, reduction of shut-offs and monetary assistance, such as a grant program or discounts for lower income households, intended to lower a household's energy burden.

(b) Energy assistance may include direct customer ownership in distributed energy resources or other strategies if such strategies achieve a reduction in energy burden for the customer above other available conservation and demand-side measures.

(c) Energy assistance may include complimentary strategies that improve the equitable distribution of energy and nonenergy benefits and reduction of burdens to vulnerable populations and highly impacted communities; long-term and short-term public health and environmental benefits and reduction of costs and risks; and energy security and resiliency.

2. Response to UTC Question Two: "Energy assistance need" should be defined in WAC 480-109-060 by an energy burden that acts as a floor rather than a ceiling.

The level of energy burden should be included within the definition of "energy assistance need," but more time is needed to identify the appropriate strategy to develop an appropriate number(s).

As the Commission has pointed out in its questions for consideration, some industry literature suggests that six percent is a standard affordability benchmark.[6] A six percent benchmark is reflected by other state governments. In the Oregon Department of Energy's Biennial Energy Report, the department notes that as part of its energy assistance programs, it

[4] RCW 19.405.010(6).
[5] Weatherization Plus Health (Wx+H) - Washington State Department of Commerce
[6] Drehobl, A., and L. Ross., *supra*, at 17.

considers "energy burdened households" to be those that spent 6 percent or more of their income on energy costs.[7] However, other utilities use more ambitious metrics, Seattle City Light's Energy Equity Rate Pilot launched in 2019 utilizes a four percent energy burden to determine bill affordability.

Regardless of the specific number(s), we propose that the definition of "energy assistance need" should contain language such as "less than or equal to," which would allow utilities the flexibility to provide energy assistance beyond what would be required. By acting as a floor rather than a ceiling, this language would not inhibit utilities from independently creating more robust energy assistance programs that target individuals with an energy burdens lower than the level set by the Commission.

Energy assistance need definitions should be tailored to the energy services included, which should include home electricity and home heating costs. It should avoid creating cliffs.

The energy burden level identified to define energy assistance should be determined by the Commission. The Commission should engage in more extensive discussion before deciding on a final number, but it should not be greater than six percent.

3. Response to UTC Question Three: The proposed definition of "low-income" in WAC 480-109-060 should be set at the statutory maximum for both the Federal Poverty Level and the Area Median Income metrics ensuring the broadest eligibility.

The definition of "low-income" is significant because it determines which households are eligible for energy assistance.

Some Federal assistance programs, such as the Low Income Home Energy Assistance Program (LIHEAP), provide assistance to families making 125 percent of the Federal Poverty Level in Washington.[8] However, corresponding state programs have the flexibility to go further. Oregon's Housing and Community Services Department set the income eligibility requirement of its Weatherization Assistance Program at or below 200 percent of the Federal Poverty Level.[9] Considering that Washington and Oregon are similar their uniquely equity-focused clean energy policy and energy assistance, it would be reasonable for the Commission to adopt language similar language in its definition as Oregon. If the Federal Poverty Level is used to define low-income, the metric should be 200 percent of the Federal Poverty Level.

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[7] Oregon Department of Energy, 2018. *Biennial Energy Report*, Chapter 7. https://energyinfo.oregon.gov/ber.
[8] Department of Commerce "Washington State Low Income Home Energy Assistance Program (LIHEAP)," 2017, https://www.commerce.wa.gov/growing-the-economy/energy/low-income-home-energy-assistance/.
[9] *Id.*

Additionally, the same industry literature cited by the Commission defines low-income as less than or equal to 80 percent of AMI.[10] The report explains its concerns that an eligibility requirement using the Federal Poverty Level may not adequately encapsulate the growing number of multi-family households in low-income communities that are still in need of energy assistance.[11]

An measurement of 80 percent of AMI should used to define low income in utility service territories where it allows higher eligibility, for example areas where the AMI is above the federal AMI..

We propose the definition of "low-income" means "household incomes that are less than or equal to the higher of 80 percent of area median household income or 200 percent of federal poverty level, adjusted for household size"

The Commission and utilities should identify pathways to reduce enrollment burdens and build opt-out rather than opt-in processes as a cornerstone to effective energy assistance qualification while still maximizing additional service opportunities. Privacy, fear and distrust of government, and lack of appropriate outreach and engagement, are all barriers that come into play with eligibility and qualification.

4. Response to UTC Question Four: The proposed changes to WAC 480-109-100(10) addressing funding and programs for low-income energy assistance as described in the Laws of 2019, Chapter 288, §§ 2(16) and 12 are vague and require additional language.

We believe proposed Section WAC 480-109-100(10) requires additional language to affect progress towards making energy assistance funds available to low-income households, pursuant to the legislative intent of Chapter 288. We therefore request amendments to proposed WAC 480-109-100(10)(b) and (b)(i).

Proposed 480-109-100(10)(b) of the draft rules requires the utilities' biennial conservation plan include "low-income conservation programs and mechanisms identified pursuant to the Laws of 2019, Chapter 288 Section 12(4)(b)." However, Chapter 288 Section 12(4)(b) does not identify specific programs or mechanisms. Instead, Section 12(4)(b) requires utility inclusion of a plan to "improve the effectiveness of the assessed mechanisms and strategies towards meeting the energy assistance need." The "mechanisms and strategies" are actually delineated in Section 12(4)(a)[12].

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[10] Drehobl, A., and L. Ross. 2016. *Lifting the High Energy Burden in America's largest Cities: How Energy Efficiency Can Improve Low-Income and Underserved Communities*, at 17. https://aceee.org/research-report/u1602.

[11] *Id.* at 3.

[12] These mechanisms and strategies include: the programs and mechanisms used by the utility to reduce energy burden and the effectiveness of those programs and mechanisms in both short-term and sustained energy burden

i. Amendments to Proposed WAC 980-109-100(10)(b)

We propose changing the language of WAC 480-109-100(10)(b) to support making progress on energy assistance to read:

> (b) Pursuant to the Laws of 2019, Chapter 288, Sections 12(4)(a) and 12(4)(b), the utility's biennial conservation plan must include:
>
> (i) low-income energy assistance and conservation programs;
> (ii) mechanisms used to reduce energy burden; and
> (iii) outreach strategies used to encourage participation of eligible households, including consultation with community-based organizations and Indian tribes as appropriate, and comprehensive enrollment campaigns that are linguistically and culturally appropriate to the customers they serve in vulnerable populations.

This language clarifies utilities must implement programs to reduce energy burdens and increase participation of eligible households.

ii. Amendments to Proposed WAC 480-109-100(b)(i)

Proposed WAC 480-109-100(10)(b)(i) requires utilities to consider the "costs and benefits that accrue to the customer over the life of each conservation measure." "Conservation," as defined in the adopted WAC 480-109-060(7), means any reduction in electric power consumption resulting from increases in the efficiency of energy use, production, or distribution. Weatherization services may be used to increase the efficiency of energy use, thereby reducing electric power consumption.[13] For instance, in many older homes, efficiency upgrades may not be possible or productive unless structural problems like roof leaks are first eliminated. Eliminating these structural problems both increases energy efficiency and helps mitigate health problems associated with poor housing quality, including asthma, respiratory problems, heart disease, arthritis, and rheumatism.[14] Because weatherization services increase efficiency of

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reductions; the outreach strategies used to encourage participation of eligible households, including consultation with community-based organizations and Indian tribes as appropriate, and comprehensive enrollment campaigns that are linguistically and culturally appropriate to the customers they serve in vulnerable populations; and a cumulative assessment of previous funding levels for energy assistance compared to the funding levels.

[13] *See generally* Annie Gilleo, Seth Nowak, and Ariel Drehobl "Making a Difference: Strategies for Successful Low-Income Energy Efficiency Programs," October 2017 at page 15, https://www.njit.edu/sites/njit.edu.tab/files/sustainability/T2-Low-Income-Energy.pdf.

[14] See Khalil Shahyd "Study Highlights Energy Burden for Households and How Energy Efficiency Can Help," April 2016, https://www.nrdc.org/experts/khalil-shahyd/study-highlights-energy-burden-households-and-how-energy-efficiency-can-help.

energy use, these services are arguably included in the adopted definition of "conservation." Confusingly, however, weatherization services are later distinguished from conservation services in proposed WAC 480-109-060(13)(a).[15]

To further the legislative intent of Chapter 288 §12(1)[16], we propose amending the language to:

> (c) A utility must consider the costs and benefits that accrue to the residence, its inhabitants, and the community over the life of any service undertaken pursuant to an energy assistance program.

The revised language would thus read, in total, as follows:

WAC 480-109-100(10). **Low-income conservation.**
(a) A utility must fully fund low-income conservation measures that are determined by the implementing agency to be cost-effective consistent with the *Weatherization Manual* maintained by the department. Measures identified through the priority list in the *Weatherization Manual* are considered cost-effective. In addition, a utility must fully fund repairs, administrative costs, and health and safety improvements associated with cost-effective low- income conservation measures.
(b) Pursuant to the Laws of 2019, Chapter 288, Sections 12(4)(a) and 12(4)(b), the utility's biennial conservation plan must include:
(i) low-income energy assistance and conservation programs;
(ii) mechanisms used to reduce energy burden; and
(iii) outreach strategies used to encourage participation of eligible households, including consultation with community-based organizations and Indian tribes as appropriate, and comprehensive enrollment campaigns that are linguistically and culturally appropriate to the customers they serve in vulnerable populations.
(c) A utility must consider the costs and benefits that accrue to the residence, its inhabitants, and the community over the life of any service undertaken pursuant to an energy assistance program.
(d) To the extent practicable, a utility must prioritize energy assistance to:
(i) low-income households with a higher energy burden; and
(ii) low-income households whose residents:
(A) are in a racial or ethnic minority;
(B) are members of an Indian tribe;

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[15]

[16] Chapter 288 §12(1) states: "It is the intent of the legislature to demonstrate progress toward making energy assistance funds available to low-income households consistent with the policies identified in this section."

(C) have a qualifying disability as defined in WAC 220-200-160;

(D) are members of a sensative population, such are those sixty-five years of age or more;

(E) rent or lease the property in which they reside; or

(F) demonstrate multiple, cumulative factors used in vulnerable population sub-topic of the Department of Health Cumulative Impact Analysis

A utility will account for factors including but not limited to: the number of individuals at the residence, residents that are sensitive or vulnerable populations, the age of the residence, the location of the residence, including whether it is in a "highly impacted community" designed by the Department of Health, and the ownership of the residence when determining the appropriate energy assistance program.

(e) A utility **must** exclude low-income conservation from portfolio-level cost- effectiveness calculations.

(f) A utility must count savings from low-income conservation toward meeting its biennial conservation target. Savings may be those calculated consistent with the procedures in the *Weatherization Manual*.

5. **Response to UTC Question Five: It is practicable for the Commission to prioritize certain minority communities and vulnerable populations, in addition to low-income households with higher energy burdens, in the context of low-income energy assistance.**

Chapter 288 §12(2) requires electric utilities to "make programs and funding available for energy assistance to low-income households by July 31, 2021." Utilities are required to prioritize program and funding availability to low-income households with a higher energy burden, *to the extent practicable*. This language is repeated in proposed WAC 480-109-100(b)(ii)[17]. "Practicable" means "any idea or project which can be brought to fruition or reality without any unreasonable demands."[18] We propose that it would be unreasonable not to consider additional criteria in determining what is "practicable" in the context of low-income energy assistance. We further propose that it would be unreasonable not to include factors the utilities should look to in determining which energy assistance program is appropriate for qualifying individuals.

i. The Commission should prioritize energy assistance for historically disenfranchised groups and communities identified as vulnerable populations.

Consistently, communities of color, senative population populations such as elderly households, households with differently-abled residents, renters, and multifamily building

[17] Proposed WAC 480-109-100(b)(ii) states: "To the extent practicable, a utility must prioritize energy assistance to low-income households with a higher energy burden."

[18] Practicable Definition, Black's Law Dictionary (9th ed. 2009), available at Westlaw.

residents have bore higher energy burdens than other similarly situated households.[19] We therefore propose it would be unreasonable if the Commission failed to prioritize energy assistance for qualifying, low-income households falling into one of the aforementioned categories, in addition to low-income households with a higher energy burden. Considering demographics in addition to energy burdens promulgates Chapter 288 1(1)'s intention to broadly share the transition to a clean energy economy. It will also promulgate outreach strategies used to encourage comprehensive participation campaigns that are linguistically and culturally appropriate.[20] These considerations are permitted by Chapter 288 12(2), and by proposed WAC 480-109-100(b)(ii), because neither require the Commission to prioritize funding to low-income households with a higher energy burden *to the maximum extent practical*--only to the extent practical, i.e. to the extent not unreasonable.

We therefore propose amending WAC 480-109-100(b)(ii) as follows:

WAC 480-109-100(d)[21]: To the extent practicable, a utility must prioritize energy assistance to:
(i) low-income households with a higher energy burden; and
(ii) low-income households whose residents:
(A) are in a racial or ethnic minority;
(B) are members of an Indian tribe;
(C) have a qualifying disability as defined in WAC 220-200-160;
(D) are members of a sensative population, such are those sixty-five years of age or more;
(E) rent or lease the property in which they reside; or
(F) demonstrate multiple, cumulative factors used in vulnerable population sub-topic of the Department of Health Cumulative Impact Analysis

ii. The Commission should qualify what criteria utilities will evaluate in determining which energy assistance programs will be most effective for qualifying individuals.

It is important to note that energy efficiency programs "often struggle to serve low income households due to split incentive issues."[22] Often, the property owners of low-income tenants do not themselves qualify for low-income programs. It may therefore be more difficult to provide certain energy assistance programs, such as weatherization services for these tenants. Further, energy assistance programs could result in unintended consequences; for example, if a home is updated with modernized, energy efficient appliances, the landlord may raise the rent.

[19] American Council for an Energy-Efficient Economy "Understanding Energy Affordability," September 2019 at page 2, https://aceee.org/sites/default/files/energy-affordability.pdf.
[20] See Chapter 288 12(4)(a)(ii).
[21] See Section 4, supra.
[22] Jennifer Chiodo "Energy Burden is Just One Indicator of Inequality," August 2016, https://buildingenergy.cx-associates.com/energy-burden-is-just-one-indicator-of-inequality.

We therefore propose adding qualifying language as follows*:* A utility will account for factors including but not limited to: number of individuals at the residence, residents that are sensitive or vulnerable populations, the age of the residence, the location of the residence, including whether it is in a "highly impacted community" designed by the Department of Health when determining the appropriate energy assistance program.

The revised language would thus read as follows:

WAC 480-109-100(10). Low-income conservation.
...
(d) To the extent practicable, a utility must prioritize energy assistance to:
(i) low-income households with a higher energy burden; and
(ii) low-income households whose residents:
(A) are in a racial or ethnic minority;
(B) are members of an Indian tribe;
(C) have a qualifying disability as defined in WAC 220-200-160;
(D) are members of a sensative population, such are those sixty-five years of age or more;
(E) rent or lease the property in which they reside; or
(F) demonstrate multiple, cumulative factors used in vulnerable population sub-topic of the Department of Health Cumulative Impact Analysis

A utility will account for factors including but not limited to: the number of individuals at the residence, residents that are sensitive or vulnerable populations the age of the residence, the location of the residence, including whether it is in a "highly impacted community" designed by the Department of Health, and the ownership of the residence when determining the appropriate energy assistance program.

In addition, in the case of bill assistance, utilities should seek to scale the amount of bill assistance to the amount of need to avoid benefit cliffs.

Benefits to eligible households should not be awarded allocated appropriately to ensure all customer segments have an opportunity to participate, not just those with earlier access to information.

6. Response to UTC question 10. Should WAC 480-109-300 include language requiring electric companies to report on greenhouse gas emissions occurring during the gathering of fuel for electricity generators?

Yes, emissions occuring during the gathering of fuel for electricity should be included as they contribute to climate change as a result of energy demand and generation.

7. Response to UTC Question 19: The Commission should consider the following factors in implementing the changes to WAC 480-109.

The need for weatherization techniques. Generally, low-income residents live in older buildings, with less efficient appliances.[23] Thus, there is likely a correlation between low-income households with higher energy burdens and the ability to reduce operating costs through weatherization. City-led energy benchmarking programs and reporting initiatives may help provide a metric for assessing whether a particular sector or building type needs improved weatherization. Making this information accessible to the public can provide transparency and help identify priority areas for action and investment.[24] Further, upgrading building envelope and heating systems through effective weatherization techniques may help save households an average of $283 a year in reduced heating and cooling costs. Weatherization and bill assistance should be used complementarity appropriate to the customer and should not be pitted against each other[25]

The need for directed outreach strategies. While low-income efficiency programs are fairly widespread, they are serving only a small fraction of the eligible customer base**.**[26] This is largely due to barriers including: the high up-front costs of energy efficiency investments; split incentives between owners and renters; lack of outreach access to information about efficiency programs; lack of appropriate language and translation/interpretation; time constraints; hostile relationships with utilities; and lack of technology.[27] By offering a portfolio of low-income energy efficiency programs customized to different types of customers in the communities where they associate, these programs may be more accessible to low-income households.

Policy considerations. Reducing energy burdens on low-income households achieves policy objectives beyond cost savings. When low-income households spend more on energy, they have

[23] Center for Climate and Energy Solutions "Strengthening Energy Efficiency Programs for Low-Income Communities," July 2017 at page 1, https://www.c2es.org/site/assets/uploads/2017/07/strengthening-energy-efficiency-programs-low-income-communities.pdf.
[24] *Id.*
[25] Weatherization Assistance Program Technical Assistance Center "Energy Efficiency and Renewable Energy," January 2017 at page 1, https://www.energy.gov/sites/prod/files/2017/01/f34/107598_WAP_FS_v1b.pdf.
[26] Annie Gilleo, Seth Nowak, and Ariel Drehobl "Making a Difference: Strategies for Successful Low-Income Energy Efficiency Programs," October 2017 at page 3, https://www.njit.edu/sites/njit.edu.tab/files/sustainability/T2-Low-Income-Energy.pdf.
[27] *Id.*

less to spend on non-energy goods and services, impacting their health and well-being, as well as the vitality of the community. Further, not only does energy efficiency improve individuals' quality of life, but it is also an effective way to decrease air pollution, improve public health, and create jobs in the building and energy sectors.[28]

Thank you for considering our comments and concerns about the proposed rule changes. We look forward to working with you on this important matter and appreciate the Commission's commitment to access and high levels of service for all utility customers. Please contact us if you have any questions or would like to discuss any of our proposed ideas.

Sincerely,
Deric Gruen
Program and Policy Director

David Mendoza
Legislative and Government Affairs Director

[28] Center for Climate and Energy Solutions "Strengthening Energy Efficiency Programs for Low-Income Communities," July 2017 at page 1, https://www.c2es.org/site/assets/uploads/2017/07/strengthening-energy-efficiency-programs-low-income-communities.pdf.