

**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

INITIAL COMMENTS OF THE
ENERGY PROJECT (CR 101)

I. INTRODUCTION

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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 July 10, 2018. The deployment of Advanced Metering Infrastructure (AMI) in Washington has important implications for consumer protections currently enjoyed by all residential customers of Washington utilities and The Energy Project (TEP) commends the Commission for opening this rulemaking to examine these issues. These comments focus on three issue areas which have a particular impact on low-income customers – prepayment, remote disconnection, and privacy. The comments recommend ways in which the Commission can ensure that AMI deployment does not erode existing well-established protections or introduce new disadvantages for customers.

II. PREPAID SERVICE

Notice Questions

5. *What kind of prepaid services will you implement for AMI customers? [sub queries not shown]*
6. *How will prepayment systems comply with notice requirements?*
7. *How will you incorporate energy assistance into prepayment agreements?*

A. General Characteristics of Prepaid Service

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Simon J. ffitch
Attorney at Law
321 High School Rd. NE,
Suite D3, Box No. 383
Bainbridge Island, WA 98110
(206) 669-8197

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Prepaid service represents a major shift from current utility billing practices whereby customers receive a bill reflecting their usage for the previous billing cycle. With prepaid service, as the name indicates, customers must pay in advance for their electric or natural gas service. Typically, their service is automatically terminated once their account balance reaches zero. Early prepay programs such as those in the United Kingdom used special prepayment meters that require customers to purchase special tokens or coins at a pay station or kiosk that are installed directly into the meter in order to add more electric or natural gas usage.¹ Deployment of AMI aids the introduction of prepaid service because of the new technical potential for remote meter reading, disconnection and reconnection. Prepayments might be made online, by telephone, or at a pay station or kiosk, and often require additional transaction fees.² For example, the West Florida Electric Cooperative charges a \$2 transaction fee every time a prepayment customer makes a payment.³ Evaluations have found that prepay customers typically make several small payments each month.

B. Prepaid Service Should be Prohibited in Washington

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The Energy Project recommends that the Commission prohibit prepaid utility service in Washington. Prepaid service poses substantial threats to consumers because it can circumvent critical consumer protections and can have a disproportionately negative impact on low-income households. The concept of prepayment for utility service is not consistent with the legal and

¹ *Prepaid Electric Utility Service: The Need for Essential Consumer Protections*, John Howat, National Consumer Law Center, Presentation to the New York Low-Income Forum on Energy, June 24, 2015, at slide 6. https://www.nclc.org/images/pdf/energy_utility_telecom/electric_and_gas/prepaid-electricity-service-ppt.pdf [last accessed August 10, 2018] (*Prepaid Electric Utility Service*).

² *Prepaid Electric Utility Service*, p. 5.

³ *Rethinking Prepaid Utility Service: Customers at Risk*, National Consumer Law Center, June 2012, p. 15. https://www.nclc.org/images/pdf/energy_utility_telecom/consumer_protection_and_regulatory_issues/report_prepaid_utility.pdf (*Rethinking Prepaid Utility Service*).

policy framework under which customers currently receive electric and natural gas service in Washington state.

4 Utility service is an “essential service,” critical for the basic well-being of Washington households and businesses. As the legislature has found with regard to electricity: “electricity is a basic and fundamental need of all residents.”⁴ Under the regulatory compact in Washington “utilities have an obligation to provide all customers in their territory with safe and reliable service in return for the regulator’s promise to set rates that will compensate the utility for the costs incurred to meet that obligation.”⁵ Federal and state bill assistance and weatherization programs have been established and funded to assist customers to maintain continuity of service. The Washington legal and regulatory framework, therefore, incorporates a policy of “universal service,” under which the goal is to keep all Washington residents connected to the grid to the extent possible.

5 As an integral part of this policy, the Commission has adopted by rule over many decades a framework of important consumer protections that seek to minimize the likelihood of disconnections. These include: customer notice prior to disconnection, the opportunity to make payment at time of disconnection, the winter shut-off moratorium, a prohibition on weekend and holiday disconnection, payment arrangements, medical certificates, and the prior obligation rule. A fundamental danger with prepaid service is that it sidesteps or bypasses these protections and “is intended to serve as a means of replacing the disconnection procedures governed by the

⁴ RCW 19.29A.005(1)(a).

⁵ *In the Matter of the Petition of Puget Sound Energy For An Accounting Order Approving the Allocation of Proceeds of the Sale of Certain Assets to Public Utility No. 1 of Jefferson County*, Order 04, Docket 132027, ¶16.

existing regulatory framework [.]”⁶ Once a customer has depleted the prepaid balance the service can be immediately disconnected without the protections to which customers are otherwise entitled. This is illustrated by Duke Energy’s explanation on its website of its disconnection policy for prepay customers in South Carolina. In answer to the question “What happens if my Duke Energy Prepaid Advantage account goes to zero?” the company states:

Your account is subject to disconnection anytime it has a zero balance. (Disconnection will occur on the business day after the account reaches a zero balance—no earlier than 10 a.m. and typically no later than 2 p.m.) Kilowatt-hours used after the account reaches zero, but before disconnection, will result in a negative account balance. Service will be reconnected remotely when any negative balance is satisfied and a sufficient payment creates a credit balance. If the account remains disconnected after 15 business days without payment, the account will be final billed and you will be required to contact Duke Energy Carolinas to re-establish service with a new account, which may require a credit check and security deposit.⁷

6 As the foregoing discussion reflects, the “default” expectation in Washington is that the customer’s household will be connected to utility service. By contrast, the “default” under prepayment is that the customer does not have service. The prepayment concept accepts, and indeed is based upon, the premise that a household will *not* have electricity or natural gas service *unless* paid in advance, and *only* for the amount of energy the payment covers. For this reason, prepaid service runs counter to the goal of universal access to affordable utility service.⁸ This is a significant change in the paradigm for provision of utility service in Washington.

⁶ Access to Utility Service, National Consumer Law Center, Sixth Edition (2018), § 4.7.3 (Access to Utility Service).

⁷ <https://www.duke-energy.com/home/billing/prepaid-advantage> [last accessed September 6, 2018].

⁸ Access to Utility Service, § 4.7.3.

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Nationally, consumer groups have raised serious concerns about the introduction of prepaid utility service. The National Consumer Law Center (NCLC) opposes prepaid electric and natural gas service,⁹ concluding that prepaid service increases the rate of remote service disconnections and can pose grave health and safety consequences for consumers.¹⁰ The NCLC Report, *Rethinking Prepaid Utility Service*, relates the tragic story of Marvin Shur, a 93-year-old Michigan man who passed away in 2009. Mr. Shur had a limiter device on his electric meter, which functions similarly to a prepaid meter or remote disconnection with an advanced meter. The limiter caps electricity usage at a certain level, and electricity is disconnected once it reaches that level. In January 2009, a neighbor found Shur's body in his home; he froze to death after his electricity was shut off by the limiter. On Shur's table was cash clipped to his electric bills.¹¹

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AARP does not support prepay for utility customers. Its stated position is that “[p]olicy makers should prohibit providers of residential utility services from implementing prepaid service.”¹² The National Association of State Utility Consumer Advocates (NASUCA) has adopted a formal resolution regarding advanced meter deployment which addresses prepayment:

The implementation of advanced metering should also not be used to degrade existing consumer protections in the area of prepayment. The implementation of advanced metering should not lead to new requirements for prepayment of electric service.¹³

⁹ *Rethinking Prepaid Utility Service*, p. 4.

¹⁰ *Id.*, p. 8.

¹¹ *Id.*, p. 9.

¹² AARP Policy Book 2017-2018 <https://policybook.aarp.org/policy-book/utilities-telecommunications-energy-and-other-services-44>.

¹³ The National Association of State Utility Consumer Advocates, Resolution 2009-01, Adopted June 30, 2009, Section 8.

9 Prepaid service is akin to payday lending, but in the utility context. Like payday lending, existing prepayment programs in the United Kingdom and the United States have been shown to target customers with lower or moderate incomes, particularly customers facing financial difficulties, such as substantial deposit payments or disconnection for non-payment.¹⁴

10 This predatory aspect of the practice is reflected in the data about participation in the prepaid program operated by the Salt River Project (SRP) in Arizona. Salt River Project operates M-Power, the largest prepaid service program in the United States, with over 150,000 customers currently enrolled.¹⁵ The program is composed predominantly of lower-income households, according to research by the Electric Power Research Institute (EPRI).¹⁶ In 2010, the median household income of M-Power customers was \$17,900, and 82 percent of program participants had household incomes of less than \$30,000.¹⁷ The EPRI report found that the M-Power customers were relatively young, with 50 percent between the ages of 18-34 in 2010. During peak summer months, prepay customers made an average of seven payments per month.¹⁸ While the EPRI report does not specifically analyze disconnection rates among M-Power customers, it references a 2009 study of the program that found that on average 20 percent of customers were disconnected every month.¹⁹

11 Prepaid utility service in essence uses the financial challenges faced by low-income families as leverage to ration essential utility service. Even if prepayment is offered as

¹⁴ *Rethinking Prepaid Utility Service*, p. 2.

¹⁵ Access to Utility Service, § 4.7.2.

¹⁶ *Id.*

¹⁷ Access to Utility Service, § 4.7.2, Electric Power Research Inst., *Paying Upfront: A Review of Salt River Project's M-Power Prepaid Program* (2010).

¹⁸ *Paying Upfront: A Review of Salt River Project's M-Power Prepaid Program*. EPRI, Palo Alto, CA: 2010. 1020260 (EPRI Report), pp. 4-7.

¹⁹ *Id.*, Table C-1, p. C-2.

voluntary, customers under financial duress may have little real option. In this regard, the offering is like payday lending or other similar financial “options” that some customers are driven to use for lack of better choices.

12 Customers participating in prepay typically pay higher effective rates than non-prepay customers. Prepayments might be made online, by telephone, or at a kiosk, and often require additional transaction fees which add additional cost burdens to customers already stretching to pay for service.²⁰ Exposure to these additional fees as a condition of continuing service under the prepay program means that financially challenged customers end up paying more for utility service than higher income customers who are still operating under the “old paradigm” of a regulated essential service. This may simply perpetuate the cycle of falling behind on utility payments. Another concern with prepay is that it would appear to allow utilities an additional financial benefit. Since customers pay in advance for service, the utility has the use of the customers’ funds until the service is provided.

13 Few investor-owned utilities in the United States currently offer prepaid service.²¹ State commissions have rejected utility proposals for prepaid service due to concerns that customers would not receive sufficient notification of an impending disconnection, and the erosion of other consumer protections. Pennsylvania prohibits the use of prepay service for low-income customers, defined as customers at or below 150 percent of Federal Poverty Level.²² In 2014, the California PUC rejected San Diego Gas & Electric’s proposed prepay program as not in the

²⁰ LIHEAP Clearinghouse Report No. 1, *Prepaid Utility Service, Low-income Customers and LIHEAP* (March 2014) <https://liheapch.acf.hhs.gov/pubs/LCIssueBriefs/prepaid/FIINALprepay.pdf> (LIHEAP Report).

²¹ Access to Utility Service, § 4.7.2.

²² *Id.*, § 4.7.1.

public interest.²³ The Commission determined that consumers would likely not receive notification of impending disconnection, reasoning as follows:

... depending on the communications means chosen (e.g., text message, automated phone message, or e-mail), customers on the proposed Prepay Program might receive no advance notice of termination at all since customers who are behind on their electric bills may also [be] behind on their internet or phone bills. We find that such an outcome is unacceptable.²⁴

14 The North Carolina Utilities Commission also rejected a Prepay Pilot program proposed by Progress Energy. Progress Energy proposed the program as an energy efficiency program and planned to provide customers with advanced meters with remote disconnect and reconnect capability as well as an in-home display providing energy usage information. Progress Energy sought to measure energy and capacity savings achieved by participants, and their persistence.²⁵ A predecessor company to Progress Energy, Carolina Power & Light (CP&L), had conducted a similar pilot program in 2001.²⁶ CP&L filed to terminate the program in 2002 upon determining it was not cost-effective.²⁷ An examination of that prior program found that on average, participants made five monthly trips to a paystation.²⁸ With respect to the new pilot proposed by

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²³ California Public Utilities Commission, Decision 14-01-002, *Application of San Diego Gas & Electric Company (U902E) For Authority to Update Marginal Costs, Cost Allocation, and Electric Rate Design*, Decision Addressing the Application and the Motions to Adopt Partial Settlements, Issued January 23, 2014, at p. 54. (CalPUC Pre-pay Decision).

²⁴ *Id.*

²⁵ State of North Carolina Utilities Commission, Docket No. E-2, SUB 1011, *In the Matter of Application of Progress Energy Carolinas, Inc., for Approval of Residential Service Pre-Pay Pilot, Experimental Tariff, and Waiver of Commission Rules*, Order Denying Approval of Program, Tariff, and Waiver, June 13, 2012, p. 2. (hereafter, “North Carolina Pre-Pay Decision”).

²⁶ *Id.*, p. 3.

²⁷ *Id.*, p. 4.

²⁸ *Id.*, p. 5.

Progress Energy, the North Carolina Commission rejected the pilot, stating:

As proposed, the Pre-Pay Pilot would not have provided the information necessary to determine whether a future full-scale deployment would be cost-effective for PEC or its customers. Because the Pre-Pay Pilot would require participants to incur payment processing fees, and the 2001 CP&L experiment found that pre-pay participants made, on average, five payments each month, the Commission finds on this record that it is unlikely that the Pre-Pay Pilot would be cost-effective as an EE program from a participant's perspective. In addition, PEC stated that the incremental cost of adding a customer to its proposed Pre-Pay Pilot would be about \$500. This high cost indicates to the Commission that the technology costs that CP&L experienced during its 2001 pre-pay experiment have not gone down with the passage of time, and have perhaps gone up.²⁹

15 This discussion highlights the significant burden on customers, here required to make on average five payments per month to keep power on, and the high costs for the company itself, which called into question the cost-effectiveness of the entire program. Both of these issues are relevant considerations in Washington.

16 Proponents of prepaid service sometimes contend it helps customers manage their use which can result in energy conservation gains. However, environmental advocates such as the Sierra Club do not agree. "This is an issue of economic justice," said Jennifer Miller, the Sierra Club's senior campaign representative for energy efficiency. "When they end up saving energy, it's because of how difficult it is to pay. It's deprivation, not conservation."³⁰ Carol Biedrzycki, director of the nonprofit Texas Ratepayers' Organization to Save Energy, has observed: "They say people use less electricity. Well, why? Probably because they're running out of money and they can't afford more money on their account, and so they live without electricity for some time

²⁹ *Id.*, pp. 6-7.

³⁰ Garthwaite, *Prepay Plans for Electricity Offer Alternative to the Usual Monthly Power Bill: Proponents see opportunity for conservation, but critics warn of risks for consumers*, *National Geographic Daily News*, June 6, 2014. <http://news.nationalgeographic.com/news/energy/2014/06/140604-pre-paid-electricity-billing-plans-help-or-hurt-consumers/> [last accessed August 13, 2018] (*National Geographic*).

period." In a society where having continuous electricity is essential to daily life, Biedrzycki said, the prepay model creates a "second-class utility customer who doesn't need to have power all the time."³¹ While supporters may argue that prepaid service simply offers another management tool for customers, when self-management of usage begins to include deprivation, up to and including "self-disconnection," it becomes apparent that the tool is not a fair alternative.

17 For the reasons discussed in this section, TEP urges the Commission to prohibit the introduction of prepaid service by investor-owned utilities in Washington. This approach to provision of utility service is contrary to the Washington's long-standing policy goal of keeping customers at all levels of income connected to the grid, fostering universal service and affordable access for all Washingtonians. Proponents of prepaid service have not provided any compelling justification for abandoning this policy. Washington should not open the door to second-class status for significant numbers of its regulated utility customers.

III. REMOTE DISCONNECTION

Notice Questions

8. *What are the advantages and limitations of remote disconnection?*

9. *If the Commission allows remote disconnections for non-payment, in what circumstances would you remotely disconnect customers?*

18 An overriding concern with the widespread deployment of AMI in Washington and the new capability of remote disconnection of electric or natural gas utility service is the potential for a significant surge of service disconnections for non-payment. While remote disconnection and reconnection may offer some added convenience, for example for a customer moving across

³¹ *Id.*

town, for those households struggling to pay utility bills to maintain home heating, cooling, and the necessities of daily life, streamlined disconnection is not beneficial.

19 The disconnection of utility service due to non-payment is a traumatic event for a household, even more so if sudden or unexpected.³² A recent report by the NAACP takes a broad look at the impact of disconnection from a social justice perspective.³³ The report catalogues multiple examples of the harms and hardships which result from shut-offs,³⁴ observing that:

Whether it is extremes in heat, extremes in cold, or the need for electricity to power life saving devices like respirators or medicines requiring refrigeration, not to mention just providing light, electricity/heating/cooling is essential, not just for quality of life, but also for the maintenance of life.³⁵

20 The report advocates for an end goal “to prioritize utility policies that place a moratorium on utility service disconnection.”³⁶ The report explains that “[u]tility disconnections can have a discriminatory impact on low-income people, people of color, elderly people, people with special health needs, and other socially vulnerable utility customers who disproportionately face potential violations of human rights.”³⁷ The NAACP report specifically identifies the following

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³² A 2011 NASUCA Resolution (2011-01) extensively reviews the issues around utility disconnection and encourages “state legislatures and state public utility commissions to institute programs to reduce the incidence of disconnection of residential and gas service based on non-payment. [http://nasuca.org/encouraging-state-legislatures-and-state-public-utility-commissions-to-institute-programs-to-reduce-the-incidence-of-disconnection-of-residential-gas-and-electric-service-based-on-nonpayment-2011-01/\(NASUCA Disconnection Resolution\)](http://nasuca.org/encouraging-state-legislatures-and-state-public-utility-commissions-to-institute-programs-to-reduce-the-incidence-of-disconnection-of-residential-gas-and-electric-service-based-on-nonpayment-2011-01/(NASUCA%20Disconnection%20Resolution)).

³³ Marcus Franklin, Caroline Kurtz, *Lights Out In The Cold: Reforming Utility Shut-Off Policies As If Human Rights Matter*, NAACP (March 2017) (*Lights Out*).

³⁴ *Lights Out*, pp. 3-5 (“The Human Cost of Utility Disconnection”).

³⁵ *Id.* at vii.

³⁶ *Id.* at iv.

³⁷ *Id.* p. 9.

issues for vulnerable populations:

1. Customers with limited income bear a disproportionate burden of energy bills;
2. Disconnections have a disparate impact on low-income communities and communities of color;
3. Customers may be reliant on utility services for medical devices and life-supporting systems; and
4. Vulnerable customers' use of hazardous heating, cooling, and lighting measures can have harmful and even fatal results.³⁸

21 Consequently, as the NAACP report describes, many state regulators, legislatures, and utility companies have developed “suites of protections, which if implemented appropriately can remediate several critical concerns for vulnerable populations.”³⁹ The report reflects a broad national consensus that disfavors disconnection of utility service, treating it as an option of last resort.

22 Current Washington law and policy addresses the types of concerns raised by the NAACP and is founded upon fostering universal access to utility service, with a strong “suite of protections” to help customers avoid disconnection. Prevention of disconnection is perhaps the most critical element of Washington’s universal access policy. In keeping with this policy, existing Washington rules have long provided customers with the critically important opportunity to make a payment at the time of disconnection in order to maintain service. WAC 480-100-128(6)(k) and WAC 480-90-128(6)(k) require electric and natural gas utilities,

³⁸ *Id.*

³⁹ *Id.*

respectively, to accept payment at the time of a disconnection visit, stating:

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;⁴⁰

23 As discussed below in our response Commission Notice Question 10, recent Washington data demonstrates that this "premise visit" rule has functioned to prevent thousands of disconnections for non-payment in Washington each year, up to one-half of threatened shut-offs in some cases.⁴¹ The Energy Project believes it is essential that this requirement be retained. Whether as a technical matter the service is to be disconnected remotely or manually, a premise visit should occur on the day of and prior to the scheduled disconnection. This "last-knock" requirement will provide the customer final notice and an opportunity to make a payment to keep the power or gas on.

24 With the advent of AMI and remote disconnection of utility service, New York has acted to preserve this critically important consumer protection. The New York Public Service Commission reaffirmed the requirements of the state's Home Energy Fair Practices Act (HEFPA), including the "last knock rule," in the era of AMI and the prospect of remote

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⁴⁰ WAC 480-100-128(6)(k) and WAC 480-90-128(6)(k).

⁴¹ For most of the history of the rule, the state of meter technology required that a premise visit occur to disconnect service.

disconnection, stating:

...we remind the companies that termination of service for nonpayment is subject to Home Energy Fair Practices Act (HEFPA) regardless of whether that disconnection is performed by physical (on-site) or electronic (remote) service shut off. No utility may utilize AMI for remote disconnection of service for nonpayment unless it has taken all of the prerequisite steps required by HEFPA, including the requirement of 16 NYCRR § 11.4(a)(7) that customers must be afforded the opportunity to make payment to utility personnel at the time of termination. This process requires a site visit, even where a remote device is utilized.⁴²

25 The NASUCA Disconnection Resolution cited above details the benefits that can result from a premise visit when disconnection is scheduled:

[P]remise visits prior to disconnection enable utilities to assess health and safety risks at the home, identify previously unidentified individuals whose special needs require continues gas or electric service, educate customers about the serious safety risks associated with alternative means of heating or lighting their homes, make sure customers have received requisite notice of disconnection and are aware of pending disconnection; consider the customer's dispute allegations if made orally at the time, and inform customers of payment options that will avoid disconnection.⁴³

26 The NASUCA Disconnection Resolution recommends, inter alia:

The adoption, maintenance and enhancement of premise visit requirements associated with disconnection and remote disconnection for nonpayment to assess health and safety issue at the home, educate customers, and provide opportunities to present payment to avoid disconnection[.]⁴⁴

Notice Question

10. *What percentage of current disconnection visits result in the customer making a payment to stop the impending disconnection after the service technician makes contact, but before the service is disconnected?*

27 This question was examined five years ago in Washington as part of two related proceedings. Initially, PacifiCorp had sought an exemption from the requirement to accept

⁴² *Prepaid Electric Utility Service*, p. 17, (citing New York PSC Order in Cases 94-E-0952, et. al.).

⁴³ NASUCA Disconnection Resolution, p. 2.

⁴⁴ *Id.*, p. 3.

payment at the time of the “premise visit” to disconnect service.⁴⁵ Because of the potential impact, the Commission deferred action on the request and opened a rulemaking inquiry to consider this issue more broadly for all utilities.⁴⁶ Staff sent a data request to the five regulated energy companies requesting detailed information regarding premise visits, including “the number of field interactions, disconnections, and payments made to stop disconnections.”⁴⁷

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When the two dockets came before the Commission at Open Meeting, Commission Staff’s memorandum recommended closure of the rulemaking docket and denial of PacifiCorp’s petition for an exemption. Staff summarized the data regarding payment at the time of the premise visit:

More disconnections are prevented than completed for PSE customers. PSE’s roughly 1:1 ratio has stayed consistent over the past five years. NW Natural Gas also disconnects an average of one customer for every one customer who pays at the door; Avista disconnects an average of two customers for every one customer who pays at the door; and PacifiCorp disconnects an average of four customers for every one customer who pays at the door. Most notably, Cascade Natural Gas – the only company that has not accepted cash to stop a disconnection at the door in the past five years – disconnects an average of ten customers for every one customer who pays at the door to stop a disconnection. *It appears that accepting cash at the service address reduces the number of disconnections for nonpayment by as much as 40 percent.*⁴⁸ (emphasis added)

Commission Staff concluded: “Staff 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

⁴⁵ *In the Matter of the Petition of PacifiCorp d/b/a Pacific Power And Light Co. Seeking Exemption From the Provisions of WAC 480-100-128(6)(k) Relating To Accepting Payment from Customers at Disconnection Service Address*, Docket UE-130545 (*In the Matter of Petition of Pacific Power*). The petition was based on Pacific Power’s concerns about employee safety.

⁴⁶ *Inquiry to Consider Whether Changes to WAC 480-90-128(6)(k) and WAC 480-100-128(6)(k) are Warranted*, Docket UE-131087.

⁴⁷ Staff Open Meeting Memorandum for September 12, 2013, Dockets UE-130545 and UE-131087 (Item Number A1), p 1 (Staff Memorandum). The Staff may wish to consider sending a similar data request in this docket to update the information available for this rulemaking.

⁴⁸ *Id.*, p. 2.

light of the data showing that between one-third and one-half of all disconnections are prevented because this rule exists. Electricity and gas are essential services, the continuity of which is not to be taken lightly.”⁴⁹

29 The Commission closed the rulemaking proceeding without action on the rule and denied PacifiCorp’s petition, observing that “an exemption would be contrary to the underlying purpose of the rule: to ensure that an electric utility disconnects service only as a last resort.” As the Commission explained: “WAC 480-100-128(6)(k) provides electric utility customers a last chance opportunity to bring delinquent accounts current and avoid disconnection. Requiring workers in the field to accept payments is an important protection for the utility’s most vulnerable customers.”⁵⁰

30 When customers are provided with a reasonable opportunity to make a payment at their premise, particularly with cash, a very high proportion of disconnections are avoided. The Energy Project respectfully requests the Commission continue to preserve this critical consumer protection, and prohibit remote disconnection for non-payment without a “last knock” premise visit on the day of and prior to the scheduled disconnection, giving consumers the option to make cash payments to avoid disconnection.

31 The fact that substantial numbers of customers make payments in cash in order to avoid service disconnection reflects an important characteristic of many low-income customers. Low-income customer are frequently “unbanked” and operate exclusively with cash. The Federal Deposit Insurance Corporation (FDIC) found that in 2015, 7.0 percent of U.S. households (1 in

⁴⁹ *Id.*, pp. 5-6.

⁵⁰ *In the Matter of Petition of Pacific Power*, Order 01, ¶¶ 8, 10.

13) were “unbanked,” meaning that no one in the household had a checking or savings account.⁵¹ This FDIC study further found that an additional 19.9 percent of U.S. households in 2015 were “underbanked,” meaning that while they had an account at an insured financial institution, they also used a financial product or service with an entity outside of the banking system within the past year, such as “money orders, check cashing, international remittances, payday loans, refund anticipation loans, rent-to-own services, pawn shop loans, or auto title loans.”⁵² For customers operating on a “cash economy,” payment in person may be the only practical way to make an immediate payment to avoid shut-off.

32 Another reason to preserve the opportunity for payment during a premise visit is that customers in arrears on their electric or natural gas bills may also be behind on their telephone or Internet bills and thus may not receive telephone notice of potential impending disconnection or be able to make payments by phone. Similarly, low-income customers may lack Internet service, or may have lost service, having fallen behind on those bills as well. Even customers with bank accounts, therefore, may not have the option to make online payments.

33 Another factor is that to the extent utility pay stations may not be easily available to customers, payment options are more limited for unbanked customers. More data is needed to examine this issue. Commission Staff’s analysis in 2013 during the prior rulemaking determined that four of the five energy companies maintained more than 30 pay stations available to customers, all free of charge at that time. PacifiCorp maintained 20 pay stations, but only 5 were

⁵¹ Federal Deposit Insurance Corporation, *2015 FDIC National Survey of Unbanked and Underbanked Households*, Executive Summary, Susan Burhouse, et. al., October 20, 2016, Executive Summary, p. 1. See: <https://www.fdic.gov/householdsurvey/2015/2015execsumm.pdf> [last accessed August 27, 2018].

⁵² *Id.*

available with no additional fees.⁵³ Staff’s memorandum further explained that Avista provided data showing that an average of 6.7 percent of customers threatened with disconnection made payments at a pay station to avoid impending disconnection.⁵⁴ The Energy Project recommends that it would be helpful to have the utilities provide information about the availability of pay stations as part of this rulemaking.

Notice Question

11. Is it necessary to modify current rules governing disconnection or customer notice rules to allow companies to remotely disconnect and reconnect customers?

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No modifications should occur which impair existing consumer protections. These include the following:

- Customer notice requirements prior to disconnection;
- Opportunity to make payment at the customer premise to avoid disconnection for nonpayment;
- Prohibition on weekend and holiday disconnection;
- Moratorium on winter disconnections for nonpayment;
- “Prior obligation” rule; and
- Medical restrictions.

As noted, current rules likely need modification to clarify preserve the “last knock” requirement and the ability of the customer to pay at the premises to avoid disconnection, whether disconnection is performed manually or remotely.

Notice Question

12. During what time of day should disconnection and reconnections occur (e.g., before noon, 24 hours a day, or during business hours only)?

a. In the case of a customer disconnected for non-payment, how long will the company take to remotely reconnect service after payment has been received?

⁵³ Staff Memorandum, p. 2.

⁵⁴ *Id.*

When disconnection does occur remotely, TEP recommends requiring such disconnections to occur only during business hours, within specified times, ideally prior to noon, to maximize time for customers to remedy the delinquent bill situation the same day, if they are unable to pay during a morning premise visit. Any new time of day rules should not erode other current protections and should be consistent with all other requirements.

IV. DATA PRIVACY

A. Introduction

The deployment of AMI and the resulting capability of utilities to collect more customer data than ever before implicates fundamental customer privacy issues. As one article states the issue:

Smart meter systems enable massive collection of personal information from households with the potential intrusiveness increased by the ability to infer information from the data about what members of a household do within the privacy of their own homes.⁵⁵

Thus, implementation of smart metering systems raises important privacy and data protection concerns that are exacerbated by the availability of other sources of personal data that could be combined with energy-use data to produce highly detailed consumer profiles.⁵⁶

At the same time, there is a tension between this important customer interest, and other interests that may favor disclosure of and broader access to private information. Regulators and policy makers are asked to balance the customer interest in privacy versus the desire for access to

⁵⁵ King, N., and Jessen, P.W. (2014), *For Privacy's Sake: Consumer "Opt-Outs" for Smart Meters*, Computer Law and Security Review, 30-5, 530-539. (*For Privacy's Sake*).

⁵⁶ *Id.*, p. 3.

and use of customer information and data by utilities and third parties for potential grid benefits and for economic opportunities. Utilities may view sale of the data as a new potential revenue stream as part of the “utility of the future.” Third parties may view the data as a business opportunity that will allow free-market solutions to energy needs outside the monopoly control of the utility.⁵⁷

38 Within this discussion, low-income customers are among the most vulnerable to privacy risks. Commentators have noted that low-income people often “don’t factor into broader debates on protecting individuals’ liberty and right to be left alone.”⁵⁸ An extensive review of this issue in the Washington University Law Review begins with the observation:

Low-income communities have historically been subject to a wide range of governmental monitoring and related privacy intrusions in daily life [footnote omitted]. The privacy harms that poor communities and their residents suffer as a result of pervasive surveillance are especially acute in light of the resulting economic and social consequences and the low likelihood that they will be able to bear the costs associated with remedying those harms. In the “big data” era, there are growing concerns that low-status Internet users who have lower levels of income or education may be further differentially impacted by certain forms of Internet-enabled data collection, surveillance, and marketing.⁵⁹

39 Collection of large amounts of data about low-income individuals and communities can be useful and decision makers are increasingly encouraged to “listen to the data.” However, “when the data is about humans—especially those who lack a strong voice—those algorithms can become oppressive rather than liberating. For many poor people in the U.S., the data that’s

⁵⁷ See generally, *A Regulator’s Privacy Guide to Third Party Data Access for Energy Efficiency*, State and Local Energy Efficiency Action Network, December 2012.

⁵⁸ *Poor People Deserve Digital Privacy Too*, Seta Pena Gangadharan and Aleta Sprague, Slate, December 11, 2013 http://www.slate.com/blogs/future_tense/2013/12/11/low_income_people_forced_to_use_insecure_digital_systems_to_apply_for_government.html.

⁵⁹ Mary Madden, Michele Gilman, Karen Levy, and Alice Marwick, *Privacy, Poverty, and Big Data: A Matrix of Vulnerabilities for Poor Americans*, 95 Washington University Law Review 53, 55 (2017).

gathered about them at every turn can obstruct attempts to escape poverty.”⁶⁰ Because of the particular impact of privacy intrusions on low-income customers, TEP’s interest in this aspect of the AMI rulemaking is in ensuring that customers’ private information and usage data receive appropriate protection.

Notice Question

1(a). What incremental or different information will companies collect or retain with the implementation of AMI?

40 The deployment of smart meters significantly expands the type and amount of information collected by the utility. Smart meters produce “‘highly detailed energy usage data at the household level,’ including the ability to measure, record, and transmit granular individual energy consumption data on a near real-time basis. For example, depending on the granularity of energy use data collected and communicated by particular smart metering systems, these devices may enable persons outside the home to remotely monitor activities in the home, including determining when the home is occupied, what specific appliances are used in the residence, when an individual appliance is turned on and off, and providing a detailed picture of energy usage in the home over a long period of time that reveals patterns of energy use from which human behavior in the home can be inferred.”⁶¹

Notice Question

2(b) What rights do or should customers have with respect to their energy use data? (Co-owners, right to access, right to share with third parties)?

41 As an initial comment, it may be appropriate to more broadly frame this issue to include

⁶⁰ *How Big Data Harms Poor Communities*, Kaveh Waddell, April 8, 2016, The Atlantic <https://www.theatlantic.com/technology/archive/2016/04/how-big-data-harms-poor-communities/477423/>.

⁶¹ *For Privacy’s Sake*, p.3 (footnotes omitted); *Smart Metering and Privacy: Existing Law and Competing Policy*. Report for the Colorado Public Utilities Commission (2009), p. 9.

not only energy use data, but also personally identifiable customer information (PII). To the extent that AMI deployment creates the potential for disclosure of both types of information, the rulemaking should address protection of both.

42 Washington has specific legal protections applicable to information collected by utilities. In particular, Washington regulatory law establishes a customer right of privacy with respect to “private customer information,” stating:

An electric [or natural gas] utility may not disclose or sell private consumer information with or to its affiliates, subsidiaries, or any other third party for the purposes of marketing services or product offerings to a customer who does not already subscribe to that service or product, unless the utility has first obtained the customer’s written or electronic permission to do so.⁶²

43 The rule defines “private customer information” to include both personally identifying information, as well as most types of information about the customer’s utility service, including the “amount of use.”

44 The rule requires the utility to obtain “prior permission” for each disclosure or sale of information, and requires that a record be maintained of such consent. Specific additional requirements are established for electronic consent. Utilities are allowed to release aggregated data so long as the data does not allow any specific customer to be identified.

45 The Commission explained the intent of the rule in the Adoption Order:

The Commission believes that the customer should have control over how his/her private information is used. The customer should not be marketed to by any company to which the customer has not provided his/her private consumer information, unless the customer has given permission for his/her information to be used in this way.⁶³

⁶² WAC 480-90-153 (natural gas utilities) and WAC 480-100-153 (electric utilities)

⁶³ *In the Matter of Adopting WAC 480-100-153 Relating to Disclosure of Private Information*, Docket UE-990473, General Order No. R-489.

In keeping with this, the customer ownership interest in their own data should be recognized, and the customer should have a right of access to their own data, and the right to share the data with third parties if the customer chooses.⁶⁴

46 The Commission's existing rule provides a good baseline framework for protection of customer data. The existing rule incorporates a statement of customer rights, a definition of private customer information, rules for customer consent, record keeping and retention, and reasonable exceptions.⁶⁵ This rulemaking provides an important opportunity to review the rule to determine if it should be modified or updated.

47 Some possible areas where modifications are worth considering include:

1. *Notice.* The rule does not address the type of notice that customers should receive of their privacy rights, or the timing or content of the notice.
2. *Scope of Use.* Under the current rule, disclosure or sale to third parties is prohibited "for the purposes of marketing services or products." According to a literal reading, the rule would not prohibit sale or disclosure for other purposes. This potential loophole that should be addressed.
3. *Definition.* The definition of private customer information should be reviewed to see if it encompasses all the types of information currently collected, or that would be collected in future with AMI deployment.

⁶⁴ In NASUCA Resolution 2011-8, the Association adopted principles regarding data privacy, including: identifiable personal and usage data should be protected from disclosure; regulatory agencies should adopt rules to protect privacy; full disclosure of planned use should accompany requests for consent; no disclosure by utilities to third parties without affirmative written consent of the consumer; limit use to only required to provide service; third parties receiving data must provide protection. <http://nasuca.org/energy-privacy-resolution-2011-8/>.

⁶⁵ *Washington Utilities & Transportation Commission v. Puget Sound Energy*, U-061239, Order 02, provides an example of the rule's application. The Commission reviewed a case involving disclosure of private utility customer information to third parties for commercial purposes in violation of the rule.

4. *Utility-Customer Relationship.* The rule applies to information available to the utility “solely by virtue of the utility-customer relationship.” This may unduly narrow the scope of protection. Arguably, all customer information that the company has in its possession that constitutes “private customer information” should be protected, even if not “solely” a result of the relationship.
5. *Retention of consent records.* The current rule addresses in detail the retention of a record of electronic consent, but is less clear with regard to written consent. There may be room for clarification on this point.

V. CONCLUSION

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The Energy Project respectfully requests consideration of these comments. Remote disconnection, prepayment, and data privacy are issue of major importance for low-income utility customers. Recognizing that many of the Notice questions specifically sought information from the utilities, TEP may have additional comments or recommendations after a review of those submissions. The Energy Project believes it would be helpful if the Commission would set at least one additional comment round for that purpose, as well as an initial workshop for discussion of the issues. The Energy Project looks forward to working with the Commission and other stakeholders in the future as this important rulemaking docket moves forward.