

**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

FOURTH COMMENTS OF THE ENERGY PROJECT

June 22, 2020

I. INTRODUCTION

1 The Energy Project (TEP) files these comments in response to the Commission’s Notice
of Opportunity To File Written Comments (May 4, 2020), the CR-102, and the Proposed Rules
issued in this docket.

2 The Energy Project filed Initial Comments on September 7, 2018, Second Comments on
January 31, 2019, and Third Comments on September 17, 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. The
Energy Project appreciates the Commission bringing forward a review of the consumer
protection issues raised by the deployment of AMI.

3 The Commission, Staff, and stakeholders have invested substantial time and resources in
this rulemaking and developed a number of Proposed Rules which strengthen consumer
protection in a variety of ways. The Energy Project commends these efforts. The Energy Project
has some remaining concerns with the Proposed Rules as currently drafted, however. The
Energy Project proposes some modifications to the Proposed Rules in furtherance of a policy in

which disconnection from essential utility service is disfavored and is employed only as a last resort. The Energy Project recommends limiting disconnection to serious delinquencies, increasing medical certificate protections, enhancing public awareness of the medical certificate rule, and clarifying the premise visit rule. Each of these points is discussed below and proposed amendments to the rule are provided.¹

II. COMMENTS OF THE ENERGY PROJECT

A. Enhanced Protections In The Proposed Rules.

4 Several provisions of the Proposed Rules provide valuable protection for consumers.

These include:

- Limiting remote disconnection to the morning hours;
- Requiring premise visits prior to disconnection for low-income customers and those with medical certificates;
- Improving notice of bill assistance and medical certificate protections for customers facing disconnection;
- Removing the limit on the number of medical certificates allowed;
- Eliminating fees for remote disconnection; and
- Requiring an inclement weather limit on disconnection in company tariffs.

5 The Energy Project supports these changes. Of particular note, limiting remote disconnections to the morning hours will help to ensure that a disconnected customer is able to get service restored the same day if they are able to find resources. This is particularly helpful for the many customers who will no longer have the opportunity to pay at the “last knock”

¹ For convenience, these comments cite the rules for electric companies in Chapter 480-100 WAC. The comments also apply to the parallel provisions for gas companies in Chapter 480-90 WAC. The remote disconnection comments apply to electric service only at this time since remote disconnection is not currently performed for natural gas service. WAC 480-90-128(6).

premise visit. The rule affords them time to pay the bill, if able, at a pay station, or through other methods, to restore service the same day. Eliminating the fee for remote disconnection is beneficial in removing a financial burden on customers that simply adds to the amount owed and increases the difficulty of re-establishing service. The addition of the inclement weather tariff requirement will help to bring transparency to varying company practices which limit disconnection in extreme weather.

B. The Energy Project Recommends Additional Amendments To Strengthen The Rules.

1. Minimum arrearage trigger for disconnection.

6 The Energy Project continues to recommend adoption of a minimum arrearage level of \$200 to trigger disconnection. The Energy Project does not agree with the Staff’s view that the proposal is arbitrary, overbroad and unduly burdensome for the utilities.² This modification would act as a filter to help minimize instances where households lose essential electricity or natural gas service for relatively minor unpaid balances. Universal service policy is well-served by avoiding disconnections. Disconnection from essential service, with its disruptive human and financial consequences, is never desirable, and is even more of a problem for households during the COVID-19 pandemic. Pursuing disconnection for *de minimis* amounts emphasizes a punitive approach to customers over a policy to maintain connection.

7 The proposed amount is not arbitrary. Statistics from the United States Energy Information Administration indicate that an average monthly residential household electric bill in

² Revised Draft Summary of 9-16-19 Comments and 12-19-19 Workshop Discussion and Subsequent Comments on Second Draft Proposed Rule Revisions, May 4, 2020, at 2.

Washington is just under \$100.00.³ An approximation of two months billing, or \$200, would represent a reasonable minimum overdue amount, preventing disconnection from being initiated when a household is only one month behind on the bill. The proposal recognizes that income streams for low-income households are more limited, and less reliable and predictable. Falling one month behind on the utility bill would not be unexpected for a family juggling rent, food and medical expenses.

8 The impact on utilities would be mitigated by cost savings from avoided disconnection and related collection activity. The arrearage is still owed, but other resources can be brought to bear as alternatives to deal with unpaid amounts, including directing the customer to available energy assistance and deferred payment options. It is not a given that this approach would be financially burdensome for the utility or ultimately result in more unpaid balances or bad debt. Finally, the fact that this would be applicable to all customers under the rule does not mean it is overbroad. Broad availability under the rule is a matter of fairness and consist treatment for all customers, as required by RCW 80.28.090.

Amendment to Proposed WAC 480-100-128(2)(a)

(2) Utility-directed with notice. After notifying the customer as required in subsection (4) of this section, the utility may disconnect service for any one of the following conditions:

(a) The customer has delinquent charges associated with regulated electric service, including any required deposit; however the utility may not disconnect service when the customer has met the requirements of subsection (8) of this section for medical emergencies, or has agreed to and maintains agreed-upon payment arrangements with the utility, as described in WAC 480-100-143, Winter low-income payment program, or has a delinquent balance of less than two hundred dollars;

³ The U.S. Energy Information Administration (EIA) monthly average for Washington is \$93.34, based on average monthly usage of 957 kWh at an average price of 9.75 cents/kWh (2018 data published October 2019). https://www.eia.gov/electricity/sales_revenue_price/pdf/table5_a.pdf

2. Health Endangerment Due to Disconnection (Medical Certificates).

a. Extend maximum duration of medical certificate.

9 The Proposed Rules leave in place the current provision that protects customers with a medical condition from disconnection for a maximum period of only 60 days, requiring renewal for any extension. The renewable 60-day requirement is unnecessarily short and particularly onerous for customers with more serious conditions. The Energy Project proposes that the rule be amended to a maximum of six months, unless the medical provider specifies a shorter period. For customers with serious medical conditions, requiring frequent and repetitive contact with medical professionals and the utility to renew certification is unduly burdensome. Scheduling an appointment with a medical provider can often take weeks. Attending appointments can be challenging due to illness and transportation problems. If customers are billed for additional appointment or examination time in connection with the renewal, already stretched finances are exacerbated. As noted in our earlier comments, Washington's rules on this point are more restrictive than many other states.⁴ The impact on utilities should not be significant as the number of customers with medical certificates is likely relatively small.⁵

Amending Proposed WAC 480-100-128(8)(b)

(b) The medical certification is valid only for the length of time the health endangerment is certified to exist but no longer than ~~sixty days~~ six months.

⁴ Third Comments of The Energy Project, ¶ 22 (September 17, 2019). The Energy Project previously recommended mirroring the Oregon rules which allow a maximum six months for non-chronic and 12 months for chronic conditions. Modifying the Washington rule to six months for all conditions would represent a middle ground between the current Washington rule and the Oregon approach.

⁵ For example, PacifiCorp reports that it has 33 medical certificates for low-income customers and 77 for non-low-income residential customers. State of Washington Low-income Data Tracking Report, March 2020. Comprehensive data on the number of medical certificates is not available to TEP's knowledge.

b. Require premise visits for customers with medical conditions in past six months.

10 To address the health effects of disconnection, the Proposed Rule requires a premise visit only in cases where a customer has an “active medical certificate.”⁶ This is unduly limited. The Energy Project prefers the broader protection provided under the earlier draft rule which required a premise visit if a medical certificate had been in place within the prior two years.⁷ However, since the two-year provision has not been adopted in the Proposed Rules, TEP respectfully requests the Commission consider at a minimum requiring a premise visit if the customer has had an active medical certificate within the last six months.⁸ The presence of an active medical certificate within the recent past puts the utility on notice that there may be an additional risk factor – the possibility that health effects could result from disconnection. The premise visit in that instance allows an opportunity for a “health and safety” check at the address, for the customer to make payment, or to renew the medical certificate if warranted. When health is potentially at stake the better policy is to err on the side of greater protection for the customer.

Amendments to Proposed WAC 480-100-128(6)(c)

(6) Remote Disconnection. When disconnecting services remotely, the utility must:

(c) Prior to disconnecting a customer who has an active medical certificate or who has had a medical emergency verified in the prior six months in accordance with subsection (8) of this section visit the customer’s premises and provide the customer with an opportunity to pay [.]

⁶ Proposed WAC 480-100-128(6)(c).

⁷ Discussion Draft 12/5/2018, Draft Informal Rule WAC 480-100-128(6)(c) issued December 21, 2018 required a premise visit for a customer who “had a medical emergency verified in the prior two years.”

⁸ The Energy Project comments above also propose that the medical certificates be “active” for a six-month period. The premise visit requirement recommended here is separate and is not tied to the length of the certificate validity.

c. Expanding protection for active health certificate customers.

11 Washington's current medical emergency rule has a significant exception which may effectively nullify the protection of the rule in some cases. The rule currently provides that even where a customer has an active medical certificate, the utility may nevertheless disconnect if the customer does not make required payments under the rule.⁹ As a practical matter, this means that a customer with a valid medical certificate stating that disconnection would be health-endangering is still subject to disconnection under the rule regardless of health impact. This is bad public policy, placing a higher value on collection activity than on human life and health. The Energy Project proposes that subsection (8)(d) be amended to postpone disconnection activity until after the medical certificate expires, and clarifying that a premise visit is required.¹⁰

Amending Proposed Rule WAC 480-100-128(8)(d)

(d) If the customer fails to provide an acceptable medical certificate or ten percent of the delinquent balance within the five business days grace period, or if the customer fails to abide by the terms of the payment agreement, the utility may disconnect service after the expiration of the medical certificate, and after complying with the notice requirements in subsection (4)(a)(ii) of this section, and the premise visit requirement of subsection (6)(c).

a. Provide medical certificate information clearly on utility websites.

12 Information about the medical certificate rule should be made available to customers who may be able to benefit. The Proposed Rules address this in part by adding a new requirement that the disconnection notice include information about how to apply for a medical certificate.¹¹

⁹ Proposed WAC 480-100-128(8)(c) and (d), permitting the utility to require a payment of 10 percent of the arrearage and a payment plan.

¹⁰ The Energy Project did not raise this issue in prior phases of the rulemaking. Since the last round of comments, however, the COVID-19 pandemic has emerged in Washington with severe economic and health consequences. This new development warrants another look at this aspect of the medical certificate rule.

¹¹ Proposed WAC 480-100-128(4)(b)(i).

The Energy Project recommends that utility websites also clearly and conspicuously carry this information. The Energy Project’s review of IOU websites indicates that information regarding the medical certificate rule in many cases is not readily apparent. This information should be easy to find for customers with health issues who are facing financial challenges and worrying about how to deal with bill delinquency. Providing more visible information on the website would allow customers, in advance of a disconnection warning, to take steps to get protection under the rule before a crisis situation develops.

Amending Proposed WAC 480-100-128(8)(x)

(8)(x) A utility shall clearly and conspicuously display on its website information regarding the medical emergency rule and how it can be used to avoid disconnection.

3. Clarification re cash payments at time of premise visits.

13 While TEP appreciates that the rules require premise visits for low-income and medical certificate customers, TEP is disappointed that the Proposed Rules would ultimately allow the elimination of premise visits prior to disconnection for the majority of customers with AMI where remote disconnection is enabled. As argued in our prior comments, TEP remains concerned that this will increase disconnections, eliminate a recognized and effective existing customer protection, reduce a significant utility revenue stream, and potentially increase collection costs.

14 In those cases where premise visits will continue, the Proposed Rules require that the utility representative accept payment for past due amounts “via appropriate methods.” This language is undefined and leaves very broad discretion to the utility. There is the potential for adoption of unduly limited payment options and for inconsistency between companies. The

Energy Project recommends that that rule be amended to provide more specificity about the type of payment that will be accepted. At a minimum, the rule should specifically allow customers to pay in cash, consistent with proposed WAC 480-100-128 (4)(h).¹² For low-income customers, many of whom are “unbanked,” cash may be the most readily available and convenient form of payment.

Amendments to Proposed WAC 480-100-128(6)(c) and (d)

(6) Remote Disconnection. When disconnecting services remotely, the utility must:

(a) Limit the number of remote disconnections in a 24-hour period and disable remote disconnection functionality for medical facilities and other critical infrastructure or take other reasonable measures to prevent unauthorized disconnections;

(b) Perform all remote disconnections for non-payment between the hours of 8 a.m. and noon and may only remotely disconnect service if the utility is able to reestablish service on the same day;

(c) Prior to disconnecting a customer who has an active medical certificate or who has had a medical emergency verified in the prior two years in accordance with subsection (8) of this section, visit the customer’s premises and provide the customer with an opportunity to pay via appropriate methods including providing cash or other form of payment to the dispatched utility representative;

(d) Prior to disconnecting a customer who the utility is aware has received low-income assistance in the prior two years, visit the customer’s premises and provide the customer with an opportunity to pay via appropriate methods including providing cash or other form of payment to the dispatched utility representative;

C. Additional Issues.

15 The deployment of AMI provides the potential for companies to institute prepaid service. The Commission initially called for comment on this issue in its July 2018 Notice, asked companies to describe their plans for the service. Puget Sound Energy (PSE) was the only utility to indicate it was considering prepaid service. The Energy Project, Public Counsel and NWECC

¹² Current WAC 480-100-128(6)(k).

all raised concerns about prepaid service.¹³ More recent phases of the rulemaking have not covered the issue and the Proposed Rules do not address it. The Energy Project, accordingly, is not providing additional substantive comments at this time. The Energy Project recommends that if any company proposes to institute prepaid service in Washington, that a docket be established to allow full consideration and a hearing regarding prepaid service issues. If following such review any prepaid service is to be permitted, a rulemaking docket should first be conducted to determine whether new or modified consumer protections should be implemented.

16 Finally, as a general matter this rulemaking has been appropriately focused on consumer protection in the context of AMI. Subsequent to this docket's initiation, the emergence of the COVID-19 pandemic has raised potential new issues about ways in which the consumer protection rules might be modified and improved to recognize the new reality for many customers. While these questions are beyond the scope of this docket, TEP stands ready to participating in future proceedings to address these new consumer protection challenges.

III. CONCLUSION

17 In many respects, the Proposed Rules make valuable improvements to consumer protections related to the deployment of AMI in Washington. As discussed above, however, TEP also believes there are opportunities to make some additional modifications that will further help consumers facing financial difficulties. It is important that the rules emphasize keeping customers connected to service and maintaining affordability of service. The Energy Project

¹³ Advanced Metering Infrastructure Comment Matrix, Section 2, Prepaid Service and Customer Deposits, October 9, 2018; Initial Comments of The Energy Project, ¶¶ 3-17.

appreciates the Commission's consideration of these comments and respectfully requests adoption of these recommended changes to the Proposed Rules.