

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

RULEMAKING TO CONSIDER
PAPERLESS BILLING AND NOTICES
FOR ELECTRIC AND NATURAL GAS
CUSTOMERS

DOCKET NO. U-100523

SECOND COMMENTS OF PUBLIC COUNSEL

July 14, 2010

I. INTRODUCTION

1. Pursuant to the Commission's Notice of Opportunity to File Written Comments on draft rules (June 11, 2010), the Public Counsel Section of the Washington State Attorney General's Office (Public Counsel) respectfully submits these comments. These comments build upon our Initial Comments, filed May 10, 2010.
2. While a paperless billing program can be beneficial to customers, it may also reduce customers' notice of critical information about their utility service. These comments will first address the Commission's draft new sections (Section II.A). Section II.B then addresses the Commission's proposed amendments to current sections of the administrative code. Finally, Section II.C discusses Public Counsel's proposed new sections.
3. Public Counsel has looked at other states' administrative codes in determining the appropriate formation of paperless billing rules. These comments also draw from the federal Electronic Signature and Global National Commerce Act (E-SIGN), 15 U.S.C. §§ 7001-7031

(2006), which governs electronic transactions in interstate commerce (*See* Attachment A).

Please also note that, while these comments specifically address WAC 480-100, they apply equally to the Commission's draft rules for natural gas service (WAC 480-90).

II. DRAFT RULES FOR PAPERLESS BILLING

A. Draft New Section: WAC 480-100-XXX

1. Verification of Consent

4. Public Counsel generally supports creating a new section dealing specifically with paperless billing. However, Public Counsel recommends adding provisions to help costumers understand their obligations and rights under any paperless billing program. Absent clear instructions, customers may not alert the company to changes in e-mail addresses or a desire to return to paper billing. If customers do not notify companies of these changes, customers may not receive their bill, and may accordingly fail to make payment, resulting in late fees and possible collections actions, with other ensuing consequences.¹ Accordingly, Public Counsel recommends the following amendments to the Commission's draft new sections:

(2) **Verification of consent.** The company must obtain prior written or electronic consent to provide prescribed documents electronically (consent letter). The consent letter must not be combined on the same document or on the same screen or web page with any other information. The company must retain the consent letter as a permanent part of the customer's account records to serve as verification of the customer's authorization to receive selected documents electronically. The documentation of the consent must be made available to the customer and to the commission upon request at no charge. The consent letter must confirm the following information from the customer:

- (a) The customer's name, telephone number, address, and e-mail address;
- (b) The decision to change;

¹ For example, a woman was denied a home loan due to a decreased credit score resulting from failure to pay her cable pill. Elizabeth A. Harris, "The Going Gets Tougher," *N.Y. Times*, Mar. 11, 2010 at RE1 (N.Y. Edition). The woman had attempted to set up automatic billing, and in the process, missed payments on the bill. *Id.*

(c) The customer understands that signing the consent letter allows the company to provide bills, ~~notices of tariff revisions~~, or bill inserts including inserts containing information required to be provided to customers or applicants by statute, rule, or commission order by electronic means instead of the use of paper copies sent by U.S. Mail;

(d) The customer's right to withdraw a previously provided consent letter;

(e) The company's procedures for making changes to a customer's e-mail address(es), which will also be provided in customers' bills; and,

~~(d)~~ (f) The company will provide upon request, a paper copy of any document sent electronically at no additional charge. The customer may also request to revert to paper delivery at no additional charge.

5. Public Counsel also recommends adding company procedures addressing e-mails returned as undeliverable. Public Counsel encloses a Pennsylvania utility's procedures for handling undeliverable e-mails for reference (*See Attachment B*).² Finally, Public Counsel strongly encourages the Commission to include language ensuring that utility providers do not charge a fee to customers who elect to continue receiving paper bills.³

2. Low-Income Program Notices

6. Public Counsel opposes any modification to the existing WAC notice requirements for disconnection of service or for the winter low-income program (including disconnection notices under the program). Accordingly, Public Counsel recommends that the Commission insert

² "If an electronic bill notification e-mail is returned as undeliverable, Columbia . . . will resend the email two additional times. If the email is still undeliverable Columbia . . . will post a message on its website that appears when the customer logs in. Columbia also attempts to contact the customer via phone to have the email address corrected. If through these efforts, Columbia still fails to gain [the] customer's proper email address, Columbia will issue a paper bill . . . [and] the customer is removed from the electronic billing program." *In Re: Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with Provisions of 66 Pa.C.S., Chapter 14; General Review of Regulations*, Docket No. L-00060182, Comments of Columbia Gas of Pennsylvania, Inc. in Response to March 31, 2009 Secretarial Letter, p. 3, <http://www.puc.state.pa.us/pcdocs/1039510.pdf>.

³ According to a research group specializing in consumer privacy, hidden fees for services such as receiving paper bills, franchise fees, and other charges, cost each U.S. consumer roughly \$950 a year. Tom Spring, *Sneaky Fees: Two Bucks to Get a Paper Statement? \$15 to Book Airline Tickets Online? Wireless Providers, Cable Companies, and other Firms Are Increasingly Nickel-and-Diming Us to Death. Here's How to Fight Back*, PC World, Oct. 27, 2009, available at http://www.pcworld.com/article/173366/sneaky_fees.html. T-Mobile attempted to charge customers a \$1.50 fee for continuing to request paper billing. However, customer backlash caused T-Mobile to cancel the planned program. *T-Mobile Drops Plans for Paper Billing Fee*, The Wall Street Journal, Sep. 16, 2009 at D6.

language indicating that this section does not modify existing notice requirements for disconnection of service or for the winter low-income program.

3. Notices of Proposed Tariff Changes and Public Hearings

Public Counsel opposes any changes to the existing requirement that notices of proposed tariff changes or restriction of services, as well as public hearings, be provided in paper format to individual customers consistent with the Commission's notice rules. E-mail cannot provide the same degree of notice to customers of such important information regarding their utility service. Paper notice of requested rate increases and public comment hearings provide tangible notification to the customer. Paper notices also alert the customer to possible changes in service simply by opening their bill. Additionally, customers can quickly skim the paper notice, allowing the customer to determine any important information contained in the notice. And finally, customers can place paper notices in an obvious location to remind the customer of important dates and information.

7. Unlike paper notice, an e-mail allows the customer to simply delete the notice without reading it. E-mail also presents problems with spam filters – customers with highly restrictive spam filters may not receive notices of tariff changes or public hearings, as most spam filters automatically delete junk e-mail. Additionally because junk e-mails often contain headings such as “Urgent Notice,” spam filters may send company notices directly to the spam filter, bypassing customers’ inboxes. These all present risks that customers will fail to receive notice of proposed tariff changes and public hearings.

8. Public Counsel recognizes, however, that, for some customers who opt in to a paperless billing program, e-mail may be a more convenient form of notice. To ensure that all customers

receive optimal notice of proposed tariff changes and public hearings, Public Counsel recommends including language in this section that allows utilities to send e-mail notices *in conjunction* with paper notice as specified in WAC 480-100-194 (WAC 480-90-194 for gas companies). Accordingly, Public Counsel recommends the following amendments to the new draft section:

(4) The following documents shall be provided in paper format pursuant to the Commission's existing notice rules:

(a) Notices of disconnection; ~~and~~

(b) Information regarding the winter low-income payment program, including written copies of any extended payment plans under the winter low-income payment program;

(c) Notices for proposed tariff changes of increased rates or restrictions of access to services; and,

(d) Public Hearings.

(5) For documents listed in section (4)(a)-(d), companies may also provide e-mail notice in combination with paper notices pursuant to the Commission's existing notice rules.

9. Public Counsel believes that no electronic format accurately replicates the experience of receiving paper notices of tariff filings and public hearings. If the Commission does, however, provide for notice of tariff filings and/or public hearings *solely* via e-mail, Public Counsel strongly urges the Commission to, in addition, require inclusion of these notices in the actual customer bill to increase the probability that customers will view the content of the notice. Specifically, companies should place notices within the body of the e-mail, *before* providing any billing information. This ensures that customers view the notice when received. This comes closest to replicating the customer's experience when receiving and opening a paper bill and notice.

B. Proposed Amendments to Existing Rules

1. WAC 480-100-103 & 480-100-194

10. As Public Counsel stated previously, notice of proposed tariff changes and public hearings should continue to be provided according to the Commission's notice rules.

2. WAC 480-100-178

11. Public Counsel supports the Commission's proposed language in this section.

C. Public Counsel's Proposed New Sections

12. Public Counsel recommends the inclusion of software and hardware requirements for users of any paperless billing program. Customers should also have the option of withdrawing consent upon notification of changes to software or hardware requirements. Public Counsel is concerned that inadequate customer knowledge of technological requirements will result in difficulties accessing electronic bills.⁴ Accordingly, Public Counsel recommends the following additional sections:

(X) The consent letter must also inform the customer of the hardware and software requirements for access to and retention of the electronic records.

(X) After the customer consents to electronic billing, if a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain a subsequent electronic record that was the subject of the consent, the utility providing the electronic record must provide the customer with:

(a) The revised hardware and software requirements for access to and retention of the electronic records; and (b) Notice of the right to withdraw consent."

⁴ New Jersey specifically requires that bill providers outline the technology requirements needed to access electronic bills. N.J. Admin. Code § 14:4-2.4 (2008). (See Attachment C). For example, Potomac Electric Power Company (PEPCO), a Washington, D.C. area utility, specifically outlines requirements for using paperless billing, including unsupported internet browsers, on its website. <http://www.pepco.com/home/billing/pay/browser/>.

III. CONCLUSION

13. Public Counsel supports adoption of much of the Commission's draft new rules. However, Public Counsel strongly encourages the Commission to ensure that these rules maintain the current level of notice to customers regarding important changes in service. In particular, Public Counsel strongly advocates that the Commission continue to require paper notice for proposed changes to tariffs and public hearings pursuant to the Commission's existing notice rules. Public Counsel also encourages the Commission to adopt language ensuring that customers are adequately informed of the software and hardware requirements of the company's paperless billing program.
14. Public Counsel thanks the Commission for the opportunity to participate in this rulemaking and looks forward to continued involvement in the process.