BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

Rulemaking to modify existing consumer protection and meter rules to include Advanced Metering Infrastructure	DOCKET U-180525

FIFTH COMMENTS OF PUBLIC COUNSEL

June 22, 2020

I. INTRODUCTION

1. Pursuant to the Commission's Notice of Opportunity to File Written Comments on Proposed Rules ("Notice") filed on May 4, 2020, the Public Counsel Unit of the Washington State Attorney General's Office ("Public Counsel") respectfully submits these comments regarding the consumer protection and related meter rules in draft WAC 480-90 and WAC 480-100.

II. COMMENTS

2. Public Counsel largely supports the latest revision of the Draft Rules but has a few remaining issues with the draft rules on remote disconnections, medical certificates, and protections for low-income customers. Public Counsel's comments cite to draft language in WAC 480-100 for electric utilities, and, although not specified below, we mirror our recommendations for corresponding language in WAC 480-90 for natural gas utilities.

A. Remote Disconnections and Payment During Premise Visit

1. Draft WAC 480-100-128(6)(b)

3. Draft WAC 480-100-128(6)(b) limits the time during which a utility may remotely disconnect customers. The draft rule currently states that a utility must,

ATTORNEY GENERAL OF WASHINGTON
PUBLIC COUNSEL
800 5TH AVE., SUITE 2000
SEATTLE, WA 98104-3188
(206) 389-3040

> (b) Perform all remote disconnections for nonpayment between the hours of 8:00 a.m. and 12:00 p.m. and remotely disconnect service only if the utility provides customers with a reasonable opportunity to re-establish service upon receiving payment on the same day;

Public Counsel understands that the most recent modifications to this subsection were intended to provide utilities the flexibility to remotely disconnect a customer provided the utility had the reasonable belief that it could re-establish service within the same day. As written, however, the language can be read to imply that the customer will be receiving payment on the same day, not the utility. Additionally, the flexibility added to this subsection can potentially be at odds with the requirement in draft WAC 480-100-133[1] for utilities to make all reasonable efforts reconnect service within four hours if a customer has been remotely disconnected. Public Counsel, therefore, recommends the following modifications to WAC 480-100-128(6)(b):

> (b) Perform all remote disconnections for nonpayment between the hours of 8:00 a.m. and 12:00 p.m. and remotely disconnect service only if the utility has a reasonable belief that there is sufficient time for the customer to provide payment and ~~provides customers with a reasonable opportunity to~~ for the utility to re-establish service ~~upon receiving payment on the same day~~ within four hours of receiving payment;

2. Draft WAC 480-100-128(6)(c) and (d)

4. Draft WAC 480-100-128(6)(c) and (d) both state that, prior to disconnecting customers with a medical certificate or customers who have received low-income assistance, the utility must make a premise visit and "provide the customer with an opportunity to pay via appropriate

[1] Draft WAC 480-100-133 Reconnecting service after disconnection.

> (1) A utility must make every reasonable effort to restore a disconnected service within twenty-four hours, or within four hours for customers who the utility has remotely disconnected, or other time mutually agreeable between the customer and the company, after the customer has paid, or at the time the utility has agreed to bill, any applicable reconnection charge, and:

methods including providing payment to the dispatched utility representative." Public Counsel appreciates the inclusion of the protections afforded by the premise visit in both of these instances. Public Counsel, however, agrees with The Energy Project's previous recommendation that the rule state that cash is an acceptable form of payment.[2] These rules are intended to provide protections for vulnerable customers. These vulnerable customers, particularly customers who have previously enrolled in low-income assistance programs, may not have checking accounts with a bank or may not have access to a credit card. The rule, as written, could allow utilities to reject cash payments during the premise visit, which could result in that customer being disconnected.

5. Public Counsel, therefore, recommends that draft WAC 480-100-128(6)(c) and (d) be modified to specify that the utility representative must accept cash payment during a premise visit. The language for (6)(c) is provided in the next section of these comments with additional modifications. Public Counsel recommends that the language for (6)(d) be modified, as follows:

> (d) Prior to disconnecting a customer for nonpayment 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 payment to the dispatched utility representative. Utility representatives during the premise visit must accept cash as an appropriate method of payment, but may also accept other forms of payment.

6. Additionally, Public Counsel recommends that the rules require the notices of disconnection to include information on the appropriate methods of payment – in general as well as specifically during a premise visit - and information about payment stations.

[2] Third Comments of The Energy Project, ¶ 37 (Sept. 16, 2019).

B. Medical Certificates

1. Draft WAC 480-100-128(6)(c)

7. The draft rule states that utilities must:

> (c) Prior to disconnecting a customer who has an active medical certificate 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 payment to the dispatched utility representative.

Public Counsel continues to have concerns with this section as written. As we stated in our last set of comments, the phrase "active medical certificate" is not defined and, thus, is unclear.[3] Subsection (8) referenced here provides the requirements for a written certificate from a qualified medical professional and the length of time during which the certificate may be valid. The use of the word "active" in subsection (6)(c) is ambiguous as it could mean "valid" or something else. The draft rule should be clarified.

8. We also continue to believe that a key protection for vulnerable customers with a medical necessity is to extend the requirement of a premise visit for two years if the customer has had a medical necessity and submitted a medical certificate, in accordance with draft WAC 480-100-128(8).[4] The current language requires a site visit if the customer has a medical certificate, but subsection (8)(b) states that the certificate is only valid for 60 days unless renewed. It is not difficult to imagine circumstances where a customer has an ongoing medical issue, such as a chronic condition, or where the cost of a doctor's visit could place a significant financial burden on a customer. The requirements place an unnecessary and potentially unequitable burden on vulnerable customers. Public Counsel, therefore, continues to support the language suggested in our last set of comments, modified further to include the requirement to accept cash payments

[3] Fourth Comments of Public Counsel, ¶¶ 6-7 (Sept. 16, 2019).
[4] *See* Fourth Comments of Public Counsel, ¶ 9 (Sept. 16, 2019).

and language regarding medical certificates. The following language presumes that "appropriate methods" is defined elsewhere in the rules, as discussed, above.

> (c) Visit the customer's premises and provide the customer with an opportunity to pay via appropriate methods including providing payment to the dispatched utility representative prior to disconnecting a customer who has submitted a medical certificate in the prior two years, in accordance with subsection (8) of this section. Utility representatives during the premise visit must accept cash as an appropriate method of payment, but may also accept other forms of payment.

9. Public Counsel also supports robust notification measures suggested by The Energy Project.[5] It is important that consumers are notified in any disconnection notices and through the utilities' websites what they should do in light of a medical emergency or if they need bill assistance.

2. Draft WAC 480-100-128(8)(a)

10. The draft rule states that the utility may require the customer to submit a "written certification" within five business days.[6] Public Counsel believes that this rule should be clarified to specify that an electronic mail message or digital format (e.g., PDF) should be accepted by a utility as a "written certification." It can be cumbersome and costly for a customer to visit their health care provider to obtain a physically signed document. For example, a customer may not have a personal vehicle and may need to take public transportation, pay for a taxi or ride service, or arrange for a friend or relative to shuttle them to their doctor's office. If the doctor's office is not nearby the customer's residence or workplace, it could take additional time away from work or require obtaining childcare to make the visit. It is also possible that a customer with a medical condition would have difficulty leaving their home if they are bed bound or require a wheelchair

[5] Third Comments of The Energy Project, ¶ 39 (Sept. 16, 2019).
[6] Draft WAC 480-100-128(8)(a).

or other mobility assistance. In addition, due to the COVID-19 pandemic, many doctor's offices are increasingly utilizing tele-health visits as an alternative to having a patient physically present in their office.[7] Given these circumstances, utilities should be required to accept electronic written certificates.

3. Draft WAC 480-100-128(8)(d)

11. Public Counsel also suggests a possible revision for proposed WAC 480-100-128(8)(d). The section currently reads:

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

This subsection uses language that is vague, similar to subsection 6(c). The phrase "acceptable medical certificate" could be clearer by saying "a medical certificate that complies with the requirements of subsection (8)(a)." Pointing to the precise requirements that appear elsewhere in the rule provides clarity.

12. Public Counsel also has concerns with this section related to the notice requirements for disconnection. If a customer who has notified the utility of a medical condition fails to abide by the payment agreement and the utility decides to proceed with disconnection, the section requires notice according to subsection (4)(a)(ii) or second notice of disconnection. If the customer received their second notice for disconnection before they contacted the utility to let the company know about a medical condition, will the utility need to issue the second notice again if

[7] Sara Hansard, *Telehealth, Tested in Covid-19 Crucible, Expands in Health Plans*, BLOOMBERG LAW (June 17, 2020, 2:35 AM) https://news.bloomberglaw.com/health-law-and-business/telehealth-tested-in-covid-19-crucible-expands-in-health-plans (last visited June 17, 2020).

the customer fails to provide either the medical certificate or payment? Public Counsel believes that the rule should be clarified to require another second notice. Customers with medical conditions who are facing the possibility of disconnection are some of the most vulnerable and deserve extra protections, including a premise visit. In addition, this set of circumstances is not likely to impact very many customers, so the overall burden on the utilities will be limited.

13. Finally, we request that the Commission consider requiring a minimum arrearage amount for the utility to begin the disconnection process. Again, customers with medical conditions who are facing the possibility of disconnection are very vulnerable. To shut off their electricity or gas over a small amount owed is cruel, and the Commission should take the important act of setting a minimum bound to provide extra protection, regardless of the individual utility company's policy.

C. Disconnection Reporting

14. Public Counsel continues to share the concerns raised by The Energy Project, regarding the tracking of utility disconnections and monitoring whether AMI remote disconnections dramatically increases with the employment of this new technology and whether additional consumer protections are warranted.[8] Public Counsel continues to believe reporting requirements on utility disconnections should be mandatory, either through the AMI rules or elsewhere.

/ /

/ / /

/ / / /

[8] Second Comments of The Energy Project, ¶ 10 (Jan. 31, 2019).

D. Customer Privacy

1. Draft WAC 480-100-153(21)

15. Draft WAC 480-100-153(21) addresses the use and disclosure of aggregate customer data. Public Counsel supported the previous iteration of this rule because it limited the use of aggregate data to activities directly related to the utility's primary purpose.[9] The latest revision of the draft rule expands the use of aggregate data "to the extent necessary to comply with legal requirements, or to facilitate voluntary efforts, to promote energy efficiency, conservation, or generating resource management." While Public Counsel acknowledges the potential value in aggregate customer data, the expansion of the use of aggregate data beyond the utility's direct use and control revives our concerns over the adequacy of privacy protections for aggregate data, which we raised in our previous comments.[10]

16. The draft rule currently states that the utilities must, "have sufficient policies, procedures, and safeguards in place to ensure that the aggregated information does not allow any specific customer to be identified" but does not specify a standard which utilities must follow to ensure the dataset is sufficiently anonymized. Public Counsel previously discussed issues related to ensuring sufficient anonymization and masking of customer data sets. Technological advances in meter data hardware as well as in data manipulation heighten our concern over these issues.

17. The draft rule does not ensure that the utilities enact the same level of protections to ensure aggregate data is sufficiently anonymized to prevent customer identification. Customer privacy can, therefore, receive varying levels of protection across the different utilities. The draft

[9] Fourth Comments of Public Counsel, ¶ 5 (Sept. 16, 2019).

[10] *See* Initial Comments of Public Counsel, ¶¶ 17-21 (Sept. 7, 2018); *see also* Second Comments of Public Counsel, ¶¶ 23-24 (Jan. 31, 2019); *see also* Fourth Comments of Public Counsel, ¶ 5 (Sept. 16, 2019).

rule also does not limit or define who may receive aggregate customer data or how the data may be used. Furthermore, because the draft rules do not contain any specific requirements for the contents of utility privacy policies, there is no requirement to inform customers that their data will be disclosed in an aggregate data set, how that data will be handled to prevent customer identification, or to whom their data will be provided.

18. Public Counsel, therefore, does not support the latest iteration of draft WAC 480-100-153(21). While there may be legitimate and valuable reasons to disclose aggregate customer data, the current draft rule does not sufficiently protect customer privacy. Additional discussion and development of this rule would be useful to ensure customer data is not inadvertently disclosed. In the meantime, Public Counsel recommends that the draft rule revert to the previous version of the rule which limited the dissemination of aggregate data to the extent necessary for the utility to perform its primary purpose. The previous rule stated,

> The utility may collect and release aggregate data to the extent reasonably necessary for the utility to perform duties directly related to the utility's primary purpose but must have sufficient policies, procedures, and safeguards in place to ensure that the aggregated information does not allow any specific customer to be identified.[11]

19. If the Commission does not wish to specify a uniform approach to anonymizing and managing aggregate data, the rules should, at the very least, require the utilities to publish their policies regarding the anonymization of aggregate data in their respective privacy policies and explicitly inform customers that their data may be aggregated and provided to outside parties. Customers should also have the opportunity to opt out of the inclusion of their data in aggregate data sets and be informed of their right to do so.

[11] Notice of Opportunity to File Written Comments, WAC 480-100 Second Redline at 49 (Aug. 14, 2019).

Additionally, if the draft rule is not reverted to the prior version, Public Counsel recommends a minor edit to the language to remove the comma after "facilitate voluntary efforts," which appears to have been left in place erroneously. If the placement of the comma is intentional to separate "voluntary efforts" from promoting energy efficiency and the rest of the list of activities, Public Counsel recommends that "voluntary efforts" either be defined and explained or deleted. It is unclear from the current language if the voluntary efforts refer to company activities, research activities, or other "efforts."

III. CONCLUSION

20. Public Counsel appreciates this additional opportunity to comment on the draft rules and looks forward to reviewing the comments submitted by other stakeholders. If you have any questions regarding these comments, please contact either Stephanie Chase at Stephanie.Chase@ATG.WA.GOV or Nina Suetake at Nina.Suetake@ATG.WA.GOV.

Dated this 22th day of June, 2020.

ROBERT W. FERGUSON
Attorney General

/s/ _____
NINA SUETAKE, WSBA No. 53574
Assistant Attorney General
Public Counsel Unit
Email: Nina.Suetake@ATG.WA.GOV
Phone: (206) 389-2055