BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Rulemaking for the Energy Independence Act, WAC 480-109, Considering Revisions To Comply with the Clean Energy Transformation Act.	DOCKET UE-190652 INITIAL COMMENTS OF THE ENERGY PROJECT

I. INTRODUCTION

1 The Energy Project (TEP) files these comments in response to the Commission's Notice of Opportunity To File Written Comments, served on October 4, 2019 and the related CR-101 Preproposal Statement of Inquiry (WSR 19-21-016), dated October 4, 2019.

II. INITIAL COMMENTS OF THE ENERGY PROJECT

A. Responses to Notice Questions Regarding Low-income Conservation.

1. Do stakeholders have concerns with the additions of the statutory definitions for "energy assistance" and "energy burden" in WAC 480-109-060?

2 The Energy Project does not have major concerns with including statutory definitions from the Clean Energy Transformation Act (CETA)[1] in the Commission's Energy Independence Act (EIA) rules.[2] However, these are key definitions for CETA's Section 12[3] generally, and as such the terms have other broader applications beyond the EIA context. It will, therefore, be important to maintain consistency between the definitions in the EIA rules and the definitions of these key terms adopted elsewhere. Coordination with the Section 12-related proceedings at the

[1] Laws of 2019, Chapter 288, codified at RCW Chapter 19.405.
[2] Chapter 480-109 Washington Administrative Code (WAC).
[3] RCW 19.405.120.

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Department of Commerce, and at the Commission,[4] will be important. Ultimately, the definitions established here should be designed to further the broad statutory Section 12 and "public interest"[5] goals of CETA.

2. Please propose the level of energy burden that should be included within the definition of "Energy assistance need." Please explain and provide justification for your proposal. Industry literature suggests an affordability benchmark as low as six percent of household income.

3 Energy costs represent one of the major contributing factors to the high cost of being poor. The combination of lower income, less energy efficient housing, and difficulty of accessing energy efficiency programs contribute to higher energy burdens. Renters, many of whom are low-income, have little or no control over appliances and heating and cooling systems. Low-income income families paying high percentages of their income for energy face a situation of "energy poverty."[6] The result is that "families who face higher energy burdens experience many negative long-term effects on their health and well-being. These families are at greater risk for respiratory diseases and increased stress, and they can experience increased economic hardship and difficulty in moving out of poverty."[7]

4 The Clean Energy Transformation Act defines a household's "energy assistance need" as "the amount of assistance necessary to achieve a level of household energy burden established by

[4] The Notice indicates that the Commission expects to address other elements of CETA Section 12 in other proceedings. Notice p. 2.

[5] RCW 19.405.010(6), 19.405.040(8).

[6] *Where The Poor Spend More Than More Than 10 Percent Of Their Income On Energy,* Atlantic, June 8, 2016 (Atlantic). https://www.theatlantic.com/business/archive/2016/06/energy-poverty-low-income-households/486197/.

[7] Drehobl, A., and L. Ross (2016), *Lifting the High Energy Burden in America's Largest Cities: How Energy Efficiency Can Improve Low-income and Underserved Communities,* Washington D.C., ACEEE and Energy Efficiency for All (ACEEE Report), p. 3. In 2018 ACEEE completed a study of rural energy burdens, *The High Cost of Energy Rural America*, which will be filed separately. http://www.aceee.org/sites/default/files/publications/researchreports/u1806.pdf.

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the department [of Commerce] or the [Utilities and Transportation] commission."[8] CETA defines "energy burden" as "the share of annual household income used to pay annual home energy bills."[9] As noted, CETA contemplates that the level of energy burden will be established by the UTC or the Department of Commerce, or both. While strictly speaking, any definitions adopted here would only be applicable in the EIA context,[10] the Commission should take a comprehensive view and adopt definitions that will also fit with the broader intent of Section 12.

5 The topic of energy burden has been the subject of significant analysis. Two recent studies in particular provide a good base of information that support the six percent level referenced in the Notice. Fisher Sheehan & Colton's (FSC) studies of the "Home Energy Affordability Gap," initiated in 2003, have developed a model that quantifies the gap between actual home energy bills and affordable energy bills on a county-by-county basis nationwide. The FSC analysis adopts an "affordable burden" for home energy bills of six percent of gross household income.[11] The FSC methodology also includes a calculation of the "gap" – the shortfall in dollars which would need to be made up to make utility service affordable.

6 In 2016, the American Council for An Energy Efficient Economy (ACEEE) issued the energy burden report cited in the Commission's Notice.[12] A copy of the ACEEE Report is attached as Appendix A to these comments. The report provides a snapshot of the energy burden

[8] RCW 19.405.020(16).
[9] RCW 19.405.020(17).
[10] WAC 480-109-060 provide that that the "definitions in this section apply throughout this chapter unless the context requires otherwise."
[11] http://www.homeenergyaffordabilitygap.com/01_whatIsHEAG2.html.
[12] Notice, p. 2, n.1. In 2018 ACEEE also completed a study of rural energy burdens, *The High Cost of Energy Rural America*, which will be filed separately. http://www.aceee.org/sites/default/files/publications/researchreports/u1806.pdf.

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in the 48 largest U.S. cities, building on the work of Fisher Sheehan & Colton.[13] The ACEEE Report concluded that "[t]he data we examine show that the median energy burden for low-income households is more than two times that of the median household (7.2 % and 3.5 % respectively), and three times greater than higher income households (2.3%)."[14]

7 In September 2019, ACEEE published a policy brief, *Understanding Energy Affordability*, which provided an overview of ACEEE and other research on energy burden. The publication notes that "high" energy burden, spending more than 6 percent of income on energy bills, is the standard employed by multiple researchers and policy makers.[15]

8 Although somewhat dated, a LIHEAP analysis conducted in 2005 is useful from a methodological perspective.[16] This study was designed to assess to what extent the LIHEAP program was serving the lowest income households that have the highest energy burdens.[17] The study is extensive, considering multiple factors in a variety of scenarios, reviewing different approaches to calculating energy burden. One approach looked at energy burden in the context of shelter costs. For households with a "severe shelter burden" (over 50 percent of income) the study concludes that a high residential energy burden is 10.9 percent of household income. For households with a moderate shelter burden (30 percent of income) the study sets a moderate residential energy burden at 6.5 percent.[18] Looking at hearing and cooling costs alone, the study

[13] ACEEE Report, p. .3
[14] ACEEE Report, p. 9.
[15] *Understanding Energy Affordability*, ACEEE Policy Brief, September 9, 2019 http://www.aceee.org/topic-brief/energy-affordability.
[16] LIHEAP Energy Burden Evaluation Study, Final Report, prepared for US Department of Health and Human Services (July 2005), Applied Public Policy Research Institute for Study and Evaluation (LIHEAP Study). https://www.acf.hhs.gov/ocs/resource/liheap-energy-burden-evaluation-study.
[17] LIHEAP Study, Executive Summary, p. i.
[18] LIHEAP Study, p. 12.

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concluded that "high home energy burden is defined as heating and cooling costs that exceed 4.3 percent of income. Moderate home energy burden is defined as heating and cooling costs above 2.6 percent of income but less than 4.3 percent of income."[19]

9 A 2016 report on energy burden conducted by *Inside Energy* included a county-by-county national calculation of energy burden for households in extreme poverty, at or below 50 percent of Federal Poverty Level. For each county the analysis reported the household energy burden and the annual energy bill. For example, the King County energy burden was 18.8 percent for households at or below 50 percent of FPL, Spokane County energy burden was 22.7 percent, Yakima County energy burden was 22 percent, Whatcom County energy burden was 20.8 percent, and Grays Harbor County was 20.1 percent.[20]

10 As an added reference, a Seattle City Light Equity Rate Pilot launched in 2019 uses a 4 percent energy burden to determine bill affordability.

11 With these analyses as context, the adoption by the Commission of six percent as an energy burden affordability benchmark would be reasonable. Due to the different methodologies available and the variety of factors to be considered, it may be appropriate to spend some time in the docket to look at alternatives to ensure that this level makes sense. The Energy Project also recommends that the level adopted should be a "no greater than" level to allow utilities adopt more aggressive standards for their programs if they desire.

[19] LIHEAP Study, p. 12.

[20] *High Utility Costs Force Hard Decisions For The Poor, Inside Energy*, May 8, 2016 http://insideenergy.org/2016/05/08/high-utility-costs-force-hard-decisions-for-the-poor/.

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3. Please propose a definition of "low-income" based on area median household income or percentage of the federal poverty level. Please explain and provide justification for your proposal. The maximum allowed in Laws of 2019, Chapter 288, § 2(25), is the higher of 80 percent of area median household income or 200 percent of federal poverty level, adjusted for household size. Investor-owned utilities currently use 200 percent of the federal poverty level, adjusted for household size, for the low-income conservation programs.

12 The Energy Project supports the use of 200 percent of Federal Poverty Level for the definition of low-income, the maximum allowed under the statute. As the Notice observes, this metric is already in use for low-income weatherization programs in Washington. While most IOU bill assistance programs set income eligibility at 150 percent of FPL, there are strong arguments for increasing the definition to 200 percent. The FPL metric has long been questioned as an outdated and unreliable way to measure actual poverty levels. An analysis performed for Avista and filed in its currently pending general rate case examines this question in depth.[21] The study, which in part analyzes the impact of decoupling on low-income households, lists multiple benchmarks that are used as indicators that a household is in a situation of economic difficulty, and goes on to observe:

> Of these benchmarks, the most used in the United States is the multiple of the federal poverty level (FPL), yet this is also one of the most challenged indicators. The fact that almost no agency uses the FPL, but instead agencies use a multiple of the FPL for program eligibility suggests that problems with the FPL are universally recognized.[22]

[21] *Washington Utilities & Transportation Commission v. Avista Utilities*, Dockets UE-190334/UG-190335, Exh. PDE-2, p. 207 (Decoupling Evaluation).

[22] *Id.*

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As an alternative to the FPL, the Avista study cites the Washington Self-Sufficiency Standard[23] as the most well-grounded methodology for evaluating poverty levels. As part of its Key Findings, the Standard notes:

> The official poverty measure, developed half a century ago, is now methodologically out of date and no longer accurately measures poverty, and at best measures "deprivation." Throughout Washington State, the Self-Sufficiency Standard shows that incomes well above the official federal poverty thresholds are nevertheless far below what is necessary to meet families' basic needs.[24]

The Standard is based on the family budget method, and builds on the monthly costs required by households characterized by family structure and age of the household members. The Standard is based on achieving a lower-moderate standard of living and is calculated at the county level. Comparing the Self-Sufficiency Standard with other data available for Avista, the Decoupling Evaluation study concludes that for Avista customers, 200 percent of Federal Poverty Level approximates the income level for households at or below the Washington Self-Sufficiency Standard.[25]

13 The Energy Project's recommendation is also consistent with trends in Washington, with some bill assistance programs in Washington already moving toward the 200 percent of FPL level. In October, Cascade Natural Gas received approval to increase income eligibility for its Washington Energy Assistance Fund (WEAF) from 150 percent to 200 percent of Federal Poverty Level.[26] As an additional example, as part of its Low-income Rate Assistance Program

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[23] The Self Sufficiency Standard for Washington State (2017), p. vi. http://selfsufficiencystandard.org/sites/default/files/selfsuff/docs/WA2017_SSS.pdf.

[24] *Id.* (Key Findings).

[25] Avista Decoupling Evaluation, Exh. PDE-2, pp. 207-224 and Figure 8-1.

[26] Cascade Natural Gas Advice No. W19-09-06 (Schedule 303), Docket UG-190826 (Effective November 1, 2019). WEAF is currently administered by twelve agencies in Cascade's service territory, which covers multiple

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(LIRAP), Avista Utilities offers a Senior and Disabled Discount program, which sets income eligibility at 200 percent of Federal Poverty Level. This program, initially a pilot, was recently made permanent and opened up to all eligible customers.[27]

14 The CETA definition of "low-income" also requires the agencies to establish a metric for Area Median Income as part of the definition. As with the FPL metric, The Energy Project supports setting the Area Median Income metric at the highest allowed level, that is, at 80 percent of AMI. The ACEEE report research found that the "overwhelming majority of single-family and multifamily low-income households (those with income at or below 80 percent of Area Median Income), minority households, low-income households residing multifamily building, and renting households experienced higher energy burdens than the average household in the same city."[28] Use of the 80 percent of AMI metric will therefore help prioritize high burden households consistent with CETA.

15 The AMI and the FPL metrics work together to ensure the most appropriate income level is used for determining low-income status. In areas with a high cost of living, 80 percent of AMI may exceed 200 percent of FPL. In those instances, the AMI metric should be employed. The Energy Project, therefore, recommends that the rule add the language "whichever is greater" following the specific metrics.

16 While the statutes by its terms allows Commerce or the UTC to adopt a lower standard than 200 percent FPL/80 percent AMI, based on the factors discussed above, there seems little or

regions of the state, including the coast, northern and eastern Puget Sound, north central and south central Washington, and areas along the Columbia River.

[27] Avista Schedule 2, Schedule 92A.

[28] ACEEE Report, p. 3.

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no reasonable justification for doing so. The Energy Project recommends adoption of 200 percent FPL or 80 percent of Area Median Income, whichever is greater, and adjusted for household size, as the definition of low-income in the Commission rules.

4. Do stakeholders have concerns with the proposed changes to WAC 480-109-100(10) addressing funding and programs for low-income energy assistance as described in the Laws of 2019, Chapter 288, §§ 2(16) and 12? Is additional language necessary? If so, please propose alternative rule language.

17 The Energy Project is generally supportive of the proposed changes to WAC 480-109-100(10) for the reasons set forth in the discussion of the proposed rules below.

5. The Laws of 2019, Chapter 288, § 12(2), requires utilities to plan for the provision of energy assistance aimed toward reducing household energy burdens. To the extent practicable, this energy assistance must prioritize low-income households with higher energy burdens. What considerations should the Commission consider in determining what is practicable in the context of low-income conservation?

18 As a general matter, existing state and federal low-income conservation programs for customers of IOUs currently take into account low-income households with higher energy burdens. LIHEAP energy assistance and weatherization programs prioritize households that are comprised of tribal members, elderly, families with small children, disabled household members and households with high energy burdens. As the 2005 LIHEAP energy burden study cited

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above stated:

> Given that limitation [need exceeding budget], the LIHEAP statute requires LIHEAP grantees to provide, in a timely manner, that the highest level of assistance will be furnished to those households that have the lowest incomes and the highest energy costs or needs in relation to income, taking into account family size. The LIHEAP statute identifies two groups of low-income households as having the highest home energy needs: vulnerable households and high burden households. Vulnerable households are those with at least one member that is a young child, an individual with disabilities, or a frail older individual. High burden households are those households with the lowest incomes and highest home energy costs.[29]

19 Utility and agency experience with these prioritization considerations and methodologies provides a platform to build on while developing approaches to CETA compliance.

B. Comments Regarding Draft Proposed Rules.

1. WAC 480-109-060 Definitions.

20 Proposed WAC 480-109-060(13) and (15) appropriately restate the statutory definitions from CETA for "energy assistance" and "energy burden." The Energy Project has no concerns with these provisions, except as noted in the response to Question 1 above, regarding consistency.

21 Proposed WAC 480-109-060 (14) defines "energy assistance need," consistent with CETA, as the amount of assistance needed to achieve the "energy burden" established by the Commission. As discussed in response to Question 2 above, establishing an energy burden of no greater than 6 percent would be reasonable for this provision.

22 Proposed WAC 480-109-060 (21) likewise correctly reflects the CETA language. The Energy Project recommends that the rule definition should incorporate 200 percent FPL or 80

[29] LIHEAP Study, Executive Summary, pp. i-ii.

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percent AMI, as further discussed in response to Question 3 above.

23 Subject to the caveats in TEP's response to Question 1, TEP does not have major concerns with the inclusion of these CETA definitions in the EIA rules. So long as a consistent approach is taken across the implementation rules and dockets involving Section 12 and public interest matters, inclusion of these terms here could help to underline and facilitate CETA's policy goals in this area.

2. WAC 480-109-100(10) Energy Efficiency Resource Standard – Low-Income Conservation.

24 The Energy Project supports the proposed amendments to subsection 10 (a) requiring utilities to fund low-income measures determined by the implementing agency to be cost-effective, consistent with the Commerce Weatherization Manual. The Energy Project also supports the requirement that utilities must fully fund repairs, administrative costs, and health and safety improvements associated with cost-effective low-income conservation. Clarifying that these types of funding are required is consistent with CETA's goal of expanding energy assistance to more customers over time, and with the fact that energy efficiency is defined as a form of energy assistance under the Act.

25 The Energy Project also supports the requirement in proposed WAC 480-109-100(b) that biennial conservation plans under the EIA must include low-income conservation programs "identified pursuant to CETA." As CETA places new emphasis on and new requirements for the provision of low-income programs, it is appropriate to ensure that EIA conservation plans

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incorporate these CETA related efforts in furtherance of the statutory goals to "demonstrate progress" in providing energy assistance.[30]

26 Proposed subsection 10(b)(i) requires a utility to "consider the costs and benefits that accrue to the customer over the life of each conservation measure." This provision appears to be a useful addition to the rule and can provide a tool for utilities to take a broader view of the cost-benefit analysis for low-income measures, for example, through consideration of non-energy benefits. This in turn could allow for the identification of additional low-income measures to be pursued.[31] It may be beneficial to make this more clear by modifying the proposed rule to read: "A utility must consider the costs and benefits, <u>including non-energy benefits</u>, that accrue to the customer over the life of the conservation measure."

27 The Energy Project recommends that the word "may" in subsection 10(c) (formerly subsection 10(b)) be changed to "must" to require utilities to exclude low-income from portfolio cost-effectiveness. The rule as amended would read:

> A utility ~~may~~ <u>must</u> exclude low-income conservation from portfolio-level cost-effectiveness calculations.

28 The current rules already contemplate that low-income conservation need not be included in portfolio-cost effectiveness and low-income programs already have some flexibility for cost-effectiveness purposes. The Energy Project is requesting the change as a way to encourage the provision of additional low-income measures and programs without the limitation of inclusion in the conservation portfolio.

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[30] RCW 19.405.120(1) and (2).

[31] The Energy Project does not understand this subsection to be a modification of any of the cost-effectiveness tests currently in use in EIA proceedings.

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III. CONCLUSION

29 The Energy Project respectfully requests consideration of these issues by the Commission in this rulemaking docket. The Energy Project may have additional recommendations or modifications to these proposals as the rules develop. The Energy Project looks forward to working with the Commission and other stakeholders as this docket moves forward.

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