



NW Energy Coalition

April 27, 2022

Amanda Maxwell
 Executive Director and Secretary
 Washington Utilities and Transportation Commission
 621 Woodland Square Loop SE
 Lacey, WA 98503

State OF WASH.
 UTIL. AND TRANSP.
 COMMISSION

04/27/22 15:44:53

Received
 Records Management

Re: Docket U-210590, Notice of Opportunity to Comment on Commission proceeding to develop a policy statement addressing alternatives to traditional cost of service ratemaking (Phase 1 – Performance Metrics)

Dear Ms. Maxwell:

The NW Energy Coalition appreciates the opportunity to comment on Phase 1 of the Utilities and Transportation Commission's (UTC or Commission) proceeding to develop a policy statement addressing alternatives to traditional cost of service rulemaking. The NW Energy Coalition is a public interest organization focused on ensuring clean and affordable energy for all customers, working across the Pacific Northwest.

We appreciated the robust conversation amongst stakeholders, utilities, and the Commissioners on April 19, 2022, and it is clear that there are many areas of alignment. Generally, there seemed to be agreement that traditional cost of service ratemaking has allowed for utility economic return based largely on capital expenditures and load growth, but our collective interests also include environmental and social impacts that are not adequately valued. Adjusting our regulatory structure to one that is more appropriate to changing policy and technology is necessary, and we are excited to work on these issues in this proceeding over the coming years. Below, we address the questions posed in this Notice to supplement our verbal commentary at the meeting.

1. What goals and outcomes should be pursued through regulation in Washington?

The responsibility of the Commission is to ensure our regulated monopolies are providing fair, affordable, and equitable service to all customers; are complying with evolving social and environmental policies; and that they are doing so with market-like discipline.

Below are some examples of goals and outcomes that the NW Energy Coalition believes should be pursued in the course of regulating our state's energy monopolies. This list is not intended to be exhaustive, but rather illustrative. Those who are served by the regulated—customers—should have safe and equitable access to energy and energy services, and should have understanding and control of the energy bills. The regulated, in turn, should have the opportunity to earn a profit, if such services are provided with minimal environmental impacts and are serving the best interests of customers.

Example Goal	Outcome(s)
Provision of equitable and universal service	<ul style="list-style-type: none"> • Equitable access to power and heat, affordability programs, and clean energy programs • Affordable, reliable service
Minimized environmental impacts and greenhouse gas emissions reductions	Equitable access to clean and efficient power and heat
Understandable provision of affordable energy services	<ul style="list-style-type: none"> • More and more accessible income-qualified programming • Readable energy bills • Customer control over energy bills • Peak load management with customer consent and control • Equitable access to energy efficient programming

2. What are the current regulatory mechanisms, approaches, or processes that are currently influencing or incentivizing utility performance? What behaviors or achievements are currently incentivized?

Traditional cost of service regulation encourages large capital investments in the form of the development of large resources (traditionally fossil resources) and sometimes the building of transmission and distribution system additions. The traditional regulatory framework also encourages utilities to own these resources.

In some cases, these investment needs could be better served by purchased power, distributed resources, and/or non-wires alternatives. However, these solutions both take away some operational control from the utility and the financial incentive to take on this new risk. Even when laws attempt to even the playing field between different types of resources (e.g., RCW 80.28.410 allows a utility to earn a return on a power purchase agreement; RCW 80.28.360 allows a utility to earn a return on electric vehicle supply equipment), institutional inertia¹ may still bias a utility toward a more traditional resource selection. There is not an incentive to be innovative or risk taking – the incentive instead is to make the “prudent” decision, and for the utility to document (and document) on all the inputs that went into making a decision, rather than the output of that decision – was it the best decision for customers?

In Washington, the Energy Independence Act (I-937, 2006) and the Clean Energy Transformation Act (SB 5116, 2019) are substantially influencing utility performance on the acquisition of clean energy, energy efficiency, and other customer side resources, and we are seeing changes and the results of those policies.

¹ e.g., Is there an employee or team dedicated to demand response? Are distribution system evaluations siloed from resource system planning?

Because of the Commission's and utilities' past experiences with energy efficiency in particular, this customer side resource has the most robust (utility and Commission) processes in place to encourage conservation and energy efficiency programs. However, traditional measure-based conservation acquisition has been the focus of these efforts. Utilities have been more hesitant to take up things that differ from these measures (e.g., whole-building based approaches, measures that result in both energy efficient and demand response, measures that result in fuel switching) or where the impacts cannot be directly or immediately "acquired" by the utility (e.g., education that results in customer changes to energy use, code changes that are not supported by utility dollars through NEEA or when the results come in later conservation plan cycles). Risk of not meeting conservation targets and having no incentive for exceeding targets, as well as unclear processes on how to account for certain types of programs (e.g., fuel switching, energy efficiency that interacts with demand response) drives this behavior.

SB 5295 (2021) is also influencing change – this legislation has prompted the Commission, utilities, and stakeholders, to move away from this traditional cost of service model toward one that is more performance-based and in line with more emergent public policy objectives. However, two things are important to note on this point:

- (1) SB 5295 has set up "a cart before the horse" situation regarding performance-based regulation (PBR) and multi-year rate plans (MYRPs): while the legislation has directed a process and policy statement which have spurred this proceeding, it also directs the energy companies to propose multi-year rate plans and performance measures beginning in 2022, and two of the five investor-owned utilities have so far come in for general rate cases in this year. As RMI recently noted in a national round-up report on PBR, "...[T]he Commission and stakeholders must review the merits of PBR applications before they have established a common basis for evaluation."²
- (2) However, it is also true that mechanisms commonly used in PBR have already been used and are available for use in Washington. The Regulatory Assistance Project (RAP) listed in their report and presentation for this proceeding four typical components of PBR: multi-year determination/formulate for allowed revenue (i.e., MYRP); decoupling; earnings sharing mechanisms; and performance metrics linked to outcomes, sometimes with financial incentives (i.e., performance incentive mechanisms or PIMs). All four of these mechanisms have been used in Washington and have been available for use before the passage of SB 5295. For example, many of the utilities have service quality indices (SQIs) that are at least annually reported to help the Commission gauge utility service quality obligations; some of these SQIs are subject to penalty if they are missed and/or if they are missed multiple periods in a row. As another example, most of the regulated utilities have decoupling mechanisms, including some earnings sharing mechanisms.

² Wilson, Gennelle; Felder, Cory, and Gold, Rachel. "States Moving Swiftly on Performance-Based Regulation to Achieve Policy Priorities." March 31, 2022. <https://rmi.org/states-move-swiftly-on-performance-based-regulation-to-achieve-policy-priorities/>

3. In what ways does the Commission’s current regulatory framework (i.e., traditional cost of service regulation) measure utility performance? What additional performance measures should the Commission be tracking?

The NW Energy Coalition recognizes that the regulated utilities report a great deal of information regularly to the Commission. Our organization is most interested in information related to renewable energy acquisition, energy efficiency achievement, SQIs, financial information, annual statistics, and more recently, the information that has been reported in Docket U-200281 related to COVID impacts on customers. We are also interested in further metrics that will be reported as part of the electric utilities’ Clean Energy Implementation Plans (CEIPs) and have recommended, along with The Energy Project, Front & Centered, and the Public Counsel Unit of the Attorney General’s Office, a number of Customer Benefit Indicators (CBIs) that should be regularly tracked and reported.³

For a general customer, it can be challenging to track all of this information and find the data of most interest, especially if the customer is less familiar with utility and the Commission websites and formats for reporting. When Commission staff or other stakeholders have taken the time to synthesize the data (as The Energy Project did in U-200281 with arrearage data, or past Commission work on annual statistics for utilities), this is very useful to our work and to explain background information to customers and other stakeholders. As the Commission moves forward with this process and other related work around website updates and data presentation, it is important to note that the most useful information for the public should be comprehensive, easily accessible on the UTC website, regularly updated, and with little jargon.

4. What metric design principles would need to be considered to develop metrics in order to determine which utility behaviors or achievements should be incentivized?

As we mentioned in our initial comments in this proceeding, a key issue for Phase 1 is how the performance metrics developed in this process are related to other metrics reported in other venues, including the CEIPs that the electric IOUs have developed.

Some principles that we recommend for metric design include:

- Metrics should be understandable to customers and the general public
- If a metric is incentivized, it should be controllable by utility and not duplicative of other requirement
- There is a need for some comparability amongst utilities – there should be some regulatory consistency.
- Metrics should have an indication of directionality – what does “improvement” look like? What direction should the metric be moving in?

³ See UE-210628, re: Avista Clean Energy Implementation Plan, August 20, 2021 comments of The Energy Project, Front and Centered, NW Energy Coalition, and Public Counsel.

5. What questions should the Commission ask related to regulatory goals, desired outcomes, and metric design principles for the next comment period?

A few questions that come to mind at this time:

- How can the Commission present and synthesize the information it receives from utilities in a way that is useful to customers and stakeholder groups?
- Are there reporting procedures that would make it easier for utilities to report data and for the Commission to subsequently synthesize it?
- Should gas and electric utilities be treated differently for purposes of this proceeding?
- What is an amount of incentive or penalty mechanism that sufficiently motivates utility performance on a particular metric?

Other Comments

Below are a few other comments that came up for the NW Energy Coalition during and following the workshop.

PBR Webpage: As we mentioned in our initial comments, we recommend that the UTC develop a clear webpage with information on this proceeding, with resources and other information, similar to how it has done for the various clean energy proceedings. For example, Hawaii’s Public Utilities Commission has a clear website with decisions, presentations, and summaries: <https://puc.hawaii.gov/energy/pbr>. Given that this will be a multiyear process with multiple phases, the normal docket website will quickly become cumbersome to navigate.

More Background Information: The regulation of utilities is a complicated and nuanced topic, and if the Commission is interested in bringing more and varied stakeholders into these processes, more background and level-setting information would be useful.

- In this proceeding, the RAP report provides a good background, and we appreciate the Commission for making it available. The Commission could link to other useful guides and background information, such as RAP’s *Electricity Regulation of Utilities in the U.S.*⁴
- During the workshop, a UTC Youtube video on energy rates was mentioned.⁵ This resource is a useful overview, but it seems underutilized and is out of date (e.g., discusses the high costs of renewable energy versus traditional thermal energy, does not mention energy efficiency). Updating it to be briefer, or in segments, and with updates for current policy would be useful.
- Some other public utilities commissions have resources more aimed at the general public regarding ratemaking and rate cases, from which the UTC could draw; e.g.:
 - From North Dakota’s You Should Know resources: <https://www.psc.nd.gov/docs/ysk/PUD-2-Participation-and-process.pdf>
 - California PUC’s overviews: <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-rates/general-rate-case> and https://www.puc.pa.gov/general/consumer_ed/pdf/Ratemaking_Complaints.pdf

⁴ See <https://www.raponline.org/wp-content/uploads/2016/07/rap-lazar-electricity-regulation-US-june-2016.pdf>

⁵ See https://www.youtube.com/watch?v=oQ4wdCL9mzg&ab_channel=WAUTC

- Minnesota PUC overview and FAQ: <https://mn.gov/puc/activities/financial-analysis/general-rate-case/>
- New Hampshire PUC presentation on ratemaking, at a slightly deeper level: <https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/2020-01/20191004-puc-presentation.pdf>
- There are a number of “Utility 101”-type resources (e.g., Initiative for Energy Justice⁶); while the Commission may not have the capacity to develop their own resources at this time, linking to a variety of other resources could be a useful first step. The NW Energy Coalition is currently updating our website’s Energy 101 section, and are happy to work in collaboration with UTC staff on finding resources that may be useful to share with customers and stakeholders.

Open Discussions: It is important that stakeholders be able to engage collaboratively with Commission staff on this topic. Commission staff has expertise in this area, and it is in the Commission's best interest that stakeholders and Commission staff understand each other’s priorities in this docket. We recommend that the Commission clarify that, while there may be broad discussion of PBR in adjudicated dockets, it expects Commission staff to engage in this docket while avoiding ex parte communications, and to discuss proactively with Commission staff how to best avoid ex parte communications while still engaging productively in this docket. Alternatively, the Commission can direct Commission staff to host its own workshop on this topic without the Commissioners present.

Thank you for the opportunity to comment.

Best,

/s/

Amy Wheelless
Senior Policy Associate
NW Energy Coalition

⁶ See: <https://iejusa.org/utilities-101/>