BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

Relating to the Commission's Proceeding to Develop a Policy Statement Addressing Alternatives to Traditional Cost of Service Ratemaking	DOCKET U-210590

COMMENTS OF PUBLIC COUNSEL

April 27, 2022

I. INTRODUCTION

1. The Public Counsel Unit of the Washington Attorney General's Office (Public Counsel) files these comments in response to the Washington Utilities and Transportation Commission's (Commission or UTC) Notice of Virtual Workshop dated April 7, 2022 (Notice). The purpose of the current docket is to provide guidance on alternatives to traditional cost of service regulation, including performance measures or goals, targets, performance incentives, and penalty mechanisms. As stated in the Notice, Phase 1 of this proceeding will establish design principles, regulatory goals, and outcomes related to performance-based regulation (PBR), while a subsequent stage of Phase 1 will identify performance metrics.

2. Public Counsel provides comments below related to the Notice questions. These written comments supplement the oral comments made by Public Counsel representatives during the April 19, 2022, workshop. Public Counsel reserves the right to modify its positions or make additional arguments following additional discussions, analyses, and reflection.

3. Public Counsel wishes to emphasize the important role that tracking metrics play in enhancing transparency and supporting effective, efficient utility regulation. Tracking metrics provide a valuable low-cost, low-risk way to monitor and guide utility performance. Metrics[1] are also the building blocks to full performance incentive mechanisms (PIMs), helping to establish vital baseline data. At the same time, metrics also provide regulators with important information regarding energy policy goals, such as equity, even where metrics never become full PIMs with financial incentives. Consequently, a broad range of metrics should be established to provide

[1] Metrics refer to data and information. By themselves, metrics do not have targets or financial incentives. The addition of targets and financial incentives results in a full performance incentive mechanism. Metrics that are not part of PIMs can also be referred to as "tracking metrics."

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regulators with data regarding important regulatory goals, including at least one metric for each of the goals Public Counsel identifies in the following section. Establishing a wide range of tracking metrics now provides the opportunity and necessary data foundation to establish future performance incentive mechanisms where warranted, avoiding the need to spend additional months or years later to collect baseline data.

4. Public Counsel is mindful of the desire to reduce administrative burden on all parties. However, this objective must be balanced with the requirement that the Commission has adequate information to regulate effectively, particularly as we move into a new regulatory paradigm that may rely more on outcomes than on inputs. Further, developing a suite of well-defined, targeted tracking metrics now could avoid the need for intervenors to ask for the same data through discovery in a rate case, streamlining the rate case process. Establishing a systematic reporting process for key metrics now is also apt to be more efficient than for the utilities to collect and assemble the data to respond to one-off requests in the future.

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

5. Public Counsel believes that a key outcome of this docket will be clarity and guidance to stakeholders regarding how performance-based regulation will take place in Washington. In doing so, the Commission should identify guiding factors or regulatory concepts that must hold true regardless of the form of regulation. Public Counsel suggests that those concepts include lowest reasonable cost resource planning, used and useful rate base, known and measurable costs, and gradualism.

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6. In its November 2021 comments, Public Counsel identified priority goals that it believes should be addressed (as previously identified in Docket U-180907). These goals with the addition of specific desired outcomes are as follows:

	Goals	**Outcomes**
1	Affordability	• Low energy burden for low-income customers, low-income seniors, vulnerable populations, and highly-impacted communities, as measured on a total energy cost basis. • Affordability of energy relative to other consumer goods (e.g., percentage increases in bills relative to general inflation). • Bill stability, with no sudden adverse changes in bills. • An allowed return on equity that reflects concurrent market conditions and is commensurate with the regulatory framework (e.g., reflects reduced risk where greater regulatory certainty or expedited cost recovery is provided).
2	Utility Cost Control	• Utility procurement of least cost resources that meet the state's energy and emissions policies. Such resources include demand side resources and procurement from third parties. • Well-defined cost-effectiveness methodology for the transparent analysis of resource value. • Prudent and efficient utility management through use of proper planning processes, risk analysis, and prioritization of projects. This outcome applies to investments identified in utility Clean Energy Implementation Plans as well as distribution system investment plans. • Allowed utility return that is commensurate with risk profile, cost of raising capital, and concurrent market conditions.

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3	Reliability	• High level of service reliability at reasonable cost. Service quality should be measured not only through SAIDI and SAIFI, but also in terms of momentary outages (MAIFI), outage duration (CELID), multiple interruptions (CEMI), service availability (ASAI), worst performing circuits, locational reliability, equity, and the number of customers whose service falls below a defined minimum standard. • Equal levels of service for vulnerable populations and highly-impacted communities, identifying areas where service improvements are needed. • Demonstrated improvements in reliability from targeted investments (i.e., demonstration of value for money). • Reduction in outages due to vegetation and other major service disruption sources.
4	Safety	• Utility employee safety. • Public safety (including wildfire risk mitigation and natural gas distribution network safety). • Reduction in utility-caused wildfires and impacts, as well as sparks and ignitions that do not result in wildfires.
5	Community Equity and Engagement	• Reasonable sharing of costs and benefits of the current and future electric system across customer groups, with equal access to products, service, information, and opportunities to control energy bills. • Utility active engagement of communities, particularly low-income, highly-impacted communities, and vulnerable populations, such that these communities' input is considered in utility decision-making processes.
6	Capital Market Access	• Utilities' financial integrity and access to capital on reasonable terms.
7	Advancing Washington's Public Policy Goals	• Must achieve state's energy policy goals, particularly the Energy Independence Act, Clean Energy Transformation Act (CETA), the Climate Commitment Act, development of electric vehicle infrastructure, and other relevant goals.

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

7. The Commission has long used a hybrid approach to ratemaking. While the Commission follows cost-of-service regulation, it also allows tracking mechanisms, decoupling, use of end-of-period rate base valuation, multiyear rate plans (approved even before SB 5295 passed in 2021), forward calculations of power costs, etc. Many of these strategies soften the impact of a rigid cost-of-service regulatory framework and address many of the traditional criticisms, such as utilities' concerns regarding regulatory lag and, to some extent, concerns regarding the throughput incentive. At the same time, many of the core components of cost-of-service regulation remain.

8. Under cost-of-service regulation, utilities have an incentive to increase their rate base as long as their rate of return exceeds the market cost of capital. As explained in the report by the Regulatory Assistance Project, utilities have an incentive to "maintain and increase utility-owned infrastructure because of the traditional cost of service business model. Utilities are also discouraged to promote non-utility investments (e.g., customer-owned distributed generation, power purchase agreements, etc.) or non-capitalized operational solutions (e.g., third-party software platforms)."[2]

9. The throughput incentive is also still relevant, even though Washington utilities operate under revenue decoupling mechanisms. The incentive to increase sales remains (albeit to a lesser extent) because reductions in sales often reduce the need for additional capital investments.

[2] Elaine Prause and Jessica Shipley, *Performance-Based Regulation: Considerations for the Washington Utilities and Transportation Commission* 5 (2022) (filed Mar. 2, 2022 in Docket U-210590).

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10. Finally, although utilities may benefit from cost reductions between rate cases, the opportunity to increase profits through cost reductions is muted by the earnings sharing requirements of the utilities' revenue decoupling mechanisms. Under the earnings test, if the Company earns more than its authorized rate of return, ratepayers receive all or a portion of the over-earnings. While this prevents ratepayers from paying rates that result in excessive profits, utilities may not seek to reduce costs in an effort to avoid overearnings.

11. The effect of the current regulatory framework is that utilities have incentives to:

- Favor capital investments over operational expenses;
- Favor utility-owned solutions over third-party solutions, even if alternatives may be less expensive;
- Favor "tried and true" utility solutions over innovative, lower-cost alternatives; and
- Undertake additional investments in its system and file frequent rate cases when costs exceed revenues.

12. The framework relies largely on regulatory oversight and the prospect of prudence disallowances to ensure that costs are reasonable, which requires that regulators review and analyze large amounts of utility data. Transitioning to a regulatory framework that is more focused on outcomes than inputs does not relieve the regulator of its oversight role. Rather, the timing of that oversight and information provided by the utility will be different. In some instances, workload may actually increase because the regulator must review a proposal when it is incomplete, and then revisit the proposal to determine whether it was properly implemented. Public Counsel believes that key tracking metrics will facilitate greater transparency into not only what the utility has spent, but also whether customers are receiving value for their money.

C. 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?

13. The current regulatory framework measures utility performance primarily in terms of service quality and reliability. Each electric utility must file reports with the Commission that quantify the utility's performance across a range of indicators (e.g., customer satisfaction, customer services, and operations services), as well as reliability statistics, such as System Average Interruption Duration Index (SAIDI) and System Average Interruption Frequency Index (SAIFI) pursuant to WAC 480-100-398.[3] The utilities may also have service guarantees (e.g., missed appointments or outages exceeding a certain duration) that they report on. Natural gas utilities must report on their gas distribution systems in accordance with WAC 480-93-200.

14. In addition, reports are provided to the Commission on the following:

- Energy and emissions intensity (per the requirements of WAC 480-109-300).
- Annual renewable portfolio standard reports and energy conservation reports (pursuant to RCW 19.285.070 and WAC 480-109-210).
- Arrearages (by zip code) and low-income assistance programs (pursuant to RCW 19.405.120(4)).

Although these reports contain useful information, they do not provide the full picture of utility performance. For example, although the utilities report reliability data, the cost of achieving this reliability is not readily apparent. Instead, costs are generally examined separately in utility rate cases. Further, variation in utility performance across communities is often

[3] Note that no reports appear to be available for Puget Sound Energy on the UTC website after 2017.

obscured by statistics that focus on system-wide averages.

15. In the coming months, Public Counsel intends to develop proposals for additional reporting metrics to help improve transparency and a holistic view of utility performance. At this point, we offer the following potential metrics as a starting point for discussion:

Goals	**Metrics**
Affordability	• Average energy burden (energy bills as percent of income) for residential customers. • Average energy burden for low-income customers, low-income seniors, vulnerable populations, and highly-impacted communities. • Percentage increases in energy bills relative to general inflation. • Annual variation in energy bills. • Ratio of customers on arrearage management plans to customer disconnections, by month. • Affordable transition to clean energy for all customers, including an equitable distribution of costs and benefits across all customers, but with particular attention to low-income customers, vulnerable populations, and highly impacted communities.
Utility Cost Control	• MWh and MW of demand side resources and non-utility renewables. • Average cost of demand-side resources and non-utility renewables. • Cost savings from utilization of cost-effective non-wires solutions. • Base rate (i.e., excluding fuel) increases relative to inflation.
Reliability	• SAIDI and SAIFI in highly-impacted communities and vulnerable populations relative to system-wide. • Equity – reliability by geography, income, highly-impacted community designation, vulnerable population designation, and other defined benchmarks. • Average annual cost of reliability improvements relative to average annual benefits.

	• Momentary Average Interruption Frequency Index (MAIFI). • For worst performing circuits, cost of investments in last 10 years and changes in CPI99 (composite index of reliability excluding major events) and CPI105 (composite index of reliability including major events). • Number of customers whose service falls below a defined minimum standard, by zip code. • Customers Experiencing Long Interruption Duration (CELID). • Customers Experiencing Multiple Interruptions (CEMI). • Average Service Availability Index (ASAI). • Frequency and duration of outages by cause.
Safety	• Natural gas distribution network major safety incidents (e.g., explosions). • Number of utility-caused wildfires. • Cost (utility and customer) of utility-caused wildfires. • Number of utility-caused sparks and ignitions that do not result in wildfires. • Average annual cost of wildfire mitigation efforts relative to average annual benefits.
Community Equity and Engagement	• Percentage of customers participating in energy efficiency and conservation by customer class, highly-impacted community designation, vulnerable population designation, and low-income designation. • Utility active engagement of communities, particularly low-income, highly-impacted communities, and vulnerable populations, such that these communities' input are considered in utility decision-making processes.

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

16. Equity must guide metric design. Public Counsel recommends that data for each metric be collected in a way that does not obscure differences between system-wide average outcomes and outcomes for customers in low-income, highly-impacted, and vulnerable communities.

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17. Public Counsel recommends standardizing metric definitions and measurement methodologies as much as possible across utilities and over time. For example, when calculating reliability metrics, utilities should follow the same version of the IEEE-1366 reliability standards, the definition of "major events" should be the same, and data recording practices should be similar. For all metrics, the impact of any significant changes to data collection or measurement processes should be explicitly recorded and their impacts discussed. Likewise, the underlying data and measurement practices should be transparent and publically available,[4] and the results verifiable by an independent auditor.

18. Data collected through metrics can be used to establish baselines and determine how a utility is performing relative to its historical baseline and, where appropriate, relative to other utilities. Monitoring these metrics over time will allow regulators and stakeholders to identify areas where improvement is needed and areas where the utility is performing well. For areas where a utility is performing well, full PIMs with incentives are likely not needed.

19. Not all metrics should be converted into full PIMs with financial incentives, but this does not mean that the metric itself is unnecessary. For example, energy burden is dependent on a range of factors, some of which are outside the utility's control (e.g., customer income). Thus, it may be inappropriate to provide financial incentives for energy burden, but this does not mean that energy burden is irrelevant. Instead, increases in energy burden may highlight the need to increase assistance programs. Public Counsel therefore urges the Commission to consider

[4] For example, in Hawaii, the utilities' websites provide public access to performance metrics, including the underlying data in spreadsheet form and a description of the methodology for each metric. *See,* Hawaiian Elec., *Performance Scorecards and Metrics*, https://www.hawaiianelectric.com/about-us/performance-scorecards-and-metrics (last visited Apr. 27, 2022).

metrics as a useful tool for monitoring key energy policy objectives, and not simply for the purpose of establishing utility PIMs in the future.

20. Although these comments are primarily focused on metric design principles, rather than on principles for full PIMs with incentives, we offer the following additional comments regarding accompanying metrics with incentives:

- For a utility's core responsibilities, penalties can effectively address shortcomings. For example, providing good customer service and safe, reliable energy service are core utility responsibilities. A utility does not need financial rewards to provide adequate customer service or safe and reliable utility service, but it may be appropriate to apply penalties if utilities fail to meet pre-determined benchmarks measuring customer service and reliability.
- Incentives may be appropriate where utility behaviors, actions, or programs would provide net benefits to customers
- Incentives should address items that the utility would not be expected to undertake absent an incentive. Utilities should clearly explain the barriers that prevent them from undertaking such items and provide evidence and information to confirm and establish those barriers.
- Goals should be set that are measurable and actionable. The goal of the incentive mechanism and determining whether a utility meets or fails the associated target should both be clear. PIMs should be designed to support least reasonable cost planning and acquisition.

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- The Commission should consider unintended consequences of incentives. For example, it may not be appropriate to provide financial incentives for safety metrics to avoid incentives for under-reporting of safety issues.

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

21. Public Counsel recommends that the workgroup discuss what tools could be used to present metric data in the most easily-accessible, efficient, and transparent manner possible (e.g., utilities hosting a webpage that provides data dashboards with access to underlying data and links to reports filed in various dockets). Additionally, Public Counsel suggests that the workgroup discuss what data are or are not readily available, and what level of effort might be required to provide data that are not readily available.

Dated this 27th day of April 2022.

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