

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

In the Matter of the Notice of Inquiry Into
the Adequacy of the Current Regulatory
Framework Employed by the Commission
in Addressing Developing Industry
Trends, New Technologies, and Public
Policy Affecting the Utility Sector

DOCKET U-180907

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, December 17, 2018. The Energy Project works with
Community Action Partnership Agencies and other organizations that provide rate assistance and
energy efficiency programs to low-income electric and natural gas service customers. The
Energy Project is a frequent party in general rate cases and other significant dockets before the
UTC involving Washington investor-owned utilities when energy affordability, energy
efficiency, and customer service policies are at issue.

2 The Energy Project supports the initiation of this docket as means to bring all
stakeholders and the Commission together in a process to conduct a fair and thorough
examination of the important emerging issues identified in the Commission Notices. The issues
under discussion in this docket are important to The Energy Project because of the potentially
significant impact that changes to Washington's regulatory framework could have on low-
income customers of Washington's regulated utilities.

II. COMMENTS OF THE ENERGY PROJECT

A. Problems from the Low-income Customer Perspective

3 The Energy Project supports the Commission's decision to begin its analysis with an identification of the problem or problems to be addressed. The stated purpose of this proceeding is to examine the adequacy of Washington's current regulatory framework in addressing developing industry trends, new technologies, and public policy affecting the utility sector. Re-examining the framework of utility regulation is a complex matter with potentially significant consequences for all stakeholders. The Commission and parties should avoid the risk of proceeding on the basis of generalized or pre-determined assumptions, policy preferences or outcomes. This review should be based on a clearly articulated common understanding of the problem or problems that need to be addressed. Identifying the specific industry trends, new technologies, and public policies of concern is critical to that process. Having a clear and specific problem statement is essential to creating an appropriate focus and targeted goals for this docket. In addition, conclusions and policy determinations in this docket should be based, to the extent possible, on analysis of the underlying objective facts and data.

4 The ultimate purpose of regulation is to protect customers and the public interest. The Energy Project believes it is, therefore, important to view the question of problem identification from the customer perspective. What problems to customers face? What customer needs are not being met by the current regulatory framework? In what ways is the public interest not being served by that framework? It is particularly crucial from TEP's perspective that in looking at

alternative regulatory options, we not lose sight of the specific needs of underserved, low-income, and front-line communities.

1. Affordability and Energy Burden are Serious Problems in Washington

Large percentages of electric and natural gas customers in Washington face serious economic challenges. In the case of Puget Sound Energy (PSE), for example, approximately 20 percent of PSE customers, around a quarter of a million people, have incomes at or below 150 percent of the Federal Poverty Level (FPL).¹ A 2015 Eastern Washington University study of Avista's service territory found that over 51,000 households (22.5 percent) earned income at or below 125 percent of the FPL, making them eligible for Avista's LIRAP bill assistance program.² Over 85,000 Avista households (37.5 percent) were at or below 200 percent of FPL, the level that qualifies for low-income weatherization programs.³

Avista recently provided an analysis of its customers using the ALICE Project approach.⁴ ALICE calculates a Household Survival Budget, representing the bare minimum cost to live and work in the modern economy.⁵ Using the ALICE analysis, based on 2016 data, an average of 45 percent of Avista households (over 316,000 total) in the nine counties served by Avista have incomes at or below the minimum Household Survival Budget. In Adams, Grant, and Whitman

¹ Testimony of Suzanne Sasville on behalf of PSE, PSE 2017 GRC, Dockets UE-170033/UG-170034, Exh. SMS-1T at 3:7-10; Exh. SMS-3. Customers at or below 150 percent of FPL are eligible for PSE's HELP bill assistance program.

² An Estimate of the Number of Households in Poverty Served By Avista Utilities in Washington State (EWU Study), Brian Kennedy MS, D. Patrick Jones Ph.D, Eastern Washington University, Institute for Public Policy and Economic Analysis, May 2015, p.3, Table 2.

³ *Id.*, p. 5, Table 5.

⁴ ALICE (Asset Limited, Income Constrained, Employed) is a United Way project designed to identify individuals that have incomes above the FPL yet struggle to afford basic household necessities. <https://www.unitedwayalice.org/washington>

⁵ Avista Utilities, Report on the Line Extension Allowance Program (LEAP) Pilot, November 9, 2018.

counties over 50 percent of households are at or below the ALICE minimum, representing over 50,000 households.

7 Another analytic tool, the Washington Self-Sufficiency Standard (WSSS), developed at the University of Washington, provides a useful framework for assessing income insecurity in the state, fleshing out the picture created by Federal Poverty Level data. The standard describes how much income is needed by families to make ends meet without private or public assistance, looking at the basic needs for a working family: housing, child care, food, health care, transportation, and other items including taxes. The 2015 WSSS report states:

For most workers throughout Washington State the Self-Sufficiency Standard shows that earnings well above the official Federal Poverty Level are nevertheless far below what is needed to meet families' basic needs.⁶

8 The 2015 WSSS finds that for a three-person household with one adult, one preschooler, and one school-age child, the income required for self-sufficiency in Thurston County is 264 percent of FPL, in South King County 327 percent, and in Kittitas County, 240 percent.

9 These data reflect that for many customers and households, affordability of utility service is a likely to be substantial problem. Even a relatively small increase in the monthly bill will be difficult to absorb without cutting back on other necessities. One measure of affordability is to look at “energy burden,” the percent of the household budget dedicated to energy costs. The threshold beyond which energy is no longer considered affordable is when energy costs exceed 6 percent or more of household income. Middle- and upper-income customers typically pay a

⁶ PSE 2017 GRC, Dockets UE-170033/UG-170034, Revised Response Testimony of Shawn Collins, Exh. SMC-1Tr, at 4 (citing and discussing WSSS). <https://www.washingtonlawhelp.org/resource/the-self-sufficiency-calculator-for-washington>.

much lower percentage, and the disparity is particularly extreme for customers living at 50 percent or less of Federal Poverty Level. One study of data for all U.S. counties shows that customers at this income level in Washington pay 20 percent or more of their monthly income on energy. Examples include a 22 percent energy burden in Yakima County, 20.8 percent in Whatcom County, 20.5 percent in Kitsap County, and 22.7 percent in Spokane County.⁷ In Avista's service territory, as of 2015, over 18,000 households were at or below 50 percent of FPL.⁸

10 From the low-income customer perspective, recent developments in the regulatory environment have contributed to the affordability issues. The frequency of rate cases has placed increased pressure on household budgets. In addition, in some instances, the need to address environmental goals has placed upward pressure on rates, impacting low-income customers more. While ongoing efforts have been undertaken to increase low-income bill assistance and weatherization in response to these pressures, as discussed below, existing programs do not a cover a large proportion of Washington customers.

2. Limited Reach of Bill Assistance Programs

11 Bill assistance programs are available for all customers of Washington investor-owned utilities. These include federal LIHEAP, ratepayer funded programs such as PSE HELP and Avista LIRAP, and charitable funds such as PSE Warm Home and Avista Project Share. While

⁷ High Utility Costs Force Hard Decisions For The Poor, Inside Energy, May 8, 2016, Dan Boyce and Jordan Wirfs-Brock, <http://insideenergy.org/2016/05/08/high-utility-costs-force-hard-decisions-for-the-poor/>. The cited data is derived from an interactive map of all U.S. counties presented as part of the article.

⁸ EWU Study, p. 3, Table 1 (Estimates of the Number of Households in Avista's Service Area at or Below 50% FPL).

these programs provide substantial help to customers, even with outreach by the utilities and social service agencies and others, a basic problem is that the majority of low-income customers are not participants in the programs. For PSE, for example, only about 13-14 percent of eligible low-income customers participate in PSE's HELP program.⁹ Recent data for Avista reflects that approximately 27 percent of eligible households are served by Avista's LIRAP program.¹⁰ While there are ongoing efforts in the context of rate cases and other dockets to increase bill assistance funding as rates increase, these resources do not reach the majority of customers. In order to make energy affordable for all eligible low-income customers it is critical to set bold and meaningful goals to achieve full participation in LIHEAP and IOU funded energy assistance programs.

3. Weatherization

12

Weatherization programs are offered by all the regulated utilities to their low-income customers. While in most cases, the programs are well-run and supported, as with bill assistance, however, the reach of these IOU programs needs to be broader. Increased investment in all cost-effective weatherization is needed. Higher energy burdens for low-income customers often result from inefficient housing stock, and limited access to energy efficiency programs. Renters have may have little or no control over the appliances and heating and cooling systems used in their homes.

⁹ PSE 2017 GRC, Dockets UE-170033/UG-170034, Revised Response Testimony of Shawn Collins, Exh. SMC-1Tr, at 3:3-10.

¹⁰ Avista 2017 GRC, Docket UE-170485/UG-170486, Testimony of Shawn Collins,, Exh. SMC-1T at 3:4-17 (citing EWU Study).

13 Investment in expanding utility low-income weatherization programs can be a powerful
tool in moving toward on-going permanent reductions in energy usage. Long-term benefits
include advancing equity for low-income communities, reductions in household energy burdens,
and system- and societal benefits of enhanced demand side resources.

4. Limited access to renewable energy.

14 An emerging problem area for low-income customers is access to renewable energy
resources. With the increasing availability and deployment of renewable resources, it is
important that low-income customers and communities have the opportunity to participate and
benefit from those new resources.

15 There has been some recognition of this need. The Commission's policy statement on
electric vehicles supply equipment states that "utility portfolios must include a carve-out that
provides direct services to low-income customers."¹¹ Utilities have done so. State legislation on
community solar requires a report on the extent to which projects are being deployed in low-
income and moderate-income communities.¹² These are positive early steps but more is needed
to avoid developing a "green divide" under which the costs of renewables are borne by low-
income customers, but where they see few of the benefits.

16 Recent research has demonstrated that low-income communities are often on the front-
lines of negative environmental impacts. The UW Department of Environmental &
Occupational Health Sciences (DEOHS) has developed an interactive tool that ranks the

¹¹ *In the Matter of Amending and Adopting Rules in WAC 480-100 Rulemaking to consider policy issues related to the implementation of RCW 80.28.360, electric vehicle supply equipment*, Docket UE-160799, Policy and Interpretive Statement, ¶ 85 (June 14, 2017).

¹² ESSB 5939, Section 6(30)(a)(iv)(A). The report is due on November 1, 2019.

cumulative risk each neighborhood in Washington faces from environmental factors that influence health outcomes. The Washington Environmental Health Disparities Map uses state and national data to map 19 indicators of community health, including exposure to diesel emissions, proximity to hazardous waste facilities, housing affordability and race. The map pinpoints where living and economic conditions combine with pollution to contribute to inequitable health outcomes and unequal access to healthy communities.¹³ Providing more equitable access to renewable resources can help low-income communities address this issue.

B. Principles

1. Equity

17 The Fourth National Climate Assessment (NCA or Climate Assessment) was issued late
in 2018, pursuant to a congressional mandate to provide to Congress and the President every four
years, a report that, inter alia, “analyzes the effects of global change on the natural environment,
agriculture, energy production and use, land and water resources, transportation, human health
and welfare, human social systems, and biological diversity.”¹⁴

18 In its Summary Findings, the Climate Assessment states the following regarding impacts
of global warming on communities:

The impacts of climate change are already being felt in communities across the country. More frequent and intense extreme weather and climate-related events, as well as changes in average climate conditions, are expected to continue to damage infrastructure, ecosystems, and social systems that provide essential benefits to communities. Future climate change is expected to further disrupt many areas of life, exacerbating existing challenges to prosperity posed by aging

¹³ The tool is available at: <https://fortress.wa.gov/doh/wtn/WTNIBL/>.

¹⁴ Fourth National Climate Assessment (2018) (NCA), <https://nca2018.globalchange.gov/chapter/front-matter-about/>.

and deteriorating infrastructure, stressed ecosystems, and economic inequality. *Impacts within and across regions will not be distributed equally. People who are already vulnerable, including lower-income and other marginalized communities, have lower capacity to prepare for and cope with extreme weather and climate-related events and are expected to experience greater impacts.* Prioritizing adaptation actions for the most vulnerable populations would contribute to a more equitable future within and across communities. Global action to significantly cut greenhouse gas emissions can substantially reduce climate-related risks and increase opportunities for these populations in the longer term.¹⁵ (emphasis added).

19 As this statement highlights, low-income energy customers of Washington regulated utilities are likely to experience, and are already experiencing the greatest impacts of climate change. The Pacific Northwest section of the NCA includes the following “Key Message” regarding frontline communities:

20 “Communities on the front lines of climate change experience the first, and often the worst effects. Frontline communities in the Northwest include tribes and indigenous peoples, those most dependent on natural resources for their livelihoods, and the economically disadvantaged. These communities generally prioritize basic needs, such as shelter, food, and transportation; frequently lack economic and political capital; and have fewer resources to prepare for and cope with climate disruptions. The social and cultural cohesion inherent in many of these communities provides a foundation for building community capacity and increasing resiliency.”¹⁶

21 Ensuring that any regulatory alternatives considered in this proceeding are equitable in their impacts on low-income and vulnerable communities in Washington should be a central

¹⁵ NCA, Summary of Findings, <https://nca2018.globalchange.gov/>.

¹⁶ NCA, Chapter 24 Northwest, Key Message 5, <https://nca2018.globalchange.gov/chapter/24/>.

principle of these discussions.

2. Preserving Fundamental Regulatory Principles.

a. Statutory Framework

22 Washington state law provides a set of strong regulatory principles which are designed to protect the interests of the public and of utility consumers.

- Regulation must seek to advance the public interest. The regulator must regulate “in the public interest.” RCW 80.01.040.
- Utility rates must be fair, just, reasonable, and sufficient. RCW 80.28.010 and 020.
- Utility rates may not be unjustly discriminatory nor unduly preferential. RCW 80.28.020
- Utility customer service practices must be just, and reasonable. RCW 80.28.010
- Service must be adequate, safe, and sufficient. RCW 80.28.010
- Regulated monopolies have an “obligation to serve.” RCW 80.28.110

23 This underlying framework was recognized by the Commission in its initial Notice of Workshop:

RCW 80.01.040 authorizes the Washington Utilities & Transportation Commission (Commission) to regulate in the public interest the rates, services, facilities, and practices of investor-owned utilities within Washington State. *The Commission’s paramount objective is to secure for the public safe, adequate, and reliable utility services at just, fair, reasonable, and sufficient rates. (emphasis added).*¹⁷

24 As a general matter, Washington’s current regulatory framework has been largely successful in achieving these statutory goals to date. The adequacy of the existing framework and of alternative approaches reviewed in this proceeding should be measured against adherence to these statutory requirements.

¹⁷ Notice of Inquiry, November 9, 2018, at 1.

25 In reviewing the adequacy of the current regulatory framework, it is important to keep in
mind certain fundamental principles which remain applicable to today's environment.

26 Electric and natural gas service are essential services. Washington households rely upon
these services for the maintenance of the basic functions of everyday life in modern society ---
heating, cooking, lighting, power for medical and communications devices, and many other uses.
Consistent with this, the Washington legislature has found that "electricity is a basic and
fundamental need for all residents."¹⁸ Ensuring that "universal service" is protected for these
essential energy services for Washington residents is a fundamental public policy goal.

27 In Washington, these energy services are provided by monopoly for-profit utilities to
approximately half the population of the state. Utilities have an obligation to serve customers in
their service territory who meet the requirements for service. Privately owned for-profit
monopolies that provide an essential service to the public are affected with the public interest
and therefore subject to pervasive regulation to protect the public. Private utilities have the right
to the opportunity to earn a reasonable return on investment, but, just as in the private sector,
there is not a legal guarantee of investor profit. The current regulatory framework builds in an
incentive for the utility to operate efficiently so as to be able to earn its authorized return.

28 As a practical matter, customers of Washington IOUs currently have no choice about
where to obtain their utility service. In the absence of effectively competitive market options for
these essential services for residential and low-income customers, utility regulation acts as a
surrogate for competitive restraints on price, service quality, and customer service. The utility

¹⁸ RCW 19.29A.005; RCW 80.28.074 (declaring state policy to preserve affordable electric and natural gas service, maintain and advance the efficiency and availability of those services).

regulator must have the expertise, resources, independence and legal authority to be an effective protector/watchdog for the customers.

29 These fundamental principles reflect continuing economic realities and policy values and remain part of the framework that protects customers and the public interest in Washington. The assessment of alternative regulatory mechanisms should include an evaluation of the extent to which these principles are maintained.

C. The Energy Project Comments In Response to Workshop Discussion

30 Much of the discussion around the need for an examination of the current regulatory structure is couched in generalities contrasting generalized change factors with traditional structures. Its important, therefore, for the Commission to look at the problem statements in this docket through an objective lens, based on facts and data. As one example, data in recent rate case filings in Washington indicates that some investor-owned companies have been earning, or in some cases overearning, their authorized rates of return. This type of information should be considered in evaluating the adequacy of the current ratemaking structure.

31 The Commission’s current ratemaking practice and the existing regulatory framework should be looked at accurately, rather than being simplistically characterized as “traditional ratemaking.” The Commission no longer uses a strictly traditional historical test-year method, but has used a “modified historical test-year” approach for several years. Over the past two decades, the Commission has adopted a roster of mechanisms designed to streamline or update utility cost-recovery. Purchased gas adjustments (PGAs) on the gas side and power cost adjustments (PCAs) on the electric side have been in use for many years, allowing the utilities to respond quickly to commodity cost changes. Use of a “power-cost only rate case” (PCORC) has

been approved. Likewise, deferred accounting has been permitted in appropriate cases for many years. Special cost-recovery mechanisms have been allowed for natural gas pipeline replacement. Other regulatory changes that have been approved include decoupling, end-of-period rate base, and multi-year rate plans. The durability and flexibility of the regulatory structure was reflected in its ability to respond to the Western Energy Crisis of 2000-2001 and the Great Recession at the end of the same decade. This is not to say that there is no room for change or improvement, but that the actual capabilities and performance of the existing system should be recognized and evaluated as part of the discussion in this docket.

32

Another way to approach the “problem” issue is to ask “what is not happening?” in Washington as a result of the current regulatory framework. Arguing for regulatory change to advance important public policy goals should not overlook the achievements which are already occurring. On renewables, Washington utilities are meeting or exceeding the targets established by I-937, the Energy Independence Act. Utilities are meeting and exceeding energy efficiency goals under I-937 as well. Washington is making substantial progress towards moving beyond coal, with the scheduled phase out of the Centralia plant, and progress with regard to Colstrip. Utilities are also engaged in electric vehicle deployment, community solar projects, evaluating utility scale solar, and wind development. Both PSE and Avista have embarked upon the replacement of their existing meters with Automated Meter Infrastructure on a system-wide basis.

33

All of these efforts have been accomplished within the current regulatory framework. Again, this is not meant to say that there is no room for improvement or new approaches. The

point is rather that the problem identification process in this docket should recognize existing progress, identify specifically what goals are not being met, what specific regulatory impediments exist, and how alternatives would better meet those goals. Ultimately this will help best determine what changes to the regulatory framework are needed.

III. CONCLUSION

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