

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

RULEMAKING TO CONSIDER
PAPERLESS BILLING AND NOTICES
FOR ELECTRIC AND NATURAL GAS
CUSTOMERS

DOCKET NO. U-100523

THIRD COMMENTS OF PUBLIC COUNSEL

September 10, 2010

I. INTRODUCTION

- I.* Pursuant to the Commission's Notice of Opportunity to File Written Comments and revised draft rules issued August 9, 2010, Public Counsel respectfully submits these comments. These comments build upon our previously-filed Initial and Second Comments. Again, Public Counsel urges the Commission to proceed in this rulemaking with caution. While a paperless billing program can be beneficial to customers, it may also reduce customers' notice of critical information about their utility service and infringe on customer control and privacy of personal data and information. These comments first address the Commission's draft new section on electronic information. They then address the new proposed amendments to WAC 480-90/100-153 and -178.

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II. COMMENTS

A. DRAFT NEW SECTION WAC 480-90/100-XXX -- Electronic Information

1. WAC 480-90/100-XXX (2)(d) – Verification of Consent.

2. In addition to those items listed, companies should also be required to obtain confirmation that the customer understands they will receive all notices regarding service, including notices of potential rate increases and changes in service, electronically. The proposed draft language may be amended as follows to reflect this:

....

(d) At a minimum, the customer consent must confirm the following information from the customer:

- (i) The customer is the customer of record;
- (ii) The decision to choose electronic information;
- (iii) Confirmation that customers understand that they will now receive all notices regarding service, including notices of the utility's request to increase rates and changes in service, electronically;
- (iv) ~~(iii)~~ Confirmation that the customer understands that the utility will provide upon request, a paper copy of any document sent electronically at no additional charge;...

2. WAC 480-90/100-XXX(3)(b) -- Distribution of electronic notices.

3. Public Counsel agrees that some customers may prefer to receive all notices electronically. However, as Staff recognized in the Comment Summary Matrix, it is more difficult to overlook or ignore the mailed or delivered notice. The rules requiring written notification in some instances serve to ensure that the information contained therein is not inadvertently overlooked or ignored. Accordingly, notices of proposed tariff changes that increase rates or restrict access to services should be provided in the *body of the email* to customers, and *not as an attachment or a link*. The customer should see the heading,

“IMPORTANT NOTICE REGARDING YOUR UTILITY,” in the first screen they open when the email is received. This is necessary to ensure that customers receive the notice and that it most closely replicates the experience of receiving a paper notice.

This specification should be included in the rule:

(3) Distribution of electronic notices.

(a) Electronic bills including notices of proposed tariff changes of increased rates or restriction of access to services, and public hearings will ~~be marked~~ include IMPORTANT NOTICE REGARDING YOUR UTILITY in the subject line.

(b) Notices of proposed tariff changes that increase rates or restrict access to service shall be included in the body of the email containing the customer’s bill and not as an attachment or a link; the heading and the text of the notice shall be visible before the billing information. The utility may elect to additionally send such notices in a separate email from the customer bill.

~~(b) If the utility elects to send the notices of proposed tariff changes of increased rates or restriction of access to service, and public hearings separate from the bill, it will also include a copy of the electronic notice with the electronic bill as an attachment or link. The attachment or link will include the electronic address designated by the commission where customers may file public comment(s) regarding the proposed tariff changes or restriction of access to service.~~

3. WAC 480-90/100-XXX(3) – Undeliverable electronic documents.4

4. In its Second Comments in this rulemaking, Public Counsel suggested that the Commission include language in any new paperless billing and notification rule establishing the procedure that utilities must follow when emails are returned to the company as undeliverable or otherwise cannot reach the customer.¹ In its Comment Summary Matrix, Staff stated it “agreed that new language might offer useful guidance to the company and added protection to customers.”² Accordingly, Public Counsel suggests the following, additional language:

(3) Distribution of electronic notices.

¹ Second Comments of Public Counsel, ¶ 5 and Attachment B.

² Comment Summary Matrix, p. 10.

(a) Electronic notices of proposed tariff changes ~~of that increased rates or restriction of~~ access to services, and public hearings will be marked IMPORTANT NOTICE REGARDING YOUR UTILITY in the subject line.

(b) If the utility elects to send the notices of proposed tariff changes of increased rates or restriction of access to service, and public hearings separate from the bill, it will also include a copy of the electronic notice with the electronic bill as an attachment or link. The attachment or link will include the electronic address designated by the commission where customers may file public comment(s) regarding the proposed tariff changes or restriction of access to service.

(c) If any bill, notice of tariff revision, bill inserts, or other information required to be provided to customers or applicants by statute, rule, or commission order, which has been sent to a customer electronically is returned to the utility as undeliverable, or, the utility is made aware by other means that such email did not reach the customer, the utility must take the following steps to ensure customer receipt:

(i) the utility must first resend the information to the customer-provided email address. If a second attempt to send the electronic information fails, then the utility must contact attempt to contact the customer by telephone to obtain a functioning email address;

(ii) if the utility is unable to obtain a functioning email address, the utility shall send the customer the information by U.S. Mail and return the customer to paper, rather than electronic, billing and notification. The utility must send an explanation with the paper information, that the customer's current email address is not functioning and that, in order to return to receiving information electronically, the customer must provide the utility with a functioning email address by a provided means, such as a toll-free telephone number, email address, or webpage address.

4. WAC 480-90/100-XXX(5) – Limit on changes to information format.

5. This section should be deleted. A utility should not be able to limit the number of paper documents provided to a customer regardless of whether the customer has requested electronic billing. As drafted, this section is inconsistent with the proposed language in the previous section of this rule stating that customers may receive “upon request, a paper copy of any document sent electronically at no additional charge.” Moreover, this section is likely unnecessary; providing electronic bills and notices does not have the printing and delivery costs and it is unlikely that a large number of customers will request multiple paper copies of electronic bills or notices. Thus, the utility will not bear significant additional costs by providing

both paper and electronic bills to customers who have opted for electronic billing and request a fourth or fifth paper document within a 12-month period.

6. Alternatively, the rule could be amended to allow utilities to automatically revert a customer to paper-only billing and notification after three requests for paper billing, i.e., discontinue provision of electronic bills and notices.

B. WAC 480-90/100-153 – Disclosure of private information.

7. Public Counsel strongly urges the Commission not to amend WAC 480-90-153 and WAC 480-100-153 to allow utilities to obtain and retain a customer’s authorization to share private and personal information electronically with the utility’s affiliates, subsidiaries, or other third parties for the purpose of marketing services or product offerings. Eliminating the existing requirement that utilities obtain written consent to disclose information would decrease customers’ ability to control disclosure of their private information simply to allow the utility to profit from using the information for marketing services or providing it to third parties. As on-line commerce become more ubiquitous, it becomes all the more important that consumers have security and control over their private information.

8. In the Order adopting WAC 480-90-153, the Commission stated that it “intend[ed] that this rule prohibit companies from disclosing customer private information... without the customer’s *written* permission.”³ The Commission emphasized that “the customer should have control over how his/her private information is used” and “should not be marketed to by any

³ *In the Matter of Adopting WAC 480-90-153 Relating to Disclosure of Private Information*, Docket No. UG-990294, Order Adopting Rule Permanently (General Order No. R-488), ¶ 14 (emphasis added).

company to which the customer has not provided his/her private consumer information, unless the customer has given permission for his/her information to be used in this way.” The importance of obtaining written consent prior to sharing private customer information was illustrated in a 2007 complaint case against Puget Sound Energy, Inc. (PSE), in which PSE was ultimately ordered to pay a “substantial penalty” of nearly \$1 million and provide notification to all customers of the violation.⁴

9. While the current draft rules still require consent, they require only electronic consent. As a practical matter, it is less likely that a customer will actually be aware that they are releasing private information when consent is obtained electronically. For example, utilities may seek consent through an opt-out option in an email, which are easy to overlook and often difficult to understand. Even if consent is obtained through an opt-in, it is less likely that customers will be aware that they have agreed to release of private information because of the likelihood that the explanation they are doing so appears in small print or as part of a click-through screen necessary to complete a different on-line registration or transaction. In sum, electronic consent cannot provide the type of consumer protection that the Commission intended to create when it established the requirement that opt-in consent to disclose a customer’s information be obtained from the customer *in writing*.

C. WAC 480-90/100-178 Billing requirements and payment date.

10. Public Counsel urges the Commission to modify the proposed language in subsection (4) to require utilities to complete the change in one, rather than two, billing cycles. This should

⁴ *WUTC v. Puget Sound Energy, Inc.*, Docket No. U-061239, Order Accepting Settlement Agreement Subject to Condition (Order 02), ¶¶ 34 and 37.

allow the utility sufficient time to update its customer records while also ensuring that customers receive bills and other important notifications. Many customers may discontinue using electronic mail or be unable to access electronic mail for a period of time and, in such circumstances, would need to receive paper bills and notices promptly to avoid fees or unanticipated changes in service.

III. CONCLUSION

11. Public Counsel again urges the Commission to proceed with caution in this rulemaking. While electronic billing and notification can provide benefits to customers, it also creates the risk that customers will not receive important information regarding their utility service. Public Counsel strongly supports retaining the current protections against disclosure of private customer data and thus opposes the proposed changes to rules governing disclosure of private information.
12. Public Counsel respectfully requests consideration of these comments and looks forward to continued involvement in the process.