

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

Rulemaking to consider potential long-term changes and improvements to customer notice, credit, and collection rules, including permanent elimination of late fees, disconnection and reconnection fees, and deposits.

DOCKET U-210800

**SECOND COMMENTS OF PUBLIC COUNSEL**

**August 19, 2022**

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## I. INTRODUCTION

1. Public Counsel appreciates the opportunity to provide its initial comments in Docket U-210800. Emerging from Docket U-200281, this rulemaking provides the opportunity to update and strengthen the Commission's consumer protections rules.

## II. RESPONSES TO NOTICE QUESTIONS

2. Public Counsel's initial comments in this docket, filed on April 29, 2022, contain data and resources relevant to many of the questions included in the August 3, 2022, Notice of Opportunity to File Written Comments (Notice). The comments below seek to add additional context to the responses provided in the initial comments and additional insight to guide discussion among the stakeholders.
3. The Commission's Notice included several questions directed to the utilities, particularly relating to utility practices and data. The comments below reflect Public Counsel's responses to the Notice questions relevant to non-Company stakeholders.
4. As a general matter, it is critical to examine all of the issues included in the Notice through an equity lens. Issues related to disconnection for non-payment, fees, and collection actions are necessarily going to intersect with concerns related to income or membership in vulnerable and highly impacted communities. As the Commission considers comments and convenes workshops, equity should be a leading principle in discussing all issues.

1. **Regarding requests for the Commission to consider whether disconnecting customers for non-payment remains necessary:**
  - a. **What is the annual and average cost to the utility to (a) disconnect and (b) reconnect customers? What customer count is used in these calculations?**
  - b. **What is the annual and average cost to the utility due to a customer's late payment? What customer count is used in these calculations?**
  - c. **How much revenue does the utility collect annually from customers for (a) disconnection, (b) reconnection, and (c) late fees?**

5. Public Counsel understands that this question is primarily directed at utilities to provide relevant data. However, Public Counsel responds in the context of considering the ongoing necessity of disconnections for non-payment.

6. Under the current framework, accounts in arrears that move to disconnection for non-payment are sent to collections if the utility is unable to recover unpaid balances from customers directly. Through the normal process of ratemaking, utilities are able to recover these arrearages through uncollectibles. To that extent, utilities already recover costs from unpaid arrearages.

7. Furthermore, Public Counsel does not believe that disconnection, reconnection, and late fees should be a revenue generator. These fees are set to recover the costs, such as staff and administrative time, associated with disconnecting, reconnecting, and processing accounts in arrears. However, Public Counsel is concerned that collecting these fees could result in double- or over-collection of costs. Staff and administrative costs are recovered through operations and maintenance (O&M) expenses in customer rates. Thus, it follows that customers already pay for staff related costs to handle late payments, disconnections, and reconnections. Collecting fees from customers to cover these costs is duplicative and would simply amount to additional revenue generated for the utility.

8. Disconnection, reconnection, and late fees are targeted at customers who have trouble staying current on their utility bills. These customers likely are part of highly impacted or vulnerable communities. Assessing fees on customers who are already struggling to meet basic expenses only make it more difficult to maintain connection to essential, life-giving services. In this way, and if these fees indeed represent an additional revenue generator for utilities at the expense of vulnerable customers, these fees are predatory. They also further the cycle of debt, as customers struggling to pay are simply required to pay more than customers who have the financial wherewithal to stay current on bills. Given the disproportionate impact fees have on highly impacted, vulnerable, and low-income customers, permitting these practices to continue stands in opposition to the Commission's and Washington's equity goals and objectives.

9. Although the Notice questions do not inquire about customer deposits, the same issues outlined above for fees apply to deposits. Vulnerable customers facing disconnection should not be further penalized for seeking to resume essential utility service. Furthermore, deposits also perpetuate inequities.

**d. What concerns factor against eliminating disconnections for non-payment?**

10. Prior obligations are an issue that the Commission would have to address with the utilities and stakeholders. Forbidding disconnections for non-payment would not remove a customer's obligation to pay for utility service. To that extent, the utilities must be diligent in enrolling qualifying customers in arrearage management plans and/or payment plans to eliminate those obligations. While this is not a reason to continue disconnections, it is an issue that must be given careful consideration.



11. Additionally, the prior obligation rule also provides some level of protection to customers. Utilities cannot refuse service to customers who have been disconnected and still have past due balances,<sup>1</sup> so this allows customers to be reconnected to electric and natural gas service even though they still have prior financial obligations to the utility. However, customers who are reconnected may still be subject to fees and deposits under current rules. Another issue to solve, as a result, is how to deal with those prior obligations for customers who have been disconnected and reconnected to utility service.

**e. Please explain how disconnecting customers for non-payment is, or is not, in the public interest.**

12. Disconnection for non-payment is not in the public interest; recent events and research bear this out. Electric and natural gas utilities are an essential service that help individuals carry out basic life functions to support survival and promote the ability to be an active member of society and participant in the economy. The COVID-19 pandemic and subsequent public policy actions adopted in Washington and across the country demonstrate this. Keeping people connected to their utilities saved lives.<sup>2</sup> Keeping people connected to electric and natural gas service promotes comfortable and hospitable living conditions, keeps food and medications safe, powers life-sustaining medical devices, facilitates connection to work and school, and many

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<sup>1</sup> WAC 480-100-123(3) and WAC 480-190-123(2).

<sup>2</sup> Kay Jowers, Christopher Timmins, and Nrupen Bhavsar, *Policy in the Pandemic: Housing Security Policies Reduce U.S. COVID-19 Infection Rates*, Duke Univ. Nicholas Inst. for Env't Pol'y Solutions (June 29, 2020), <https://nicholasinstitute.duke.edu/articles/policy-pandemic-housing-security-policies-reduce-us-covid-19-infection-rates>. The study shows that “the CARES Act and eviction, water, and utility moratoria significantly reduced daily infection growth rates as compared to a simulation of growth rate if no policies were implemented.”

more critical functions. Utilities are widely accepted to be essential services, and public policy should reflect that.

13. In Public Counsel’s April 29, 2022, comments in this docket, we illustrated the inequitable impacts of disconnections for non-payment. Black and Latinx households are more likely to receive disconnection notices than white households at similar income levels.<sup>3</sup> Not only are communities of color more likely to receive disconnection notices, but they are also more likely to be disconnected from utility service than white households.<sup>4</sup> Disconnection for non-payment is an inequitable practice in its current form and it is incumbent upon policymakers to address this.

14. Alternatives to disconnection exist. Rather than pushing for the ability to disconnect customers who are unable to pay, utilities should be focused on upstream solutions that reduce the occurrence of events that would otherwise put customers in the disconnection pipeline.<sup>5</sup> Many regulated utilities are in the process of implementing or have implemented programs designed to keep customers connected by delivering assistance that effectively reduce energy burden and assist customers in eliminating past due balances. In pilot programs, arrearage management programs and percentage of income payment plans have shown promise — and utilities are moving toward these programs. These programs help people stay connected to

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<sup>3</sup> Anna Kowanko & Charlie Harak, *More Can and Must Be Done to Prevent Utility Consumers from Losing Service Due to Mounting COVID-Driven Arrearages in Massachusetts and Other States 2* (Nat’l Consumer L. Ctr. 2021), [https://www.nclc.org/images/pdf/special\\_projects/covid-19/Rpt\\_More\\_Covid\\_Util\\_Arrearage\\_Svc.pdf](https://www.nclc.org/images/pdf/special_projects/covid-19/Rpt_More_Covid_Util_Arrearage_Svc.pdf).

<sup>4</sup> Marcus Franklin & Caroline Kurtz, *Lights Out in the Cold* (NAACP 2017), <https://naacp.org/resources/lights-out-cold>.

<sup>5</sup> The “disconnection pipeline” is inclusive of the dunning process to notify customers they are in arrears, sending disconnection notices, and ultimately being disconnected from service.

prevent the process of disconnection from initiating, and there is no evidence that they deter customers from paying their bills when they are able.

**f. Is there a practice that would be more equitable than disconnection for non-payment?**

15. Yes, as indicated in part ‘e’, pursuing upstream solutions to prevent disconnection produces far more equitable outcomes than disconnection for non-payment. Currently, bill assistance programs across all Washington regulated utilities are undersubscribed, meaning that only a small share of income-eligible customers are enrolled in programs. Removing the threat of disconnection for non-payment provides an extremely strong incentive for utilities to promote their assistance offerings and ensure that eligible customers are enrolled.
16. Limiting the ability of utilities to disconnect customers does not necessarily have to involve a complete prohibition on disconnections. For example, rules could specify that low-income customers cannot be disconnected. As a result, this would open the door to utilities verifying customers’ household incomes and initiating the process for bill assistance enrollment.
17. The threat of disconnection is not a substitute for outreach. Investing the time and resources to reaching customers in need and connecting them with the appropriate resources to remain connected to utility will result in more equitable outcomes than leveraging a tool of last resort to strong arm customers into engagement. Even if some stakeholders believe that the threat of disconnection is the only or most effective tool for engagement, this practice perpetuate well-established inequities and the debt cycle that catches many vulnerable customers.

- g. How else could companies be assured that customers would continue to pay or seek assistance if disconnection for non-payment were disallowed?**

18. Limiting the utilities' ability to disconnect customers for non-payment does not remove any customer's obligation to pay their bills. Those financial obligations still exist, regardless of whether a customer is or is not disconnected.

- 2. Should additional information be provided to customers prior to disconnection for nonpayment?**

- b. What, if any, information regarding customer rights and protections should be provided?**

19. Utilities should have an affirmative obligation to provide accurate and clear information about all options available to customers if they are facing a potential disconnection. There is no reason to withhold information that, for example, beginning the process of seeking rate assistance or a payment plan halts the disconnection process. As indicated in Public Counsel's April 29, 2022, comments, a Utility Customer Bill of Rights would provide vital information to all utility customers and establish principles to keep customers connected to utility service. Some principles to guide creation of a Utility Customer Bill of Rights, as imagined by the National Consumer Law Center, that Public Counsel highlighted include:

- Explicit recognition that utilities are essential and promote public health and safety, establishing that no customer should be disconnected simply due to inability to pay;
- Disconnections for low-income households eliminated to provide broad, universal access to service; and

- Fees, penalties, and deposits disproportionately impact low-income households and should be eliminated.<sup>6</sup>

20. Stakeholders and utilities could convene through this process to determine the principles behind a Customer Bill of Rights to formulate what ultimately is memorialized in rule. The Bill of Rights is something that should be provided to customers in the event they receive a disconnection notice.

**c. Should disconnection for non-payment notices include Commission contact information?**

21. Absolutely. Notices should also provide context about the Commission’s role. Customers who face disconnection may feel more comfortable speaking to a Commission representative and fear that speaking only to their utility could produce detrimental outcomes. Many customers distrust their utility provider and the option to communicate first with a more neutral entity might put distressed customers at ease.

**4. How does your company define “low-income”? How should “low-income” be defined?**

22. The Clean Energy Transformation Act defines low-income qualification as the greater of 200 percent of the federal poverty level (FPL) and 80 percent of area median income.<sup>7</sup> Although this statute only applies to electric utilities, there is good reason to establish consistency across all regulated utilities. Defining low-income in this way helps to ensure that the definition

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<sup>6</sup> Nat’l Consumer L. Ctr., *Implementing a Roadmap to Utility Service as a Human Right* 2–3 (2021), [https://www.nclc.org/images/pdf/special\\_projects/covid-19/IB\\_Utility\\_Bill\\_of\\_Rights.pdf](https://www.nclc.org/images/pdf/special_projects/covid-19/IB_Utility_Bill_of_Rights.pdf).

<sup>7</sup> RCW 19.405.020(25).

accounts for local differences and demographic characteristics. For example, 80 percent of area median income may be higher than 200 percent of the FPL in certain parts of Washington. Higher costs of living are also likely to accompany higher relative incomes, so defining low income this way helps identify customers who cannot afford their utility bills due to other high living expenses, so limiting the definition to only FPL could exclude customers who otherwise demonstrate the need for bill assistance.

**8. TEP raises concerns that the 60-day renewal requirement in the Commission’s rule governing medical emergencies may be difficult for customers.**

23. In addition to the concerns raised by TEP, the rule should be clarified to ensure that the medical emergencies applies to all members of a household, including dependents, and not just the primary account holder.

**b. Could medical emergencies remain in effect for the stated duration of the condition, rather than having a set expiration?**

24. Yes, this could be one approach to respond to the burden created by 60-day recertification for medical conditions. Alternatively, the recertification could be extended to 12 months or annually, as opposed to 60 days. This would create administrative simplicity for both utilities and qualified customers.

**c. Should a 60-day renewal be required for customers experiencing chronic conditions?**

25. No. Individuals suffering from a documented chronic medical condition will need protection from disconnection on a long-term basis. The challenge in determining or differentiating between medical conditions is that the utilities, stakeholders, and the Commission are not medical professionals. It would be challenging to determine how to verify a chronic

condition and what types of medical conditions are considered chronic. The Commission should consult with the relevant experts to make identify chronic conditions.

**12. Please explain how your company uses customer credit scores.**

26. In responding to this question, the Companies should provide detail as to how they use internally developed credit scores, and not just scores provided by the three major credit-reporting agencies (Experian, Equifax, and TransUnion). Public Counsel understands that some, but perhaps not all, utilities develop their own credit scoring system to determine customer credit-worthiness.

**13. Please provide a list, including addresses, of all payment locations, the tender accepted at each location, and any fees.**

27. In response to this question, utilities should also provide information about any fees that apply to certain payment types or payment locations. For example, whether or not utilities add a fee for credit card payment or if there is a fee to pay at an automated payment station.

**15. Are there any other changes the Commission should consider to the customer notice rules in WACs 480-90-193, 480-90-194, 480-90-195, 480-90-197, 480-90-198, 480-100-193, 480-100-194, 480-100-195, 480-100-197, 480-100-198? Please provide any suggested changes in legislative format (track changes).**

28. See Appendix A for suggested changes to the enumerated WACs.

**16. Should the Commission broaden the requirements for offering payment arrangements? For example, see Maine's Consumer Protection Standards for Electric and Gas Transmission and Distribution Utilities at p. 23, linked here. 1 Should the Commission adopt a similar policy?**

29. It is generally good practice to have a uniform, detailed outline of how payment plans should be arranged and the terms available to customers in rule. This offers consistency between

the regulated utilities and administrative simplicity for the utilities, Commission Staff, and other

stakeholders, including Community Action Agencies. Additionally, it is helpful to enumerate exactly what information the utility must provide while offering a payment plan, including but not limited to information about what happens if a customer is unable to comply with the terms and how payment amounts and duration is determined.

30. Public Counsel cautions the Commission in adopting the requirements for payment arrangements outlined in the Maine Standards because some Washington utilities already offer different or more accommodating terms in their payment arrangements. For example, some utilities allow payment arrangements for more than 12 months. Additionally, the Commission should consider whether Washington utilities offer grace for one or more missed payments. In this case, customers would be able to maintain the payment plan in the event they are unable to make the additional payment for a certain month. These terms should also be based on the individual customer's circumstances.

31. There are unintended consequences of creating one-size-fits-all payment plans. Individual customer circumstances, such as their income and size of their outstanding balances, may require the utilities to adjust the terms of a payment plan to allow customers to succeed.

32. In addition to payment plan terms, the utilities should also be required to notify customers that they might be income eligible for Arrearage Management Plans. This type of arrangement makes it possible for income-constrained customers to make regular payments and retire their arrearages.

**17. If disconnections for non-payment continue:**

- a. The Commission currently requires site visits prior to disconnecting a customer with a medical certificate or a customer who has received**



**energy assistance. Should a site visit be required prior to all disconnections for non-payment?**

33. Yes. Site visits prior to disconnection for non-payment serve as a strong customer protection and are a “last line of defense,” particularly for customers with vulnerabilities. Site visits provide the opportunity to make customers aware of options to remain connected, including payment plans, medical certificates, and bill assistance. Furthermore, this provides the ability for the Company to better understand their customers’ needs. Customer needs and characteristics that may otherwise be obscured through electronic or telephone communication — or no communication at all — may become clearer through a visit.
34. Generally speaking, utility assistance programs are undersubscribed. Many low-income customers are not known low-income customers, so the current site visit requirement for known low-income customers misses many qualifying customers. Furthermore, site visits provide an opportunity for direct, face-to-face outreach and allows the Company another opportunity to enroll customers in assistance programs.
35. Revisiting site visit rules also provides the opportunity for utilities and other stakeholders to examine the manner in which utilities conduct these visits. Through engagement in this docket and Docket U-200281, stakeholders discussed the importance of utilities building community trust. Many utility customers, particularly those belonging to vulnerable or marginalized communities, do not trust institutions — including their utilities. History of discrimination or negative interactions influences the way individuals and communities view the institutions with which they interact. People who know they are behind on their utility bills and are facing the threat of disconnection may not be eager to talk to a utility representative at their door. This is

true even if the utility employee is there to provide information on programs to prevent

disconnection from occurring. Utilities should consider working with trusted community organizations who can make site visits ahead of disconnection. Customers may be more likely to speak to a community organization's employee over a utility representative (who customers assume is just there to disconnect service).

**b. Should the Commission require a minimum overdue account balance prior to disconnecting for non-payment?**

36. Yes. It would be unreasonable to disconnect a customer for a relatively small dollar amount in arrears. It would be more effective to resolve small past due balances by establishing a payment plan or enrolling qualified customers in an arrearage management plan.

37. While Public Counsel does not recommend a specific threshold at this time, we look forward to engaging with stakeholders to determine an appropriate amount, in the event disconnections for non-payment are permitted utility activity.

**c. Should the Commission require Commission approval before a utility disconnects a customer, as it did in Docket U-200281?**

38. Yes, this was a reasonable step and provides an important layer of protection for utility customers. Commission approval ensures that utilities comply with the statutes and rules surrounding disconnection for non-payment. Understanding the last-resort nature of customer disconnections, special care and attention should be given to the process.

**18. Should the Commission consider adding energy assistance requirement rules? If so, what should be included?**

39. Yes, rules would create minimum standards for assistance program offerings and the terms offered to qualified customers. To the extent possible, consistency in programs across the utilities is desirable. Utilities should be able to make additional program offerings to their

customers based on the unique characteristics of a utility’s customer base, but every Washington utility has low-income customers who are unable to stay current on their bills. For energy assistance offerings, the following requirements should be considered for rules:

- Income eligibility criteria;
- Documentation required to establish eligibility;
- Frequency of documenting eligibility;
- Guidance for auditing enrollment through self-attestation;
- Funding mechanisms; and
- Administrative allocations to Community Action Partnership Agencies.

40. This is not an exhaustive list of requirements to include in rule. Public Counsel looks forward to continued engagement on this issue.

**a. Should there be requirements for Percent Income Payment Plans?**

41. Yes, utilities should be required to propose Percentage of Income Payment Plans to better ensure customers have a manageable energy burden. Rules should include guidance for discounts offered to customers based on their income levels. The level of benefit should be appropriately tailored to customer income. Additionally, customers on a Percentage of Income Payment Plan might also be eligible to receive other forms of assistance, including federal Low Income Heating Assistance Program funds.

**b. Should there be requirements for Arrearage Management Plans?**

42. Yes, utilities should be required to offer Arrearage Management Plans (AMPs). The Commission should consider the following non-exhaustive list of requirements to place in rule:

- Allowed frequency of enrollment (i.e. a customer is eligible to enroll once every three years);
- Number of missed payments allowed (i.e. a customer can miss two payments over the course of the plan and remain enrolled);
- Guidelines for customer monthly contributions; and
- Maximum length of AMP or number of payments to achieve debt relief.

**19. How might the Commission modify the notice methods listed in WAC 480-90-194(1)-(3) and WAC 480-100-194(1)-(3) to better reach customers?**

- Considering the reduced consumption of traditional newspaper media, is it still appropriate for customer notices to be published in newspapers?**
- Are there any alternatives to newspaper publishing we should consider?**

43. The Commission should work to expand the means by which customers are notified of electric and natural gas tariff changes and not necessarily eliminate existing platforms required. For many customers, traditional print newspaper, television, radio, and community agencies remain an important source of trusted information. To that extent, it is reasonable to continue requirements for traditional newspaper notification.

44. In addition to current requirements, the Commission should indeed expand the scope of platforms to reach customers about tariff changes. The content of these notices should also always include information about assistance options and information to contact the Commission. The Commission should consider adding the following platforms:

- Digital ads on trusted news source websites (i.e. The Seattle Times or Spokane Spokesman-Review websites);

- Notice to or ads with local trusted news sources (i.e. the Seattle Stranger, the West Seattle Blog, etc.);
- Notice and/or ads in non-English languages based on utility customer demographics, particularly placed in ethnic media sources including print, television, and radio;
- Automated phone calls, emails, or text messages to customers; and
- Push notifications from utility smartphone apps, if applicable.

Public Counsel looks forward to continued discussion on this topic.

**20. Should the Commission require utilities to provide to the Commission a copy of any customer notice made in connection with a tariff filing before the notice is distributed to customers?**

45. Yes, this should be a standard compliance measure. Public Counsel should also review and provide feedback, similar to the review and feedback Public Counsel provides on rate case customer notices.

**21. What can the Commission do to help ensure customers know about tariff filings and to help ensure that customers know about the Commission?**

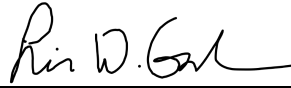
46. Requiring utilities to include information about the Commission and how to contact the Commission in every notice would begin to raise customer awareness of the Commission. Public Counsel also recommends that the Commission expand its own independent outreach. This will help establish trust in the Commission's work and help the general public understand the regulator's role in interfacing with their utility companies.

47. Public Counsel looks forward to continuing discussions on these issues and thanks the Commission for the opportunity to comment. Please direct questions about Public Counsel's

comments to Corey Dahl, Corey.Dahl@ATG.WA.GOV or Lisa Gafken,  
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Dated this 19th day of August 2022.

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