BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the	DOCKET NO. UE-990473 UG-990294
Rule Making Proceeding on Chapters 480-90 and 480-100 WAC – Rules Related to Natural Gas and Electric Companies	COMMENTS OF PUBLIC COUNSEL

Public Counsel appreciates the opportunity to participate in the Commission's review of electricity and natural gas rules. We look forward to working with all stakeholders to ensure that any changes to current rules meet the needs of consumers. As we seek to meet the standards established by the Governor's rules review, our goal is to maintain adequate consumer protections.

As existing language is clarified, it is important to ensure that existing consumer protections are not lost in translation. To that end, we suggest future drafts contain a strike-out version that would help stakeholders distinguish changes where the intent is to alter substantive content from changes where the intent is merely to clarify overly complex syntax or to regroup sections more logically without changing content. We appreciate the work of the staff in developing a thorough draft, and support many of the proposed changes in the July 16 version that will benefit Washington's consumers. Public Counsel's comments are organized according to the numbers and format of the staff's proposed draft.

- **WAC 480-90/100-041 Availability of information**

(3) and (4)—Information and notification. The draft states that a company (3) "must notify" existing customers how to obtain a brochure and (4) must make other pertinent information "available upon request." It is not clear what kind of notification suffices. It is also not clear that customers should be clearly informed that certain information exists and is available. Current chapter 480-100-041(4) requires companies to include an annual bill insert that serves as an information request form.

Public Counsel prefers the current requirement of an annual insert. This order form informs customers of the presence and availability of at least the following information: the customer guide, rate schedule and tariffs, applicable rules and regulations, usage summaries, and any other form of pertinent information. We would support alternative means of notification where reasonable.

Further, the current rule (1) requires pertinent information to be available at its "listed business offices." The draft does not. We believe customers who wish to be informed should be given the easiest possible access to pertinent information, and we welcome proposals that ensure that customer access to information is not diminished by potential office closures or the removal of information from remaining offices.

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- **WAC 480-90/100-046 Application for service**

(1)(e)—Proof of identification. Public Counsel opposes the draft's inclusion of "proof of identification" under the section controlling what information companies may require. In workshop comments some companies indicated that they currently run identification numbers of selected applicants through detection machines. This heightened threshold of pre-application scrutiny concerns Public Counsel because we believe that selectively requiring identification prior to service raises fundamental questions of fairness and equal protection.

Existing consumer protection laws suggest the exercise of considerable care in this area. For instance, the federal Equal Credit Opportunity Act (ECOA) establishes consumer safeguards to prevent discrimination in the granting of credit. Transactions between a utility company and potential customers are included within the ECOA definition of "credit" and are subject to ECOA provisions that prohibit treating any applicant less favorably on the basis of race, religion, nationality, neighborhood, age, gender or marital status. This includes any pre-application requirements, and communications or decisions regarding deposits, terms, or credit worthiness. Thus, any requirement of identification that is based on prohibited grounds would constitute an ECOA violation. The Act does not require intentional discrimination. Any discretionary identification practice that has the effect of unequal treatment is also prohibited.

Any system that allows company agents significant discretion to determine which applicants should and should not be required to prove identity is open to potential problems and liabilities. If discretion is to be exercised, then utility employees should be trained regarding the legal duty to treat all applicants equally under the law.

Further, if such discretionary potential for discrimination is allowed to exist, careful monitoring of the results should be required. Utilities should provide regular reports containing the characteristics (neighborhood, race, gender, age, marital status, etc.) of consumers whose identification was requested or whose application was denied due to an inability or failure to provide identification.

(2)—Service date. Public Counsel supports the addition requiring companies to provide a service date. We note that utilities appear to be moving toward more rigorous and accurate scheduling, with payments to customers when they fail to meet scheduled appointments.

• **WAC 480-100-051 Establishment of credit**

In general, the draft of this proposed rule raises significant concerns for Public Counsel. It contains numerous reductions in the range of consumer opportunities to establish credit and avoid deposit requirements as well as raising potentially troubling consumer protection questions. These diminishments of customer options and protections are especially troublesome when viewed collectively.

(1)—Collection of security deposits. The current rules contain several provisions which exempt customers from deposit requirements. The proposed draft significantly reduces the circumstances under which an applicant can establish credit and thus avoid deposit requirements. Public Counsel believes these current exemptions to be valuable and requests that they be retained to the extent possible. It might be useful to explore the utility data on which mechanisms are most commonly used.

(1)(a)—Satisfactory payment history. The proposed rule appears to allow a utility to require a deposit whenever there is merely a short-term gap in an otherwise satisfactory record. This change would adversely effect consumers, such as college students, whose status requires temporary moves. According to the language in the current rule (1)(a), when an applicant establishes at least six consecutive months of satisfactory payment and then discontinues service for up to six months, a utility may not require a deposit upon reapplication. We prefer the content of the current rule, modified to make it simpler to understand.

(1)(c)—Employment history. The draft proposes to add a new requirement that employment be "full time" to qualify as "establishment of credit." In an era of job-sharing and the increasing use of temporary employees, this may place an unwarranted burden upon gainfully employed consumers who currently qualify for a deposit exemption.

(1)(e)—Guarantor. The proposal imposes tougher standards upon the use of guarantors. It is reasonable to require that guarantors meet the credit worthiness standards of the chapter. However, the apparent requirement that they be customers of the utility in question does not make sense. College students, for instance, are likely to ask parents to sign as guarantors. Draft language would preclude this, as most college students are not served by the same utility as their parents. Further, the requirement that guarantors will be held responsible for a customer's *previous* past due balances is unwarranted.

(2)—Roommate's arrears. The draft allows companies to collect a deposit merely because a prior customer with arrears appears to live at the residence. In addition to raising potential ECOA issues, this approach presents a number of implementation questions (e.g., who will determine whether a prior arrears customer permanently lives at a particular residence? How will that determination be made?). Applicants should be analyzed on the basis of their merits alone, not on the basis of their address or a company

employee's discretionary decisions regarding other roommates at the residence in question. Other proposed rules cover instances where evidence of fraud exists. Public Counsel believes those are more than sufficient to address this situation.

(5)—Applicants unable to pay deposit. The proposed language requires that customers be allowed to pay 50% of the deposit prior to service, 25% after the first month, and the remaining 25% of the deposit after the second month.

While Public Counsel applauds this additional option, we oppose the apparent deletion of language in (8) of the current rule--Alternative to deposit (prepay). Current section (8) should be retained and improved upon. Section (8) allows applicants who are unable to pay the full deposit amount to prepay installation charges and monthly billings for the length of time a deposit would have been required. For low-income customers, as well as elderly customers on fixed incomes, the prepayment alternative could result in manageable monthly payments. Proposed (5) places a significantly heavier deposit burden on the first few months, a time in which customers are burdened with relocation or moving expenses as well. In their comments, companies have indicated that this option should be deleted because customers rarely utilized it. It would be worthwhile to explore how many customers use this method, and how many are aware of it, before making such changes.

(10)—Refund if satisfactory payment history. In both current rule (10) and the proposed draft (10), it appears that a company can keep a deposit amount when a customer has failed the "satisfactory payment" test (3 delinquency notices, for instance, constitutes failure) even if that customer has paid all arrears and is owed a net refund. The opportunity to impose such a punishment should be removed for customers with accounts in good standing.

(11)—Refund preference. The addition of customer preference at the time of deposit is a good one. However, if the "local business office" is no longer "local," companies should be required to issue refunds through designated local payment agencies.

In addition, the current rule (1)(f) allows the production of two major credit cards to qualify as establishment of credit. The proposed draft apparently deletes that option. We believe the option should be retained in some form.

- **WAC 480-90-056 and 480-100-056 Refusal of Service**
- **WAC 480-90-121 and 480-100-116 Responsibility for Delinquent Accounts**

(8)—Delinquent account responsibility. The proposed draft states that "The electric/gas company may not refuse to provide service" unless "the company believes," based on "objective evidence, that the applicant is acting on behalf of the prior customer with the intent to avoid payment." Preferable language in the current rules, 480-90/100-121/116, requires "evidence of intent to defraud." Draft terms such as "objective

evidence" are overly vague. It needs to be carefully defined if current language is not retained. For instance, it must be made clear that a field service representative merely seeing a customer with arrears at a new applicant's home is not sufficient to constitute "objective evidence."

As described in current and proposed WAC 480-100-071, before a utility can discontinue service, a utility has the burden of proving that fraud occurred. The same proof of culpability should apply in this refusal of service context.

(9)—Prior obligation. We appreciate the recent correspondence from WUTC staff indicating that the draft's apparent roll-back of prior obligation consumer protections was due to a typographical error and not staff intent. Public Counsel continues to support the retention of current rules regarding prior obligation. This rule is the single most effective mechanism to protect essential energy services for low-income customers in Washington. It should not be weakened. For the nearly thirty years it has been in effect, prior obligation has never been shown to place an excessive burden on the companies. We understand company concerns that some customers might take advantage of this protection to avoid paying utility bills. Companies do, however, have other channels, such as collection, to recover past arrears. Without compelling evidence that prior obligation is excessively burdensome to company bottom lines, and without a showing that company concerns cannot be mitigated in any other way, Public Counsel opposes diminishment or elimination of the current prior obligation protections.

- **WAC 480-90/100-071 Discontinuance of Service**

(2)(a-e)—Notice. The proposed draft reduces notice requirements in a number of circumstances. Current rules require notice prior to disconnection when tampering, vacation, payment plan default, or unauthorized use of service occur or are suspected. The draft either reduces notice provisions entirely or relieves companies of the requirement to issue further or second notice. Notice, which ensures that a customer is notified of a problem and provided a channel for response, is an important part of due process and basic fairness. Given the general trend toward leaving local communities in favor of centralized customer service, and thereby distancing the utility from its customers, this is a poor time to reduce notice requirements.

(2)(f)—Fraudulent use. Each of the proposed "examples" of fraud in the draft should, at the very least, include the phrase "with the intent to defraud." A finding of fraud in other contexts typically requires that the accused act with the intent to defraud. All utility customers deserve protection from punishment in situations where the culpability of intent is lacking.

Commission Appeal. Current language (1)(m) states that disconnection for fraud is subject to appeal to the commission. This language should be retained.

- **Medical Emergencies**

(4)(a) and (4)(a)(ii)—Medical Emergencies. The proposed draft requires an increased threshold of medical certification that disconnection would "significantly endanger" physical health. In accordance with language in the current rule (2)(h)(ii)(A), this section should instead require certification that disconnection would "aggravate" or "endanger" health. Unless companies can present persuasive evidence that language in the current provision causes an undue burden, the current, reasonable threshold should be retained.

(4)(d)—Notification of disconnect to customers with medical difficulties. The draft removes crucial notice protection. The current rule (2)(h)(iii) requires "additional notification" before disconnect if a customer claiming medical problems fails to provide medical certification or sufficient payment. This additional notice requirement should be retained.

(4)(e)—Contact notice . The draft removes the provision in current rule (2)(h)(6) that requires notice by actual "contact" with the customer. Times of illness are times of stress and confusion, and the potential for adversely effecting someone's health due to missed communication is too great. Protections should be increased, not reduced, for customers with medical problems.

(5)(a)(iii)—Contact information provided on disconnection notices. The draft requires companies to provide company name, address and telephone number on disconnection notices. The customers who are most likely to be disconnected are also the customers most likely to lack telephones. Combined with the fact that companies have closed many local service centers, pay telephones remain the only way for the most vulnerable customers to contact their utility to avoid disconnection. As lengthy payphone calls are prohibitively expensive, especially for low-income customers, Public Counsel believes companies should be required to provide a toll-free, preferably 24 hour, telephone number on all disconnection notices.

(5)(b)(iii)—Second Notice, by Telephone. For customers who work during the day or who have no recording service, the telephone provision in the proposed draft is equivalent to no notice at all. The current rule (2)(b)(i)(A) requires that when telephone is elected as the vehicle for second notice and companies are unable to reach a customer by telephone, written notice must be mailed allowing an additional minimum of three days before disconnection. This provision is important and should be retained.

(5)(h)(i)—Third Party designation. The proposed language leaves out the following important language from the current rule (2)(h)(vii): "The utility shall offer all customers the opportunity to make such designation." Public Counsel favors retaining this language. Perhaps companies should also be required to inform applicants of pertinent Consumer Action Agencies who might intervene to help in difficult circumstances.

• **Customer Notice**

(6)—No disconnect while customer pursues a remedy, appeal, or is engaged in discussion. The current rule (1)(g) provides additionally that "The customer shall be so informed by the utility upon referral of a complaint to a utility supervisor or the commission." That language should be added to make the draft correspond with current rule.

(7)—Payments at a payment agency. The draft language states that payment of past-due amounts will only "constitute payment" after the "customer informs the company of the payment" AND "the company has verified the payment." The term 'verification' needs clarification in this context.

It appears that a customer who makes a timely payment at a payment agency and then calls to inform the company of that payment could still be labeled delinquent, or worse disconnected, if the payment does not arrive in time and the company fails to verify the payment. It is unacceptable for customers to bear the burden of lag time between payment and posting when it is the companies that have chosen to provide pay stations in lieu of staffed local offices. We would like to see it clearly delineated that a customer who informs a company of payment shall not be disconnected or labeled delinquent during any interval between when they pay or inform of payment and when the company processes or verifies payment. As well, to protect customers who pay in time but fail to call, a mandatory grace period should be required which takes into account the longest possible lag-time between payment agency payment and a company's posting of that payment to the account.

(8)(d)—Reconnection of prior obligation account. Public Counsel is uncertain of how or under what circumstances an account will be designated as "prior obligation" and what such a designation will entail.

• **WAC 480-90/100-072 Payment arrangements and winter moratorium**

(2)—Extended payment arrangements. The draft indicates that arrangements must be "appropriate for both the customer and the company." We would prefer the addition, suggested by staff, of a mandatory, one-time, six-month payment arrangement (as exists in the telephone context). Instead of the two or three-month plans companies tend to offer, a six-month plan spreads smaller payments over a longer period. This would provide customers a meaningful opportunity to recover from financial setbacks. A mandatory six-month payment plan has the added benefit of helping customers stay current, thus avoiding unnecessary disconnection and reconnection fees.

(4)—Combined gas and electric billing. Public Counsel approves of staff's proposal that allows customers the option of requiring companies to apply partial payments to the account of the customer selects. Notification to customers of their

options will be an important mechanism to help them understand this protection. Customers should be given periodic opportunities to evaluate their payment allocation and change it as necessary.

We are concerned about the proposed language regarding customers who, for whatever reason, fail to make a choice. This language appears to ensure that both accounts will be delinquent even though payment was sufficient to cover one portion (gas or electric) of the bill. We propose that the draft be amended to ensure that the customer does not face disconnection of both energy services.

(6)(b)—Winter Moratorium. We are concerned about the language of eligibility in the proposed rule. It precludes a company from setting up a new extended payment arrangement for customers who failed to meet moratorium obligations in the past. Occasionally, however, a company might find such an arrangement to be in the best interest of the company and the customer. Perhaps language could be added to the end of the subsection disallowing reapplication "unless authorized by the company." Companies should be provided discretion to allow reapplication.

- **WAC 480-90/100-076 Service responsibilities**

(5)—Record of interruptions. Public Counsel believes "substantial number" is overly vague but believes this issue might be better addressed within the Commission's reliability rulemaking.

- **Service Quality and Customer Service Performance Measures**

Public Counsel is interested in incorporating performance benchmarks for service quality and customer service into the WACs. We believe that the utility industry is increasingly moving toward a more customer-service focus and that customers should be assured of a reasonable minimum level of service. We believe a well-constructed set of performance benchmarks would address a variety of areas, broadly support a company focus on service quality and customer service, and not emphasize one area to the detriment of others.

We believe this docket to be an appropriate forum to discuss issues primarily focused on customer service for three reasons. First, all customers, regardless of service provider, are entitled to a high quality of customer service. Second, customer service performance is not dependent on underlying system characteristics. For example, answering the telephone should not be any different at one utility than another (indeed, a variety of very dissimilar businesses employ call centers, and the speed and ability to satisfy the customer is integral to their business success). Finally, Public Counsel is concerned about the centralization underway in many companies' customer service operations, which seems to be moving the companies out of smaller communities and increasing utility reliance on technology to meet consumer needs. If customers are no

longer to enjoy a personal relationship with the company that provides service, they should be guaranteed that the remaining relationships the customer relies upon meet a high standard of personal service.

We suggest the following performance measures and metrics for measuring that performance for discussion and inclusion into the rules.

- Telephone answering performance.
  [percentage of calls answered within an allotted time frame]
- Customer satisfaction with call center performance.
  [measured on a scale through sampling]
- Complaints to the Commission and the Company.
  [a ratio per number of customers]
- Complaint resolution.
  [percentage of total complaints resolved within a time frame]
- Customers disconnected.
  [a ratio per number of customers]
- Service Commitments.
  [the ability to offer scheduled service on a variety of service tasks, within a set period of time]
- Kept appointments.
  [percentage of total appointments met of total commitments]
- Service satisfaction.
  [measured on a scale through sampling]

At this time we have not included specific performance targets because we feel the issue of what constitutes minimum service deserves a discussion among all the stakeholders. Existing performance in Washington and possible performance as demonstrated by utilities in other states could form the beginning point for such a discussion.

In past proceedings Public Counsel has advocated for both customer-specific and system-wide remedies should a company miss performance targets. We continue to do so, as some measures are more amenable to remedies for customers that may be inconvenienced or harmed, such as service appointments offered and missed appointments. Other benchmarks are clearly measures of the company's overall performance and should carry remedies appropriate to that scope, such as disconnection ratios and telephone performance. We note that both the largest electric and telephone service providers in Washington currently offer customer-specific remedies, and suggest that providing these to all customers would represent a move towards equity for both the consumer and the service provider.

Public Counsel believes that issues related to performance of the network and its reliability and safety are also worth exploration by the Commission. However, we are

willing to defer these issues in this proceeding so as to explore them more fully in Docket UE-991168, the rulemaking on electric utility system reliability. Such a discussion should include consideration of the appropriate benchmarks to evaluate system performance for each utility's system, the value of reliability and power quality, penalties for missed targets, and informing customers about reliability and service quality. Public Counsel recognizes that each utility operates a unique system servicing unique territories and is willing to explore a set of uniform measures customized to fit each circumstance. That said, there may be minimum standards below which no system should sink since that level of performance would be inadequate to ensure reliable service.

•WAC 480-100-081 Service entrance facilities (Electric version)

(1) and (2)—Language in the proposed draft provides customers no recourse if a company should demand costly or unreasonable changes to (1) provide entrance facilities at the "easiest access point" or (2) to provide a "structurally sound point of attachment" for service conductors. The current language of 480-100-081 protects customers from unreasonable demands, stating that companies may only require customers to "comply with reasonable requirements." This reasonable language should be retained.

• WAC 480-100-081 Service entrance (Gas version)

(1)—See comments above. Public Counsel opposes the deletion of current language which requires company demands to be reasonable.

• WAC 480-90/100-091 Access to premises

(2)—Company caused damage. Public Counsel supports the proposed language providing for restoration of customer property when deterioration or damage results from company activities.

• WAC 480-90/100-096 Gas/electric company responsibility for complaints and disputes

(1)—Complaint process. The complaint process needs further clarification, particularly as to how complaints are classified, acknowledged, and responded to.

(1)(d)—Corrective action response. The proposed language, "as soon as appropriate," reduces customer service expectations and is overly vague and open to interpretation. Public Counsel prefers the rule's current language (1) requiring companies to take corrective action as "soon as possible."

(1)(f)—Dissatisfied complainant. The proposed language provides company

agents and supervisors with considerable discretionary authority to determine when the threshold of continued dissatisfaction is passed, triggering the need to inform the customer of the right to speak to a supervisor or appeal to the commission. We propose language that requires companies to inform customers up front, as early as possible after the initiation of a complaint, of their right to pursue the complaint with a supervisor and/or commission staff if they should remain dissatisfied.

(4)—Record-keeping of complaints. The draft does not appear to address customer correspondence. Current rule (6) requires companies to "acknowledge" written complaints and retain all "correspondence" and "records" of complaints. The draft should be amended to reflect this current customer protection ensuring that a customer's written version of events and production of pertinent documents or records must be kept, recorded and made readily available.

• WAC 480-90-106 and 480-100-101 Billing requirements and payment date

(1)(d)—Customer bills must include. The draft requires companies to provide telephone numbers on their bills. For the reasons detailed above, Public Counsel suggests companies provide a toll-free, 24-hour number.

We support Staff's proposal for a bill format that will provide consumers information sufficient to readily reproduce the calculation of their bills.

• WAC 480-90/100-21/311 Payment locations

(3)—Company access. The draft should be amended to require a 24-hour, toll-free telephone number.

(4)—Notice of closure. Definitions of company facilities are elusive. To ensure customer notice, we suggest adding "customer service center" after "any business office."

(4)(c)—Listing of alternative locations after closure. The intent of the current rule (3)(d) should be retained. It requires a listing of the nearest locations where customers can obtain service across the counter from live business office or customer service center staff. Customers who occasionally need or prefer in-person assistance should be informed of the nearest location where they can speak, in person, to a company representative.

• Payment Agencies

Customer concerns about diminishing access to in-person customer service agents need to be thoughtfully addressed in these proceedings. In other regulated industries Washington consumers have had a recent and unpleasant history with reductions in local service. This creates a considerable reluctance to embrace similar changes in the energy industry.

As noted above, Public Counsel is concerned about customers who wish to pay their bill immediately to avoid disconnection but are unable to do so in person. The current draft provisions need to ensure that customers will not be disconnected during any interval between their payment and a company's processing and posting of that payment.

Furthermore, before the commission codifies the current shift away from in-person customer service, it should carefully consider the adverse combination of telephone-centered service and low telephone penetration rates within low-income and other vulnerable populations. Households dependent upon public assistance are especially likely to lack telephones. Thus, relying on the telephone as the predominate means to communicate with customers, particularly about their ability to avoid shut-off or to negotiate payment plans, is likely to fail. For example, one National Consumer Law Center study found that 80% of Maine households disconnected from essential energy services had no telephone. That study also found energy consumers without telephones to be underrepresented in utility payment plans.

Washington-specific data is needed on low-income telephone penetration rates and the correlation of that population with those on energy assistance or facing disconnection. The lack of a telephone already makes it difficult for low-income households to keep gas and electric service, to enter into payment plans, or to contact consumer advocacy groups that can help them avoid disconnection. Closing local customer service options to rely on distant telephone service centers can only make these problems worse for low-income customers.

Until companies can show that telephone-centered service will not have an adverse effect on Washington's low-income populations, the following language from the introductory paragraph in the current electric rule (480-100-311) should be retained: "Companies shall provide applicants and customers reasonable access to company representatives for conducting business."

- **Proposed WACs 480-90/100-XX4/XX5/XX6/XX7 Customer notification prior to and after commission action**

(1) and (2)—Submission of company proposal draft notices. The submission of a company draft notice, either before or after commission action, should be made subject to commission approval.

Public Counsel generally applauds this effort to notify customers of company proposals and to foster public involvement in commission decisions that effect energy service.