

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of PUGET SOUND ENERGY For an Order Authorizing Accounting for Costs Associated with COVID-19 Public Health Emergency	DOCKETS UE-200780 and UG-200781
In the Matter of the Petition of AVISTA CORPORATION, d/b/a AVISTA UTILITIES For an Order Authorizing Deferral of Costs and Benefits Associated with COVID-19 Public Health Emergency	DOCKETS UE-200407 and UG-200408
In the Matter of PACIFICORP d/b/a PACIFIC POWER & LIGHT COMPANY Petition for an Order Approving Deferral of Costs Associated with COVID-19 Public Health Emergency	DOCKET UE-200234
In the Matter of CASCADE NATURAL GAS CORPORATION Petition for an Accounting Order Associated with COVID-19 Public Health Emergency	DOCKET UG-200479
In the Matter of NORTHWEST NATURAL GAS COMPANY d/b/a NW NATURAL Petition for an Accounting Order Associated with COVID-19 Public Health Emergency	DOCKET UG-200264

**JOINT RESPONSE OF
THE OFFICE OF THE WASHINGTON ATTORNEY GENERAL
PUBLIC COUNSEL UNIT
AND
THE ENERGY PROJECT**

NOVEMBER 19, 2020

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I. INTRODUCTION

1 Pursuant to WAC 480-07-370(4), the Public Counsel Unit of the Attorney General’s
Office (“Public Counsel”) and The Energy Project (TEP) file the following joint response to the
petitions for accounting order filed by Puget Sound Energy (PSE), Avista Utilities (“Avista”),
PacifiCorp, Cascade Natural Gas Company (“Cascade”), and Northwest Natural Gas Company
2 (“NW Natural”) (collectively, the “utilities” or “Petitioners”) in the above-captioned dockets.

At issue in these dockets is the utilities’ requests for deferred accounting treatment for
certain foregone revenues and various pandemic costs, many of which are inappropriate or ill-
defined. These requests arise during a global health pandemic that has had severe economic
impact on the utilities’ customers. Indeed, the COVID-19 pandemic has inflicted crisis on
multiple fronts. Washington residents are facing economic, financial, and public health
emergencies unlike anything experienced in decades, including skyrocketing levels of
unemployment, expiring federal subsidies, and growing financial troubles, especially for those
who were economically vulnerable before the pandemic.

3 Petitioners have proposed accounting deferrals that would insulate shareholders from
responsibility for a variety of costs and reduced revenues viewed as “incremental” and caused by
the COVID-19 pandemic. If approved, these deferrals would further burden Washington
residents with such costs in the future, while providing immediate financial benefits to the
utilities’ shareholders, with no showing of financial need or hardship to justify this regulatory
relief. Because of the widespread impact of the pandemic, the utilities must view any deferral

allowed in these dockets and any future cost recovery with the spirit of shared sacrifice, and the Commission should strongly encourage the utilities to do so.

4 Approving any type of accounting deferral is entirely discretionary with the Commission and the utility have no legal entitlement to this relief. The Commission must carefully balance the interest of ratepayers and shareholders in considering the proposed accounting petitions. Public Counsel and TEP assert that this balance weighs heavily in favor of significantly narrowing the scope of the deferrals.

II. SUMMARY OF CONSUMER RECOMMENDATIONS FOR COVID-19 ACCOUNTING

5 Public Counsel and TEP respectfully recommend that the Commission adopt the following recommendations and incorporate them its orders on the pending accounting petitions. These are presented in more detail in Exhibit 1 to the Declaration of Lisa W. Gafken.¹ Also, for use as a summary reference tool, Exhibit 2 to the Declaration of Lisa W. Gafken compares Staff's terms, each company's request, and Public Counsel and TEP's recommendation in matrix form.

6 Only two categories of utility cost should be appropriate for deferred accounting treatment:

- *Customer Assistance Programs.* Customer assistance costs to fund a COVID-19 bill payment assistance program, as adopted in Docket U-200281 as *Additional Funding for Customer Programs*,² are eligible to be deferred for Commission review and potential recovery in future rate case or other proceedings. Companies should contribute to these costs to share the burden with customers.

¹ Declaration of Lisa W. Gafken, Exh. 1, presents a redlined version of Staff's recommendation and a clean version reflecting only Public Counsel and TEP's recommended modifications.

² *In the Matter of Response to the COVID-19 Pandemic*, Docket U-200281, Order 01, ¶¶ 18–19, 43 (Oct. 20, 2020).

- *Bad Debt.* Any change in the amount of bad debt expense accrued in 2020 or 2021, relative to the bad debt baseline, may be deferred. While the Utilities will defer the change in bad debt expense that is accrued relative to the baseline being collected from customers today, it will not collect any amount above the actual Accounts Receivable balance amounts actually written off and not subsequently collected, or amounts offset by customer assistance programs. Companies should contribute to these costs to share the burden with customers.

7

The following additional categories of cost proposed for accounting deferral treatment by

Petitioners should not be approved:

- *Lost Revenues.* No deferral should be permitted for lost revenues, arising from changes in customer usage due to COVID-19, except within the scope of existing, Commission-approved revenue decoupling mechanisms.
- *Late and Reconnection/Disconnection Fees.* No deferral should be permitted for late fees or reconnection/disconnection fees not charged.
- *Direct Costs of COVID-19 Pandemic.* No deferral of non-labor costs (PPE, cleaning supplies etc.) for measures taken by the utility in response to the COVID-19 pandemic. These costs are reasonably presumed to be fully offset by COVID-19 enabled reductions in utility costs, including reductions in employee travel, training, advertising, office supplies and cleaning, and the temporary deferral of the utility's other discretionary program and project costs.
- *Direct Costs Alternative.* If the Commission allows deferral of direct costs, it should also adopt a rebuttable presumption that direct costs are offset by savings. Any utility proposing accounting deferral and future recovery of incremental non-labor direct costs has the burden to present evidence in future proceedings demonstrating that realized cost reduction offsets did not, either fully or partially, exceed such incremental costs incurred within 2020 or 2021. The Commission should require broad tracking of offsetting cost savings.
- *COVID-19 Relief Cost Savings.* Utilities shall defer as a regulatory liability all cost savings, credits, payments, or other benefits received by the Utility from a federal, state,

or local government that are directly related to COVID-19 relief programs, including but not limited to federal, state, or local tax credits or benefits.³

- *Labor Costs.* No deferral of employee labor or benefit costs or payroll taxes shall be recorded as deferred COVID-19 deferred costs because normalized, ongoing levels of employee labor and benefits expenses are fully recovered within currently effective utility rates.
- *Carrying Charges.* No carrying charges or interest shall be added to any authorized regulatory deferrals.

8 Any deferred accounting approval in these dockets should be subject to the following conditions:

- *Earnings Test.* As a condition of accounting for deferred costs, each utility shall calculate its average return on equity (ROE), on a rolling 12-month basis employing a commission basis of regulatory accounting, to quantify and test the financial impact of the proposed accounting deferrals in each month, reducing net accrued costs if necessary to ensure that such accruals do not contribute to excessive earnings. The utility's application of the earnings test throughout the deferral period will then be reviewed in the general rate case when recovery is sought.
- *Reporting and Data.* Separate subaccounts should be employed for each category of monthly accounting deferrals ultimately authorized by the Commission. Supporting workpapers and documentation, stating any assumptions made and algorithms employed for each monthly entry to these subaccounts, should be retained in sufficient detail to facilitate efficient regulatory review in future proceedings before the Commission. Quarterly reports summarizing the monthly amounts of accounting deferrals for each category of accounting deferrals ultimately authorized by the Commission should be submitted for review by Staff and parties to these dockets.

³ This is consistent with Staff principle 3 approved in U-200281, Order 01. *In the Matter of Response to the COVID-19 Pandemic*, Docket U-200281, Order 01, Appendix A, at 4 (Oct. 20, 2020) (establishment of regulatory liability accounts for identified benefits).

III. CONSUMER RECOMMENDATIONS

A. Deferred Accounting Is an Extraordinary Remedy Which Should Be Narrowly Applied

9 The Commission has discretion to approve or deny utility deferred accounting requests.⁴ Indeed, a utility is not entitled to deferred accounting as a matter of law simply upon request. Rather, deferred accounting is allowed, if at all, as a fully discretionary, exceptional remedy in cases where there are extraordinary circumstances⁵ and only when the costs are material.⁶

10 As Staff notes, “it is neither normal Commission practice, nor Staff’s preference, to allow the deferral of revenues.”⁷ While the pandemic clearly creates exceptional circumstances, the Commission must resolve issues regarding the appropriate scope of deferral accounting and future cost-recovery criteria in response to the deferred accounting petitions.

11 Deferred accounting is a special remedy that is a form of single-issue ratemaking. As such, it is generally disfavored because it is inappropriate to cherry-pick isolated types of costs on a single-issue basis for piecemeal accounting and separate recovery of increasing costs (or declining revenues). Any attempt to isolate, defer, and track selected costs that are expected to increase, while ignoring the other continuous changes in the utility’s revenue requirement

⁴ See RCW 80.04.090.

⁵ *Wash. Utils. & Transp. Comm’n v. Pacific Power & Light Co.*, Docket UE-140762 et al., Order 08, ¶¶ 273–274 (Mar. 25, 2015) (that costs are extraordinary is “a criterion that should apply to a cost deferral accounting mechanism at the time requested and at the time any recovery is sought.”).

⁶ *Wash. Utils. & Transp. Comm’n v. NW Nat. Gas Co.*, Dockets UG-080519 and UG-080530, Order 01, ¶ 7 (May 2, 2008) (“In prior decisions concerning accounting petitions, the Commission has determined that deferred amounts must be of a magnitude such that recording the costs under the Federal Energy Regulatory Commission’s uniform system of accounts has a material impact on company earnings.”).

⁷ UTC Staff Proposed COVID-19 Response Term Sheet Memo, at 6, *In the Matter of Response to the COVID-19 Pandemic* (Sept. 17, 2020) (Docket U-200281).

elsewhere that may offset such cost increases, exposes the regulatory system to the potential for gaming and excessive rates.

12 Deferred accounting, therefore, should be narrowly tailored to protect ratepayers from the risk of unfair and unbalanced rates. Normal, ongoing levels of revenues and expenses are embedded within each utility's Commission-approved base rates, and the elements of a utility's revenue requirement constantly change between rate case test years. COVID-19 has undoubtedly caused utilities to incur certain increased costs, but the pandemic has also caused or enabled utilities to avoid or defer other discretionary costs. Such offsetting cost savings should not be ignored.

B. The Commission May Allow Utilities to Defer Costs Acceptable for Deferred Accounting

13 Public Counsel and The Energy Project do not object to deferred accounting treatment for bad debt and customer bill and arrearage assistance, within the parameters described. Approval of these costs for deferral must be also coupled with the adoption of an earnings test, as discussed in detail in a separate section below. In addition, as with all the areas of cost-recovery addressed in this filing, deferral and future recovery of these costs presents an opportunity for the utilities to demonstrate shared sacrifice.

1. Bad debt

Staff Term (summary)⁸

Allow deferral of bad debt expense accrued in 2020, 2021 and 2022 above the bad debt baseline established in the last general rate case. No recovery in rates would be allowed for amounts exceeding the actual amount that is written off.

Company Petitions

All company petitions incorporate the Staff recommendation.

Public Counsel and TEP Recommendation

Any change in the amount of bad debt expense accrued in 2020 or 2021, relative to the bad debt baseline, may be deferred. While the Utilities will defer the change in bad debt expense that is accrued relative to the baseline being collected from customers today, it will not collect any amount above the actual Accounts Receivable balance amounts actually written off and not subsequently collected. Deferrals should be net of avoided collection agent fees, and after application of all bill payment assistance amounts.

Discussion

14 Recovery of “bad debt” expenses in utility rates is a long-established element of ratemaking that is deemed generally reasonable and conceptually non-controversial. All the utilities in these dockets are currently recovering an amount of bad debt expense in their rates. During the pandemic, utilities have increased levels of bad debt due to severe impacts on their customers’ ability to pay. It is reasonable to allow deferral of these increased levels of bad debt, within certain parameters to ensure fairness.

15 Public Counsel and TEP recommend that the incremental change in the amount of bad debt expense accrued in 2020 and 2021, relative to the bad debt baseline, should be eligible for

⁸ To assist the reader, each section of the pleading discussing specific cost categories begins with the Staff Term as reflected in Docket U-200281, Order 01, Appendix A, either in full or in summary. This is followed by a summary of company positions stated in their amended petitions and a summary of the Public Counsel and TEP recommendation. *In the Matter of Response to the COVID-19 Pandemic*, Docket U-200281, Order 01, Appendix A (Oct. 20, 2020).

deferral. However, while the Utilities would defer the change in bad debt expense that is accrued relative to the baseline being collected from customers today, they would not collect any amount above the actual Accounts Receivable balance amounts that are written-off in each year, net of recoveries of previously written-off balances and avoided collection agent fees. The Staff Term does not include these two netting items.

16 Allowed recovery would also be after application all COVID-19 bill payment assistance program and other public assistance amounts to the Accounts Receivable. Bill assistance directly credited to customers' utility account balances effectively go from one pocket to the other, representing both a "cost" and a "cost savings" to utilities. Customer account credits directly reduce the Accounts Receivables that are most at risk of becoming bad debts in the absence of such assistance.

17 Public Counsel and TEP and Staff's recommendations differ with respect to the period initially covered. While Staff's recommendation extends deferrals through 2022 without a clear indication of whether COVID-19 impacts will still be present, Public Counsel and TEP recommends that the deferral period be initially limited to 2020 and 2021. If the resumption date plus 180 days extends into 2022, the utility may defer the change in bad debt expense using the same formula as described for 2021 in 2022. Public Counsel and TEP concur with the Staff bad debt expense baseline, defined as the expense amount that is currently being collected from customers for bad debt, as determined in their last general rate proceeding as of October 1, 2020, unless a new rate case is completed during the deferral period, at which time an updated baseline amount reflective of changed expense recovery levels should be employed commencing when new base rates are effective.

2. Customer bill and arrearage assistance

Staff Term

Costs to fund a COVID-19 bill payment assistance program, as described in the Additional Funding for Customer Programs section.

Company Petitions

All company petitions incorporate Staff Term.

Public Counsel and TEP Recommendation

Accepts Staff's term for costs to fund a COVID-19 bill payment assistance program, as described Docket U-200281, Order 01 at paragraphs 18-19 and 43, subject to potential for shared sacrifice by the utility to share the cost. These costs will help to offset company bad debt also proposed for deferred accounting. Deferrals should be limited to 2020-2022 to reflect that program is temporary.

Discussion

18 Public Counsel and TEP generally do not object to deferred accounting of the costs of bill and arrearage assistance under the Commission's COVID-19 order within the parameters discussed below. Other than the federal Low-Income Home Energy Assistance Program (LIHEAP), the vast majority of customer bill and arrearage assistance is funded by and for Washington ratepayers. Consistent with RCW 80.28.068, providing that low-income assistance can be recovered in rates to other customers, the costs of customer bill assistance programs are ordinarily recovered outside of general rates through separate tariffs.⁹ To the extent that COVID-19 assistance is also recovered through those tariffs, those amounts would not be appropriate for deferral or later recovery in rates. Accordingly any deferrals should be tied to Commission-approved program expenditures and should exclude any assistance that is recovered through existing bill assistance tariffs. Deferrals should also be limited to the years 2020 through

⁹ See e.g., Avista Schedule 92 (Low-income Rate Adjustment), PSE Schedule 129 (Low-income Program).

2022 to reflect the Commission's order that these programs are temporary in nature. This is consistent with the timeline recommended by Joint Advocates previously.¹⁰

19 As noted above, deferred accounting and future rate recovery of customer assistance funding costs would create offsetting bad debt avoidance benefits that would be captured within the Bad Debt deferrals recommended for approval above.

C. The Commission Should Reject Requests to Defer Costs Not Acceptable for Deferred Accounting

20 The utilities have requested deferral of certain costs and reduced revenues that are not proper for deferral treatment, including lost utility sales revenues, late fees, disconnection fees, selected direct costs, and carrying charges on deferral balances. The Commission should reject deferral of those additional items.

1. Revenues due to lost sales volumes are not proper for deferral

Staff Term

Staff opposes the deferral of lost revenues due to the reduction in customer usage.

Company Petitions

PSE, PacifiCorp, and NW Natural petitions do not request recovery of lost revenues due to reduction in customer usage.

Avista and Cascade's petitions appear to request lost revenue recovery. Responses to discovery, however, disclaim intent to recover.

Public Counsel and TEP Recommendation

Public Counsel and TEP oppose the deferral of lost revenue due to reduction in customer usage.

¹⁰ Advocates COVID-19 Term Sheet, Section V.4 (3), *In the Matter of Response to the COVID-19 Pandemic* (Sept. 17, 2020) (Docket U-200281) (funding remains in place until September 30, 2022).

Discussion

21 The Commission should expressly reject deferred accounting for changes in utility sales volumes and related revenues for customer classes not included in approved decoupling mechanisms. Changes in sales volumes are business risks properly absorbed by utility shareholders, who routinely retain the impact of normal customer count growth and variation in large commercial and industrial sales volumes and revenues between test years. Deferral of lost revenues is ultimately simply an effort to collect lost revenues and to restore any profits lost as a result of the pandemic.

22 Commission Staff recognized this and recommended against recovery in its proposed cost recovery terms.¹¹ In response to discovery asked of each utility, all five utilities stated that they were not seeking to recover this type of lost revenue.¹² Subsequently however, in their amended accounting petitions, Avista and Cascade have requested deferral of “. . . normal business costs not recovered due to a *reduction in [electric/gas] use* by its customers due to the statewide Stay-Home Order.”¹³ These proposals effectively represent a request for replacement of lost revenues and should be rejected.

23 Utility shareholders are compensated for certain operating risks, including the risk of sales volume and revenue fluctuations between rate cases, through a generous return on equity capital. These risks have already been mitigated in Washington by Commission approval of

¹¹ *In the Matter of Response to the COVID-19 Pandemic*, Docket U-200281, Order 01, Appendix A, at 6 (Oct. 20, 2020).

¹² See Declaration of Lisa W. Gafken, Exh. 3 (Utilities’ Responses to PCU/TEP Data Request No. 23).

¹³ See Amended Petition of Cascade Natural Gas Corporation, ¶ 8, Docket UG-200479 (Oct. 30, 2020); and Amended Petition of Avista Corporation, ¶ 12, Dockets UE-200407 and UG-200408 (Oct. 21, 2020) (emphasis added).

revenue decoupling for certain utilities and customer rate classes. Allowing deferral of revenues not collected due to fluctuations in usage for customer classes not subject to decoupling would be a selective, retroactive expansion of revenue decoupling. This would not be reasonable. In rate cases, utilities are provided a reasonable opportunity to recover their prudently incurred costs, plus an opportunity to earn a fair return on invested capital.¹⁴ There is no guaranteed recovery of either approved revenues or “normal business costs” as part of this opportunity.

24 Moreover, quantification of these lost revenues with any precision is nearly impossible. It would be very difficult to accurately isolate sales and revenue changes that were directly and solely caused by the “statewide Stay-Home Order” given the continuous changes in sales driven by weather fluctuations, changes in general business conditions, and the many other drivers of electric and gas usage. Approval of accounting deferrals for this purpose would introduce a need for either gross simplifying assumptions and/or complex calculations to effect isolation of sales and revenue impacts attributable solely to the Stay-Home Order. Accumulating such deferrals over multiple years and months compounds the quantification challenge and invites controversy in future rate cases, adding regulatory complexity and further burdening the resources needed for other issues in such cases. Notably, Petitioners are silent on the many detailed assumptions and complex methods that would be required to isolate COVID-19 Stay-Home order impacts upon sales volumes and revenues.

¹⁴ *People’s Organization For Washington Energy Resources v. Utilities and Transportation Commission*, 104 Wn.2d 798, 808–11, 711 P.2d 319 (1985) (“POWER”).

25 Rate case regulation provides no guarantee of recovery of any set level of cost plus shareholder profit,¹⁵ and the existence of a crisis does not change this principle. Importantly, no company has claimed that it is not collecting enough revenue to cover all of its operating expenses, depreciation, and taxes. Rather, indications are that the companies are reporting positive earnings, while being able to fully cover the ongoing costs of doing business. Even if earnings dip below the authorized level, which is an outcome reasonably expected during a global health pandemic, automatic replacement of lost utility sales revenues to reach authorized levels is not warranted. That would result in a riskless guarantee of shareholder profit levels, which is unlawful under any circumstance, but particularly inappropriate in the midst of a national economic crisis.

26 Other state commissions addressing this question have rejected lost revenue recovery. In a June 2020 Order, the Indiana Utility Regulatory Commission found that:

Asking customers to go beyond their obligation and pay for services they did not receive is beyond reasonable utility relief based on the facts before us. A utility’s customers are not the guarantors of a utility earning its authorized return. Instead utilities are given the opportunity to recovery their costs and fair rate of return, which includes a certain level of risk attributable to variable sales.¹⁶

27 In a similar vein, the Missouri Commission rejected a utility request to defer alleged lost revenues in 2012, reasoning that, “ungenerated revenue has never existed, never does exist, and

¹⁵ *POWER*, 104 Wn.2d at 810 (holding that a utility is not permitted to recovery every expense in its rate structure and the UTC has the power to disallow expenses).

¹⁶ *Verified J. Petition of Duke Energy et al. Petition of Ind. Off. of Util. Consumer Counselor for Generic Investigation Into COVID-19 Impacts*, Cause No. 45380, Phase 1 Interim Emergency Order Of The Commission, at 9 (June 29, 2020), available at https://www.in.gov/iurc/files/45380Phase1_ord_062920.pdf.

never will exist. Revenue not generated, from service not provided, represents no exchange of value. There is neither revenue nor cost to record, in the current period, or any other.”¹⁷

28 Finally, overbroad approval of accounting deferrals to ensure the recovery of approved revenues for normal business costs during a health pandemic, or any other piecemeal change in business conditions that impact sales volumes, violates the rule against retroactive ratemaking. Such action would establish a dangerous precedent in Washington.¹⁸

2. Uncharged late fees and reconnection fees should not be deferred

a. Late fees

Staff Term (summary)

Allow deferral of late payment fees for calendar year 2020 compared to the average annual amount of late payment fees collected over the previous five years (2015-2019). For 2021 use the same baseline prorated by month to the resumption date plus 180 days, extending into 2022.

Company Petitions

Avista, Cascade, and PacifiCorp petitions do not request deferral of late fees for recovery.

PSE and NW Natural petitions incorporate the Staff term.

Public Counsel and TEP Recommendation

The Commission should not approve deferred accounting for uncollected late fees.

¹⁷ *In re the Application of S. Union Co. for the Issuance of an Acct. Auth. Ord. Relating to its Nat. Gas Operations*, Docket GU-2011-0392, Report and Order at 25 (Jan. 25, 2012), available at <https://www.efis.psc.mo.gov/mpsc/commoncomponents/viewdocument.asp?DocId=935660687>.

¹⁸ *See, Gearhart v. Pub. Util. Comm'n of Or.*, 255 Or.App. 58, 98, 299 P.3d 533 (2013) (“the rule against retroactive ratemaking prohibits a utility regulator from setting rates to allow a utility to recover past losses or to require it to refund past profits, so as to ensure that customers are paying rates that reflect the cost of service at the time the service is provided, and so as to protect utilities by ensuring that past profits cannot be used to reduce future rates”), *aff'd*, *Gearhart v. Pub. Util. Comm'n of Or.*, 356 Or. 216, 339 P.3d 904 (2014).

Discussion

29 Public Counsel and TEP recommend that deferred accounting not be approved for “uncharged” late payment fees. Although Staff’s term supports deferred accounting for recovery of late fees,¹⁹ Avista, PacifiCorp, and Cascade have not included the Staff late fee term in their amended petitions. Accordingly, this is not a contested issue for those petitions.

30 Recovery of these foregone fees in rates is not appropriate. From April 17, 2020, through December 31, 2020, collection of these fees has been prohibited by law, by order of Governor Inslee. Governor’s Proclamation (GP) 23.2 stated in part:

I prohibit all energy, telecommunications, and water providers in Washington State from . . . (3) charging fees for late payment or reconnection of energy, telecommunications, or water service.²⁰

Nothing in the Governor’s Proclamation authorizes recovery of these fees from other Washington ratepayers.

31 Therefore, allowing collection of these foregone late fees from any customer by deferring unrecovered fees and then including the charges later in rates to all customers is directly contrary to the plain language of prohibition. By socializing the cost of uncollected late fees, customers who had no late payments will pay a portion of the late fees. There is no basis under company tariff or Commission rules to charge this group of customers late fees. Even more problematic,

¹⁹ *In the Matter of Response to the COVID-19 Pandemic*, Docket U-200281, Order 01, Appendix A (Oct. 20, 2020).

²⁰ The prohibition has been extended by subsequent proclamations and currently is in effect until December 31, 2020, pursuant to Governor’s Proclamation, Wash. Exec. Order 20-23.11 (Oct. 14, 2020).

this would result in thousands of customers for whom charges were waived nonetheless paying an apportioned late fee, directly contrary to the Governor's Proclamation.

32 Additionally, these fees are primarily designed to act as an incentive for customers to pay, and they do not reflect any particular company costs.²¹ For this reason, there are no specific costs or expenditures which are not recovered as a result of the late fee prohibition. This is simply foregone revenue which never existed and never will exist until resumption is approved. There are no actual revenues or related costs to record with respect to these uncharged late payment fees. Allowing deferral of these uncharged fees is simply another form of improper revenue guarantee.

33 If the Governor's Proclamation expires prior to April 30, 2021, as is the current situation, collection of late fees will be thereafter prohibited by the Commission Order in this docket and cannot be lawfully charged to customers. The arguments above apply equally to uncharged late fees between January 1, 2021 and April 30, 2021.

34 Finally, the fact that several companies are not seeking recovery of late fees is significant. These companies may not see these costs as material, or they may share the concern that recovery is inappropriate given the existence of the legal prohibition. In order to treat all customers in Washington fairly and consistently, no Washington IOU should be allowed to defer these costs.

²¹ The Public Service Commission of Utah declined to include late fees in the regulatory asset as an additional incremental source of revenue, having previously concluded that the late fee was not cost-based and principally served to encourage prompt payment. *Application of Rocky Mountain Power for a Deferred Acct. Ord. Regarding Costs Incurred Due to the COVID-19 Pub. Health Emergency*, Order Approving Accounting Order, at 6, Docket No. 20-035-17 (Utah Pub. Serv. Comm'n Sept. 15, 2020), available at <https://pscdocs.utah.gov/electric/20docs/2003517/3154062003517oao9-15-2020.pdf>.

b. Reconnection fees

Staff Term (summary)

Allow deferral of reconnection charges in 2020 after March 1 compared to historical five-year average (2015-2019). For 2021 same baseline prorated by month through resumption date plus 180 days into 2022.

Company Petitions

Avista, Cascade, and PacifiCorp incorporate Staff term except not beyond 2020.

PSE and NW Natural incorporate Staff term.

Public Counsel and TEP Recommendation

The Commission should not approve deferred accounting for uncollected reconnection fees.

Discussion

35 Deferral and recovery of uncollected reconnection fee revenue should also be denied for some of the same reasons applicable to late fees. Like late fees, collection of these fees was prohibited by the Governor's Proclamations.²² These are foregone revenues that are not guaranteed for recovery under normal utility regulation. Shareholders are compensated through the allowed return on rate base to accept risks of fluctuations in transaction volumes and revenue amounts between rate cases.

36 A distinction with late fees is that costs are directly incurred by utilities to perform disconnection and reconnection activities, including labor and overheads for involved field personnel, transportation costs, and customer service systems and personnel administering these activities. Therefore, to the extent reconnection fee levels have been established based upon cost of service principles, it is likely that offsetting avoidance of these labor and non-labor disconnection/reconnection costs eliminates the need for deferral accounting for these foregone

²² Wash. Exec. Order 20-23.2 (Apr. 17, 2020) through Wash. Exec. Order 20-23.11 (Oct. 14, 2020).

revenues. Alternatively, if deferred accounting for reconnection fees is approved, offsetting cost savings from avoided trips to disconnect and reconnect service must be captured.

3. Direct costs should not be deferred

Staff Term (summary)

Allow deferral of “direct costs” in listed categories for measures taken in response to COVID-19, net of savings, credits, payments or other benefits received by the utility that are directly related to a COVID-19 direct cost.

Company Petitions

Avista, Cascade, PacifiCorp, and NNG petitions incorporate the Staff term.

PSE’s petition adds to Staff’s list of costs “labor for employees temporarily unable to work due to the pandemic, where such labor is typically charged to capital but must be charged to expense.” PSE also lists savings associated with the pandemic such as travel, training, parking and office supplies.

Summary of Public Counsel and TEP Recommendation

Labor and non-labor costs for measures taken by the utility in response to the COVID-19 pandemic should not be authorized for deferral. These costs should be presumed to be fully offset by savings.

In the alternative, if the Commission approves deferral of any direct costs, any utility proposing such deferrals would have the burden of presenting evidence to overcome the presumption costs are fully offset by cost savings achieved during the deferral period. The Commission should require utilities to take steps to mitigate the impact of the pandemic, and the Commission should require broad tracking of offsetting costs savings.

Discussion

a. The Commission should reject deferral of “direct costs”

37 Public Counsel and The Energy Project recommend that the Commission reject deferral of labor and non-labor costs for measures taken by the utility in response to the COVID-19 pandemic. Further, the Commission should establish a presumption that these costs are fully offset by cost reductions including employee travel, training, advertising, office supplies and

cleaning, and the temporary deferral of the utility’s other discretionary program and project costs.

38 As an alternative, should the Commission authorize deferrals for direct costs, it should order broad tracking of utility savings and cost reductions, including but not limited to, reduced employee travel and training, reduced office space/supplies/cleaning/parking expenses, deferred project and program costs, deferred hiring and avoided new hire medical testing, savings from debt refinancing, reduced vehicle usage and fuel costs, avoided advertising, and other cost savings enabled by or coincident with COVID-19 operational restrictions and changes.

39 If the Commission authorizes deferral of any direct costs, the Commission order should provide that any utility may seek to overcome the presumption of savings offsets, and propose accounting deferral and future recovery of incremental non-labor costs incurred in 2020 or 2021 associated with COVID-19 response efforts by presenting evidence demonstrating that realized cost reduction offsets did not, either fully or partially, exceed such incremental costs incurred within 2020 or 2021. Such deferrals would also be subject to the earnings test described below.

40 The Michigan Public Service Commission adopted a similar approach to COVID-19 deferrals, declining “to direct utilities to track or defer any specific category of expenses related to their COVID-19 response beyond the Commission’s previous authorization . . . to track and defer uncollectible expenses.”²³ The Commission found that:

²³ *In the Matter, On the Comm’n’s Own Motion, to Review Its Response to the Novel Coronavirus (COVID-19) Pandemic; Including the Statewide State of Emergency, and to Provide Guidance and Direction to Energy and Telecomm. Providers and Other Stakeholders*, Case No. U-20757, Order at 29 (Mich. Pub. Serv. Comm’n July 23, 2020), available at <https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t00000D7FkoAAF>.

[W]hile the Commission recognizes that there are costs that may be extraordinary from the stand point that they are outside the utility’s control and were not considered when setting the utility’s current rates, there may also be unforeseen savings or revenues, as well as deliberate cost savings measures taken by the utility to mitigate the financial impacts of COVID-19 over the course of the year. The Commission cannot consider on side of the equation — that is cost increases — in isolation and not have a fuller picture of the utility’s overall financial conditions.²⁴

b. Non-labor costs do not appear to be material and are presumptively offset by other cost savings

41 Petitioners have proposed accounting deferral authority for what they term “direct” costs resulting from the COVID-19 pandemic, asking to defer, “. . . incremental costs associated with: personal protective equipment, cleaning supplies and services, contact tracing, medical testing, financing costs to secure liquidity, information technology updates, equipment needed for remote work options, and the administrative needs to implement the term sheet components.”²⁵

42 These are insufficiently defined costs that will be difficult to precisely isolate given the existence of similar types of costs within normal utility operations. As a general matter, these isolated incremental costs are not substantial in amount, are not beyond the control of management, and are not large or volatile enough amounts to merit extraordinary accounting treatment.

43 Importantly, Petitioners’ asserted pandemic direct costs are very likely to be offset by cost savings achieved elsewhere in the business. For example, in response to discovery, PSE has identified significant non-labor COVID-19 “Cost Savings” totaling \$3.9 million to date in 2020,

²⁴ *Id.*

²⁵ See e.g., Amended Petition of Avista Corporation, Dockets UE-200407 and UG-200408, ¶ 8 (Oct. 21, 2020).

which more than offset the incremental \$152,751 identified for “facilities cleaning,” \$535,266 for “PPE and Safety Equipment/Supplies” and \$202,700 for “Home Office Equipment and Setup.”²⁶

44 Similarly, Avista identified estimated annual savings from “cancelled events, decreased transportation costs, lower collection fees, training/conference travel and misc. other savings” totaling \$3.3 million and noted, “[i]n response to increased expenses not related to COVID-19, the company also identified approximately \$3.8M of savings related to operations (including maintenance expense, delay in hiring positions, and non-utility marketing/advertising) which were not savings related to COVID-19.”²⁷ This Avista response highlights the difficulties in attributing some costs and savings as “related to COVID-19” while other are attributed elsewhere, with no clearly defined definitions or limitations on such seemingly arbitrary attribution choices. During a national health pandemic, utilities should aggressively exploit all opportunities to reduce costs and customer rate impacts and then fully offset savings achieved against asserted incremental costs that are subject to deferral accounting.

45 If the broad scope of “direct cost” accounting deferrals proposed by Petitioners is approved, extensive discovery and analysis of offsetting cost savings will be necessary in future rate cases. The following potential issues can currently be identified:

46 *Financing Costs.* If incremental financing costs to secure liquidity are eligible for deferral, it would be necessary to evaluate changes in the utilities’ cost of capital to account for the offsetting benefits of reduced market interest rates that were not captured in each utility’s

²⁶ See Declaration of Lisa W. Gafken, Exh. 4 (PSE’s Response to PCU/TEP Data Request No. 3).

²⁷ See Declaration of Lisa W. Gafken, Exh. 5 (Avista’s Response to PCU/TEP Data Request No. 8).

most recent rate case. Considerable complexity and potential controversy would be introduced determining how to quantify accurate accounting deferrals in the near term, net of offsetting benefits, and again later in future rate cases when these types of complex analyses will be needed for each utility to determine the cumulative net costs and benefits recoverable from ratepayers associated with reduced financing costs between rate cases.

47 Utility responses to discovery in these dockets illustrate this problem. PSE asserts that its “. . . additional costs incurred due to the higher CP [commercial paper] rates and funding the cash liquidity reserve was approximately \$326,747” which would presumably be deferred for future recovery. By contrast, the same capital market conditions allowed both Cascade and NW Natural to achieve significant ongoing interest expense savings by refinancing existing debt at much lower current market interest rates.²⁸ Cascade borrowed \$25 million at 3.34 percent interest on October 30, 2020, refinancing existing debt of \$24.2 million bearing interest at 5.25 percent, creating annual interest expense savings of about \$462,000. NW Natural issued 30-year first mortgage bonds at 3.6 percent which was, “the Company’s lowest 30-year issuance ever.”²⁹ It would be unfair to ratepayers to permit deferral and recovery of only selected financing costs incurred earlier this year while ignoring the long term debt cost interest rate savings from refinancing that have been or could be realized before each utility’s next rate case.

48 *Information Technology.* If incremental Information Technology (IT) expenses are allowed where costs were incurred to facilitate employee work from home arrangements, future

²⁸ See Declaration of Lisa W. Gafken, Exh. 6 (PSE’s Response to PCU/TEP Data Request No. 27a, Cascade’s Response to PCU/TEP Data Request No. 10, Cascade’s Response to PCU/TEP Data Request No. 27, and NW Natural’s Response to PCU/TEP Data Request No. 27.

²⁹ See Declaration of Lisa W. Gafken, Exh. 6. Cascade savings calculated as \$24.2 million times (3.34 percent – 5.25 percent).

rate cases would also need to analyze and quantify offsetting cost savings from other potentially larger IT projects and programs that were suspended or delayed due to COVID impacts upon vendors and supply chains. It is not unusual for IT software upgrades and large system development projects to be rescheduled as priorities change or when vendor resource availability becomes limited. Analyzing and determining the reasons for such changes, the cost impacts experienced and which changes should be offset against deferred amounts designated as “to facilitate employee work from home arrangements” would likely be both complex and controversial, particularly if required to be conducted over multiple months and years between rate cases.

49 *Personal protective equipment (PPE)*. If PPE costs are deferred, it will be necessary to evaluate changes in the overall costs of employee uniforms and safety equipment to evaluate overall impacts.

50 *Cleaning Supplies*. If incremental cleaning supplies costs are deferred, there may be offsetting savings in cleaning costs at less occupied utility office buildings or temporarily closed public-facing facilities.

51 *Medical Testing*. If medical testing costs are deferred, it would be appropriate to analyze changes in new employee hiring activities and changes in workforce management to see if reduced hiring during the pandemic created offsetting reductions in new employee drug screening or physical examinations.

52 In summary, utilities routinely and continuously incur costs for safety equipment and uniforms, for cleaning supplies and services, for IT equipment and software upgrades, credit, and for a variety of administrative needs. Substantial analysis and judgements would be required to

isolate only the incremental new costs in these areas that are reasonably attributable to COVID-19 conditions and define and quantify all of the offsetting cost savings that were achieved.

53 Tightly defining the deferral authority granted in these dockets will result in administrative efficiency and avoid unduly burdening future rate cases with controversial new issues that would arise if Petitioners' expansive proposals for expense and lost revenue deferral are granted. Public Counsel and The Energy Project urge the Commission to consider the added complexity and significant resources needed to address general rate cases when considering what level of deferral authority to grant in these dockets.

c. Labor costs should not be deferred

54 Utility labor expenses are quantified for full recovery within periodic base rate cases and present unique problems when deferral accounting is contemplated. As with all other categories of cost, labor costs are constantly changing between rate case test years. Employee headcounts and labor hours routinely change with variations in workload, while the distribution of labor costs between construction (capitalized) and operation/maintenance (expensed) activities is also continuously changing. It would be inappropriate to defer for later recovery any utility labor costs or related employee benefits because such costs are continuously recovered within base rates.

55 The Petitioners do not clearly indicate whether and how deferral of employee labor or

benefit expenses should be approached.³⁰ Cascade and NW Natural assert no changed costs or deferral accounting is needed, while large estimates of incremental labor costs are asserted by PSE, PacifiCorp, and Avista that are dependent upon complex analyses and questionable assumptions to quantify. This uncertainty and complexity should be avoided, and Public Counsel and TEP ask the Commission to not approve deferral of employee labor or benefit costs.

d. PSE’s vague request for “other incremental costs” should be rejected

56 In addition to listing “direct costs” generally similar to the other utilities, PSE’s Petition requests approval to defer “other incremental costs associated with COVID-19, as may be identified.” This request suffers from all the defects discussed generally in this section. Additionally, it is so vague, undefined, and unlimited as to provide no information upon which the Commission can rule. It is not consistent with the Staff principle adopted in Docket U-200281, Order 01 that, “Petitions must identify specific categories of expenditures and certain revenues and include overly broad requests.”³¹ Granting PSE’s request requires that the Commission blindly and arbitrarily approve a pig in a poke. There is literally no restriction on

³⁰ For example, in response to PCU/TEP Data Request No. 3, PSE indicates it has incurred \$1.38 million of incremental expensed labor costs due to labor cost accounting distribution shifts. PacifiCorp responded to the same Data Request No. 3 indicating it incurred approximately \$2.2 million on a total company basis of incremental standby pay expenses to enable certain transmission and distribution crews to stay together as a pod should they need to respond for social distancing. Avista’s response to Data Request No. 3 includes a complex narrative discussion of procedures to be followed to estimate incremental labor costs, concluding that the company is still in the process of identifying what costs are incremental to O&M due to COVID. Avista asserted that it would determine what would be appropriate to defer at the end of the year and based on complete annual data. Declaration of Lisa W. Gafken, Exh. 4 (PSE’s Response to PCU/TEP Data Request No. 3). In contrast, Cascade and NW Natural responded to PCU/TEP Data Request No. 5 indicating no employee labor or benefit costs have increased directly or indirectly due to the pandemic. Declaration of Lisa W. Gafken, Exh. 8 (Cascade Response to PCU/TEP Data Request No. 5; NW Natural Response to PCU/TEP Data Request No. 5).

³¹ *In the Matter of Response to the COVID-19 Pandemic*, Docket U-200281, Order 01, Appendix A, at 4 (Principle 1) (Oct. 20, 2020).

the type or amount of costs that PSE could defer under this category, only that it will be assertedly linked to COVID-19. Whether or not the Commission approves deferred accounting for any other category of costs, this overbroad request should be rejected.

e. Accounting for savings should be broadened

57 The COVID-19 pandemic has imposed many changes upon the utility industry and Petitioners that have both favorable and unfavorable earnings impacts.³² Petitioners focused their requests upon the negative impacts upon bad debt expenses and foregone revenues, as well as the isolated direct costs and labor effects discussed above. However, as noted, beneficial cost trends have also emerged. Interest rates have declined precipitously, providing an opportunity to refinance long-term debt and to borrow in short-term markets at favorable rates. Employee work-at-home arrangements that caused the incurrence of up-front costs for equipment and secure data access provide offsetting and ongoing savings when office facility and employee parking costs can be reduced. Vehicle fuel expenses have declined due to historically low diesel and gasoline prices, at the same time reduced service disconnect/reconnect volumes have reduced service-related trips. Restrictions placed upon travel tend to reduce utility expenses for employee travel and training below levels incurred when rates were last set.

58 Cascade provides an example of this dynamic, indicating in response to discovery that, “Due to the impacts of COVID-19, including the projected economic growth reductions in our

³² Jim Lazar, *Synchronizing The Electric Regulatory Response to COVID-19*, REGULATORY ASSISTANCE PROJECT, (May 5, 2020), available at <https://www.raponline.org/blog/synchronizing-the-electric-regulatory-response-to-covid-19/> (“Before utility regulators take actions to adjust revenues or rates to reflect COVID-19 impacts, it is important to identify and quantify the broad range of impacts so that those that increase costs or reduce sales can be appropriately offset against those that decrease costs or cause increased sales in some sectors.”).

communities, in April, Company management instructed a 40 percent cut to all growth ‘blanket’ projects. In addition to the growth blanket cuts management requested that all projects be looked at to determine what else could be deferred without compromising safe and reliable service. As a result, some specific projects were deferred as well to future years as a result of COVID-19.”³³

59 Petitioners have acknowledged the need to account for offsetting costs savings. The Amended Petitions indicate, “Direct costs are net of savings, credits, payments, or other benefits *received by the Company from a federal, state, or local government that are directly related to a COVID-19 direct cost*, including federal, state, or local tax credits or benefits.”³⁴ This restriction of savings only to those amounts “directly related to a COVID-19 direct cost” is unreasonable on its face and will effectively ignore important cost savings realized elsewhere in the business. For example, employee travel and training expenses have been dramatically reduced due to travel restrictions.³⁵ Without designating these incremental travel or training costs as “directly related” to COVID conditions and costs, these savings would be ignored. Similarly, realized cost savings from avoided office cleaning or parking expenses where employees are working at home could be ignored if this restrictive language is applied.

f. Obligation to mitigate

60 Utility management should be expected and presumed to achieve cost savings sufficient to offset the utilities’ relatively modest non-labor COVID pandemic direct costs. It is also

³³ See Declaration of Lisa W. Gafken, Exh. 7 (Cascade’s Response to PCU/TEP Data Request No. 12).

³⁴ See Amended Petition of Cascade Natural Gas Corporation, ¶ 7, Docket UG-200479 (Oct. 30, 2020); Amended Petition of Avista Corporation, ¶ 8, Dockets UE-200407 and UG-200408 (Oct. 21, 2020) (emphasis added).

³⁵ See Declaration of Lisa W. Gafken, Exh. 4 (PSE’s Response to PCU/TEP Data Request No. 3).

reasonable for the Commission to expect Washington utilities to adopt “self help” measures to offset and mitigate the incremental costs they seek to defer and recover. For example, utilities should aggressively reduce and defer discretionary spending on travel and entertainment, advertising, non-essential customer-facing programs and other projects or programs, where deferral does not compromise service quality or safety. While these dockets do not finally determine whether certain costs will be included in rates, they establish an important framework for later consideration of the issue. That later consideration should include a demand for full reporting of utility cost reduction initiatives as offsets to proposed recovery of deferred incremental COVID-19 expenses.

61 In response to discovery, the Petitioners identified a variety of general cost savings measures that have been implemented, illustrating the ability of utilities to mitigate COVID-related direct costs with broadly imposed cost reduction programs, including employee hiring freezes, reduced discretionary expenses, cuts to capital budgets, reduced advertising and cancelled events.³⁶

62 Indeed, nearly all of the Petitioners’ internally generated cost savings would be ignored when applying the proposed restrictive language requiring such benefits to be, “received by the Company from a federal, state, or local government” in order to be recognized. The Commission should avoid this unfair outcome by eliminating vaguely-defined miscellaneous incremental “direct” costs from deferrals. If any direct cost deferrals are authorized, the Commission should

³⁶ See Declaration of Lisa W. Gafken, Exh. 5 (Avista’s Response to PCU/TEP Data Request No. 8).

require broad tracking of offsetting costs savings and benefits not limited by Petitioners' proposed restrictive language.

4. Carrying charges should not be allowed on any deferrals

Staff Term

Staff does not address.

Company Petitions

Avista and PSE petitions expressly state that interest will not accrue on the unamortized balance of the deferred amounts.

Cascade and NW Natural petitions do not request carrying charges in their petitions.

PacifiCorp requests carrying charges at the average rate of return approved in UE-152253.

Public Counsel and TEP Recommendation

No carrying charge should be allowed for deferred balances.

Discussion

63 Public Counsel and TEP note with approval that PSE and Avista specifically state they do not seek interest or carrying charges on deferral balances related to COVID-19 costs. Cascade and NW Natural do not request carrying charges in their petitions. PacifiCorp is the only company seeking to earn a full, Commission-authorized return on deferred amounts, at a rate of 7.17 percent.³⁷ PacifiCorp cites no statutory requirement in its Petition requiring the Commission to approve carrying charges, and Public Counsel and TEP are aware of none. Such approval is discretionary with the Commission. Public Counsel and TEP recommend that PacifiCorp's

³⁷ Amended Petition of PacifiCorp, ¶ 9, Docket UE- 200234 (Nov. 9, 2020). This is the rate of return set in PacifiCorp's 2015 General Rate Case, Docket UE-152253.

request be denied and that the accounting order for each company state that no carrying charges or interest accruals should be authorized for accounting deferral balances.

64 Approval of any carrying charges means that future Washington utility customers will not only be paying for deferred utility costs authorized in this proceeding (e.g. bad debt and customer assistance), but will also be paying utilities a return on those amounts, amounts for which PacifiCorp has provided no estimate.³⁸ In the case of increased bad debt costs, these costs accrue as a result of Washington customers being unable to pay their bills due to the economic consequences of the COVID-19 pandemic. Asking these same customers, as well as other future customers, to help the company not only be made “whole” but also earn a return on these costs is the antithesis of fair, just, and reasonable ratemaking.³⁹

65 Customers have no mechanism to be made whole for their economic losses in the pandemic. Competitive businesses have no comparable exterior mechanism to be made whole for their financial losses, much less the ability to charge interest on those losses. Denying the request for carrying charges is in the public interest and will share some of the pandemic’s economic burden with shareholders and simplify the administrative and regulatory review of deferral balances in future rate proceedings.

D. The Commission Should Apply an Earnings Test to the Accounting Deferrals

³⁸ *Id.*, ¶ 10.

³⁹ *In the Matter Of Deferred Acct. Of Incremental Costs Associated With The COVID-19 Pub. Health Emergency*, Case No. GNR-U-20-03, Order No. 34718, at 9 (Idaho Pub. Utils. Comm’n July 7, 2020), available at https://puc.idaho.gov/Fileroom/PublicFiles/MULTI/GNR/GNRU2003/OrdNotc/20200708Final_Order_No_34718.pdf.

66 Deferred accounting authority, as proposed by Petitioners, benefits each utility as it allows the utility to defer cost recovery of the selected incremental costs until those costs can be built into new rates. Thus, current utility earnings increase (in effect restated) because incurred costs are not recognized currently. Costs are instead deferred into future periods when future rates can be increased and when deferred costs are allowed recovery. In other words, Petitioners are today requesting increases to current earnings, based upon the promise of higher future utility rates and revenues to recover costs being “moved” from today’s income statement into future periods. The key question is whether any increase in current utility earnings is warranted.

67 Allowing piecemeal accounting deferral treatment at this time, for only isolated, *incremental* direct costs (or foregone revenues) attributable to the COVID-19 pandemic, may be entirely unnecessary. It may invite gaming of the regulatory system, where increasing costs are meticulously isolated and deferred for future recovery while favorable cost changes are ignored. Deferrals are only justified if there is a showing of Petitioners’ overall financial need, where new COVID costs or revenue reductions are shown to reduce jurisdictional earnings below authorized levels. Petitioners have not made such a showing. The question is whether, even where net incremental costs are unexpected and largely beyond the company’s control, those costs are material to the company’s financial well-being and not offset by savings elsewhere.⁴⁰

⁴⁰ Utilities also have multiple tools to address financial challenges such as under-earning, chief among them, the ability to file a general rates case and the ability file for emergency rate relief. In its 2019 general rate case, PSE announced it expected to file another general rate case in 2021. Cascade has a currently pending general rate case (Docket UG-200568) requesting a \$13 million increase in gas rates based in part on a substantial rise in shareholder profit. On October 30, 2020, Avista filed a new general rate case requesting an electric rate increase of over \$44 million and a gas rate increase of over \$12 million, also based in part on an increase in shareholder profit margin (Dockets UE 200900 and UG-200901). While the Avista increases would be temporarily offset by tax benefits, they would be absorbed by ratepayers over the longer term.

Accordingly, it is essential that an earnings test should be imposed as a condition of the proposed accounting deferral approval.⁴¹ The utility would be responsible for “testing” the financial impact of accounting deferral entries each month, as part of the monthly closing of accounting records, to limit such entries as necessary to avoid exceeding authorized levels of earnings on a commission basis of accounting. The utility would calculate its average achieved ROE, on a rolling 12-month basis employing a commission basis of regulatory accounting, to quantify and “test” the financial impact of the proposed accounting deferrals in each month against the ROE most recently authorized by the Commission. If this deferral entry would result in excessive earnings, that entry would “fail” the earnings test, and the utility would either reduce or not record the otherwise authorized deferral.⁴²

To illustrate: If the utility accrued an aggregate of \$1 million of deferrable costs (bad debt, etc.) for February 2021, and it calculated that it was earning at or above its authorized ROE of 9.4 percent based on the rolling 12 month average achieved ROE, then the costs would not be recorded as deferred at the monthly closing of accounting records. If in the next month, March 2021, the deferrable costs were again \$1 million, and the company calculated it was earning below its authorized ROE of 9.4 percent, it would only defer the portion of the \$1 million that would bring ROE up to its authorized level. Any excess amount would not be recorded at the monthly closing of accounting records. The company would retain documentation of its application of the earnings test for later review. No contemporaneous Staff or Commission

⁴¹ RCW 80.04.090 authorizes the Commission to “in its discretion, prescribe the forms of any and all accounts, records and memoranda to be kept by public service companies[.]”.

⁴² This earnings test process is comparable to the existing earnings test mechanisms employed by the Commission to ensure that revenue decoupling, and the accounting deferrals used to administer decoupling, do not contribute to excess utility earnings.

review of the earnings test would be necessary. In future proceedings where rate recovery for deferred costs is requested, each utility would be required to include monthly earnings test documentation for all recorded deferral entries to support recovery.

E. The Final Order Should be Clear that Approval of Accounting Deferrals Does Not Guarantee Recovery of Costs

70 Commission Staff recommends that “possible recovery of any deferrals be subject to a future Commission proceeding for prudence review as per the Commission’s normal practice.”⁴³ It is Public Counsel and TEP’s understanding that the companies agree to this principle.

71 Public Counsel and TEP also agree with this principle, but additionally recommend that any Commission orders issued in these dockets go beyond this narrow formulation, and state clearly that these orders do not pre-approve or guarantee recovery of any of the costs that are approved for deferral in these dockets. The orders should further state that any future recovery is subject to prudence review and application of the earnings test described above. Any future recovery will also be subject to all other standards of general rate case review, including the overall requirement that rates must be fair, just, reasonable, and sufficient.

F. Reporting and Data Should Allow Adequate Review

72 Utilities should be directed to segregate within separate subaccounts for each category of monthly accounting deferrals ultimately authorized by the Commission, maintaining workpapers and documentation, stating any assumptions made and algorithms employed for each monthly

⁴³ *In the Matter of Response to the COVID-19 Pandemic*, Docket U-200281, Order 01, Appendix A (Oct. 20, 2020).

entry to these subaccounts should be retained in sufficient detail to facilitate efficient regulatory review in future proceeding before the Commission.

73 Quarterly reports summarizing the monthly amounts of accounting deferrals for each category of accounting deferrals ultimately authorized by the Commission should be submitted for review by Staff and parties to these dockets. The reports should indicate separately the amounts actually recorded within published financial statements and any amounts not recorded due to uncertainty regarding future recovery upon review by the Commission.

IV. THE PUBLIC INTEREST AND PUBLIC POLICY REQUIRE STRICT LIMITS ON DEFERRED COVID COSTS

A. Washington IOUs Do Not Claim that They Are Facing Financial Jeopardy

74 Each of the utilities makes a statement about the unpredictable and unprecedented nature of the pandemic that they are incurring costs that are not currently in rates, and that the costs are outside the normal business risk. None of the utilities, however, asserts that it is experiencing financial jeopardy. They generally state that they are “fully capable of executing [their] obligation to provide safe, reliable . . . service to [their] customers.”⁴⁴ Petitioners do not demonstrate overall financial need for the reduced expenses and additional earnings that would result from recording the proposed accounting deferrals.

75 It is important that the Commission take note in these dockets that recent public financial disclosures do not indicate any financial need for extraordinary regulatory relief and do not reveal significant or extraordinary overall costs that require deferral accounting. For example, in

⁴⁴ See e.g., Amended Petition of Avista Corporation, Docket UE-200407 and UG-200408, ¶¶ 5–6 (Oct. 21, 2020).

its SEC Form 10Q dated November 4, 2020, PSE describes COVID-19 impacts upon its business in considerable detail, but characterized the net financial impacts as “immaterial.” PSE stated, “Due to business disruptions caused by the COVID-19 pandemic, the Company has incurred increased costs and partially offsetting cost savings that have been immaterial through the period ended September 30, 2020.”⁴⁵ PSE further explains that its operating expenses were actually lower during the nine month period ending September 30, 2020, compared to the comparable period in 2019, in spite of COVID-19 cost impacts.⁴⁶

76 Avista similarly presents positive financial information. While Avista is seeing current short term reductions in earnings, it continues to experience positive earnings. Further, Avista continues to project earnings growth and continued dividend growth. Indeed, Avista expects to increase its dividends by 4.5 percent over 2019 levels.⁴⁷

77 PacifiCorp’s parent company, BH Energy, stated in its Form 10Q that the impacts of COVID-19 on the Company’s financial results and operations through September 30, 2020, have not been material.⁴⁸

78 Cascade’s parent company, MDU Resources Group, stated in its Form 10Q that, “the Company has assessed the impacts of the COVID-19 pandemic on its results of operations for the three and nine months ended September 30, 2020, and *determined there were no material*

⁴⁵ Puget Energy SEC Form 10Q, at 43 (Nov. 4, 2020), available at <https://www.pugetenergy.com/pages/filings.html>.

⁴⁶ *Id.* at 64.

⁴⁷ Avista Corporation, *Our Customers, Our People, Perform, Invent*, at Slide 6 (Nov. 2020), available at <https://investor.avistacorp.com/static-files/0f00e8d8-65b0-4997-a525-27769c9acc12>.

⁴⁸ Berkshire Hathaway Energy Company SEC Form 10Q (Nov. 6, 2020), available at https://www.brkenegy.com/assets/upload/financial-filing/20200930_89_pc_quarterly.pdf.

adverse impacts.”⁴⁹ Significantly, MDU approved somewhat higher Q3 dividends in 2020 than were approved in Q3 2019, an indication of confidence in its financial condition in spite of the pandemic.⁵⁰

B. The Utilities Must Approach Cost-Recovery with a Spirit of Shared Sacrifice

79 Shared sacrifice, as the term is used by consumer advocates, means that customers alone should not bear responsibility for the costs imposed by the COVID-19 pandemic and that utility shareholders should also share in the burden. As the Michigan Public Service Commission held, “[w]hile rate-regulated energy providers are lawfully entitled to recover reasonably and prudently incurred expenses related to the cost of service, this is also an opportunity for the utilities to share the economic burden that has been brought on by the pandemic and approach cost recovery with the spirit of shared sacrifice.”⁵¹ This statement sent a clear message to the utilities it regulates that they should only ask for what they absolutely need and that customers should not be asked to bear more than necessary during this time of crisis.

80 Michigan utilities responded. Consumers Energy will provide \$12 million directly to residential and small business customers and to nonprofit organizations with the goal of helping 25,000 households and 1,000 small businesses.⁵² DTE Energy will create new assistance

⁴⁹ MDU Resources Group, Inc. Form 10Q (Nov. 5, 2020) (emphasis added), available at https://sec.report/Document/0000067716-20-000053/#i72b97b9efa354f7091e63f8a5fab37c7_13.

⁵⁰ *Id.* (MDU declared a dividend of \$0.6075 per common share for Q3 2019 and a dividend of \$0.6225 per common share for Q3 2020.).

⁵¹ *In the Matter, On the Comm’n’s Own Motion, to Review Its Response to the Novel Coronavirus (COVID-19) Pandemic; Including the Statewide State of Emergency, and to Provide Guidance and Direction to Energy and Telecomm. Providers and Other Stakeholders*, Case No. U-20757, Order at 30 (Mich. Pub. Serv. Comm’n July 23, 2020).

⁵² Press Release, Consumers Energy, *Consumers Energy Commits \$12 Million to Help Michigan Customers Affected by COVID-19 Pandemic* (Sept. 29, 2020), available at <https://www.prnewswire.com/news->

programs funded with \$13 million, with the goal of helping 40,000 of its most vulnerable customers.⁵³ These efforts are separate from customer-funded assistance programs, such as the programs ordered by the Commission in UTC Docket U-200281.⁵⁴

81 Here in Washington, the Commission should affirmatively take a leadership role and explicitly call upon the utilities in these dockets to demonstrate ways in which they are sharing the financial burdens and challenges of the pandemic with their customers. Voluntary shared sacrifice from the companies and their shareholders can happen in a variety of ways, including shareholder contributions toward bill and arrearage assistance and foregoing aggressive deferral and future recovery of selected incremental costs.

82 Customers have endured stay-home orders, unemployment, and illness throughout the pandemic, and Washington is entering a new phase of the pandemic as the weather turns cooler and infection rates double in a matter of weeks. Indeed, Governor Inslee imposed further restrictions on Washingtonians on November 15, 2020, in an effort to curb the transmission surge.⁵⁵ In short, customers are struggling to survive, and businesses are failing. Customers are not the guarantors of utility shareholders' return and should not be asked to "make whole" the companies for all of their costs.

[releases/consumers-energy-commits-12-million-to-help-michigan-customers-affected-by-covid-19-pandemic-301140074.html](https://www.globenewswire.com/news-release/2020/10/05/2103626/0/en/DTE-Energy-creates-new-assistance-programs-pledges-13-million-to-help-customers-struggling-during-pandemic.html).

⁵³ Press Release, DTE Energy, *DTE Energy creates new assistance programs, pledges \$13 million to help customers struggling during pandemic* (Oct. 5, 2020), available at <https://www.globenewswire.com/news-release/2020/10/05/2103626/0/en/DTE-Energy-creates-new-assistance-programs-pledges-13-million-to-help-customers-struggling-during-pandemic.html>.

⁵⁴ *In the Matter of Response to the COVID-19 Pandemic*, Docket U-200281, Order 01 (Oct. 20, 2020).

⁵⁵ David Gutman et al. *Gov. Inslee orders sweeping restrictions on indoor gatherings, restaurants, bars, gyms as COVID-19 cases surge in Washington state*, THE SEATTLE TIMES (last updated Nov. 16, 2020), available at <https://www.seattletimes.com/seattle-news/health/gov-inslee-orders-sweeping-restrictions-on-indoor-gatherings-restaurants-bars-gyms-as-covid-19-cases-surge-in-washington-state/>.

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Washington’s statutory ratemaking principles support this approach. All charges demanded by the utility company for gas or electricity service must be “just, fair, reasonable, and sufficient”⁵⁶ and the Commission must set such rates.⁵⁷ The legislature has declared the state’s policy to be to “preserve affordable natural gas and electric services,” maintain the availability of utility service, and “ensure that customers pay only reasonable charges for natural gas and electric service.”⁵⁸ Ultimately the Commission must regulate “in the public interest.”⁵⁹ The Commission has discretionary authority regarding deferred accounting. It is under no legal mandate to grant accounting orders. Where the Commission has discretion regarding accounting deferrals, it should give substantial weight to the principle of shared sacrifice in exercising that discretion.

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There has yet to be any indication from Washington regulated utilities, either in Docket U-200281 or these accounting dockets, that they intend to offer specific actions to share the financial burden of the epidemic. Without a clear signal from the Commission, it appears unlikely to expect such a commitment based on the record to date. Consistent with the Commission’s welcome attempts to mitigate rate case impacts on customers during the pandemic,⁶⁰ and Public Counsel and TEP urge the Commission here to strongly encourage the utilities to share the burdens and the challenges of the pandemic with their customers.

⁵⁶ RCW 80.28.010(1).

⁵⁷ RCW 80.28.020.

⁵⁸ RCW 80.28.074.

⁵⁹ RCW 80.01.040.

⁶⁰ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-190529 and UG-190530, et. al., Order 08 at ¶¶ 635–667 (July 8, 2020).

C. Washington Utility Customers Are Facing Serious Economic and Personal Hardship

85 Washingtonians, including millions of IOU customers, are entering a long and difficult winter season as the COVID-19 pandemic finds dramatically renewed intensity and its economic consequences continue to unfold. Last week, Washington lead the nation in unemployment claims and the spike was the largest since March.⁶¹ The most recent data from the Washington Department of Commerce shows Washington employment levels trending down generally. Service jobs are particularly hard hit, with the leisure and hospitality jobs dropping 25 percent and other services 15 percent.⁶² People from communities of color are heavily represented in these sectors. A Seattle Times article in June 2020 noted that “[w]here previous recessions killed jobs across many industries and demographic groups, layoffs in the COVID-19 era have been concentrated among workers who were often behind economically before the pandemic. Among them, working moms, younger workers, and workers who are less educated, lower paid, and non-white.”⁶³ Participation in support programs is increasing by double digits according to Department of Commerce data.⁶⁴ People seeking “basic food” support has increased 17 percent and participation levels are near one million. Participation in Temporary Assistance For Needy

⁶¹ Paul Roberts, *Washington state leads nation in new jobless claims — a seasonal fluke or ‘a red flag’?* THE SEATTLE TIMES (last updated Nov. 13, 2020), available at <https://www.seattletimes.com/business/economy/washington-state-leads-nation-in-new-jobless-claims/>. The Seattle Times article discusses whether the spike is only seasonal or reflects a second COVID-19 related wave of job loss.

⁶² Washington State Department of Commerce, *Economic Recovery Dashboard* (“Commerce Dashboard”), available at <https://www.commerce.wa.gov/datadashboard/>.

⁶³ Paul Roberts, *Coronavirus pandemic job losses falling hardest on people who were already hurting*, THE SEATTLE TIMES (last updated June 29, 2020) (reporting on WA STEM study), available at <https://www.seattletimes.com/business/economy/coronavirus-pandemic-job-losses-falling-hardest-on-people-who-were-already-hurting/>.

⁶⁴ Commerce Dashboard.

Families (TANF) is up 30 percent.⁶⁵ In recognition of the impact of these economic challenges on housing security, Governor Inslee extended the eviction moratorium until at least December 31, 2020.⁶⁶

86 The personal situation for individual utility customers is reflected in these statements provided to TEP in July by agencies delivering energy assistance to those in need:

I am a struggling mother. I lost my job at the beginning of COVID. I had enough savings that I made it up until this month. I was going to start doing Uber/Doordash something along those lines but then my car stopped running. I have half my rent and need help with the other half. I have \$350 so I would need \$350 to finish. I was told to contact you guys and see if there's any sort of help. If there's not I understand.

We have family we are working with who are seeking help with LIHEAP and Rental Assistance. The client's wife just gave birth and then died from COVID-19. The husband's mother also died from COVID-19. He was working at a foundry until COVID hit and was laid off. Now the income coming into the house is TANF and the one of the older child's job. They are at 47 percent of FPL. Rent in their duplex is \$1200/month and they are now two months behind. They owe the utility almost \$800.00.

I am in dire need of some help. I have a utility bill that is over \$1,000 due to poor heating in my home with a five-month-old. I have been on comfort billing, however, it is overwhelming and we do not have the funds due to COVID-19. Can someone please help?

I have been out of work since March 7, 2020. I was initially told I was laid off and then I was later told I was fired. I have been unable to get work since COVID. I am a single dad with a three year old. I am having difficulties getting a hold of unemployment and someone filed a fraudulent claim with my information. I can't pay rent and utilities.⁶⁷

These conditions are not likely to improve over the coming winter.

⁶⁵ *Id.*

⁶⁶ Governor's Proclamation, Wash. Exec. Order 20-19.4 (Oct. 14, 2020) ("COVID-19: Evictions and Related Housing Practices"), available at <https://www.governor.wa.gov/office-governor/official-actions/proclamations>.

⁶⁷ Comments of The Energy Project, *In the Matter of Response to the COVID-19 Pandemic* (July 31, 2020) (Docket UE-200281).

D. Future General Rate Case Review Does Not Justify Authorizing Improper Deferrals Today

87 Parties have argued in this case that there is no need to be particularly precise about the deferral authorizations since the Commissioners can simply decide the validity of cost recovery issues in a later rate case, rejecting overly broad, imprudent or otherwise improper requests at that time. This argument is flawed for several reasons. First, simply by granting questionable deferrals, the Commission is allowing current utility earnings to be increased even though the deferred amounts may not ultimately be recoverable. This can mislead investors if costs are deferred now, and earnings are improperly overstated.

88 Second, when deferred cost recovery is sought in future a general rate case, the utility may urge an additional argument of negative financial impacts even when the regulatory assets should be written off as worthless. Third, the complexity of unravelling questionable costs and offsetting savings amounts for multiple prior periods in the increasingly distant past would prove severely challenging and burdensome for Staff, parties, and the Commission, particular given the absence of any prescribed accounts that accumulate “cost savings” for this purpose. Finally, and perhaps most significantly, using an overly broad catch-all approach to deferral approval is not consistent with basic accounting principles and the policies against single issue and retroactive ratemaking. Kicking the can down the road is simply not the solution.

V. CONCLUSION

89 The Commission has a weighty decision before it in these dockets. The utilities request overly broad and generous deferral accounting treatment during a global pandemic that has deeply harmed their customers. The Commission should limit any authorized deferred

accounting to only increased bad debts and the costs of customer bill and arrearage assistance. Additionally, the Commission should impose an earnings test on the deferrals. The Commission should strongly encourage the utilities to look at any deferrals through the lens of shared sacrifice. The Commission should deny all other requests for deferred accounting presented in the petitions.

90 If you have any questions regarding this response, please contact Lisa W. Gafken at lisa.gafken@atg.wa.gov or (206) 714-3551 or Simon J. ffitch at simon@ffitchlaw.com or (206) 669-8197. Representatives for both Public Counsel and The Energy Project will be present at the Commission's Open Meeting on December 10, 2020, when the Commission is scheduled to hear the petitions in these dockets.

DATED this 19th day of November, 2020.

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