BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Regulated Utility Response to the COVID-19 Pandemic	DOCKET U-200281 COMMENTS OF THE ENERGY PROJECT

COMMENTS OF THE ENERGY PROJECT

July 1, 2020

I. INTRODUCTION

1 The Energy Project (TEP) files these comments in response to the Addendum To Notice of Virtual Special Open Meeting (June 8, 2020) in this docket. At the Special Open Meeting on June 16 the written comment deadline was extended to July 1, 2020. These comments expand on the statement of The Energy Project Director Shawn Collins at the Special Open Meeting.

2 The Energy Project appreciates the Commission taking the first step of scheduling a Special Open Meeting to gather status information from Washington utilities. At the meeting, as a general matter, utilities reported high rates of arrearages but were uncertain as to the longer-term effect on "bad debt" levels and did not express significant concern about their current financial condition. Utilities did not present specific plans or recommendations for resumption of disconnection or for the transition. Consumer groups who spoke emphasized the impacts of the crisis on customers and the need for a comprehensive and consistent response. Karen Lusson of the National Consumer Law Center presented information about broad customer protections

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adopted in regulatory proceedings in Illinois, California, and Massachusetts. Public Counsel presented a nine-point set of principles that provide a good framework for further action in this area.

3 Building on the Special Open Meeting, the following TEP comments provide an overview of the economic challenges faced by utility customers in the state and outline TEP's specific recommendations about how to address those challenges.

4 Decisive action is required. The utility customer protections in place as a result of early company actions and proclamations by Governor Inslee since March have done much to help Washingtonians survive the effects of the pandemic. The pandemic is not over, however, nor are its economic effects. It will have done little good in the long run to have helped customers for an initial period if the protections are no longer available when most needed, as the economic pressures on customers build and winter approaches.

II. THE CHALLENGES FACING WASHINGTON UTILITY CUSTOMERS

A. The Approaching "Cliff" Creates An Urgent Need For Action.

5 Washington utility customers are currently protected from the loss of essential utility service through the disconnection moratorium established under Governor Inslee's Proclamation 20-23.4. Without further action by the Governor, however, the moratorium will expire on July 28, 2020.[1] The current Proclamation's prohibition on late fees and on refusing to reconnect will

[1] The Proclamation orders the moratorium until July 28 or the end of the COVID-19 State of Emergency.

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also end on July 28.[2]

6 At the same time, as reported by utilities at the Special Open Meeting, there has been a significant build-up of arrearages for some customers as a result of loss of employment and income caused by the pandemic. To simply return to business as usual after July 28 with a resumption of disconnection and other collection activity would be catastrophic for many thousands of customers, sending them off a "cliff" of financial distress likely to result in spikes in disconnection activity and financial and personal hardship. Loss of utility service in the coming months while the coronavirus epidemic continues, and in many areas expands, also undermines efforts to limit the spread of infection and poses health threats to customer households and to the community at large.

7 What is needed to avoid going over this "cliff" is a transition plan with at least these major components: (1) an extension of the disconnection moratorium, preferably until at least November 15, 2020; (2) removal of financial barriers that make getting and staying connected more difficult; (3) energy assistance funding and bill payments assistance to make utilities affordable (including arrearage management and deferred payment plans); and (4) detailed data about the scope of the problem. These plan elements are listed in more detail in the next section.

8 These plan elements work together. The moratorium keeps customers' utility service turned on while providing an opportunity to connect them to bill assistance and other resources that can reduce arrearages. The moratorium also allows time to develop, implement, and publicize a transition plan. Once the moratorium ends, the new flexible credit and collection

[2] Some voluntary utility fee waivers and disconnection "freezes" may remain in place after July 28, but the consistency and duration of these protections is not known.

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policies remain in effect for an additional period, until Spring 2021, to make it easier for customers to stay connected. Bill assistance funds and payment plans such as arrearage management plans address affordability and help customers pay their bills going forward.[3]

B. The COVID-19 Pandemic Is Not Abating.

9 Gradual reopening and the hoped-for improvement in the economy is facing new challenges. With increasing numbers of new coronavirus cases, phased reopening of the economy is being paused in many areas and the future is uncertain both in terms of health issues and in the pace of economic recovery. Policy regarding utility consumer protection should not be premised on an assumption that Washington has controlled the pandemic and or that the state will quickly emerge from the economic downturn.

C. Low And Moderate-Income Utility Customers Face Dire Economic Conditions.

10 Washington's current economic situation is very challenging. The reported unemployment rate for May 2020 was 15.6 percent, higher than the national average, and more than triple the rate of 4.4 percent for May 2019. Year over year, job losses are over 400,000 higher than last year and more than double the losses during the recession.[4] More than 800,000 people have filed unemployment claims since the crisis, enough to erase Washington's job growth since the early 2000s. The Seattle Times recently reported that nearly 20 percent of

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[3] At the request of The Energy Project, in their most recent General Rate Cases PSE, and Avista have agreed to work with their low-income advisory groups to develop Disconnection Reduction Plans. The Avista GRC settlement agreement has been approved by the Commission. *Washington Utilities & Transportation Commission v. Avista Corp*., Dockets UE-190334/UG-190335, UE-190222, Final Order 09 (March 25, 2020). The decision in the PSE GRC is pending. The agreements were reached prior to the height of the COVID-19 crisis. Development of these plans will be affected and informed by the COVID-19 response activities.

[4] The Employment Security Department Facts and Figures Report June 2020. https://esd.wa.gov/labormarketinfo/facts-and-figures-report The national average in May was 13.3 percent.

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renters doubt they will be able to pay rent for July.[5] Federal COVID-19 unemployment benefits are currently scheduled to end in July. Experts predict that the effects of the downturn will be long-lasting with recovery not beginning until 2021 or later and are more akin to a natural disaster than to an ordinary economic downturn.[6]

11 The impact on low-income and vulnerable communities is particularly extreme. Over 1 million Washington residents are estimated to be at or below 200 percent of the Federal Poverty Level.[7] Applications for food assistance skyrocketed in April as the economic downturn intensified.[8] Unemployment rates are significantly higher than the state average in communities of color. In King County for example, the rate is 40 percent for Pacific Islander/Native Hawaiian, 30 percent for Native American/Alaska Natives, 28 percent for black residents and 20 percent for Hispanic/Latinx.[9] In Yakima County, COVID-19 disproportionately impacts Hispanic communities[10] amidst one of the most severe outbreaks in the state.

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[5]Seattle Times, June 26, 2020, https://www.seattletimes.com/seattle-news/data/nearly-one-in-five-seattle-area-renters-doubt-they-can-make-julys-rent/

[6] Seattle Times, May 10, 2020, https://www.seattletimes.com/business/economy/no-more-v-shaped-recovery-economists-expect-washington-could-take-years-to-get-over-the-coronavirus-crash/

[7] https://www.kff.org/other/state-indicator/distribution-by-fpl/?dataView=1&currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D

[8] Seattle Times, April 23, 2020: https://www.seattletimes.com/seattle-news/homeless/applications-for-food-and-cash-assistance-skyrocket-in-washington-as-coronavirus-pandemic-continues/

[9] Crosscut, May 21, 2020, https://crosscut.com/2020/05/unemployment-king-county-hits-communities-color-hardest

[10] Yakima Herald, June 26, 2020, updated June 28, 2020, https://www.yakimaherald.com/special_projects/coronavirus/covid-19-continues-to-disproportionately-impact-hispanic-communities-state-and-local-leaders-say/article

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12 The impact of the pandemic has been felt most severely by people already struggling. Data and analysis from Washington STEM,[11] reported in the Seattle Times on Sunday June 28, 2020, reflects that "[w]here previous recessions killed jobs across many industries and demographic groups, layoffs in the COVID-19 era often have been concentrated among workers who were often behind economically before the pandemic. Among them, working moms, younger workers, and workers who were less educated, lower paid, and non-white."[12]

13 As an example of this data, "[p]andemic related layoffs struck earlier and hardest in sectors where Black workers were already over-represented. That includes food service and lodging, as well as personal service such as hair salons, and gig work" according to Andrea Caupain, CEO of Byrd Barr Place, a Seattle-based nonprofit that works with low-income families. "Low-wage workers in those industries were the first to go" Caupain said.[13]

14 In another example reflecting the STEM data at the personal level, the Seattle Times reported the case of Katie Brodkin, a 37-year-old Seattle area pediatric dental assistant with a six-year-old son. Ms. Brodkin lost her job in March and without the governor's eviction moratorium and a timely tax refund "would have been out on the streets."[14]

15 Data from the Household Pulse Survey of the U.S. Census indicates that the great majority of Washington residents who received federal stimulus payments in the past couple of months used the funds for immediate household expenses, with food being the leading item, and

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[11] Washington STEM, COVID-19 Impact Tool, https://washingtonstem.org/covid-19-impact-beta/#COVIDtool

[12] Seattle Times, June 28, 2020, https://www.seattletimes.com/business/economy/coronavirus-pandemic-job-losses-falling-hardest-on-people-who-were-already-hurting/

[13] *Id.*

[14] *Id.*

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utilities and cell phone bills high on the list.[15] This is particularly pronounced for low-income customers, with the data showing that 91 percent of households with an income below $50,000 put the money directly toward basic necessities.[16] According to U.S. Census Bureau statistics, over one quarter of Washington's families have incomes below $50,000 annually.[17] For a household of four, 200 percent of Federal Poverty Level represents an income of $51,500.[18]

16 The fact that customers are spending their stimulus funds on immediate short-term survival needs rather than purchasing consumer goods or placing them in savings underlines the short-term nature of the fix and the precarious condition of household finances for hundreds of thousands of Washington households.

III. RECOMMENDED ACTIONS TO RESPOND TO COVID-19

A. Adopt Specific Customer Protections Immediately.

17 There are a number of specific steps that should be taken to help customers as the pandemic and the economic downturn continue. As TEP Director Shawn Collins expressed at the Special Open Meeting, these actions must address four main goals: (1) keeping low-income and vulnerable households connected; (2) removing fees that act as barriers to obtaining or continuing service; (3) addressing ongoing affordability; and (4) gathering data to support sound

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[15] Seattle Times, June 29, 2020, https://www.seattletimes.com/seattle-news/data/new-data-shows-how-seattle-residents-spent-their-stimulus-checks/

[16] *Id.*

[17] Selected Economic Characteristics, Washington, American Community Survey Data Profile 2018, https://data.census.gov/cedsci/table?d=ACS%205-Year%20Estimates%20Data%20Profiles&table=DP03&tid=ACSDP5Y2018.DP03&g=0400000US53

[18] Washington State Low Income Weatherization Program 2019 Income Eligibility Guidelines, http://www.commerce.wa.gov/wp-content/uploads/2019/03/DRAFT-2019-WA-Eligibility-Guidelines-unprotectedversion.pdf

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policy making. Steps to reach these goals should include:

1. Extend the disconnection moratorium until November 15, 2020.

18 The fundamental rationale for the disconnection moratorium remains as valid as when first initiated. As the Governor has stated since March: "maintaining provision of utility services during this crisis is an essential tool in sustaining and protecting the health and welfare of our people and businesses as a critical part of the overall response to the COVID-19 pandemic."[19] The ability to maintain required personal and household hygiene and cleaning standards and the need for electronic communications for access to government services, employment, education, and other resources has not become less critical.

19 As noted, the current moratorium on energy utility disconnections ordered by Governor Inslee is currently set to expire on Tuesday, July 28, 2020, four weeks from the date of these comments. It is not known whether the moratorium will be extended or for how long.[20] Even if the Governor extends the moratorium for an additional period there will eventually come a time when we will again be facing a "cliff" where thousands of customers will be exposed to disconnection. The Commission must step in at that point to extend protection for customers from loss of essential service. This will be especially important as the winter approaches. It is important that the moratorium remain in place until a comprehensive transition plan is in place.

20 Accordingly, TEP recommends that Commission extend the comprehensive ban on disconnections by investor-owned electric and natural gas utilities as long as possible, at a

[19] Governor's Proclamation 20-23, March 18, 2020, Governor's Proclamation 20-23.4, May 29, 2020.

[20] The Governor's decision on whether or how long to extend the ban or the state of emergency may be affected by a number of factors not directly related to the situation of the IOUs or their customer needs, including statutory limitations and legislative action.

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minimum to November 15, 2020. Washington's winter disconnection moratorium rules take effect November 15 and continue through March 15, preventing disconnection for qualifying low-income customers.[21] The Energy Project also recommends that the winter moratorium rule should be reviewed to determine if it can be modified to improve or broaden its protections.

2. Require reconnection without a fee for anyone disconnected since January 2020.

21 The Governor has required that utilities may not refuse to reconnect utility service for customers disconnected due to non-payment.[22] Like the disconnection moratorium, this requirement is justified by the critical importance from a public health and welfare perspective of keeping Washington citizens connected to essential services.

3. Continue waiver of all late fees and penalties until Spring 2021.

22 The Governor's proclamations have prohibited the collection of utility late fees.[23] Late payment fees make little sense in an environment of sudden and involuntary income loss. Addition of a late payment fee to an existing arrearage just exacerbates the financial burden of a household already having trouble paying the utility bill. After the moratorium ends, these fees should continue to be waived until Spring 2021 to make it easier for customers to pay.

4. Waive deposits until Spring 2021.

23 As with late payment fees, imposing deposit requirements on customers already having trouble paying is counterproductive. A deposit may create an insuperable barrier to establishing

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[21] WAC 480-90-143, 480-100-143.
[22] Governor's Proclamations 20-23.2, 20-23.3, and 20-23.4.
[23] *Id.*

service, or may add to the arrearage if assessed after service is established. Existing deposit balances should be allocated to help pay off a customer's unpaid balance. During the moratorium, adding a deposit to the customer account only adds to the unpaid arrearage. After the shut-off moratorium ends, imposing a deposit just makes it more difficult for the customer to establish or maintain service. Deposits should be waived during the post-moratorium period, at least until Spring 2021.

5. More flexible deferred payment plans.

24 Deferred payment plans are an existing and recognized tool to help customers manage larger arrearages. The Governor's proclamations have encouraged flexible credit and collection practices including the use of payment plans to fulfill outstanding balances.[24] There is a need, however, for consistency between utilities and for a minimum standard that applies to all customers. The Commission should establish a clear minimum requirement in the rules, allowing customers to have up to 24 months to pay a bill. There should be no "down-payment" requirement that could prevent a customer from using this option.

6. Streamline eligibility.

25 One effective way to help customers during this period is to make it easier for customers to qualify for bill assistance and other programs by streamlining the eligibility process. Traditionally, a customer seeking bill assistance has to provide various kinds of written documentation of income, a process that can be difficult and time-consuming. Self-certification is an effective alternative. Customers should be allowed to establish low-income eligibility if

[24] *Id.*

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they participate in any means-tested program, or provide an attestation of job or income loss. This approach has already begun in some programs, for example with LIHEAP, and should extended to all ratepayer funded bill assistance and weatherization programs.[25] During the transition period, paperwork barriers to assistance should be eliminated or reduced as much as possible through collaborative efforts between agencies and utilities, including tariff adjustments if needed. Review of eligibility tied to percentage of federal poverty metrics should also be reviewed to determine if modifications are warranted.

7. Minimum arrearage to trigger disconnection.

26 Customers should not face disconnection for small overdue balances. The Energy Project recommends adopting a minimum overdue balance tied to average monthly billing that would trigger disconnection. The average electric bill in Washington is slightly below $100 per month. Setting the minimum balance due at $200 would prevent disconnections for customers who fall behind by only one month.[26]

8. Arrearage Management Plans (AMP).

27 Each utility company should adopt an AMP for its low-income customers. The AMP can be based on the successful pilot conducted by Avista.[27]

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[25] Self-certification is currently permitted under the winter moratorium rules, WAC 480-90-143, 480-100-143.

[26] The Energy Project has made this recommendation in the AMI consumer protection rulemaking, Docket U-180525.

[27] The pilot is referenced in Avista's LIRAP Annual Summary Report for the October 2018-September 2019 Program Year, Docket UE-010436, at 13. An Interim Evaluation was filed as an attachment. On April 20, 2020, Evergreen Economics submitted its Final Report, Avista Income-Based Payment Program/Balance Management Arrangement Pilot Program Evaluation.

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9. Enhanced customer information and outreach.

28 Utilities should use their marketing and customer communication resources to provide clear and detailed information to customers about COVID-19 programs and assistance that is available. Utilities should establish outreach programs, including where appropriate reallocating staff resources, to connect the customer with a substantial arrearage to bill assistance programs and other forms for relief. Focusing resources on this effort can be a way to reduce arrearages before the end of the moratorium and reducing the number of customers in the "eligible for disconnection" pipeline.

10. Postpone credit reporting and collection activity.

29 During the shut-off moratorium, and until Spring 2021, utilities should refrain from credit reporting regarding customers with bill payment problems. Customer creditworthiness is not fairly reflected by payment history during involuntary unemployment and income loss resulting from the pandemic and governmentally imposed business restrictions. Similarly, customer accounts should not be referred to collection until Spring 2021. Customers should instead be afforded the extended opportunity to work with utilities to reduce or remove arrearages using the flexible credit and collection options recommended in TEP's comments.

11. Data Reporting.

30 Making good policy choices during the pandemic requires a solid base of information to provide a clear picture of affordability and energy security, evaluation of the effectiveness of credit and collection practices, and development of new programs. Data should be reported regarding late fees, arrearages, disconnections, reconnections, security deposits, deferred

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payment arrangements and medical certificates.[28] Data should be provided on a zip code basis, with identified low-income customers separately reported, and prior year data provided to allow for identification of COVID-19 impacts, as well as general trends.

B. Initiate A Broader Review Of Credit And Collection Practices For The Longer Term.

31 The Energy Project recommends that once the transition plan is in place, that the Commission consider initiating a CR-101 rulemaking to conduct a review of the Commission's consumer credit and collection rules and related company tariffs and practices.[29] The purpose of the review would be for the Commission and stakeholders to determine what long-term changes and improvements can be made to the rules, based on the experience gained and data gathered during the pandemic.

IV. OPTIONS FOR THE COMMISSION

32 It is TEP's understanding that beginning in mid-July the Commission plans to convene a work group of regulated utilities, Commission Staff, and customer stakeholders to address transition issues. The Energy Project views this as a productive next step and looks forward to working with Commission Staff and other parties to address the issues discussed in these comments.[30]

33 Ultimately, the goal of the process should be a set of strong, enforceable, and consistent consumer protections for Washington customers of investor-owned utilities. Protections adopted

[28] The Energy Project can provide more detailed data recommendations at the appropriate time in the proceedings. The Avista and PSE Disconnection Reduction Plans include specified data reporting.

[29] This could be coordinated with the development of the Disconnection Reduction Plans for utilities.

[30] The Governor's Proclamation 20-23.4 included guidance to the utilities in which they were requested to conduct a review of their "customer support programs" by July 10. The Energy Project respectfully recommends that the results of that review be filed with the Commission in this docket and be presented to the work group.

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in Illinois, California, and Massachusetts provide valuable models to inform Washington's approach to the crisis.[31] The Commission has a range of regulatory tools within its authority to assist in reaching this goal, including: emergency rulemaking,[32] general rulemaking,[33] interpretive and policy statements, complaint authority,[34] required production of information,[35] and the authority to order improvements in practices, acts and service.[36]

34 As discussed above, the Commission work group and other Commission actions are faced with substantial time pressure given the coming July 28 deadline for the end of the Governor's disconnection moratorium. It is essential that a transition plan be in place before any disconnection activity resumes, a task that may be very difficult to accomplish prior to July 28. The disconnection moratorium should be extended beyond July 28 either by Governor's proclamation or by the Commission to allow transition plan development by the work group as well as to pursue any other action determined necessary by the Commission.

V. CONCLUSION

35 The Energy Project appreciates the Commission initiating proceedings under this docket to help low-income and other consumers cope with the impacts of the coronavirus pandemic.

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[31] On June 29, 2020, the Indiana Utility Regulatory Commission (IURC) ordered, that in the event the statewide utility disconnection moratorium was not extended beyond June 30, 2020, all jurisdictional Indiana utilities were required to comply with temporarily amended utility practices and tariff rates and charges with the effect that utility service disconnections would be prohibited through August 14, 2020, along with the collection of certain utility fees (i.e., late fees, convenience fees, deposits, and reconnection fees). Jurisdictional Indiana utilities were required to offer extended payment arrangements to all customers. *Verified Joint Petition of Duke Energy, et al For Authority To Defer.; Petition of Indiana Utility Consumer Counselor For Generic Investigation Into COVID-19 Impacts*, Cause Nos. 45377, 45380, Phase 1 and Interim Emergency Order, at 2-6.

[32] RCW 34.05.350.

[33] RCW 80.01.040(4), 80.04.160, RCW 34.05.330.

[34] RCW 80.04.110.

[35] RCW 80.04.070, 80.04.100.

[36] RCW 80.28.040.

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We look forward to working with the Commission, Staff, the companies and the stakeholders toward developing a comprehensive set of customer protections.

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