

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

Relating to the Commission's Proceeding to  
Develop a Policy Statement Addressing  
Alternatives to Traditional Cost of Service  
Ratemaking

DOCKET U-210590

**COMMENTS OF PUBLIC COUNSEL**

**June 13, 2022**

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## I. INTRODUCTION

1. The Public Counsel Unit of the Washington Attorney General's Office (Public Counsel) files these comments in response to the Washington Utilities and Transportation Commission's (Commission) Notice of Opportunity to File Written Comments dated May 2, 2022 (Notice). In the Notice, the Commission stated that it sought comments related to regulatory goals, desired outcomes, and design principles for performance metrics, as well as comments regarding shortcomings in Washington's regulatory regime.<sup>1</sup> Public Counsel responds to the Notice questions, expands on previous comments filed on November 29, 2021, and April 27, 2022, and responds to certain comments made by other stakeholders in this docket.<sup>2</sup>
2. In addition, Public Counsel wishes to reiterate the important role that tracking metrics play in enhancing transparency and supporting effective, efficient utility regulation. Tracking metrics provide a valuable low-cost, low-risk way to monitor and guide utility performance by identifying areas of performance that are important to meeting energy policy goals and allowing for regular discussion and feedback regarding utility performance. Because metrics do not have financial penalties or rewards attached, they are low-risk to both ratepayers and utilities. The cost of tracking and reporting data relevant to policy goals is generally much less than the cost ratepayers bear when utilities are not incentivized to choose the optimal or least-cost investments. Consequently, Public Counsel maintains that a broad range of metrics should be established to provide regulators with data regarding important regulatory goals including at least one metric for each of the goals identified in the following section. Establishing a wide range of

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<sup>1</sup> Notice of Opportunity to File Written Comments at 1 (issued May 2, 2022) (hereinafter "Notice").

<sup>2</sup> Public Counsel reserves the right to modify its positions or make additional arguments following additional discussions, analyses, and reflection.

tracking metrics now provides the opportunity and necessary data foundation to establish future performance incentive mechanisms (PIMs) where warranted, avoiding the need to spend additional months or years later to collect baseline data.

## II. RESPONSE TO NOTICE QUESTIONS

### A. List of priority regulatory goals, desired outcomes, and rationale.

3. The table below reproduces the priority outcomes identified by Public Counsel in our April comments with the addition of an explicit rationale for each. The rationale references the Clean Energy Transition Act (CETA, RCW 19.405.040) and other state energy policy goals and requirements where applicable.

Regulatory Goals	Desired Outcomes	Rationale
1. Affordability	<ul style="list-style-type: none"> <li>• Low energy burden for low-income customers, low-income seniors, vulnerable populations, and highly-impacted communities, as measured on a total energy cost basis.</li> <li>• Affordability of energy relative to other consumer goods (e.g., percentage increases in bills relative to general inflation).</li> <li>• Bill stability, with no sudden adverse changes in bills.</li> <li>• An allowed return on equity (ROE) that reflects concurrent market conditions and is commensurate with the regulatory framework (e.g., reflects reduced risk where greater regulatory certainty or expedited cost recovery is provided).</li> </ul>	<ul style="list-style-type: none"> <li>• Per CETA, electric utilities must ensure “the equitable distribution of energy and nonenergy benefits and reduction of burdens to vulnerable populations and highly impacted communities.” RCW 19.405.040(8); RCW 19.405.060(1)(c)(iii).</li> <li>• Total energy costs account for both (1) utility energy bills (including impacts from optional programs such as community solar), (2) cost savings from fuel switching (e.g., from avoided gasoline costs), and thus provide a more holistic view than energy rates alone.</li> <li>• Bill stability is a widely recognized ratemaking principle.</li> <li>• ROE is a large component of electric rates. A fair return should account for changes in the regulatory environment and market conditions so that ratepayers are not paying more than necessary.</li> </ul>

Regulatory Goals	Desired Outcomes	Rationale
2. Utility Cost Control	<ul style="list-style-type: none"> <li>• Utility procurement of least cost resources that meet the state’s energy and emissions policies. Such resources include demand side resources and procurement from third parties.</li> <li>• Well-defined cost-effectiveness methodology for the transparent analysis of resource value.</li> <li>• Prudent and efficient utility management through use of proper planning processes, risk analysis, and prioritization of projects. This outcome applies to investments identified in utility Clean Energy Implementation Plans as well as distribution system investment plans.</li> <li>• Allowed utility return that is commensurate with risk profile, cost of raising capital, and concurrent market conditions.</li> </ul>	<ul style="list-style-type: none"> <li>• Per CETA, in making new investments, an electric utility must achieve greenhouse gas targets at the lowest reasonable cost, considering risk. RCW 19.405.040(6)(a)(i).</li> <li>• Per CETA, each utility shall pursue all available conservation that is cost-effective, reliable, and feasible. RCW 19.405.040(1)(a).</li> <li>• Transparent cost-effectiveness methodologies are critical to ensuring that a portfolio of resources is evaluated in a consistent, reasonable, and fair manner.</li> <li>• The impact of the energy transition is not limited to generation resources; transmission and distribution system costs are a large portion of customers’ bills.</li> <li>• ROE is a large component of electric rates. A fair return should account for changes in the regulatory environment and market conditions so that ratepayers are not paying more than necessary.</li> </ul>
3. Reliability	<ul style="list-style-type: none"> <li>• High level of service reliability at reasonable cost. Service quality should be measured not only through SAIDI and SAIFI, but also in terms of momentary outages (MAIFI), outage duration (CELID), multiple interruptions (CEMI), service availability (ASAI), worst performing circuits, locational reliability, equity, and the number of customers whose service falls below a defined minimum standard.</li> <li>• Equal levels of service for vulnerable populations and highly-impacted communities, identifying areas where service improvements are needed.</li> </ul>	<ul style="list-style-type: none"> <li>• Traditional reliability measures using system averages (e.g., SAIDI and SAIFI) can obscure reliability issues that are difficult for customers to manage. Such issues include: <ul style="list-style-type: none"> <li>○ frequent momentary outages, which may require customers to expend significant time and resources addressing through resetting equipment, and</li> <li>○ differential impacts where certain customers experience consistently worse reliability than others.</li> </ul> </li> </ul>

Regulatory Goals	Desired Outcomes	Rationale
	<ul style="list-style-type: none"> <li>• Demonstrated improvements in reliability from targeted investments (i.e., demonstration of value for money).</li> <li>• Reduction in outages due to vegetation and other major service disruption sources.</li> </ul>	<ul style="list-style-type: none"> <li>• Identifying variations in reliability across populations or locations is critical for ensuring equity.</li> <li>• Reliability issues are frequently cited to justify utility expenditures. Customers should be provided evidence that the expenditures achieved their reliability goals.</li> <li>• Vegetation management is a means of enhancing reliability that is within the utility’s control and that does not require capital investments.</li> </ul>
4. Safety	<ul style="list-style-type: none"> <li>• Utility employee safety.</li> <li>• Public safety (including wildfire risk mitigation and natural gas distribution network safety).</li> <li>• Reduction in utility-caused wildfires and impacts, as well as sparks and ignitions that do not result in wildfires.</li> </ul>	<ul style="list-style-type: none"> <li>• Safety is a core utility responsibility.</li> <li>• Wildfires are becoming a greater threat to public safety and pose potentially great economic consequences.</li> <li>• Natural gas poses safety risks to the public when distribution systems are not safely maintained and operated.</li> </ul>
5. Community Equity and Engagement	<ul style="list-style-type: none"> <li>• Reasonable sharing of costs and benefits of the current and future electric system across customer groups, with equal access to products, service, information, and opportunities to control energy bills.</li> <li>• Utility active engagement of communities, particularly low-income, highly-impacted communities, and vulnerable populations, such that these communities’ input is considered in utility decision-making processes.</li> </ul>	<ul style="list-style-type: none"> <li>• Per CETA, electric utilities must ensure “the equitable distribution of energy and nonenergy benefits.” RCW 19.405.060(1)(c)(iii).</li> <li>• Ensuring equal access to various tools and services that facilitate management of energy bills promotes equity and affordability.</li> <li>• Meaningful engagement of vulnerable and highly-impacted communities is necessary to ensure that decision-making is equitable and solutions adequately consider the unique needs of these populations.</li> </ul>
6. Capital Market Access	<ul style="list-style-type: none"> <li>• Utilities’ financial integrity and access to capital on reasonable terms.</li> </ul>	<ul style="list-style-type: none"> <li>• These factors impact the utility’s cost of borrowing, and thus utility rates.</li> </ul>

Regulatory Goals	Desired Outcomes	Rationale
7. Advancing Washington's Public Policy Goals	<ul style="list-style-type: none"> <li>• Must achieve state's energy policy goals, particularly the Energy Independence Act, CETA, the Climate Commitment Act, development of electric vehicle infrastructure, and other relevant goals.</li> </ul>	<ul style="list-style-type: none"> <li>• Tracking progress toward energy policy goals will facilitate meeting goals in a timely manner and making course corrections where necessary.</li> <li>• Reviewing progress on multiple goals simultaneously will help to ensure that certain goals are not being unreasonably prioritized over others.</li> </ul>

**B. How well do current regulatory mechanisms accomplish goals and outcomes you listed above? Please share specific reasons for your answer.**

4. Traditional regulatory approaches as currently employed in Washington, particularly cost-of-service regulation and resource planning, may not fully address the goals and outcomes listed above in certain circumstances. Traditional regulatory approaches may not provide all of the necessary information to ensure that utilities are meeting regulatory goals. Planning requirements, such as the Biennial Conservation Plans, Clean Energy Implementation Plans, and Wildfire Plans, may help address some of these shortcomings by improving transparency and accountability towards achieving goals outlined in statute. Metrics are needed to monitor progress and can help align utility efforts with policy goals. Below, we identify some of the ways in which current regulatory mechanisms do, or do not, fully address the goals and objectives identified above.

**1. Affordability**

5. Current regulatory mechanisms address affordability of utility service through (1) providing energy assistance, and (2) reviewing the reasonableness of rates in rate cases. Currently, it is difficult to assess the extent to which utility energy assistance programs meet customers' needs, as utilities typically report data on the amount of dollars provided to customers

or the total number of customers served, without contextualizing this data in terms of the total need (e.g., the total number of eligible customers). Further, this information is not provided to the Commission in a standardized format across the utilities.

6. Likewise, rate cases fail to provide the full picture of energy affordability for the following reasons:

- Rate cases typically focus on one type of utility service and do not consider total energy burden from all energy sources;
- Rate cases tend to focus on costs, not on quantifiable benefits provided for that cost;
- Information presented in rate cases generally lacks sufficient detail to understand the differential impacts on various communities, particularly highly-impacted and marginalized communities; and
- A utility's allowed ROE is not adjusted between rate cases to reflect changes in market conditions. A utility's allowed ROE may also be inflated and not accurately reflect their risk profile or current market conditions.

## **2. Utility Cost Control**

7. Under current regulatory mechanisms, utility cost control is primarily addressed through resource planning and reviewing historical investments for prudence in the context of rate cases. However, these mechanisms do not fully offset existing incentives and are hindered through information asymmetry. In particular:

- Providing utilities with a rate of return on utility-owned capital results in utility ownership and capital bias and discourages support for power purchase agreements or customer adoption of distributed energy resources;

- Earnings sharing mechanisms may dampen utilities’ incentives to operate more efficiently;
- Information and stakeholder resource asymmetry make it difficult to establish whether investments were truly least-cost compared to alternatives, particularly when investments differ from those identified in utility resource plans;
- Utility resource plans historically have not incorporated comprehensive transmission and distribution planning; and
- Cost-effectiveness frameworks and methodologies are not consistently defined or applied across resources, which may lead to investment in unnecessary resources or gold-plating.<sup>3</sup>

### **3. Reliability**

8. Under WAC 480-100-398, Washington electric utilities must file annual electric service reliability reports with the Commission. However, this requirement does not adequately address concerns regarding equity or the net benefits of reliability improvements. Specifically, current reliability reports:

- Largely focus on system averages (e.g., SAIDI and SAIFI), and do not include many other aspects of reliability, such as momentary outages;
- May provide data on worst performing circuits, but without context regarding how the performance has changed from year-to-year and how investments have affected

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<sup>3</sup> See, for example, Public Counsel’s comments regarding the evaluation of non-wires alternatives and distributed energy resources in Docket UE-210795, filed on March 2, 2022.

performance;<sup>4</sup>

- Generally do not capture population characteristics (i.e., highly-impacted or vulnerable communities) or geographic location, hindering considerations of equity;
- Are not standardized across utilities and each report is filed in a separate docket that can be difficult to locate or compare across time and service territory; and
- Do not clearly indicate the performance of the utility in improving reliability, since standard statistics include many causes of outages that may be largely outside of the utility's control (e.g., animals, vehicle accidents, vandalism, etc.).

#### **4. Safety**

9. Wildfires pose an increasing risk to public safety. Under the current regulatory framework, utilities have an incentive to invest in infrastructure hardening where the costs can be capitalized in rate base. Other forms of lower-cost risk mitigation, such as frequency of power line inspection and vegetation management, are not equally incentivized because they do not earn a return for the utility. Thus, utilities do not necessarily have an incentive to focus on the wildfire mitigation methods that are lowest-cost and provide the greatest reduction in risk. Further, there are no metrics or tracking requirements in place to determine the extent to which spark ignition risk is reduced following utility investments. Utilities also have no requirements regarding the level of public engagement and customer outreach ahead of and during emergencies. As a result, customers with limited English proficiency or access and functional needs may not receive critical information or resources from utilities.

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<sup>4</sup> By definition, a list of the 50 worst performing circuits will always contain 50 circuits, regardless of whether the reliability for the worst circuits is improving over time. This limits the ability of regulators to determine whether reliability on the worst circuits is improving or not.

## **5. Community Equity and Engagement**

10. Under CETA, utilities must use a framework that facilitates public participation and oversight in developing their clean energy implementation plans. While this is a significant step forward in terms of expanding community engagement and equity in decision-making, there are no requirements for utilities to respond to or incorporate stakeholder feedback. Thus, it is unclear to what extent CETA's public outreach requirements will truly enhance equity.<sup>5</sup>

## **6. Capital Market Access**

11. Modifications to traditional cost of service regulation, such as decoupling and trackers, have mitigated lost revenues associated with demand-side management and regulatory lag. These tools also shift the burden of risk onto customers, and that risk-shifting is not necessarily reflected in the authorized returns used in rate setting. Utilities also have the ability to file a rate case at any time if revenues are insufficient to cover costs. To date, utilities have had access to debt and equity capital on reasonable terms.

## **7. Advancing Washington's Public Policy Goals**

12. The Commission generally has the ability to assess penalties where utilities fail to comply with statutory requirements, and utilities may report progress on certain goals through various mechanisms. However, monitoring progress toward state energy policy goals is generally done in a piecemeal manner, rather than through a holistic review of progress across multiple dimensions. This hinders regulators' ability to ensure that utility efforts are prioritized appropriately.

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<sup>5</sup> See, for example, Public Counsel's comments regarding the evaluation of non-wires alternatives and distributed energy resources in Docket UE-210795, filed on March 2, 2022.

### C. Metric Design Principles

13. Public Counsel recommends adoption of the following metric design principles:
1. Explicit Incorporation of Equity: Data for each metric should be collected in a way that does not obscure differences between system-wide average outcomes and outcomes for customers in low income, highly impacted, and vulnerable communities.
  2. Standardization: Metric definitions and measurement methodologies should be standardized as much as possible across utilities and over time. If any significant changes to the data collection or measurement process are made, these impacts should be explicitly recorded and their impacts on performance values discussed.
  3. Transparent and Verifiable: The underlying data and measurement practices should be transparent and publicly available,<sup>6</sup> and the results verifiable by an independent auditor.
14. In addition, Public Counsel offers the following comments on the metric design principles listed in the notice.
- Outcome-based Metrics: Public Counsel does not agree that metrics should always track outputs or outcomes and not inputs. In some cases, it may be appropriate to track utility effort, even if that effort does not ultimately produce tangible progress toward an outcome. For example, it may be worthwhile to track the number of utility

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<sup>6</sup> For example, in Hawaii, the utilities' websites provide public access to performance metrics, including the underlying data in spreadsheet form and a description of the methodology for each metric. See, *Performance Metrics and Scorecards*, Hawaiian Elec. <https://www.hawaiianelectric.com/about-us/performance-scorecards-and-metrics> (last visited June 10, 2022).

solicitations for non-wires alternatives from third-party vendors, even if no proposals are ultimately received.

- Non-duplicative: Public Counsel agrees that any penalties and rewards should not duplicate penalties or rewards elsewhere. Similarly, utilities should not be financially rewarded for providing service that simply meets their core responsibilities (i.e., safe, reliable service at reasonable cost) or meeting existing mandates (i.e. achieve all cost effective conservation). We note that these principles only apply to the design of performance incentive mechanisms, not tracking metrics that have no financial reward or penalty associated with them.
- Clear, Measurable, and Verifiable: Public Counsel generally supports this principle, but believes that more detail is needed in the definition. Therefore, Public Counsel recommends that the Commission adopt Public Counsel’s proposed metric design principles of “Standardization” and “Transparent and Verifiable,” listed above, rather than the “Clear, Measurable, and Verifiable” principle listed in the Notice.
- Evaluated Regularly: While Public Counsel supports reviewing metrics at regular intervals, we caution against abandoning metrics based on utility performance. For example, if data collected indicate that utility performance in an area is satisfactory, that does not mean that the tracking metric is unnecessary, as performance in the future could change. Conversely, if a utility fails to meet targets, that does not mean the target is too stringent but could indicate that an underlying issue needs to be addressed. Metrics, targets, and eventual PIMs are not cast in stone and should be

evaluated over time for appropriateness and effectiveness, but they also need time to operate.

**D. Additional Considerations**

15. Public Counsel wishes to respond to certain points raised by utilities in their April 27th comments. Both Puget Sound Energy and Avista expressed concerns regarding the burden associated with additional reporting requirements and a desire to limit the number of reporting metrics. Because the information that would be provided through tracking metrics is critical for enabling the Commission to regulate effectively, objections to establishing new metrics should be thoroughly substantiated and contextualized. Otherwise, access to data could be artificially limited at the outset, diminishing the Commission's ability to adequately exercise its regulatory oversight. If utilities have concerns regarding the cost of tracking certain data, they should provide estimates of the costs to implement the metrics and explain whether alternative data could be collected more efficiently. In many cases, it may be well worth the incremental cost of tracking data to ensure that utility investments and actions are providing net benefits to ratepayers. For example, the cost of tracking reliability on worst performing circuits is certainly much less than the annual spending on reliability improvements on those circuits.

16. Public Counsel notes that we agree with Avista's comments regarding the need to make sure that we are making good use of existing metrics. To that end, Public Counsel reiterates our recommendation that the workgroup discuss what tools could be used to present metric data in the most easily-accessible, efficient, and transparent manner possible (e.g., utilities hosting a webpage that provides data dashboards with access to underlying data and links to reports filed in various dockets).

17. Finally, Public Counsel concurs with Avista’s goal of ensuring that technology investments (such as advanced metering infrastructure) are leveraged for the benefit of customers. Illinois provides several examples of metrics and PIMs related to AMI. These include:

- The number and percentage of distribution lines using sensing from an AMI meter as part of voltage regulation schemes;
- Reductions in the issuance of estimated bills;
- Reductions in consumption on inactive meters;
- Reductions in non-technical line loss unaccounted for energy (*i.e.*, losses not related to distribution and transmission losses); and
- Reductions in uncollectible expense.<sup>7</sup>

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<sup>7</sup> For example, see Commonwealth Edison’s Performance Metric Reports here:

<https://www.icc.illinois.gov/industry-reports/comed-performance-metrics> (last visited June 10, 2022).

### III. CONCLUSION

18. The current regulatory framework offers some ways to accomplish the goals and outcomes outlined by Public Counsel, but they are often done in a piecemeal fashion, making accountability and comparison across utilities difficult. A more holistic, transparent, standardized approach is needed to ensure progress towards established goals and outcomes.
19. Public Counsel looks forward to continued efforts among stakeholders to develop an approach that meets the state's policy goals, while providing safe, reliable, and affordable service to all Washington utility customers.

Dated this 13th day of June 2022.

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