

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

Investigation for the purpose of keeping track
of COVID-19 Related Informational Filings

DOCKET U-200281

PUBLIC COUNSEL COMMENTS ON ISSUES RELATED TO COVID-19

July 1, 2020

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I. INTRODUCTION

1. Public Counsel provides written comments pursuant to the Utilities and Transportation Commission's ("Commission") Addendum to Notice of Virtual Special Open Meeting dated June 8, 2020.¹ The Commission's inquiry in this docket is critical to ensuring that customers remain connected to essential services during the COVID-19 global pandemic and the related near and long-term economic impact. Currently, telecommunication, water, natural gas, and electric utilities in Washington are prohibited from disconnecting customers for nonpayment and from charging late fees through July 28, 2020.² Significant consumer protections are required to avoid a spike in disconnections if and when the disconnection moratorium is lifted.
2. Public Counsel's comments begin with general information, discuss general principles that should guide the decision-making, provide recommendations regarding specific action that should be taken, and address the various industries impacted. Public Counsel also acknowledges that modifications may be implemented where appropriate while maintaining the underlying policy of protecting customers during these uncertain times.

II. GENERAL IMPACT OF CORONAVIRUS

3. The coronavirus, which causes the disease COVID-19, has significantly altered the economy and the well-being of Washingtonians. Washington, like many states, ordered its residents to stay home and only go into public when necessary beginning in March.³ Businesses remained closed for months, and although some economic re-opening has begun, many

¹ The date by which the Notice requested written comments is June 19, 2020. Chairman Danner extended the deadline at the Special Open Meeting to July 1, 2020.

² Wash. Exec. Order No. 20-23 (Mar. 18, 2020) ("UTC – Ratepayer Assistance"); Wash. Exec. Order No 20-23.2 (Apr. 17, 2020) ("Ratepayer Assistance and Preservation of Essential Services"); Wash. Exec. Order No 20-23.4 (Apr. 17, 2020) ("Ratepayer Assistance and Preservation of Essential Services").

³ Wash. Exec. Order No. 20-25 (Mar. 23, 2020) ("Stay Home – Stay Healthy").

businesses are not operating at full capacity. Moreover, infection and hospitalization rates are currently trending upward,⁴ which raises concerns that businesses and individuals will be impacted further. Indeed, many states have halted or reversed reopening activities, including Washington, and some states have initiated policies requiring people traveling from certain “hot spot” states to quarantine for 14 days upon arrival.⁵

A. Unemployment Impacts Ability to Pay Bills

4. Washington’s unemployment rate increased from 3.8 percent in February to 5.1 percent in March, and surged to 16.3 percent in April.⁶ Washington’s unemployment rate decreased slightly to 15.1 percent in May,⁷ which is still higher than the national average of 13.3 percent.⁸ Even though the unemployment rates ticked down slightly in May, they remain significantly elevated from this time last year. In May 2019, Washington’s unemployment rate was 4.4 percent⁹ and the national average was 3.6 percent.¹⁰
5. Customers face significant threat of being disconnected from essential utility service or

⁴ Washington Department of Health, *COVID-19 Data Dashboard — Current Status*, available at <https://www.doh.wa.gov/Emergencies/NovelCoronavirusOutbreak2020COVID19/DataDashboard> (Last Visited June 29, 2020).

⁵ Paul Davidson, *Will infections spike, state reopening rollbacks hurt recovery or spur a new recession?* USA TODAY, available at <https://www.usatoday.com/story/money/2020/07/01/coronavirus-states-reopening-put-pause-and-may-hurt-rebound/5352811002/> (Last Updated July 1, 2020); King 5 Staff, *Washington state pauses counties moving to Phase 4 of reopening*, KING 5, available at <https://www.king5.com/article/news/health/coronavirus/washington-state-coronavirus-covid19-phase-4-reopening/281-9b358945-41ee-48a3-9fa8-3ab0a0065060> (Last Updated June 29, 2020); Eric Levenson, *NY, NJ and CT require travelers from states with high coronavirus rates to quarantine for two weeks*, CNN, available at <https://www.cnn.com/2020/06/24/us/new-york-coronavirus-travel-restriction/index.html> (Last Updated June 24, 2020).

⁶ US Bureau of Labor Statistics, *Western Information Office — Washington*, available at <https://www.bls.gov/regions/west/washington.htm> (Last Visited June 29, 2020).

⁷ *Id.*

⁸ US Bureau of Labor Statistics, *Economic News Release — Employment Situation Summary*, available at <https://www.bls.gov/news.release/empsit.nr0.htm> (Last Visited June 29, 2020).

⁹ US Bureau of Labor Statistics, *Databases, Tables & Calculators by Subject — Washington*, available at <https://data.bls.gov/timeseries/LASST530000000000003> (Last Visited June 29, 2020).

incurring late fees due to the considerable hardship created by the pandemic. Governor Inslee recognized the importance of keeping customers connected when he stated in Proclamation 20-23.4, “maintaining provision of utility service 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.”¹¹ Proclamation 20-23.4 prohibits disconnections for nonpayment from March 23, 2020, until July 28, 2020. The proclamation further prohibits utilities from refusing to reconnect customers who had been disconnected and prohibits utilities from charging late payment or reconnection fees.¹²

B. Increased Risk of Disconnection

6. Public Counsel is concerned that significant numbers of utility customers will be at risk for disconnection once the Governor’s moratorium is lifted. Public Counsel is also deeply concerned that the number of utility customers in arrears and the average amount owed per customer will increase substantially. The utilities provided some information about customer arrearages during the June 16th Special Open Meeting, but the utilities should be required to provide written information, including data regarding the amount of arrearages, the affected customer classes, outreach engaged in by the utility with their past-due customers, bill assistance provided for past-due customers, and any repayment efforts made to date by customers.

7. Prior to the Proclamation, several of Washington’s regulated utilities voluntarily suspended disconnections and related fees. Additionally, a number of utilities indicated at the

¹⁰ US Bureau of Labor Statistics, *Databases, Tables & Calculators by Subject — Labor Force Statistics from the Current Population Survey*, available at <https://data.bls.gov/timeseries/LNS14000000> (Last Visited June 29, 2020).

¹¹ Wash. Exec. Order No 20-23.4 (Apr. 17, 2020) (“Ratepayer Assistance and Preservation of Essential Services”).

June 16th Special Open Meeting that they did not intend to begin disconnections immediately. However, at least one company stated that it would resume disconnection activities when it was able.¹³ Public Counsel believes that it is imperative for the Commission to act by providing guidance and requiring utilities to act in accordance with appropriate customer protections. Upon expiration of the Governor’s moratorium, it will be insufficient to rely on voluntary utility action to continue forward the protections contained in the moratorium. Relying on voluntary actions will likely result in customers receiving different treatment based on the utility from which they receive service. Since customers have very little choice regarding their utility service provider, the Commission should set the minimum customer protections that all customers may expect.

C. Disconnections Disparately Impacts Minority Communities

8. In addition to preventing access to critical utilities for economically vulnerable people, the negative impacts of disconnections are exacerbated by racial disparities. Analysis from the NAACP shows that African Americans face higher average energy burdens than Americans as a whole.¹⁴ In turn, this community is at higher risk of disconnection. National data shows that African American households at or below 150 percent of the federal poverty line are far more likely to experience disconnections than white-identified households at the same income level.¹⁵ This income level also represents the threshold to qualify for federal LIHEAP bill assistance. Despite being income-eligible for federal bill assistance – and also for utility-based assistance for

¹² Wash. Exec. Order No. 20-23 (Mar. 18, 2020) (“UTC – Ratepayer Assistance”); Wash. Exec. Order No 20-23.2 (Apr. 17, 2020) (“Ratepayer Assistance and Preservation of Essential Services”); Wash. Exec. Order No 20-23.4 (Apr. 17, 2020) (“Ratepayer Assistance and Preservation of Essential Services”).

¹³ Recording of June 16, 2020 Special Open Meeting (Comments of Puget Sound Energy, Avista, Cascade Natural Gas, and CenturyLink).

¹⁴ NAACP, Environmental and Climate Justice Program, *Lights Out in the Cold*, at 12 (Mar. 2017), available at https://www.naacp.org/wp-content/uploads/2017/12/Lights-Out-in-the-Cold_NAACP.pdf.

¹⁵ *Id.*, at 13. 11.3% of African American Households at 150 percent of FPL, versus 5.5 percent of white households at the same income level.

Washington IOUs – African American households face a disproportionate risk of being disconnected from their energy utilities.

9. At this time, Public Counsel is not aware of data to determine exactly how the COVID-19 pandemic and subsequent economic crisis may impact racial disparities in utility disconnections. However, well-known institutional racism and disparate economic outcomes based on race are likely to persist, and likely deepen, through this crisis. Current data does show that there are disproportionate health outcomes for African Americans related to COVID-19 infections. On a national level, “African-American deaths from COVID-19 are nearly two times greater than would be expected based on their share of the population.”¹⁶ In Washington, African Americans have experienced a higher than proportionate share of confirmed COVID-19 cases.¹⁷ Though this health outcome data does not directly relate to utility disconnections, we can extrapolate that disproportionality based on race will persist as Washington utility customers face the prospect of utility disconnections.

10. Action from the Commission to limit disconnections moving forward can help to stem the likely case of disproportionate outcomes for communities of color as we weather the economic crisis.

III. THE COMMISSION’S DECISION-MAKING SHOULD BE GUIDED BY THE PRINCIPLE OF KEEPING PEOPLE CONNECTED THROUGH THE IMMEDIATE PUBLIC HEALTH CRISIS AND THE ONGOING ECONOMIC IMPACT

11. Public Counsel believes the correct focus is to keep customers connected to essential services to the extent possible, recognizing that the pandemic has a substantial impact on consumers. Just about everyone has felt the impact of the COVID-19 pandemic. At best, people

are working from home and still drawing their paychecks. Because we do not know how long or how severe the economic impact of COVID-19 will be, even those fortunate workers who remain employed are vulnerable to furloughs and layoffs. At worst, people have lost jobs – or businesses – as a result of the Stay Home—Stay Healthy Order.

12. At some point, the disconnection moratorium will be lifted, either by the Governor or by the Commission if it imposes a complementary disconnection moratorium. At that time, utilities will be able to disconnect people. However, the Commission can implement consumer protections to ensure that customers are better protected during this vulnerable time. Those protections should focus on keeping people connected, remove unnecessary burdens from receiving assistance, provide for adequate and affordable arrearage management, and provide a fair and equitable path for reconnection in the event of disconnection.

13. Maintaining the focus on keeping customers connected serves two purposes. First, access to essential services is critically important to the State’s response to COVID, particularly in light of rising infection rates. Washingtonians cannot take care of their families without access to safe and reliable utility service. Access to safe, clean water is necessary to exercise good hygiene, which prevents the spread of the virus. Access to electricity and natural gas is important for cooking, heating and cooling, and may be necessary to run medical equipment. Access to telecommunication services, and related broadband infrastructure, has been important in keeping people connected to each other and to their jobs, for those working from home.

14. Second, keeping a customer connected and encouraging the customer to pay what they can to remain as current as possible allows the company to minimize the impact of bad debt.

¹⁶ Maria Godoy, *What Do Coronavirus Racial Disparities Look Like State by State?* NPR (May 30, 2020), available at <https://www.npr.org/sections/health-shots/2020/05/30/865413079/what-do-coronavirus-racial-disparities-look-like-state-by-state>.

Keeping the customer connected maintains the habit of paying bills. This habit of paying bills benefits both the customer and the utility in the long run by keeping past due balances as low as possible.

IV. ACTION TAKEN BY THE COMMISSION SHOULD BE COMPLIMENTARY TO THE GOVERNOR'S PROCLAMATION AND SHOULD PROVIDE UTILITY CUSTOMERS WITH ADEQUATE PROTECTIONS

15. The Commission regulates utilities in the public interest.¹⁸ In doing so, the Commission may conduct inquires and issue policy statement or engage in rulemaking resulting in agency rules. The Commission may also consider evidence and issue an order of general applicability. Further, the Commission may engage in emergency rulemaking under RCW 34.05.350. The vehicle chosen by the Commission in order to act is not as important as setting policy that will positively impact the most vulnerable in our communities.

16. Public Counsel recommends that the Commission take the following action:

17. **First, the Commission should require utilities to file the results of reviewing their existing credit, collection, and disconnection policies with the Commission.** The Governor asked the utilities to review their existing credit, collection, and disconnection policies and update those policies as appropriate. If the review results in a tariff modification, utilities would be required to seek approval of the modifications. Public Counsel recommends that the Commission require utilities to file the results of their review and their planned modifications, even if the modifications would not alter tariffs. The Commission should review and approve, reject, or amend the utilities' planned modifications. Additionally, as noted in the COVID-19 Utility Customer Support Program Guidance that accompanied Proclamation 20-23.4, the

¹⁷ *Id.*

¹⁸ RCW 80.01.040.

Commission can impose additional requirements. The Commission should also require each utility to evaluate their disconnection plans with the goal of reducing the number of disconnections from pre-COVID levels.²⁰

18. **Second, the Commission should extend the disconnection moratorium for an appropriate period of time.** Currently, the Governor’s disconnection moratorium is set to expire on July 28, 2020. While it is possible that the Governor may extend his moratorium in some form, it is not certain that an extension will occur. Additionally, the Commission has the broad authority to act with respect to the utilities under its jurisdiction. The California Public Utilities Commission (CPUC) provides an example of how that broad authority can be exercised in response to COVID. The CPUC has extended its emergency customer protections, which apply to both residential and small business customers, for one year. The emergency customer protections will run through April 2021, which allows customers to weather the ongoing pandemic and the upcoming winter season without worrying about losing their utility service. The CPUC noted that the emergency customer protections are the minimum, not maximum, levels of protection and encouraged the regulated utilities to do more to help customers during this time of need.²¹ The Commission can require the same of Washington’s regulated water, natural gas, electricity, and telecommunication utilities.

19. **Third, certain credit and collection activities should be suspended to remove unnecessary barriers.** Utilities routinely charge late fees, disconnection fees, and reconnection

²⁰ Wash. Exec. Order No. 20-23.4 (May 29, 2020) (“Proclamation by the Governor Amending and Extending Emergency Proclamations 20-05, 20-23, 20-23.1, 20-23.2, and 20-23.3”), COVID-19 Utility Customer Support Program Guidance at 3.

²¹ *Emergency Operation and Order Directing Utilities to Implement Emergency Customer Protections to Support California Customers During the COVID-19 Pandemic*, Resolution M-4842 (Cal. Pub. Utils. Comm’n, Apr. 16, 2020). A copy of the Resolution is attached hereto as Attachment A.

fees, along with deposits and a down payment on past-due balances prior to reconnection. Such punitive measures do not result in more timely payments for struggling households. Rather, they only serve to increase the consumer's costs to reconnect, making reconnection more difficult and delay reconnection. The goal should be to keep customers connected. While customers continue to owe amounts they incur for services, customers should continue to be connected and should pay what they can for service. The utility can then address the issue of arrearages, discussed below.

20. **Fourth, utilities should be required to offer long term payment plans of 12 to 24 months to consumers with past-due balances.** Consumers with very large balances should be offered longer term payments so that the monthly payment is manageable. The Commission should establish a presumption that each consumer who is unable to pay their utility bill is unable to do so because of COVID-19.
21. Affordability is critically important because if the repayment plan is not tailored to a customer's unique financial situation, coupled with the customer's current monthly charges, the customer will continue to struggle to pay. In this circumstance, the customer would be at risk of falling behind again, creating a vicious cycle of disconnection and reconnection. If this happens, the utility is at risk for additional amounts that may become bad debt. On the other hand, if the repayment plan is affordable along with the customer's current charges, the utility will be able to collect the balances owed over time. The recommendation to offer longer-term payment plans recognizes that bill assistance programs are not reaching all qualified customers and that successful resolution of the issues require a multiple-pronged approach.
22. **Fifth, the Commission should require utilities to design and implement bill assistance programs that address arrearages.** Arrearage management programs, percentage of

income programs, and deferred payment are examples of bill assistance programs that can help utility consumers manage their arrearages. These programs tend to benefit both the consumer and the utility.²² The individual customer benefits because service is maintained at affordable levels. Other customers and the utility benefit because the amount of bad debt is kept to a minimum. The utility benefits because the customer develops a bill payment habit by paying each month.

23. **Sixth, adequate data is very important to decision-making regarding response to the pandemic.** We know the pandemic is having a profound effect on individuals and their ability to pay their daily expenses. Public Counsel recognizes the theoretical tension between utility cash flow and ratepayers' ability to pay. This tension is most likely felt more acutely by smaller utilities. In large part, the large investor-owned utilities have continued to have access to reasonable capital and are not reporting major cash flow issues resulting from larger arrearage balances.²³ Residential usage is up, resulting in residential customers incurring larger bills, even in the absence of rate increases, because they are home more than normal.²⁴ Moreover, utilities typically recover bad debt in rates, and decoupling also softens the impact on revenues.

24. Importantly, the Commission asked the utilities to provide an update regarding the impact COVID-19 has had on demand for service, expenses, cost savings, resource and supply availability, customer interactions, customer arrearages, the dollar amount of past due accounts, and the estimated time period remaining until ratepayer assistance funds would be exhausted. Further, the Commission asked for information about how utilities planned to communicate with

²² Penni Conner & Charlie Harak, *Utility exec and consumer advocate: Arrearage management programs are a win for consumers and utilities*, UTILITY DIVE (June 8, 2020), available at <https://www.utilitydive.com/news/utility-exec-and-consumer-advocate-arrearage-management-programs-are-a-win/579357/>.

²³ Recording of June 16, 2020 Special Open Meeting (Comments of Cascade Natural Gas, Puget Sound Energy).

²⁴ Recording of June 16, 2020 Special Open Meeting (Comments of Avista, Puget Sound Energy, PacifiCorp).

customers with past due accounts, resume disconnections and related fees, address arrearages, and whether utilities planned long-term payment arrangements.²⁵

25. If data is adequately collected from the utilities, the Commission can implement data-based consumer protections based on information provided by the utilities. The Commission should request that the utilities provide this information in writing and to continue reporting on a regular basis going forward. In particular, utilities should file information on a monthly basis regarding the number of past-due accounts, the amount owed, the demographics of the customers (residential, commercial, industrial, etc.), customer repayment efforts, communication with customers regarding arrearages, and the number of customers receiving assistance. In the initial report, utilities should also provide how the current information compares to the same information one year ago. Understanding the scope of the issue will result in better public policy.

26. **Seventh, similar protections should apply to small businesses who are following safety guidelines and making a good faith effort to meet its obligations.** Small businesses have been profoundly affected by the pandemic. Some will not return. For those who do, a disconnection for nonpayment could be devastating. If they are following safety and health guidelines and have difficulty paying their utility bills, utilities should provide payment plans and consider individual circumstances similar to what Public Counsel recommends for residential ratepayers. The CPUC in California recognized that small businesses should be included in the consumer protections it ordered.²⁶ In Washington, the Retail Association has developed a set of guidelines that can be used as retailers reopen.²⁷ The Commission should

²⁵ Notice of Virtual Special Open Meeting (June 1, 2020).

²⁶ *Emergency Operation and Order Directing Utilities to Implement Emergency Customer Protections to Support California Customers During the COVID-19 Pandemic*, Resolution M-4842 (Cal. Pub. Utils. Comm'n, Apr. 16, 2020). A copy of the Resolution is attached hereto as Attachment A.

²⁷ Attached to these comments as Attachment B is a copy of the Retail Association's Safety Operational Plan that retailers should consider as they reopen.

require utilities to consider a small business's individual circumstances in providing assistance and avoiding disconnection, including whether the small business is complying with public safety guidelines and making a good faith effort to reopen.

27. **Eighth, the Commission should require that utilities proactively communicate with all ratepayers and with those ratepayers who carry past-due balances.** Communication is critically important during the pandemic and the related economic impact. Customers may not know what to do if they are struggling to pay their bill, and they may also misunderstand the disconnection moratorium. The Commission should require all utilities reach out to customers with past due balances to provide information about bill assistance and other available assistance and to provide clear (but compassionate) messaging that the disconnection moratorium is not bill forgiveness. Ratepayers must understand that they remain liable for their bills and that they should remain current to the best of their ability. While some customers may not be able to stay current because they have lost their jobs, all customers should strive to keep their arrearage balances as low as possible. Additionally, utilities should conduct outreach to all of their customers, asking them to contact the utility or the Commission if they are having difficulty paying their bills.

28. **Ninth, the Commission should require utilities to actively seek ways to reduce the administrative burden of requesting assistance.** Particularly during the ongoing pandemic, excessive verification of eligibility and complicated administrative hoops can serve to block consumer from assistance. Because the goal is to keep people connected, they must have the opportunity to access assistance to help them pay their bills. Administrative burdens to achieve that assistance should be reduced to provide easier access to assistance.

29. The actions described above have been taken by various commissions in other

jurisdictions. For example, stakeholders in Illinois recently submitted a settlement agreement for consideration that provides for extension of the moratorium until September 2020, reconnection without fee, bill assistance programs that allow for bill-forgiveness, consumer-friendly deferred payment arrangements, allow verbal expressions of hardship to remove barriers to accessing protections, waiver of various fees, and data reporting requirements.²⁸

V. TELECOMMUNICATIONS, WATER, NATURAL GAS, AND ELECTRIC UTILITIES FACE DIFFERENT CHALLENGES DURING THE PANDEMIC, BUT THEIR CUSTOMERS DESERVE ADEQUATE CONSUMER PROTECTIONS

30. Water and telecommunication companies can be much smaller utilities than Washington's five large investor-owned energy utilities. Despite the difference in scale, Proclamation 20-23.4 recognizes the importance of keeping customers connected to all of their utility services. The underlying policy of keeping customers connected applies to customers of small utilities as well as those of large utilities.
31. Smaller utilities may have a smaller cushion with which to endure missed payments from their customers. Sufficient data will inform stakeholders and the Commission about the extent of the issue. However, a utility may unnecessarily reduce its cash flow through disconnections when customers may be able to pay a portion of the bill. Additionally, a disconnected customer's balance may become bad debt, which is absorbed by the remaining customers. As long as that customer remains connected, the utility has an opportunity to work with the customer and design a payment plan that is suitable for the customer. The utility misses that opportunity by disconnecting the customer.
32. The Commission can consider how various policies should be modified to account for the

²⁸ Attached to these comments as Attachment C is a copy of the press release associated with the stakeholder stipulation and a copy of the stipulation.

difference in size and resources. The Commission should, however, hold the smaller utilities to the standard of providing their customers with fair opportunities to avoid disconnection, access assistance, and reconnect on fair terms.

VI. CONCLUSION

33. Public Counsel appreciates the inquiry the Commission is making in this docket. From open meeting discussions on other matters to the special open meeting held on June 16th, Public Counsel appreciates that the Commission is concerned about the impact the COVID-19 pandemic is having on Washingtonians.
34. Affordability is more than low-income bill assistance, but rather involves the challenge people have in meeting all of their day-to-day expenses. Energy burden can be reduced by bill assistance, which remains an important part of the solution for customers impacted by the pandemic. However, the financial impact of the COVID-19 pandemic will harm those customers who cannot pay their bills as well as those who can barely pay their bills. For example, with disconnection notices not being issued under the disconnection ban, many customers facing severe financial hardship may not qualify for financial assistance programs, delaying their access to assistance funds.
35. Public Counsel recommends that the Commission establish a presumption that each consumer who is unable to pay their utility bill is unable to do so because of COVID-19. For residential and small business customers in particular, a requirement that each customer make a showing of hardship due to COVID-19 would likely be too burdensome.
36. Public Counsel urges the Commission to take action and establish a set of minimum requirements that provide substantial consumer protection. Utilities will be free to take additional measures to assist their customers during this challenging time, but the Commission can and

should provide a layer of protection for customers. While many of the utilities commendably implemented voluntary disconnection moratorium and fee waivers, continued voluntary action after the Governor's moratorium expires does not provide the consistent and fair consumer protections that people need during the pandemic and related economic impact.

37. Public Counsel looks forward to further engagement regarding the Commission's response to COVID. We appreciate the opportunity to offer these comments. Any questions about these comments may be directed to Lisa W. Gafken, AAG and Public Counsel Unit Chief, at lisa.gafken@atg.wa.gov or (206) 714-3551, or to Corey Dahl, Regulatory Analyst, at corey.dahl@atg.wa.gov or (206) 482-3523.

Dated this 1st day of July, 2020.

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