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Liz Anderson
Washington Public Utility Districts Association
Via Electronic Mail

Dear Ms. Anderson,

The Attorney General's Office (AGO) cannot provide legal advice to Washington Public Utilities Districts Association (WAPUDA), but we can provide information that you might find useful. The responses to your questions below may not be construed as legal advice and should not be considered as regulatory guidance.

Legislators, statewide elected officials and select other elected officials may request an Attorney General opinion on legal questions relating to public officer's duties and for interpretation of statutes and the Washington Administrative Code.

For more information, please visit this website: <https://www.atg.wa.gov/about-ago-opinions>

HB 1329 was written with the intent for utilities to have the flexibility to implement and operationalize the standards in RCW.

**QUESTIONS RELATED TO HEAT DISCONNECTION
MORATORIUM/RECONNECTION LAW FROM WAPUDA**

1. What is the definition of a "residential user?"

- The bill references dwellings, apartments, and mobile homes but there are other potential classes of residential users such as group homes and health care facilities. Does the bill apply to these as well?
- Does it apply to irrigation accounts that may be designated as a "residential user."

AGO Response: The language in the bill should be given its ordinary meaning. The purpose of the bill is to protect utility users (the end user) in residential settings. If group homes and health care facilities are residential dwellings, then the bill would apply.

2. How does the law apply to apartments where the property owner pays the bill and the tenant may never see the bill?

- What if the agency has a business relationship with the property owner and not the tenant (i.e. We do not put accounts in tenant's names so the property owner is responsible for the bills) – Is the agency obligated to follow the request of the tenant, the property owner, or both? If both, what if they conflict?
- How does the bill work if the property owner wants a disconnection due to unauthorized occupancy to remain (i.e. squatters, eviction, etc.)?
- How do we manage a situation where a property owner says “no” to a payment plan because their agreement with the tenant is for the tenant to pay the utility bill? Do we need to require a payment plan with the property owner and advise them to get a payment plan from the tenant?
- Are we obligated to turn water services back on if the property owner is not willing to enter into a payment plan because they state it is the tenant's responsibility to pay the bill?

Response: See Sec. 8 (11) (a)-(c) and Sec. 9 (7) (a)-(c) for specific landlord duties. The purpose of the bill is to protect utility users (the end user) in residential settings.

3. When an account is currently off for delinquent payments and the owner has provided written documentation stating the house is vacant and wants the water to remain off, what is the expectation if the utility is contacted by someone (not the property owner) asking for the service to be re-stored during a heat alert event?

Response: The utility needs to determine what documentation it needs to know whether there is a legitimate residential user.

4. RCW 35.21.290 restricts collection rights on water charges that are more than four months past due. Re-storing delinquent water service can extend the charges more than four months past due. Is there anything additional utilities should be aware of regarding collection of past due charges?

Response: The premise of this question is unclear to us. Restoring service doesn't change the timeline for delinquencies. If a delinquency is going to extend beyond 4 months, that would occur with or without a heat event.

5. How do utilities verify household income to comply with the 6% payment requirement? What information can we request to verify income? If the customer indicates they are not working, is there guidance on how to set up a payment arrangement for that situation?

Response: This section was written to allow for a utility's ability to implement as is most feasible for their customers and business practices. We cannot provide further guidance.

- 6. If a utility requires a payment plan to have services restored after shutoff and the customer refuses to sign a payment plan, is the utility allowed to disconnect services when the extreme heat warning is lifted? If they sign a payment plan and fail to pay either current charges or past due balances of less than 6% of their income, does the utility have a waiting period prior to disconnecting services?**

Response: The bill allows utilities to require a payment plan to be reconnected.

- 7. The new law stipulates that payment plans established pursuant to the law “will be designed both to pay the past due bill by the following May 15th, or as soon as possible after May 15th if needed to maintain monthly payments that are no greater than six percent of the customer’s monthly income, and to pay for continued utility service.” Does that mean that the allowable monthly bill is: up to 6% of the customer’s monthly income PLUS whatever the amount necessary for continued utility service?**
- **Clarifying example: A customer has monthly income of \$1,000 per month. They owe \$1,000. Their normal bill for continued utility service is \$100 per month. What are the allowable terms of a payment plan in this situation?**

Response: The standard is six percent of the customer’s monthly income. Also, “A customer may agree to pay a higher percent of the customer’s monthly income.” However, the customer will not be in default unless payment during this period is less than six percent of their monthly income.

Please consult your attorneys for more in-depth analysis.

- 8. On a delinquency notice, a utility provides the day when payment is due to avoid shut off. The utility knows that language needs to be added to this notice on how people can have services restored if an extreme heat warning is in place. With the date on the delinquency being at least ten days from disconnect, can the utility push out the shutoff date if an extreme heat warning happens on the day the utility is to shut off without giving additional notice? For example, if the utility sends a delinquency notice on July 12th with payments due to avoid shut off on July 24th, and July 25th had an extreme heat warning, can the utility simply move the shut off without further notice to a later date when there is not an extreme heat warning?**

Response: Please confer with an attorney for legal analysis.

9. How does the law apply to customer accounts disconnected for non-payment prior to the effective date of the law since they wouldn't have been advised of their right to reconnection previously?

Response: Customers who are disconnected after the effective date are protected by the law. The utilities should anticipate potential issues and include the appropriate information to their customers in their disconnection notices.

10. Is there a time-limit for services previously disconnected to remain eligible for reconnection (such as 6 months, 8 months, etc.)?

Response: The bill addresses residential users. If there is a residential user who has been disconnected, that person is covered by the bill.

11. There is a utility that has a policy in place that any service that has been disconnected for 365 days or more obtain an L&I inspection prior to re-energization to ensure electric service safety. Would the requirement in the law supersede the safety policy?

Response: Please confer with an attorney for legal analysis.

12. If a customer requests to be disconnected but retains an arrearage, are they eligible for automatic heat alert reconnection? For example, a vacation property owner decides to disconnect when they aren't using the property but retains a past-due balance. Could they request reconnection when a heat alert is issued without resolving the balance (they weren't disconnected for non-payment but have a past due balance)?

Response: The session law states "a residential user *at whose dwelling utility service has been disconnected for lack of payment* may request" reconnection.

13. What is the obligation of the utility to restore service during a short duration heat events in which service restoration is estimated to take more time than the duration of the event?

Response: The session law requires reconnection of any residential user who has requested reconnection of utility services during triggering heat events.

14. Does the requirement to reconnect electrical service apply if BPA or other line operators implements a public safety power shutoff (PSPS) in response to the threat of wildfires? The reconnect in that case would not result in service availability.

Response: The bill does not impact PSPS. Service may be unavailable to all impacted customers in the event of a PSPS.

15. How does the law apply to rentals?

Response: Any residential user may request a reconnection of services during triggering heat events.

16. What is the definition of “the area” for the heat related alert?

- Zip code, city, county?
- How might it apply to a district whose boundaries extend beyond “the area”?

Response: National Weather Service defines the area the alerts apply to.

17. How is 6% of the customers’ monthly income for payment plan limits defined?

- Gross, net, individual, household?
- How should customer income be determined?
- The bill states specific requirements for payment plans if the utility chooses to require a customer to enter into a payment plan prior to being re-connected during a heat event. If we re-connect service at the beginning of the heat event without a payment plan, but offer to leave the service active after the heat event ends with a payment plan in place – Can the customer voluntarily enter into a payment plan under different requirements/criteria than specified in the law to prevent being turned back off at the end of the event?
- The required “payment plan” requires payment toward the past due amount to bring the account in order by the following 5/15 and includes payment for continued service subject to the 6% income limitation. Given the 6% limitation, some accounts may never be paid in full, so what is the utility’s option for a payment plan?
- What is the consequence and authority of the district if the customer fails to comply with the payment plan?

Response: The standard is six percent of the customer’s monthly income. Also, “A customer may agree to pay a higher percent of the customer’s monthly income.” However, the customer will not be in default unless payment during this period is less than six percent of their monthly income.

Please consult an attorney for more in-depth analysis.

18. Is there anything that would preclude a utility from charging a reconnection fee for users requesting reconnection?

Response: The legislation is silent on reconnection fees. Please consult an attorney for more in-depth analysis.

19. If a utility has disconnected at the request of a user, and the account becomes in arrears, is the utility obligated to reconnect?

Response: The session law states “a residential user *at whose dwelling utility service has been disconnected for lack of payment* may request” reconnection.

20. Is it ok to reconnect upon request and then disconnect after the heat advisory is over knowing we may have to go through this action multiple times in a summer if the “alert” applies and there are associated fees for each action?

Response: Yes. The bill allows residential users to request reconnection during triggering extreme heat events and does not limit the number of reconnections.

21. On page 12 of bill (Section (9) (a)) it states “Upon receipt of a request made pursuant to (a) of this subsection, the district shall promptly make a reasonable attempt to reconnect service to the dwelling.” Please define “promptly” and “reasonable”.

- Possible scenario: Customer is disconnected for non-payment on Tuesday. Heat advisory is announced on Thursday for starting on Friday. Residential user calls 15 minutes before end of business on Friday requesting to be turned back on under this rule. What is promptly and reasonable in this situation?
- Possible scenario: Customer is disconnected for non-payment on Tuesday. Heat advisory is announced on Thursday for starting on Friday. Residential user calls on Saturday afternoon requesting to be turned back on under this rule. What is promptly and reasonable in this situation?
- Is there an expectation to call in staff on overtime to comply? Section 9 (b) says the utility, “in connection with a request... may require the residential user to enter into a repayment plan”. This seems to imply the customer has to make the request during office hours when staff are available that can agree to the repayment plan, thus nullifying the idea that they can simply call after hours on a weekend to have on-call staff reconnect them.

Response: The bill was designed to provide the requirements while the utilities determine their own practices. Please consult with an attorney for legal advice as needed.

22. When is the heat event “complete” that triggers when a customer might be disconnected again?

Response: Utility operators will need to check with the National Weather Service resources to determine when triggering extreme heat events are in effect. The FEMA app is one easy way to do this. This app provides push notifications for heat events.

[FEMA Mobile Products | FEMA.gov](https://www.fema.gov/mobile-products)

[Extreme heat: A media resource guide | National Oceanic and Atmospheric Administration \(noaa.gov\)](https://www.noaa.gov/media-resources/extreme-heat)

23. What information is required to collect for the reporting requirements?

Response: Department of Commerce and Department of Health are actively developing reporting requirements. They will release reporting standards in advance of the bill effective date.

24. Does the requirement to reconnect electrical service apply if BPA or other line operators implements a public safety power shutoff (PSPS) in response to the threat of wildfires? The reconnect in that case would not result in service availability.

Response: See response to question 14.

25. The reporting requirements regarding disconnections are general. Do they include disconnections due to maintenance, safety, equipment failure, etc.?

Response: Department of Commerce and Department of Health are actively developing reporting requirements. They will release reporting standards in advance of the bill effective date. Please consult with an attorney for legal advice as needed.

26. Is there any guidance for utilities regarding prioritizing resources in a heat alert situation? For example, if there is an important maintenance or repair project that is necessary for system reliability, what is the utility's obligation to reconnect customers while potentially losing power to others?

Response: Utilities need to ensure that they have sufficient resources to meet all statutory and regulatory obligations.

27. NWS heat advisories are issued by sub areas. What if someone falls on the line?

Response: If a residence is in an area with an extreme heat advisory, they qualify for reconnection.

28. If a customer is on a pre-payment plan and has reached a zero balance (they haven't been disconnected by the utility for non-payment, they simply have run the account to zero), would that customer be eligible for reconnection when a heat alert is issued?

Response: Service in this scenario would have been disconnected due to funds and not another operating purpose. Please consult an attorney for legal advice as needed.

Sincerely,

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