SUMMARY OF COMMENTS

And

STAFF RESPONSES

A-021178

Transactions Between Regulated Companies and Their Subsidiaries

(Financial Reporting Rules)

March 11, 2003
Comments

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General Comments

Public Counsel (3/11/03)	In general, the draft discussion rules do not do enough to address the concern which led to the initiation of this rulemaking – lack of reporting and oversight of transactions with subsidiaries. The rules do not appear to require the filing of any agreements between utilities and subsidiaries, either before or after the agreements take effect. Public Counsel believes that the Commission has the statutory authority, pursuant to RCW 80.04.070 and 80.04.090 *inter alia*, to review any contract entered into by a company subject to its jurisdiction. The annual summary report of subsidiary transactions required in the draft rule will result in dated and incomplete information being provided to the Commission. It is not clear from the rule how much information the summary must provide. It may be quite difficult for the Commission to determine from a cursory summary whether a transaction needs to be investigated. Public Counsel also reiterates the concern raised in our Initial Comments that transactions between utilities and parent companies should be filed with the Commission. These transactions raise many of the same concerns as subsidiary transactions. *Staff response:* *The Staff will request copies of agreements when the information provided to the Commission pursuant to the annual subsidiary transaction report creates a concern. To the extent information is incomplete, followup information will be requested. To the extent information on certain transactions is found to be dated and incomplete , subsequent information on those transactions will be requested in a more timely fashion. Transactions between utilities and parent companies must be filed pursuant to the affiliated interest requirements.*

Verizon (3-13-03)	The rules should not be adopted as drafted. Moreover, it may not be necessary to have rules on this topic at all. Due to the exemption of competitively classified companies and small local exchange carriers, the rules would apply only to Verizon, the CenturyTel companies, United Telephone Company of the Northwest (Sprint), and Qwest Communications Corporation. The Commission's objective could well be accomplished by open communications with each company that keep the Commission updated on their structures and operations and, if necessary, company-specific formal reporting requirements. Verizon understands that recent events in various utility sectors across the country have heightened awareness about possible consumer effects due to "risky" corporate financial behavior. Verizon understands that the Commissioners do not want to be surprised by any such developments affecting Washington. Thus, the apparent intent of the draft rules is to bring unusual and risky transactions by the four local telephone operations named above to the Commission's attention. If rules are needed at all to accomplish this objective while also meeting the standards of the Governor's Executive Order 97-02 (need, effectiveness and efficiency, clarity, intent and statutory authority, coordination, cost, and fairness), they would need to be substantially clarified and narrowed. *Staff response:* *The rules are an effort to balance broad reporting requirements and company-specific requirements. Formal requirements applicable to each industry ensure fairness to each regulated entity. Given personnel turnover, the reporting requirements specified by rule will provide greater assurance that expectations are understood and the necessary communication occurs. Rules provide consistency and standards and are useful for planning and measurement purposes.* *Executive Order 97-02 requires a full regulatory review following certain designated criteria. Such a review is underway in this rulemaking. Any specific suggestions you may have to assist the Commission in accomplishing its objective most effectively will help assure the Commission meets the standards of Executive Order 97-02.*

ICNU (3-11-03)	ICNU generally supports the Commission's proposed rules and its efforts to regulate transactions between utilities and their subsidiaries and affiliates. However, ICNU renews the request it made in earlier comments that the Commission specify the substantive requirements for electric utility subsidiary reports. ICNU also continues to believe that certain utility-subsidiary transactions should be subject to Commission approval prior to inclusion in rates and that all subsidiary transactions must be "reasonable and consistent with the public interest." *Staff response:* *This section will be clarified. If the information provided is not adequate the Commission may request additional information. Utility-subsidiary transactions are subject to Commission approval prior to inclusion in rates and at that time a finding of "reasonable and consistent with the public interest" is made.* The Proposed Financial Rules are an important step toward ensuring that the Commission identify and prevent potential utility abuses. The requirements regarding filing of certain essential services contracts should provide the Commission with a greater ability to review significant utility transactions. Similarly, the requirement that utilities pre-file certain financial transactions will protect customers by providing the Commission the opportunity to review potentially harmful transactions between the utility and any individual or company, including affiliated interests and subsidiaries. In addition, these requirements will not be unduly burdensome because the threshold requirements should remove transactions that do not warrant review. However, to ensure that the Commission can properly review these transactions, the final Financial Rules should specify the types of information that should be included in the financial transaction reports. *Staff response:* *Not opposed to providing guidance when requested on minimum information to include in the report. This section will be clarified.*

WRRA (3-28-03)	We note that the draft rules contain two parts. One part of the proposal is for general applicability, and the other is an industry-specific filing regulation. We also note that many industries are not the subject of industry-specific rules. Just in the transportation industry alone, this includes household goods moving companies, commercial ferry companies, and pipeline companies. We wonder why only certain industries were selected and other not. An explanation of this selective rulemaking would assist our understanding of the Commission's intent. *Staff response:* *All Title 80 and 81 companies subject to the jurisdiction of the Commission under RCW 80.08, 81.08, 80.16, or 81.16, are subject to the provisions of the draft of Chapter 480-146 WAC. Industry-specific financial reporting requirements draft rules have been circulated for all industries except household goods moving companies and commercial ferry companies. Specific financial reporting requirements were not drafted for the household goods moving companies because they provide service under minimum and maximum rates published by the Commission and operate under eased entry requirements. Specific financial reporting rules were not drafted for commercial ferry companies due the small number and size of regulated companies.* In terms of the practical realities of implementing these laws, our primary concern has to do with the risk of disclosure of confidential material unprotected in the WUTC's public records files. As Assistant Attorney General Trotter has correctly observed, in contrast to laws applicable to other utilities, the solid waste statutes and rules do not provide for confidentiality of the kind of information that would be filed and become public record under the Commission proposal. Our industry thus lacks statutory protection for disclosure of confidential information or material that would put its members at a competitive disadvantage. A specific example would be financial statements for an unregulated affiliate who may be bidding for a city contract. That is, a regulated company or its affiliate would have to produce these documents to the WUTC, and a competitive bidder for an unregulated service could then examine them. This obviously would create an extremely unfair advantage, and essentially render the bidding process meaningless. In the future, there may be a need for a legislative correction of the confidentiality limitations. The Commission has expressed interest in

	the past in pursuing such a correction; we hope to be able to rely on a joint cooperative effort to address the exiting gaps in the law. *Staff response:* *RCW 81.16.020 requires regulated utilities to file a copy of all contracts or arrangements with an affiliate. Where disclosure of an affiliate's financial statements create a competitive disadvantage, rule exemptions may be requested with provision for on-site review by the Commission.* We are concerned about the risks of unintentional rule violations, (particularly for the smaller companies who do not have in-house accountants) in what would be a time-consuming and expensive task. Ironically, regardless of the size of the company, we expect these rules to result in increased costs to the ratepayers, the very group we all seek to protect. We have previously suggested that the Commission could address these risks by creating a materiality threshold that would relieve companies with relatively low gross revenues, or perhaps by setting a dollar-amount for transactions above which filings would be required. We also continue to believe that the rate review process should be considered as a surrogate for the filing requirements, regardless of company size. Again, in the past, the rate review process has worked well to address whatever concerns the Commission may have about unreasonable affiliated transactions. We recognize that some modifications to the rate review procedures may be necessary, but nonetheless would be more compatible with industry practice. It would allow the rules to be administered according to past practice, and prevent increased costs of compliance as well. *Staff response:* *The provisions of RCW 81.16 make no allowance for waiver of the requirement to file a copy of the arrangement dependent upon the size of a transaction. Staff is open to any suggestions WRRA may have regarding the reporting rules. The rate review process will continue to address the treatment of transactions with affiliates for rate making purposes however, as pointed out above, RCW 81.16 requires the filing with the Commission of all arrangements with affiliates.*

Chapter 480-146 WAC

(Proposed to be deleted)

WAC 480-146-330 Supplemental securities filings may be exempt from time limitations. Supplemental filings made:

(1) To comply with a previous order;

(2) To change the terms and conditions of a previous order; or

(3) To request that flaws in a previous order must be corrected are exempt from WAC 480-146-320.

NW Natural (3-11-03)	We are concerned that the deletion of this section would have an undesirable impact on us. Please explain the rationale for the proposed deletion of this section. *Staff response:* *1) The rule as currently written with the word "may" is ambiguous about the obligations of the company. It's also redundant with the exemption rule.* *2) This clarifies that the public interest requires timely information. In the rare case that a company needs an exemption from the time limitations, the company can request an exemption.*

WAC 480-146-350 Filing of dealings with affiliated interests ~~transactions~~. Every public service company must file a verified copy, or a verified summary, if unwritten, of contracts or arrangements with affiliated interests before the effective date of the contract or arrangement. Verified copies of modifications or amendments to the contracts or arrangements must be filed before the effective date of the modification or amendment. If the contract or arrangement is unwritten, then a public service company must file a verified summary of any amendment or modification. The commission may institute an investigation and disapprove the contract or arrangement if the commission finds the public service company has failed to prove that it is reasonable and consistent with the public interest.

PSE (3-11-03)	PSE suggests that the definition of "Affiliated interest transactions" that has been deleted from existing WAC 480-146-360 be restored and inserted into 480-146-350. 480-146-350 be revised to refer to 480-90/100-208, since those rules will set forth the details of the affiliated interest filing requirement. *Staff response:* *Exisiting WAC 480-146-360 does not include a definition of "affiliated interest transactions." Agree to revise WAC 480-146-350 to refer to reporting requirements in each industry rule.*

WAC 480-146-360 Reporting of affiliated interest transactions. (1) Every public service company, as defined in the application of rules WAC 480-146-240 must file with the commission by June 1 of every year an annual report of all affiliated interest transactions that occurred during the period January 1 through December 31 of the preceding year.

(2) The annual report must include a corporate organization chart of the public service company and its affiliates.

(3) The annual report must contain the following information for each affiliate that had transactions with the public service company during the preceding year:

(a) A description of the products or services flowing between the public service company and any affiliated interest;

(b) A description of the pricing basis or costing method and procedures for allocating costs for such products or services rendered, and the amount and accounts charged;

(c) A description of the terms of any loans between the public service company and its affiliate and a listing of the year-end loan amounts and maximum loan amounts outstanding during the year;

(d) A description of the terms and maximum amount of any debt guarantees by the public service company for any affiliate and a listing of the year-end debt amounts and maximum debt amounts outstanding during the year;

(e) A detailed description of the activities of the affiliates with which the public service company has transactions;

(f) A list of all common officers and directors of the affiliated interest company and the public service company along with their titles in each organization, and;

(g) Appropriate financial information for each affiliated interest company including, but not limited to, a balance sheet and income statement.

The commission may request any additional information during its review of the public service company's annual report of affiliated interest transactions.

(4) The annual report required by this section will supersede the reporting requirements contained in previous commission orders authorizing affiliated interest transactions pursuant to chapter 80.16 RCW.

(5) The public service company is obligated to file verified copies of affiliated interest contracts and arrangements as stated in WAC 480-146-350.

Public Counsel (3/11/03)	Public Counsel does not necessarily oppose removal of this section to the various sections of the rules relating to specific industries. Since it appears to be restated verbatim in the new locations, it is not clear that it is an improvement to move the rule, leaving the affiliated interest filing requirement standing alone. An alternative would be to leave this rule here and cross-reference to it in the individual industry rules. This is essentially an organizational issue, however. *Staff response:* *Per Public Counsel suggestion – cross-reference from WAC 480-146-350 to each industry rule. The goal is to place all financial reporting requirements for each industry in the same chapter.* If this section is retained in full in each separate industry section, the language from WAC 480-146-360(5) should be retained and included. *(5) The public service company is obligated to file verified copies of affiliated interest contracts and arrangements as stated in WAC 480-146-350.* *Staff response:* *Agree*

Telecommunications Companies

WAC 480-120-304 Reporting requirements for companies not classified as competitive.

(4) **Special Reports.**

(a) **Financial transaction reports.** Twenty days prior to the transfer of cash, credit, or any pecuniary interest between a company, its subsidiaries, or its affiliates, the company must report to the commission the amount and the details of the transaction when:

(i) A single transaction amount exceeds five percent of prior calendar year gross operating revenue; or

(ii) A cumulative transaction amount for the prior twelve months exceeds five percent of prior calendar year gross operating revenue.

Qwest (3/11/03)	Qwest's concern lies principally with the timing and unclear scope of the financial transaction reporting set out in proposed (a). As proposed, the Commission would require all companies to file a report summarizing substantial transfers of cash, credit or other pecuniary interest between "a company, its subsidiaries, or its affiliates" twenty days prior to the transfer. Timing. The proposed timing of reporting under this rule is both unnecessary and, from a practical perspective, unworkable and counterproductive to the companies regulated by the Commission. Given that the rule does not propose to require pre-approval by the Commission of any such transfer or provide any other mechanism by which the Commission could preclude the transfer from occurring, Qwest does not believe it is necessary for companies to file notice twenty days in advance of the transaction occurring. Qwest infers that the purpose of this new requirement is to ensure that the Commission keeps apprised of all such transfers. This goal could be easily satisfied if the requirement were altered to require reporting as soon as practicable, but no later than 30 days after the transfer occurs. Requiring notice twenty days before a financial transfer between a utility and its subsidiary or affiliate is impracticable. The requirement would impede the ability to prudently manage the liquidity of the utility, its subsidiaries and its affiliates by requiring the utility and its subsidiaries and affiliates to maintain excessive liquidity in order to compensate for unanticipated liquidity needs that might arise within the twenty-day time limit imposed by the rule. Liquidity management is an important element in the prudent management of Qwest, its subsidiaries, and its affiliates. The rule could materially interfere with that management process. Scope. Qwest is also concerned by the somewhat unclear wording regarding what types of transactions fall within the scope of the reporting requirements. As proposed, the rule requires prior notification of the "transfer of cash, credit, or any pecuniary interest between a company, its subsidiaries, or its affiliates." As worded, this could require the public service company to notify the Commission of transfers occurring solely between two unregulated subsidiaries or affiliates, even if those transactions do not involve the regulated utility. Qwest believes the intent of this proposed rule is to require reporting of monetary transfers between the regulated public service company and its subsidiaries or its affiliates.

	Based on these comments, Qwest would suggest that the Commission revise proposed (a) as follows: *(a)* ***Financial transaction reports.*** *~~Twenty days prior to~~ As soon as is practicable, but in no case later than thirty days after the transfer of cash, credit, or any pecuniary interest between a company~~,~~ and its subsidiaries~~,~~ or its affiliates, the company must report to the commission the amount and the details of the transaction when:* *Staff response:* *Both the timing and scope of the financial reporting requirements will be explored at the May 9 stakeholder workshop.*
Verizon (3-13-03)	**The New 20-day Advance Notice Requirement** (This) Draft would impose a new "short fuse" reporting requirement on the handful of affected telecommunications companies. The draft rule contains some ambiguities, some requirements that duplicate other existing requirements, and some provisions that do not appear to serve the presumed objective. *Staff response:* *The rule will be clarified. The twenty-day reporting requirement will be explored at the May 9 stakeholder workshop.* **"Transfer of cash, credit or any pecuniary interest"** Verizon believes it understands what "transfer of cash" means in the context of this rule. The meaning of "transfer of *** credit" is not clear. Verizon assumes it means the telephone company assuming debt for the benefit of a subsidiary or affiliate, e.g., "co-signing" on a loan. The draft rule should be clarified on this point. *Staff response:* *Agree. The rule will be clarified.* Moreover, the draft rule duplicates existing requirements under RCW Chapters 80.08 and 80.16 and WAC Chapter 480-146. The draft rule and/or the WAC 480-146 rules should be amended to remove the overlap and duplication. Verizon believes that would leave just the short-term transactions covered by the exemption in RCW 80.08.043. Thus, a new advance reporting requirement should only be imposed if it were determined that a real need exists as to such transactions, and any such rule should be narrowly tailored to the type of short-term transactions that truly warrant an additional regulatory burden.

	Staff response: *RCW 80.08 applies only to the issuance of evidence of ownership or indebtedness by the regulated company. Transfers of cash between subsidiaries or affiliates of regulated companies often are not reflected by issuance of "evidence" of ownership or indebtedness. To the extent there are duplicate requirements, reports may be combined and cross-referenced.* Also, the meaning of "transfer of *** any pecuniary interest" is not clear. When the meaning of a requirement is not clear, companies can never be certain that they are in compliance with the Commission's rule. This phase appears to be a vague catchall. It should be dropped. Any legitimate concerns should be covered by clear, specific rule requirements. *Staff response:* *Agree. The section will be redrafted and the phrase "pecuniary interest" will be deleted from the draft.* **"Between"** The proposed reporting requirement would, apparently, cover not only cash moving from the telephone company to affiliates and subsidiaries but also cash moving to the telephone company. The Commission's presumed objective does not appear to require this broad of a rule. Any rule should be limited to cash flowing out from the telephone company. Also, the structure of the draft sentence appears to require reporting of transactions between affiliates even if the telephone company is not involved. Verizon is certain this is not the intent. Thus, the draft rule should instead read: "* * * from a company to a subsidiary or affiliate, . " *Staff response:* *Both the timing and scope of the financial reporting requirements will be explored at the May 9 stakeholder workshop.* **Dollar threshold** Verizon appreciates that the purpose of draft (a)(i) and (ii) is to create a reporting threshold that captures only those transactions that genuinely pose a possible financial risk to the handful of telephone companies affected by the rule. As drafted, the rule is unclear and the proposed threshold is probably too low, at least for Verizon. The differences in the structures and operations of the affected companies may, in fact, make it impossible to enact a reasonable and effective general rule on

	this point. The Commission should carefully consider pursuing its objectives with company-specific actions rather than by imposing an ill-fitting rule on the industry. The meaning of "gross operating revenue" is not made clear by the draft rule. Verizon understands Staff intends the use of regulated intrastate revenues, i.e., the same base on which the companies pay their annual Commission regulatory fee. For single-state operations, such as Verizon understands the CenturyTel companies to be, the use of this base and the proposed five percent threshold may be acceptable. It would, however, create problems for multistate firms such as Verizon. Financial transactions are often made for multistate purposes. For example, Verizon may transfer funds to an affiliate to purchase supplies or pay taxes for its entire four-state operation, not just for Washington. Thus, it would be impossible to allocate the transfers so as to synch up with the jurisidictionally separated threshold amount. While Verizon is still investigating the practical impact of the draft rule, it can at this time say that the formula intended by Staff would appear to produce a threshold that is to[o] low to capture only the extraordinary, risky transactions with which the Commission is concerned. Besides changing the threshold formula and level, the Commission should also consider including specific exceptions in the rule for normal though large transactions. When Verizon completes its internal investigation, it will provide specific ideas to the Staff. *Staff response:* *The language will be clarified. Staff looks forward to the results of Verizon's internal investigation.* The meaning of the cumulative transaction amount condition in draft (a)(ii) is also unclear. Is the cumulative amount per affiliate/subsidiary or a roll up transactions with all affiliates and subsidiaries? If it were the latter, the threshold would need to be set at a high enough level so as not to capture a year's worth of normal, legitimate transactions. *Staff response:* *The cumulative amount is per affiliate/subsidiary. The language will be clarified.*

Gas Companies

WAC 480-90-208 Financial reporting requirements.

(4) **Special Reports.**

(a) **Financial transaction reports.** Twenty days prior to the transfer of cash, credit, or any pecuniary interest between a gas utility, its subsidiaries, or its affiliates, the utility must report to the commission the amount and the details of the transaction when:

(i) A single transaction amount exceeds two percent of the latest reported common shareholders equity; or

(ii) A cumulative transaction amount for the prior twelve months exceeds two percent of the latest reported common shareholders equity.

Electric Companies

WAC 480-100-208 Financial reporting requirements.

(4) **Special Reports.**

(a) **Financial transaction reports.** Twenty days prior to the transfer of cash, credit, or any pecuniary interest between an electric utility, its subsidiaries, or its affiliates, the utility must report to the commission the amount and the details of the transaction when:

(i) A single transaction amount exceeds two percent of the latest reported common shareholders equity; or

(ii) A cumulative transaction amount for the prior twelve months exceeds two percent of the latest reported common shareholders equity.

Avista (3-11-03)	(1) Avista Energy, a subsidiary of Avista Utilities, acquires natural gas for Avista Utilities. Disclosure and submission of all available data in support of this arrangement has been provided to the Commission on a timely basis. To the Company's understanding, reporting of available transactional data has not been an issue of concern. Under this agreement, and as an agent for the operating utility, Avista Utilities provides to Avista Energy cash for the procurement of natural gas in excess of two percent of Avista's latest reported common shareholders equity. Because the Commission has previously approved this arrangement, filing such transfers of cash with twenty days prior notice should not be necessary nor should this count toward a cumulative threshold. Avista Utilities does provide quarterly reports related to the gas procurement mechanism. The Company respectfully requests that the proposed rule provide an exception for transactions previously approved by the Commission. *Staff response:* *Reporting all transactions presents a complete picture of utility/subsidiary interactions. Under exceptional circumstances, exemptions may be requested on a case-by-case basis.* (2) Two percent of Avista's latest reported common shareholders equity is approximately $14.6 million. Annualized transfers of cash, credit, or any pecuniary interest from Avista Utilities to its subsidiaries are projected, at this time, to be less than this threshold amount but for the gas procurement arrangement. There may be situations in which dividends or other cash transfers in excess of this threshold amount are provided to Avista Utilities from its subsidiaries. Under the proposed rule, this transfer to Avista Utilities would require twenty days notice and does not appear to serve a broad public interest. The Company requests that the proposed rule be modified accordingly. *Staff response:* *Reporting both sides of the transaction presents a complete picture of the flow of funds between the utility and its subsidiaries. The return of capital or payment of debts to the parent utility is necessary. The total risk exposure is of interest: netting obscures the true risk exposure. It is staff's understanding that for the purposes of evaluating the strength of ring fencing, the finance community generally looks at the total, rather than the net, flow of funds.* (3) Draft (4)(a)(ii) requires reporting if the threshold is exceeded for cumulative transactions over a twelve month period. Avista Utilities assumes that "cumulative" includes a netting of incoming and outgoing

transfers of cash, credit, and pecuniary interests. Transfers to a subsidiary may be made on a short-term basis which are returned thereafter. The Company seeks confirmation that "cumulative" is intended to be on a net basis over the twelve month period. The reference in (4)(a)(ii) to a 'cumulative transaction amount for the prior twelve months (exceeding) two percent…" is understood by the Company to relate to a single transaction with multiple payments. Avista seeks clarification of this understanding.

Suggest modification:

(a) ***Financial transaction reports****. Twenty days prior to the transfer of cash, credit, or any pecuniary interest from ~~between~~ an (electric/gas) utility~~,~~ to its subsidiaries, or its affiliates, the utility must report to the commission, excepting transactions previously approved by the Commission the amount and the details of the transaction when:*

(i) A single transaction amount exceeds two percent of the latest reported common shareholders equity; or

(ii) A cumulative net transaction amount for the prior twelve months exceeds two percent of the latest reported common shareholders equity.

Staff response:

This could be a series of separate transactions which sum to the threshold. The Commission has an interest in knowing about these intercompany transfers, therefore Staff recommends no substantive change to proposed language.

(4) In the event of a "twenty day prior notice filing" for a transaction in which a relevant financial interest is transferred from the utility to a subsidiary, proprietary information would likely be involved. The Company recognizes that WAC 480-09-015 provides for the submission of confidential information. Avista Utilities notes that this confidentiality provision would likely be utilized if this proposed rule is adopted.

Staff response:

Confidential filing is permissible when appropriate and necessary.

PacifiCorp (3-11-03)	The proposed rule fails to distinguish between subsidiaries and affiliates with respect to the procedures that apply. As indicated in 11/27/02 comments and comments in A-020683, imposing a pre-filing requirement may be acceptable with respect to such transfers involving an affiliate, given the statutory authority in Chap[ter] 80.16 RCW with respect to affiliate transactions. In the case of transactions involving subsidiaries, PacifiCorp supports the filing of periodic reports detailing transactions only *after* they have occurred. As a practical matter, imposing a requirement to file such transactions "twenty days prior to the transfer" is probably not feasible in the case of financial transactions. Where market-based pricing of financial terms is used, for example, the "details of the transaction" simply may not be known twenty days in advance. *Staff response:* *File what is available in advance, and follow-up with additional information as it becomes known.* *Securities transactions between affiliates or subsidiaries are not as dependent on market participants, such as banks therefore more transaction details are known prior to consummation.* The financial rule, by using "between" rather than "from" or "to," would seem to apply to transfers in both directions, *i.e.*, from a subsidiary to its parent and from a parent to its subsidiary. In cases of some types of flows in some directions, there does not seem to be a concern so urgent as to warrant a prefiling requirement. The proposed rule is written broadly to address an apparent concern that probably does not exist in the case of most transactions technically falling within its scope. *Staff response:* *The scope of the financial reporting requirements will be discussed at the May 9 stakeholder workshop.*
PSE (3-11-03)	This section includes references to subsidiaries and affiliates with some different reporting requirements for those corporate entities. It would be helpful if definitions were included. Suggested: *(1) Affiliate: For purposes of this rule, an affiliate means a person or corporation that is an "affiliated interest" as defined in RCW 80.16.010.* *(2) Subsidiary: For purposes of this rule, a subsidiary means any corporation, limited liability company, partnership, limited partnership, limited liability partnership or other similar legal entity in which the utility owns more than 50%*

	of the voting equity or controlling interest. *Staff response:* *Agree with inserting (1) Affiliate as proposed.* *Agree with definition of (2) Subsidiary except 5% rather than 50%. The definition of subsidiary will be discusses at the May 9 stakeholder workshop.* The Company's primary concern with this portion of the proposed rule is the legal basis for the Commission to adopt a rule requiring prior notification of transactions involving subsidiaries. Given the analysis provided by PacifiCorp's 12/20/02 comments, the Company is concerned that the Commission does not have legislative authority to enact such a rule. However, the Company does respect the Commission's desire to be informed of significant transactions on a timely basis. PSE proposes a rule that allows for prefiling of subsidiary transactions, but that does not require it. PSE's proposed rule does require filing of significant subsidiary transactions with the Commission shortly after the transaction so that the Commission does not have to wait for the annual report of subsidiary transactions to learn about the transaction. *Staff response:* *Voluntary reporting is welcomed but not a substitute for regular reports. Authority for the Commission to require prior notification of transactions exists in RCW 80.04.080, Annual Reports.*
Public Counsel (3/11/03)	This rule should include a requirement that the contract or other document reflecting the terms of the transaction should be filed with the Commission as part of the report. *Staff response:* *In order to limit the cost of compliance, Staff believes the best alternative is for the company to provide a copy of any contract staff requests.*

Low-Level Waste Companies

WAC 480-92-050 Reporting requirements.

(2) **Special Reports.**

(a) **Financial transaction reports.** Twenty days prior to the transfer of cash, credit, or any pecuniary interest between a company, its subsidiaries, or its affiliates, the company must report to the commission the amount and the details of the transaction when:

(i) A single transaction amount exceeds five percent of prior calendar year gross operating revenue; or

(ii) A cumulative transaction amount for the prior twelve months exceeds five percent of prior calendar year gross operating revenue.

US Ecology, Inc. (4/30/03)	For cash management efficiency and control purposes, each time a payment is made to US Ecology, it is deposited in an American Ecology concentration account. This procedure is not unique to US Ecology, but is used by American Ecology for US Ecology in the same manner as it is used for each of American Ecology's other subsidiaries. The concentration account is set up in such a manner that when funds are paid to US Ecology, regardless of amount, they are available to American Ecology and are "due to" US Ecology. Funds paid by US Ecology to vendors are paid in a similar manner with each days checks clearing the US Ecology bank account with the necessary funds, regardless of amount, being provided by American Ecology and are "due from" US Ecology. This cash management structure enables US Ecology to utilize cash balances maintained by American Ecology and its subsidiaries without having to borrow funds to cover operating cash flow needs. As a result of this standardized procedure, it would be impossible for US Ecology to provide the Commission with twenty days advance written notice of transactions, including those that fit within the scope of proposed WAC 480-92-050. Even if the Commission were to reword the language of WAC 480-92-050 in such a manner that it only required retroactive reporting of the transactions instead of advanced reporting, it would still entail a great deal of reporting work for both US Ecology and for the Commission without any real benefit to either. Therefore, US Ecology proposes that the Commission remove the provisions of proposed WAC 480-92-050(2(a) involving financial transaction reports. The provisions of subsections 2(b) and 2(c), annual subsidiary transaction report and annual affiliated interest report, respectively, are acceptable and appear to meet the Commission's goals. These two reports seem to cover all of the objectives of proposed WAC 480-92-050, without the need for an additional report each time before a transaction is actually made.

	In the event that the Commission is unwilling to remove the provisions of subsection 2(a), US Ecology proposes that the Commission include a provision allowing for sweep accounts as an exception to the reporting requirements of subsection 2(a). This would enable the Commission to track and approve unusual transactions while not substantially hindering US Ecology's effectiveness. The proposed language would be inserted after subsection 2(a)(ii) and would read:
	(iii) Sweep and Cash Management Accounts. The forgoing provisions shall have no application to sweep and cash management account transfers used to automatically transfer funds received by a subsidiary as part of the customary and routine cash management functions between the subsidiary and parent.
	Staff response: *US Ecology's cash management (so-called "sweep" accounts) practice would seem to raise, not lower, concerns about cash transfers. Staff understands US Ecology's concerns regarding the volume of transactions reporting requirements would generate. We will consider whether or not a different reporting method (e.g., net cash out and cash back, etc.) or a higher threshold designed specifically for US Ecology may meet the Commission's needs. We encourage US Ecology to provide input on what a different reporting method and threshold might look like.*

WAC 480-70-071(2)(b); 480-92-050(2)(b); 480-90-208(2)(d); 480-100-208(2)(d); 480-110-275(4)(b); 480-120-304(4)(b).

Annual subsidiary transaction report. The annual subsidiary transaction report must summarize all transactions that occurred between the electric utility and its subsidiaries during the period January 1 through December 31 of the preceding year. This report is due by June 1 of each year.

Avista (3/11/03)	The corporate structure of the Company is such that Avista Corporation is Avista Utilities. Avista Corporation, doing business as Avista Utilities, has one wholly-owned subsidiary, Avista Capital. Avista Capital subsidiaries are shown in Attachment 1. Avista Corporation has willingly provided the Commission with direct access to the books and records of Avista Corporation's subsidiaries. For example, Avista Energy has provided all available data to the Commission relative to its gas procurement arrangement with Avista Utilities/Corp. Avista's corporate structure can be compared and contrasted to a corporate holding company structure. In some instances, corporate holding companies may own equity in separate companies that have their own independent board, boards that are not under the control of the holding company. Under this corporate structure, the Commission would not have access to the independent companies' books and records but for explicit statutes and regulations that allow for discovery. This is not the case and is not necessary for Avista Utilities given Avista Utilities corporate structure, insofar as it has a controlling interest in subsidiaries. The Commission's access to books and records of the Company's subsidiaries has not been an issue contested by Avista Corporation. In fact, the Company has filed an annual subsidiary transaction report similar to what would be required under this section of the proposed reporting rule. Attachment 2, attached, is last year's report. Given Avista Utilities corporate structure, the Company intends to file annual subsidiary transaction reports to be in compliance with this rule, upon adoption. The Commission Staff has the authority under Commission procedure to seek more information as the Staff processes the annual report. (4)(e) Annual Affiliated Interest Transaction Report For the reasons described in Section (4)(d) above, Avista Utilities has subsidiaries and intends to file an Annual Subsidiary Transaction Report rather than an Annual Affiliated Interest Transaction Report. *Staff Response:* *Under the circumstances, a report under either subsection (4)(d) or (4)(e) will satisfy the requirements of the draft rule. However, subsection (4)(d) will be clarified such that the requirements are similar to the requirements of (4)(e).*

ICNU (3-11-03)	ICNU supports the proposed requirement that electric utilities file an annual subsidiary transaction report. The annual subsidiary transaction report must summarize all transactions between the electric utility and its subsidiaries, but does not specify the type of information that must be submitted to the Commission. In contrast, the annual affiliated interest transaction report specifically details the type of information that the report should contain. WAC 480-146-360; Proposed WAC 480-100-208(4)(e). The Proposed Financial Rules should be amended to require the annual subsidiary transaction reports to provide information similar to what is required in the annual affiliated interest reports. *Staff response:* *In order to limit the cost of compliance, Staff believes the best alternative is to report additional information on a need to know basis. Clarifying language will be added.* The Financial Rules fail to address the issue of the standards and requirements for approval of utility-subsidiary transactions. ICNU repeats its earlier comments that the final Financial Rules should require that the Commission affirmatively approve the costs of any transaction that may be included in customer rates. Similarly, the rules should provide the Commission with the ability to thoroughly investigate all utility-subsidiary transactions. Finally, to prevent future uncertainty and disputes, the Commission should clarify that the "reasonable and consistent with the public interest standard" that applies to affiliated interest transactions also apply to utility-subsidiary transactions. *Staff response:* *The intent of the rule is to assure the Commission is apprised of all transactions that may impact regulated companies. Additional information may be requested on a need to know basis. Normally, reasonable and consistent with the public interest determinations will be made at the time rates are established.*
PacifiCorp (3-11-03)	PacifiCorp generally supports this new requirement as a reasonable response to the Commission's expressed concerns and the legitimate need for increased information regarding transactions between utilities and subsidiaries. The proposed rule refers to "annual subsidiary transaction report," as if this filing requirement already exists. The rule should be re-written to define that particular report, specify what is to be included in that report, and the due date for its filing. The requirement should be formulated along the lines of the Avista proposal in the 10/30/02 comments to require "all

	agreements transacted between a regulated company and its subsidiaries in the previous year [to] be itemized in an Annual Subsidiary Transaction Report." *Staff response:* *Agree. The rule will be clarified.*
Public Counsel (3/11/03)	Public Counsel recommends that the rule also require that, in addition to annual reporting, that the verified copies of the actual contracts reflecting transactions with subsidiaries be filed with the Commission. At least for significant contracts, filing should occur prior to the effective date. This would be only partially addressed by adoption of our suggested change to the financial transaction reporting requirement above. *Staff response:* *In order to limit the cost of compliance, Staff believes the best alternative is to request contracts found to be significant.*
Verizon (3-13-03)	As drafted, the breadth of (this subsection) would require make-work reports of little relevance to the concerns that are presumably motivating this rulemaking. Verizon has one subsidiary: Verizon West Coast Inc., which operates as a local exchange company in the northwest corner of California, adjacent to Verizon's southern Oregon territory. Verizon West Coast is a separate corporate entity (and, therefore, a "subsidiary") due to historical circumstances peculiar to California. As a practical matter, it is integrated with Verizon's Washington, Oregon and Idaho operations. The Commission has no requirement -- and no need -- for reports of transactions across the Oregon and Idaho borders. No point would be served by adding a new requirement as to "transactions" between Verizon and Verizon West Coast. One way to avoid such an unnecessary new regulatory burden would be to have any rule specifically except subsidiaries that are local exchange companies. *Staff response:* *In the rare instance a particular report is "of little relevance" an exemption may be requested.*

WRRA (3-28-03)	We are uncertain about the statutory authority for several aspects of the proposed rule, and would ask for further clarification before we are able to provide specific comments. The most obvious, of course, is the addition of "subsidiaries" to the scope of filings. Putting aside the potential for a management or services contract to trigger affiliated relations, we are still not clear what the basis is for including "subsidiaries" in this rule. We were unable to locate statutory authority for the proposed modifications of 480-70-071(2)(a) which requires reports "twenty days prior to the transfer of cash, credit, or any pecuniary interest between a company, its subsidiaries or its affiliates . . ." We have reviewed the applicable statutes and fail to find authority for this kind of pre-approval of transactions which may be as innocuous as the purchase of tires or the servicing of trucks. Finally, within the rules of general applicability are sections requiring filings for matters that we believe are inapplicable to solid waste companies. For instant, the "securities" statute expressly excludes "garbage and refuse" collection companies regulated under Ch. 81.77 RCW from the definition of "public service company" RCW 81.08.010. So filings of indebtedness have never been required of our industry. Similarly, RCW 81.12.010 expressly excludes "garbage and refuse" companies from the term "public service company" for purposes of Ch. 81.12 RCW (Transfers of Property"). Neither of those statutory schemes has ever been raised in the solid waste industry and doing so now thus appears inconsistent with well-settled law. *Staff response:* *Statutory authority will be found in RCW 81.04.070, 81.04.080. The draft rules do not require "pre-approval" of transactions.*

Gas Companies

WAC 480-90-208 Financial reporting requirements.

(4) **Special Reports.**

(b) **Essential gas services contracts.** Gas utilities subject to RCW 80.28 that enter into contracts for essential utility services when the annual value will exceed $10,000,000, must file the contracts along with anticipated associated charges. Essential utility services include, but are not limited to:

(i) Operation and maintenance of gas system infrastructure;

(ii) Operation or maintenance of computer systems;

(iii) Purchase of gas for classes of customer service regulated by the commission; and

(iv) Construction of gas system infrastructure.

Electric Companies

WAC 480-100-208 Financial reporting requirements.

(4) **Special Reports.**

(b) **Essential electric services contracts.** Electric utilities subject to RCW 80.28 that enter into contracts for essential utility services when the annual value will exceed $10,000,000, must file the contracts along with anticipated associated charges. Essential utility services include, but are not limited to:

(i) Operation and maintenance of electric system infrastructure;

(ii) Operation or maintenance of computer systems;

(iii) Purchase of electricity for classes of customer service regulated by the commission; and

(iv) Construction of electric system infrastructure.

<table>
<tr>
<td>Avista
(3/11/03)</td>
<td>The proposed essential electric services contracts filing requirement is either redundant to other reporting rules and rate making procedures or overly burdensome.
Some, if not most, of the requested data is currently provided. The Company submits power purchase data through its monthly Energy Recovery Mechanism reports as well as annually in its FERC reports. Utilities report major construction projects through the annual budget filing. Reliability data associated with the operation of the electric system is provided annually per WAC 480-100-398, reliability plans.
All of the information requested in this section of the proposed rule is subject to Commission review and approval for rate making purposes. The Commission Staff audits essential service expenditures during rate cases. Prudence analysis of such expenditures is a rate case issue.
Avista recommend that Section (4)(b) be deleted. This section is administratively burdensome and redundant to currently established reporting and cost-recovery procedures. “Re-reporting” the requested information or providing such data without related Commission action outside of a rate case is burdensome.

Staff Response:
The draft rule will be discussed at the May 9 , 2003 stakeholder workshop. To the extent there are duplicate requirements, reports may be combined and cross-referenced.

<u>(4)(c) Annual essential gas service contract report. The annual essential gas service contract report must summarize all transactions that occurred as a result of the contracts required in (b) of this subsection during the period January 1 through December 31 of the preceding year. This report is due by June 1 of each year.</u>

(4)(c) Avista recommends that Section (4)(c) be deleted for the reasons explained in response to Section (4)(b), above.

Staff Response:
The draft rule will be discussed at the May 9, 2003, stakeholder workshop.</td>
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NW Natural (3-11-03)	(This) Subsection as currently proposed is overly broad and unclear. This proposed new section requires further clarification in several areas, including but not necessarily limited to: 1. The proposed rule does not limit the reporting to contracts that apply only to services offered in the state of Washington. Is it the intent that all essential gas services contracts, without regard to the state in which the contract is applicable, be subject to this subsection? *Staff response:* *The rule applies to all essential gas services contracts without regard to the state in which the contract is applicable. Issues of concern from large contracts include impact upon a company's financing. Appropriate allocation of costs, requests for emergency interim relief can be driven by large essential service contracts.* 2. If the costs associated with any particular essential gas services contract call for an allocation of costs across one or more states, and the Washington allocation is less than the $10,000,000 threshold, does this section apply to that contract? *Staff response:* *Yes, file contracts on a company-wide basis.* 3. It is not clear what is meant by "anticipated associated charges." *Staff response:* *This includes the costs incurred to consummate the contract, legal fees, set up fees, overheads, etc.* 4. The timing for making such filings is not specified. *Staff response:* *This section will be redrafted to require quarterly reporting of transactions or copies of the contracts.* 5. Gas purchase contracts are typically provided at the time of the company's annual purchased gas cost adjustment filing. Would the continuation of that practice meet the requirements of this section? *Staff response:* *Yes, the rule will be revised to clarify to the extent there are duplicate references, reports may be combined and cross-referenced.*

PacifiCorp (3-11-03)	This new category of transactions has nothing to do with subsidiaries or affiliates, but applies to transactions between a utility and any party, whether affiliated or not. As such, this proposal seems to go far beyond any concerns previously identified as the basis for this rulemaking. The affiliated interest statute refers to "management or service contracts" between a utility and its affiliates, not all manner of contracts between a utility and any party, whether affiliated or not. *Staff Response:* *The scope of this rule will be discussed at May 9, 2003, stakeholder workshop.* The scope and breadth of the proposed rule, given the rather low threshold, is so broad as to impose costly and burdensome reporting requirements. The proposed $10 million threshold, for example, as applied to contracts for the "purchase of electricity" would require the filing of hundreds of contracts each year in the case of PacifiCorp. These contracts are subject to regulation at the federal level under the Federal Power Act, and it is unclear what benefits derive from additional reporting requirements at the state level. *Staff response:* *Thresholds will be discussed at the May 9, 2003, stakeholder workshop.* (4)(b)(i), (ii), and (iv) arguably fall within the category of "management or service contracts," although the threshold appears to be too low. (4)(b)(iii) does not fall within the category of "management or service contract." *Staff response:* *This information is requested pursuant to RCW 80.04.080 not RCW 80.16 therefore the definition of a "management or service contract" is not critical.* It is not clear from the proposed rule when these contracts must be filed. If a prefiling requirement is contemplated, PacifiCorp reiterates its concerns expressed in (a). Preferably, any requirement with respect to contracts for "essential utility services" could be satisfied by filing the annual report required by (Annual essential electric/gas service contract report). *Staff response:* *The rule will be revised to clarify when the contracts must be filed.* Given these fundamental concerns with respect to this proposed rule, it may be appropriate to withdraw this particular proposal, and replace it with a more narrow, tailored approach.

PSE (3-11-03)	PSE is concerned that with this subsection, the Commission appears to be instituting an entirely new and expansive reporting requirement regarding transactions not only with affiliated interests and subsidiaries, but also with third parties. The consequent burdens on regulated companies and Commission Staff are likely to be significant, and PSE urges the Commission to reconsider whether it really needs or wants to receive such information. Magnitude of Threshold – If Staff believes that "large" contracts must be reported annually, it is important to reflect that "large" is relative to the utility, which is why most reporting standards are tied to a percentage measure. For example, the $10 million threshold of the proposed rule is approximately 8.8% of the value of Cascade Natural Gas Company's common shareholder's equity of just over $114 million, reported in that utility's 2002 annual report. However, the $10 million threshold is 0.7% of PSE's common equity, reported in the Company's 2002 annual report. If the Commission retains this rule, PSE recommends that the threshold be rounded to 10% of the value of common shareholder equity reported in the most recent annual report. *Staff response:* *The threshold will be addressed at the May 9, 2003, stakeholder workshop.* Public disclosure of the types of contracts listed in the draft proposed rule could drive up costs by placing the Company at a competitive disadvantage in purchasing inputs needed to provide utility service. This would necessitate filing the contracts with the Commission under confidentiality protections. It is costly for both the Company and WUTC to manage requests for public information. Unless the Commission truly believes this annual contract information filing is necessary to protect the public interest, PSE suggests the increased cost of regulation should be a consideration in dropping this routine report. As an alternative, the Commission might consider requiring the material to be assembled at the Company and available for Staff inspection rather than filed with the Commission. *Staff response:* *The filing may be made under confidential cover. Appropriate thresholds will provide needed information with minimal costs.* The language "…include, but not limited to…" in the definition of "essential utility services" means that the Company will not be on notice of the contracts that it must file. PSE proposes that that language be deleted, although PSE welcomes discussion with Staff about potential expansion of

	the list depending upon what information Staff intends to collect and why that information is necessary for the Commission to meet its statutory obligations. *Staff response:* *This issue will be addressed at the May 9, 2003, stakeholder workshop.*
Public Counsel (3/11/03)	This rule should specify when such contracts are to be filed. Public Counsel would support filing of the contracts prior to their effective dates. There should be further review of whether the telecommunications version of the reporting rules should also include an "essential services contract" requirement to cover telecommunications carrier contracts for operation and maintenance of infrastructure, computer systems, purchase of telecommunications services and construction of infrastructure. *Staff response:* *The rule will be redrafted to require quarterly reporting of transactions or copies of the contracts. An "essential service contract" requirement for telecommunications companies may be addressed at the May 9, 2003, stakeholder workshop.*