

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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)	DOCKET NO. A-010648
Rulemaking (Procedural Rules): Chapter)	
480-04 WAC—Public Access to)	COMMENTS OF THE INDUSTRIAL
Information And Records; Chapter 480-09)	CUSTOMERS OF NORTHWEST
WAC Procedure)	UTILITIES
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The Industrial Customers of Northwest Utilities (“ICNU”) submits the following Comments to the Washington Utilities and Transportation Commission (“WUTC” or “Commission”) in the above-referenced Docket. ICNU generally supports the Commission’s efforts to clarify and reorganize its procedural and public record rules, but respectfully recommends that the Commission adopt the substantive modifications noted below to promote greater access to information and public participation in Commission proceedings.

1. Background

On May 31, 2001, the Commission initiated a rulemaking to consider revisions to its rules regarding procedures and public access to information. On March 31, 2003, the Commission finalized its preliminary proposed revisions to its rules and posted the proposed rules on its web page. The Commission is specifically seeking comments regarding: 1) the organization of rules; 2) language clarity; and 3) potential substantive changes. The Commission also intends on providing interested individuals and organizations the opportunity for further comment.

The Commission has proposed a complete reorganization and revision of its existing rules of procedure, and intends on replacing WAC § 480-09 with WAC § 480-07. ICNU's comments regarding the new procedural rules focus on: 1) designation of confidential information; 2) the appropriate time to file a motion for summary disposition; 3) discovery rights; 4) general rate case filings; and 5) other minor clarifications. ICNU's comments are preliminary, and ICNU may raise additional issues as they arise in this rulemaking.

2. Definition of Confidential Information

The proposed procedural rules may expand the definition of confidential information and result in the withholding of more information from public disclosure in proceedings before the Commission. The current procedural rules define confidential information as information "which is protected from inspection or copying under chapter 42.17 RCW or RCW 80.04.095." WAC § 480-09-015. The proposed procedural rules allow the Commission to issue a protective order to protect information that is not treated as confidential under RCW §§ 42.17 or 80.04.095. Proposed WAC §§ 480-04-095(2); 480-07-160(2)(b)&(4). The Commission should encourage parties to limit the amount of information that is designated confidential because overuse of confidentiality protections creates an undue burden on the Commission and other parties. Accordingly, the Commission should revise the proposed procedural rules to ensure that the Commission only treats as "confidential" information that is protected by RCW §§ 42.17 or 80.04.095.

3. Motions for Summary Determination

The Commission proposes that a motion for summary determination be filed “at least thirty days before the next applicable hearing session.” Proposed WAC § 480-07-380(2)(b). The current procedural rules do not prescribe a time limit for filing a motion for summary determination. *See* WAC § 480-09-426. In many Commission proceedings it is inappropriate to require parties to file a motion for summary determination thirty days before hearing. Hearings are often scheduled in thirty days or less than the time for filing of final pre-filed rebuttal testimony. *E.g. Re PacifiCorp*, Docket No. UE-020417, Fourth Suppl. Order at 2 (Oct. 31, 2002); *WUTC v. PacifiCorp*, Docket No. UE-001734, Fourth Suppl. Order at 3 (June 5, 2002). The parties cannot be certain that there is no genuine issue regarding any material fact, which is the basis for a motion for summary determination, until after they have reviewed the final pre-filed rebuttal testimony. ICNU agrees that there is merit in requiring certain dispositive motions to be filed prior to hearing; therefore, ICNU proposes that the rules require that motions for summary determination be filed before the prehearing conference for marking exhibits and testimony, unless otherwise specified by Commission order.

4. Discovery Rules

ICNU supports the majority of the Commission’s proposed revisions to the discovery rules because they primarily codify existing practice in Commission proceedings. However, ICNU proposes two modifications to the proposed discovery rule, WAC § 480-07-400. First, the proposed rules explicitly allow the parties to submit data requests in specific proceedings, including rate change proceedings and complaint proceedings involving allegations

of discrimination or anticompetitive conduct. Proposed WAC § 480-07-400(2)(b). Data requests also should be permitted in any complaint proceeding regarding allegations of unjust or unreasonable rates or other illegal utility practices, including any alleged violation of RCW § 80.28. Second, the proposed rules state that “commission staff is not required to respond to data requests before it files its direct evidence in a proceeding initiated by petition or commission complaint.” Proposed WAC § 7480-07-400(5). This sentence should be expanded to include Public Counsel and intervenors.

5. General Rate Cases

The proposed rules adopt, with little modification, the existing definition for general rate cases. Proposed WAC § 480-07-505; WAC § 480-09-310. The rules essentially define a general rate case as a filing that adjusts the utility’s rate of return or increases rates by three percent or more, with exceptions for certain filings, including periodic adjustments, emergency and other short term filings. Proposed WAC § 480-07-505(2). A general rate case is subject to more stringent requirements regarding the filing of testimony and other exhibits. Proposed WAC § 480-07-510. Since the general rate case rule was last modified in 1996, the Commission has experienced an increase in electric utility power cost adjustment filings, interim and emergency rate cases, and other filings that could arguably fit within the exceptions to a general rate case filing. In some circumstances, the record in these proceedings would have benefited from the electric utility filing the information required for a general rate case.

Therefore, ICNU suggests that the Commission adopt a subsection to 480-07-505 that reads: “(4)

Other filings. The Commission may require that any filing by a regulated company for an increase in rates be subject to the procedures and protections of a general rate case.”

6. Amendment of Orders

The proposed rules reaffirm the Commission’s authority to alter, amend or rescind any order that it has entered. Proposed WAC § 480-07-875. The proposed rules would require the Commission to notify the public service company or companies prior to altering, amending or rescinding its order. The Commission should modify the proposed rules to require that notice also be provided to Public Counsel and all intervenors involved in the underlying proceeding.

7. Responses to Petitions to Intervene

The Commission should clarify that a response to a petition to intervene is due in five business days. The proposed rules state that a reply to a motion should be designated as a “response” and that a reply to a petition be designated as an “answer.” *Compare* Proposed WAC § 480-07-370(c) *with* Proposed WAC § 480-07-375(4). “Responses” are generally due within five business days while “answers” are due within twenty calendar days. *Id.* The proposed rules also specify that a reply to a petition to intervene shall be designated as a “response.” WAC § 480-07-335. The Commission should clarify that a response to a petition to intervene, like a response to a motion, is due within five business days by inserting the following language in proposed WAC § 480-07-355(2): “A party who opposes the petition to intervene shall file any written response within five days after the petition is served.”

ICNU appreciates the opportunity to comment on the Commission’s proposed changes to its procedural rules.

DATED this 30th day of April, 2003.

Respectfully submitted,

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