BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION Complainant, v. PUGET SOUND ENERGY, INC., Respondent, ...	)	DOCKET NO. UE-011163
In the Matter of the Petition of PUGET SOUND ENERGY, INC. for an Order Authorizing Deferral of Certain Electric Energy Supply Costs.	)	DOCKET NO. UE-011170 SIXTH SUPPLEMENTAL ORDER ORDER GRANTING MOTIONS; DISMISSING DOCKETS

1 **Synopsis**: The Commission grants a motion to dismiss two consolidated dockets in which Puget Sound Energy seeks authorization to begin deferring actual power costs and to begin passing to ratepayers the estimated increased costs of power. The Company failed to demonstrate that its financial condition requires the extraordinary relief that it requested.

2 **Proceeding:** This matter is the consolidation of two dockets. Docket No. UE-011170 is a request by Puget Sound Energy (PSE or Company) for an accounting order allowing the Company to track its actual power costs in a way that would enable it, upon Commission approval, to pass to customers the increases or reductions in its cost of acquiring the power it sells to its customers. Docket No. UE-011163 is a tariff rider, filed to become effective on November 1, 2001, that would implement a power cost adjustment by passing on to customers the costs tracked in the accounting

mechanism requested in Docket No. UE-011170. The proposed increase is approximately 18%, or approximately $84 million annually.

3 **Hearings:** The Commission convened prehearing conferences in this matter on September 4, 2001, and September 18, 2001, before Administrative Law Judge C. Robert Wallis. Public Counsel moved to dismiss the dockets on September 4, 2001. Parties agreed at the September 4, 2001, conference on a procedural schedule to consider the motion. The City of Tukwila and Commission Staff supported the motion; intervenor Industrial Customers of Northwest Utilities (ICNU) also moved for dismissal. The Company answered the motions and supporting pleadings, and Public Counsel and Commission Staff replied.

4 **Appearances.** The following parties entered appearances:[1] Puget Sound Energy, by Markham A. Quehrn, attorney, Bellevue; City of Bremerton, by Angela Olsen, attorney, Tacoma; Industrial Customers of Northwest Utilities, by Bradley Van Cleve, attorney, Portland, Oregon; City of Tukwila, by Carol S. Arnold, attorney, Seattle; Microchip Technology, by Harvard P. Spigal, attorney, Portland; King County, by Donald Woodworth, deputy prosecuting attorney, Seattle; Public Counsel, by Simon ffitch, assistant attorney general, Seattle; and the Commission Staff, by Shannon Smith and Robert D. Cedarbaum, assistant attorneys general, Olympia.

5 **Commission.** The Commission grants the motion and dismisses PSE's requested tariff rider and its petition for an accounting order. The dismissals are without prejudice to refiling when the Company believes that its presentation will meet the standards for granting the relief it seeks. The Commission acknowledges PSE's stated intention to file a general rate increase in November, 2001.

I. INTRODUCTION

6 PSE filed these dockets on August 21, 2001. It asks for "interim" or expedited relief, outside of the filing of a general rate case. PSE states that its financial needs are

[1] AT&T Wireless Service (AWS) petitioned for intervention after the initial prehearing conference, represented by John Cameron and Terry Kilpatrick, attorneys, Portland, Oregon. Petitioner has demonstrated an interest in the proceeding and the petition is granted. In addition, Ms. Arnold petitioned for intervention on behalf of several additional municipal customers of PSE; their petitions are granted as well.

urgent. PSE claims that it cannot wait the time needed for Commission action to prepare a general rate case, to provide other parties the opportunity to review the Company's overall circumstances and its results of operations, to conduct full discovery, cross examination, and briefing, or for the Commission to decide its issues in the context of a general rate case. It has committed that it will file a general rate case during the month of November 2001.

7 The Commission convened a prehearing conference in this docket on September 4, 2001. Public Counsel on September 4, 2001, filed a motion to dismiss the dockets, contending that they were improper on several grounds. Parties at the conference agreed upon a schedule for responding to the motion. Commission Staff and the City of Tukwila joined in the motion and supported it; intervenor ICNU filed an additional motion to dismiss.[2] The Company responded, and Commission Staff and Public Counsel replied. In considering the motion, we have before us the Company's filings, including the evidence that it filed to support them; the motions; and the arguments expressed in the motions, the answers, and the replies. The parties offered to present oral argument to the Commission in support of their positions. The Commission believes that the motions are well-argued, that all parties had every opportunity to state their views and their support for those views, and that no additional purpose would be satisfied by putting parties to the time, the delay, and the expense of preparing and appearing for oral argument.

II. STANDARD FOR REVIEW

8 The motions are filed under WAC 480-09-426(1):

> A party may move to dismiss an opposing party's pleading, including the documents initiating the case, if the pleadings fail to state a claim on which the commission may grant relief.

9 In considering a motion to dismiss, the Commission is guided by the "standards applicable to a motion made under CR 12(b)(6), 12(c), or 50, as applicable, of the civil rules for superior court." *Id.*

[2] Intervenor ICNU sought and received a waiver of the time and form of filing because of the events of September 11, 2001. PSE's motion to strike the filing is denied.

10 The movants ask us to dismiss the proceedings, consistent with the application of CR 12(b)(6). They assert (1) that merely filing these requests violates provisions of the merger agreement identifying when the Company is eligible for interim relief; (2) that the request violates the standards established in case law for achieving interim relief; (3) that the Company failed to provide notice to its customers as required by rule and (4) that PSE's presentation does not meet the standards for granting interim rate relief. If the Commission accepted either of the first two contentions,[3] PSE would be barred as a matter of law from the relief it requests because it has failed to use the only vehicles available to it for interim relief. No conceivable facts could justify relief, if the Company failed to use the only available processes to pursue relief.

11 The Commission denies the portion of the motion contending that PSE is barred by the merger order provisions or by the exclusivity of interim rate relief standards from requesting alternative relief or treatment. It is inherent in a regulatory setting that a commission has the authority to meet extraordinary needs. It would be inconsistent with the fundamental purposes of regulation, for example, if the Commission denied extraordinary relief on technical grounds and the Company consequently was unable to provide service.

12 The issue then becomes whether the assertions of the pleadings initiating the proceeding[4] provide sufficient basis for the Commission to exercise its discretion and consider the requested relief. The same is true of the ground urged by Tukwila for granting the motion – that, taking the prefiled evidence in the light most favorable to PSE, it has not demonstrated facts that entitle it to the requested relief**.** If, taking the allegations of the initiating documents, as defined in the prefiled evidence supporting the filing, in the light most favorable to the Company, the Commission would not grant the relief, there is no point in wasting the parties' and the Commission's time, energies, and financial resources pursuing that relief.

13 Commission pleadings are similar, but not identical, to pleadings in civil litigation. A party filing a civil complaint makes allegations of fact, which it represents that it will

[3] We need not rule whether insufficiency of customer notice would support a motion to dismiss. Here, the schedule adopted for an evidentiary hearing provided sufficient time for parties to pursue an agreed amended notice. We observe that a company seeking extraordinary relief can remove this as an issue by working with Commission Staff and Public Counsel prior to filing its request.

[4] The rule provides that the motion is addressed to, and the Commission will consider in ruling on a motion, the documents initiating the proceeding. Those documents include the prefiled evidence.

prove by evidence submitted at trial. In reviewing a motion to dismiss under CR 12(b)(6), the court asks whether the allegations may be proved by any competent evidence. Documents initiating these Commission dockets include a proposed tariff and proposed accounting order, and "prefiled" evidence – documents including the written testimony of witnesses -- that the Company represents that it would offer at hearing to prove its need for the requested relief. In reviewing a motion under WAC 480-09-426(1), the Commission uses the prefiled evidence to define the pleadings originating the proceeding.

14 The situation is also analogous to CR 50, which allows dismissal of a proceeding at the conclusion of the plaintiff's presentation if, taking the evidence in the light most favorable to the respondent, the evidence is insufficient to support the complaint. A company seeking a rate increase has the burden of coming forward with sufficient evidence to support its request.

15 In Commission proceedings, prefiled evidence *is* a party's evidence supporting its case. Prefiled evidence serves an essential regulatory function. The Commission resolves complex, high-stakes, multiparty litigation within time frames from start to completion that are often shorter than the civil courts can schedule and hold a trial. Prefiled evidence is one of the means by which this efficiency is accomplished. Other parties rely on the prefiled evidence as the basis for preparing their cross examination of witnesses and in formulating their responsive evidence. If there is no cross examination and no responding evidence – as may happen, for example, in the event of a settlement – a party has no absolute right to provide additional evidence in support of its position.

16 Therefore, in reviewing the motions and the arguments for and against the motions, the Commission asks whether, putting the prefiled evidence in the light most favorable to the Company, the Commission would grant the requested relief. We will discuss each asserted ground later in this order, but will begin with a statement of the basic issue and an evaluation of whether PSE's filing supports extraordinary action.

III. THE FUNDAMENTAL QUESTION

17 The Company is asking for relief of a sort that the Commission has recently characterized as "extraordinary." In Docket No. UE-010395, *In re Avista Corporation Request for Recovery of Power Costs Through a Deferral Mechanism,*

that utility also asked for extraordinary relief outside the context of a general rate case. In the Sixth Supplemental Order in that docket, the Commission granted a portion of the requested relief, finding that the Commission has the right and the obligation to act, *when circumstances warrant*, to protect the public interest even when that interest requires an increase in utility rates. In doing so, we first acknowledged the Commission's authority to grant immediate rate relief:[5]

> [T]he Commission's authority to authorize immediate rate relief, subject to refund or other conditions, is a power necessarily incident to the exercise of the Commission's express statutory authority to regulate the rates of jurisdictional utilities. *State ex rel. Puget Sound Navigation Company v. Department of Transportation, 33 Wn.2d 448, 206 P.2d 456 (1949).*

18 The order at page 10 describes the circumstances leading to the proceeding and the decision:

> Avista faces a financial crisis that may be due in part to unfortunate business decisions made by the Company's prior management, and is due in part to weather conditions and market conditions that are beyond the Company's ability to control. Rigid adherence to the usual forms the Commission follows in setting rates simply will not solve the urgent problem faced by Avista and its customers. Were we to concern ourselves unduly with form, we would hamper our flexibility and our ability to address the very real substance of the problem before us.
>
> This is not to say that we should ignore the well-established principles that are a familiar part of the ratemaking process. Rather, we should look to these principles for guidance, while being sufficiently flexible, adaptive, and creative to meet the financial crisis Avista faces while protecting the Company's ratepayers, to the extent possible, from severe rate shock. Acting in the public interest, based on the record before us, we need to fashion a short-term remedy that will act as a bridge to a longer-term, comprehensive resolution of Avista's financial requirements.

[5] Sixth Supplemental Order, p 8.

19 In the recent Avista proceeding, therefore, the Commission determined that extraordinary relief outside the context of a general rate case was appropriate, given a demonstration of a critical need. Therefore, the fundamental question posed by the motions is not, "Are these proceedings barred by prior orders and the law?" Instead, the question is, "Given the existence of the merger order, the cases defining interim and extraordinary relief, and the Commission's statutory and inherent authority, would the Commission grant the requested relief upon the demonstration of need alleged in the Company's filing?"

20 How does PSE's situation compare with the showing that led to relief in Avista?[6]

(1) Avista's initial filing contained much more detailed documentation of specific indicators which, if the Commission found the indicators to be true, would demonstrate the urgency of its need for a surcharge.

(2) Avista stated that it was already taking extraordinary steps to preserve its financial integrity. These included the reduction of management salaries and the deferral of substantial expenses and capital investment. PSE makes no such statement.

(3) Avista contended that without relief it might not be able to receive *any* financing, and it named certain specific major construction projects for which it was *currently* unable to obtain financing for completion. PSE stated only that without relief, it would be unable in the future to obtain certain types of financing at what it called "reasonable rates," in the event that the financing were needed.

(4) Avista asserted that without relief it would lose access to capital markets when the need for financing was clear and immediate. PSE made no such assertion.

(5) Avista previously sought and received Commission approval to record deferred power costs for potential ratemaking recovery during an extensive prior proceeding that culminated with a settlement agreement and an order in May of this year. PSE complicates this filing by requesting a power cost adjustment (PCA), with all the controversy and detailed analysis that such a request provokes, while contending that it need not make a showing to demonstrate that the resulting rates would be fair, just, and reasonable.

[6] Here we compare the information Avista presented in its direct filing with that of PSE in its direct filing.

(6) Avista asserted that without relief its rate of return would be negative. PSE asserted that without relief, its overall return and its return on equity would be below its authorized level. PSE's own confidential forecasts do not persuade the Commission that PSE's present or forecasted financial condition requires an expedited proceeding, as opposed to review in a general rate proceeding.

21 We conclude that PSE's filing as a whole simply does not show that it is in dire, or emergency, or extraordinary, need of rate or accounting relief. Neither does the filing demonstrate any urgent need to consider a PCA proposal on a "fast-track" basis. While cash shortfall or revenue lag may not be the only conditions upon which the Commission would consider extraordinary relief, a company seeking such relief must show a clear and present extraordinary need, beyond the needs inherent in any situation that may prove a need for general rate relief. A request for extraordinary relief must provide a clear showing of the adverse consequences that will reasonably flow from the lack of the relief requested, and must demonstrate why relief in a general rate case, or in an interim request associated with a general rate increase, would be inadequate to protect the Company and its ratepayers from severe financial consequences. We will review each of the asserted bases for the motion and each of the pertinent tests for extraordinary relief.

IV. ASSERTED GROUNDS FOR THE MOTION

A. Failure to comply with the merger order.

22 Parties supporting the motions to dismiss contend that terms of the Commission's Fourteenth Supplemental Order, *In re the Application of PUGET SOUND POWER & LIGHT COMPANY and WASHINGTON NATURAL GAS for an Order Authorizing Merger*, Docket Nos. UE-951270, UE-960195, (February 5, 1999), called "the merger order," foreclose it from even asking for relief. We disagree.

23 The order said, [7]

[7] The order adopted as the Commission decision the terms of a settlement agreement containing this and other provisions. This quotation is drawn from pages 10 and 11 of the stipulation

> **Interim rate relief.** During the Rate Plan Period, PSE may seek, under appropriate circumstances, interim rate relief. The Commission adopted a six-part standard for interim rate relief in *WUTC v. Pacific NorthwestBell Telephone Company,* Cause No. U-72-30, Second Supplemental Order (October 1972). The *Pacific Northwest Bell* standard has been consistently affirmed in several Commission decisions since 1972. If PSE requests interim rate relief, it will apply under the *Pacific Northwest Bell* standard or whatever Commission standard exists for such relief at the time of PSE's request.

24 The merger order expressly permits the Company to seek an interim rate increase, but it does not totally foreclose the Company from seeking other relief, if needed. The order specifically authorizes the Commission to approve other means of relief. It does not purport, nor was it intended, to prevent a future Commission from exercising its inherent right, consistent with the *Puget Sound Navigation* case, above, to take extraordinary action necessary to preserve a company's financial integrity. Existence of the merger order, therefore, is not an absolute bar to a request for alternative relief.

B. Failure to submit the filing as a request for interim relief in the context of a general rate case.

25 The second ground for the motion to dismiss was that the Company sought "interim" rate relief but that it failed to seek the relief in the context of a general rate case. As we noted in the recent Avista order, at page 11:

> We do not regard this case as a request for interim rate relief as that term traditionally is used in utility ratemaking. Interim rate relief is an appropriate vehicle to avoid the consequences of regulatory lag during the Commission's consideration of the overall financial needs of a utility company in the context of a general rate case. Under the extraordinary circumstances of this case, the usual labels that describe various forms of rate relief, and the constraints the use of such labels might imply, are more of an impediment than an aid to reasoned decision making.

26 The Commission reaffirms these principles and will review the Company's filing, below, under the appropriate tests. We believe it will be helpful to address interim rate relief before doing so.

27 The Company argues that a request for interim rate relief is totally independent from the general rate case in which it arises. We believe that this characterization is inaccurate. An interim request is processed swiftly, without the full time for review afforded in a general rate case. It is more narrowly focused than a general rate proceeding. But it draws upon and rests in the context of the fully prepared evidence. In preparing its best case for general rate relief, the Company develops a panorama from which it chooses scenes for presentation in its quest for interim relief. The Company's full circumstances have been presented in its prefiled exhibits and will be explored fully at hearing. The evidence is interrelated and consistent. The proceedings are independently prosecuted, but the two are not independent in context or content. In that sense, while the standards for granting interim relief are high, interim requests are more likely than requests that are independent of a general rate proceeding to be seen in a proper perspective and less likely to constitute "single-issue" requests whose effect might actually be moderated or exacerbated by other aspects of a company's operation.

28 An interim determination is also tied to a regulatory clock whose ticking has begun with the filing for general rate relief. PSE has pledged to file a general rate request in November 2001 – as many as 100 days following these filings for interim relief. The consequence is that any rates approved would likely be in effect for a longer period than if tied to the regulatory clock that is started upon filing and stating a proposed effective date for a general rate request. Providing either greater or lesser relief than a company requires in an independent context as proposed here could work to the Company's disadvantage – if lesser, it prolongs the need, and if greater, it could require a refund at an importune time.

C. The proposed power cost adjustment rate would not be fair, just, and reasonable.

29 Commission Staff and others argue that a power cost study is essential to establishing the proposed power cost adjustment mechanism, as the power costs embedded in the Company's rates are based upon information that led to an order entered seven years ago. PSE contends that interim or extraordinary rates are established solely by reference to the tests in *WUTC v. Pacific Northwest Bell Telephone Company, Cause No. U-72-30, Second Supplemental Order (October 1972).* The Company argues that because fairness, justness, and reasonableness of interim rates are not listed in those

criteria, the Company need not prove that rates resulting from an extraordinary proceeding are fair, just, and reasonable. We disagree with the Company.

30 Under RCW 80.04.130, the Commission has the authority only to establish rates that are fair, just, and reasonable. In the context of these proceedings, the validity of a power cost adjustment could not be properly determined in the absence of a power cost study of the sort that parties requested. In prior interim proceedings, no such adjustment was proposed, so such proceedings offer no precedent for the proposition that such a study is not needed. The Commission does not rule that it would never institute a power cost adjustment in any conceivable extraordinary situation. We merely state the principle that all rates must be fair, just, and reasonable under the circumstances in which they are imposed, and that in these dockets the Company has failed to assert circumstances proving the propriety of a power cost adjustment.

D. The proposed rate spread is inconsistent with the merger order.

31 ICNU contends that PSE's proceedings should be dismissed because they seek a spread of rates among customers that is inconsistent with terms of the merger order. PSE responds that the merger order specifically allows the Commission to alter its terms, and that the terms of the order are therefore not a proper ground for dismissal. The Commission agrees with PSE. Unlike process matters, which could bar a party from having its case considered, this is a matter of application once the process is entered. The issue is not shown under present circumstances to be a ground for dismissal.

E. PSE's pleadings and proposed direct evidence fail to meet the standards allowing interim or extraordinary rate relief.

32 The City of Tukwila contends that PSE has failed to meet the conditions necessary for achieving interim rate relief. While PSE is correct in asserting that it is not a condition of interim relief that a company be unable to make payments of principal when required, the standards for interim relief are sufficiently high as to make it clear that a general rate proceeding is the appropriate means to secure rate relief except in extraordinary circumstances.

33 In the Avista order, while acknowledging that the request was not for "interim" relief as the Commission has used the term in the past, the Commission noted that

extraordinary relief may be needed – and granted -- in circumstances other than the opening phase of a general rate proceeding. The Commission also in that order accepted as appropriate tests for determining need the standards outlined for granting interim relief in *WUTC v. Pacific Northwest Bell Telephone Co., Cause No. U-72-30 (October 1972) (hereinafter "Pacific Northwest Bell").* The Commission will review the Company's proposed evidence in light of the six numbered standards articulated at page 13 of that order.

34 *First*, "the Commission should exercise its authority to grant interim rate relief only after an opportunity for an adequate hearing."*Id*. Here, as no relief is granted, we hear the Company's evidence by viewing it in the light most favorable to the Company.

35 *Second*, an interim increase is one sort of extraordinary remedy, and "should be granted only where *an actual emergency exists* or where *necessary to prevent gross hardship or gross inequity*."*Id.* Here, the Company (in contrast with Avista) does not according to its own evidence face an emergency or a gross inequity that is so great or so imminent as to require extraordinary relief. It does not show the inability to secure financing imminently needed to meet commitments. It does not show management efforts to contain costs to moderate its needs. It does show the sort of needs, and the sort of schedule, that if true may justify general rate relief. But it does not demonstrate emergency and does not demonstrate imminent gross hardship or inequity that would allow consideration in an interim proceeding.

36 *Third*, "the mere failure of the currently realized rate of return to equal that approved as adequate is not sufficient, standing alone, to justify the granting of interim relief."*Id*. Here, the Company projects that it will achieve a rate of return beneath its authorized level for 2001, and it projects a lower return for calendar 2002. Both projections are positive. The Company's concern about its return is appropriate. In a general rate case, the Commission can review many factors that bear upon the achieved return, including power costs, and can normalize or *pro form* results of operations, to assure that rates are fair, just, reasonable, and sufficient. A statement of the achieved rate of return, outside of that context, does not provide similar assurance.

37 *Fourth*, "The Commission should review all financial indices as they concern the applicant, including rate of return, interest coverage, earnings coverage, and the

growth, stability, or deterioration of each, together with the immediate and short-term demands for new financing and whether the grant or failure to grant interim relief will have such an effect on financing demands as to substantially affect the public interest."*Id*. PSE contends that at least some of its indicators are of concern. So they may be. But PSE's presentation does not demonstrate, in light of its asserted needs, that the effect on the Company's ability to achieve financing will have any effect on the public interest.

38 *Fifth*, "In the current economic climate the financial health of a utility may decline very swiftly. Interim relief stands as a useful tool in an appropriate case to stave off impending disaster. However, this tool must be used with caution, and must be applied only in a case where not to grant would cause clear jeopardy to the utility and detriment to its ratepayers and stockholders. That is not to say that interim relief should be granted only after disaster has struck or is imminent, but neither should it be granted in any case where full hearing can be had and the general case resolved without clear detriment to the utility."*Id*. Here, there is no demonstration that failure to grant the requested relief would cause clear jeopardy to the utility or detriment to the ratepayers.

39 *Sixth*, "As in all matters, we must reach our conclusion with the statutory charge to the Commission in mind, that is, to 'Regulate in the public interest.' (RCW 80.01.040). This is our ultimate responsibility, and a reasoned judgment must give appropriate weight to all salient factors."*Id*. Here, the Commission is left with the firm conviction, after reviewing the Company's evidence in the light most favorable to the Company, that it has not depicted circumstances that call for extraordinary relief.

40 PSE relies principally on its assertions of uncertainties in the capital market and deteriorating Company financial indicators to support its request. It also cites recent changes in rating services' risk assessments and the Company's projections of higher costs for ratepayers as a result. While we are concerned about the potential consequences of these events, the information brought to us does not demonstrate extreme risk or the imminent risk of inability to acquire needed capital. The consequences of these events are not so serious, nor so imminent, that extraordinary relief is warranted.

V. CONCLUSION

41 The times are uncertain, and we must be vigilant to ensure that utility companies' ratepayers and stockholders are treated fairly, consistent with the public interest, and protected from clear jeopardy, impending disaster, an actual emergency, or gross hardship or inequity. Our response to Avista's request demonstrates that in a proper situation we will not shrink from providing extraordinary relief that is necessary for a utility that proves extraordinary need. Here, we simply conclude, based on PSE's evidence, that PSE has not shown its circumstances to be imminent or foreseeable with certainty and it has not shown that these circumstances pose potential detriments that call for the extraordinary relief that PSE requests.

42 PSE has pledged to file a request for general rate relief soon. Dismissing these dockets will provide an opportunity for the Company and all of the other parties to focus on preparation for that filing. These dismissals are without prejudice. If circumstances change, and if PSE can demonstrate that its needs meet the pertinent tests, PSE is free to refile for extraordinary relief or for interim relief in the context of a general rate case.

VI. ORDER

43 The Commission grants the motion to dismiss. In doing so, it dismisses both of the pending dockets without prejudice to the Company to refile them consistent with the terms of this Order.

Dated at Olympia, Washington, and effective this day of October, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final Order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this Order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).