

**BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION**

**A-130355**

In the Matter of	)	
	)	
Rulemaking to Consider Possible Correction	)	COMMENTS OF THE INDUSTRIAL
and Changes in Rules in WAC 480-07,	)	CUSTOMERS OF NORTHWEST
Relating to Procedural Rules	)	UTILITIES REGARDING PROPOSED
	)	CHANGES TO WAC§ 480-07-100 –
	)	WAC § 480-07-180
	)	

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**I. INTRODUCTION**

On November 14, 2013, The Washington Utilities and Transportation Commission (the “Commission” or “WUTC”) served notice that comments regarding proposed revisions to Part One of Washington Administrative Code Chapter 480-07. The Industrial Customers of Northwest Utilities (“ICNU”) appreciates the opportunity to participate in the ongoing series of workshops scheduled by the Commission submits these Comments regarding certain of Staff’s proposed revisions.

**II. COMMENTS**

ICNU is generally supportive of the edits proposed by Staff in WAC Sections 480-07-100 through 480-07-180. INCU’s Comments focus on two sections within Part 1 of the chapter, but ICNU reserves the right to make take a later position on the rules not mentioned herein in response to comments filed by other parties or the Commission.

**1. Waivers of Commission Rules: WAC § 480-07-110**

ICNU agrees with Staff that clarification of the rule that permits the Commission to grant waivers of its rules is important. ICNU is particularly concerned that the current rule does not promote predictability or consistency, and as such, may be insufficient to guarantee due process to parties that request waivers of Commission rules, or to parties whose rights or interests may be impaired if a waiver requested by another party is granted.

ICNU supports Staff's recommendations to WAC § 480-07-110(1), which eliminates ambiguous language could undermine application of the rule. Staff's deletion of the last sentence of the existing rule in this subsection will provide greater certainty for participants in adjudications, by clarifying the proper process for the Commission and parties to follow when a waiver is requested, or when the Commission considers granting a waiver on its own motion.

In order to promote predictability and due process, ICNU recommends that Staff's suggested language in Section 480-07-110(2)(c) be modified. As proposed, Staff's recommendation removes the "Standard for Consideration" and describes these standards as "Factors." This proposal confuses two important concepts, because while "Factors for Consideration" may more appropriately describe the considerations in the paragraph, due process requires a transparent standard for review, against which factors may be weighed.

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In order to clarify that the public interest standard remains the standard of review that must be met in order to grant a waiver of the rules, ICNU recommends the following language in Section 480-07-110(2)(c):

(c) ~~Standard for consideration of Review.~~ Standard for consideration of Review. The standard for ~~consideration~~ review for a waiver of a commission rule is the public interest standard. In determining whether to grant an exemption, factors the commission may consider include whether ~~application of the rule would impose~~ an undue hardship on the requesting person, of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule to the requesting person would be contrary to the underlying purposes of the rule.

If a standard of review is removed, the rule would appear to allow the Commission to grant a waiver if any factor was present to any degree, regardless of whether or not the waiver would be in the public interest, or other offsetting factors. The Commission's statutory duty is to regulate in the public interest. RCW § 80.01.040. The rules adopted by the Commission must be proper, just, and reasonable. RCW § 80.04. Therefore, waivers of such rules should only be granted when doing so is in the public interest. Retaining an explicit public interest standard in addition to listing potential factors for the Commission to weigh against this standard will ensure due process, an appearance of fairness, and regulation in the public interest.

Likewise, the Commission should not eliminate Section 480-07-110(2)(d) regarding orders resolving petitions for waivers. Subsection (d) states:

(d) Disposition. The commission will enter an order granting or denying the petition, or setting it for hearing.

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Requests for waivers of Commission rules are petitions. WAC § 480-07-730(1)(b)(i). Like any other petition, parties requesting or opposing a petition for a waiver must be afforded the right to receive and understand the disposition of the request. Waivers often have just as significant an effect upon the rights of parties in Commission proceedings as do the resolutions of motions or petitions, so the Commission should not remove the rule calling for an order granting or denying the petition, so that parties will understand the Commission's disposition of the request and create a full record in the case. If the Commission wishes to clarify that some minor petitions for waivers of the rule may be suitable for oral disposition by the presiding judge at a hearing, followed by memorialization in an order following a hearing, such language may be appropriate, but not necessary, to add to the current rule. In any case, subsection (d) should not be eliminated.

**2. Electronic Service and Filing: WAC § 480-07-145**

ICNU supports Staff's proposed changes to WAC § 480-07-145. Permitting electronic filing, in addition to creating a presumption that electronic service is acceptable, will greatly reduce the administrative burden created by rate cases and other proceedings on the Commission, Staff, and the Parties. ICNU notes that WAC § 480-07-145(2)(a) retains a 5:00 p.m. deadline for electronic submissions. Given that orders in many proceedings create a 2:00 p.m. deadline for filings with the Commission, ICNU recommends that that the Commission

considers selecting a single time for filing deadlines that could be used in most circumstances.

### III. CONCLUSION

ICNU appreciates the effort exerted by Staff to streamline and clarify rules within Part 1 of WAC Chapter 480-07. ICNU respectfully urges the Commission to adopt the Staff's proposed rules regarding electronic filing, as well as the modifications to Staff revisions of WAC § 480-07-110 presented in these comments.

Dated this 20th day of December, 2013.

Respectfully submitted,

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