

May 30, 2003

VIA FAX AND FIRST CLASS MAIL

Carole Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Pk. Dr. S.W.
PO Box 47250
Olympia, WA 98504-7250

Re: In the Matter of the Rulemaking Procedure Related to Commission General-
Procedure: Chapter 480-09 WAC; Docket No. A-010648

**Supplemental Comments of Public Counsel Regarding Public Comment
Hearing Process**

Dear Ms. Washburn:

These comments are submitted to supplement general comments previously filed in this docket.

Background

In some proceedings, for example, in general rate cases, the Commission holds public comment hearings to provide an opportunity for members of the general public to comment on the issues before the Commission. These hearings are a valuable part of the Commission process. The Commission and its public affairs staff have devoted time, resources and creativity to making these hearings useful for the Commission and valuable for the public.

The hearings are generally convened separately from the “evidentiary hearing” at times and locations that are convenient for the general public. Public testimony is typically not expert testimony and cross-examination is not conducted. The procedures at public comment hearings have evolved primarily as a matter of practice rather than formal legal requirements.

Overall, Public Counsel believes the framework for the hearings continues to be satisfactory. There are two areas, however, where we are interested in modifications which we think can improve and update the process, and make Public Counsel’s role more clear to the public.

1. Modification: Summary of Parties' Positions

Under current procedure, our office is ordinarily asked to provide a neutral summary of the positions of all parties as part of the preliminary portion of the hearing..

The modification we suggest is that the summary be provided by either the ALJ or by a member of the public affairs, energy or telecommunications staff, rather than by Public Counsel. An alternative would be for each party to have a representative present to make a brief statement of their position(s) in the case. Since Staff and the Company ordinarily have representatives in attendance this should not be burdensome.

The rationale for this change is that the presentation of a neutral summary is inconsistent with our role as an advocate for customers. The expectation, and the common practice, is that we will avoid any advocacy with regard to our own position, and avoid any apparent criticism of positions with which we differ.

This places us in a difficult position. Public hearings of this type are virtually the only occasion when Public Counsel is seen by customers in a hearing setting. If we are only seen as presenters of a disengaged overview, the average customer will not identify us as the "consumer advocate" or understand our role. Instead the nature of the presentation (including the seating arrangement) have the tendency to lead attendees to believe we are members of the Commission staff in some technical capacity.

There may even be additional benefits from a new procedure where parties are present and state their positions briefly. The public may find this type of presentation more interesting than a long recitation by one person of all the competing interests. Members of the public can focus their comments by stating agreement or disagreement with positions stated by parties, and can speak with counsel or staff for those parties afterwards.

2. Modification: Calling of Witnesses

Under current procedure, the attorney for Public Counsel calls witnesses forward to testify based on the sign up lists. The theory behind this is that we are the lawyer for the public. Ordinarily, however, we have had no prior contact or witness preparation, and simply read the names of those in attendance. In many cases, seemingly on the increase in recent years, persons attend and testify at the request of the utility company (e.g. shareholders, elected officials) or other parties (WashPIRG, environmental groups) in support of other positions. We nevertheless treat these as if they were Public Counsel's witnesses. Again, this creates an awkward situation. While we strongly support the right of any member of the public to attend and testify, for or against the company, it makes little sense for Public Counsel to be the one "calling" every witness regardless of their position or reason for attendance. Again, this "neutral" administrative function blurs our role with that of the Commission and presiding officer conducting the hearing.

We recommend adoption of the Oregon practice in which the ALJ calls the witnesses, reading from the sign up sheet, and asks the brief, routine direct examination to identify the witness. In the recent PSE interim rate case, PSE appeared to share some of these concerns, at least with

respect to written public testimony (letters) where many letters were written by PSE shareholders and presented by Public Counsel.

To sum up, we have developed increasing discomfort with these aspects of the public hearing process. We believe these two modifications would address those concerns, without changing the overall nature of the hearings, and could add new benefits.

We would be happy to discuss these with the Commission in a workshop or other setting. While the current procedures are not primarily a matter of rule, but of practice, this procedural rule docket provides a convenient opportunity to raise and discuss the issues.

Sincerely,

Simon J. fitch
Assistant Attorney General
Public Counsel Section
206-389-2055

cc: Hon. Robert Wallis (email)