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Steven V. King
Acting Executive Director and Secretary
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Re: Docket No. A-130355, Rulemaking to Consider Possible Corrections and Changes in Rules in WAC 480-07 – Discussion of Draft Rules Dated November 14, 2013

Secretary King:

On behalf of our solid waste collection clients, we offer the following comments on the Rulemaking to Consider Possible Corrections and Changes in Rules in WAC 480-07 – Discussion of Draft Rules Dated November 14, 2013 (the “November Draft”). The provisions within the scope of the November Draft are limited to the mechanics of communicating with the Commission. We think the Commission is wise to issue draft revisions to the procedural rules just one topic at a time, and thank you for constraining the breadth of the proposed revisions to this preliminary, ministerial, but very important topic. Our comments are few.

Summit Law Group regularly submits documents to the Commission and also facilitates submittals made by our clients directly. We have, therefore, conferred with our staff about these rules, since they are usually in control of the actual mechanics of getting documents properly transmitted. Our staff found the proposed language to WAC 480-07-140 (1)(a) (Electronic Filing), (1)(b) (Electronic Filing, Adjudications) and (1)(d) (Use of Email) to be somewhat confusing. The difference between the “records center web portal” and the “records center email” is not obvious, and the phrase “e-mail addressed to the records center” could be either or both. The same is true with WAC 480-07-143(3)(a) (Submitting Documents in Rule-Making Procedures).

The Commission seems to be suggesting that submitting records through the web portal is not email. In WAC 1480-07-145(2)(3) it says “all email” goes to records@utc.wa.gov, not to the web portal. This difference is confusing to us. To us, both of them are e-filings that are accomplished by email.

The Commission seems to be expressing a strong preference for filings through the web portal, indeed the rule in some provisions seems to make that method of filing mandatory rather than permissive. The language in (1)(a) states that documents filed electronically may only be submitted by using the commission's "records center web portal." Subpart (1)(d) states that only if a person is unable to use the "records center web portal," then "email addressed to the records center" is acceptable. But then WAC 480-07-145(2)(a) expresses the web portal as a preference that the Commission "encourages" but does not require.

Using the web portal and not the records center email address is consistent with informal discussions at workshops about this matter, where we were told to use the web portal because it puts the document directly into the Commission's website. However, we have also been informally told that filings in adjudicative matters should be sent through to records@utc.wa.gov in order for the record to reflect whether other parties were served or not, a detail that is not included when the documents are sent in via web portal submittal. Tariffs are clearly to be filed through the web portal, but where simultaneous delivery to all parties and the presiding officer is required, then using the records center email address would seem more efficient.

Basically, we are willing to accommodate the Commission's preference, regardless. We do suggest, however, that the rule could be clearer in distinguishing between the two.

In WAC 480-07-140(1)(b) (Adjudications), the Commission is now proposing along with the electronic filing, the original and one paper copy are still required. This is still "old school" and would not bring the Commission in line with the federal courts (and some superior courts) as some suggest. Nonetheless, it is a step forward.

Certainly, it is a vast improvement to allow documents to be "filed" electronically and to eliminate the need for multiple copies. If we are interpreting WAC 480-07-145(2) correctly, we believe the rule is stating that a filing can be made electronically on the day it is due, but whether it has been timely filed will not be determined until the next day. Many have been urging the Commission to allow for electronic filing, and this approach seems to finesse the reality of permitting e-filing on the due date, so long as the hard copy follows.

In WAC 480-07-141, the Commission proposes revisions to address the process employed for filings that are not in compliance with the rules. Acknowledging the Commission's right to decide whether the deficient filing will be accepted or assigned a docket number, we nonetheless suggest that some level of materiality be required for a filing that is being made to meet a deadline. Tariff filings that must be made forty-five days prior to the effective date should only be rejected if the deficiency is not material and is capable of being corrected.

We have reported instances where tariff filings were rejected because a cell in the spreadsheet was locked. As we have explained, when data is downloaded from the general ledger that is maintained at the parent corporate level, the local company itself

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is only permitted access to locked cells from the source document. There is simply no way to avoid this. It should not be considered grounds for rejecting a tariff filing that otherwise comports with regulatory requirements.

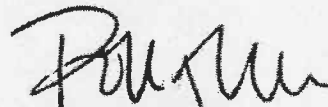
In discussing service of documents from the Commission, WAC 480-07-150 requires parties to identify contact information. Certainly, once an adjudicative proceeding has commenced, this can and should be done. However, before adjudication has started, there is no vehicle for identifying the appropriate contact information because the party is not aware of the need for being contacted. When the Commission's service itself *initiates* an adjudicative process, we suggest that service through the respondent's registered agent should be utilized. With third-party complaints this is particularly vexing, and we have had experiences where third-party adjudication has commenced without the respondent being aware because they rely on their registered agent to let them know when they are being sued. Although we support the use of e-filing, this risk is even more problematic, since under WAC 480-07-150(8), service of a third-party complaint might be completed electronically.

Finally, we wish to express our appreciation for WAC 480-07-165. Although Title 81 companies may, at some point in time, be afforded statutory protections allowed to utilities under Title 80, until that time this rule provides some welcome relief. Arguably, some of the exemptions provided under the Public Records Act, Ch. 42.56 RCW, might apply to some of the materials that are being submitted – or not; but at least this rule allows companies to state that exemption and submit confidential and redacted information without having the filing rejected outright.

We look forward to continued communications about administrative procedures, and will be attending the workshop in January to talk further about the Commission's laudable efforts to update its regulations.

Sincerely,

SUMMIT LAW GROUP PLLC



Polly L. McNeill