

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Rulemaking (Procedural Rules): Chapter 480-04 WAC—Public Access to Information and Records; Chapter 480-09 WAC Procedure)
) DOCKET NO. A-010648
)
) SUPPLEMENTAL COMMENTS OF THE
) INDUSTRIAL CUSTOMERS OF
) NORTHWEST UTILITIES
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The Industrial Customers of Northwest Utilities (“ICNU”) submits the following Supplemental Comments to the Washington Utilities and Transportation Commission (“WUTC” or “Commission”) in the above-referenced Docket. ICNU supports the Commission’s effort to revise the procedural rules to reflect current practice and improve Commission proceedings, but respectfully recommends that the Commission adopt the substantive modifications noted below to promote greater access to information and increase the quality of public participation in Commission proceedings. ICNU has attached its proposed revisions to the procedural rules as Exhibit 1 to these Supplemental Comments.

1. Background

On May 31, 2001, the Commission initiated a rulemaking to consider revisions to its rules regarding procedures and public access to information. The Commission has proposed a complete reorganization and revision of its existing rules of procedure, and intends on replacing WAC § 480-09 with proposed WAC § 480-07. The Commission is specifically seeking comments regarding: 1) the organization of the proposed rules; 2) language clarity; and 3)

potential substantive changes. On May 31, 2003, the Commission published new draft procedural rules. Interested parties, including ICNU, submitted comments on April 30, 2003, and the Commission Staff (“Staff”) provided written responses to the comments at the June 9, 2003 public workshop. On June 30, 2003, the Commission published revised procedural rules and allowed parties to submit supplemental comments until July 11, 2003. The Commission will consider adopting new procedural rules at the August 13, 2003 open meeting.

2. ICNU’s Previous Comments

ICNU previously submitted comments regarding the new procedural rules focused 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 specifically reincorporates those comments in these supplemental comments and recommends that they be adopted in the final procedural rules. ICNU continues to believe that the procedural rules should limit the abilities of utilities to withhold more information from public disclosure, and instead should promote greater access to information and eliminate unnecessary confusion.

Many of ICNU’s comments were supported or were unopposed by other parties and/or received favorable Staff responses, but have not been incorporated into the revised procedural rules. For example, ICNU suggested that all parties to a proceeding be provided notice that an order will be amended. ICNU Comments at 5. The Staff response stated that ICNU’s “proposal has merit,” but the revised procedural rules do not include the change. Staff Response to Draft Procedural Rule WAC § 480-07-875. ICNU also pointed out that a 30-day

prior requirement for filing dispositive motions is impractical and recommended that dispositive motions be filed by the prehearing conference for marking exhibits. ICNU Comments at 3. The Staff response suggested other reasonable alternative time frames, but the revised procedural rules retain the impractical 30-day time frame. In addition, ICNU's proposal to modify the types of proceedings in which discovery should be allowed "seems reasonable" to Staff, but has not been included in the new procedural rules. Staff Response to Draft Procedural Rule WAC § 480-07-400(2). Similarly, ICNU recommended that clarifying language be added for responses to Petitions to Intervene. The Staff recognized that "ICNU's suggestion, to specify the time for this response, is appropriate;" however, ICNU's proposed language has yet to be included in the new procedural rules. Staff Response to Draft Procedural Rule WAC § 480-07-370(c). ICNU respectfully requests that all of the proposed changes in its earlier comments be adopted in the final procedural rules.

3. Revised Procedural Rules

ICNU is generally supportive of many of the changes included in the revised procedural rules published on June 30, 2003, but provides the following comments. First, ICNU is opposed to the removal of the language that would require a party to provide five days notice if the party plans on objecting to a data request instead of providing a full response. Including this language would hasten the discovery process because parties requesting data would not need to wait two weeks before finding out that they will not receive the requested information.

The revised procedural rules include a new subsection that details the rights of opponents of a proposed settlement. Proposed WAC § 480-07-740(2)(c). ICNU supports

formalizing the rights of parties opposed to settlements because it will ensure that the Commission and non-settling parties will have the opportunity to fully review the proposed settlement. However, the revised procedural rules fail to provide settlement opponents with the right to conduct discovery regarding the proposed settlement. Id. The final procedural rules should be revised to ensure that a party's ability to investigate proposed rate changes, potentially precedential actions, or illegal utility practices is not limited merely because other parties have entered into a settlement.

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

DATED this 11th day of July, 2003.

Respectfully submitted,

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