

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

Rulemaking to Consider Possible Corrections
and Changes in Rules in WAC 480-07,
Relating to Procedural Rules.

DOCKET A-130355

THIRD COMMENTS OF PUBLIC COUNSEL

October 23, 2014

I. INTRODUCTION AND GENERAL COMMENTS

1. Pursuant to the Commission's Notice of Opportunity to File Written Comments, dated September 22, 2014, Public Counsel submits the following comments regarding the draft procedural rules found in WAC 480-07-010 through -180 (Part I). Public Counsel supports the Commission's efforts to establish clear and efficient rules and appreciates the efforts made in this docket.
2. Once the final rules are adopted, it may be helpful if the Commission provides an overview and training for those who interact with the Commission to highlight the changes and answer questions that our staff may have about the mechanics of communicating with the Commission. Our comments are informed by our staff's review of the proposed rules, and they express interest in participating in such training.
3. The King County Superior Court transitioned to an all-electronic filing system a few years ago. The Court conducted training to walk practitioners through the new processes and requirements. This provided an efficient venue for people to ask questions and for the Court to answer them. The Commission and the parties who practice before it could similarly benefit if

the Commission held a session to highlight changes and discuss expectations that result from the current rulemaking. Indeed, the Commission has provided similar training in the past that has been well-received.

II. COMMENTS REGARDING SPECIFIC PROVISIONS

4. The comments in this section follow the proposed rules as they appear in the draft.

A. WAC 480-07-110 (Exemptions and modifications)

5. Public Counsel appreciates the provision for one paper copy to be received on the next business day after the electronic petition is sent. As noted in our prior comments, we support efforts to reduce the amount of paper each party is required to produce. We currently operate with a paper-based system for state retention and archival purposes and for evidentiary hearing purposes. Until this changes, making the leap to fully electronic cases would be difficult at best for our unit, and Public Counsel appreciates that the proposed rule recognizes the need to accommodate this situation.

6. WAC 480-07-110(3) is ambiguous when it states “those statutes or rules govern *any exemption request*” (emphasis added) because it could mean either: (1) that those statutes or rules govern requests made by the particular persons or in the particular proceedings; or (2) that those statutes and rules govern *all* requests for exemption or modification. This ambiguity should be remedied before the final rule is adopted. One option would be to use the following language (edits shown in underline and strikethrough):

Other statutes and rules. If this rule conflicts with statutes in the Revised Code of Washington or rules in other chapters of Title 480 of the Washington Administrative Code that apply to particular persons or proceedings and establish a process for seeking exemption or modification from rules applicable to particular persons or proceedings, those statutes or rules govern requests made by those persons or in those proceedings.

7. Public Counsel continues to believe that the rule should be amended to require the petitioner to include a list of the exemptions or modifications it already enjoys. When a regulated company requests an exemption from or modification of a rule, the answer is not automatically yes or automatically no. Whether the petition is granted depends on the circumstances presented. One relevant circumstance is whether the petitioner has been granted exemptions or modifications previously, and, if so, what the scope and extent of those exemptions or modifications are. In some instances, even though other exemptions or modifications exist for the petitioner, it may be in the public interest to grant the petition. In other circumstances, granting too many exemptions or modifications would dilute regulation, which may not be in the public interest. As noted in Public Counsel's prior comments, it would not be overly burdensome for petitioners to include this information in their petitions.

B. WAC 480-07-120 (Office hours)

8. The draft rule defines "business day" as "any day when the commission's offices are open to the public." The draft rule further provides that the Commission's offices are open to the public Monday through Friday, "except on legal holidays and legislatively recognized days, as defined in RCW 1.16.050." Legislatively recognized days are important days that the Legislature declared to be recognized, but "may not be considered legal holidays for any purpose."¹ Thus, state agencies are open to the public on the legislatively recognized days. As a result, the reference to "legislatively recognized days" should be deleted, and WAC 480-07-120 should read:

The commission's offices are open to the public between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except on legal holidays as defined in

¹ RCW 1.16.050(7).

RCW 1.16.050 or when closed due to inclement weather, emergencies, or other similar circumstances.

C. WAC 480-07-125 (Commission contact information)

9. It appears that a comma is deleted that should remain in WAC 480-07-125. It is likely that this would be caught in the final editing process, but Public Counsel raises it in these comments to assist with the close editing. The sentence in question appears immediately before the table listing the Commission's contact information. The comma that should remain, but appears to be deleted, follows the words "or by requesting the information in person at the commission offices." The comma is highlighted in yellow below:

Persons may obtain current and additional information for the commission and its personnel by accessing the commission's Internet web site or by requesting the information in person at the commission offices, by a telephone call to the commission's main public number, or through an email to the commission's records center.

D. WAC 480-07-140 (Communicating with the Commission)

10. The naming convention proposed in WAC 480-07-140(6)(b) should provide the Commission and parties with a clear description of documents and strikes a reasonable balance in what information to include in the document name. Document names can become lengthy when the pertinent information is included, but Public Counsel appreciates the flexibility provided in the proposed rule to appropriately abbreviate without compromising clarity.
11. The proposed rule provides a detailed description regarding how multiple emails should be handled in WAC 480-07-140(6)(c). Similar detail regarding multiple portal submissions may be beneficial to provide guidance regarding the Commission's expectations and preferences. The online form associated with the portal has two sections where information about the filing can be provided – "filing description" and "instructions, clarifications, or comments for this

filing.” Parties could use the guidance regarding email submissions to inform how they communicate regarding portal submissions, but the Commission could take the opportunity to provide specific portal guidance in this rulemaking.

12. With respect to making multiple portal submissions, feedback from Public Counsel staff is that it can be cumbersome to make multiple portal submissions. As the Commission increases its use of the portal, Public Counsel would encourage the Commission to expand its capacity, for example, allowing for more than six documents to be attached and increasing the size capacity beyond 40 megabytes. As noted in prior comments, the Commission’s desire for parties to use the portal to file documents electronically with its Records Center is a reasonable one, and Public Counsel is shifting its practice to using the portal in most instances.

E. WAC 480-07-141 (Commission receipt of document is not filing or acceptance)

13. Under the proposed rule, the Commission will review a submission to determine whether it complies with the applicable filing requirements and whether it is accepted for filing. The proposed rule establishes a five business day window for this review to occur. It is unclear whether, in matters that have statutory deadlines, the clock begins to run when the filing is received or when either: (1) the Commission expressly accepts the filing; or (2) the five business day period expires. The proposed rule as drafted may be fine, but clarification would be desirable in this rulemaking. Once new rules are adopted, the Commission should communicate the timeline in each applicable case, perhaps in a prehearing conference order.

F. WAC 480-07-145 (Filing documents in adjudicative proceedings)

14. The current draft of WAC 480-07-145(4) calls for six copies of any document filed with the Commission, unless the Commission specifies a different number of copies. As noted in our

Second Comments, Public Counsel strongly supported the proposal that parties be required to provide one copy in addition to the original.² We continue to prefer one copy over six, but recognize that six is an incremental improvement from the current rule providing for 12 copies. Public Counsel applauds the Commission's efforts in recent cases to reduce the number of copies parties must produce when filing documents with the Commission (e.g., Docket UE-130043 – PacifiCorp general rate case, reducing the number of copies from 19 to 13 copies, and Docket UT-130477 – CenturyLink AFOR, four copies). We encourage the Commission to continue its efforts to reduce the amount of copies that are required to be filed with the Commission in adjudicative proceedings.

G. WAC 480-07-150 (Service)

15. Public Counsel views positively the language that provides that “a party may request that other parties provide both an electronic and paper copy of any document that must be served on the requesting party.” This allows a party to consent to electronic service, but also obtain a single paper copy if needed. From Public Counsel's perspective, this is ideal since, as mentioned above, we are still required to maintain a paper system. We appreciate the more gradual option to shifting towards an all-electronic system.

H. WAC 480-07-160 (Confidential information)

16. The proposed changes to WAC 480-07-160 will improve the readability of confidential documents. Additionally, expectations regarding handling of confidential documents are clear. For these reasons, Public Counsel views the proposed changes generally in a positive manner.

² Second Comments of Public Counsel, dated December 20, 2013, at ¶ 14. The original proposal of one copy appeared in the draft rules that accompanied the Commission's November 14, 2013, Notice of Opportunity to Comment. Also in ¶ 14 of Public Counsel's Second Comment, we noted concern regarding the language “unless the commission specified a different number of copies.” This concern is still relevant.

17. There seems to be a conflict between draft sections WAC 480-07-160(b) (confidential and redacted versions) and WAC 480-07-160(d) (submission components and number of copies). WAC 480-07-160(b)(ii) states that two paper copies of the redacted version is required. WAC 480-07-160(d)(i)(E) and (ii)(D) and (F) all refer to one paper copy of the redacted version. This inconsistency should be resolved before final rules are adopted.

I. WAC 480-07-175 (Inspection and production of documents in commission investigations)

18. The proposed rule would facilitate and augment the Commission's ability to audit companies and conduct investigations into company practices. Public Counsel supports the draft rule presented in WAC 480-07-175.

III. CONCLUSION

19. Public Counsel appreciates the opportunity to submit these comments and the comments previously filed in this rulemaking docket. Clear rules that have reasonable requirements will result in efficient proceedings and matters before the Commission, and we support the efforts in this docket to clarify and update the Commission's procedural rules. If there are any questions about the comments filed herein, please contact Lisa Gafken.

20. Dated this 23th day of October, 2014.

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