

**BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

A-130355

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| 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 – 180 |
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| |) | |

I. INTRODUCTION

1 On September 22, 2014, The Washington Utilities and Transportation Commission (the “Commission” or “WUTC”) served notice that it would receive 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 and submits these Comments regarding certain of Staff’s proposed revisions.

II. COMMENTS

2 As a general matter, ICNU supports the efforts of the Commission and Commission Staff to streamline the rules that govern communication with the Commission and the procedural conduct of matters before the Commission. The proposed Draft Rules, dated September 22, 2014, include a number of positive changes. For example, the new language in WAC § 480-07-110 regarding waivers of the Commission’s rules represents a significant improvement over the current rule. In addition, ICNU notes that this draft is responsive to the

concerns raised by parties in previous workshops that the “public interest” standard should remain in the rule, as an issue separate from the factors that the Commission may consider in evaluating a waiver against this standard.

3 While ICNU may have further comments on the Draft Rules, and reserves the right to respond to other parties’ comments, these Comments suggest improvements to a small set of the rules proposed on September 22, 2014.

480-07-145(2)

4 ICNU continues to believe that it would be appropriate for the Commission to select a time deadline for electronic filing that is likely to be consistent with the times that will be set in prehearing orders. The rule proposes a 5:00 PM filing deadline on the due date for electronic filing. However, for some time, we have noted that most prehearing orders establish a 2:00 PM deadline in adjudicative proceedings. While ICNU prefers 5:00 PM filing deadlines, it is preferable that the rule reflect the deadline that is actually likely to be used in the majority of cases.

480-07-145(4)

5 The proposed rule’s requirement that the Commission receive an original plus six paper copies of every filing will reduce the administrative burden of the parties and is an improvement over the current rule. While some parties have advocated for the elimination of all paper copies, ICNU understands that this is not possible for filings with the Commission. While the fewer additional copies necessary is preferable, ICNU believes the proposed change to be reasonable.

480-07-150(5)(a)

6 During the course of this rulemaking, ICNU and other parties have experimented, at the Commission’s request, with waiving paper service. In the recent Avista general rate case (UE-140188), ICNU initially consented to receive only electronic copies of documents relating to the adjudication, but found that this was not practicable. At ICNU’s request, Avista resumed sending ICNU one paper copy of each document. This arrangement of electronic service and one paper copy struck an optimal balance by enabling ICNU to effectively track filings and correspondence, while reducing the amount of paper received by ICNU, its experts, and its attorneys. ICNU recommends that the rule establish default service requirements that include electronic service in addition to one paper copy, but permit parties that do not desire a paper copy to waive such service.

480-07-150(5)(b)

7 While the framework of the rules indicates that parties who receive paper copies will also receive electronic courtesy copies of files served by the Commission, the purpose of the language of subsection (b) is unclear. ICNU would recommend that the Commission simply state that it will use electronic service, and, unless waived, will serve one paper copy, so as to reduce ambiguity and promote certainty surrounding notice issues. If the Commission foresees circumstances in which it will need to choose not to use electronic service, a reference to the rules regarding waiver in 480-07-110 could be appropriate.

480-07-160(3)

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The designation of Highly Confidential information has led to numerous disputes between parties to adjudicative proceedings. As a result, staff's language providing a definition of the Highly Confidential designation may be appropriate. However, such a definition should be consistent with the information on Highly Confidential designations that is contained within WAC § 480-07-423. Further, the Commission has, in some cases, ruled that parties failed to demonstrate that certain Highly Confidential designations were warranted or that the Commission's standard protective order and standard Confidential designation provided insufficient protection. E.g., Docket No. UT-023003, 19th Suppl. Order (December 18, 2003). The obligation for a party to bear the burden of demonstrating the necessity of a Highly Confidential designation should be included in the rule. As a result, ICNU proposes the following modification to Staff's proposed WAC § 480-07-160(3):

(3) Highly confidential information. The commission may authorize protection of information as highly confidential only pursuant to a protective order: amended from the standard form, based upon a sworn statement that sets forth the specific factual and/or legal basis for highly confidential protection and an explanation of why the standard form protective order is inadequate. The sworn statement must identify specific parties, persons, or categories of persons, if any, to whom a party wishes to specially restrict access, and state the reasons for such proposed restrictions. The party making a Highly confidential designation bears the burden of proof that the commission's protective order is insufficient to protect the information. Highly confidential information is confidential information ~~to~~ which, without protections enhanced beyond those afforded confidential information, imposes a highly significant risk of competitive harm to the disclosing party, if disseminated. Even more restricted access is necessary to ensure the information is not disclosed to the detriment of the provider. Highly confidential information remains subject to the requirements in RCW 80.04.095 or RCW 81.77.210 and WAC 480-07-423, and the provisions of this section apply to highly confidential information as well as confidential information unless this

rule or the protective order authorizing highly confidential treatment of information states otherwise.

III. CONCLUSION

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ICNU appreciates the opportunity to submit comments regarding the proposed Procedural Rules for Part 1 of WAC § 480-07, and looks forward to further participation in workshops or comment periods regarding this rule.

Dated this 23rd day of October, 2014.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Joshua D. Weber

Joshua D. Weber

333 S.W. Taylor, Suite 400

Portland, Oregon 97204

(503) 241-7242 phone

(503) 241-8160 facsimile

jdw@dvclaw.com

Of Attorney for Industrial Customers
of Northwest Utilities