

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of

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

Docket No. A-072162

INITIAL COMMENTS OF PUBLIC COUNSEL (CR-101)

January 8, 2008

I. INTRODUCTION

The Public Counsel Section of the Washington State Attorney General's Office (Public Counsel) respectfully submits these comments in response to the Notice of Opportunity to File Written Comments (Notice) issued by the Commission on December 7, 2007. After participating in the upcoming workshops and reviewing proposals from the Commission or other parties, we may submit additional comments.

As a preliminary matter, Public Counsel respectfully suggests that the Commission consider using the February upcoming "Bench Bar" conference as a forum to discuss amendments to procedural rules not mentioned in its December 7th Notice but within the scope and spirit of this rulemaking. The Commission could then incorporate such amendments into this rulemaking.

II. COMMENTS

A. WAC 480-07-110 on exemptions from Commission rules.

Public Counsel recommends that the Commission adopt a heightened standard for exemptions from, and modification of, Commission rules. Limiting the situations in which an exemption can be granted would promote consistent and uniform application of the rules.

The current standard appears in WAC 480-07-110(c). The Commission should consider adding the following language:

The commission may consider whether application of the rule would impose undue hardship on the requesting person, of a degree or a kind different from hardships imposed on other similarly situation person, and whether the effect of applying the rule would be contrary to the underlying purpose of the rule. **The commission will consider whether the request for an exemption or modification: (1) undermines the original purpose or intent of the rule; (2) creates hardship for those customers who are beneficiaries of the rule; (3) restates arguments or objections that the requesting party made during the rulemaking adopting the challenged rule; or (4) results in undue discriminatory treatment of similarly situated customers.**

Additionally, we ask that the rules require a party applying for an exemption or modification to serve a copy of its request on Public Counsel. Currently, we do not routinely receive service of such filings. Requiring service would alert Public Counsel to requests for exemptions that may impact customers. Accordingly, WAC 480-07-110(a) should be amended to read:

To request a rule exemption or modification, a person must file with the commission a written petition identifying the rule **At the time of the filing, the person requesting the exemption or modification must serve a copy of the petition on Public Counsel.**

More generally, the Commission may wish to clarify other persons or parties to be served. For example, WAC 480-07-110(c) could require service on all parties who participated in the most recent rulemaking, or any prior exemption proceeding, regarding the rule at issue.

B. WAC 480-07-140 on communicating with the Commission and electronic filing.

The rules currently allow parties to submit documents in adjudications electronically,¹ but require parties to obtain permission from the Commission to submit electronic documents on the filing deadline and file the paper copy a day later.² Public Counsel recommends that the Commission consider allowing electronic filing with next-day filing of paper copies in *all* proceedings, including adjudications.³ In other words, the Commission should eliminate the requirement of special permission to file paper copies one day after the filing deadline. This would promote administrative efficiency—the Commission would not have to consider this issue at every adjudicative pre-hearing conference, or on a piecemeal basis for individual document filings. It would also streamline and standardize filing procedures and eliminate confusion over electronic versus paper filing deadlines.

¹ WAC 480-07-140(1) reads:

(a) You may *file* documents electronically using the commission's records center web portal (see WAC 480-07-125) or e-mail if you are submitting documents that are not part of an adjudicative proceeding. Examples include registration applications, tariffs, contracts, price lists, rule-making comments, and comments on open meeting items. Electronic filing means the commission accepts the electronic version of the document as the official filing and does not require a paper copy of the documents. (b) You may *submit* documents electronically using the commission's records center web portal (see WAC 480-07-125) or e-mail you are submitting documents in an adjudicative proceeding. Electronic submission means the commission allows submission of electronic versions of documents, but requires a paper copy of the document as the official filing.

² WAC 480-07-145.

³ This would require changes to rules not listed in the Commission's Notice, namely WAC 480-07-145.

C. WAC 480-07-160 on confidentiality and sanctions for improper designations.

The Commission’s ability to effectively regulate investor-owned utilities depends, in part, on its ability under WAC 480-07-160 to allow confidential treatment of commercial information. This ability must be balanced against Washington’s stated public policy that government be conducted in public,⁴ adjudications held openly,⁵ and records of public agencies made publically accessible.⁶ The Commission has recognized this balance, previously stating that the “designation of documents as confidential is not encouraged.”⁷

The current rules do not allow sanctions for improper or bad faith confidential designations. The Commission should consider including language allowing imposition sanctions in such circumstances. WAC 480-07-160(4) should be amended to read:

The commission may express its ruling orally on the record in an adjudicative proceeding, or in a written order. **If the commission determines that a provider has made an improper or bad faith designation of material as confidential, the commission may impose sanctions, including, but not limited to monetary penalties.**

D. WAC 480-07-395 on format requirements, specifically page limits.

Given some recent dispute on the issue, the Commission may wish to consider the issue of how much flexibility to allow parties in using formatting changes to meet page limits for briefs.

⁴ RCW 43.30.

⁵ Const. art. I, § 5.

⁶ RCW 42.56.040 *et seq.*

⁷ *In re application of U.S. West, Inc. and Quest Communications International, Inc.*, Docket No. UT-991358, Eighth Supplemental Order Denying Petitions for Leave to Withdraw; Denying Confidential Status to Bench Request Response and Providing Notice, ¶ 75.

E. WAC 480-07-510 on electronically filed work papers.

In the past, Public Counsel has had difficulty accessing information in work paper spreadsheets because the cells were password protected. This problem could be avoided if language was added to WAC 480-07-510 so that it is consistent with WAC 480-07-140.

WAC 480-07-510 requires parties to file electronic files supporting witnesses' work papers.⁸ The general rule on electronic filing, WAC 480-07-410, specifies that electronically filed spreadsheets must not contain cells with limited access or hidden data.⁹ However, WAC 480-07-150 does not clarify that this specification applies to electronic files submitted to support work papers.

Public Counsel recommends that the Commission consider adding language to WAC 480-07-510(3)(b) so that it reads:

Electronic files that support the exhibits and work papers must be submitted using logical file paths, as necessary, by witness, identifying file names, **and may not include, locked, password protected, or hidden cells.**

III. CONCLUSION

Public Counsel respectfully submits these Comments in response to the Notice issued by the Commission on December 7, 2007. This rulemaking is an opportunity to enhance all parties'

⁸ WAC 480-07-510(3)(b) reads (emphasis added):

Parties *must file all electronic files* supporting their witnesses' work papers.

⁹ WAC 480-07-140(6)(b) reads (emphasis added):

Electronic versions of all documents . . . must be filed in .pdf (Adobe Acrobat) format, supplemented by a separate file in .doc (MS Word), .wpd (WordPerfect), .xls (Excel), or .ppt (Power Point) format, so that spreadsheets displaying results of calculations based on formulas include all formulas, *and do not include locked, password protected or hidden cells.*

ability to effectively participate in Commission proceedings. Public Counsel will remain an active participant in this rulemaking and comment further as necessary.