

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Rule-Making
Proceeding Related To

Commission General – Procedure:
Chapter 480-09 WAC

Preproposal Statement of Inquiry
(CR 101)

DOCKET NO. A-010648

**COMMENTS
OF PUBLIC COUNSEL
ATTORNEY GENERAL OF WASHINGTON**

September 10, 2003

INTRODUCTION

Public Counsel files these comments in response to the Commission's August 25, 2003, Notice of Opportunity to Submit Written Comments on Proposed Rules. These comments build upon our prior comments filed in April, May, and July 2003 as well as our oral presentation at the August 13, 2003 CR-102 hearing. This set of comments will highlight the two remaining areas of serious concern to Public Counsel in the most recent draft rules. As a general matter, Public Counsel also reiterates and reaffirms our earlier recommendations, and incorporates the earlier comments herein by reference. The failure to address an issue in this final round of comments does not indicate agreement with a draft rule about which we have earlier expressed concern.

WAC 480-07-420, 423 – Discovery—Protective orders

Public Counsel still believes the starting point should be a presumption that proceedings and documents related to Commission adjudicative proceedings will be open to the public. Public Counsel continues to be concerned about the level of confidentiality asserted by companies subject to Commission jurisdiction and the increased use of highly confidential protective order amendments. It is Public Counsel's position that any highly confidential amendment to a protective order should be a rare occurrence to address a specific, articulated concern and not develop into a matter of course in adjudications before the Commission. Public Counsel believes the current draft language requiring an explicit standard for the party seeking a highly confidential protective order amendment by motion is a significant improvement. We are generally satisfied in proceedings where Commission Staff and Public Counsel receive similar treatment, as has been the case in many recent highly confidential protective order amendments. We request an additional sentence be added to this effect at the end of the introductory paragraph of section 423 as follows:

WAC 480-07-423 Discovery—Protective orders—Submission requirements for documents. Protective orders entered in individual proceedings may allow for parties to designate portions of documents exchanged during discovery or submitted during a proceeding (e.g., by filing, or by offering as an exhibit) as “confidential” or “highly confidential.” In general, parties must strictly limit the amount of information they designate as confidential or highly confidential. Designation of documents as highly confidential is not permitted under the commission's standard form of protective order, and may only occur if the commission so orders. In entering such a protective order the commission shall not restrict the access of the attorney general to such records or portions of records.

Public Counsel believes this change is consistent with the intent of the legislature in adopting RCW 80.04.095 wherein no distinction is drawn between the Commission and the Attorney General.

WAC 480-07-505 – General rate cases—Definition

Public Counsel appreciates the improvement reflected in the proposed subsection 4, which explicitly sets forth that the Commission may require a complete set of general rate case supporting papers when any filing or proposal is made to increase rates for any customer class. Public Counsel believes that this should be required in every case where a party to a proceeding before the Commission would seek to raise rates for any customer class by 3% or more. We therefore propose the following amendment to the current draft language:

WAC 480-07-505 General rate proceedings—Definition.

(4) ~~Commission discretion~~ Other filings. The commission ~~may~~ shall require that any filing or proposal by a regulated company to increase rates for any customer class by 3% or more, or to restructure rates, is subject to the procedures and protections of subpart B of these rules.