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SENT VIA EMAIL

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Steven V. King
Executive Director and Secretary
P.O. Box 47250
1300 S. Evergreen Park Dr. SW
Olympia, WA 98504-7250

Re: Procedural Rulemaking (Docket A-130355)

Dear Secretary King:

Thank you once again for the opportunity for Summit Law Group to provide comments to the revised procedural rules on behalf of the solid waste collection clients regulated by the Washington Utilities and Transportation Commission (“the Commission”).

We have previously submitted extensive comments, both on Part I and Part III of the procedural regulations. The iterative process and the hard work of Commission staff has resulted in an improved set of rules. We appreciate the response to some of our comments that is reflected in this current draft. Not all of our comments have resulted in changes to the rules, obviously. Nonetheless, we are confident that our suggestions have been duly considered, along with the comments from all the stakeholders. We will therefore not repeat statements that have been previously raised. There are few remaining points on which to comment, most of which are in Part I with just a few in Part III, which seems to have been thoroughly vetted and revised. Nonetheless, in the order that they appear, following are some observations:

WAC 480-07-140(1)(a): The text refers to “public comments made in an adjudicative proceeding by persons who are not, and do not seek to be, parties to that proceeding.” This is in addition to allowing public comments in open meetings. Perhaps we are limited in experience or unimaginative in vision, but we fail to understand why the Commission would allow public comments in an adjudicative proceeding from persons who are not parties.

WAC 480-07-140(6)(a): The rule requires documents to be filed in “searchable .pdf (Adobe Acrobat)” format in subsection (i). Our firm has recently moved from Adobe Acrobat to another .pdf provider. It still produces searchable .pdf text, but perhaps this is an example

of the rule being unnecessarily specific, and therefore obsolete before it's even final. Maybe naming the program should be avoided. Also, in subsection (ii) the rule goes on to explain how to submit Excel spreadsheets — are Excel documents also to be submitted in searchable .pdf or are these alternative submittal rules? Apparently the current provision requiring that the .pdf documents be supplemented by a separate file in the “native format” is being dropped — and if that is right, we do not object, but on this point seek clarification. Finally, subsection (iii) refers to a “standard convention” for email communications. We are not certain what that requires, and suggest the rule be more specific or perhaps cross-reference the governing regulation that explains the standard. But, by the way, thank you for clarifying in this rule and elsewhere how to handle a filing that exceeds the capacity of the web portal.

WAC 480-07-141: Again, commendations for articulating a process that allows for compliance review and corrections to noncompliant submittals. The only comment we have is to ask whether the “material” standard for notification about areas of noncompliance is the same as the standard for changing the date of submission (or not) if the deficiencies “are substantive or otherwise impair or hamper” the Commission’s ability to act.

WAC 480-07-160: Obviously, we are keenly interested in how confidential information is handled. The proposed rule is strictly limited to information submitted under RCW 80.04.095 or RCW 81.77.210. Apparently, documents that might be exempt from disclosure under other provisions of the Public Records Act are not governed by this chapter, but would instead still be eligible for protection under chapter 480-04 WAC. This rule only requires notice to the provider if the claim of confidentiality is challenged. In other words, merely requesting confidential documents without challenging their status is not grounds for notice, under the rule as it is written. We question whether a challenge is needed, or simply a request for the confidential materials. Another comment to this rule is to ask how to comply with it in the context of informal data requests. As you know, with the solid waste industry the adjudication of a general rate case is not certain until a matter is suspended and a prehearing conference is noticed. Yet, in reviewing rate cases, auditors frequently ask for answers to informal data requests, typically by email exchange. If answering data requests implicates confidential (or exempt) materials, this rule would suggest that the response be submitted in conformance with the procedures articulated. That is not always practical, but if that is the only way to protect confidentiality of responses to informal data requests that are provided before adjudication commences, then please clarify.

WAC 480-07-175: We are still troubled by the implications of this regulation. The Commission certainly has statutory authority to review the accounts and records of public service companies. However, with the courts steadily increasing the breadth of the Public Records Act, how can the lack of limitation in subsection (1) square with the need for disclosure? If auditing staff inspects accounts, books, paper and documents at the company’s site, would all of those documents be considered public records? Under subsection (2), there

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is no reasonable limit to production, which is troubling both from a public records perspective and a practical, cost-based view. On a less substantive and more procedural point, the Commission will require inspection by “sending” a notice and the respondent is to “send” the documents, but that is not a defined term. Especially if the provisions of WAC 480-07-160 must be met, it would be important to understand the formality of transmission contemplated by this rule.

WAC 480-07-300(2): We have a couple of comments about the changes to this rule, mostly related to the relationships between this rule and WAC 480-07-305. For instance, the “formal complaint proceedings” enumerated in subsection (a) do not include classification complaints under RCW 81.04.510. Perhaps that is because the latter is an “application” under WAC 480-07-305; please clarify. With regard to subsection (b), we agreed that suspended tariff filings are examples of adjudicative proceedings under this rule, and not really an application for adjudication under -305, but what are tariff filings prior to or without suspension?

WAC 480-07-307: The determination of probable cause is limited to staff-initiated adjudication. The Commission should consider whether it should also be required in determining whether to grant an application for adjudication of third-party complaints.

Thank you for considering our comments. We look forward to discussing these with Commission personnel and other stakeholders.

Sincerely,

SUMMIT LAW GROUP PLLC



Polly L. McNeill

cc: Clients