

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

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

DOCKET A-130355

**FIFTH COMMENTS OF PUBLIC COUNSEL**

**June 30, 2016**

**I. INTRODUCTION**

1. Pursuant to the Commission's Notice of Opportunity to File Written Comments, dated June 1, 2016, Public Counsel submits the following comments regarding the draft procedural rules found in WAC 480-07-010 through -180 (Part I) and WAC 480-07-300 through -498 (Part III, Subpart A).
2. Procedural rules are vitally important in that they provide the framework within which the Commission's work and interaction with stakeholders and the public occur. The two parts subject to the Commission's most recent Notice involve rules of general applicability and thus have wide application. The current draft reflects the earlier discussions in this docket, and the amount of work and thought going into the draft is apparent. Public Counsel appreciates the ongoing work on the Commission's procedural rules.

**II. COMMENTS WITH RESPECT TO PART I OF WAC 480-07**

3. The comments in this section address the draft rules contained in Part I of WAC 480-07 and are presented in the order that the rule provisions appear in the draft.

**A. WAC 480-07-110 (Exemption from and modifications to commission rules).**

4. The current draft provides that parties seeking exemptions from or modifications to commission rules provide an electronic copy of the petition to Public Counsel. This electronic copy must be provided the same day that the petition is filed with the Commission.<sup>1</sup> Although in prior comments Public Counsel requested that a paper copy be provided under this rule, an electronic copy of a petition for exemption or modification is acceptable.

**B. WAC 480-07-140 (General requirements for submitting documents to the commission).**

5. Under the draft rule, electronic submission of documents must be done through the Commission's web portal, but if a person is unable to use the web portal, the submission may be made by email.<sup>2</sup> The draft rule also states that the size limitations of submissions via the web portal will be included on the Commission's website. Although Public Counsel uses the web portal to file documents with the Commission, it would be useful to also include the size limitations of submissions to the Commission's email on the website. In the event email is necessary, having information about the size limitations would allow parties to better plan the number of emails required and how to group attachments.

6. Under the current draft, WAC 480-07-140(6) provides that .pdf files created directly from the document in native format should be submitted separately from .pdf files created from scanned documents. One question arises regarding whether particular labeling will be required based on how the .pdf files are created.

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<sup>1</sup> Draft WAC 480-07-110(2).

<sup>2</sup> Draft WAC 408-07-140(5)(a).

7. With respect to ensuring that .pdf documents created from scanning are searchable, Public Counsel is exploring whether its scanning capabilities include creating searchable .pdf documents. The draft language appears to allow for some flexibility if available software does not support searchable scanned documents.

8. With respect to naming conventions, the draft rule requires that the docket number be included in the document name.<sup>3</sup> The rule does not address whether the docket number includes the alphabetical component (e.g., UE, UG, UT, etc.) or only the numerical component. Public Counsel suggests that only the numerical component is necessary and that excluding the alphabetical component will shorten the file name. Public Counsel also notes that illustrations of file names have been deleted from the rule. Although the draft rule describes the components required in a document name, it may be useful to retain examples that parties may refer to as they prepare filings.

**C. WAC 480-07-160 (Confidential information).**

9. The draft rule contains language that seems to shift the burden from the entity claiming confidentiality to the Commission with respect to whether confidential information is correctly marked. The draft language states: “The commission will not accept for filing any documents containing information a provider claims is confidential that fail to comply with these requirements.” The prior draft language placed the burden on the entity claiming confidentiality by providing that the submission may result in the information not being treated as confidential. Public Counsel believes that the burden is properly on the party claiming confidentiality.

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<sup>3</sup> Draft WAC 480-07-140(6)(b).

**D. WAC 480-07-190 (Electronic signatures).**

10. The draft rule regarding electronic signatures appears to capture current practices used by various parties and to provide an opportunity to move towards more full use of more secure electronic signature options. This is an important step in adopting a fully electronic system before the Commission, and Public Counsel is pleased that the draft rule recognizes the flexibility that will allow a smooth transition away from paper documents.

**III. COMMENTS WITH RESPECT TO PART III, SUBPART A OF WAC 480-07**

11. The comments in this section address the draft rules contained in Part III, Subpart A of WAC 480-07 and are presented in the order that the rule provisions appear in the draft.

**A. WAC 480-07-360 (Service and Master Service List).**

12. The current draft of WAC 480-07-360(5) (Contents of master service list) incorporates the idea that individuals designated by parties to receive copies are included on the master service list. Public Counsel views the establishment of one service list as positive instead of having a master service list and a courtesy service list. This will likely improve consistent service upon all who need copies of documents related to a particular case.

13. With respect to electronic versus paper service, the draft rule provides that service is to be done electronically, but that parties may provide paper copies in addition to the electronic copies to parties requesting paper copies.<sup>4</sup> Some parties have long preferred electronic copies of documents. Others continue to have a need for paper copies, although it is likely that this need will diminish. It is unclear what might happen under the proposed rule if the serving party refuses to provide a paper copy as requested. One option would be to use mandatory language,

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<sup>4</sup> Draft WAC 480-07-360(6)(a) (Electronic service required).

such as “must” or “shall,” but limit the number of paper copies a party may request. For example, one paper copy should be sufficient.

14. Additionally, the draft rule provides that the Commission will only serve documents electronically except as otherwise required by law, and that the Commission presumes that parties consent to electronic service by participating in a proceeding unless a party states that it does not agree to electronic service.<sup>5</sup> Public Counsel has agreed to electronic service from the Commission in several dockets, and this has not posed a problem. Public Counsel intends to continue to agree to electronic service from the Commission, so the next comment is meant only to identify a potential unintended consequence. The following language in the draft rule renders any statement that a party does not agree to electronic service meaningless: “The commission will serve only those documents a statute requires to be served in paper form on any party that does not agree to electronic service as required by the applicable statutes.” Even parties agreeing to electronic service will receive in paper the documents required to be served in paper form by statute, but presumably a party who does not agree to electronic service would want all documents served in paper form.

**B. WAC 480-07-370 (Pleadings – General).**

15. The current draft of WAC 480-07-370(1)(d) (Response to a petition) states that a response must be filed within twenty days after the petition is filed “unless...the petition seeks commission action that the commission generally considers taking at an open public meeting (e.g., an accounting petition).” It appears that the draft contemplates that responses to such petition will be made through the open meeting process. This would be offer responding parties

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<sup>5</sup> Draft WAC 480-07-360(6)(b) (Electronic service required).

efficiency since parties often file a response during the twenty-day period, followed by comments submitted for consideration at the Commission's open meeting. The draft rule may benefit from adding clarity regarding when the Commission expects responses to petitions that are generally considered at open meetings.

**C. WAC 480-07-400 (Discovery).**

16. The current draft of WAC 480-07-400(1)(c)(iii) (Data request) states: "If a party relies on a cost study, model, or proprietary formula or methodology, the party must be willing, on request, to rerun or recalculate the study, model, formula, or methodology based on different inputs and assumptions, subject to the standards in subsection (3) of this section."

Public Counsel views this draft language favorably. The ability to ask a party to rerun a study, model, formula, or methodology based on different inputs and assumptions is critical in most cases, and the current draft rule appropriately allows for such requests.

**D. WAC 480-07-460 (Hearing – Exhibits, exhibit list, and cross-examination estimates).**

17. The current draft references an errata deadline identified in a prehearing conference order.<sup>6</sup> Public Counsel agrees that it is more efficient and allows for better handling of exhibits and cross examination if errors are found in advance of the hearing. However, Public Counsel also encourages some flexibility, recognizing that not all errors may be discovered before an errata deadline.

18. The current draft of WAC 480-07-460(3)(a) provides a clear and reasonable process for cross exhibits. The draft rule provides that if two or more parties are active in a proceeding, cross exhibits may be labeled with an underscored blank space. It may eliminate potential

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<sup>6</sup> See Draft WAC 480-07-460(1)(b).

confusion if the rule used mandatory language such as “shall” so that the administrative law judge is assigning exhibit numbers to all cross exhibits in multiparty dockets. Overall, the draft rule adequately provides guidance with respect to cross exhibits.

#### IV. CONCLUSION

19. Public Counsel appreciates the opportunity to submit these comments and the continued efforts to modernize the current rules. We look forward to further dialogue with the Commission and stakeholders in this docket.

20. Dated this 30<sup>th</sup> day of June, 2016.

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