

May 17, 2013

VIA EMAIL AND FIRST CLASS MAIL

Steven V. King, Acting Executive Director and Secretary
Washington Utilities and Transportation Commission
Attention: Records Center
P.O. Box 47250
1300 S. Evergreen Park Dr. SW
Olympia, WA 98504-7250

Re: A-130355 – Rulemaking to Consider Possible Corrections and Changes in Rules in WAC 480-07

Dear Mr. King:

The Commission, by its original Notice of March 22, 2013 and its Notice Extending Time to File Written Comments of April 16, 2013, has taken on an ambitious assignment in proposing to review and revise **all** of current Chapter WAC 480-07. The following letter represents merely an initial effort to underscore some of the more pressing rule revisions or clarifications that the undersigned and client representatives have identified. We look forward to attending additional stakeholder sessions (on alternate dates to the July 2/Fourth of July holiday week, particularly) to address concerns in the rules and to better coordinate focus on particular issues raised by the omnibus rules review. In addition to some specific rule revisions identified immediately below, we will also attempt, near the end of this correspondence, to address some topics raised by the Commission's April 16, 2013 revised notice in the context of general issues or broad overview comments on the agenda items raised in that Notice.

Selected Rule Provision Recommended Changes:

WAC 480-07-140

1. WAC 480-07-140(6)(b) – eliminate .pdf mandate “must be filed in .pdf/Excel.xlsm and Word only format.” We propose that Commission require either a hard copy or .pdf of filings in addition to Word/Excel, but not both.
2. Add underlined portion: 6.(b) “... Spreadsheets displaying results of calculations based on formulas include all formulas that are not otherwise self-explanatory or objectively understood and do not include locked password protected or hidden cells.”

WAC 480-07-143

3. WAC 480-07-143 for mailing/service. We recommend that the hard copy not be required to be received by the next business day, but that it simply be postmarked by then.

WAC 480-07-145(3)(a)

4. A blanket rule for the service of an original and 12 copies in this digital file era is excessive, costly and burdensome for both sender and recipient staffs. An original and one copy with electronic copies earlier provided seems sufficient in almost all circumstances today.

WAC 480-07-145

5. WAC 480-07-145(6)(a)(i) 3:00 electronic v. (b)(a)(ii) paper copy deadline

Why isn't email service v. web portal filing sufficient if electronically served by 5:00 p.m. unless a Prehearing Conference Order directs otherwise?

WAC 480-07-160

6. WAC 480-07-160 (confidential information) comment

We need to consider shielding the accessibility of certain DR (data request) responses and other non-routine documents filed in rate cases prior to adjudication. We should not overbroadly construe the Public Records Act to allow (i.e., income tax returns) in the Public Records Act file in the course of general rate case audits. We realize that this is currently more complicated for Title 81 companies, but some reasonable accommodation for confidentiality should be considered by the Commission at least on a case-by-case basis.

WAC 480-07-500

7. WAC 480-07-500(2) rule dealing with inconsistencies between Subpart A when Subpart B controls should be clarified. Additional clarification is encouraged as well on the subject of Uniform System of Accounts requirements and WAC 480-07 rules that do not include mirror USOA provisions. This conflict has arisen recently in light of challenges by the Staff to companies who do not file cost of some studies with solid waste general rate cases since WAC 480-07-520 does not require same, but Staff has cited to a 1992 USOA subpart requirement allegedly justifying the insistence upon a cost study. Again, reconciliation of which controls (which we believe to be the Commission-specific rules) needs to be confirmed in this circumstance.

WAC 480-07-505(3)

8. Rate filings under chapter 81.77 RCW that are not considered general rate proceedings:

WAC 480-07-505(3)(c) comment: Disposal fee pass-through charges as a whole should be exceptions to the general rate filing rule, not merely drop box disposal fees that do not have affiliated interest issues. The current rule is unduly restrictive and typically always requires an accompanying Petition for Exemption. For example, requiring a revenue reconciliation for a disposal fee-only filing is unduly burdensome to the Companies, and should not be required if the Company has filed a general rate proceeding within the past five years.

WAC 480-07-520 General Rate Proceedings – Solid Waste Collection Companies

9. "General rate increase filings ... The commission may reject a filing that fails to meet these ~~minimum~~ requirements, without prejudice to the company's right to refile its request in conformance with this section."

The general rate case workpaper rules are either the standards or they are not. Qualification of "minimum requirements" to impose additional implicit filing prerequisites contravenes the spirit and intent of the rule.

WAC 480-07-520(4)

10. WAC 480-07-520(4)(a)(i), end of sentence, add: "Restating actual adjustments are designed to normalize test period expenses and are also designed to include extraordinary expense items from an immediate prior period that materially affect test period expenditures."

WAC 480-07-835 Clarification of Final Order by Motion

11. We support application of this provision to initial orders as well as final orders which would allow a party not seeking to change the outcome to ask for clarification of an order for the reasons currently noted in the existing rule to be addressed initially to the administrative law judge issuing the order on a maximum of five business days after the order is served. Shortening the motion period would mitigate the interval in which any final order is entered and allowing for initial order clarification may well eliminate the need for Petitions for Administrative Review of the initial order in any event.

Specific Language Changes Addressing Separately Featured Items

- Add a new section to WAC 480-07-610(2): “Matters suitable for brief adjudication:”
 - (f) Proceedings to consider line item treatment of expenses or finite items affecting revenue requirements that are susceptible to isolation and resolution in an expedited proceeding and which may assist the Company and Commission staff in resolving an overall general rate case filing.
- Proposed Mechanism for producing more certainty in audit interval:
 - Interim Rate Relief Measure Where Rate Audit is Delayed ---
 - Temporary rates subject to refund shall be granted to a company on the expiration of the RCW 81.28.050 45-day period for review, if the Commission staff requires more time to complete its audit and if the Commission finds that interim relief is consistent with the public interest.
- Concept of filing deadlines for consideration of Open Public Meeting Agenda Item
 - Any such deadlines should be reciprocal for both company and staff at least in the context of staff review time and responses to company audit request information.
 - “Reciprocal response deadline, i.e. for data requests and all required deadlines for response must be resolved within four calendar days of the Open Meeting.” If the staff cannot resolve the audit within these intervals, the interim rate relief measure, discussed below, could be considered if the filing is subject to suspension by the Commission.

Below is narrative on some of the further miscellaneous bullet point items in the Commission’s Notice upon which we also want to comment initially.

Commission review of settlement agreements – streamlining rules

We believe there is a considerable need to review the existing settlement rule at WAC 480-07-430 with an eye towards less formality when a rate case is resolved or a certificate application case is negotiated to remove objections/protests following a prehearing conference and before an evidentiary hearing has commenced. In other words, the rule should provide for a more informal submission process allowing expedited Commission action when a settlement has been achieved. Currently we understand once a prehearing conference order is issued it is much more difficult to come back to the Open Meeting

calendar for approval of a negotiated settlement in a rate case or an application case and do not believe adjudications that involve proposed settlements should necessarily have to incur the normal regulatory lag awaiting service of a final order if the staff and company can advocate for its approval at the Open meeting. Obviously, this raises some APA mechanism concerns but there should be a reasonable middle ground to improve processing intervals here that we hope could be accommodated by rule.

Use of qualified settlement judge for major cases

We believe the routine assignment of a settlement judge for any suspended general rate case would be useful and advisable. That could also potentially aid the parties in early resolution of discrete accounting issues without a need for a brief adjudicative proceeding or the protracted administrative hearing option that appears today to be the only resolution vehicle. Such routine ADR options would likely significantly reduce costs and expenses for regulated companies, their ratepayers and the Commission staff alike.

Evaluation of Complaints Against Regulated Companies/Procedures for Penalty Assessments

Aside from private party complaints under RCW 81.04.110, the whole arena today of threshold evaluation of consumer complaints against regulated companies and the process thereafter for assessing penalties is a very esoteric statutory and regulatory area for most Title 81 regulated companies. We understand generally the statutory authorization for the Commission to consider, investigate and ultimately decide to fine public service companies for actions or omissions. But the rules in WAC 480-70, for instance, on consumer complaints and how they are resolved against solid waste collection companies seem disconnected from the more formal probable cause determinations as authorized by WAC 480-07-307 that can result in the issuance of a complaint and show cause penalty investigation proceeding which is docketed and becomes a formal adjudication. Indeed, the informality of initial inquiries from the Business Practices Section on tariff or preliminary service complaints invite rapid and substantive explanations under rule which the staff can subsequently use in building a case against a respondent raising obvious due process concerns. In short, for further example, the solid waste collection consumer complaint rule at WAC 480-70-386 needs to be better integrated against the Commission's statutory complaint framework under RCW 81.04.110 and more closely associated with and reconciled to the range of penalties prescribed by RCW 81.04.380 through 405, whose uncertainties and inter-relationships might be aided by promulgation of rule(s) in WAC 480-07 that provide far better guidance, notice and technical assistance to the regulated industry than the current much more opaque procedural rule and statutory provisions seem to provide.

General Rate Case Filing Requirements/Confidentiality Concerns

We strongly believe it is also timely to contemplate revisions to general rate case filing requirements considering that the statutory suspension periods are lengthy and the audit intervals can place regulated companies in financial limbo awaiting some better idea of current time parameters, i.e. staff review intervals and company response periods on data requests all of which occur in a period where the company is potentially generating insufficient earnings. One of the most frequently occurring issues in the last 18 months, (or certainly after formal advisories to the solid waste collection industry beginning in 2009 about heightened rule adherence), is that rate audits have become more formal, automatically invoking written data requests. But those data requests until and unless a case is suspended and set for adjudication via a prehearing conference are not technically subject to the data requests requirements of WAC 480-07-405. As noted at some recent Open Meetings, this creates even more uncertainty for Title 81 industries who may be asked in informal data requests to provide voluminous and confidential data that is not subject to protection under the Washington Public Records Act, and as we understand recently, cannot even be the source of a protective order in an adjudication.

This necessarily compounds concerns for confidential information production including sensitive items like income tax returns and attorney-client invoices which we do not believe are the subject of appropriate conventional public records request responses. In order to maintain the integrity of the public service company audit process, it is imperative that some consideration be given to the confidentiality of such response documents and that the staff avoid making requests for documents whose production in the public record could cause private or competitive harm to current regulated companies.

There is no better example of such concern in the existing rules than WAC 480-07-520(4)(a)(e), which provides that in a general rate case, a regulated solid waste collection company must provide:

A detailed list of all non-regulated operations, including the rates charged for the services rendered. Copies of all contracts must be provided on request.

There is absolutely no reason why regulated companies also operating in unregulated competitive environments should produce copies of unregulated contracts, or even more seriously, current rates for those competitive services. With the highlighting of the lack of confidential record protection for Title 81 industries, this rule subprovision should be eliminated at the earliest possible time.

As the Commission's Notice also touches upon, interested party access to confidential documents in non-adjudicative cases is merely a natural sidelight/corollary concern if the Public Records Act is to be

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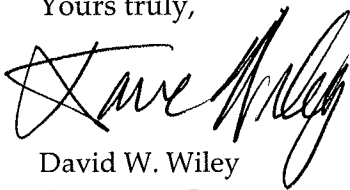
so broadly applied to non-formal data requests. In other words, interested parties should not have access to income tax returns, attorney-client privileged documents and other data compiled by a public service company pertinent to a general rate review but potentially competitively harmful if falling into third-party hands bent on using it to compete against it in the marketplace.

Procedures for Requesting Preliminary Relief in Adjudicative Dockets

As noted in the proposed language revision set forth above, there can and should be mechanisms available for public service companies subject to rate suspension to seek preliminary rate relief in an adjudicative docket. A review of Commission case law over the past decade or so seems to suggest that regulated service companies must be in extremis or otherwise on the verge of bankruptcy or reorganization in order for it to achieve interim rate relief. Instead, regulated companies and the staff should be able to negotiate a reasonable interim measure subject to Commission approval whereby temporary rates would be subject to refund thereby protecting both the ratepayer, and the public service company from material rate attrition. There is no reason of which the undersigned is aware that interim rate relief subject to refund should be rejected out of hand, particularly when an initial showing in a general rate case demonstrates to the staff's satisfaction that a measure of rate relief can be fairly provided during a rate review process interval following the initial 45-day review period. While this may not necessarily require rule acknowledgement, based on current review of Commission case law, some acknowledgement of the ability to seek interim or "preliminary" relief could be memorialized and we believe that is clearly consistent with the public interest.

Again, we appreciate the opportunity to offer some initial comments on the Commission's procedural rules review and look forward to working with you, the Commission staff and other stakeholders to move this proceeding forward to expeditious completion.

Yours truly,



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