

June 30, 2016

VIA EMAIL & US MAIL

Mr. Steven King  
Executive Director and Secretary  
WUTC  
PO Box 47250  
1300 S. Evergreen Park Dr. SW  
Olympia, WA 98504-7250

Re: Docket A-130355; Abbreviated Comments on Rulemaking to Consider Possible Corrections and Changes in WAC 480-07

Dear Mr. King:

This letter follows up previous correspondence on May 13, 2013 and December 20, 2013. As we noted in our December, 2013 correspondence, many of the comments offered in that letter related to provisions that were prospectively impacted in late 2013 by proposed legislation which in fact passed in 2014, affording confidentiality to Title 81.77 RCW companies. Thus, many of our previous comments directed to the initial portions of the procedural rules have been modified and/or mooted by the legislation enacted in 2014, which changes in law alleviated a number of issues raised, particularly in the confidentiality sections of the proposed rule changes.

The following are just some brief comments/issues/concerns on pertinent parts of the procedural rules included in the latest rule portion provisions:

- One issue raised by the enactment of RCW 81.77.210 is whether under proposed **WAC 480-07-160**, a “person” protected pursuant to RCW 81.04 should include companies that are not regulated solid waste collection companies under RCW 81.77. While we understand that “person” is broadly defined under the introductory definitional provision of RCW 81.04.010(6) as: “including an individual, a firm or co-partnership,” we question whether confidentiality protection afforded by the legislation implementing RCW 81.77.210 was intended to protect those who are not subject to economic regulation by the Commission. In other words, we would presume that WAC 480-07-160 should only pertain to public records, documents, data and confidentiality markings thereof of entities subject to regulation under RCW 81.77.210. For instance, marking confidential applicant financial information would seem to preclude a public showing of financial fitness and would contravene the statutory purposes of an analysis of the public convenience and necessity under RCW 81.77.040.
- **WAC 480-07-140(5)(a)(ii); WAC 480-07-365**. While we are very pleased to see the elimination of the existing voluminous paper filing requirements of the Commission and a move to electronic filing for web portal utilization, it would be advantageous for practitioners to take advantage of a

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later filing deadline than 5 p.m. This is not an unusual request in today's electronic filing environment. The federal court system allows practitioners to file up to midnight of the deadline date. While we are not suggesting the Commission maintain longer office hours in order to receive filings, it would seem a more modern approach to allow for some extension past 5 p.m. for filing deadlines and even a 7 p.m. filing deadline would be appreciated by many practitioners. Least the Commission think otherwise, this should not necessarily encourage any procrastination, but actually allow for additional polish, proofreading and flexibility to file on the web portal which does not have to necessarily be attended during business hours and would automatically mark the time for filing so an extended deadline during the day could be accomplished without staffing requirements. In light of the federal court trend, we urge the Commission to consider extending electronic filing deadlines past the traditional paper filing deadline of 5 p.m.

- **Tariff rules v. procedural rules in adjudicative proceedings.** As the Commission considers its omnibus revisions to WAC 480-07 which, with respect to solid waste collection ratemaking will be more specifically addressed in a later phase of this proceeding, it is important to consider the context of tariff filing requirements versus adjudicative proceedings to the extent that general rate cases in the solid waste arena typically are not subject to suspension, prefiled testimony and prehearing conferences and formal hearings. In other words, as the Commission revises its procedural rules, it should weigh the impact and import of differing standards if a tariff filing is not likely headed to a formal adjudication. In this context, where a suspension order is not entered and a prehearing conference notice is not issued, we should be mindful of a need for more flexibility and relaxation of procedural rules that are applicable to formal adjudicative proceedings. I would be happy to provide some more specific examples of variation in this context if that would be useful. At this juncture however, we merely wanted to point out that the formality of adjudicative proceedings may not require complete applicability in general rate tariff filings by solid waste collection companies and various other regulated Title 81 companies, whose general rate proceedings do not typically morph into formal adjudicative proceedings following audit and review by the regulatory requirements staff.
- **Proposed changes to WAC 480-07-175.** In our view, if nonregulated companies can seek the protections of RCW 81.77.210 and the confidentiality provisions of WAC 480-07-160, "persons" should also be included within the ambit of WAC 480-07-175. In other words, if a "person" can obtain protections of the confidentiality provisions of the procedural rules they, like public service companies utilizing those rules, should be subject to inspection and production of documents in Commission investigations. In other words, there has to be some balance and advantage/disadvantage in availing oneself of the confidentiality rules, and if 81.04.010 would apply to allow a person to seek confidentiality, that same concept should analogously apply to investigations of entities including respondent companies and parties subject to show cause

investigations under RCW 81.04.510. Thus WAC 480-07-175, as proposed, should similarly apply to non public-service companies. While we understand there may be a jurisdictional concern, WAC 480-07-160 and WAC 480-07-175 should ideally be in equilibrium.

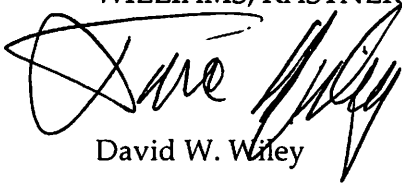
Lastly, because of concerns that have been previously communicated regarding the appearance of fairness doctrine after a recent adjudicative proceeding experience, we would recommend an addition to proposed WAC 480-07-310(1) on ex parte contacts that the below be included, as follows:

Should a petition for administrative review of an initial order be filed under WAC 480-07-825, neither the administrative law judge nor any advisory staff member involved in drafting or advising on the content of that initial order shall participate in or respond to the petition or otherwise be involved in the drafting of the final order with the Commissioners involving any adjudication in which the Commissioners did not sit on the adjudicative proceeding.

We are pleased the Commission is renewing its examination of the procedural rules and proposing moving them into the electronic age more consistently and appreciate the opportunity to once again comment on this version and invite any further thoughts once the staff and Commission have reviewed various comments and proposals.

Yours truly,

WILLIAMS, KASTNER & GIBBS PLLC

A handwritten signature in black ink, appearing to read "David W. Wiley", is written over the printed name. The signature is stylized and somewhat cursive.

David W. Wiley