



Rob McKenna

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September 21, 2005

**VIA ELECTRONIC FILING & FIRST CLASS MAIL**

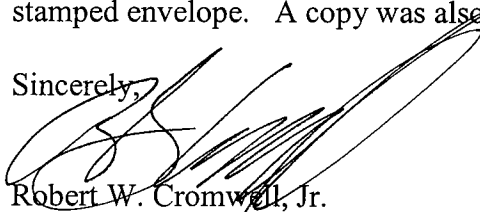
Carole Washburn  
Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Pk. Dr. S.W.  
PO Box 47250  
Olympia, WA 98504-7250

Re: In the Matter of the Petition of ICNU, WeBTEC, CUA, NWEC, the Energy Project,  
A.W.I.S.H., and Public Counsel for Amendment of WAC § 480-07-730 and 480-07-740.

Dear Ms. Washburn:

Enclosed please find the Petition for Amendment of WAC § 480-07-730 and 480-07-740 and Request for Expedited Consideration. For confirmation of receipt, I have enclosed a copy to be date-stamped and a Docket Number assigned to be sent back to us in the enclosed self-addressed, stamped envelope. A copy was also sent via e-mail on September 21, 2005.

Sincerely,



Robert W. Cromwell, Jr.  
Assistant Attorney General  
Public Counsel Section  
(206) 464-6595

RWC:kez

Enclosures

cc: Art Butler  
Chuck Eberdt  
Danielle Dixon  
Michael Karp  
John O'Rourke  
Irion A. Sanger





consideration of other rules and issues, as it did during the recent Bench-Bar conference. The Petitioners believe that a separate docket, dedicated to resolving these issues in a timely manner is in the public interest as well as the best interests of the Commission and all parties that appear before it.

3                   The Petitioners propose amendments to the existing administrative rules regarding settlements in order to improve the settlement process. The proposed addition to WAC § 480-07-730 will ensure that all parties are notified of settlement negotiations, thereby allowing all interested parties to participate in negotiations. The proposed new section of the rule will prevent Commission Staff from holding closed settlement negotiations with regulated companies, in which other parties are excluded from participating, as is permitted under the current rule. This will improve the regulatory process by giving all parties to a proceeding fair notice and equal opportunity to participate in the resolution of all issues in a contested proceeding.

4                   The proposed amendment to WAC § 480-07-740 provides that when a non-unanimous settlement has been reached, the non-settling parties will have the opportunity to fully litigate all disputed issues of law and fact, and the Commission will issue a ruling on all disputed issues. This will ensure that intervenors receive a full hearing on all disputed issues, including issues that have been settled by some parties. This will give non-settling parties the procedural right to fully litigate the issues that led to their participation in the proceeding.

5                   Fundamental fairness requires that non-settling parties have a meaningful opportunity to be heard on both the proposed multiparty settlement, and all disputed material issues of fact and law. Review of all disputed issues will provide the

Commission with a superior record and prevent a subset of parties dictating the scope of the Commission's review. As a practical matter, the Commission's final order will also be far less subject to appeal and related transactional costs.

6                   Consistent with WAC § 82-05-020, the Petitioners provide the following additional information:

7                   The Commission is authorized to adopt the proposed rules under RCW §§ 34.05.330, 80.01.040, 80.04.160, and 80.04.210. The proposed rules would apply equally to public and private entities with the exception of those provisions applicable only to the Commission Staff.

8                   The proposed rules are needed to make the settlement process open and fair, and to provide all parties to a proceeding an equal opportunity to participate in settlement negotiations. The proposed rules serve a similar purpose for which the current rule was adopted, which is to codify the settlement development and consideration processes. The proposed rules, which are attached as Attachment A, are also clearly and simply stated.

9                   The proposed rules do not conflict with or duplicate federal, state or local laws. There is no federal law that applies to the same activity or subject matter.

10                  The proposed rules do not impose any significant costs on the Commission or the parties. There is no alternative that will serve this purpose at less cost.

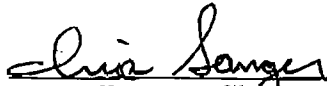
11                  WHEREFORE, the Petitioners respectfully request that the Commission initiate a separate rulemaking proceeding to amend WAC § 480-07-730 and WAC § 480-07-740. The Petitioners also request expedited consideration by the Commission of this

Petition to amend these rules as the problems they would address are on-going and continuing in nature.

Dated in Seattle, WA, this 20<sup>th</sup> day of September, 2005.

Respectfully submitted,

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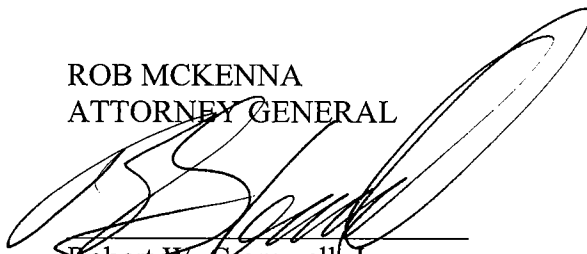
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Dated in Seattle, WA, this 10<sup>th</sup> day of September, 2005.

Respectfully submitted,

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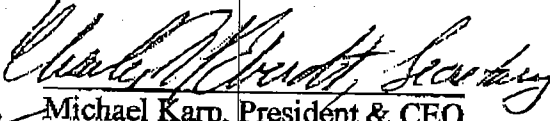
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## Attachment A

### WAC 480-07-730 – NEW SECTION:

#### (5) Notice of Settlement Negotiations Required:

(a) Prior to engaging in settlement negotiations with a regulated company in an adjudicative proceeding, commission Staff must provide notification to other parties. Five calendar days before a settlement negotiation with a regulated company, the commission staff shall notify in writing, and by electronic mail, all parties on the master service list of the time and location of the proposed settlement negotiation. If a prehearing conference has not yet been held in the case, notice shall be sent to all persons who regularly appear before the commission in similar adjudicative proceedings. Staff shall maintain a copy of the notice and a record that it was provided.

(b) Any party given notice under this section may attend settlement negotiations. Additional notice of continuing settlement negotiations involving the same issue need only be provided to parties attending the initial settlement negotiation, or who have requested continuing notice.

(c) For purposes of this section 5, “settlement negotiations” means any discussion or other communication, in person or otherwise, between Commission Staff and a company regulated by the Commission whose purpose is to pursue resolution of one or more issues in an adjudicative proceeding. Settlement negotiations do not include requests for information or clarification in aid of discovery.

### WAC 480-07-740 – AMENDMENT TO SECTION (2)(c):

**(c) *Rights of opponents of a proposed settlement.*** Parties opposed to the commission's adoption of a proposed settlement retain the following rights: The right to cross-examine witnesses supporting the proposal; the right to present evidence opposing the proposal; the right to present argument in opposition to the proposal; the right to conduct discovery, present evidence, have a hearing, cross-examine witnesses, and present arguments on all disputed material issues of fact and law. The commission's final order adopting, rejecting or conditioning a proposed settlement shall be based upon substantial evidence in the record and shall include findings and conclusions on all disputed issues of fact, law, or discretion presented on the record. ~~and the right to present evidence or, in the commission's discretion, an offer of proof, in support of the opposing party's preferred result. The presiding officer may allow discovery on the proposed settlement in the presiding officer's discretion.~~