

Agenda Date: March 27, 2002  
Item Number: 4A

**Docket No.:** ~~A-020334~~  
Interpretive Statement: Filing requirements prior to issuance of securities

Staff: Fred Ottavelli, Senior Policy Strategist

**Recommendation:**

Issue a notice to interested persons requesting comment on the draft Interpretive Statement clarifying the circumstances under which a public service company should file in compliance with RCW 80.08.040 and 81.08.040.

**Discussion:**

RCW 80.08.040 and 81.08.040, and WAC 480-146-290 require that any public service company that undertakes to issue securities file certain information with the Commission before such issuance. The draft Interpretive Statement seeks to clarify when a public service company must file such information with the Commission.

Increased volatility and uncertainty in energy, communications and water markets heighten Staff's concern with how public service companies use the proceeds from proposed financings and the resultant impact upon their capital structures. The proposed clarification will assure that regulated companies provide the Commission with relevant and complete financing information on a timely basis, and that they are spared the burden of filing documents that do not provide relevant information.

Filings with the Commission should:

- (1) Designate the type of security;
- (2) Specify the purposes for which the issuance is made;
- (3) Describe the proposed issuance including the anticipated amount and terms; and
- (4) State why the transaction is in the public interest.

In the opinion of Staff, filing a Registration Statement with the Securities and Exchange Commission using a shelf registration process does not constitute undertaking the issuance of a security and therefore a filing with the Commission is not required under the provisions of RCW 80.08.040 and 81.08.040, and WAC 480-146-290. The information provided with a shelf registration statement is typically preliminary, and does not include the important terms of the issuances that may subsequently be made under the shelf registration. However, public service companies are encouraged to file Registration Statements with the Commission for informational purposes.

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At the time of filing, as much detail as available should be provided, such as term sheets, applicable board minutes, and offering circulars.

**Conclusion:**

In conclusion, Staff recommends that the Commission direct the Staff to issue a notice to interested persons requesting comment on the draft Interpretive Statement clarifying when a public service company undertakes to issue securities.

Attachment

DRAFT INTERPRETIVE STATEMENT A-020334

1 The Washington Utilities and Transportation Commission (Commission), issues this interpretive statement to remove possible uncertainty about when a public service company undertakes to issue securities and, therefore, must file with the Commission pursuant to the requirements of RCW 80.08.040 and 81.08.040, and WAC 480-146-290. This statement clarifies that a filing with the Commission is not required upon making a shelf registration filing with the Securities and Exchange Commission. A shelf registration filing is defined under the General Rules and Regulations promulgated under the Securities Act of 1933, Rule 415 – Delayed or Continuous Offering and Sale of Securities.

2 RCW 80.08.040 and 81.08.040, and WAC 480-146-290 require that any public service company that undertakes to issue securities to file certain information with the Commission before such issuance.

3 Increased volatility and uncertainty in energy, communications and water markets heighten the Commission's concern with how public service companies use the proceeds from proposed financings and the resultant impact upon their capital structures. The proposed clarification will assure that regulated companies provide the Commission with relevant and complete financing information on a timely basis, and that they are spared the burden of filing documents that do not provide relevant information.

4 Filings with the Commission should:

- (1) Designate the type of security;
- (2) Specify the purposes for which the issuance is made;
- (3) Describe the proposed issuance including the anticipated amount and terms; and
- (4) State why the transaction is in the public interest.

5 Filing a Registration Statement with the Securities and Exchange Commission using a shelf registration process does not constitute undertaking the issuance of a security and therefore a filing with the Commission is not required under the provisions of RCW 80.08.040 and 81.08.040, and WAC 480-146-290. However, public service companies are encouraged to file Registration Statements with the Commission for informational purposes.

6 At the time of filing, as much detail as available should be provided, such as term sheets, applicable board minutes, and offering circulars.