Attachment A

SUMMARY OF COMMENTS
May 18, 2001 Request for Comments
GAS & ELECTRIC OPERATION RULES
WAC 480-90/100 – 123 and 153

Dockets UG-990294 & UE-990473

Supplemental CR-102 WAC Language:	Interested Party	Interested Party Comments:	Staff Response:
WAC 480-90-123 Refusal of service (Gas) (1) A gas utility may refuse to provide new or additional service if: (a) Providing service does not comply with government regulations or accepted natural g[illegible] industry accepted standards; (b) In the utility's judgment, there are conditions at the premises that are hazardous, or of such a nature that satisfactory service cannot be provided;	**NW Natural**	At Section (1)(b), staff has proposed to remove the distinction between conditions at the premise and safe and satisfactory service associated with equipment. We believe that it is important to retain this distinction. Therefore, we would suggest this section be revised as follows: (b) In the utility's judgment, there are conditions at the premises that are hazardous, or gas equipment is of such a nature that safe and satisfactory service cannot be provided;	Staff agrees and will adopt NWNatural's revision which more closely mirrors the language of the current gas version of this rule.
WAC 480-90/100-123 Refusal of service (Gas and Electric) (1) An electric utility may refuse requests to provide service to a master meter in a building with permanent occupants when all of the following conditions exist: (a) The building or property has more than one dwelling unit; (b) The occupants control a significant part of the electricity used in the individual units; and It is cost-effective for the occupants to have the utility purchase and install individual meters considering the long-run benefits of measuring and billing each occupant's electric use separately. **(Note: This subsection pertains to electric only).** (2) The utility may refuse to provide new or additional service if: (a) Providing service does not comply with government regulations or the electric industry accepted standards concerning the provision of service; (b) In the utility's judgment, there are conditions at the premises that are hazardous or of such a nature that satisfactory service cannot be provided;	**The Boeing Company**	The original Refusal of Service rule permits a utility to refuse new or additional service if "such service will adversely affect service being rendered to other customers." The rule also provides that a utility will not be required to provide service if it would be "economically unfeasible." Boeing strongly urges the Commission to strike these exceptions entirely from the rule to preclude a utility from having discretion to refuse service with no effective recourse for the potential customer. If the Commission does not support complete elimination of these exceptions to the obligation to serve, Boeing believes revision of the existing rule is needed for two reasons. First, revision of the Refusal of Service rule is necessary for the continued vitality of the economy in Washington. The obligation of electric utilities in Washington to serve has been critical to economic development in the state. For more than half a century, industry in the Pacific Northwest has prospered due to the region's dependable supply of low-cost electric power. When a utility is permitted to refuse new or additional service, this source of economic strength is imperiled. Second, the current Refusal of Service rule is inconsistent with the statutory and common law obligation of an electric utility to provide service. It is well established that an electric utility in Washington has the legal obligation to serve. RCW 80.28.010(2); *National Union Insurance Co. v. Puget Sound Power & Light Co.*, 94 Wn. App. 163; 972 P.2d 481 (1999). The Commission has jurisdiction to require an electric utility to provide service. *In re Tanner Elec. Co.*	Staff proposes to change the CR102 draft to leave the current and proposed CR-102 language's intent that allows the utility to refuse service if there is an adverse impact to other customers (see subsection 3a) by striking subsection 3 in its entirety and adding language in subsection 2, as follows: (f) Providing service would cause direct and adverse impact on the quantity and quality of service provided to other customers". The staff also proposes to eliminate the "not economically feasible " clause and include a "catch all" subsection that would require the utility to file for commission approval if the utility proposes to refuse service to a customer if the reason for the refusal is not specifically spelled out in the rule. The following language is proposed: "(4) An electric utility must obtain prior approval before it refuses to provide new or additional service for any reason not included in subsections (1) through (3) of this rule,..."

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(c) The applicant or customer does not comply with the utility's request to provide protective devices to protect the utility's or other customers' properties from theft or damage; (d) The utility is unable to obtain all necessary rights of way, easements, approvals, and permits; (e) The customer is known by the utility to have tampered with or stolen the utility's property, used service through an illegal connection, or fraudulently obtained service . the utility has complied with WAC 480-100-128 (2), Disconnection of service. (3) Upon request by an electric utility, the commission may waive the utility=s obligation to provide new or additional service when to do so would: (a) Cause an adverse affect on other customers; or (b) Not be economically feasible. (4) The utility may not refuse to provide service to a residential applicant or residential customer because there are outstanding amounts due from a prior customer at the same premises, unless the utility can determine, based on objective evidence, that a fraudulent act is being committed, such that the applicant or tomer is acting on behalf of the prior customer with the intent to avoid payment. (5) The utility may not refuse service to a residential applicant or residential customer who has three or fewer prior obligations in any one calendar year. A prior obligation is the dollar amount the utility has billed to the customer and for which the utility has not received payment at the time the service has been disconnected.		1991 Wash. UTC LEXIS 17 (WUTC 1991). Contrary to these principles, the current rule could give a utility untrammeled discretion to refuse service with no opportunity for Commission oversight and no redress for a customer denied service. The proposed revision would create Commission oversight into the process when a utility relies on either of the two reasons stated above as the basis for the utility's failure to serve. Boeing supports the Commission's intervention in this process as an appropriate check on the utility's discretion. However, Boeing also recommends additional safeguards be added to ensure that the issue of the utility's obligation to serve is timely resolved. We are concerned that a utility's refusal to serve could delay a project or render a time-sensitive project uneconomic. To prevent this unintended result, the rule should spell out in detail the timing and procedure that a utility must follow in requesting a waiver from the Commission. The rule should (1) prescribe the time in which a utility must request a waiver, (2) provide the customer with an opportunity to respond; (3) permit the customer to request an expedited hearing, and (4) limit the time for the Commission to rule upon the request. Accordingly, if the rule is to be revised along the WUTC's recommendations, we propose the following revision to proposed rule: **(3) Upon** ~~request~~ application **by an electric utility** made within 10 days after a request for service~~,~~ **the commission may waive the utility's obligation to provide new or additional service when** the utility has established by a preponderance of evidence that **to do so would:** **(a) Cause an adverse affect on other customers; or** **(b) Not be economically feasible.** Upon request by any person whose interests would be adversely affected by the utility's refusal to serve, the commission shall conduct a hearing and issue an order pursuant to RCW 34.05.482 (brief adjudicative proceedings) or RCW 34.05.479 (emergency adjudicative proceedings). In addition to these revisions, we believe that the Commission also should address the recourse available to the customer denied service. Specifically, the customer must be granted the right to	

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		obtain power from another source. To facilitate this end and as a condition to waiver of the utility obligation to serve, the utility must agree to waive any obstacle – including any restriction contained in any territorial agreement -- that otherwise might impede the ability of the customer to obtain power elsewhere. Also, the utility must agree to deliver any power acquired by the customer over the utility's transmission and distribution lines on a nondiscriminatory basis. Otherwise, the end result of this process could be very unfair; the utility might be relieved of the obligation to serve, while the customer would have no effective recourse to obtain power elsewhere.	
	Puget Sound Energy	PSE is primarily concerned with proposed WAC 480-100-123 (3) (a) and (b) and proposed WAC 480-90-123 (2) (a) and (b). Such rules would change the current process for making determinations concerning the economic feasibility of requested service and the potential harm to existing customers resulting from such service. The effect of this change would be to diminish the ability of the utilities and service applicants to reach mutually beneficial agreements by requiring the parties to pursue an unnecessary and time-consuming administrative procedure. Such unnecessary administrative burden would not provide extra protection to customers or service applicants relative to the current rules. Rather, the proposed rule would only increase both legal and business expenses for customers and utilities, whose costs will ultimately be born by all customers. PSE suggests the following language changes: (2) The utility may refuse to provide new or additional service if: (e) The customer is known by the utility to have tampered with or stolen the utility's property, used service through an illegal connection, or fraudulently obtained service and the utility has complied with WAC 480-100-128 (2), Disconnection of service; or (f) Providing service would cause an adverse effect on other customers. (3) ~~Upon request by ab electric utility, t~~ The commission may waive the utility's obligation to provide new or additional service when to do so would~~:~~ ~~(a) Cause an adverse affect on other customers; or~~	Staff has adopted PSE's proposal to place the "adverse effect…" clause into subsection (2) as item (f). Also, as indicated above, staff proposes to eliminate the "not economically feasible" clause and include a "catch all" subsection that would require the utility to file for commission approval if the utility proposes to refuse service to a customer if the reason for the refusal is not specifically spelled out in the rule. The following language is proposed: "(4) An electric utility must obtain prior approval before it refuses to provide new or additional service for any reason not included in subsections (1) through (3) of this rule,…"

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	TrizecHahn Office Properties, Ltd	~~(b)N~~not be economically feasible. TrizecHahn is an existing customer of Puget Sound Energy, Inc. ("PSE"), taking service under PSE Schedule 26 at four, collocated industrial warehouses in Kent Washington. TnizecHahn is converting some of its warehouse capacity into an internet data center. This conversion is anticipated to increase its electrical consumption to a level of approximately 25 MW, necessitating the construction of new PSE distribution facilities at TnizecHahn's expense. Tnizefflahn's request to convert from Schedule 26 to Schedule 31 has been resisted by PSE, although Tn*zecHahn will qualify for Schedule 31 under its terms. Until recently, PSE has demanded that TrizecHahn agree to noncore service under Schedule 48 as a condition to continued electrical service, take it, or leave it. Currently, the two parties have tabled the issue of applicable rate, while negotiations proceed regarding, construction of the necessary distribution facilities. TrizecHahn is concerned that the current wording of the proposed rule may further increase the leverage of electric utilities in dealing, with new and existing, customers. Proposed WAC 480100123(3), is an improvement over existing rules, but still remains vague. It could be subject to mischief on the part of utilities whenever incremental cost is less than that utility's average electrical cost of service. The Commission should not provide too easy a vehicle for utilities to evade their statutory obligations to serve under RCW a780.28.010(2). Moreover, the proposal lacks any statement of procedural protections for the customer faced with a threat of service denial. TrizecHahn offers for Commission consideration the following modifications to the proposed rule, WAC 480-100-123(3), underlined as shown below: Upon request by an electric utility, and after notice to the affected potential customer and opportunity for hearing in which the utility shall bear the burden of T ion may waive the Loof, the commission utility's obligation to provide new or additional service when to do so would: (a) Cause an adverse a[effect on other customers that cannot be rectified through installation of additional ~~facilities or protective equipment~~ ; or	Staff agrees that the current and proposed phrase "economically feasible" is vague and, therefore, proposes to include a "catch all" subsection that would require the utility to file for commission approval if the utility proposes to refuse service to a customer if the reason for the refusal is not specifically spelled out in the rule. The following language is proposed: "(4) An electric utility must obtain prior approval before it refuses to provide new or additional service for any reason not included in subsections (1) through (3) of this rule,..."

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		facilities or protective equipment ; or (b) Not be economically feasible. Economic feasibility shall be determined only with regard to the cost of necessary transmission and distribution upgrades and improvements, without discrimination between the utility's existing customers and the residence or business to whom service would be denied. **Procedural Protections**. Electricity is a necessity of modem life, essential to the continued economic well-being of the Sate. Under RCW a780.28.010(2), every Washington resident and business has a basic and fundamental right to electricity and the facilities to receive it. As their needs grow, they have the right to additional supplies and upgraded facilities. Before those statutory rights can be denied or abridged, it is fundamental that they should receive notice and the opportunity for a hearing regarding any attempt by an electric utility to pick and choose who is to receive service and who is to be left without. As the proponent of an order denying such rights, the electric utility should bear the burden of proof in any such hearing. Underscored additions to the proposed rule, shown above, would incorporate these protections into the rule. **Substantive Basis For Denying Service**. Legitimate examples of service denials should be very few in number: service to a ranger hut near the top of Mt. Rainer, service to a lightly populated island reachable only by submarine cable, and possibly service to a new industrial process that would create severe harmonic disturbances on the connecting distribution system. Each of these examples has a common element an incremental cost of transmission/distribution infrastructure that is, and will probably remain, prohibitive. Of course, even that generalization is an overstatement. If the potential customer is willing to pay for the line extension, the submarine cable or the harmonic-dampening equipment, there is no economic feasibility issue to be resolved. The utility's incremental cost of power should not be the measure of what is economically feasible. Today, incremental cost exceeds average cost. Five years ago, incremental cost was dramatically lower than average cost. Five years from now, incremental cost could once again be lower than average cost as new generating resources are brought on stream. Allowing power cost to be used as	

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		a determinant promises a series of patently discriminatory flip-flops that hold Washington's economy hostage to temporary power-market conditions. The goal of a rulemaking to modify existing; administrative rules should be to clarify. WAC 480100123(3), as proposed, does not achieve this goal. TrizecHahn urges the Commission to revise the proposed to rule as suggested herein.	
	Public Counsel	We note that the issue around refusal of service for economic reasons (formerly contained in 480-90/100-123(2)(e)) has been resolved by providing for a company's ability to petition for a waiver that would allow the company not to provide service (see proposed 480-90/100-123(3)(b)). If the Commission is inclined to modify the prior obligation rule, we see no reason why a waiver petition should not be employed when a company believes it can demonstrate good cause for denying a customer continued protection under the rule.	Staff does not believe that it is a good use of either the commission's nor the companies' resources to determine on a case by case basis whether a customer should be allowed prior obligation.
	Northwest Industrial Gas Users	NWIGU recommends the Commission extend the applicability of WAC § 480-90-123(3) beyond residential applicants or customers. Utilities should not be allowed to refuse service to any applicants or customers because of outstanding debts from a prior customer located on the same premises. Limiting WAC § 480-90-123(3) to residential applicants or customers creates an inequitable obligation on all other customers. ***NOTE: Refer to subsection (4) in the electric rule.***	Staff agrees with NWIGU's that the rule should not be restricted to residential customers and that we propose to strike the word "residential" from the rule language.
	Public Counsel	Public Counsel remains opposed to the proposed change to the prior obligation rule 480-90/100-123(5) that limits the use of this fundamental consumer protection to three times per year. We believe this limit to be arbitrary, capricious, and completely without merit or support in the record of this proceeding. We have filed comments in this proceeding on five separate occasions, each detailing our reasons for opposing the change to the current, effective rule. In summary:	Same response as in the previous CR -102 response. Staff's original CR-102 response: The current prior obligation rule does not limit the number of times a customer can use it. Staff's intent in proposing a limit is to limit the opportunity for customer abuse in not paying past-due bills. At the same time, retaining a customer's option to use

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		• No gas or electric company has made a showing that the existing prior obligation rule is unduly burdensome or causes expenses unrecoverable in rates. No company has demonstrated a linkage between prior obligation and the level of uncollectables. • Pacificorp, Northwest Natural and Avista have all recovered uncollectable bill expenses in rate cases before the Commission during the pendency of this proceeding. • No participant has made a showing that the proposed changes to the prior obligation rule will in fact benefit consumers. There is no evidence that lower uncollectable costs, administrative costs, or billing costs will result or that the companies will flow such savings to ratepayers. Public Counsel's assertion that higher costs to consumers will result from changes to billing systems to allow companies to track each customer's use of the three allotted prior obligation exemptions is undisputed.	prior obligation three times a year protects consumers who are unable to pay from total disconnection of services.
	NW Natural	NW Natural has been very vocal about the issue of prior obligations throughout this rule review process. Recently approved changes to the deposit rules (WAC 480-90-113) and the language contained in a new rule regarding reconnecting service after disconnection (WAC 480-90-133) have helped to mitigate our earlier concerns. Our only comment today is directed at clarity. It is not clear from the proposed rule what remedies are available in the event a customer incurs four or more prior obligations in one calendar year. While we would expect that this situation will be quite rare, it is likely best to address it in the rule now than leave it up for interpretation at a later date. We are open to discussion on this issue, but offer one possible course of action as follows: (4) The utility may not refuse service to a residential applicant or residential customer who has three or fewer prior obligations in any one calendar year. A prior obligation is the dollar amount the utility has billed to the customer and for which the utility has not received payment at the time service has been disconnected. <u>The utility may refuse service to a residential applicant or</u>	WAC 480-90-133(1c) Reconnecting service after disconnection states a customer will have service restored when the customer has paid all regulated amounts due on the account that is not a prior obligation account. In 90-123(4) a customer would be allowed 3 prior obligation accounts which would not be required to be paid prior to restoring service at any time. To clarify when a company can refuse service due to prior obligation, staff included language in the rule stating the utility may refuse service when the customer has four or more prior obligations in a calendar year. Staff has also included language that indicates when a customer is disconnected and has four prior obligations, the customer is required to pay only the amounts associated with the most recent disconnection in order to have service restored (the customer is not, as NWNG suggests, required to pay all four prior obligation amounts before service is

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		residential customer that has four or more prior obligations in any one calendar year until the customer has paid all prior obligation amounts due. *NOTE: This is section (5) in the electric rules.*	obligation amounts before service is restored).
	Avista	During a review of the proposed rules, it has come to our attention that two words ("for nonpayment") were deleted from the previous rules. We believe that dropping these words were inadvertent such that there was, to our knowledge, no discussion to this effect. Avista proposes that the following rule incorporate the proposed edits as shown. **WAC 480-100-123 (5) Refusal of Service** (5) The utility may not refuse service to a residential applicant or residential customer who has three or fewer prior obligations in any one calendar year. A prior obligation is the dollar amount the utility has billed to the customer and for which the utility has not received payment at the time the service has been disconnected for nonpayment. We propose this change at this time to avoid ambiguity that may occur at a later date without this clarification.	Staff agrees with Avista's suggestion and add the language back.
	Jay Lei	In my opinion, this is a one sided proposal. Citizens are not adequately protected. I think there should be a clause to prevent utility companies to use these proposed clauses as excuses to stop service. A clause like the following may work: "The utility may not use any of the above as an excuse for refusal of service. The utility must work in good faith with clients in resolving issues arising from situations other than mentioned above. The utility need to work with clients in good faith even if the above mentioned situations occurred."	The word "may" is included in this rule which allows the companies to use discretion in determining when to refuse service for the reasons listed in the rule. This would also allow the companies to pursue working with its customers before making a final determination against providing service. Additionally, any consumer who believes he/she was unfairly denied service may file a complaint and have the action reviewed by the Commission. It does not appear that any further restriction of this rule is necessary to meet this customer's concerns

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WAC 480-90/100-153 Disclosure of private information. (1) An electric utility may not use private consumer information, as defined in subsection (3) of this section, to market services to its customers, except that the utility may use such information to market its own energy related services or products. (2) A utility may not share or sell private consumer information with or to its affiliates, subsidiaries, or any other third / for the purposes of marketing services or product offerings to a customer who does not already subscribe to that service or product, unless the utility has first obtained the customer's written permission to do so. (3) Private consumer information includes the customer's name, address, telephone number, and any other personally identifying information, as well as information related to the quantity, technical configuration, type, destination, and amount of use of service or products subscribed to by a customer of a regulated utility that is available to the utility solely by virtue of the customer-utility relationship. (4) This section does not prevent disclosure of the essential terms and litions of special contracts as provided for in WAC 480-80-335, Special contracts for electric, water, and natural gas utilities. (5) This section does not prevent the utility from inserting any marketing information into the customer's billing package. (6) Electric utilities may collect and release customer information in aggregate form if the aggregated information does not allow any specific customer to identified.	**Public Counsel**	Public Counsel continues to support the inclusion of consumer protections for customer proprietary information. We note the Commission has adopted similar and reasonable protections for telecommunications customers in 480-120-151 through 480-120-154. We are concerned that the proposed revisions to 480-90/100-153(1) render the subsection effectively moot. The corresponding section in the telecommunications rules is 480-120-151(2) and (3) where (2) provides the prohibition and (3) allows for exceptions, with (3)(c) containing specific services that do not require prior customer approval. The energy rules, by contrast, contain no such delineation of specific services. As a result, electric and gas companies would appear to precluded from using private information to market services, except to market their own, energy-related services, a considerable loophole. If it is the intent of the rule to prevent regulated utilities from capturing a competitive edge in the provision of unregulated services by virtue of their position, this rule would appear to provide little likelihood of success. If it is the intent of the rule to prohibit companies from marketing unregulated, non-energy products to customers without their consent, it appears to be sufficient. We suggest the Commission consider which policy goal it is pursuing and modify the rule as necessary.	It is the intent of this rule to prohibit companies from disclosing customer private information to affiliate, subsidiaries or third parties for the purpose of marketing. services or products to customers who do not already subscribe to those services or products, without customer's written permission. Public Counsel states that, if this is the intent, then the proposed rules are sufficient.
	Puget Sound Energy	PSE has no desire or intention to sell its customer information to other parties or to otherwise provide such information to other parties for general marketing purposes. Therefore, PSE is supportive of the concept underlying this rule. However, the proposed rule reaches beyond the intended scope of the rule. The first paragraph of the proposed rule goes well beyond protecting customers from utilities distributing private information through restricting a utility's own use of the information. Striking this first paragraph and beginning with the second paragraph of the proposed rule will clearly protect customers from a situation where utilities could distribute private, personal information about customers without limiting how the utilities use the information, as long as it does not result in disclosure. In the second paragraph, PSE recommends changing the word "share" to "disclose." The reason for having the word "share" was to close any possible loophole for disclosing information other than	

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		outright selling the information. It seems more appropriate here to refer to the title of the rule (disclosure) which has the same effect but will provide internal language consistency. ~~(1) An electric utility may not use private consumer information, as defined in subsection (3) of this section, to market services to its customers, except that the utility may use such information to market its own energy related services or products.~~ (2) A utility may not ~~share~~ disclose or sell private consumer information with or to its affiliates, subsidiaries, or any other third party for the purposes of marketing services or product offerings to a customer who does not already subscribe to that service or product, unless the utility has first obtained the customer's written permission to do so.	Staff agrees to delete this section. Staff agrees to change "share" to "disclose".