

**BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

A-130355

In the Matter of)	
)	
Rulemaking to Consider Possible Corrections)	COMMENTS OF THE INDUSTRIAL
and Changes in Rules in WAC 480-07,)	CUSTOMERS OF NORTHWEST
Relating to Procedural Rules)	UTILITIES REGARDING PROPOSED
)	CHANGES TO WAC CHAPTER 480-07
)	
)	

I. INTRODUCTION

1 On December 7, 2016, the Washington Utilities and Transportation Commission (“WUTC” or the “Commission”) issued notice that it would receive comments regarding proposed revisions to Parts I, II, and III, Subpart A of Washington Administrative Code (“WAC”) Chapter 480-07. The Industrial Customers of Northwest Utilities (“ICNU”) appreciates the invitation to participate in this rulemaking docket and submits these comments regarding the revised draft rule proposals.

II. COMMENTS

2 The most recent rule proposals make a considerable number of additional revisions which should notably benefit the Commission and stakeholders in future WUTC process. Moreover, Staff’s narrative recommendations and summary presentation of all stakeholder comments have been very helpful as ICNU reviews the latest revision proposals. The following comments address certain issues which ICNU hopes the Commission will consider, prior to the proposed rule adoption hearing on January 30, 2017.

3 Moreover, even if not expressly noted below (in the interests of brevity and to avoid continual restatement), ICNU hopes that the Commission will consider ICNU’s prior comments suggesting outcomes that may not always align with Staff’s recommendations. ICNU has devoted a significant amount of resources to this proceeding, given the importance of the procedural rules to virtually all practice before the Commission. Accordingly, with a span of nearly four years for this docket, ICNU and many other stakeholders have raised quite a number of issues and concerns worthy of full consideration.

A. Part I, General Provisions

480-07-110(1)

4 ICNU appreciates Staff’s proposed clarification to this subsection, stating that Commission-initiated rule modifications will be effected in a manner consistent with both due process and the public interest.^{1/} This newly proposed clarification seems to address prior ICNU concerns regarding due process in relation to this rule subsection.

B. Part III, Subpart A, Rules of General Applicability in Adjudicative Proceedings

480-07-355(2)

5 There may have been a misunderstanding regarding ICNU’s proposal to modify the last sentence of this subsection, concerning the allowable period for a *response* to a written petition to intervene. Specifically, citing to rule paragraph -355(1)(a), Staff described ICNU’s recommendation as a proposal to “[r]equire petitions to intervene to be filed within 20 days or

^{1/} Summary of Comments on Proposed Revisions to Rules in Parts I and IIIA at 1 (Jan. 10, 2017).

two business days, whichever is less.”^{2/} ICNU agrees that, if such a nonsensical proposal had been made, it should have been rejected. Likewise, had ICNU’s proposal actually concerned the timing of *petition* filings, rather than the timing of *responses* to petition filings under subsection -355(2), it would be difficult to argue against Staff’s recommendation: “Staff sees no reason to require petitions to intervene to be filed more or less than three business days prior to the initial hearing or prehearing conference as currently required.”^{3/}

6 Notwithstanding, ICNU hopes that the Commission will consider ICNU’s originally stated proposal, in the context of rule subsection -355(2).^{4/} In particular, ICNU proposes the following modifications to the last sentence of Staff’s proposed text in this subsection:

A party’s written response to a timely filed written petition to intervene should be filed and served within 20 days or at least two business days before the prehearing conference or hearing at which the commission will consider the petition, whichever time is less, ~~or at such other time as~~ unless the commission ~~may~~ establishes a different time by notice.

7 Since the proposed maximum response period of 20 days, barring a specially established exception, is consistent with general rules applicable to a “response to a petition,”^{5/} ICNU does not believe that any potential party would be adversely affected by this proposed rule modification. Also, aligning sections -355 and -370 would accord with Staff’s apparent view that rules governing petitions should be interpreted consistently throughout the Commission’s procedural rules. That is, Staff recommended against retaining current rule

^{2/} Summary of Comments on Proposed Revisions to Rules in Parts I and IIIA at 9.

^{3/} Summary of Comments on Proposed Revisions to Rules in Parts I and IIIA at 9.

^{4/} See ICNU Comments at ¶ 31 (June 30, 2016).

^{5/} WAC § 480-07-370(4)(b) (using the numbering of the currently proposed rule revision).

paragraph -110(2)(d), which states that “[t]he commission will enter an order granting or denying [a] petition [requesting a rule exemption or modification], or setting it for hearing,” by reasoning that “[t]he disposition of petitions for rule waiver or modification is *the same as any other petition*, and this subsection is unnecessary.”^{6/} Conversely, if subsection -355(2) is not amended in some fashion along the lines of ICNU’s proposal, then disposition of petitions might not be the same in all circumstances. For instance, under subsection -355(2) as presently comprised, and so long as a response is filed two business days prior to a prehearing conference, a party could file a written response to a petition to intervene well after the twenty-day period allowed for such a response under proposed paragraph -370(4)(b).

480-07-410(4)

8 ICNU appreciates Staff’s clarification as to the purpose behind the deletion of the following sentence within this subsection: “A party may use a deposition to impeach a witness.” As ICNU surmised, Staff had taken the view “that this sentence is superfluous, since subsection (4) already provides that depositions may be used ‘for any lawful purpose.’”^{7/} Thus, ICNU’s potential concerns have been allayed by Staff’s confirmation that impeaching a witness via deposition “is a lawful purpose and need not be separately specified.”^{8/}

480-07-460(1)(a)

9 Apparently on its own initiative, “Staff has revised the language [in this paragraph] to eliminate [the] subsection on revising prefiled testimony to correct mistakes of

^{6/} Summary of Comments on Proposed Revisions to Rules in Parts I and IIIA at 1 (emphasis added).

^{7/} ICNU Comments at ¶ 54 (June 30, 2016).

^{8/} Summary of Comments on Proposed Revisions to Rules in Parts I and IIIA at 12.

fact.”^{9/} ICNU does not necessarily oppose this suggested revision—in fact, much like many of the revisions Staff has proposed, the intent of Staff’s deletion may simply be to streamline procedural rules by eliminating duplicative or superfluous provisions. In other words, the ability of parties to make “substantive changes,” under what would now be styled as subparagraph -460(1)(a)(i), could be interpreted as sufficient to encompass the ability to make “substantive corrections,” including “mistakes of fact,” thereby eliminating the need for express recognition of the latter.

10 Nevertheless, ICNU is unsure as to Staff’s actual rationale for this proposed revision. If ICNU’s assumption that the proposed deletion is based on the elimination of duplicative provisions is incorrect, then party procedural rights might be significantly curtailed by Staff’s recommendation. Moreover, Staff recommended rule modifications elsewhere, based on an express recognition of “duplicative” features within the existing rules, meaning that the lack of such explanation here may signal some different rationale on the part of Staff.^{10/} Therefore, ICNU requests that the Commission inquire into and consider the rationale behind this proposed deletion before making any determination.

III. CONCLUSION

11 ICNU appreciates the opportunity to submit these comments regarding proposed revisions to the Commission’s procedural rules within WAC Chapter 480-07. ICNU respectfully

^{9/} Summary of Comments on Proposed Revisions to Rules in Parts I and IIIA at 12 (recommending this revision without notation of comments by any other stakeholders on the issue).

^{10/} See Summary of Comments on Proposed Revisions to Rules in Parts I and IIIA at 13 (recommending deletions within two different subsections because such provisions were “duplicative”).

requests that the Commission and Staff consider making further modifications to the proposed ruled based on the points discussed.

Dated this 13th day of January, 2017.

Respectfully submitted,

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