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SENT VIA EMAIL
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Steven V. King
Executive Director and Secretary
P.O. Box 47250
1300 S. Evergreen Park Dr. SW
Olympia, WA 98504-7250

Re: Procedural Rulemaking (Docket A-130355)

Dear Secretary King:

Thank you once again for the opportunity for Summit Law Group to provide comments to the revised procedural rules on behalf of the solid waste collection clients regulated by the Washington Utilities and Transportation Commission ("the Commission").

During the informal rulemaking process, we have been afforded several opportunities for comment. Although it has resulted in a fairly protracted process, the iterative communications have obviously resulted in a draft rule that addresses nuances and concerns that arose during the past several years of thought and consideration. We appreciate the response to some of our comments that is reflected in revisions in this current draft, and we respect the rationale for rejecting others. Nonetheless, given the context of these comments being submitted in a CR102 context, we feel compelled to repeat some of our earlier observations.

WAC 480-07-140: This rule has been completely rewritten to allow for electronic filings. We commend the Commission for making this change. Of all the provisions offered for change, this one is probably the most important and it has been the subject of many observations and revisions. We have no further comments, and hope it works in practice as well as it reads in theory.

WAC 480-07-141: We appreciate having a process for compliance review of submissions. Indeed, this was a change we requested. Upon further consideration of the rule proposed, however, we think it is too broad and may potentially impose an unintended administrative burden on Commission staff. Given the sheer number of documents submitted to the Commission, it may not be practicable to require the records center staff to review all of

the various types of filings. The concern underpinning our original comments was related to tariff filings in particular. Because there is a statutory deadline for notice of a request to change tariff rates, the need for knowing whether a general rate submission is not in compliance is compelling, and it is in that context we have experienced being told too late about deficiencies that were "not substantive" and capable of being corrected. With filings that lack any time sensitivity – insurance certificates, compliance filings, annual reports, applications for authority or transfers, etc. – the need for compliance review is not particularly necessary. We did not mean to suggest that WUTC staff should be required to review counsel submissions. We understand the Commission is intending to next tackle the procedural rules that are specific to filing general rate requests for solid waste collection companies. We would prefer to have the standards that are articulated in this draft rule be instead stated in the general rate request filing rule.

WAC 480-07-150: This rule should be modified to specifically address service of complaints that initiate an adjudicative proceeding and for which a docket has not yet been assigned. With "commission documents" of the kind enumerated (notices, orders, or other "commission documents"), the process described in this regulation makes sense. When "business as normal" communications are between the Commission and its regulated companies, Subsection (2)(b) is a fair expectation. The Commission has authority over regulated companies, and it should be able to rely on the contact information provided for notices and orders and the like. And, when documents are served in the course of an ongoing adjudication, the parties have typically designated contact information on the record. In contrast, when an adjudication is commenced against a company regulated by the Commission, whether it be by a private party or by the Commission itself, the stakes are higher, and a timely answer is jurisdictional. We have urged that these rules demand the kind of service that would be required to commence a lawsuit in court.

As a further observation on this rule, we suggest the Commission create a regular procedural mechanism for the purpose of filing the contact information of an authorized person, and perhaps require that it be verified annually. The Annual Report form for solid waste companies is currently being updated, and it would be easy to add a verification to that submittal, making sure the regulated companies have a means of being reminded to keep their contact information current.

WAC 480-07-160: The specific reference to chapter 42.56 RCW clarifies the interaction between the general applicability of the Public Records Act, versus the specific protections of RCW 81.77.210. Although the exemptions in the PRA are narrow, the potential for one legitimately arising is real, and in that case the Commission itself has to believe the records are exempt, not the submitter – so it makes sense to handle those filings differently and to "work with the commission" on submitting those documents. The revised rule makes that clear.

The revised rule deals with "challenges" and "requests for information" differently, which is helpful. Subsection (5) allows for challenges to designations of confidentiality, which may be raised only by the Commission or parties to an adjudication. When a challenge is brought, the rule says the Commission will continue to protect the information – and we assume that is the case even if the challenge is raised by the Commission itself. The rule might be improved by explicitly recognizing that, because if the Commission itself questions the designation, the challenge can be presumed to be made on a good faith basis that would give the submitter reason to immediately reconsider whether the information was legitimately protected. On the other hand, if the challenge is brought by an opposing party in an adjudication, there may be strategic reasons for forcing the submitter to seek a court order, and those reasons may or may not be based on genuine grounds. Unfortunately, some litigants are more interested in forcing their opponents to expend legal fees and this rule imposes no requirement for having a legitimate basis for a party to an adjudication to bring a challenge. It should. If a protective order is in place, this situation is addressed; but if not, then a threshold ruling from the presiding officer on whether an opposing party's challenge is legitimate might inhibit improper use of this rule.

In response to a request for information, this rule only requires notice to the provider if the requester does not agree that non-confidential documents will satisfy the request. We suggest that notice to the submitter of a request that implicates confidentiality should be provided upon any request for documents that have been submitted as confidential. This is because, in our experience, communications with requestors by the regulated companies can sometimes address the requested information in other ways, outside of the public record. The records center has in some cases notified us about a request for information, even though not required to do so, for this very reason. Notice should be given to the provider whenever a request for public records implicates materials that have been designated as confidential so the parties can try to resolve the request agreeably, before the requestor is forced to take a hard line and cause the submitter to get a court order.

Another comment to this rule is to request clarification of whether companies need to comply with it in the context of informal data requests. As you know, with the solid waste industry the adjudication of a general rate case is not certain until a matter is suspended and a prehearing conference is noticed. Prior to suspension during the auditing process, auditors and filing companies frequently exchange emails on informal data requests. The status of those exchanges with auditors in terms of public records is somewhat ambiguous. If responses to informal data requests are part of the public records, and answering data requests by email exchanges implicates confidential (or exempt) materials, this rule would suggest that the response needs to be submitted in conformance with the procedures articulated. That is not always practical. If so, and that is the only way to protect confidentiality of responses to informal data requests that are provided before adjudication commences, please clarify.

WAC 480-07-175: We are still troubled by the implications of this regulation. The Commission certainly has statutory authority to review the accounts and records of public service companies. However, with the courts steadily increasing the breadth of the Public Records Act, how can the lack of limitation in subsection (1) square with the need for disclosure? If auditing staff inspects accounts, books, paper and documents at the company's site, would all of those documents be considered public records? Under subsection (2), there is no reasonable limit to production, which is troubling both from a public records perspective and a practical, cost-based view. On a less substantive and more procedural point, the Commission will require inspection by "sending" a notice and the respondent is to "send" the documents, but that is not a defined term. Especially if the provisions of WAC 480-07-160 must be met, it would be important to understand the formality of transmission contemplated by this rule.

WAC 480-07-190: These days, at Summit Law Group, we regularly sign documents by inserting an electronic signature. It is simply a digital image that is copied into the signature line. I have no idea if that qualifies as a "secure" electronic signature! According to this rule, for documents signed under penalty of perjury, such as declarations, we must use an electronic signature or have available the technology to scan into searchable .pdf. We suggest that any image of a signature that identifies and authenticates a person, and indicates such person's intent to sign, should be sufficient.

WAC 480-07-300: The enumerated examples of adjudicative proceedings include "suspended tariff filings...". This comports with our understanding that prior to suspension, rate cases are not adjudicative. It underscores confusion about proper procedures during the pendency of litigation, however.

WAC 480-07-307: The determination of probable cause is limited to staff-initiated adjudication. We understand that standard is not applicable to a private-party complaint, but we urge the Commission to consider revising this rule to add more substantive weight and authority to the Commission's threshold determination of whether to grant an application for adjudication of third-party complaints. The standards articulated in WAC 480-07-300 are all relevant, but they do not directly address the possibility of a nuisance lawsuit.

WAC 480-07-345: Thank you for clarifying that a notice of appearance is not necessary if an initial pleading or written petition has been filed.

WAC 480-07-370: Should "motions" be included in the list of pleadings?

Thank you for considering our comments. Overall, we commend the Commission for its efforts, and we hope our comments are received in the context of that overarching compliment. We look forward to continued participation in this process.

Sincerely,

SUMMIT LAW GROUP PLLC

Polly L. McNeill

cc: Clients