

SUPPLEMENTAL MEMORANDUM

Agenda Date: July 11, 2001
Item Numbers: 2A and 2B

Dockets: **UG-990294**
Gas Companies Operations - Rulemaking
UE-990473
Electric Companies – Rulemaking

Subject: Review of Commission's rules 480-90-123 and 480-90-153 WAC
and 480-100-123 and 480-100-153 WAC

Staff: James M. Russell, Gas Companies Operations Rulemaking Team
Lead
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Recommendation:

Staff recommends that the Commission direct the Staff to prepare a Rule Adoption Order for Commissioner's review to adopt new proposed rules WAC 480-90-123 & 153 and WAC 480-100-123 & 153, as revised, and reflected in Attachments A and B to this memorandum.

Discussion:

On July 5, 2001, PSE (Company) filed written comments on the redraft of WAC 480-90-123, Refusal of Service (gas) and WAC 480-100-123, Refusal of Service (electric). PSE states in its letter that there has been little discussion of the proposed changes to these rules and urges the Commission defer action on these rules if the Commission is not persuaded to adopt the Company's recommendations.

The original Staff memorandum in these dockets discussed the rulemaking process to date. In this memorandum we do address PSE's concerns and recommend certain language modification as a result. Staff believes that there has been adequate process for input and discussion for these proposed rules and we believe that the Commission should go forward with adopting the revised rules reflected in Attachments A and B.

Requirements for protective devices – WAC 480-90-123(1)(c) & 480-100-123 (2)(c)

PSE states that under the current rule, a utility may require an applicant or customer to install protective equipment whenever necessary to protect the utility or other customers property. PSE also states that the proposed rule merely requires the applicant or

customer to provide the equipment, implying the utility will be responsible for installing the equipment. Finally, PSE believes that the current rule language clearly gives the utility the discretion to decide whether a protective device is required.

The intent of the rule is to allow the utility to require an applicant or customer to provide and install adequate protective devices on the customer's premises in order to protect the utility's or other customer's property. Therefore, staff proposes to clarify this subsection by recommending that the Commission adopt the following language (slight variation on PSE's proposed language):

- (c) The applicant or customer does not comply with the utility's request that the applicant or customer to provide and install protective devices, when the utility, in its reasonable judgment, deems such devices are necessary to protect the utility's or other customer's properties from theft or damage.

Acquisition of Rights-of-Way – WAC 480-90-123(1)(d) & 480-100-123(2)(d)

PSE states that the proposed language is a significant departure from the existing rule and would result in a potential costly change in policy. PSE states that in numerous situations, applicants requesting service are required to obtain all necessary rights-of-way and operating rights, thereby internalizing such costs to service applicants. PSE proposes the following language:

- (d) Unless and until the utility can secure all necessary rights-of-way, easements, and permits.

The Staff recommends that the Commission adopt the original Staff proposal but that the word "secure" be used in place of the word "obtain". Most utilities' line extension tariffs address the responsibility of the applicant to get the necessary rights-of-way and easements. It is not the intent of this rule that the utility be responsible for actually obtaining, paying for, or holding all rights-of-way, easements, approvals, and permits up to the customer's burner tip, but that if all necessary right-of-way, easements, approvals, and permits are not in place, after reasonable efforts to secure them, the utility may refuse service. The staff therefore proposes to revise this subsection to read:

- (e) The utility is unable, after reasonable efforts, to ~~obtain~~ secure all necessary rights-of-way, easements, approvals, and permits.

Refusal of Service for Economic Reasons

PSE proposes language that would allow the utility to refuse service, if to do so would be uneconomic. PSE's draft also includes a requirement that the utility and customer must negotiate in good faith in an attempt to resolve the uneconomic provisions of service within the utility's existing tariffs and service agreements. PSE's proposed language then

puts the burden on the applicant or customer to file a complaint if the utility and customer or applicant cannot reach agreement.

Staff believes that the commission should adopt the Staff's proposal as outlined in Attachments A and B to the original backup memorandum (see subsections (4) [gas] and (5) [electric]). PSE's language is problematic in that other utilities do not have "uneconomic provisions of service" within their tariffs.

WAC 480-90/100-033, Distribution Line Extension Tariffs, requires a utility to file a distribution line extension rule setting forth the conditions under which it will extend its facilities to make service available to an applicant. The line extension tariffs establish the conditions and the costs the customer is responsible for when an applicant requests service. The economic decision with regard to the line extension then rests with the applicant, not the utility.

In addition, PSE's proposal puts the burden on the applicant or customer to file a complaint if the utility refuses service for "economic" reasons. The rules in chapters 480-90 and 100 apply to regulated utilities who have a statutory obligation to serve. Most customers are unaware of these rules and would be unaware of their rights under them. Therefore, Staff continues to believe that the rules should place the responsibility on the utility to seek Commission approval in order to refuse service for any reasons other than those spelled out in the rule. The Staff's proposed language does not prohibit a utility from working with its applicants and customers first to resolve any issues regarding costs, or other economic issues, to serve; but would require the utility to file for approval before the utility ultimately refuses service against the applicant's or customer's continuing request for service.

Prior Obligation – WAC 480-90-123(4) & 480-100-123(5)

PSE states that the definition of "prior obligation" is overly broad and should not include deposits, line extension amounts, or winter moratorium past-due accounts for customers who continue on the winter moratorium payment plan.

Staff agrees with the Company that deposits would not be included in prior obligation. However, it has been the position of the Commission Staff that all other amounts already billed at the time of disconnection should be included in prior obligation. PSE and Consumer Affairs staff agreed to this policy in 1995 and this policy continues today. Staff has discussed the line extension issue with PSE and agree that line extension amounts are either paid up-front or embedded in new customer rates. PSE has withdrawn its concern regarding line extension charges.

Staff asserts that the moratorium program described in RCW 80.28.010 requires any customer who has entered into this program and who defaults on his/her payments and whose service is disconnected must pay all past-due amounts pertaining to this program

prior to having service restored. This statute does not differentiate between those customers remaining or not remaining on the moratorium program. Prior obligation would not be made available in these cases. Counsel has confirmed Staff's position on this issue and the appropriate revisions are reflected in the revised rules in Attachments A and B.

Summary:

We believe we have considered PSE's comments carefully and proposed revisions accordingly as outlined. Therefore, Staff recommends that the Commission direct the Staff to prepare a Rule Adoption Order for Commissioner's review to adopt new proposed rules WAC 480-90-123 & 153 and WAC 480-100-123 & 153 as revised, and reflected, in Attachments A and B to this memorandum.

Attachments:

Attachment A – Draft WAC 480-90-123 and 153 (Revised)

Attachment B – Draft WAC 480-100-123 and 153 (Revised)