

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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| Consideration of whether to file a Notice of Proposed Rulemaking (CR-102) with the Code Reviser relating to possible corrections and changes to rules in Chapter 480-07 WAC, relating to Procedural Rules. |) | DOCKET NO. A-050802 |
| |) | SUPPLEMENTAL COMMENTS OF THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES |
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1 The Industrial Customers of Northwest Utilities (“ICNU”) submits the following supplemental comments to the Washington Utilities and Transportation Commission (“WUTC” or “Commission”) in the above-referenced Docket. These comments address the final procedural rules proposed by the Commission on April 4, 2006. These supplemental comments reaffirm that ICNU supports its previous comments requesting changes to the procedural rules in this proceeding. Instead of repeating earlier written and oral comments, ICNU specifically incorporates its prior comments and takes this opportunity to refute some of the conclusions contained in the Commission’s “Discussion of Comments Concerning Procedural Rules Governing Settlement Procedural Rules Tune-up” (“Discussion of Comments”).

2 ICNU continues to recommend that the Commission modify its procedural rules to require Staff to provide all parties an opportunity to participate in their settlement discussions, and to ensure that non-settling parties have the procedural rights to fully investigate the settlement, present evidence in opposition to the settlement, cross examine witnesses testifying in support of the settlement, and obtain a Commission order

addressing all disputed issues of fact and law. Contrary to the conclusions in the Discussion of Comments, such revisions would not be unduly burdensome and would not unreasonably limit settlement in Commission proceedings. The changes are also necessary because, although this Commission has made significant efforts toward providing non-settling parties a fair hearing, the rights of parties in Commission administrative proceedings should not be entirely based upon the goodwill of the Commission and its Staff.

COMMENTS

3 The Commission’s proposed procedural rules do not include any significant modifications to the settlement rules to safeguard against Staff entering into secret settlements, nor do they provide that parties opposed to a settlement agreement have the right to a full and fair opportunity to investigate the settlement and obtain a ruling on the issues that lead to their participation in the case. The Commission specifically rejected the underlying rationale and the specific rule proposed by most of the major customer advocates and public interest intervenor groups that regularly practice before the Commission (ICNU, Public Counsel, the Northwest Energy Coalition, the Washington Electronic Business and Telecommunications Coalition, the Citizens’ Alliance of Washington, the Energy Project, and the World Institute for a Sustainable Humanity). In its Discussion of Comments, the Commission explained that it declined to modify its rules because: 1) the proposed rules would limit the Commission’s discretion; 2) the proposed rules are more prescriptive than the similar Oregon Public Utility

Commission (“OPUC”) rules; 3) the proposed rules would negatively impact the settlement process; and 4) the Commission’s settlement practice is currently working.

4 ICNU believes the Commission should reconsider its decision not to modify its rules because the concerns articulated by the Commission and the opponents regarding the rules changes are based on a misunderstanding of how the rules would work. The proposed rules would not be too restrictive and would allow the parties to Commission proceedings to be able to conduct fruitful settlement negotiations. If the Commission’s primary concern with the proposed rules is that they are too prescriptive, then the Commission should adopt a modified version of the proposed rules to address this concern. Instead, the Commission has rejected the rules and has not made any significant rules changes to address the concerns of the intervenors. Contrary to the Commission’s conclusion, the proposed rules changes would address a real problem that has occurred before the Commission in the past and new rules would be a good safeguard to prevent future abuses.

1. The Proposed Rules Are Not Unduly Restrictive

5 The Commission has rejected the proposed rule that limits the ability of Staff to enter into secret settlements with utilities because the Commission believes it would be too prescriptive, limit its discretion, and be more limiting than a similar OPUC rule. These conclusions are inaccurate, and the Commission’s failure to make any significant changes or propose an alternative rule demonstrates that the Commission’s stated concerns are merely red herrings. Simply put, the Commission does not appear to be concerned that there are problems with the specific language proposed by ICNU and

the other intervenors, but appears to have made the public policy decision to continue to allow Staff to have the ability to enter into secret settlement discussions with the utilities. This is a decision that ICNU strongly disagrees with and believes the Commission should reconsider.

6 The Commission concluded that the proposed rule amendments are too prescriptive and are not based on the OPUC rule is based upon its observation that the OPUC rule is less detailed. The specific language in the proposed change to the Washington rule was primarily intended to codify the actual practice ICNU has experienced working with the Oregon Staff under the OPUC rule. The Oregon Staff has historically taken a broad interpretation of the OPUC rule and been very careful not to circumvent the intent of the rule by engaging in settlement negotiations outside of noticed settlement conferences. The proposed language was intended to allow Washington practice to mimic the successful Oregon settlement process. Conspicuously absent from the discussion in the Discussion of Comments is any analysis of how the OPUC Staff and their legal representatives believe the OPUC rule works in practice and how the OPUC rule has impacted the Oregon settlement process.

7 If the Commission is truly concerned that the proposed rule is overly prescriptive, then the Commission should ameliorate the rule to address its alleged concerns. For example, instead of rejecting the proposed requirements regarding notice to parties of settlement discussions, the Commission could have adopted the OPUC rule's requirements regarding "reasonable notice." ICNU has never been wedded to any specific language, and has sought to have the Commission adopt a rule that prevents Staff

from entering into settlement discussions without providing other parties a fair opportunity to participate. ICNU is aware that Public Counsel has been working on a compromise rule that attempts to meet both the objectives of the original proposal rule revision and the Commission's concerns expressed in the Discussion of Comments. While ICNU has not yet had sufficient time to fully review the specific language in Public Counsel's compromise proposal, ICNU supports Public Counsel's efforts and believes that the Commission and the parties should be focused on making common sense and workable changes to the current rules.

2. The Proposed Rules Will Permanently Improve the Settlement Process

8 The Commission rejects the proposed changes to the settlement rules as “unnecessary” because “the Commission’s settlement process is working satisfactorily under the current rules.” Discussion of Comments at 17. ICNU agrees with the Commission that, in the recent proceedings, the Commission has provided parties opposed to a settlement agreement a fair hearing, resolved the critical contested issues, and that the Commission and Staff have made a better effort to include all parties in the settlement process.

9 These changes by the Commission and Staff demonstrate the need for a new rule, and are not a justification for why changes should not be made. The rights of parties to participate in settlement discussions and/or the rights of the parties opposed to a settlement are now dependent upon the benevolence of the Commission and its Staff. A change in the make up of the Commission, or new Staff members managing or participating in rate proceedings, could have significant harmful impacts on the

participation of intervenors. Therefore, ICNU urges the Commission to adopt settlement rules similar to those existing in Oregon and to codify the rights of non-settling parties to ensure that Commission proceedings are fair and open to all parties.

CONCLUSION

10 ICNU thanks the Commission for the opportunity to comment on its proposed rules and respectfully requests that the Commission modify its settlement rules to ensure that the parties have an opportunity to participate in settlement discussions, investigate a proposed settlement, and obtain a resolution of their issues. As demonstrated by the successful practice before the OPUC and the recent cases before this Commission, the proposed changes to the procedural rules will improve, rather than burden, the settlement process.

DATED this 4th day of May, 2006.

Respectfully submitted,

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