

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of a Rulemaking to Consider)
Possible Corrections and Changes in Rules)
In Chapter 480-07 WAC, Relating to) DOCKET NO. A-050802
Procedural Rules.)
_____)

Comments from The Energy Project
Submitted by Charles M. Eberdt, Director
May 4, 2006

With regard to Docket No. A-050802, The Energy Project wishes to file our support of Public Counsel’s suggested changes to WAC section 480.07.700. We believe it is essential that the improvement in the conduct of settlement proceedings that the current Commission has sponsored be institutionalized in the WAC. As these improvements have corresponded with a change in personnel at the Commission, we can see the possibility that future changes might result in a less balanced approach, thus contravening access for less resource-rich participants in the public process. The Energy Project is especially concerned, because, while current Staff and others recognize the validity of our concerns and standing in matters before the Commission, this has not always been the case.

It is important that the Commission recognize the unique position Staff has in these discussions. As Public Counsel has already enumerated, Staff is second only to the company in the resources it brings to the issues. Staff has a reputation as an advocate for consumers and is good at its work. Being a tried and relied-upon part of the Commission itself only adds to Staff's credibility. All these things add up to having more weight than other individual parties in settlement discussions. Achieving an agreement with Staff on the issues they see as most important severely reduces a company's motivation to negotiate with other parties regarding their issues. Were any other individual party to reach a compromise with the company, this would not be true. Since some programs for which the Energy Project advocates exist only at the volition of the company, this exclusion is especially problematic. When we learn that Staff has reached an "agreement in principle" with the company before we have even had the opportunity to establish ourselves as an intervener in the case, the public process has been given short shrift.

In the course of this discussion the question has been posed as to whether the proposed changes should be applied only to Commission Staff. I think there are at least two good reasons to support this. First, as one of the parties initiating the suggested changes last fall, we see this as a means to provide some balance and preserve the public process. To my knowledge, the problem has never arisen when another party reached a compromise position with a company. It is the interaction between the Staff and the company before or without the knowledge of other parties or the opportunity for them to engage in the discussion that has been the problem. Second, applying all of the noticing rules to all other parties will retard and inhibit the settlement process unnecessarily, thus

achieving the exact result critics of Public Counsel's proposed changes have predicated. It may seem equitable to apply the proposed change to all parties, but in fact, due to the different level of influence they have in the situation, it is not. The intention here is to provide some balance, but not to overbalance and sacrifice the process.

The Energy Project strongly supports the use of the settlement process. We appreciate the savings it can provide in both finances and time. We also feel the increased pressure on time and resources, as we expect Staff does, from the increased frequency of filings. We are not making these comments from the position of a party that feels they are always "on the outside." We have been a party to a global settlement that was very well handled, a party with Staff to a non-unanimous settlement, and a party opposed to a non-unanimous settlement. Should the Commission decide to extend this discussion, we will be happy to continue our participation. Thank you very much for your consideration of these comments.