

Fred,

This e-mail will provide you with some comments concerning the proposed tariff rules. I thought if I did not do it right away, the odds are that I will not be able to get to it. Unfortunately, this means you are probably going to get something in the nature of a flow-of-consciousness, but it may give you some help.

I will start with 480-80-1X4, Tariff Format. Under Subsection (2)(e), do you really need a blank rectangular area? While this can be done, it is not the easiest thing to do under Word. Could you live with a requirement that just simply states that the upper right hand corner, two inches wide and one and one-half inches high, shall be left blank for Commission use?

Under Paragraph (4)(f), there is a requirement that if a sheet is canceled, it must not be reactivated unless it includes the same basic information. That is a style from many years ago. In recent years, at least I have been filing, if no one else has, new material on sheets that I have left dormant for awhile. This is so that the schedules can continue to be consecutively numbered. For example, there might be a surcharge that applies for just a few years. Once it has expired, I cancel the sheet and note that it is being reserved for future use. Then there may be another new item that comes along, such as a tax imposed by a particular municipality. I then might use that sheet to set out the tax charge. It has the advantage of keeping schedules consecutively numbered, and people not wondering why there are blanks or gaps in the schedules.

Just a general, overall comment, sometimes the draft uses the term "companies" and sometimes the term "a company." In the context of this particular rule (1X4), I think the better usage, at least to my ear, is "a company."

Moving now to 480-80-1X5, Substitute Pages, my comment is that you should add another category of substitute pages and that is for changes requested by Staff and agreed to by the company. In my experience, that is where substitute pages are used most often.

WAC 480-80-1X6, Banded Rate Tariff Filings, my only comment here is that I agree with the observation offered by Mary Steele that the Commission may want to move away from the "essential function" terminology.

WAC 480-80-1X7, Tariff Filings with Statutory Notice. My first comment is in Subsection (3)(a). This requires that for tariff revisions submitted by mail, it must include the original and two copies of all materials. I think you need an exception for confidential material. Or, are you intending to change the current practice which asks that we submit only one copy of confidential material? Do you also need the original and two copies of supporting work papers? Is this the type of "material" that this rule envisions? If we include a copy of the customer notice, obviously we cannot include the original. Do you then want three copies of the customer notice?

I assume you are going to change the time for receipt in (3)(b).

Turning to WAC 480-80-1X8, Tariff Filings with Less Than Statutory Notice. My first comment is to Subsection (1), the sentence that references the LSN form supplied by the Commission. Do you have one? Or is this something that is planned for future development?

Under Subsection (1)(a)(iii), whose telephone number, e-mail address and facsimile number are you requesting? Is it the company's? Is it the person submitting the tariff filing? Under Subsection (1)(a)(iv), why do you need the signature of the person to contact regarding the filing? Often, I submit the filing because I have the experience of how to translate the information into an acceptable tariff format. However, a company person may be the one with the technical or cost information that the Commission Staff may be seeking and who, in my mind, should be listed as the contact person. If that is the case, I really cannot submit their signature.

Under Section (1)(b)(ii), what is meant by the "identifying number"? Do you mean the sheet number? Probably not, since that is under (b)(iii). I am at a loss to figure out what you are requesting by "identifying number." I will also note that in the past, I have not routinely included the number of the tariff being amended as now requested by (b)(i). That is not a difficult thing to do, but it is something that has not been requested in the past.

Under WAC 480-80-1X10, Failure to Provide Statutory Notice, I assume what you are really talking about is a "tariff revision" being issued without the required statutory notice as opposed to a full tariff. I would also note that you probably need to have an exception for approval by LSN, since by definition those do not have full statutory notice. I also assume that by this rule you are not thinking that statutory notice to the public means the mailing of a customer notice thirty days in advance. That is not a requirement by statute. The only real statutory requirement is posting in the company's offices, at least as it applies to customers.

WAC 480-80-1X11, Withdrawing of Filing. I really wish we could discuss this one in a workshop. I have a very strongly held position that the Commission is exceeding its authority if it adopts Subsection (2). I believe that the statutory scheme created by the Legislature allows a company to withdraw a tariff filing without Commission approval. I have generally filed to withdraw a tariff filing without asking for Commission approval. Normally, I do get some order from the Commission, which I have not requested, which permits the withdrawal. I think this also is a due process issue. I do not believe that a company can be forced into a hearing it does not want to participate in, simply because the Commission has suspended the filing and has not granted permission for a company's withdrawal.

As to Subsection (1), I have the same comments related to the form of the certification that we discussed regarding the earlier draft rules.

WAC 480-80-1X13, Rejecting Tariffs, I assume you mean rejecting a specific tariff filing, rather than the whole tariff that is already on file. Although it does not state so, I assume the rule means that the rejection can occur up until the date it becomes effective by operation of law (the thirty day window). I do not think the Commission would have authority to reject a tariff that has become effective by operation of law, particularly if the defect is a procedural one related to the Commission's rules as opposed to some provision that may violate a statute.

More out of curiosity than anything else, do you have any idea what is meant by the term "reflects retroactive rate treatment"? I recognize that this is language from the old rule. However, any rate filing that has restating adjustments in it could arguably reflect retroactive rate treatment. Anyway, just a thought.

I think some significant thought needs to be given to proposed WAC 480-80-1X14, Tariff Adoption Notice. Under Subsection (1)(a), the proposed rule requires that a company file a tariff adoption notice if there is a change in ownership. My question is a change in ownership to what degree? To carry this to the absurd, a publicly traded corporation would need to file an adoption notice every day. On a less absurd, but very practical basis, for closely held corporations, this rule would require an adoption notice if additional stock is issued, even to the current owners, that changes any percentage of ownership interest. It would apply through estate planning changes, for example, if part of the ownership is put into a trust. It would apply upon the death of one of the owners in a closely held corporation. None of these events change the entity that is regulated by the Commission. However, the draft rule would appear to reach out and grab small ownership changes.

Under Subsection (2), it states that the acquiring company must file the tariff adoption notice. There is no acquiring company for a change in ownership or control. I also note that the requirement that the "surviving company" files a tariff adoption notice if there is a name change. This is probably not the best term to use. I suggest simply striking the sentence on change of name. It is obvious that if there is just a name change, the company that is regulated is the one that would have to file the tariff adoption notice.

I am really troubled by the concept involved here with a tariff adoption notice being required if there is a change in the ownership of the company or a change in operating control of the company. The regulated entity does not change under these circumstances. What is the intent of the Commission in these instances? Are you looking at mergers? Are you looking at asset sales? For example, if there is a change in ownership or a change of operating control, the requirement of Subsection (5) does not make any sense. There may not be a new company in which to incorporate the old tariff.

Under WAC 480-80-1X16, Tariff Availability to Customers, you may want to include the term "price list" in the title since the rule appears to address both tariffs and price lists.

Under Subsection (2), you may want to use the plural form of tariffs and price lists since companies may have more than one. Grammatically, Subsection (2)(b) does not make sense. It now reads, "Each company must maintain a complete copy of its current tariff and price list: . . .(b) by delivery to the customer within three business days" Perhaps the way to cure the language issue is to change the word "maintain" to the term "make available."

I suggest that the lead-in portion of Paragraph (4) be rewritten to read as follows: "The company must post a public notice in every office in which it makes available a tariff or price list which contains at a minimum the following language:" There are a couple of reasons for these suggested changes. The first is that the concept should be that the tariff is made available, rather than "maintained." Maintenance may actually be done at some other location. The second reason is that if the minimum language is specified, the companies may then add additional language which would be in the nature of a disclaimer of liability if there is an error by company personnel in giving the customer the wrong information. We do want to be sensitive to the idea that while we should assist the customers in trying to find information, that does not then mean the company is undertaking a legal duty which gives rise to liability if the wrong information is provided to the customer. It should ultimately be the customer's responsibility to be sure that they have explained in sufficient detail what they are seeking and why, and be able to read for themselves and understand for themselves what the tariff is saying.

I think most of the other draft rules were addressed during the workshops. There are some areas where Rob Snyder and I agreed to try to develop some language for your consideration. Those will follow under a different message.