

Agenda Date: September 12, 2001
Item Numbers: 2B and 2C

Dockets: **UG-990294**
Gas Companies Operations - Rulemaking

UE-990473
Electric Companies - Rulemaking

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

Staff: Graciela Etchart, Electric Companies Rulemaking Team Lead
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Recommendation:

Staff recommends that the Commission direct the Staff to prepare a Rule Adoption Order for Commissioners' review to adopt new proposed rules WAC 480-90-123 and WAC 480-100-123 with the language included as Alternative 4 and to repeal WAC 480-90-121. Staff also recommends that the Commission instruct electric and gas utilities to keep track of prior obligation uses, as well as the rate of uncollectibles related to prior obligation for a period of 18 months starting on October 1, 2001.

Background:

On August 8, 2001, the Commission deferred a decision on the adoption of WAC 480-90/100-123, Refusal of Service, until the open meeting of September 12, 2001. The reason for the delay was to continue discussion of the prior obligation issue. On August 10, 2001, Staff sent stakeholders four alternatives and requested comments. Staff has received comments from Avista Corporation, NW Natural Gas, PacifiCorp, Public Counsel, and The Energy Project. Details of these comments are included below in the discussion of issues.

On July 18, 2001, the Commission filed a Supplemental CR-102 (WSR#01-15-088) with the Code Reviser that proposed the repeal of WAC 480-90-121 Responsibility for Delinquent Accounts. The purpose of this Supplemental CR-102 was to correct an incorrect repealer in the May 23rd Supplemental CR-102, that listed WAC 480-90-116 as the repealer instead of WAC 480-90-121. WAC 480-90-123 is intended to replace WAC 480-90-121. On August 22, 2001, the Commission decided to continue the Adoption Hearing for the repeal of WAC 480-90-121 to the September 12, 2001 Open Meeting.

Discussion:

Organization of the rule. Staff continues to propose a "catch all" subsection that would require a utility to file for Commission approval if the utility proposes to refuse service to a customer

unless the reason for the refusal is specifically spelled out in the rule. Certain subsections of the rule were revised as follows:

Refusal of Service for economic reasons or for adverse impacts on other customers – WAC 480-90-123(3) & 480-100-123(4).

RCW 80.23.110 states that “Every gas company, electric company ..., engaged in the sale and distribution of gas, electricity ..., shall, upon reasonable notice, furnish to all persons and corporations who may apply therefore and be reasonably entitled thereto, suitable facilities for furnishing and furnish all available gas, electricity ... as demanded, ...”

Staff believes that the rule language for reasons to refuse service at the utilities discretion should be limited to safety and reliability reasons. The language should be left flexible and open, but require that denial of service for reasons other than safety, lack of necessary rights-of-way, or illegally procured service, should be left to the Commission’s determination, consistent with the open language in RCW 80.28.110.

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

As a result of gathering additional information and reviewing the information it already has (including prior draft language), Staff has formulated and circulated for comments the following four alternatives, three of which were submitted for the Commission’s consideration at the August 8, 2001, open meeting. A variation of the fourth alternative was originally suggested by The Energy Project.

Alternative 1:

Each customer is allowed three prior obligations and, on the fourth delinquency and disconnection, the customer must pay all past-due amounts associated with the fourth delinquency and disconnection before service is reconnected. The customer would be allowed three prior obligations each calendar year.

Alternative 2:

Allow each customer two prior obligations and, on the third delinquency and disconnection, the company must allow the customer to pay back all amounts associated with the third delinquency and disconnection over a period of six months. If the customer enters into this payment arrangement, he/she would be required to pay each month the then current month’s usage plus one-sixth of the delinquent amount associated with the third delinquency. If a customer fails to keep the payment arrangement at any time during the six-month period, the company could disconnect the customer without prior notice and refuse to reconnect the customer until the full delinquent amount (associated with the third delinquency) is paid. The customer would be allowed two prior obligations and one six-month payment arrangement each calendar year.

Alternative 3:

Allow each customer three prior obligations and, on the fourth delinquency and disconnection, the company must allow the customer to pay back all amounts associated with the fourth delinquency and disconnection over a period of six months. If the customer enters into this payment arrangement, he/she would be required to pay each month the then current month's usage plus one-sixth of the delinquent amount associated with the fourth delinquency. If a customer fails to keep the payment arrangement at any time during the six-month period, the company could disconnect the customer without prior notice and refuse to reconnect the customer until the full delinquent amount (associated with the fourth delinquency) is paid. The customer would be allowed three prior obligations and one six-month payment arrangement each calendar year.

Alternative 4:

Incorporate the language in 480-90-121 and 480-100-116, Responsibility for delinquent accounts, with minor changes as the prior obligation language in 480-90/100-123, Refusal of service and revisit the prior obligation issue after eighteen months of data is collected by the utilities.

(See attachments A through D for alternatives 1 through 4 for 480-90-123).

As stated above, Staff has received additional comments from several stakeholders. Staff includes a summary of each comment in this memorandum. For complete comments, refer to individual letters.

On August 16, 2001, **Avista Corporation** stated that the Company' implementation of Alternatives 2 and 3 remained contingent on the adoption of specified edits and whether Avista could execute those changes to its procedures without costly computer programming modifications. The Company noted that all alternatives remained permissive, not mandatory, and would be implemented by Avista to the extent that the total benefits would exceed the total costs to the general body of its customers. Avista also submitted editing comments to Alternatives 2 and 3, with the purpose of clarifying the language.

On August 17, 2001, **NW Natural** expressed its concern that the current rule empowers utility customers to avoid paying utility bills, and at the same time strips the utility of its rights to collect monies owed for services rendered. From NW Natural's perspective, Alternative 4 is not a viable option and even the limitation of two or three prior obligations in one calendar year (Alternatives 1 through 3) is extremely problematic. According to NW Natural, customers are most likely to find themselves in a prior obligation situation during "the heating season," October through March. Since the typical heating season is spread between two calendar years, each of the proposed alternatives would allow customers the opportunity to avoid paying their bill for a period as long as six consecutive months. The Company expressed its belief that most customers

want to pay their bills but it also expressed its concern that, with continuing utility rate increases likely, more consumers, not just low-income consumers, will be struggling to pay their utility bills. These customers may become more likely, and more willing, to avoid payment over agreeing to make payment arrangements, thus the current and proposed rules will expose the utility to a far greater financial risk with customers at all income levels. To mitigate this situation, NW Natural suggests a rule similar to that in effect in the state of Oregon, that allows the utility to collect one-half of the past-due amount, plus the deposit and reconnection charges. The remainder of the past due amount owed is then payable within 30 days. Finally, NW Natural stated its belief that, at the very least, the Commission should consider restricting the prior obligation provisions of this rule to qualifying low-income customers only.

On August 20, 2001, **PacifiCorp** supported establishing some limitations surrounding the use of prior obligation in the State of Washington. Of the four alternatives sent for comments, PacifiCorp prefers Options 2 and 3 due to the proposed limitations on the use of prior obligation.

On August 22, 2001, **Public Counsel** stated that their first choice and the one most supported by the record is to keep the existing rule in place. According to Public Counsel, in the face of significant pending rate increases it seems a singularly inopportune time to weaken consumer protections. Public Counsel believes that a compromise position could be to allow for three prior obligations per year for those utilities with bill assistance plans meeting the legislature's statutory requirements and approved by the Commission and to retain the current rule language for those not meeting that standard. Public Counsel further stated no objection to the proposed language. Nor would they object to a waiver provision allowing companies to not reconnect those persistent abusers. Public Counsel contends that the waiver language contained in the "uneconomic to serve" subsection would be adequate, but it is willing to look at other language as well.

On September 4, 2001, **The Energy Project** stated the belief that the cost of this change to limit the number of prior obligations per calendar year would be disproportionate to the benefit it will provide to other ratepayers or to the utilities themselves. They repeated their belief that this policy shift is more likely to result in increased disconnects of customers who have no resources, than to catch customers who are truly abusing the rule (i.e., using it to dodge paying their utility bill). The organization stated that the difference of intent is significant under normal circumstances, but even more so given the rising costs of utility service. The Energy Project requests that, if the Commission decides to approve some version that limits a customer's access to protection, it should also include some additional considerations. The organization also requests that this rule change have a sunset, at which time the rule should be reevaluated based on the additional information gathered during the period it is being implemented.

Finally, **Puget Sound Energy** stated the impossibility of providing information about the “aging” of their prior obligation because the Company has not kept track of these numbers in the past, given that there was no need to do so.

Staff Discussion Of the Prior Obligation Issue:

Earlier in the rulemaking process, Staff requested regulated utilities to provide information about the number of users (and possible abusers) of the prior obligation procedure. At that time, Staff was informed by most companies, that they did not keep account of prior obligations. After the August 8, 2001, open meeting, Staff reiterated the request of this information, as well as the amount of each utility’s uncollectibles. Only one company, Avista Corporation, currently keeps track of the number of users by number of prior obligations. But this data is limited to the company’s electric service and to the Spokane area. NW Natural keeps track of the total number of customers using prior obligations per year. In both cases, the proportion of customers using prior obligation per year is around one percent of the total number of residential customers. The other regulated utilities do not keep account of prior obligations, but Puget Sound Energy estimates that the users add to about 0.06 percent of their residential customers. In dollars, the total amount of residential uncollectibles as a proportion of the total amount of residential revenues varies from 0.329 percent for Cascade Natural Gas to 1.71 percent for PacifiCorp. As an additional reference, for Seattle City Light, this figure is 0.8 percent. See Attachment E.

Avista's statistics, showing the number of users by number of prior obligation, had initially and during most of the rulemaking process led Staff to propose to limit the number of allowed prior obligations to three per calendar year. Avista's figures for the Spokane area show a sharp decline of the number of users after three prior obligations. This limit was incorporated in alternatives 1 and 3.

However, the electric and gas price scenarios confronted by residential customers have drastically changed during the last months, with significant actual or potential increases in both electric and gas rates. During the last month, the Commission has received requests for electric rate increases or surcharges from Avista Utilities and Puget Sound Energy. Those increases range from approximately 17 percent to 25 percent. Gas increases, including purchased gas adjustments, have raised rates from 40 to almost 90 percent in the last year. Staff believes that now is not the time to substantially weaken prior obligation as a consumer protection instrument, particularly when not all regulated utilities provide protection for low-income customers and, moreover, as information about prior obligation, when in existence, does not reflect significant figures. Staff believes that more accurate data is needed to support a substantial change in this rule under present circumstances.

Conclusion:

Staff recommends that the Commission direct the Staff to prepare a Rule Adoption Order for Commissioners' review to adopt new WAC 480-90-123 and WAC 480-100-123, with the language included in Alternative 4 and to repeal WAC 480-90-121. Staff also recommends that the Commission direct electric and gas utilities to keep track of prior obligation users and abusers, as well as of the uncollectibles related to prior obligation for a period of 18 months starting on October 1, 2001 and revisit this rule after that data is collected.

Attachments: Attachment A – Alternative 1 WAC 480-90-123 Refusal of Service
Attachment B – Alternative 2 WAC 480-90-123 Refusal of Service
Attachment C – Alternative 3 WAC 480-90-123 Refusal of Service
Attachment D – Alternative 4 WAC 480-90-123 Refusal of Service
Attachment E - Prior obligation statistics