BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of	)	
Adopting and Repealing Rules in	)	DOCKET NO. UE-990473
	)	
Chapter 480-100 WAC	)	GENERAL ORDER NO. R-495
	)	
Relating to Rules establishing	)	ORDER ADOPTING AND
requirements for electric companies	)	REPEALING RULES
	)	PERMANENTLY
. . . . .	)	

1 **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and Transportation Commission takes this action under Notice WSR #01-11-147, filed with the Code Reviser on May 23, 2001. The Commission brings this proceeding pursuant to RCW 80.01.040 and RCW 80.04.160.

2 **STATEMENT OF COMPLIANCE:** This proceeding complies with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 **DATE OF ADOPTION:** The Commission adopts this rule on the date that this Order is entered.

4 **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW 34.05.325 requires that the Commission prepare and provide to commenters a concise explanatory statement about an adopted rule. The statement must include the identification of the reasons for adopting the rule, a summary of the comments received regarding the proposed rule, and responses reflecting the Commission's consideration of the comments.

5 The Commission often includes a discussion of those matters in its rule adoption order. In addition, most rulemaking proceedings involve extensive work by Commission Staff that includes summaries in memoranda of stakeholder comments, Commission decisions, and Staff recommendations in each of those areas.

6 In this docket, to avoid unnecessary duplication, the Commission designates the discussion in this Order as its concise explanatory statement, supplemented where not inconsistent by the Staff memoranda presented at the adoption hearing and at the open meetings where the Commission considered whether to begin this rulemaking and whether to adopt the specific language proposed by Staff. Together, the documents provide a complete but concise explanation of the agency's actions and the agency's reasons for taking those actions.

7 **REFERENCE TO AFFECTED RULES:** This Order repeals and adopts the following sections of the Washington Administrative Code:

WAC 480-100-056 Refusal of service.
Repealed, subject addressed in WAC 480-100-123.

WAC 480-100-116 Responsibility for delinquent accounts.
Repealed, subject addressed in WAC 480-100-123.

WAC 480-100-123 Refusal of service.
New section that combines WAC 480-100-056 and WAC 480-100-116.

8 **PREPROPOSAL STATEMENT OF INQUIRY:** The Commission filed a Preproposal Statement of Inquiry (CR-101) on April 7, 1999, at WSR #99-08-105.

9 **ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL STATEMENT:** The Preproposal Statement of Inquiry advised interested persons that the Commission was considering entering a rulemaking on rules relating to electric companies to review them for content and readability pursuant to Executive Order 97-02, with attention to the rules' need, effectiveness and efficiency, clarity, intent and statutory authority, coordination, cost, and fairness. The review included consideration of whether substantive changes or additions were required.

10 The Commission also informed persons of the inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the Commission's list of persons requesting such information pursuant to RCW 34.05.320(3) or who appeared on lists of interested persons in Docket No. UE-990473. Pursuant to the notice, the Commission:

- Held four interested person/stakeholder meetings.
- Created inter-institutional discussion and drafting subgroups to prepare initial rules drafts.
- Developed draft rules using the information gathered from stakeholders.
- Circulated three working drafts to stakeholders for comment.
- Updated drafts to incorporate comments received.

11 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a supplemental notice of Proposed Rulemaking (Supplemental CR-102) on May 23, 2001, at WSR #01-11-147.

12 **MEETINGS OR WORKSHOPS; ORAL COMMENTS:** Before filing the notice of Proposed Rulemaking, the Commission held four workshops at its headquarters in Olympia on June 3, June 24, October 14-15, 1999, and May 25, 2000. Representatives from the following companies, agencies and organizations attended all or some of the workshops: Avista Utilities (Avista), Puget Sound Energy (PSE),

Northwest Natural Gas (NW Natural), Office of Public Counsel (Public Counsel), PacifiCorp, Cascade Natural Gas (Cascade), The Energy Project, Energy Advocates, Cost Management Services, the Energy Office of the Department of Community, Trade, and Economic Development, International Brotherhood of Electric Workers, and the Washington State Building Code Council. During the workshops, attendees provided oral comments about all the sections under review. Most of the discussions focused on consumer related issues, including refusal of service, prior obligation, and disclosure of private information. The Commission incorporated in its rules many of the suggestions offered by various stakeholders.

13 **COMMENTERS (WRITTEN COMMENTS):** The Commission received written comments, and in some cases, several rounds of written comments from Avista, Cascade, Mr. Jay Lei, Northwest Industrial Gas Users (NWIGU), NW Natural, PacifiCorp, Public Counsel, PSE, The Boeing Company (Boeing), The Energy Project, TrizecHahn Office Properties, Ltd., and Washington Health Care Association. The Commission accepted many of the proposals contained in these written comments.

14 **RULEMAKING HEARINGS:** The Commission originally scheduled this matter for oral comment and adoption under Notice WSR #01-11-147 at 9:30 a.m., at a rulemaking hearing scheduled during the Commission's regularly scheduled open public meeting on Wednesday, June 27, 2001, at the Commission's offices in Olympia, Washington. The Notice also provided interested persons an opportunity to submit written comments to the Commission. The Commission continued the rule adoption hearing on June 27, July 11, July 25, and August 8, 2001. On September 12, 2001, Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, and Commissioner Patrick J. Oshie considered the rule proposal for adoption, pursuant to notice during the Commission's regularly scheduled open public meeting. The Commission heard oral comments from representatives of PSE, Boeing, Public Counsel, NWIGU, Avista, and Htech.

15 **SUGGESTIONS FOR CHANGE THAT ARE REJECTED:** The Commission rejected PSE's and PacifiCorp's proposals to include language in WAC 480-100-123 regarding "economic feasibility" and "adverse impacts" from WAC 480-100-056 as reasons for refusal of service, or to provide examples of economic feasibility and adverse impacts. The Commission does not believe that the rule language should contain specific examples of reasons to refuse service. The language should be left flexible and open, consistent with the language in RCW 80.28.110. Instead the Commission includes conditions in subsections (1) and (2) under which a utility may refuse to provide service, and provides a "catch all" in subsection (5) that would require a utility to file for Commission approval if the utility proposes to refuse service to a customer for reasons other than those listed in subsections (1) and (2).

16 The Commission also rejected the proposals of Cascade, NW Natural, and PacifiCorp to eliminate or specify the number of prior obligations a residential customer or applicant can incur in one calendar year before a utility may refuse

service. The Commission believes that more accurate data about the use and consequences of prior obligation is needed to support a substantial change to this rule.

17 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission repealed and adopted the rules as proposed in the Supplemental CR-102 at WSR #01-11-147 with the changes described below.

18 **CHANGES FROM PROPOSAL:** The Commission adopted the proposal with the following changes from the text noticed at WSR #01-11-147:

19 **Subsection (2)(d).** The Commission revised this subsection and made it more general to include all possibilities in response to PacifiCorp's concern that the proposed language implied that the utility is responsible for securing all rights-of-way, easements, and other permits. Most utilities' line extension tariffs address the responsibility of the applicant to obtain the necessary rights-of-way and easements. It is not the Commission's intent to make the utility responsible for actually obtaining, paying for, or holding all rights-of-way, easements, approvals, and permits. up to the customer's point of attachment. The rule simply recognizes that if all necessary rights-of-way, easements, approvals, and permits are not in place, after reasonable efforts to secure them, the utility may not be required to provide service.

20 **Subsection (3).** Based on the comments of Public Counsel and The Energy Project concerning prior obligations, the Commission determined that for the present it will restate the existing rule, which does not limit the number of prior obligations a residential customer or applicant can incur before a utility may refuse service. The Commission believes that more accurate data about the use and consequences of prior obligation is needed to support a substantial change to this rule.

21 Subsection (4). The Commission revised this subsection to address NWIGU's request that the Commission extend the applicability of this subsection beyond residential applicants and customers. In NWIGU's opinion, to limit this subsection to residential applicants or customers only creates an inequitable obligation on all other customers. The Commission agrees that this subsection should not be restricted to residential applicants or customers and extends the applicability of subsection (4) to all applicants and customers.

22 **Subsection (5).** The Commission replaced the existing subsection (3) with this subsection to address the concerns expressed by TrizecHahn Office Properties, Ltd. and Boeing's request that the Commission repeal this subsection's original language that permitted a utility to refuse new or additional service if "such service will adversely affect service being rendered to other customers" or if to provide service would be "economically unfeasible," in order to preclude a utility from having discretion to refuse service with no effective recourse for the potential customer.

23 Boeing suggested that revision of the existing rule was needed for two reasons. First, revision was necessary for the continued vitality of the economy in Washington.

Boeing commented that the obligation of electric utilities to serve has been critical to economic development in the state because it has contributed to the region's dependable supply of low-cost electric power. According to Boeing, if utilities are permitted to refuse new or additional service, this source of economic strength would be imperiled. Second, Boeing believes that the current Refusal of Service rule is inconsistent with the statutory and common law obligation of an electric utility to provide service: RCW 80.28.010(2); *National Union Insurance Co. v. Puget Sound Power & Light Co*., 94 Wn. App. 163; 972 P.2d 481 (1999). Boeing commented that the Commission has jurisdiction to require an electric utility to provide service. *In re Tanner Elec. Co.* 1991 Wash. UTC LEXIS 17 (WUTC 1991). Contrary to these principles, according to Boeing, the current rule could give a utility untrammeled discretion to refuse service with no opportunity for Commission oversight and no redress for a customer denied service.

24 Boeing asserts that the obligation to serve is a well established principle in utility regulation. The utility has the opportunity to earn a reasonable rate of return and, in exchange, it has the obligation to serve. The presumption should be that the utility has the obligation to serve unless there are reasonable exceptions. The exceptions included in the revised rule fall in the zone of reasonableness.

25 The Commission observes that existing language in the rule permits a utility to refuse new or additional service if "such service will adversely affect service being rendered to other customers" or if to provide service would be "economically unfeasible." These terms are too general and vague to be useful. Commission resolution of obligation to serve issues is likely to be based on fact-specific analysis. So resolution of such issues is not amenable to the prescriptive language of a rule. Obligation to serve issues, when they arise and cannot be resolved otherwise, should be brought to the Commission for resolution.

26 The Commission has removed the original subsection (3) language that permitted a utility to refuse new or additional service if "such service will adversely affect service being rendered to other customers" or if to provide service would be "economically unfeasible." The revised rule includes conditions in subsections (1) and (2) under which a utility may refuse to provide service, and provides a "catch all" in subsection (5) that would require a utility to file for Commission approval if the utility proposes to refuse service to a customer for reasons other than those listed in subsections (1) and (2).

27 The Commission also revised subsection (5) and added subsection (6) to address the process issues raised by Public Counsel, PSE, TrizecHahn Office Properties, Ltd., Boeing, and Mr. Jay Lei. Subsection (5) requires the utility to work with the customer requesting service to resolve the issues before coming to the Commission. Subsection (6) informs applicants and customers about options available under Chapter 480-09 WAC, the Commission's procedural rules.

28 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** In reviewing the entire record, the Commission determines that WAC 480-100-056 and WAC 480-100-116 should be repealed, and WAC 480-100-123 should be adopted to read as set forth in Appendix A, as a rule of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the Code Reviser.

ORDER

29 THE COMMISSION ORDERS That:

30 WAC 480-100-056 and WAC 480-100-116 are repealed, and WAC 480-100-123 is adopted to read as set forth in Appendix A, as a rule of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of filing with the Code Reviser pursuant to RCW 34.05.380(2).

31 This Order and the rules set out below, after being recorded in the register of the Washington Utilities and Transportation Commission, shall be forwarded to the Code Reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, this 3rd day of December, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

32 MARILYN SHOWALTER, Dissenting:

33 I cannot agree with the majority's decision to adopt the so-called "prior obligation rule," WAC 480-100-123(3). Under this rule, a residential customer who has been disconnected for failing to pay prior bills (i.e., who has a “prior obligation") is entitled to be reconnected and to receive electric service upon payment of a deposit and reconnection fee. The underlying amounts owed for prior service need never be paid to receive future service. The rule applies to any residential customer regardless of income or other circumstances. Further, the rule allows an unlimited number of prior defaults and disconnections over an unlimited number of months or years with unlimited amounts owing.

34 The most basic principle underlying all commerce is that people must pay for the goods or services they receive, and cannot expect to continue to receive those goods or services if they have not paid their bills. This universal principle is as important to the operation of public service companies as it is in the broader world. Utilities are obligated to provide service in return for compensation from customers that is fair, just, reasonable and sufficient. In short, the company must serve, but in return, the customer must pay--or at least, that is what our general rule *should* provide.

35 Not surprisingly, there appear to be no other jurisdictions with a rule like the one being adopted. Some jurisdictions require the prior obligation to be paid in full before the utility must reconnect (e.g., Seattle City Light, Snohomish Public Utility District, Tacoma Power, Clark Public Utility District). Others allow thirty days (e.g., the state of Oregon, but only once—after a second disconnection for nonpayment, all overdue obligations must be paid in full before reconnection is required). Others allow a longer period for full payment, but these provisions are limited to low-income customers and/or seasonally related to allow winter service to continue pending full payment. All jurisdictions, as far as I know, ultimately require full payment of prior amounts owed as a condition of the right to receive continued service.

36 An entirely valid concern is the plight of low-income customers who have difficulty paying their energy bills. The rule adopted by the majority, however, is not tailored to them (since it has no means test) and even appears to discriminate against them, as I will discuss shortly.

37 There are several programs devoted to low-income needs, all of which I support. Most broadly, there are state and federal income-assistance (welfare) programs. More specifically, there are state and federal programs that provide money to help low-income customers pay their electric and gas bills. These programs are outside the direct purview of this commission.

38 There are two state statutes, however, that relate more directly to our regulatory authority to address the needs of low-income customers. RCW 80.28.010, the "winter moratorium" law, prohibits defaulting low-income customers from being disconnected during the winter months (November 15 through March 15) if they agree to pay their bills in full by the following October 15. This law only makes

sense if it is premised (reasonably) on the existence of a general requirement to pay one's bills in order to continue to receive service, to which the law provides a circumscribed exception. The rule being adopted, however, negates this premise. As a result, the winter moratorium law is far more demanding of participating low-income customers (they must ultimately pay their bills) than the adopted rule is for all customers (who need never pay their bills). Moreover, the rule actually excludes from its protection anyone who defaults while participating in the winter moratorium program, so it actually discriminates against those low-income customers who are naïve enough but also responsible enough to agree to pay their bills under that program.

39 A second law, RCW 80.28.068, allows public service companies to propose, and the Commission to approve, discounted rates for low-income customers. The costs of the discount are borne by the other ratepayers. The Commission is not authorized to order a discounted rate on its own initiative; it can only respond to a proposal by the company. This law, too, only makes sense if the legislature assumes (reasonably) that without it, all ratepayers, including low-income ratepayers, will otherwise be paying a uniform residential rate. But the rule being adopted has no income test and allows unlimited amounts to go unpaid--in effect creating a much deeper discount than would ever be achieved under the low-income discount law.

40 The rule raises other fairness questions. Those who take advantage of the rule receive its "discount," but those in identical (or worse) circumstances who do manage to pay their bills will not. The majority says it wants more data to evaluate the effects of the rule. But the data being collected will not tell us the income levels or personal circumstances of those who use the rule. Nor will the data tell us the income levels or personal circumstances of those who do *not* use the rule.

41 Of course, in one sense the rule is "fair" in that all residential ratepayers are entitled to take advantage of it. But if large numbers of people were to stop paying their bills and yet continue to receive service, the resulting costs would cut into the revenue requirements of the utility and drive up costs for the rest of the ratepayers. So the rule is not sustainable if used on a broad basis. Regardless of whether the current, similar rule has been broadly or sparingly used, a rule like the one being adopted poses too much risk of misuse or broad use, especially in the absence of any well-articulated purpose. I believe in programs and policies that focus clearly on the needs of those who are unable to pay their energy bills, but the rule adopted here has a much more diffuse focus and potentially more diffuse and unsound effects.

42 The general principle that one is obligated to pay for the services one receives is deeply understood and fundamental to a functioning economy. Instead of abandoning and undermining this principle, our rules should reinforce it, and carve out exceptions to it carefully and fairly.

43 For these reasons, I respectfully dissent.

MARILYN SHOWALTER, Chairwoman

Note: The following is added at Code Reviser request for statistical purposes:

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, amended 0, repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, amended 0, repealed 2.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.