

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Rule-Making to Consider Possible Corrections and Changes in Rules In Chapter 480-07 WAC, Relating to Procedural Rules. (CR-102)

DOCKET NO. A-050802

**Supplemental CR 102 COMMENTS OF PUBLIC COUNSEL**

**Attorney General of Washington**

**June 19, 2006**

**I. INTRODUCTION**

The Public Counsel Section of the Washington State Attorney General's Office (Public Counsel) files these comments in response to the Washington Utilities and Transportation Commission's (Commission) May 11, 2006, *Notice of Opportunity to Comment on Supplemental Proposal*. These comments respond only to the supplemental proposed rules regarding Alternative Dispute Resolution (ADR), WAC 480-07-700, issued on May 11, 2006. The comments do not address the proposed rules regarding enforcement of interconnection agreements. Public Counsel hereby incorporates by reference its prior comments in this docket.

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## II. COMMENTS ON PROPOSED SUPPLEMENTAL RULES REGARDING SETTLEMENT PROCEDURES

Public Counsel strongly supports the proposed ADR rules contained in the Commission's supplemental CR 102. WAC 480-07-700(3). The previously filed comments of Public Counsel and other parties have addressed in detail our concerns with past settlement practices and have offered some proposed rule changes to effect solutions. One key area of concern has been to ensure that all parties to an adjudicative proceeding have notice that settlement discussions are being initiated, and have an opportunity to participate in those discussions. The Commission's supplemental proposal clearly and effectively provides for notice and opportunity to participate when the settlement process is to be initiated. Hopefully, with this rule in place, disputes about settlement process will be avoided. The supplemental rule institutionalizes best practices which have already been productively employed in major Commission proceedings (e.g. 2001, 2004, and 2006 PSE rate cases, Verizon GRC, Verizon Merger) and in recent Commission informal procedural changes.<sup>1</sup>

Definition. The inclusion of a definition of settlement conference is helpful. The definition appears to be a workable one, reflecting that fact that some bilateral discussions typically occur which do not trigger the need for the rule. The exclusions listed are consistent with current Commission practice. The exception for discussions "to define whether a dispute exists" could pose a problem, however, if read too broadly, since at some point the process of defining whether there is disagreement can easily become a negotiation. To avoid this problem, Public Counsel would recommend rewording the phrase to read "to ~~define~~ identify whether a dispute exists."

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<sup>1</sup> While the supplemental rule by its terms addresses the initiation of settlement conferences and not later discussions, as a practical matter, settlement practice before the Commission has shown that once all parties are initially at the table, consensual settlement process is developed by the parties which has avoided further process issues. Thus, the rule addresses a key part of the process where issues have arisen. If other issues recur with the settlement process they can be addressed in the future.

Early initial settlement conference. Public Counsel supports the addition of this section. This fills a potential gap in the prior proposed rule, which focused on the scheduling of a settlement conference in the case schedule but was silent as to earlier discussions. Public Counsel does not object to the application of the rule to all parties. While historically, most issues in this area arose from Staff/Company bilateral discussions, the proposed rule is an even-handed approach which should not be unduly burdensome and should have benefits for all parties.

Public Counsel has one technical concern. Because the term “party” is defined “for purposes of (b) of this subsection only,” it could be misinterpreted to exclude all the entities listed from the rest of WAC 480-07-700(3), including Staff, Public Counsel, and the filing entity. Public Counsel understands the focus to be on (b)(v), parties to the most recent prior case. One solution might be to move the phrase “for purposes of (b) of this subsection” to the beginning of (b)(v), to read (in bold):

(b) **Early initial settlement conference.** Any party that wishes to initiate settlement discussions with any other party between the filing of the docket and the initial prehearing conference must provide notice to the commission and to all other parties. The notice must specify the time and place of the early initial settlement conference and the topics to be discussed. The notice must be filed with the commission in the proceeding docket and served on other parties at least fourteen days before the date set for the conference. An early initial settlement conference must be open to all parties. ~~For purposes of (b) of this subsection only, a~~ A party includes:

- (i) The entity filing the matter leading to an expected adjudication and the respondent, if any;
- (ii) The commission staff;
- (iii) Public counsel;
- (iv) An entity that has filed a petition to intervene in the docket, as shown on the commission's web site at the time of service of the notice; and
- (v) **For purposes of (b) of this subsection only, An**— an entity that was party to the most recent proceeding of the same type, involving the same filing entity and respondent, if any.

### **III. CONCLUSION**

The supplemental proposed rules are a significant improvement in the Commission's settlement procedures and, if applied and followed both in the letter and the spirit by all parties, will hopefully bring resolution to what has been a contentious issue for several years before the Commission. Public Counsel urges the Commission to adopt the supplemental rules, with consideration of the minor proposed changes, as final rules.