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Ms. Carole J. Washburn, Executive Secretary  
Washington Utilities & Transportation Commission  
1300 S. Evergreen Park Drive SW  
P.O. Box 47250  
Olympia, WA 98504-7250

***Re: Docket A-072162; Comments of Verizon Northwest Regarding Rulemaking to Consider Possible Corrections and Changes to Selected Rules in WAC 480-07, Relating to Procedural Rules***

Dear Ms. Washburn:

Verizon Northwest Inc. ("Verizon") submits these comments in response to the Notice of Opportunity to File Written Comments issued by the Commission in Docket A-072162 on January 25, 2008 ("Notice"). The Notice invited comments on attached draft revisions to the Commission's procedural rules ("Draft Rules"), as well as on changes suggested by Public Counsel in comments submitted on January 8, 2008 ("Public Counsel Proposals").

### **Administrative Matters**

Verizon appreciates the use of the explanatory boxes used throughout the Draft Rules to explain the purpose behind each of the proposed changes. The explanations were very helpful in understanding the proposed language changes, and the Draft Rules generally look acceptable to Verizon. However, Verizon agrees with one of the Public Counsel Proposals not reflected in the Draft Rules: changing WAC 480-07-140 to allow electronic filing with next-day filing of paper copies in all proceedings, including adjudications. This practice has become routine, but under the current rules, special permission is required to file paper copies one day after the filing deadline. Eliminating the requirement for special permission would simplify things, and avoid an unnecessary step.

### **Exemption Petitions**

Certain of the Public Counsel Proposals, however, are problematic. For example, the proposal that WAC 480-07-110(c) be amended to mandate that the Commission consider four particular factors when assessing petitions for exemptions or modifications from Commission rules is both unnecessary and inappropriate. It is unnecessary because the rules (in WAC 480-07-100(1)) already provide the Commission with discretion to determine whether granting an exemption or modification from its rules is "consistent with the public interest." That discretion ensures that under the current rules, Public Counsel (and any other interested party) is already free to raise any factor(s) on the propriety of the granting of an exemption or modification, including the factors specified in the Public Counsel Proposals suggested for WAC 480-07-110(c).

The Public Counsel Proposals in this regard are also inappropriate because they would mandate consideration of an incomplete list of factors. The current rule (WAC 480-07-110(c)) does not mandate Commission consideration of any factors in considering exemption or modification petitions; it only lists two factors that "may" be considered by the Commission. In contrast, the Public Counsel Proposals would specify that the Commission "will" consider four isolated factors, none of which assesses the impact of the rule on the company filing for the exemption.<sup>1</sup> Thus, the Public Counsel Proposals would have the inappropriate effect of mandating Commission consideration of an isolated and incomplete list of factors. Accordingly, the amendments to WAC 480-07-110(c) in the Public Counsel Proposals should be rejected.

### **Confidentiality Designations**

Public Counsel also proposes to amend WAC 480-07-160(4) to provide for sanctions, including monetary penalties, for a company making an "an improper or bad faith" designation of material as confidential. This is a terrible solution in search of a problem. Putting aside the issue of whether the Commission even has the authority to sanction a party in this regard (an issue Verizon understands, based on comments made at the Bench Bar conference, to be of primary concern to Commission Staff lawyers and a matter that they will address in this docket),

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<sup>1</sup> Although it is unnecessary to address the substance of the drafted factors themselves since there is no reason for them to be included in any event, substantive problems with the factors are obvious on their face. For example, one proposed factor would require the Commission to consider whether a petition "restates arguments or objections that the requesting party made during the rulemaking adopting the challenged rule." Public Counsel Proposals WAC 480-07-110(c)(3). There is no reason to preclude a party from making an argument in support of a petition for exemption that it made in the rulemaking adopting the rule: the argument may make sense in the case of an exemption petition in a way that was not appropriate in the rulemaking. Such matters are for the Commission to decide, and that is why it has the latitude it does to rule on exemption or modification petitions under a public interest standard.

there is no reason for such a draconian step to be taken with regard to confidentiality designations.

Indeed, there already exists a well developed body of statutes, regulations and procedures to ensure the proper designation of confidential materials. In adjudicative proceedings, parties may challenge confidentiality designations under WAC 480-07-160(4), and upon such a challenge, the designating company must bear the burden of convincing the Administrative Law Judge or the Commission that the confidentiality designation was appropriate. In non-adjudicative proceedings, a statutory mechanism exists in which a person may seek release of confidentially-designated records from the Commission. Within ten days of receiving a notice of such a request, the party designating the material as confidential must obtain a superior court order prohibiting disclosure of the confidential information. RCW 80.04.095. Obtaining a court order on such an expedited basis puts the designating company in a very difficult position of mobilizing resources quickly to address challenges that can be made without any supporting facts. Thus, companies designating information in documents filed at the Commission as confidential already face a tremendous burden in justifying such designations; there is no reason to add to that burden by allowing imposition of monetary sanctions for mistakes.

Verizon respectfully submits these comments for consideration by the Commission, and looks forward to continuing to participate in this rulemaking.

Sincerely,



Gregory M. Romano

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