

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of

Rulemaking to Consider Possible  
Corrections and Changes to Selected Rules  
in WAC 480-07, Relating to Procedural  
Rules.

Docket No. A-072162

**SECOND COMMENTS OF PUBLIC COUNSEL (CR-101)**

**February 22, 2008**

**I. INTRODUCTION**

The Public Counsel Section of the Washington State Attorney General's Office (Public Counsel) respectfully submits these comments in response to the January 25, 2008, Notice of Opportunity to File Written Comments (Notice) on simultaneously issued draft rules. On January 8, 2008, Public Counsel filed Initial Comments in this rulemaking. At the Bench-Bar Conference on February 6, 2008, the Commissioners, ALJs, and members of the bar addressed the draft rules and Public Counsel's Initial Comments.

**II. COMMENTS**

**A. Public Counsel Initial Comments**

At the Bench-Bar Conference, participants discussed four of the recommendations in Public Counsel's Initial Comments.

**1. WAC 480-07-110 – Exemptions from Commission Rules.**

In its Initial Comments, Public Counsel recommended that the Commission adopt new standards for exemptions from, and modifications of, Commission rules. At the Bench-Bar Conference, other participants commented that rule already contains standards. Public Counsel responds that the existing standards provision has an unduly narrow focus, referring only to the interests of the person requesting the modification. Public Counsel's proposed amendments are intended to balance the standard by establishing other specific criteria that go to preserving the original intent of the rule.

With respect to our recommendation regarding service of waiver requests, Public Counsel modifies its proposal to only request service on Public Counsel in telecommunications, electric, and gas industry requests matters.

**2. WAC 480-07-140, -145, and -510 – Electronic Work Papers and Electronic Filing.**

There appears to be general agreement that the rules on electronic filing, WAC 480-07-140 and 145, should be amended to authorize such filing as a general matter in Commission proceedings. If it is compatible with the Commission's needs, the Commission may also wish to consider the suggestion made at the Bench-Bar to allow hard copy filing by first class mail, rather than requiring next day receipt, to reduce the cost to parties of overnight mail or messenger delivery. There also appears to be broad support for the proposal to amend WAC 480-07-510(3)(b) regarding electronic work papers. The Commission incorporated Public Counsel's recommendation into its draft rules.

**3. WAC 480-07-160 – Confidentiality and Sanctions for Improper Designations.**

Public Counsel’s Initial Comments recommended amending this rule to allow for possible sanctions for bad faith confidentiality designations. The purpose of the proposal is to discourage the unnecessary designation of large amounts of information in WUTC regulatory proceedings as confidential. The practice of “over-designation” appears to be occurring more frequently and is somewhat encouraged by the use of blanket protective orders, which allow parties to freely exchange information while screening the public from important regulatory information. Companies not infrequently withdraw a designation when it is questioned. Most such situations do not rise to the level of bad faith, but there is a need for a structural mechanism encouraging companies to take extra care in their designations.

Public Counsel’s proposal would create an incentive for companies not to abuse the process and only designate truly commercially sensitive information. At the Bench-Bar, concerns were raised about Commission authority to adopt the proposal. Title 80 clearly provides that the Commission may impose penalties for violations of its own orders, which presumably includes protective orders.<sup>1</sup> Moreover, the Commission has specific authority to impose sanctions for “abusive discovery practice.”<sup>2</sup> There would appear to be no issue of Commission authority to take this approach.

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<sup>1</sup> RCW 80.04.380.

<sup>2</sup> WAC 480-07-400(3).

## **B. Other Issues**

Below are Public Counsel's comments on other issues discussed at the Bench-Bar Conference, as well as some additional recommendations.

### **1. WAC 480-07-510 – General Rate Case Filings and “Summary Documents.”**

Public Counsel requests that section 510(4) be amended to provide that the “summary document,” referred to in 510(4), must be served on Public Counsel at the same time as the other rate case documents listed in 510(1)-(3). Under the current rule, different service requirements apply. WAC 480-07-510(4) only requires that the summary document be mailed to Public Counsel on filing day, which would delay receipt. As a practical matter, companies are routinely including the summary document in their full rate case filing served on Public Counsel on filing day under 510(1). The proposed amendment would bring the rule in line with current practice.

### **2. WAC 480-07-710 – Appointment of Mediator/Settlement Judge.**

If the Commission wishes to provide more flexibility in the rule, it could amend WAC 480-07-710 to allow one party to request appointment of a mediator/settlement judge, and, in addition, allow the other parties to the case to comment on the requested appointment. Then, based on the initial request and comments, the Commission could determine whether appointment of a settlement judge is appropriate. Use of a mediator or settlement judge could help to avoid the situation that may occur where a party becomes isolated as a settlement develops and is unable to have issues considered. A mediator can help to keep all parties' interests under discussion and facilitate all-party as opposed to non-unanimous settlements.

**3. WAC 480-07-900 – Open Public Meetings.**

The Commission may wish to amend WAC 480-07-900 to clarify that a party is not required to pre-file written comments in order to present oral comments at open meetings. Public Counsel would also request that the rule provide for a “listserv” so that parties who wish can automatically receive copies of open meeting agendas.

**4. WAC 480-07-904 – Delegation of Requests for Transfer of Telecommunications Company Property.**

The draft rules include a new provision delegating all requests for authorizations of transfers of property by telecommunications companies to the executive secretary.<sup>3</sup> It is our understanding that the intent is to limit the use of this provision in practice to items of small value. However, the current rule is worded to cover all transfers, some of which, as the Commission is aware, can involve multi-million dollar transactions with significant consumer impact. Accordingly, Public Counsel opposes inclusion of this provision unless it is expressly limited to *de minimis* transfers or transfers of property worth less than a stated reasonably small dollar amount (for example \$250,000).

**III. CONCLUSION**

Public Counsel appreciates the opportunity to comment on these rules and respectfully requests the Commission adopt the recommendations in these comments. Public Counsel will remain an active participant in this rulemaking and comment further as necessary.

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<sup>3</sup> Draft WAC 480-07-904(1)(l).