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

ADDITIONAL COMMENTS OF PUBLIC COUNSEL

Attorney General of Washington

July 10, 2006

I. INTRODUCTION

The Public Counsel Section of the Washington State Attorney General's Office (Public Counsel) files these comments in response to the call for comments at the June 28 adoption hearing and in the July 5th electronic mail.

II. ADDITIONAL PUBLIC COUNSEL COMMENTS ON PROPOSED SUPPLEMENTAL RULES REGARDING SETTLEMENT PROCEDURES

For the reasons stated in our June 19 comments, Public Counsel continues to be supportive of the proposed rules, with the comments below:

Section (3) lead paragraph

Definition: The additional language regarding "whether another party is willing to negotiate" is acceptable if it is not abused by using it as an opportunity to then immediately initiate non-noticed settlement discussions.

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
900 4th Ave., Suite 2000
Seattle, WA 981064-1012
(206) 464-7744

Participation: The latest version of the rule limits the right to participate in two ways. First, the right is expressly limited to "early initial" or "initial" conferences. As we noted in our most recent comments (page 2, footnote 1), the focus on the initial conference is workable if there is a presumption that current good faith settlement "best practices" continue during the settlement negotiation process. These have historically included continuing notice to and participation of negotiating parties in issues of interest to them, and the ability to caucus in smaller groups, as an understood part of the process. In several rounds of prior comments, we have observed that the rules need not micromanage the negotiation process because parties "know how to do settlement" in a workable fashion.

Public Counsel does not support this language, however, if it is interpreted by parties as a one-time formalistic initial requirement after which non-noticed private bilateral negotiations can proceed unchecked. While we hope we can rely on the good faith of parties and practitioners on this issue, the adamant insistence by companies in particular, including at the June 28 hearing, on the ability to hold private bilateral conferences with Staff and others, is of concern.

Section (3)(b)

The second limitation on participation in an early initial conference is based on whether a petition to intervene has been filed. Intervention petitions are sometimes not filed until the prehearing conference, in part because parties may only learn of the proceeding from the prehearing conference notice. Parties with legitimate interests at stake may therefore not hear of the early initial settlement conference. Public Counsel would urge revising the rule to reinsert a requirement that parties to the last company rate case be provided notice of an early initial settlement conference. Even where the new docket is not a rate case, this would likely capture the broadest group of stakeholders. A variation on this approach could require that after receiving notice of the settlement conference, they file a petition to intervene in the new docket if they wished to attend the early initial settlement conference, as a way of confirming an interest in the proceeding.

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
900 4th Ave., Suite 2000
Seattle, WA 981064-1012
(206) 464-7744

III. CONCLUSION

With these comments, Public Counsel recommends adoption of the proposed rules regarding settlement as a positive improvement in Commission procedures.

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
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Seattle, WA 981064-1012
(206) 464-7744