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 THE NW ENERGY COALITION ON PROPOSED SUPPLEMENTAL RULES REGARDING SETTLEMENT PROCEDURES

Submitted by: Danielle Dixon, Senior Policy Associate
July 10, 2006

I. INTRODUCTION

The NW Energy Coalition files these comments in response to the July 5th e-mail from Administrative Law Judge Ann Rendahl. We regret that we were unable to have someone from the Coalition present at the June 28 hearing concerning these rules, though we have heard a summary of the discussion. Unfortunately, no one from the Coalition can be present at the recessed adoption hearing on July 12 either. Our inability to participate in person at this time should in no way be taken as a sign that the settlement rules are not important to us – indeed, we have dedicated considerable staff time over the past 1.5 years pursuing improvements in settlement policies and practices at the Commission.

II. ADDITIONAL COMMENTS REGARDING PROPOSED WAC 480-07-700(3)

The current proposed rules explicitly focus on the rights of parties to participate in initial and early initial settlement conferences. While these proposed rules help establish a baseline for early participation in settlement discussions, they do not fully accomplish the Coalition's goal of ensuring equal access of all parties to all such discussions throughout an adjudicated proceeding.

As noted in our previous written comments, we are cautiously optimistic that the current trend towards notifying and including all parties in settlement discussions following the first settlement conference will continue. However, we would not want the new proposed language to be interpreted as a carte blanche to pursue exclusive settlement discussions (e.g., between Staff and the Company) following the single scheduled initial conference.

The new proposed rule limits notice to and participation in the early initial settlement conference to the Commission, Public Counsel, and parties that have filed petitions for intervention. We do not support this modification as currently written. WAC 480-07-355 requires parties to submit written petitions for intervention at least three business days prior to the first prehearing conference, or petition orally at the prehearing conference. In our experience, parties have opted to petition orally on many occasions – and those that file in writing typically do not do so far in advance of the first prehearing conference. Requiring notice of early initial settlement conferences only to intervening parties may force organizations to petition for intervention as soon as the Commission receives a filing to ensure they are kept in the loop just in case settlement discussions begin, rather than allowing them the time currently afforded in the rules to review the filed case and determine issues of potential interest – and whether intervention makes sense. Further, some parties may not even be aware of the opportunity for intervention in a case until they receive the prehearing conference notice. By then, early initial settlement conferences may have occurred without their participation and ultimately to their detriment. We recommend modifying the proposed rule to at least require that notice be provided to the Commission, Public Counsel, and intervening parties <u>as well as</u> all parties to the last company rate case. Even under this proposal, some interested parties may not be notified of pending settlement discussions, but at least the net will be wider cast. Because settlement conferences include confidential discussions, actual participation in the conference itself could be predicated on an organization filing its petition for intervention prior to the conference.

III. CONCLUSION

With the above recommended modification, the Coalition remains supportive of the settlement rules proposed in the July 5 e-mail as a step in the right direction, but we reserve the right to pursue additional changes by rule or legislation if needed.