

CONCISE EXPLANATORY STATEMENT

SUPPLEMENTAL MEMORANDUM

Agenda Date: July 11, 2001
Item Numbers: 2A and 2B

Dockets: **UG-990294**
Gas Companies Operations - Rulemaking
UE-990473
Electric Companies – Rulemaking

Subject: Review of Commission's rules 480-90-123 and 480-90-153 WAC
and 480-100-123 and 480-100-153 WAC

Staff: James M. Russell, Gas Companies Operations Rulemaking Team
Lead
Graciela Etchart, Electric Companies Rulemaking Team Lead

Recommendation:

Staff recommends that the Commission direct the Staff to prepare a Rule Adoption Order for Commissioner's review to adopt new proposed rules WAC 480-90-123 & 153 and WAC 480-100-123 & 153, as revised, and reflected in Attachments A and B to this memorandum.

Discussion:

On July 5, 2001, PSE (Company) filed written comments on the redraft of WAC 480-90-123, Refusal of Service (gas) and WAC 480-100-123, Refusal of Service (electric). PSE states in its letter that there has been little discussion of the proposed changes to these rules and urges the Commission defer action on these rules if the Commission is not persuaded to adopt the Company's recommendations.

The original Staff memorandum in these dockets discussed the rulemaking process to date. In this memorandum we do address PSE's concerns and recommend certain language modification as a result. Staff believes that there has been adequate process for input and discussion for these proposed rules and we believe that the Commission should go forward with adopting the revised rules reflected in Attachments A and B.

Requirements for protective devices – WAC 480-90-123(1)(c) & 480-100-123 (2)(c)

PSE states that under the current rule, a utility may require an applicant or customer to install protective equipment whenever necessary to protect the utility or other customers property. PSE also states that the proposed rule merely requires the applicant or

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customer to provide the equipment, implying the utility will be responsible for installing the equipment. Finally, PSE believes that the current rule language clearly gives the utility the discretion to decide whether a protective device is required.

The intent of the rule is to allow the utility to require an applicant or customer to provide and install adequate protective devices on the customer's premises in order to protect the utility's or other customer's property. Therefore, staff proposes to clarify this subsection by recommending that the Commission adopt the following language (slight variation on PSE's proposed language):

- (c) The applicant or customer does not comply with the utility's request that the applicant or customer to provide and install protective devices, when the utility, in its reasonable judgment, deems such devices are necessary to protect the utility's or other customer's properties from theft or damage.

Acquisition of Rights-of-Way – WAC 480-90-123(1)(d) & 480-100-123(2)(d)

PSE states that the proposed language is a significant departure from the existing rule and would result in a potential costly change in policy. PSE states that in numerous situations, applicants requesting service are required to obtain all necessary rights-of-way and operating rights, thereby internalizing such costs to service applicants. PSE proposes the following language:

- (d) Unless and until the utility can secure all necessary rights-of-way, easements, and permits.

The Staff recommends that the Commission adopt the original Staff proposal but that the word "secure" be used in place of the word "obtain". Most utilities' line extension tariffs address the responsibility of the applicant to get the necessary rights-of-way and easements. It is not the intent of this rule that the utility be responsible for actually obtaining, paying for, or holding all rights-of-way, easements, approvals, and permits up to the customer's burner tip, but that if all necessary right-of-way, easements, approvals, and permits are not in place, after reasonable efforts to secure them, the utility may refuse service. The staff therefore proposes to revise this subsection to read:

- (e) The utility is unable, after reasonable efforts, to obtain secure all necessary rights-of-way, easements, approvals, and permits.

Refusal of Service for Economic Reasons

PSE proposes language that would allow the utility to refuse service, if to do so would be uneconomic. PSE's draft also includes a requirement that the utility and customer must negotiate in good faith in an attempt to resolve the uneconomic provisions of service within the utility's existing tariffs and service agreements. PSE's proposed language then

puts the burden on the applicant or customer to file a complaint if the utility and customer or applicant cannot reach agreement.

Staff believes that the commission should adopt the Staff's proposal as outlined in Attachments A and B to the original backup memorandum (see subsections (4) [gas] and (5) [electric]). PSE's language is problematic in that other utilities do not have "uneconomic provisions of service" within their tariffs.

WAC 480-90/100-033, Distribution Line Extension Tariffs, requires a utility to file a distribution line extension rule setting forth the conditions under which it will extend its facilities to make service available to an applicant. The line extension tariffs establish the conditions and the costs the customer is responsible for when an applicant requests service. The economic decision with regard to the line extension then rests with the applicant, not the utility.

In addition, PSE's proposal puts the burden on the applicant or customer to file a complaint if the utility refuses service for "economic" reasons. The rules in chapters 480-90 and 100 apply to regulated utilities who have a statutory obligation to serve. Most customers are unaware of these rules and would be unaware of their rights under them. Therefore, Staff continues to believe that the rules should place the responsibility on the utility to seek Commission approval in order to refuse service for any reasons other than those spelled out in the rule. The Staff's proposed language does not prohibit a utility from working with its applicants and customers first to resolve any issues regarding costs, or other economic issues, to serve; but would require the utility to file for approval before the utility ultimately refuses service against the applicant's or customer's continuing request for service.

Prior Obligation – WAC 480-90-123(4) & 480-100-123(5)

PSE states that the definition of "prior obligation" is overly broad and should not include deposits, line extension amounts, or winter moratorium past-due accounts for customers who continue on the winter moratorium payment plan.

Staff agrees with the Company that deposits would not be included in prior obligation. However, it has been the position of the Commission Staff that all other amounts already billed at the time of disconnection should be included in prior obligation. PSE and Consumer Affairs staff agreed to this policy in 1995 and this policy continues today. Staff has discussed the line extension issue with PSE and agree that line extension amounts are either paid up-front or embedded in new customer rates. PSE has withdrawn its concern regarding line extension charges.

Staff asserts that the moratorium program described in RCW 80.28.010 requires any customer who has entered into this program and who defaults on his/her payments and whose service is disconnected must pay all past-due amounts pertaining to this program

prior to having service restored. This statute does not differentiate between those customers remaining or not remaining on the moratorium program. Prior obligation would not be made available in these cases. Counsel has confirmed Staff's position on this issue and the appropriate revisions are reflected in the revised rules in Attachments A and B.

Summary:

We believe we have considered PSE's comments carefully and proposed revisions accordingly as outlined. Therefore, Staff recommends that the Commission direct the Staff to prepare a Rule Adoption Order for Commissioner's review to adopt new proposed rules WAC 480-90-123 & 153 and WAC 480-100-123 & 153 as revised, and reflected, in Attachments A and B to this memorandum.

Attachments:

Attachment A – Draft WAC 480-90-123 and 153 (Revised)

Attachment B – Draft WAC 480-100-123 and 153 (Revised)

WAC 480-90-123 Refusal of service. (1) A gas utility may refuse to provide new or additional service if:

(a) Providing service does not comply with government regulations or accepted natural gas industry-accepted standards;

(b) In the utility's reasonable judgment, ~~there are conditions at the premises that are hazardous or the applicant's or customer's installation of piping or gas burning equipment is considered hazardous~~ or of such a nature that safe and satisfactory service cannot be provided;

(c) The applicant or customer does not comply with the utility's request that the applicant or customer ~~to provide and install~~ protective devices, when the utility, in its reasonable judgment, deems such protective devices are necessary to protect the utility's or other customers' properties from theft or damage;

(d) The utility is unable, after reasonable efforts, to secure-obtain all necessary rights of way, easements, approvals, and permits; or

(e) The customer is known by the utility to have tampered with or stolen the utility's property, used service through an illegal connection, or fraudulently obtained service and the utility has complied with WAC 480-90-128 (2), Disconnection of service.

~~(2) Upon request by an gas utility, the commission may waive the utility's obligation to provide new or additional service when to do so would:~~

~~(a) Cause an adverse affect on other customers; or~~

~~(b) Not be economically feasible.~~

~~(3)~~ The utility may not refuse to provide service to an residential applicant or residential customer because there are outstanding amounts due from a prior customer at the same premises, unless the utility can determine, based on objective evidence, that a fraudulent act is being committed, such that the applicant or customer is acting ~~on behalf of~~ in cooperation with the prior customer with the intent to avoid payment.

(3) The utility may refuse to provide new or additional service for reasons not expressed in subsections (1) and (2) of this section, upon prior approval of the commission. The commission may

grant the request upon finding that the utility has no obligation to provide the requested service under RCW 80.28.110.

(4) The utility may not refuse service to a residential applicant or residential customer who has three or fewer prior obligations in any one calendar year. A prior obligation is the dollar amount, excluding deposit amounts owed, the utility has billed to the customer and for which the utility has not received payment at the time the service has been disconnected for non-payment. This subsection does not apply to customers that have been disconnected for failure to honor the terms of a winter low-income payment program entered under WAC 480-100-143, Winter low-income payment program.

(5) Any applicant or customer who has been refused new or additional service may file with the commission an informal complaint under WAC 480-09-150, Informal complaints, or a formal complaint under WAC 480-09-420, Pleadings and briefs-Applications for authority-Protests, and 480-09-425, Pleadings-Verification, time for filing, responsive pleadings, liberal construction, amendments.

WAC 480-90-153 Disclosure of private information. ~~(1) A gas utility may not use private consumer information, as defined in subsection (3) of this section, to market services to its customers, except that the utility may use such information to market its own energy related services or products.~~

~~(2)~~ A gas utility may not ~~share~~ disclose or sell private consumer information with or to its affiliates, subsidiaries, or any other third party for the purposes of marketing services or product offerings to a customer who does not already subscribe to that service or product, unless the utility has first obtained the customer's written permission to do so.

~~(3)~~ Private consumer information includes the customer's name, address, telephone number, and any other personally identifying information, as well as information related to the quantity, technical configuration, type, destination, and amount of use of service or products subscribed to by a customer of a regulated utility that is available to the utility solely by virtue of the customer-utility relationship.

~~(4)~~ This section does not prevent disclosure of the essential terms and conditions of

special contracts as provided for in WAC 480-80-335, Special contracts for electric, water, and natural gas utilities.

(54) This section does not prevent the utility from inserting any marketing information into the customer's billing package.

(65) ~~Gas~~The utilities may collect and release customer information in aggregate form if the aggregated information does not allow any specific customer to be identified.

WAC 480-100-123 Refusal of service. (1) An electric utility may refuse requests to provide service to a master meter in a building with permanent occupants when all of the following conditions exist:

- (a) The building or property has more than one dwelling unit;
- (b) The occupants control a significant part of the electricity used in the individual units; and
- (c) It is cost-effective for the occupants to have the utility purchase and install individual meters considering the long-run benefits of measuring and billing each occupant's electric use separately.

(2) The utility may refuse to provide new or additional service if:

(a) Providing service does not comply with government regulations or the electric industry accepted standards concerning the provision of service;

(b) In the utility's reasonable judgment, ~~there are conditions at the premises that are hazardous~~ the applicant's or customer's installation of wiring or electrical equipment is considered hazardous or of such nature that satisfactory service cannot be provided;

(c) The applicant or customer does not comply with the utility's request that the applicant or customer to provide and install protective devices, when the utility, in its reasonable judgment, deems such devices are necessary to protect the utility's or other customers' properties from theft or damage;

(d) The utility is unable, after reasonable efforts, to secure ~~obtain~~ all necessary rights of way, easements, approvals, and permits; or

(e) The customer is known by the utility to have tampered with or stolen the utility's property, used service through an illegal connection, or fraudulently obtained service and the utility has complied with WAC 480-100-128 (2), Disconnection of service.

~~(3) Upon request by an electric utility, the commission may waive the utility's obligation to provide new or additional service when to do so would:~~

~~(a) Cause an adverse affect on other customers; or~~

~~(b) Not be economically feasible.~~

(43) The utility may not refuse to provide service to an residential-applicant or residential customer because there are outstanding amounts due from a prior customer at the same premises, unless the utility can determine, based on objective evidence, that a fraudulent act is being committed, such that the applicant or customer is acting on behalf of in cooperation with the prior customer with the intent to avoid payment.

(4) The utility may refuse to provide new or additional service for reasons not expressed in subsections (1) through (3) of this section, upon prior approval of the commission. The commission may grant the request upon finding that the utility has no obligation to provide the requested service under RCW 80.28.110.

(5) The utility may not refuse service to a residential applicant or residential customer who has three or fewer prior obligations in any one calendar year. A prior obligation is the dollar amount, excluding deposit amounts owed, the utility has billed to the customer and for which the utility has not received payment at the time the service has been disconnected for nonpayment. This subsection does not apply to customers that have been disconnected for failure to honor the terms of a winter low-income payment program entered under WAC 480-90-143, Winter low-income payment program.

(6) Any applicant or customer who has been refused new or additional service may file with the commission an informal complaint under WAC 480-09-150, Informal complaints, or a formal complaint under WAC 480-09-420, Pleadings and briefs-Applications for authority-Protests, and 480-09-425, Pleadings-Verification, time for filing, responsive pleadings, liberal construction, amendments.

WAC 480-100-153 Disclosure of private information. ~~(1) An electric utility may not use private consumer information, as defined in subsection (3) of this section, to market services to its customers, except that the utility may use such information to market its own energy related services or products.~~

(21) An electric utility may not share-disclose or sell private consumer information with or to its affiliates, subsidiaries, or any other third party for the purposes of marketing services or product offerings to a customer who does not already subscribe to that service or product, unless the

utility has first obtained the customer's written permission to do so.

(32) Private consumer information includes the customer's name, address, telephone number, and any other personally identifying information, as well as information related to the quantity, technical configuration, type, destination, and amount of use of service or products subscribed to by a customer of a regulated utility that is available to the utility solely by virtue of the customer-utility relationship.

(43) This section does not prevent disclosure of the essential terms and conditions of special contracts as provided for in WAC 480-80-335, Special contracts for electric, water, and natural gas utilities.

(54) This section does not prevent the utility from inserting any marketing information into the customer's billing package.

(65) The Electric-utilities may collect and release customer information in aggregate form if the aggregated information does not allow any specific customer to be identified.