

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

RULEMAKING TO CONSIDER RULES  
IMPLEMENTING SHB 2426, 2006  
SESSION, RELATING TO DELEGATION  
OF CERTAIN COMMISSION DECISIONS  
  
PROPOSED RULES (CR 102)

DOCKET NO. A-060357

COMMENTS OF PUBLIC COUNSEL (THIRD)

July 19, 2006

I. INTRODUCTION

The Public Counsel Section of the Washington Attorney General's Office respectfully submits this third set of comments in response to the Commission's June 27, 2006, Notice of Opportunity to File Written Comments on the Proposed Rules (CR-102) in the above captioned matter.

II. DELEGATION OF AUTHORITY TO THE EXECUTIVE SECRETARY

Public Counsel appreciates the Commission's incorporation of our recommendations regarding delegated decisions. Specifically, we are grateful that the Commission removed the following items from delegation: (1) petitions for accounting, (2) tariff revisions with less than statutory notice,<sup>1</sup> (3) contracts for services and (4) non-RCW 80.08.040 securities filings. We also commend the Commission's rejection of a catch-all delegation rule.

---

<sup>1</sup> The Commission limited delegation of LSI tariff revisions to items already authorized for pass-through, such as tipping fees. Similarly, securities filings were limited to those under RCW 80.08.040.

Additionally, the Commission’s acknowledgement of the usefulness of reporting annually on the number and nature of delegated decisions is encouraging. Although the Commission has decided not to incorporate reporting into the rules, we hope that it will do so in the adoption order or a subsequent order. The remainder of these comments focuses on the notice provisions contained in WAC 480-07-904(2) and (3) with an effort towards clarifying the rule and the public’s understanding of it.

### III. NOTICE AND REVIEW, WAC 480-07-904(2) AND (3) (CR-102)

Pursuant to WAC 480-07-904(2), the “commission will post on its internet web site for *at least fourteen days* a listing of all matters decided pursuant to subsection (1)(a) of this section, showing the docket number, date of entry of decision, and company name.” (Emphasis added). Additionally, the “commission will regularly publish electronic notice of listings to persons requesting such notice.” *Id.*

WAC 480-07-904(3) says that any “affected person may ask the Commission to review any matter delegated under subsection (1) of this section. A person seeking review must file his or her request for Commission consideration *no later than the fourteenth day* after the date of the posting.” (Emphasis added).

At the May 11, 2006, workshop the representation was made that interested persons need not check the website everyday – only roughly every 14 days – in order to review delegated decisions that may require appeal. Public Counsel provides a chart reflecting this understanding of the proposal for further elucidation by the Commission.

The chart below shows the relationship between Commission notice of a delegated decision as proposed and the process for tracking delegated decisions in order to make a timely

appeal. Column 1 is the assumed date the delegation decision is posted. Column 2 assumes, per the rule that the delegated decision is posted on the website at least fourteen days. Column 3 is the date by which an appeal of a delegated decision must be made i.e., per the rule, fourteen days after it is posted. Column 4 shows what happens if a person checks the website on the first and the fourteenth of every month. “Hit” or “Miss” refers to whether by checking on the day listed, one would hit or miss the deadline for filing an appeal. Given the set of assumptions in the chart, a person would catch every delegated decision before the appeal deadline runs by checking on the First and the Fourteenth of the month. It seems, however, that the best practice would be to check the list once a week. For instance, if a person was to check on August 1<sup>st</sup> before the August 1<sup>st</sup> decision was posted, and then check again on August 14<sup>th</sup>, it would leave only a day to get the appeal filed.

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
<b>Date Decision Posted</b>	<b>Posted Until (At least)</b>	<b>Appeal Deadline</b>	<b>Scheduled Checking (Hit or Miss)</b>
July 21	August 4	August 4	August 1 (Hit)
July 24	August 7	August 7	August 1 (Hit)
August 1	August 15	August 15	August 1 (Hit)
August 5	August 21	August 21	August 14 (Hit)
August 6	August 22	August 22	August 14 (Hit)
August 8	August 24	August 24	August 14 (Hit)
August 14	August 28	August 28	August 14 (Hit)
August 25	September 8	September 8	September 1 (Hit)
September 6	September 20	September 20	September 14 (Hit)

Now that the concept is somewhat clear, there remain some practical challenges to these notice and appeal provisions. Most importantly, it is difficult for the general public to understand. Other than those who practice regularly before the Commission, it is unlikely that an individual interested in one matter that happens to be delegated will keep a relatively complex

weekly or bi-weekly schedule to track it. Moreover, the rule continues to provide only electronic notice.

Public Counsel proposes the rule be amended to contain a “good cause” provision similar to that found in WAC 480-07-355(1)(b), regarding late-filed petitions for intervention.<sup>2</sup> Furthermore, the listing of delegated decisions must contain the date by which an appeal must be made. While this seems redundant, it is easy for the Commission to do, and for those unfamiliar with the fourteen day requirement, it is crucial to transparency. Public Counsel also proposes that that the section of the website devoted to delegation contain a step-by-step explanation of how to track delegated decisions.

Finally, the rule must provide for notice of delegated decisions by mail. The public’s business at the WUTC, while generally done electronically, cannot be exclusively so. Those that do not have electronic access should not be shut out of participation.<sup>3</sup>

///

///

//

//

//

---

<sup>2</sup> Any petition to intervene made after the deadline for filing or presenting the petition is a "late-filed petition to intervene." The commission will grant a late-filed petition to intervene only on a showing of good cause, including a satisfactory explanation of why the person did not timely file a petition.

<sup>3</sup> Some may say that few people lack electronic access. According to the Pew Internet & American Life Project, seventy-three percent of American adults have Internet access. Mary Madden, *Internet Penetration and Impact* (April 26, 2006). The report can be accessed at [http://www.pewinternet.org/PPF/r/182/report\\_display.asp](http://www.pewinternet.org/PPF/r/182/report_display.asp). In other words, more than a quarter of the population cannot participate in notice systems requiring electronic participation.

#### IV. CONCLUSION

Public Counsel appreciates the opportunity to submit these comments and we hope they offer assistance to the Commission in its deliberations. We look forward to participating in the adoption hearing on July 28.