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Via Electronic Filing

Mr. Steven V. King
Executive Director and Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Pk. Dr. S.W.
P. O. Box 47250
Olympia, WA 98504-7250

Re: Rulemaking to Consider Possible Corrections and Changes in Rules in WAC 480-07, Relating to Procedural Rules: Draft Proposed Rules for Part III C through IV of WAC 480-07
Docket A-130355

Dear Mr. King:

By and through this letter, the Industrial Customers of Northwest Utilities ("ICNU") responds to the Notice of Opportunity to Submit Written Comments issued by the Commission in the above-referenced docket on December 11, 2017. ICNU has participated in all relevant stages of this docket, given the importance of the subject matter, and appreciates the opportunity to provide comments on the draft rules being considered by the Commission here.

ICNU wishes to comment on several sections of Parts III D and E of the proposed rules, deemed "alternative dispute resolution" and "orders and post order process" in the proposed rules. ICNU will also provide a short comment on Part IV of the proposed rules, "other commission proceedings."[1/]

To begin, ICNU supports the intent of proposed rule 480-07-740(2)(d), which would allow the Commission to extend the period of a rate suspension if so requested. As structured, the rule requires that the party that benefits from a rate suspension (typically the

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1/ As a minor "housekeeping" recommendation, ICNU suggests two minor suggestions to proposed rule 480-07-740. The rule has two section twos. The original section two, titled "settlement presentation," should be renumbered as section three. Additionally, ICNU notes this section, "settlement presentation," requires that parties submit prefiled testimony to accompany a settlement to a general rate case or other complex proceeding. ICNU suggests that an exemption be added if a settlement addresses strictly legal issues, as testimony is not normally submitted in such cases.

utility) consent to the extension. Such a rule would likely be employed infrequently – but the Commission has occasionally been presented a settlement late in the procedural schedule that would affect central issues or be dispositive of the outcome, so such a rule would occasionally be of great value. In the past, the Commission has been required to carve essential time from the end of its procedural schedule to hear the evidence supporting the settlement and the views of opposing parties. The proposed rule may not fully mitigate risk to the established procedural schedule should the Commission reject a settlement, but it would operate to provide more time to develop and review the record prior to a Commission decision.

ICNU understands that the Commission's current practice is largely consistent with this proposed rule – but in the spirit of caution, ICNU notes that the proposed rule could arguably conflict with the Commission's governing statutes. The draft rule allows the Commission to extend *statutory* deadlines, such as the ten-month rate suspension period applicable in general rate case proceedings. But RCW § 80.04.130(1), which creates this then-month suspension rule, does not seem to anticipate extensions of that ten-month period.[2/] Due to this statutory limitation, the Commission could arguably be prohibited from applying a rule that pushes a rate suspension past ten months.[3/] ICNU understands that exposure to such a risk would be entirely dependent upon the facts and situation presented, requiring the exercise of caution when necessary. Nevertheless, the risk does exist when seeking to extend statutory deadlines. To eliminate the practical (but not necessarily the legal) risk of such a challenge, the Commission might require all parties' consent to extend a statutory deadline, instead of just the benefitted party's.

In sum, ICNU continues to support a due process environment wherein the parties and Commission are provided the time necessary to develop a full record, present or consider legal arguments, thoroughly review settlements when presented, and to produce a final order. ICNU believes that proposed rule 480-07-740(2)(d) is consistent with these goals. That said, it may be advisable to make minor changes to the rule to ensure its consistency with the Commission's governing statutes, or at the very least minimize the practical risk of a legal challenge.

Moving on to other sections, ICNU questions the rationale for the changes made in proposed rule 480-07-750(2)(b)(i). This proposed rule eliminates parties' right to seek reconsideration of the Commission's conditional approval of a settlement, and it would deem *all* conditional approvals rejected if they are not "unequivocally and unconditionally" accepted by the parties.[4/]

ICNU believes that a motion to reconsider a Commission decision is an important procedural right that allows settling parties to point out the potential impacts resulting from a

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2/ ICNU has also identified one section of the proposed rules that may conflict with proposed rule 480-07-740(2)(d). In contrast to that section's express authorization to extend statutory deadlines, section 480-07-830(6) seems to recognize that the Commission lacks the authority to do so: it allows the Commission to reject a motion to reopen the record if it would lack sufficient time to consider the additional evidence "by the statutory deadline."

3/ See generally, Washington Rest. Ass'n v. Washington State Liquor Bd., 200 Wash. App. 119, 126–27 (2017); Barendregt v. Walla Walla Sch. Dist. No. 140, 26 Wash. App. 246, 249 (1980).

4/ Proposed rule 480-07-750(2)(b)(ii).

Commission-imposed condition. To the Commission's benefit, it could then be apprised of the potential conflict between an imposed condition and an existing tariff or practice, or with the record evidence. If this proposed rule is adopted as drafted, even minor objections to Commission-required terms that could efficiently be addressed through the reconsideration process would require an outright rejection of the settlement, and therefore renegotiation by the parties. ICNU has been a party to dozens of settlement negotiations, and it is aware that these can be delicate, challenging processes. The Commission's existing rule and practice regarding motions to reconsider a settlement decision are both efficient and practical. Parties should not be required to go back to square one and renegotiate new, compliant terms when it may be possible to engage in a clarifying, efficient process that is responsive to the Commission's concerns, while still protecting the integrity of the settlement.

ICNU also comments on proposed rule 480-07-850(1), which discusses reconsideration of final orders. First, ICNU suggests that the deadline for a motion for reconsideration be set at ten *business* days, instead of ten days as currently drafted.[5/] More substantially, ICNU notes that proposed rule 480-07-850(1)(c) allows responses to requests for a petition for reconsideration only if invited by the Commission.[6/] ICNU believes that parties should have the right to file such responses, as the resolution of a petition for reconsideration might substantially affect their rights. At the very least, the rule should allow parties to file motions for leave to respond, instead of leaving it entirely up to the Commission's discretion to request responses.

Finally, ICNU suggests clarifying edits to proposed rule 480-07-904(1), which discusses matters that may be delegated to the executive secretary. The proposed rule leaves it up to the Commission to determine, via order, what types of matters may be delegated to the executive secretary. This is a significant change from the current rule, which specifically defines what may be delegated. ICNU does not necessarily oppose allowing the Commission to determine what may be delegated to the executive secretary via order, but the rules should provide greater clarity as to how this process will be conducted. Additionally, the rules should provide some limits as to what types of matters may be delegated – for instance, ICNU believes that the rules should prohibit delegating adjudicative proceedings to the executive secretary, so as to protect parties' due process rights. That said, ICNU sees no reason to change the current rule.

Again, ICNU thanks the Commission for the opportunity to respond and provide these comments.

5/ See WAC § 480-07-130(1).

6/ Proposed rule 480-07-860(2), governing responses to motions for stays, also requires that the Commission invite responses. ICNU suggests that it also be changed along the lines discussed in this section.

Sincerely,

/s/ Riley G. Peck

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