

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

Rulemaking to Consider Possible Corrections
and Changes in Rules in WAC 480-07,
Relating to Procedural Rules.

DOCKET A-130355

EIGHTH COMMENTS OF PUBLIC COUNSEL

January 31, 2017

I. INTRODUCTION

1. Pursuant to the Commission's Notice of Opportunity to File Written Comments, dated December 11, 2017, Public Counsel submits the following comments regarding the draft procedural rules for WAC 480-07.

II. WAC 480-07-720 – COLLABORATIVES

2. Collaboratives are used with some frequency and can be a useful tool to resolve issues of broad applicability. The proposed rule includes edits to WAC 480-07-720(4), pertaining to how participants should communicate with the Commission during a collaborative. Communication with the Commission can be directed to Commission Staff if they are not a participant, or if they are, communications can be directed to the Commission's secretary. This is generally obvious to the participants, or if a letter is addressed to the wrong person, the mistake has no material effect. It would be beneficial to state Commission Staff's role at the outset of a collaborative, to the extent that is known, in order to assist in complying with this rule.

III. WAC 480-07-730 - SETTLEMENT

3. The proposed modifications to WAC 480-07-730 provide clarity to the settlement definitions and how parties not participating in the settlement and issues not subject to the settlement will proceed. Public Counsel supports the proposed modification and appreciates the straight-forward nature of the draft.

IV. WAC 480-07-740 – SETTLEMENT CONSIDERATION PROCEDURE

4. Timing of a settlement can materially aid or hinder the process before the Commission. There is a natural tension between providing enough time for the parties to conduct adequate discovery and analysis before settling a case and providing the Commission enough time to consider the settlement. The proposed edits to WAC 480-07-740(2) address the amount of time needed by the Commission to consider a settlement and enlarge the amount of time over the current rule.
5. Public Counsel appreciates the complexity of many of the dockets before the Commission, particularly in the energy sector. We also appreciate the need for adequate time to address settlement proposing an outcome to a pending matter, and we support allowing for adequate time. However, Public Counsel also offers some observations for consideration.
6. In many cases, an early settlement conference is set in the procedural schedule, often before any response testimony is filed. Public Counsel generally prefers to have more in the record than less because we believe that a more robust record is beneficial to the Commission. The Commission bases its evaluation of settlements and resolution of each matter on evidence and, occasionally, when a settlement is reached early in a case, the record is threadbare.

7. On the other end, some cases settle later in the process as parties become more comfortable with the issues and facts. This can pressure the decision process at times, but the Commission has before it a more robust record. Public Counsel understands the need to alleviate time constraints, but implores the Commission to consider some flexibility regarding when parties settle. Requiring settlements to be presented too early may decrease the likelihood of compromise, and may lead to less robust records.

8. Public Counsel supports encouragement of companies to be flexible with statutory suspension dates to allow for consideration of settlement agreements. (*See*, draft WAC 480-07-740 (2)(d) Extension of statutory deadline.) Although companies cannot be required to waive a statutory deadline for Commission action, settlements can pose a real procedural challenge, depending on the circumstances.

V. WAC 480-07-750 – COMMISSION DISCRETION TO CONSIDER AND APPROVE OR REJECT

9. The draft rules include edits to the procedures that apply when the Commission approves a settlement with conditions. In particular, the draft rules provide, “If all parties to the settlement timely notify the commission that they accept the conditions, the terms in the settlement agreement and the commission’s conditions will resolve the issues identified in the settlement agreement.” Draft WAC 480-07-750(2)(b)(i). The draft rules provide further, “If a party to the settlement rejects or does not unequivocally and unconditionally accept any of the commission’s conditions, the settlement will be deemed rejected without further action from the commission....” Draft WAC 480-07-750(2)(b)(ii).

10. Public Counsel has concerns about requiring settling parties to affirmatively accept conditions and the potential effects of deeming a settlement rejected without such affirmative acceptance. The current rules allow for parties to object to conditions, and that seems adequate and appropriate. Changing the requirement to require affirmative acceptance of conditions, or risk automatic rejection of the agreement, could lead to unintended consequences of settlement being rejected because a party did not meet the acceptance requirement – even if they accept the conditions. This seems to be an unnecessary risk interjected into the Commission’s jurisdiction.

VI. WAC 480-07-890 – INDEX OF SIGNIFICANT DECISIONS

11. The draft rules include a new provision regarding an index of significant decisions that will be (or is) maintained by the Commission. The Commission’s website is one of the better regulatory commission websites nationally. It is relatively easy to navigate and provides substantial, useful information. Public Counsel commends the Commission for continuing to improve its website and accessibility to information, and encourages the Commission to continue this work.

12. With respect to Draft WAC 480-07-890, it would be helpful to include information regarding how the Commission will assess whether an opinion or policy statement is “significant.” Additionally, it would be beneficial to allow for a process under which parties may seek to have an order included in the data base and index.

13. The Commission used to maintain a Digest of cases dating back before 1990. The Digest was last updated in 2005, so updating it would be a substantial feat today. The Digest contained a listing of cases, with summaries, addressing statutory and rule provisions within the Commission’s purview. It would be helpful if the index contemplated in Draft WAC 480-07-

890 would include a summary of main issues or some indication of why an order or policy statement is significant. It would be of even greater utility if the index approximated the Commission's Digest. Regardless, Public Counsel is appreciative of the accessibility provided by the Commission's website to its major decisions, and supports the open flow of information and transparency provided by such access.

VII. WAC 480-07-900 – OPEN PUBLIC MEETINGS

14. The Commission publishes the agenda for its open public meetings at least two business days prior to the meeting. WAC 480-07-900(4). Written comments should be submitted at least three business days prior to the meeting to allow the Commissioners an opportunity to consider the comments during the meeting. WAC 480-07-900(5)(c). The timing of when the agenda is published and when comments are due can be at odds, particularly if an interested party is becoming aware of the issue through the published agenda. Public Counsel encourages the Commission to consider whether its agendas can be made available earlier, to allow for timely written comments.

15. Additionally, Commission Staff generally prepares a memo with respect to open meeting items. It can be useful to refer to the Staff memos, which often contain analysis and recommendations. Public Counsel encourages the Commission to ensure that the Staff memos are published in the dockets they address, so they are available to interested parties.

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VIII. CONCLUSION

16. Public Counsel appreciates the opportunity to submit these comments and the continued efforts to modernize the current rules. We look forward to further dialogue with the Commission and stakeholders, and will attend workshops scheduled in this rulemaking.

Dated this 31st day of January 2018.

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