BEFORE THE WASHINGTON UTILITIES AND

TRANSPORTATION COMMISSION

A-130355

In the Matter of Rulemaking to Consider Possible Correction and Changes in Rules in WAC 480-07, Relating to Procedural Rules	)	COMMENTS OF THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

I. INTRODUCTION

The Washington Utilities and Transportation Commission (the "Commission" or "WUTC") opened this rulemaking to consider possible changes to the Commission's procedural rules. The Industrial Customers of Northwest Utilities ("ICNU") appreciates the opportunity to submit these comments and looks forward to participating in the upcoming July 2, 2013 workshop. ICNU urges the Commission to take this opportunity to improve the ability for interested parties to meaningfully participate in Commission proceedings. Given the early stage of this process, ICNU is submitting conceptual proposals, rather than specific rule language.

II. COMMENTS

1. The Commission Should Ensure that Utilities Cannot Avoid the General Rate Filing Requirements by Breaking Up Rate Filings into Multiple Cases

The Commission should clarify its rules to ensure that utilities cannot avoid the requirement to file a general rate case by breaking up their rate filings. The Commission's rules provide that a general rate case is a filing that would increase gross annual revenues by any class by 3% or more. WAC § 480-07-505(1). A utility should not be permitted to avoid this rule by

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submitting multiple rate filings at roughly the same time that individually are less than 3%, but in total exceed more than 3%. ICNU believes this change would be consistent with the purpose of and language in the current rule. The Commission should consider all of the utility's pending filings to determine if they increase rates more than 3% to determine if they qualify as a general rate case. Once a utility has made filings that request a cumulative rate increase of more than 3% for any class, then the filings should be consolidated and considered a general rate case.

2. Parties Should Be Provided Discovery Rights in Non-Contested Case Proceedings

The Commission should apply its discovery rules to its review of utility Integrated Resource Plans ("IRP"), Request for Proposals, Conservation Plans, and I-937 plans. Currently, the utilities conduct informal processes to develop IRPs and Conservation Plans, which are then filed with the Commission and reviewed through a notice and comment process.

When the utility is open with its information and cooperates with interested parties, as Puget Sound Energy ("PSE") has done in the context of its conservation costs and plans, then parties can effectively participate and review the filing. When a utility, however, elects to withhold information, as PSE has done with its IRP process, then parties cannot meaningfully participate or review the filing. For example, PSE elected not to provide ICNU with information in its current IRP process, which resulted in ICNU being unable to review the reasonableness of its planning reserve margins. Attachment A (Irion Sanger Letter to Phillip Popoff). The current lack of discovery for more informal proceedings means that the utility can control access to whatever information it wishes to provide and can effectively prevent a party from fully reviewing the utility filing.

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3. Interested Parties Should Be Provided Access to Confidential Documents in Non-Adjudicative Proceedings

The Commission should ensure that interested parties gain access to all information they need to review utility filings, even those in non-adjudicative proceedings. Over the past few years, the utilities have designated more information as confidential, even material that was previously considered publicly available. In addition, some utilities frequently designate entire documents as confidential when only a small portion actually qualifies as confidential. The utilities' routine failure to abide by the requirements for designation of confidential material is particularly problematic in non-adjudicative proceedings in which there is no protective order and a utility's designation of material as confidential results in interested parties having no access to the information necessary to participate effectively.

The Commission should issue protective orders in non-adjudicative proceedings, like the Oregon Public Utility Commission ("Oregon Commission") does, or adopt a rule that requires the utilities to enter into individual confidentiality agreements with interested parties who would otherwise gain access to the confidential material if a protective order had been issued. Either approach should be simple. For example, ICNU has entered into numerous bilateral confidentiality agreements with utilities to obtain confidential material prior to the issuance of a protective order, or in cases in which a protective order will not be issued. The Commission should codify this process, which is currently voluntary, so that a utility cannot refuse to provide materials that would ordinarily be provided under confidential cover in an adjudicative proceeding.

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4. The Commission Should Streamline the Service List Process

The Commission adopts a service list and courtesy email distribution list in its prehearing conference order; however, the service list and courtesy email list frequently change over the course of the proceeding and the only way to obtain a corrected list is by contacting the Commission directly. The Commission should update these lists on its website, and list all individuals on the lists with their email addresses so that parties can easily access this information. This would ultimately save time and resources of parties, but also of Commission employees, who currently field frequent calls from parties making filings.

5. The Commission Should Require the Utilities to Pre-File Additional Information with their Rate Case Filings

The Commission could assist the review of general rate case filings by requiring utilities to pre-file standard information that parties typically request in rate cases. For example, the Oregon Commission has adopted a set of Standard Data Requests that utilities must respond to when they make a general rate case filing. Attachment B (Oregon Standard Data Requests). The information in the Standard Data Requests was developed jointly by the Oregon Staff, Oregon utilities, and ratepayer advocates, and has reduced the amount and degree of discovery required in rate case proceedings. In addition, the Oregon Staff, electric utilities, and ICNU have also worked out separate minimum filing requirements for power cost issues, which has significantly reduced the amount of discovery. For example, in Portland General Electric Company's last power cost only proceeding, the minimum filing requirements were so detailed and comprehensive that ICNU sent out almost no formal data requests.

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6. The Commission Should Adopt a Rule that Bars Secret Settlements

The Commission's current rules have failed to prevent the Commission Staff from engaging in secret settlement negotiations with utilities, and ICNU urges the Commission to adopt a rule that bars Staff from conducting any settlement negotiations, unless all parties are notified. The Commission previously attempted to resolve the problem of secret settlements by adopting WAC § 480-07-700(3)(b), which states that if any party wishes to initiate a settlement conference with any other party between the filing of the docket and the initial prehearing conference, it must provide 10-days' notice to the Commission, parties, persons who have filed petitions to intervene, and any person that was a participant in the most recent proceeding involving the filing party. This rule was adopted in response to Staff engaging in secret settlements to resolve rate case filings without inviting ratepayer representatives, but recently, it has failed to prevent Staff from conducting secret settlement negotiations.

The current rule has been interpreted as not applying until a filing has been formally suspended, or to be inapplicable if a meeting is described as a "technical conference," which allows Staff to circumvent the meaning and intent of the rule by attempting to reach bilateral settlement before the case has even started. In addition, the rule does not prevent Staff from settling cases without participation of other parties after the first noticed settlement conference. It should not be controversial to ensure that, when key rate case decisions are made, all parties are able to have a seat at the table, especially those that ultimately pay the bills.

ICNU proposes two changes. First, all parties must be provided notice and an opportunity to participate in any meeting in which discussion of settlement of any issue is likely

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to occur. Second, the rule should apply to both docketed proceedings and proposed filings. The rule would not apply to meetings that are purely informational.

ICNU urges the Commission to adopt a rule similar to the Oregon Commission's settlement rule, which provides that "all parties may attend a meeting in which Staff participates to discuss settlement." OAR § 860-001-0350(5). The rule does not bar ordinary communications between Staff and the utilities, and provides that settlement discussions do not include communications primarily for the purpose of discovery. Id. The Oregon rule has resulted in a more fair and participatory adjudicative process. A similar rule in Washington could ensure that all parties can meaningfully participate in contested proceedings.

III. CONCLUSION

ICNU urges the Commission to make these minor modifications to its procedural rules to ensure that interested parties can more effectively participate in the important matters that come before it in adjudicatory and non-adjudicatory proceedings.

Dated this 17th day of May, 2013.

Respectfully submitted,

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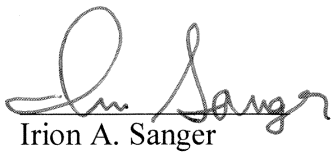

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