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VIA ELECTRONIC MAIL

Ms. Carole J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504

***Re: Docket No. A-060357
Rulemaking to Consider Rules Implementing SHB 2426, 2006 Session,
Relating to Delegation of Certain Commission Decisions***

Dear Ms. Washburn:

Please accept this letter as comments of Verizon Northwest Inc. ("Verizon") on the proposed rules to implement SHB 2426, as filed by the Commission on June 20, 2006 in a Notice of Proposed Rulemaking (CR-102) (collectively, the "Proposed Rules"). Verizon offers the following comments on how the Proposed Rules would address initial orders, delegations to the Executive Secretary and probable cause determination.

Initial Orders Under Proposed Amendments to WAC 480-07-825

The proposed amendments to WAC 480-07-825 would specify that an initial order that becomes final by operation of law "has no precedential value." Proposed WAC 480-07-825(7)(c). Such orders would lack precedential effect because they became final without the involvement of the Commissioners. There should, however, be some mechanism by which a party could seek ratification by the Commission of an initial order such that it becomes binding precedent. Such a mechanism would save party and Commission resources so that new cases would not have to be re-tried on the same subject matter in the future. The Proposed Rules do not contemplate such a mechanism, as the only way to involve the Commissioners in consideration of an "initial order" is to file a "petition[] for administrative review" that challenges some component of an initial order. See proposed WAC 480-07-825(7)(a) (referring to the filing of a review petition under WAC 480-07-825(1)). One way to create a mechanism allowing a party to seek establishment of

an initial order as Commission precedent would be to create another subcategory of proposed WAC 480-07-825(7)(a) that would permit a party to petition the Commission to ratify an initial order.

Delegation of Authority to Executive Secretary Under Proposed Sections WAC 480-07-903 and -904

There are two drafting issues in the Proposed Rules delegating certain authority to the Executive Secretary (WAC 480-07-903 and -904) that may have unintended consequences.¹ The first involves Proposed Rule WAC 480-07-903(c), which provides for additional delegation of functions by the Commission to the executive secretary “by order.” When read with 480-07-903(b) and because of use of the word “also,” this proposed section gives the impression that the Commission may delegate by order virtually any function to the Executive Secretary. The intent of this proposed section is unclear, as the delegation of both administrative and specified substantive functions are already covered by Proposed Rules WAC 480-07-903(2), 480-07-904 and -905. If the Commission were to delegate additional substantive functions beyond those listed in 480-07-904 and -905, then it should do so through a rulemaking, just as it is doing here. Thus, unless Proposed Rule WAC 480-07-903(c) can be modified or limited in some way to clarify its intent, it should be deleted.

The second drafting issue on delegations to the Executive Secretary is in Proposed Rule 480-07-904(2). The proposed rule specifies that the Commission will post all matters decided pursuant to Proposed Rule WAC 480-07-904(1)(a) on its internet website within a specified time period. Proposed Rule WAC 480-07-904(1)(a) applies only to applications for the funding of certain highway-railroad grade crossing improvements. The internet notice requirement, however, should apply to all matters decided under WAC 480-07-904(1), including approval and adoption of interconnection agreements delegated under Proposed Rule WAC 480-07-904(1)(d). This can be accomplished by simply deleting subsection (a) from the cross reference in Proposed Rule 480-07-904(2) so that it refers instead to “... matters decided pursuant to subsection (1) of this section.”

Probable Cause Determinations Under Proposed Section WAC 480-07-307

The Proposed Rule governing probable cause determinations (WAC 480-07-307) provides that an administrative law judge (“ALJ”) will sign a complaint or penalty assessment on behalf of the Commission if he or she “determines that the information would support the proposed penalties or sustain the complaint, if proved at hearing and if not rebutted or explained.” An objective standard is generally appropriate for this function, but the Proposed Rule, as drafted, does not afford the ALJ any modicum of prosecutorial discretion. For example, under the Proposed Rule, the ALJ would not be permitted to decline to find probable cause in a complaint or penalty assessment if the information provided includes internal conflicts or is incredible on its face. A

¹ One other item related to delegations that the Commission may want to consider is whether the ex parte rules set forth in WAC 480-07-310 apply to the Executive Secretary, when performing functions delegated by the Commission.

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process should be established to allow the ALJ to decline to find that probable cause exists in such instances.

Verizon appreciates the Commission's efforts to solicit input on the Proposed Rules. Thank you for your consideration.

Sincerely,

/s/

Gregory M. Romano

GMR:kad