

MEMORANDUM

July 11, 2005

TO: Chairman Sidran
Commissioner Jones
Commissioner Oshie
Carole Washburn
Chris Rose
Bob Wallis (w/attachments)
Sally Johnston (w/attachments)
Glenn Blackmon (w/attachments)
Marilyn Meehan
Sharyn Bate
Jing Roth

FROM: Mike Sommerville, Records Center

SUBJECT: Qwest Corporation v. Washington Utilities and Transportation
Commission
(A-021178 / TO-030288)
Petition for Judicial Review and Declaratory Judgement
No. 05-2-01336-0

A petition for review has been filed in the Superior Court of the State of Washington for Thurston County, on July 8, 2005, by John H. Ridge, representing Petitioner listed above. The petition was received by the Commission on July 8, 2005.

Please contact the Records Center if you would like copies of the attachments.

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Date: _____
Time: _____
Judge/Calendar: _____

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

QWEST CORPORATION, a Colorado
corporation,

Petitioner,

v.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Respondent.

No. 05-2-01336-0

**PETITION FOR JUDICIAL REVIEW
AND DECLARATORY JUDGMENT**

Petitioner Qwest Corporation ("Qwest"), pursuant to RCW 34.05.570(2), petitions for an order vacating and a judgment declaring invalid WAC 480-120-369 (hereinafter "the Cash Transfer Rule") and WAC 480-120-395 (hereinafter "the Subsidiary Reporting Requirements"), together with the definitions related to subsidiary reporting contained in WAC 480-120-325. Qwest also seeks a declaratory judgment invalidating the Washington Utilities and Transportation Commission's adoption of these rules. In support of this Petition, Qwest respectfully sets forth, pursuant to RCW 34.05.546, the following:

1. Name and Address of Petitioner:

QWEST CORPORATION
1600 Seventh Avenue, Room 3206
Seattle, Washington 98191

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2. Names and Addresses of Petitioner's Attorneys:

Lisa A. Anderl
Adam L. Sherr
QWEST 1600 Seventh Avenue, Room 3206
Seattle, WA 98191

Mary S. Hobson
Stoel Rives LLP
101 South Capitol Boulevard, Suite 1900
Boise, ID 83702

John H. Ridge
Stoel Rives LLP
600 University Street, Suite 3600
Seattle, WA 98101

3. Name and Address of Agency Whose Action Is at Issue:

Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, WA 98504-7250

4. Identification of Agency Action at Issue:

Adoption of the Subsidiary Reporting Requirements, together with the related definitions, and adoption of the Cash Transfer Rule as filed with the Code Reviser on February 28, 2005, and published in the Washington State Register under WSR #05-06-051, and as corrected under WSR #05-08-018, published on March 28, 2005. Copies of the Cash Transfer Rule and Subsidiary Reporting Requirements and related definitions are attached as Appendix A.

5. Identification of Parties in Any Adjudicative Proceeding That Led to Agency Action:

The matter under review is the adoption of a rule rather than an order in an adjudicative proceeding. Therefore, there are no parties to be identified other than the Petitioner and the agency identified above.

1 **6. Facts to Demonstrate the Petitioners are Entitled to Obtain Judicial Review:**

2 a. Petitioner

3 Qwest is a Colorado corporation authorized to do business in the state of Washington and
4 thirteen other states: Oregon, Idaho, Montana, Utah, Wyoming, Arizona, North Dakota, South
5 Dakota, Minnesota, Nebraska, New Mexico, Colorado, and Iowa. Qwest's corporate headquarters
6 are located in Denver, Colorado.

7 Qwest is a telecommunications company as defined in RCW 80.04.010 and is subject to
8 the jurisdiction of the Washington Utilities & Transportation Commission ("WUTC") pursuant to
9 RCW 80.01.130. As such, Petitioner is subject to WAC 480-120-395, the Subsidiary Reporting
10 Requirements, and the related definitions found in WAC 480-120-325. In addition, because
11 Qwest does not have a corporate rating in one of the four highest rating categories from either
12 Standard & Poor's L.L.C. or Moody's Investors Service, Inc., under newly adopted WAC 480-
13 120-369, the Cash Transfer Rule, Qwest is subject to the newly enacted cash reporting
14 requirements.

15 b. The Cash Transfer Rule: An Overview

16 The Cash Transfer Rule requires a regulated telephone company whose corporate/issuer
17 rating is below the four highest rating categories from either Standard & Poor's L.L.C. or Moody's
18 Investors Service, Inc, to report certain cash transfers between it and an affiliate or subsidiary, or
19 between its subsidiary and that subsidiary's affiliate or subsidiary. The rule imposes the similar
20 reporting requirements for the assumption of obligation or liability of the regulated company's
21 affiliates or subsidiaries. Reports must be filed with the WUTC at least five business days in
22 advance of the actual transfer. The conditions under which the rule applies are complex.

23 The rule applies where the cumulative total of cash transactions between the transferor
24 and the transferee exceeds five percent of the telecommunications company's prior calendar year's
25 gross operating revenues subject to WUTC regulation. Only those individual cash transactions
26 that exceed one percent of the telephone company's prior calendar year's gross operating revenues
27 subject to WUTC regulation must be reported. The rule excludes payments for federal and state
28

1 taxes, payments for goods or services, and transactions previously approved or ordered by the
2 WUTC, other regulatory agencies, or a court. Dividends are also excluded so long as they do not
3 exceed the larger of net income during the period or the average level of dividends over the
4 preceding three years. Sweep or cash management accounts used to transfer to or from a
5 subsidiary or affiliate as part of customary and routine cash management functions between or
6 among the company and its subsidiary or affiliate are also excluded. Failure to report under the
7 Cash Transfer Rule could subject the telecommunications company to per-day penalties under
8 RCW 80.04.380-.405.

9 The Cash Transfer Rule does not purport to provide WUTC authority to prevent or modify
10 cash transactions or debt assumptions reported under the rule. However, the five business day
11 advance notice was designed to allow the WUTC the opportunity to commence proceedings to
12 review and even seek to enjoin the transfers. In the WUTC's order adopting the rules¹ the
13 Commission made clear how advance reporting might appear useful:

14 Providing the Commission with five days' advance notice of such
15 transfer would allow the Commission to immediately commence
16 ratemaking or prudence proceedings, or, in particularly egregious
17 instances, to seek to enjoin the utility from proceeding with the cash
18 transfer altogether. . .

19 General Order No. R-518, ¶ 26.

20 Attempts by regulators to enjoin or otherwise control the cash and debt transactions
21 between Petitioner, a multi-state, centrally-managed corporation, and its affiliates and
22 subsidiaries, and Petitioner's subsidiaries' cash transactions, could profoundly interfere with the
23 business and internal management of the Petitioner.

24 c. Subsidiary Reporting Requirements: An Overview

25 The reporting requirements for the regulated telecommunications company's subsidiaries
26 arise in two areas under the newly adopted rules. First, the Cash Transfer Rule requires reporting
27 of cash transfers or assumptions of liability or obligations by the regulated company's

28 ¹ A copy of General Order No. R-518, entered February 28, 2005, is attached as Appendix B.

1 subsidiaries, even when the regulated company is a not a party to the transaction. Second, the
2 annual affiliated interest reporting requirements previously contained in WAC 480-146-360² did
3 not include transactions with the regulated company's subsidiaries. The newly enacted rule,
4 WAC 480-120-395, expands the scope of obligation provided by statute to require reporting of
5 transactions between the regulated company and its subsidiaries, as well as the company and its
6 affiliated interests. Compliance with this requirement is complicated by the new definitions of
7 "subsidiary" and "control" found in WAC 480-120-325 that are both unenforceably vague and
8 overly broad.

9 d. The Cash Transfer Rule Exceeds the Statutory Authority of the WUTC in
10 Violation of RCW 34.05.570(2)(c).

11 The WUTC's authority to promulgate rules and to otherwise exercise regulatory authority
12 is limited to jurisdiction expressly conferred by the legislature. No Washington statute authorizes
13 the Commission to impose pre-reporting requirements on telecommunications companies' cash
14 transfers and debt assumptions, or those of its affiliates or subsidiaries. Nor did the legislature
15 authorize or require the WUTC to "inquire into or keep itself informed about"³ such matters.

16 e. The Cash Transfer Rule Holds the Potential for WUTC Regulation of the
17 Interstate Cash Management of Telecommunications Companies.

18 Petitioner is a multi-state telecommunications company whose cash is centrally managed
19 at the corporate headquarters level. The Cash Transfer Rule does not purport to limit its reach to
20 cash transactions within the state of Washington or to cash generated from sales of services to
21 Washington ratepayers. Therefore, the rule exceeds the scope of the WUTC's jurisdiction under
22 Title 80, RCW. Further, application of the rule to telecommunications companies like Qwest
23 potentially interferes with the conduct of interstate commerce in violation of the Commerce
24 Clause of the United States Constitution.

25 f. The Cash Transfer Rule Unlawfully Regulates the Internal Affairs of a
26 Foreign Corporation.

27 ² This rule was repealed under General Order No. R-518, effective 30 days after the filing with the Code Reviser.

28 ³ See RCW 80.04.080. This statute, which is relied upon by the WUTC, does not confer Commission jurisdiction
for the oversight of cash transfers or debt assumptions.

1 Petitioner is a foreign corporation, authorized to do business in the state of Washington.
2 As a general proposition, the only state empowered to regulate the internal affairs of the
3 corporation is the state of its incorporation, i.e., the state of Colorado. Washington recognizes
4 this limitation in its Business Corporation Act.⁴ WUTC efforts to regulate, enjoin, modify or
5 reduce cash transfers based on the information obtained to through the Cash Transfer Rule will
6 interfere with the internal affairs⁵ of a foreign corporation, which activity is not only beyond the
7 scope of the authority granted by the legislature to the WUTC, but also exceeds the regulatory
8 powers of the state of Washington.

9 g. The Cash Transfer Rule Violates the General Principle of Public Utility
10 Law that State Commissions Cannot Interfere with the Management
11 Prerogative of Regulated Utilities.

12 Regulatory commissions and courts throughout the nation have ruled that regulatory
13 agencies are not permitted to interfere with the management prerogative of the utilities they
14 regulate.⁶ The five business day pre-transfer reporting requirement contained in the Cash
15 Transfer Rule, together with the WUTC's explanation of the perceived benefit of the advance
16 notice,⁷ suggests that the WUTC expects to review and, if deemed appropriate, to take action to
17 enjoin transfers and debt assumptions.

18 h. The Subsidiary Reporting Rule Also Exceeds the Statutory Authority of the
19 WUTC in Violation of RCW 34.05.570(2)(c).

20 As in the case of the Cash Transfer Rule, the WUTC lacks authority to require reporting
21 of subsidiary transactions. While the WUTC has been granted authority to obtain information

22 4 See RCW 23B.15.050(3) ("Except as otherwise provided in chapter 23B.19 RCW, this title does not authorize
23 this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business
24 in this state.").

25 5 The "internal affairs" of a corporation are matters peculiar to the relationships among or between the
26 corporation and its current officers, directors, and shareholders such as, and without limitation, the declaration
27 and payment of dividends and other distributions.

28 6 See, e.g., *Southwestern Bell Tel. Co. v. Public Serv. Comm'n.*, 262 U.S. 276, 289, 43 S.Ct. 544, 67 L.Ed. 981
(1923).

 7 See General Order No. R-518, ¶ 26. Pertinent language from this paragraph is cited in section 6.b above.

1 concerning dealings with affiliated interests,⁸ the definition of "affiliated interest" contained in
2 statute⁹ does not include subsidiaries. Nor does any other Washington statute grant the WUTC
3 jurisdiction over the subsidiaries of regulated companies.

4 i. The Definitions Contained in WAC 480-120-325 are Vague and
5 Unenforceable.

6 Two of the definitions that are critical to the application of the newly enacted Subsidiary
7 Reporting Rule,¹⁰ "subsidiary" and "control," are so vague and ambiguous as to be unenforceable.

8 Under WAC 480-120-325 the terms are defined as follows:

9 **"Control"** means the possession, direct or indirect, of the power to
10 direct or cause the direction of the management and policies of a
11 company, whether through the ownership or voting shares, *by*
contract, or otherwise. (Emphasis added)

12 **"Subsidiary"** means any company in which the
13 telecommunications company owns directly or indirectly five
14 percent or more of the voting securities, unless the
telecommunications company demonstrates it does not have
control.

15 These definitions create the presumption that a company is the subsidiary of a
16 telecommunications company if the later owns, "directly or indirectly," a mere five percent of its
17 voting securities. Where the five percent ownership threshold is met, the burden falls to the
18 telecommunications company to demonstrate it lacks "control" of the company. Since the scope
19 of the term "subsidiary" is determined in part by the concept of "control," it is important the latter
20 term have a clear and specific meaning. In this respect, the definition is woefully inadequate.
21 Under the definition, the power to manage and direct the company can arise not only by virtue of
22 ownership, but also "by contract, or otherwise." The phrase "by contract" is vague and
23 potentially overly broad. The addition of the phrase "or otherwise" renders the definition
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25 ⁸ See RCW 80.16.020.

26 ⁹ See RCW 80.16.010.

27 ¹⁰ In addition, because the Cash Transfer Rule on its face pertains to transactions with, and by, the
28 telecommunications company's subsidiaries, the flaws contained in these definitions spill over to the application
of that rule as well.

1 unlawfully vague and subjective. Furthermore, although the rule precedes from the counter-
2 intuitive presumption that five percent ownership creates "the power to direct . . . the management
3 and policies" of the company, the rule adopted by the WUTC fails to specify any procedure or
4 standard which by the telecommunications company can demonstrate that it does not possess
5 "control."

6 **7. The Petitioner's Reasons for Believing that Relief Should be Granted:**

7 Relief should be granted for the reasons set forth in Section 6 above, and because the
8 Commission's adoption of WAC 480-120-325, WAC 480-120-369, and WAC 480-120-395
9 interferes with or impairs, or immediately threatens to interfere with or impair, the legal rights or
10 privileges of the Petitioner by compelling it, under threat of fines and other legal process, to
11 comply with standards that are vague (in the case of the definitions contained in WAC 480-120-
12 369), and with requirements that are unnecessary, unauthorized and unlawful (in the case of the
13 Cash Transfer Rule and the Subsidiary Reporting Requirements). Specifically the Commission's
14 rules listed above:

- 15 (a) are outside the statutory authority or jurisdiction of the Commission;
- 16 (b) are void and unenforceable for vagueness;
- 17 (c) violate constitutional provisions, specifically the Commerce Clause of the United
18 States Constitution;
- 19 (d) violate the internal affairs doctrine; and
- 20 (e) unlawfully interfere with utilities' management prerogative.

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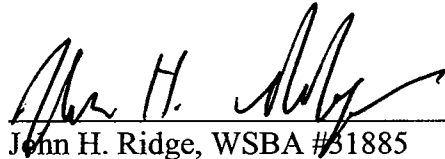
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8. Petitioner's Request for Relief:

Petitioner respectfully requests:

1. entry of a declaratory judgment pursuant to RCW 34.05.570(2) and an order pursuant to RCW 34.05.574(1) that WAC 480-120-325, WAC 480-369, WAC 480-120-395, and the Commission's orders adopting the same, are invalid;
2. award of attorney fees and court costs; and
3. such other relief as the Court may deem just and equitable.

DATED: July 8, 2005



John H. Ridge, WSBA #31885
Mary S. Hobson ISB# 2142
Lisa Anderl, WSBA #13236
Adam L. Sherr WSBA #25291

Attorneys for Petitioner Qwest Corporation

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that I am an employee of Stoel Rives LLP. I am a citizen of the United States and a resident of the state of Washington. I am over the age of 18 years, and not a party to this action.

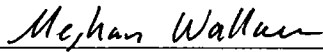
On July 8, 2005, I served a true and correct copy of **Petition for Judicial Review and Declaratory Judgment** upon the following parties in the manner shown below:

Sally Johnston, Assistant Attorney General [] Via United States Mail
Attorney General's Office [x] Via Messenger
1125 Washington St. SE [] Via Facsimile
Olympia, WA 98504-0100 [] Via Email

Attorney General's Office [x] Via United States Mail
1125 Washington St. SE [] Via Messenger
P.O. Box 40100 [] Via Facsimile
Olympia, WA 98504-0100 [] Via Email

Carole Washburn, Executive Secretary [] Via U.S. Mail
Washington Utilities and Transportation [x] Via Messenger
Commission [] Via Facsimile
1300 S. Evergreen Park Drive S.W. [] Via Email
Olympia, WA 98504-1160

DATED this 8 day of July, 2005, at Seattle, Washington.



Meghan Wallace

Appendix A

NEW SECTION

WAC 480-120-369 Transferring cash or assuming obligations.

This section does not apply to a company classified as competitive pursuant to RCW 80.36.320, or to a local exchange company that serves less than two percent of the access lines in the state of Washington.

(1) At least five business days before a telecommunications company whose corporate/issuer rating is not in one of the four highest rating categories of either Standard & Poor's L.L.C. or Moody's Investors Service, Inc., or its subsidiary transfers cash to any of its affiliated interests or subsidiaries or assumes an obligation or liability of any of its affiliated interests or any of its subsidiaries, the company must report to the commission an estimate of the amount to be transferred and the terms of the transaction when the transaction will exceed thresholds as described in (a) or (b) of this subsection.

(a) The company must report if the cumulative transactions to a subsidiary or affiliated interest for the prior twelve months exceed a threshold of five percent, which is based on the prior calendar year gross operating revenue from Washington intrastate operations subject to commission jurisdiction.

(b) When the threshold in (a) of this subsection has been reached, the company must report each subsequent transaction exceeding a threshold of one percent for the prior twelve-month period, which is based on the prior calendar year gross operating revenue from Washington intrastate operations subject to commission jurisdiction.

(2) The reporting requirements in subsection (1) of this section do not include payments for:

(a) Federal and state taxes;

(b) Goods, services, or commodities;

(c) Transactions, attributed to the regulated entity, previously approved or ordered by the commission, other regulatory agencies, or the court;

(d) Dividends to the extent the level of such dividends over a twelve-month period does not exceed the larger of:

(i) Net income during such period; or

(ii) The average level of dividends over the preceding three years; or

(e) Sweep or cash management accounts used to transfer funds to or from a subsidiary or affiliate as part of the customary and routine cash management functions between or among the company and its subsidiary or affiliate.

NEW SECTION

WAC 480-120-395 Affiliated interest and subsidiary transactions report. (1) By June 1 of each year, each telecommunications company subject to the provisions of chapter 80.16 RCW must file a report summarizing all transactions, except for transactions provided at tariff rates, that occurred between the company and its affiliated interests, and the company and its subsidiaries, during the period January 1 through December 31 of the preceding year.

(2) The information required in this subsection must be for total company, total state of Washington, and Washington intrastate. The report must include a corporate organization chart of the company and its affiliated interests and subsidiaries.

(3) When total company transactions with an affiliated interest or a subsidiary are less than one hundred thousand dollars for the reporting period, the company must provide the name of the affiliated interest or subsidiary participating in the transactions and the total dollar amounts of the transactions. When total company transactions with an affiliated interest or subsidiary equal or exceed one hundred thousand dollars for the reporting period, the company must provide:

(a) A balance sheet and income statement for such affiliated interest;

(b) A description of the products or services provided to or from the company and each such affiliated interest or subsidiary;

(c) A description of the pricing basis or costing method, and procedures for allocating costs for such products or services, and the amount and accounts charged during the year;

(d) A description of the terms of any loans between the company and each such affiliated interest or subsidiary and a listing of the year-end loan amounts and maximum loan amounts outstanding during the year;

(e) A description of the terms and total amount of any obligation or liability assumed by the company for each such affiliated interest or subsidiary;

(f) A description of the activities of each such affiliated interest or subsidiary with which the company has transactions; and

(g) A list of all common officers and directors between the company and each such affiliated interest or subsidiary, along with their titles in each organization.

(3) The report required in this section supersedes the reporting requirements contained in previous commission orders authorizing affiliated interest transactions pursuant to chapter 80.16 RCW.

(4) The company is obligated to file verified copies of affiliated interest contracts and arrangements as stated in WAC 480-120-375 (Affiliated interests--Contracts or arrangements).

NEW SECTION

WAC 480-120-325 Definitions. The definitions in this section apply to Part VIII of this chapter.

"Affiliated interest" means a person or corporation as defined in RCW 80.16.010.

"Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a company, whether through the ownership of voting shares, by contract, or otherwise.

"Subsidiary" means any company in which the telecommunications company owns directly or indirectly five percent or more of the voting securities, unless the telecommunications company demonstrates it does not have control.

Appendix B

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Amending,	)	DOCKET NO. A-021178 and
Adopting and Repealing Certain	)	TO-030288
Sections of Chapters 480-90, 480-100,)	
480-110, and 480-120 WAC,)	
Amending and Adopting Certain	)	GENERAL ORDER NO. R-518
Sections of Chapters 480-70, and 480-)	
92 WAC; Adopting Chapter 480-73)	
WAC; Amending WAC 480-121-063,)	
and Repealing WAC 480-146-350,	)	ORDER REPEALING,
and WAC 480-146-360	)	AMENDING AND ADOPTING
	)	RULES PERMANENTLY
Relating to Reporting of transactions)	
between regulated utility and)	
transportation companies and their)	
subsidiaries)	
.....)	

1 **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and Transportation Commission takes this action under Notice WSR # 05-01-224, filed with the Code Reviser on December 22, 2004. The Commission brings this proceeding pursuant to RCW 80.01.040, RCW 80.04.160, RCW 81.04.160 and RCW 34.05.353.

2 **STATEMENT OF COMPLIANCE:** This proceeding complies with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 **DATE OF ADOPTION:** The Commission adopts this rule on the date that this Order is entered.

4 **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW 34.05.325 requires that the Commission prepare and provide to commenters a concise explanatory statement about an adopted rule. The statement must

include the identification of the reasons for adopting the rule, a summary of the comments received regarding the proposed rule, and responses reflecting the Commission's consideration of the comments.

- 5 The Commission often includes a discussion of those matters in its rule adoption order. In addition, most rulemaking proceedings involve extensive work by Commission Staff that includes summaries in memoranda of stakeholder comments, Commission decisions, and Staff recommendations in each of those areas.
- 6 In this docket, to avoid unnecessary duplication, the Commission designates the discussion in this order as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda presented at the adoption hearing and at the open meetings where the Commission considered whether to begin a rulemaking and whether to propose adoption of specific language. Together, the documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.
- 7 **REFERENCE TO AFFECTED RULES:** This rule repeals, amends, or adopts the following sections of the Washington Administrative Code:

Chapter 480-70 WAC, Solid Waste and/or Refuse Collection Companies

Amend

480-70-041 Definitions, general.

1. Adds definitions for "Affiliated interest," "Control," and "Subsidiary."

Amend

480-70-051 Exemptions from rules in chapter 480-70 WAC.

1. Amended to reference WAC 480-07-110 (Exceptions from and modifications to the rules in this chapter; special rules).

Adopt

480-70-077 Transferring cash or assuming obligations.

1. Adds requirement for reporting of cash transfers to affiliates and subsidiaries if credit rating is not in one of the four highest rating categories of either Standard & Poors L.L.C. or Moody's Investors Service, Inc.

Adopt

480-70-078 Affiliated interest— Contracts or arrangements.

1. Adopt rules implementing requirements to report transactions with affiliated interests and subsidiaries.
2. Provides exception for transactions provided at tariff rates.

Adopt

480-70-079 Affiliated interest and subsidiary transactions report.

1. Adopt rules implementing requirements to report transactions with affiliated interests and subsidiaries.
2. Provides exception for transactions provided at tariff rates.

Chapter 480-90 WAC, Gas Companies – Operations

Amend

480-90-008 Exemptions from rules in chapter 480-90 WAC.

1. Amended to reference WAC 480-07-110 (Exceptions from and modifications to the rules in this chapter; special rules).

Amend

480-90-023 Definitions.

1. Adds definitions for "Affiliated interest," "Control," and "Subsidiary."

Adopt

480-90-207 Filing information.

1. Adds filing information within chapter.

Repeal

480-90-208 Financial reporting requirements.

1. Financial reporting requirements moved to new sections:
Annual reports – WAC 480-90-252 (Federal Energy Regulatory Commission (FERC) Form No. 2.)
Commission basis reports (annual) – WAC 480-90-257 (Commission basis report.)
Quarterly reports – WAC 480-90-275 (Actual results for Washington operations report.)
Additional reports – WAC 480-90-209 (Additional reports.)

Adopt

480-90-209 Additional reports.

1. Adopted from WAC 480-90-208 (Financial reporting requirements) repealed in this rulemaking.

Repeal

480-90-218 Securities, affiliated interests, and transfers of property.

1. Deletes subsections (1) and (3), which are moved into new section WAC 480-90-248 (Securities and transfers of property).

Adopt

480-90-244 Transferring cash or assuming obligation.

1. Adds requirement for reporting of cash transfers to affiliated interests and subsidiaries when transaction exceeds certain threshold if credit rating is not in one of the four highest rating categories of either Standard & Poors L.L.C. or Moody's Investors Services, Inc.

Adopt

480-90-245 Affiliated interests – Contracts or arrangements.

1. Adopts provisions from WAC 480-146-350 (Filing of affiliated interest transactions) repealed in this rulemaking.
2. Provides exception for transactions provided at tariff rates.

Adopt

480-90-248 Securities and transfers of property.

1. Adopts provisions from WAC 480-90-218 (Securities, affiliated interests, and transfers of property) repealed in this rulemaking.
2. Adds requirements for issuing stock, securities, or other evidence of indebtedness.

Adopt

480-90-252 Federal Energy Regulatory Commission (FERC) Form No. 2.

1. Adopts provisions from WAC 480-90-208 (Financial reporting requirements) repealed in this rulemaking.

Adopt

480-90-257 Commission basis report.

1. Adopts provision from WAC 480-90-208 (Financial reporting requirements) repealed in this rulemaking.

Adopt

480-90-264 Affiliated interest and subsidiary transactions report.

1. Adopts provision from WAC 480-146-360 (Reporting of affiliated interest transactions) repealed in this rulemaking.
2. Adds subsidiaries to reporting requirement.
3. Provides exception for transactions provided at tariff rates.

Adopt

480-90-268 Essential utilities services contracts report.

1. Adds requirement for reporting of essential utilities services contract when certain thresholds are exceeded.

Adopt

480-90-275 Actual results for Washington operations report.

1. Adopts provisions from WAC 480-90-208 (Financial reporting requirements) repealed in this rulemaking.

Amend

480-90-999 Adoption by reference.

1. Revised to reflect references to repealed sections and new sections.

Chapter 480-92 WAC, Low-Level Radioactive Waste Companies

Amend

480-92-016 Exemptions from rules in chapter 480-92 WAC.

1. Amended to reference WAC 480-07-110 (Exceptions from and modifications to the rules in this chapter; special rules).

Amend

480-92-021 Definitions.

1. Adds definitions for "Affiliated interest," "Control," and "Subsidiary."

Amend

480-92-050 Reporting requirements – Annual report.

1. Grammar changes.

Adopt

480-92-055 Reporting requirements – Special reports.

1. Adopt Low-Level Radioactive Waste Company rules implementing requirements to report transactions with affiliated interests and subsidiaries.
2. Provides exception for transactions provided at tariff rates.

Chapter 480-100 WAC, Electric Companies -- Operations

Amend

480-100-008 Exemptions from rules in chapter 480-90 WAC.

1. Amended to reference WAC 480-07-110 (Exceptions from and modifications to the rules in this chapter; special rules).

Amend

480-100-023 Definitions.

1. Adds definitions for "Affiliated interest," "Control," and "Subsidiary."

Adopt

480-100-207 Filing information.

1. Adds filing information within chapter.

Repeal

480-100-208 Financial reporting requirements.

1. Financial reporting requirements moved to new sections:
Annual reports – WAC 480-100-252 (Federal Energy Regulatory Commission (FERC) Form No. 2.)
Commission basis reports (annual) – WAC 480-100-257 (Commission basis report.)
Quarterly reports – WAC 480-100-275 (Actual results for Washington operations report.)
Additional reports – WAC 480-100-209 (Additional reports.)

Adopt

480-100-209 Additional reports.

1. Adopted from WAC 480-100-208 (Financial reporting requirements) repealed in this rulemaking.

Repeal

480-100-218 Securities, affiliated interests, and transfers of property.

1. Deletes subsections (1) and (3), which are moved into new section WAC 480-100-248 (Securities and transfers of property).

Adopt

480-100-244 Transferring cash or assuming obligations.

1. Adds requirement for reporting of cash transfers to affiliated interests and subsidiaries when transaction exceeds certain threshold if credit rating is not in one of the four highest rating categories of either Standard & Poors L.L.C. or Moody's Investors Service, Inc.

Adopt

480-100-245 Affiliated interests – Contracts or arrangements.

1. Adopts provisions from WAC 480-146-350 (Filing of affiliated interest transactions) repealed in this rulemaking.
2. Provides exception for transactions provided at tariff rates.

Adopt

480-100-248 Securities and transfers of property.

1. Adopts provisions from WAC 480-100-218 (Securities, affiliated interests, and transfers of property) repealed in this rulemaking.
2. Adds requirements for issuing stock, securities, or other evidence of indebtedness.

Adopt

480-100-252 Federal Energy Regulatory Commission (FERC) Form No. 1.

1. Adopts provisions from WAC 480-100-208 (Financial reporting requirements) repealed in this rulemaking.

Adopt

480-100-257 Commission basis report.

1. Adopts provisions from WAC 480-100-208 (Financial reporting requirements) repealed in this rulemaking.

Adopt

480-100-264 Affiliated interest and subsidiary transactions report.

1. Adopts provisions from WAC 480-146-360 (Reporting of affiliated interest transactions) repealed in this rulemaking.
2. Adds subsidiaries to reporting requirement.
3. Provides exception for transactions provided at tariff rates.

Adopt

480-100-268 Essential utilities services contracts report.

1. Adds requirement for reporting of essential utilities services contract when certain thresholds are exceeded.

Adopt

480-100-275 Actual results for Washington operations report.

1. Adopts provisions from WAC 480-100-208 (Financial reporting requirements) repealed in this rulemaking.

Amend

480-100-999 Adoption by reference.

1. Revised to reflect references to repealed sections and new sections.

Chapter 480-110 WAC, Water Companies

Amend

480-110-205 Application of rules.

1. Grammar changes.

Amend

480-110-215 Exemption from rules in chapter 480-110 WAC.

1. Amended to reference WAC 480-07-110 (Exceptions from and modifications to the rules in this chapter; special rules).

Amend

480-110-225 Additional requirements.

1. Adds new standard language for section that replaced previous language.

Adopt

480-110-227 Severability.

1. Adds new standard language for section.

Amend

480-110-235 Definition of control.

1. Grammar change.

Amend

480-110-245 Glossary.

1. Grammar change.

Repeal

480-110-495 Maps.

1. Repealed to reflect new numbering of chapter parts.

Adopt

480-110-261 Maps.

1. Adopted to reflect new numbering of chapter parts.

Amend

480-110-335 Establishing credit and deposits.

1. Clarifies interest on deposit calculation.

Amend

480-110-355 Discontinuing service.

1. Grammar change.

Amend

480-110-365 Service responsibilities.

1. Grammar change.

Amend

480-110-375 Form of bills.

1. Grammar change.

Amend

480-110-385 Water company responsibility for complaints and disputes.

1. Grammar change.

Amend

480-110-395 Water quality refunds.

1. Grammar change.
2. Changes statutory authority reference.

Amend

480-110-415 Meters.

1. Grammar change.

Amend

480-110-425 Water company customer notice requirements.

1. Grammar change.

Repeal

480-110-265 Tariffs.

1. Repealed to reflect new numbering of chapter parts.

Adopt

480-110-431 Tariffs.

1. Adopted to reflect new numbering of chapter parts.

Repeal

480-110-295 Adopted and initial tariffs.

1. Repealed to reflect new numbering of chapter parts.

Adopt

480-110-433 Adopted and initial tariffs.

1. Adopted to reflect new numbering of chapter parts.

Amend

480-110-445 Service connections and customer service lines.

1. Grammar change.

Adopt

480-110-456 Definitions.

1. Adds definitions for "Affiliated interest," "Control," and "Subsidiary."

Adopt

480-110-457 Filing information.

1. Adds filing information within chapter.

Adopt

480-110-459 Additional reports.

1. Adds new standard language for section.

Amend

480-110-465 Expenditures for political or legislative activities.

1. Adds new standard language for section.

Amend

480-110-485 Retaining and preserving records and reports.

1. Changes title to standard Commission format.

Repeal

480-110-275 Accounting and reporting requirements, and regulatory fees.

1. Repealed to reflect new numbering of chapter parts.

Adopt

480-110-505 Accounting and reporting requirements, and regulatory fees.

1. Adopted to reflect new numbering of chapter parts.

Repeal

480-110-475 Reports of accidents.

1. Repealed to reflect new numbering of chapter parts.

Adopt

480-110-515 Reports of accidents.

1. Adopted to reflect new numbering of chapter parts.

Adopt

480-110-535 Transferring cash or assuming obligations.

1. Adds requirement for reporting of cash transfers to affiliates and subsidiaries when transaction exceeds certain threshold if credit rating is not in one of the four highest rating categories of either Standard & Poors L.L.C. or Moody's Investors Service, Inc.

Adopt

480-110-545 Affiliated interests – Contracts or arrangements.

1. Adopts provisions from WAC 480-146-350 (Filing of affiliated interest transactions) repealed in this rulemaking.
2. Provides exception for transactions provided at tariff rates.

Repeal

480-110-285 Securities, affiliated interest, transfer of property.

1. Deletes subsections (1) and (3), which are moved into new section WAC 480-110-555 (Securities and transfers of property).

Adopt

480-110-555 Securities and transfers of property.

1. Adopts provisions from WAC 480-110-285 (Securities, affiliated interests, and transfer of property) repealed in this rulemaking.
2. Adds requirements for issuing stock, securities, or other evidence of indebtedness.

Adopt

480-110-575 Affiliated interest and subsidiary transactions report.

1. Adopts provisions from WAC 480-146-360 (Reporting of affiliated interest transactions) repealed in this rulemaking.
2. Adds subsidiaries to reporting requirement.
3. Provides exception for transactions provided at tariff rates.

Amend

480-110-999 Adoption by reference.

1. Grammar change.

Chapter 480-120 WAC, Telecommunications Operations

Amend

480-120-015 Exemptions from rules in chapter 480-120 WAC.

1. Amended to reference WAC 480-07-110 (Exceptions from and modifications to the rules in this chapter; special rules).

Adopt

480-120-325 Definitions.

1. Adds definitions for "Affiliated interest," "Control," and "Subsidiary."

Adopt

480-120-331 Filing information.

1. Adds filing information within chapter.

Adopt

480-120-335 Additional reports.

1. Adds new standard language for section.

Repeal

480-120-305 Streamlined filing requirements for Class B telecommunications company rate increase.

1. Repealed to reflect new numbering of chapter parts.

Adopt

480-120-339 Streamlined filing requirements for Class B telecommunications company rate increase.

1. Adopted to reflect new numbering of chapter parts.

Repeal

480-120-321 Expenditures for political or legislative activities.

1. Repealed to reflect new numbering of chapter parts.

Adopt

480-120-344 Expenditures for political or legislative activities.

1. Adopted to reflect new numbering of chapter parts.

Repeal

480-120-323 Washington Exchange Carrier Association (WECA).

1. Repealed to reflect new numbering of chapter parts.

Adopt

480-120-352 Washington Exchange Carrier Association (WECA).

1. Adopted to reflect new numbering of chapter parts.

Repeal

480-120-301 Accounting requirements for competitively classified companies.

1. Repealed to reflect new numbering of chapter parts.

Adopt

480-120-355 Competitively classified companies.

1. Adopted to reflect new numbering of chapter parts.

Adopt

480-120-369 Transferring cash or assuming obligation.

1. Adds requirement for reporting of cash transfers to affiliated interests and subsidiaries when transaction exceeds certain threshold if credit rating is not in one of the four highest rating categories of either Standard & Poors L.L.C. or Moody's Investors Service, Inc.

Adopt

480-120-375 Affiliated interests – Contracts or arrangements.

1. Adopts provisions from WAC 480-146-350 (Filing of affiliated interest transactions) repealed in this rulemaking.
2. Provides exception for transactions provided at tariff rates.

Adopt

480-120-379 Transfers of property.

1. Adopted to incorporate language concerning transfers of property.

Repeal

480-120-303 Reporting requirements for competitively classified companies.

1. Repealed to reflect new numbering of chapter parts.

Adopt

480-120-382 Annual report for competitively classified companies.

1. Adopted to reflect new numbering of chapter parts.

Repeal

480-120-304 Reporting requirements for companies not classified as competitive.

1. Repealed to reflect new numbering of chapter parts.

Adopt

480-120-385 Annual report and quarterly results of operations reports for companies not classified as competitive.

1. Adopted to reflect new numbering of chapter parts.

Adopt

480-120-395 Affiliated interest and subsidiary transactions report.

1. Adopts provisions from WAC 480-146-360 (Reporting of affiliated interest transactions) repealed in this rulemaking.
2. Adds subsidiaries to reporting requirement.
3. Provides exception for transactions provided at tariff rates.

Repeal

480-120-311 Access charge and universal service reporting.

1. Repealed to reflect new numbering of chapter parts.

Adopt

480-120-399 Access charge and universal service reporting.

1. Adopted to reflect new numbering of chapter parts.

Chapter 480-121 WAC, Registration, Competitive Classification and Price Lists of Telecommunications Companies

Amend

480-121-063 Regulatory requirements that may be waived for competitively classified telecommunications companies.

1. Revised to reflect references to repealed sections, adopted sections, and new numbering of Chapter 480-120.

Amend

Chapter 480-146 WAC, Commission general—Securities, Liens, Affiliated Interests, Refunding of Notes, Lease of Utility Facilities

1. Removes Affiliated Interests from title.

Repeal

480-146-350 Filing of affiliated interest transactions.

1. This section adopted in WAC:
480-70-078 (Affiliated interests—Contracts or arrangements).
480-90-245 (Affiliated interests—Contracts or arrangements).
480-92-055 (Reporting requirements—Special reports) (1) (Affiliated interests—Contracts or arrangements).
480-100-245 (Affiliated interests—Contracts or arrangements).
480-110-545 (Affiliated interests—Contracts or arrangements).
480-120-375 (Affiliated interests—Contracts or arrangements).

Repeal

480-146-360 Reporting of affiliated interest transactions.

1. This section adopted in WAC:

480-70-079 (Affiliated interest and subsidiary transactions report).

480-90-264 (Affiliated interest and subsidiary transactions report).

480-92-055 (Reporting requirements – Special reports) (3) Affiliated interest and subsidiary transactions report.

480-100-264 (Affiliated interest and subsidiary transactions report).

480-110-575 (Affiliated interest and subsidiary transactions report).

480-120-395 (Affiliated interest and subsidiary transactions report).

Chapter 480-73 WAC, Hazardous Liquid Pipeline Companies

Adopt

480-73-010 Application of rules.

Adopt

480-73-020 Exemptions from rules in chapter 480-73 WAC.

Adopt

480-73-030 Additional requirements.

Adopt

480-73-040 Severability.

Adopt

480-73-050 Tariffs.

Adopt

480-73-060 Definitions.

Adopt

480-73-110 Filing information.

Adopt

480-73-120 Additional reports.

Adopt

480-73-130 Accounting system requirements.

Adopt

480-73-140 Expenditures for political or legislative activities.

Adopt
480-73-150 Retaining and preserving records and reports.

Adopt
480-73-160 Annual reports.

Adopt
480-73-180 Transferring cash or assuming obligation.

Adopt
480-73-190 Affiliated interests — Contracts or arrangements.

Adopt
480-73-210 Affiliated interest and subsidiary transactions report.

Adopt
480-73-999 Adoption by reference.

8 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS**

THEREUNDER: The Commission filed a Preproposal Statement of Inquiry (CR-101) on October 2, 2002, at WSR # 02-20-105, and October 28, 2002, at WSR # 02-22-030, in Docket A-021178. The Commission filed a Preproposal Statement of Inquiry (CR-101) on March 13, 2003, at WSR # 03-07-034, in Docket TO-030288.

9 **ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL**

STATEMENT: The statement at WSR # 02-20-105 advised interested persons that the Commission was considering entering a rulemaking on establishing reporting rules for transactions between regulated utility and transportation companies and their subsidiaries. The statement at WSR # 02-22-030 advised interested persons that other industries, including auto transportation companies may be affected by rules adopted in this docket, and that rules adopted in this docket would not apply to competitive telecommunications companies. The statement at WSR # 03-07-034 advised interested persons that the Commission was considering developing a new chapter applicable to the economic regulation of Hazardous Liquid Pipeline Companies regulated as common carriers by the Commission, including, but not limited to, financial reporting requirements.

- 10 The Commission also informed persons of the inquiry into these matters by providing notice of the subjects and the CR-101s to all persons on the Commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all registered companies and the Commission's lists of regulatory attorneys. The Commission posted the relevant rulemaking information on its Internet web site at <http://www.wutc.wa.gov>.
- 11 **WORKSHOP; ORAL COMMENTS; WRITTEN COMMENTS:** Pursuant to the notice, the Commission held three stakeholder workshops. In addition, Staff met informally to discuss issues related to financial reporting rules with representatives from Qwest Corporation (Qwest), PacifiCorp, Puget Sound Energy, Inc. (PSE), Avista Corporation (Avista), and Olympic Pipe Line Company (Olympic). Representatives of regulated companies and consumer advocacy organizations attended the workshops and/or filed written comments.
- 12 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a notice of Proposed Rulemaking (CR-102) on September 1, 2004, at WSR # 04-18-129. The Commission scheduled this matter for oral comment and adoption under Notice WSR # 04-18-129 at 1:30 p.m., Wednesday, October 13, 2004, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission.
- 13 **ORAL COMMENTS:** Representatives of Verizon Northwest, Inc. (Verizon), Qwest, and Public Counsel provided oral comments on the rule proposal.
- 14 **COMMENTERS (WRITTEN COMMENTS):** The Commission received written comments on the proposed rules (*i.e.*, CR-102) from: PacifiCorp, Qwest, PSE, The Bond Market Associates, O'Melveny & Myers LLP, Cahill Gordon & Reindel LLP, Gibson, Dunn & Crutcher, LLP, and Washington Refuse & Recycling Association.
- 15 **RULEMAKING HEARING:** The rule proposal was considered for adoption, pursuant to the notice, at a rulemaking hearing scheduled during the Commission's regularly scheduled open public meeting on October 13, 2004, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, and Commissioner Patrick Oshie. The Commission heard oral comments from Fred

Ottavelli representing Commission Staff, and from representatives of Verizon, PacifiCorp, Qwest, and Avista.

- 16 **SUPPLEMENTAL NOTICE OF PROPOSED RULEMAKING:** The Commission filed a supplemental notice of Proposed Rulemaking (Supplemental CR-102) on December 22, 2004, at WSR # 05-01-224. The Notice advised interested persons of a substantial change from the CR-102 Proposal filed at WSR #04-18-129, and of the Commission's intention that the entire proposal submitted at WSR # 04-18-129 be renoticed for comment by interested persons. The Commission scheduled this matter for oral comment and adoption under Notice WSR #05-01-224 at 1:30 p.m., Tuesday, February 1, 2005, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission.
- 17 **COMMENTERS (WRITTEN COMMENTS):** The Commission received written comments on the proposed rules (*i.e.*, Supplemental CR-102) from: Qwest, Verizon, PacifiCorp, PSE, Northwest Natural Gas Company (NW Natural), Olympic, Tesoro Refining and Marketing Company, and The Bond Market Associates.
- 18 **RULEMAKING HEARING:** The rule proposal was considered for adoption, pursuant to the notice, at a rulemaking hearing scheduled during the Commission's regularly scheduled open public meeting on February 1, 2005, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, and Commissioner Patrick Oshie. The Commission heard oral comments from representatives of Qwest, Verizon, and PacifiCorp. In addition, Richard Boehmer of O'Melveny & Myers, special securities counsel to Qwest Communications International Inc. and its subsidiaries, provided comment.
- 19 **SUGGESTIONS FOR CHANGE THAT ARE ACCEPTED OR REJECTED:** In this section the Commission responds to comments made on the proposed rules. The material in this section is organized by rule number. In each response we indicate whether we made a change in the adopted rules based upon the comment, or whether we adhered to the language in the proposed rule.

WAC Sections Related to Issuing Securities.

- 20 Qwest, Verizon, NW Natural, PSE, PacifiCorp, the Bond Market Association, and O'Melveny & Myers, LLP commented on the rules related to the issuance of securities. The Commission has decided to consider the rules related to securities at a later date.

WAC 480-120-325 and WAC-100-023 Definitions.

- 21 Qwest and PacifiCorp comment that the definitions of "subsidiary" and "control" are vague and unenforceable. Qwest acknowledges that control should be the focus of a definition of "subsidiary," but argues that the inclusion of "by contract, or otherwise" in the definition of "control" is vague and confusing. Qwest suggests that the Commission adopt the Washington Corporations Act definition of a 'subsidiary,' that requires no further investigation or analysis other than whether the utility owns a majority of the voting securities of the other company."¹
- 22 PacifiCorp contends that the five percent ownership threshold is too broad and captures ownership structures that do not fit the traditional parent-subsidiary model. PacifiCorp contends that its research of case precedent interpreting the SEC rules that define "control" supports its concern for incorporating this "elusive notion" of "control" in the Commission's rules.
- 23 The Commission concludes that these suggestions cannot be adopted without undermining the fundamental purpose of requiring that companies report transactions with subsidiaries. When a regulated company owns one or more unregulated companies, there is the potential for the companies to engage in coordinated transactions among themselves and thereby to frustrate the Commission's ability to ensure that only reasonable costs are charged to the customers of the regulated company. Commenters do not contest either the notion that unreported transactions with a subsidiary can frustrate effective oversight of a regulated company or the notion that a company can "control" another company without owning a majority of its shares. The Commission has addressed the legitimate concerns about how to determine whether a regulated

¹ The Washington Corporations Act defines a subsidiary as "a domestic or foreign corporation that has a majority of its outstanding voting shares owned, directly or indirectly, by another domestic or foreign corporation." RCW 23B.19.020(17).

company "controls" a subsidiary. It has done so by using a definition for "subsidiary" that tracks the long-established definition of "affiliated interest" in RCW 80.16.010, with the addition of language that would allow the utility to demonstrate it does not have "control" of the subsidiary. The source of the definition for "control" is a rule of the Securities and Exchange Commission, Rule 1-02(g), "Definition of terms used in Regulation S-X," as found at 17 CFR Part 210.²

WAC 480-120-369 Transferring cash or assuming obligations.

- 24 Qwest objects to this rule as beyond the Commission's statutory authority. Qwest argues that the Legislature did not impose, or authorize the Commission to impose, pre-filing requirements for cash transfers. Qwest also suggests that the rule is an attempt to permit the Commission to engage in regulating the multi-state cash management of utilities and their affiliates and subsidiaries. According to Qwest, any attempt by the Commission to regulate multi-state cash management activities of Qwest and its family of companies would violate RCW 80.01.040(3) and the Commerce Clause of the United States Constitution.
- 25 Contrary to Qwest's position, RCW 80.04.080 grants the Commission broad authority to require companies to provide special reports "concerning any matter about which the commission is authorized or required by this or any other law, to inquire into or keep itself informed about." This broad authority provides sufficient basis to request notice of the large cash transfers that are encompassed in the rules. The notice rules are specifically intended to cover only a small, particularly significant subset of all utility cash transfers: namely, cash transfers exceeding a high monetary threshold, made by utilities that are not rated investment grade.
- 26 Transfers of large amounts of cash from the regulated utility or its subsidiaries could have serious and detrimental effects on ratepayers. Regulated utilities collect cash from customers as they pay for utility services, and regulated utilities use cash to fund operations and capital investment. A large transfer of cash from the control of the regulated utility could effectively disable funding for utility

² Regulation S-X pertains to the requirements for financial statements filed pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, and the Public Utility Holding Company Act of 1935. This is substantially the same definition for "control" as defined in Rule 12b-2(f) under the Securities Exchange Act of 1934. 17 CFR Part 240 at Rule 12b-2.

operations or render the utility unable to make necessary capital investments. Either circumstance could cause an immediate harm to customers. Providing the Commission with five days' advance notice of such transfers would allow the Commission to immediately commence ratemaking or prudence proceedings, or, in particularly egregious instances, to seek to enjoin the utility from proceeding with the cash transfer altogether, if necessary to protect the interests of the ratepayers or the public interest. RCW 80.36.140 and RCW 80.28.020 authorize the Commission to determine, after hearing, that a company's "practices" or "practices affecting rates" are unreasonable, to determine the just, reasonable, and proper practices to be thereafter observed and used, and to "fix the same by order or rule."

- 27 The Commission is particularly concerned about large cash transactions by non-investment grade companies, because a parent company that is in a weak financial condition is both more likely to take advantage of cash held by a utility subsidiary and because such a company would have greater difficulty raising capital to offset the loss of cash. Large cash transfers by non-investment grade companies are more likely to directly affect the rates or service provided to ratepayers. Providing the Commission with five days' advance notice does not unreasonably burden the company, and it affords the Commission with sufficient time to take remedial action, if necessary, in advance of any irreparable harm to ratepayers or to the public interest.
- 28 The Commission also finds that the proposed rule, which requires only that the Commission be given five days' advance notice of certain large cash transfers from the regulated utility or its subsidiary, does not violate the Commerce Clause, pursuant to the test set forth in *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142, 90 S. Ct. 844, 25 L.Ed. 2d 174 (1970). The rule does not interfere with Qwest's management prerogatives. Whatever effects the rule might have on interstate commerce are at most incidental and minimal, and are clearly outweighed by the Commission's strong interest to protect the ratepayers of regulated utilities and the public interest.

WAC 480-90-245 and WAC 480-73-190 Affiliated Interests—Contracts or arrangements

- 29 NW Natural states that, absent a materiality threshold, the requirement to file contracts or arrangements with affiliates could be burdensome on the utility.

30 The Commission does not accept this proposal, because it is inconsistent with the statute. RCW 80.16.020 requires every public service company file with the Commission a copy or summary of contracts or arrangements with affiliates. The statute provides no exemption from the requirement based upon materiality.

31 Olympic Pipe Line Company is concerned that the proposed regulation suggests the Commission has the authority to disapprove any contract or arrangement that Olympic might enter into with an affiliated entity. Olympic believes that the operation of interstate pipeline facilities such as Olympic's system is subject to the exclusive jurisdiction of the federal government.

32 The Commission responds as follows: Neither Chapter 81.16 RCW nor the proposed rule call for affiliated interest contracts to be filed "for approval." On the other hand, the statute gives the Commission authority to disapprove payments under an affiliated interest agreement. RCW 81.16.030. Presumably, the disapproved payment would be in the context of ratemaking recovery, and it would apply only to the Washington intrastate share of the payment. If so, there is no problem, because FERC does not regulate intrastate rates. Congress has "expressly provided that [scope of federal rate regulation] was not to extend to purely intrastate traffic." *Simpson v. Shephard*, 230 U.S. 352, 418 (1913).

33 The Commission also has statutory authority to disapprove the contract itself. RCW 81.16.020. In any event, a challenge on this basis is premature, because the rule itself does not pose that sort of conflict. Accordingly, the broad attack of the sort levied by Olympic against the affiliated interest filing requirements fails because there are legitimate purposes to be fulfilled under RCW 81.16 by the Commission regarding regulation of intrastate pipeline transportation rates, and those purposes are advanced by the proposed rule.

WAC 480-90-257 Commission basis report.

34 NW Natural suggests that Section 2(b) be clarified so as to state, "Results of operations adjusted for any material out-of-period, nonoperating, nonrecurring, and extraordinary items or any other item that materially distorts reporting period earnings and rate base, and . . ."

35 The Commission accepts this proposal.

WAC 480-70-079, 480-90-264, 480-100-264, 480-110-575, 480-120-395 Affiliated interest and subsidiary transactions report, and WAC 480-92-055 Reporting requirements—Special reports.

- 36 Qwest and Verizon urge deletion of the rule's reporting requirement of transactions between a public service company and its subsidiaries. They argue that subsidiary regulation is not permitted under RCW 80.16, the affiliated interest statute, nor any other statute vesting the Commission with regulatory powers. Alternatively, Verizon requests the rule specifically exempt subsidiaries that are local exchange companies.
- 37 Olympic comments that this rule would require extensive reporting on each and every activity and "transaction" governed by the operating agreement which necessarily involves Olympic's operator, an "affiliate" entity. Olympic also states that this contract is already provided to the Commission under WAC 480-73-190. Olympic suggests that to the extent transactions with affiliated entities are governed by and required by its operating agreement, those transactions should be excluded from the reporting obligations of this proposed regulation.
- 38 Olympic notes that its two shareholders are ultimately affiliated with two of the World's largest corporations, BP and Shell. According to Olympic, there are literally hundreds of entities "affiliated" with Olympic, many of which are not publicly traded. Olympic asserts that the Commission does not have authority to compel Olympic to provide to the Commission financial information which is not Olympic's property, is not "public information, and is instead the property of entities which are not subject to the Commission's regulatory authority. Olympic states that it could provide annual financial statements and reports of both BP and Shell, which are publicly traded and thus their financial information is available.
- 39 The Commission does not accept the proposal to delete reporting of transactions involving a regulated company's subsidiaries from the proposed rule. The Commission has broad authority under RCW 80.04.080 to require special reports from regulated companies concerning any matters about which it is authorized or required to keep itself informed. These include transactions involving a regulated company's subsidiaries, which can directly and substantially affect the assets and liabilities of the regulated company, and in turn, the rates and services

provided by the regulated company to its ratepayers. The Commission also has broad authority to examine the accounts, books, and documents of the regulated company, including its subsidiaries, pursuant to RCW 80.04.070. The Commission also rejects Verizon's alternative proposal to specifically exempt subsidiaries that are local exchange companies. The fact that a subsidiary of a utility is itself a regulated utility does not, in and of itself, eliminate the possibility that transactions between the two entities could be disadvantageous to one of them. The regulator would not have reviewed the terms of the transaction, and it would not be at arms length. Therefore effective oversight of the regulated utility requires information on its transactions with regulated subsidiaries. If there are specific circumstances where this concern is not present, the affected utility may seek an exemption.

WAC 480-120-331 Filing information.

- 40 Qwest recommends deleting subsection (2) of the proposed rule, which provides that the Commission may require pertinent information "in addition to that" specified by statute or in this statute because it appears to grant the Commission powers beyond those granted by the legislature.
- 41 The Commission does not accept this proposal. The proposed rule specifies that the additional information that the Commission may require is limited to "pertinent information." As Qwest points out, the Commission has broad authority to gather information from public service companies under the provision of RCW 80.04.070.

WAC 480-73-160 Annual reports.

- 42 Olympic suggests amending WAC 480-73-160(5) to specify the regulatory fee is based upon intrastate operating revenue.
- 43 The Commission accepts this suggestion. The regulatory fee is based upon intrastate operating revenue.
- 44 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission finds and concludes that it should amend, repeal, and adopt the rules in the supplemental CR-102 Notice at WSR #05-01-224 with the changes described below.

- 45 **CHANGES FROM PROPOSAL:** After reviewing the entire record, the Commission adopts the supplemental CR-102 proposal with the following changes from the text noticed at WSR # 05-01-224.

WAC 480-70-078, 480-73-190, 480-90-245, 480-100-245, 480-110-545, 480-120-375 Affiliated interests--Contracts or arrangements, and WAC 480-92-055 Reporting requirements--Special reports.

- 46 WAC 480-70-078, 480-73-190, 480-90-245, 480-100-245, 480-110-545, 480-120-375 and 480-92-055 are edited as follows:

Prior to the effective date of any contract or arrangement described in RCW 81.16.020, each [solid waste collection company] must file a verified copy or a verified summary, if unwritten, of contracts or arrangements, except for transactions provided at tariff rates,

WAC 480-70-079, 480-90-264, 480-100-264, 480-110-575, 480-120-395 Affiliated interest and subsidiary transactions report, and WAC 480-92-055 Reporting requirements--Special reports.

- 47 WAC 480-70-079, 480-90-264, 480-100-264, 480-110-575, 480-120-395 and 480-92-055, as published in the CR-102, are edited as follows:

(1) By June 1 of each year each [Class A company] must file a report summarizing all transactions that occurred between the company and its affiliated interests, except for transactions provided at tariff rates,

WAC 480-73-210 Affiliated interest and subsidiary transactions report.

- 48 WAC 480-73-210, as published in the CR-102, is edited as follows:

(2) The information required in this section must be provided for total company and for total state of Washington. The report must include a corporate organization chart of the company and showing the pipeline company and how it is related to its affiliated interests and subsidiaries.

(3) (a) A balance sheet and income statement for such affiliated interest to the extent such information is publicly available, and if not publicly available but

the balance sheet and income statement of a parent of such affiliated interest is publicly available, then the balance sheet and income statement for such parent must be provided;

WAC 480-73-060 and 480-110-456 Definitions.

49 WAC 480-73-060 and 480-110-456, as published in the CR-102, are edited as follows:

~~"Securities" means stocks, stock certificates, other evidence of interest or ownership, bonds, notes, or other evidence of indebtedness, or any obligation or liability as guarantor.~~

WAC 480-73-110, 480-90-207, 480-100-207, 480-110-457 and 480-120-331 Filing information.

50 WAC 480-73-110, 480-90-207, 480-100-207, 480-110-457 and 480-120-331, as published in the CR-102, are edited as follows:

(1) ~~Filing. The commission records center will accept any filing under WAC 480-73-170 (Issuing securities) delivered in person, by mail, telefacsimile, or electronic mail message. The commission records center will accept all other reports . . .~~

WAC 480-73-160 Annual reports.

51 WAC 480-73-160, as published in the CR-102, is edited as follows:

(5) Economic regulatory fees. An economic regulatory fee is an annual assessment paid by each company to cover the costs of economic regulation of the industry. The economic regulatory fee is separate from the pipeline safety fee identified in WAC 480-75-240 (Annual pipeline safety fee methodology). The maximum economic regulatory fee is set by statute at one-tenth of one percent of the first fifty thousand dollars of gross intrastate operating revenue plus two-tenths of one percent of any gross intrastate operating revenue in excess of fifty thousand dollars.

WAC 480-73-180, 480-90-244, 480-100-244, and 480-120-369 Transferring cash or assuming obligations.

- 52 WAC 480-73-180, 480-90-244, 480-100-244, and 480-120-369, as published in the CR-102, are edited as follows:

(1) At least five business days before a [pipeline company] ~~that is not rated investment grade~~ whose corporate/issuer rating is not in one of the four highest rating categories of either Standard & Poors L.L.C. or Moody's Investors Service, Inc.

WAC 480-90-244 Transferring cash or assuming obligations.

- 53 WAC 480-90-244, as published in the CR-102, is edited as follows:

(1)(b)A utility's common shareholder equity is determined according to the latest annual report filed pursuant to WAC 480-~~100~~ 90-252 (Federal Energy Regulatory Commission (FERC) Form No. ~~1~~ 2). Information about the FERC Form No. ~~1~~ 2 regarding the version adopted and where to obtain it is set out in WAC 480-~~100~~ 90-999 (Adoption by reference).

WAC 480-110-535 Transferring cash or assuming obligation.

- 54 WAC 480-110-535, as published in the CR-102, is edited as follows:

Transferring cash or assuming obligations.

WAC 480-120-369 Transferring cash or assuming obligations.

- 55 WAC 480-120-369, as published in the CR-102, is edited as follows:

This section does not apply to a company classified as competitive pursuant to RCW 80.36.320, or to a local exchange company that serves less than two percent of the access lines in the state of Washington.

WAC 480-90-248, 480-100-248, and 480-110-555 Transfers of property.

- 56 WAC 480-90-248, 480-100-248, and 480-110-555, as published in the CR-102, are edited as follows:

Securities and Transfers of property. (1) Before a [gas utility] issues stock, securities, or other evidence of indebtedness, the utility must comply with the requirements of chapters 80.08 RCW and 480-146 WAC.

WAC 480-90-257 and 480-100-257 Commission basis report.

- 57 WAC 480-90-257 and 480-100-257, as published in the CR-102, are edited as follows:

(b) Results of operations adjusted for any material out-of-period,

WAC 480-110-335 Establishing credit and deposits.

- 58 WAC 480-110-335, as published in the CR-102, is edited as follows.

(6) **Interest on deposits.** Companies that collect customer deposits must pay interest on those deposits calculated:

(a) ((For each calendar)) ~~Effective February 1 of each~~ year, at the rate for the one-year ~~Business Day~~ Treasury Constant Maturity as of November 15 of the previous year, as calculated by the U.S. Treasury, ~~as and~~ published in the Federal Reserve's Statistical Release H.15 ~~on January 15 of that year. If January 15 falls on a nonbusiness day, the company will use the rate posted on the next~~ ((following)) business day;

WAC 480-121-063 Regulatory requirements that may be waived for competitively classified telecommunications companies.

- 59 WAC 480-121-063, as published in the CR-102, is edited as follows:

(p) ((Chapter 480-146 WAC (Commission general-Securities, liens, ~~affiliated interests~~, refunding of notes, lease of utility facilities);

(q)) WAC 480-120-102 (Service offered);

~~((r) WAC 480-120-305))~~ (q) WAC 480-120-339 (Streamlined filing requirements for Class B telecommunications company rate increases);
~~((s))~~ ~~(r)~~ WAC 480-120-311 (Access charge and universal service reporting);
~~((t) WAC 480-120-321))~~ ~~(s)~~ WAC 480-120-344 (Expenditures for political or legislative activities); ~~(and~~
~~(u) WAC 480-120-323))~~ ~~(t)~~ WAC 480-120-352 (Washington Exchange Carrier Association (WECA));
~~(u) WAC 480-120-365 (Issuing securities);~~
~~(v) WAC 480-120-369 (Transferring cash or assuming obligation);~~
~~(w) WAC 480-120-375 (Affiliated interests—Contracts or arrangements);~~
and
~~(x) WAC 480-120-389 (Securities report); and~~
~~(y) WAC 480-120-395 (Affiliated interest and subsidiary transactions report).~~

This rule supersedes all waivers of regulatory requirements for competitively classified companies granted by the commission at the time of a company's competitive classification. However, subsequent to the adoption of this rule, the commission may revoke the waiver of any regulatory requirement set forth in (a) through ~~((u))~~ ~~(y)(x)~~ of this subsection or may waive any regulatory requirement not included in (a) through ~~((u))~~ ~~(y)(x)~~ of this subsection.

Chapter 480-146 WAC COMMISSION GENERAL—SECURITIES, LIENS, AFFILIATED-INTEREST, REFUNDING OF NOTES, LEASE OF UTILITY FACILITIES

60 The title of Chapter 480-146 WAC as published in the CR-102, is edited as follows:

COMMISSION GENERAL—SECURITIES, LIENS, ~~AFFILIATED~~ INTEREST, REFUNDING OF NOTES, LEASE OF UTILITY FACILITIES

- 61 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** In reviewing the entire record, the Commission determines that WAC sections 480-90-208, 480-90-218, 480-100-208, 480-100-218, 480-110-495, 480-110-265, 480-110-295, 480-110-275, 480-110-475, 480-110-285, 480-120-301, 480-120-303, 480-120-304, 480-120-305, 480-120-311, 480-120-321, 480-120-323, 480-146-350, and 480-146-360 should be repealed as set forth in Appendix A, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the Code Reviser.
- 62 WAC sections 480-70-041, 480-70-051, 480-90-008, 480-90-023, 480-90-999, 480-92-016, 480-92-021, 480-92-050, 480-100-008, 480-100-023, 480-100-999, 480-110-205, 480-110-215, 480-110-225, 480-110-235, 480-110-245, 480-110-335, 480-110-355, 480-110-365, 480-110-375, 480-110-385, 480-110-395, 480-110-415, 480-110-425, 480-110-445, 480-110-465, 480-110-485, 480-110-999, 480-120-015, 480-121-063, and the title to Chapter 480-146 WAC should be amended to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the Code Reviser.
- 63 WAC sections 480-70-077, 480-70-078, 480-70-079, 480-90-207, 480-90-209, 480-90-244, 480-90-245, 480-90-248, 480-90-252, 480-90-257, 480-90-264, 480-90-268, 480-90-275, 480-92-055, 480-100-207, 480-100-209, 480-100-244, 480-100-245, 480-100-248, 480-100-252, 480-100-257, 480-100-264, 480-100-268, 480-100-275, 480-110-227, 480-110-261, 480-110-431, 480-110-433, 480-110-456, 480-110-457, 480-110-459, 480-110-505, 480-110-515, 480-110-535, 480-110-545, 480-110-555, 480-110-575, 480-120-325, 480-120-331, 480-120-335, 480-120-339, 480-120-344, 480-120-352, 480-120-355, 480-120-369, 480-120-375, 480-120-379, 480-120-382, 480-120-385, 480-120-395, 480-120-399, 480-73-010, 480-73-020, 480-73-030, 480-73-040, 480-73-050, 480-73-060, 480-73-110, 480-73-120, 480-73-130, 480-73-140, 480-73-150, 480-73-160, 480-73-180, 480-73-190, 480-73-210, and 480-73-999 should be adopted to read as set forth in Appendix A, as a rule of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380 (2) on the thirty-first day after filing with the Code Reviser.

THE COMMISSION ORDERS:

- 64 WAC sections 480-90-208, 480-90-218, 480-100-208, 480-100-218, 480-110-495, 480-110-265, 480-110-295, 480-110-275, 480-110-475, 480-110-285, 480-120-301, 480-120-303, 480-120-304, 480-120-305, 480-120-311, 480-120-321, 480-120-323, 480-146-350, and 480-146-360 are repealed as set forth in Appendix A, to take effect on the thirty-first day after the date of filing with the Code Reviser pursuant to RCW 34.05.380(2).
- 65 WAC sections 480-70-041, 480-70-051, 480-90-008, 480-90-023, 480-90-999, 480-92-016, 480-92-021, 480-92-050, 480-100-008, 480-100-023, 480-100-999, 480-110-205, 480-110-215, 480-110-225, 480-110-235, 480-110-245, 480-110-335, 480-110-355, 480-110-365, 480-110-375, 480-110-385, 480-110-395, 480-110-415, 480-110-425, 480-110-445, 480-110-465, 480-110-485, 480-110-999, 480-120-015, 480-121-063, and the title of Chapter 480-146 WAC are amended to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of filing with the Code Reviser pursuant to RCW 34.05.380(2).
- 66 WAC sections 480-70-077, 480-70-078, 480-70-079, 480-90-207, 480-90-209, 480-90-244, 480-90-245, 480-90-248, 480-90-252, 480-90-257, 480-90-264, 480-90-268, 480-90-275, 480-92-055, 480-100-207, 480-100-209, 480-100-244, 480-100-245, 480-100-248, 480-100-252, 480-100-257, 480-100-264, 480-100-268, 480-100-275, 480-110-227, 480-110-261, 480-110-431, 480-110-433, 480-110-456, 480-110-457, 480-110-459, 480-110-505, 480-110-515, 480-110-535, 480-110-545, 480-110-555, 480-110-575, 480-120-325, 480-120-331, 480-120-335, 480-120-339, 480-120-344, 480-120-352, 480-120-355, 480-120-369, 480-120-375, 480-120-379, 480-120-382, 480-120-385, 480-120-395, 480-120-399, 480-73-010, 480-73-020, 480-73-030, 480-73-040, 480-73-050, 480-73-060, 480-73-110, 480-73-120, 480-73-130, 480-73-140, 480-73-150, 480-73-160, 480-73-180, 480-73-190, 480-73-210, and 480-73-999 are adopted to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of filing with the Code Reviser pursuant to RCW 34.05.380(2).

67 This Order and the rules set out below, after being recorded in the register of the Washington Utilities and Transportation Commission, shall be forwarded to the Code Reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, this 28th day of February, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

Note: The following is added at Code Reviser request for statistical purposes:

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 67, amended 30, repealed 19.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Amending,)	
Adopting and Repealing Certain	)	DOCKET NO. A-021178 and
Sections of Chapters 480-90, 480-100,	)	TO-030288
480-110, and 480-120 WAC,)	
Amending and Adopting Certain)	
Sections of Chapters 480-70, and 480-	)	GENERAL ORDER NO. R-518
92 WAC; Adopting Chapter 480-73)	
WAC; Amending WAC 480-121-063,)	
and Repealing WAC 480-146-350,)	
and WAC 480-146-360	)	ORDER CORRECTING TEXT OF
	)	WAC 480-120-369 (1) SUBMITTED
Relating to Reporting of transactions	)	FOR ADOPTION
between regulated utility and)	
transportation companies and their)	
subsidiaries)	
.....)	

1 On February 28, 2005, the Washington Utilities and Transportation Commission (Commission) filed with the Code Reviser an Order Repealing, Amending and Adopting Rules Permanently in certain sections of the above captioned chapters of Title 480 WAC, relating to reporting of transactions between regulated utility and transportation companies and their subsidiaries. The Commission took this action pursuant to RCW 80.01.040, RCW 80.04.160, and RCW 81.04.160. The Order is filed at WSR # 05-06-051. The effective date for the repeal, amendment, and adoption of the rules is March 31, 2005.

2 Recently, the Commission learned that an intended deletion of a phrase from subsection (1) of WAC 480-120-369 as published at WSR #05-01-224, was erroneously included in the rule submitted for adoption. The phrase that should have been deleted from subsection (1) of WAC 480-120-369 is set out below in italics:

WAC 480-120-369 Transferring cash or assuming obligations. This section does not apply to a company classified as competitive pursuant to RCW 80.36.320, or to a local exchange company that serves less than two percent of the access lines in the state of Washington.

(1) At least five business days before a telecommunications company whose corporate/issuer rating is not in one of the four highest rating categories of either Standard & Poor's L. L. C. or Moody's Investors Service, Inc., or its subsidiary that is not rated investment grade or its subsidiary transfers cash to any of its affiliated interests or subsidiaries or assumes an obligation or liability of any of its affiliated interests or any of its subsidiaries, the company must report to the commission an estimate of the amount to be transferred and the terms of the transaction when the transaction will exceed thresholds as described in (a) or (b) of this subsection.

- 3 Failure to delete the phrase, *or its subsidiary that is not rated investment grade*, from the rule submitted to the Code Reviser with the Adoption Order constitutes an oversight. Accordingly the Commission enters this Order to correct the rule by deleting this phrase from WAC 480-120-369 (1). A copy of the corrected rule is attached to this Order as Appendix A.

DATED at Olympia, Washington, this ____ day of March, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

RECEIVED
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CASE TYPE 2
THURSTON COUNTY SUPERIOR COURT
CASE INFORMATION COVER SHEET

Case Number _____ Case Title Owest Corporation v. Washington Utilities and Transportation Commission

Attorney Name John H. Ridge Bar Membership Number 31885

Please check one category that best describes this case for indexing purposes. Accurate case indexing not only saves time in docketing new cases, but helps in forecasting judicial resources. Cause of action definitions are listed on the back of this form. Thank you for your cooperation.

APPEAL/REVIEW

- Administrative Law Review (ALR 2)
- Appeal of a Department of Licensing Revocation (DOL 2)
- Civil, Non-Traffic (LCA 2)
- Civil, Traffic (LCI 2)

CONTRACT/COMMERCIAL

- Breach of Contract (COM 2)
- Commercial Contract (COM 2)
- Commercial Non-Contract (COL 2)
- Third Party Collection (COL 2)

MERETRICIOUS RELATIONSHIP

- Meretricious Relationship (MER 2)

DOMESTIC VIOLENCE/ANTI-HARASSMENT

- Civil Harassment (HAR 2)
- Domestic Violence (DVP 2)
- Foreign Protection Order (FPO 2)
- Vulnerable Adult Protection (VAP 2)

JUDGMENT

- Abstract Only (ABJ 2)
- Foreign Judgment (FJU 2)
- Judgment, Another County (ABJ 2)
- Judgment, Another State (FJU 2)
- Tax Warrant (TAX 2)
- Transcript of Judgment (TRJ 2)

OTHER COMPLAINT/PETITION

- Action to Compel/Confirm Private Binding Arbitration (MSC 2)
- Change of Name (CHN 2)
- Deposit of Surplus Funds (MSC 2)
- Emancipation of Minor (EOM 2)
- Injunction (INJ 2)
- Interpleader (MSC 2)
- Malicious Harassment (MHA 2)

- Minor Settlement (No guardianship) (MST 2)
- Petition for Civil Commitment (Sexual Predator) (PCC 2)
- Seizure of Property from Commission of Crime (SPC 2)
- Seizure of Property Resulting from a Crime (SPR 2)
- Subpoenas (MSC 2)

PROPERTY RIGHTS

- Condemnation (CON 2)
- Foreclosure (FOR 2)
- Land Use Petition (LUP 2)
- Property Fairness (PFA 2)
- Quiet Title (QTI 2)
- Unlawful Detainer (UND 2)

TORT, MEDICAL MALPRACTICE

- Hospital (MED 2)
- Medical Doctor (MED 2)
- Other Health Care Professional (MED 2)

TORT, MOTOR VEHICLE

- Death (TMV 2)
- Non-Death Injuries (TMV 2)
- Property Damage Only (TMV 2)

TORT, NON-MOTOR VEHICLE

- Asbestos (PIN 2)
- Other Malpractice (MAL 2)
- Personal Injury (PIN 2)
- Products Liability (TTO 2)
- Property Damage (PRP 2)
- Wrongful Death (WDE 2)

WRIT

- Habeas Corpus (WHC 2)
- Mandamus (WRM 2)
- Restitution (WRR 2)
- Review (WRV 2)

IF YOU CANNOT DETERMINE THE APPROPRIATE CATEGORY, PLEASE DESCRIBE THE CAUSE OF ACTION BELOW.

APPEAL/REVIEW

Administrative Law Review-Petition to the superior court for review of rulings made by state administrative agencies.

Appeal of a Department of Licensing Revocation-Appeal of a DOL revocation (RCW 46.20.308(9)).

Lower Court Appeal-Civil-An appeal for a civil case; excludes traffic infraction and criminal matters.

Lower Court Appeal-Infractions-An appeal for a traffic infraction matter.

CONTRACT/COMMERCIAL

Breach of Contract-Complaint involving monetary dispute where a breach of contract is involved.

Commercial Contract-Complaint involving monetary dispute where a contract is involved.

Commercial Non-Contract-Complaint involving monetary dispute where no contract is involved.

Third Party Collection-Complaint involving a third party over a monetary dispute where no contract is involved.

MERETRICIOUS RELATIONSHIP

Meretricious Relationship-Petition for distribution of property from a meretricious relationship (i.e., a stable, marital-like relationship where both parties cohabit with knowledge that a lawful marriage between them does not exist).

DOMESTIC VIOLENCE / ANTIHARASSMENT

Civil Harassment-Petition for protection from civil harassment.

Domestic Violence-Petition for protection from domestic violence.

Foreign Protection Orders-Any protection order of a court of the United States, or of any state or territory, which is entitled to full faith and credit in this state.

Vulnerable Adult Protection-Petition for protection order for vulnerable adults, as those persons are defined in RCW 74.34.020.

JUDGMENT

Abstract Only-A certified copy of a judgment docket from another superior court, an appellate court, or a federal district court.

Foreign Judgment-Any judgment, decree, or order of a court of the United States, or of any state or territory, which is entitled to full faith and credit in this state.

Judgment, Another County-A certified copy of a judgment docket from another superior court within the state.

Judgment, Another State-Any judgment, decree, or order from another state which is entitled to full faith and credit in this state.

Tax Warrant-A notice of assessment by a state agency creating a judgment/lien in the county in which it is filed.

Transcript of Judgment-A certified copy of a judgment from a court of limited

jurisdiction to a superior court in the same county.

OTHER COMPLAINT/PETITION

Action to Compel/Confirm Private Binding Arbitration-Petition to compel or confirm private binding arbitration.

Change of Name-Petition for a change of name. If change is confidential due to domestic violence/antiharassment see case type 5 instead.

Deposit of Surplus Funds-Deposit of money or other item with the court.

Emancipation of Minor-Petition by a minor for a declaration of emancipation.

Injunction-Complaint/petition to require a person to do or refrain from doing a particular thing.

Interpleader-Petition for the deposit of disputed earnest money from real estate, insurance proceeds, and/or other transaction(s).

Malicious Harassment-Suit involving damages resulting from malicious harassment.

Minor Settlements-Petition for a court decision that an award to a minor is appropriate when no letters of guardianship are required (e.g., net settlement value \$25,000 or less).

Petition for Civil Commitment (Sexual Predator)-Petition for the involuntary civil commitment of a person who 1) has been convicted of a sexually violent offense whose term of confinement is about to expire or has expired, 2) has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial who is about to be released or has been released, or 3) has been found not guilty by reason of insanity of a sexually violent offense and who is about to be released or has been released, and it appears that the person may be a sexually violent predator.

Seizure of Property from the Commission of a Crime-Seizure of personal property which was employed in aiding, abetting, or in the commission of a crime, from a defendant following criminal conviction.

Seizure of Property Resulting from a Crime-Seizure of tangible or intangible property which is the direct or indirect result of a crime, from a defendant following criminal conviction (e.g., remuneration for, or contract interest in, a depiction or account of a crime).

Subpoenas-Petition for a subpoena.

PROPERTY RIGHTS

Condemnation-Complaint involving governmental taking of private property with payment, but not necessarily with consent.

Foreclosure-Complaint involving termination of ownership rights when a mortgage or tax foreclosure is involved, where ownership is not in question.

Land Use Petition-Petition for an expedited judicial review of a land use decision made by a local jurisdiction (RCW 36.70C.040).

Property Fairness-Complaint involving the regulation of private property or restraint of land use by a government entity brought forth by Title 64 RCW.

Quiet Title-Complaint involving the ownership, use, or disposition of land or real estate other than foreclosure.

Unlawful Detainer-Complaint involving the unjustifiable retention of lands or attachments to land, including water and mineral rights.

TORT, MEDICAL MALPRACTICE

Hospital-Complaint involving injury or death resulting from a hospital.

Medical Doctor-Complaint involving injury or death resulting from a medical doctor.

Other Health Care Professional-Complaint involving injury or death resulting from a health care professional other than a medical doctor.

TORT, MOTOR VEHICLE

Death-Complaint involving death resulting from an incident involving a motor vehicle.

Non-Death Injuries-Complaint involving non-death injuries resulting from an incident involving a motor vehicle.

Property Damage Only-Complaint involving only property damages resulting from an incident involving a motor vehicle.

TORT, NON-MOTOR VEHICLE

Asbestos-Complaint alleging injury resulting from asbestos exposure.

Other Malpractice-Complaint involving injury resulting from other than professional medical treatment.

Personal Injury-Complaint involving physical injury not resulting from professional medical treatment, and where a motor vehicle is not involved.

Products Liability-Complaint involving injury resulting from a commercial product.

Property Damages-Complaint involving damage to real or personal property excluding motor vehicles.

Wrongful Death-Complaint involving death resulting from other than professional medical treatment.

WRIT

Writ of Habeas Corpus-Petition for a writ to bring a party before the court.

Writ of Mandamus-Petition for a writ commanding the performance of a particular act or duty.

Writ of Restitution-Petition for a writ restoring property or proceeds; not an unlawful detainer petition.

Writ of Review-Petition for review of the record or decision of a case pending in the lower court; does not include lower court appeals or administrative law reviews.