

Davison Van Cleve PC

Attorneys at Law

TEL (503) 241-7242 • FAX (503) 241-8160 • rgp@dvclaw.com
Suite 450
1750 SW Harbor Way
Portland, OR 97201

May 11, 2018

Via Electronic Filing

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

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

Dear Mr. Johnson:

By and through this letter, the Alliance of Western Energy Consumers (“AWEC”), formerly the Industrial Customers of Northwest Utilities, responds to the Notice of Opportunity to Submit Written Comments issued by the Commission in the above-referenced docket on April 11, 2018. AWEC appreciates the invitation to participate in this rulemaking docket and submits these comments regarding the revised draft rule proposals.

AWEC believes that the majority of changes made to Parts III B and III C-IV are reasonable, fair, and will serve the interests of efficiency and transparency in Commission proceedings. Consistent with this view, AWEC’s comments expressly acknowledge proposed rule language that is compatible with AWEC’s comments and positions. There are, however, a small number of issues where AWEC does not agree with the proposed rules. The Commission will find that AWEC’s comments address these issues succinctly and with the intent to benefit and inform the Commission’s reflection of the issues presented.

First, AWEC appreciates Staff’s resistance to requests to modify proposed rule 480-07-510(1), which requires that a company’s filing include “all testimony and exhibits the company intends to present as its direct case.” This language is consistent with longstanding Commission practice. Nevertheless, Puget Sound Energy claims that the rule “would limit what

Received
Records Management
05/11/18 14:57
State Of WASH.
UTIL. AND TRANSP.
COMMISSION

the Commission can consider in terms of the company's direct case."^{1/} AWEC submits that this limitation is exactly the point of the rule. It is unfair and arguably inconsistent with due process to allow a company to introduce new remedies and evidence into the record after its initial submission.^{2/} Importantly, utilities control the timing and content of rate case filings that by law must be concluded in no more than ten months.^{3/} Statutory and intervening parties have a narrow window of opportunity to analyze a company's case, and they must limit their responses to the materials included in those filings. The introduction of new remedies or evidence months after the initial filing hinders and obstructs the responding parties' ability to conduct effective discovery and produce responsive testimony. This is particularly true during the later stages of GRC proceedings, as non-company parties would not have sufficient time to adequately respond to new information.^{4/} The Commission is well aware of this problem, and it has repeatedly rejected utilities' efforts to introduce new evidence into proceedings after the filing of direct cases.^{5/} AWEC believes that this rule, as drafted, is consistent with the Commission's prior guidance. It should remain unchanged in the final rules.

Next, AWEC appreciates Staff's changes to proposed rule 480-07-740(2)(d), which governs possible extensions of time to allow the Commission time necessary to consider a proposed settlement. While satisfied with these changes, AWEC remains concerned that implementation of the proposed rule could, in certain circumstances, be interpreted to contravene the timing provisions of RCW § 80.04.130(1). That said, the proposed rule also creates greater discretion for the Commission, as it removes the requirement that parties submit a settlement agreement no less than 30 days before a hearing or 60 days prior to the statutory deadline if the party that filed the suspended tariff did not agree to an extension. All in all, AWEC believes that the proposed rule changes are positive.

Next, AWEC reiterates its concern that proposed rule 780-07-904, which governs delegation of authority to the Secretary, ignores the practical limits to delegation. Without question, the Commission has broad authority to delegate its statutory duties. However, practical boundaries limit the powers it should delegate. For example, a Commission decision to fully delegate its ratemaking authority to a presiding officer may be permitted by the Administrative Procedures Act,^{6/} but such an action would astonish and alarm the regulated community. AWEC believes that the Commission's current practice of producing and authorizing a list of delegable business should be retained. It is clean, simple, and gives parties notice as to whether the Secretary may address their business.

^{1/} PSE Comments at 3 (Dec. 1, 2017).

^{2/} Improper rebuttal evidence is evidence that addresses new issues, which is "outside the scope of the prudence review." WUTC v. Puget Sound & Light Co., Docket UE-920433 et al. (consolidated), Order 19 Supplemental at 38 (Sept. 27, 1994).

^{3/} RCW 80.04.130(1).

^{4/} New evidence offered during rebuttal testimony "can be unsettling to the parties and potentially can disrupt a carefully planned procedural schedule close in time to a planned evidentiary hearing." WUTC v. Pacific Power & Light, Dockets UE-140094 et al. (consolidated), Order 08 ¶ 79 (Mar. 25, 2015).

^{5/} The Commission views the purpose of the rebuttal round of testimony as an opportunity "to rebut evidence presented by other parties in their response testimonies. Any evidence presented on rebuttal that is outside this purpose may be rejected." WUTC v. Pacific Power & Light, Dockets UE-140094 et al. (consolidated), Order 08 ¶ 80 (Mar. 25, 2015).

^{6/} RCW 34.05.461(1).

Finally, AWEC appreciates changes made to 740-07-750(2)(b)(ii), which now allows parties to request reconsideration or clarification of a Commission order accepting a settlement with conditions, and to 740-07-850(1)(c), which now requires that all parties be given an opportunity to respond to a petition for reconsideration. These are positive changes that will help create fair, efficient proceedings.

In closing, AWEC recognizes and appreciates the hard work that has gone into these revised rules. Staff should be commended for balancing a range of interests and producing a draft that appears fair, efficient, and readable.

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

Sincerely,

/s/ Riley G. Peck

Patrick J. Oshie

Riley G. Peck

Davison Van Cleve, P.C.

1750 SW Harbor Way, Suite 450

Portland, OR 97201

Telephone: (503) 241-7242

Facsimile: (503) 241-8160

E-Mail: rgp@dvclaw.com

Of Attorneys for the Alliance of Western Energy
Consumers