

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

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

DOCKET A-130355

**NINTH COMMENTS OF PUBLIC COUNSEL**

**May 11, 2018**

**I. INTRODUCTION**

1. Pursuant to the Commission's Notice of Opportunity to Submit Written Comments, dated April 11, 2018, Public Counsel submits the following comments regarding the draft procedural rules for WAC 480-07, Parts III B and C.

**II. WAC 480-07-510(3)(i) GENERAL RATE PROCEEDING FILINGS – DETAILED SUPPORT**

2. The proposed rule WAC 480-07-510(3) requires that a company filing a general rate case and parties responding to a company's request must include in its testimony and exhibits all detail, calculations, information and descriptions necessary to support its requests and proposals. Section (3)(i) of the proposed rule states further that, if a party's testimony or exhibits refer to a document, including but not limited to a report, study, analysis, survey, article, or court or agency decision, the party must include that document in its filing except in certain instances. The listed exemptions allow parties to include citations or URLs for Commission orders or court and agency decisions, submit excerpts to voluminous documents, and omit materials subject to copyright protections.

3. Public Counsel generally agrees with these proposed rule changes and listed exemptions, but recommends an additional exemption to this proposed rule. When parties cite to and include large databases of information or models in its assessment of company rate proposals, providing a paper copy of the printout of the database or information is largely unusable.<sup>1</sup> As a result, Public Counsel supports the requirement to include the information in a party's filing, but recommends that large database information or models be provided only in electronic format. Large databases and models should be exempted from the proposed requirement in WAC 480-07-510 to file five paper copies of all testimony and exhibits. Public Counsel suggests the addition of the following language (underlined language is an addition to the proposed or existing language).

WAC 480-07510(3)(i)(D)<sup>2</sup> – a party may include a description of a database, spreadsheet, or model in the paper copy of its exhibits rather than the entire database, spreadsheet, or model in printed format if printing the information would result in an exhibit exceeding 5 pages and render the data, spreadsheet cells, or model unusable. The party must submit the complete exhibit with its electronic filing and serve the electronic version on parties to the proceeding. The description in the paper version must state that the electronic version of the document has been electronically filed in its entirety with all information, formulae, and functionality intact.

### III. WAC 480-07-510(4)(a) GENERAL RATE PROCEEDING FILINGS – WORKPAPERS – GENERAL

4. The proposed rule WAC 480-07-510(4)(a) requires parties to provide its workpapers three days after the party files and serves its testimony and exhibits. Public Counsel appreciates that this proposed rule has been revised to extend the deadline for the submission of workpapers

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<sup>1</sup> See for example, *WUTC v. Cascade Nat. Gas Corp.* Docket UG-170929, Public Counsel Exh. CJD-4C.

<sup>2</sup> Public Counsel notes that the numbering for the proposed rule in this section appears to be incorrect. Section (3)(i) is repeated and the subsections to (3)(i) are misnumbered. The exceptions listed under (3)(i) should be numbered as subsections (3)(i)(A) through (3)(i)(D).

from zero to three days after the filing of testimony. Public Counsel, however, recommends that this rule be revised to increase the deadline to five business days, as is the current practice. Five days would give all parties sufficient time to compile its workpapers in a presentable, servable format but is within a reasonable amount of time from the filing of testimony such that no party is prejudiced or harmed by the minor delay. Public Counsel recommends the following language:

WAC 480-07-510(4)(a) General. Work papers are documents that support the technical aspects of a party's testimony and exhibits. Work papers may include, but are not limited to calculations, data analysis and raw data. Work papers, except as provided in subsection (4)(d) below, are not a part of a party's direct case. Except as provided in subsection (4)(d) below, within ~~three~~ five business days after each party files and serves its testimony and exhibits, the party also must provide to all other parties work papers that each of its witnesses relied on when preparing testimony and exhibits. All work papers must comply with the requirements of this subsection (4).

**IV. WAC 480-07-510(4)(d) GENERAL RATE PROCEEDING FILINGS –  
WORKPAPERS – FILING DESIGNATED WORKPAPERS WITH THE  
COMMISSION**

5. The proposed rule WAC 480-07-510(4)(d) addresses the filing of workpapers with the Commission and states that the Commission may issue a bench request for a party's workpapers if it determines the information is necessary. The proposed rule states that the Commission will not rely on any other workpapers as the basis for any finding of fact or conclusion of law in the proceeding unless the Commission formally admits such workpapers into the evidentiary record.
6. Public Counsel understands that voluminous paper files that can accompany a general rate case and the challenges they present. However, the workpapers underlying the assertions and proposals in company filings are regularly crucial to staff and intervening parties' responsive positions. Workpapers often contain the methodology used by a company to calculate particular

figures, and, more often than not, conflicts can arise over methodology rather than simply over the final numbers presented in testimony. Allowing companies to omit workpapers from the adjudicative proceeding's record would contradict the requirement in proposed rule WAC 480-07-510(3)(a), which requires companies to include "all detail, calculations, information and descriptions necessary to support its requests and proposals and meet its burden of proof."

7. While parties can currently submit a company's workpapers as exhibits in support of their own testimony or as a cross-examination exhibit, parties should not be limited to submitting the company's information as part of their own showing to be included in the evidentiary record. The workpapers that represent a company's assertions and calculations underlying its testimony should be available for parties, as well as the Commission, to rely upon. To the extent that a party must refer to a workpaper that is not yet part of the record, a party should have the opportunity to request that the workpaper be included in the evidentiary record. Public Counsel, therefore, recommends that the proposed rule be modified as follows:

WAC 480-07-510(4)(d) – Filing designated work papers with the commission. If the commission determines that it needs the information in addition to the detailed support a party provides in its testimony and exhibits as required under subsection (3) of this rule, the commission may issue a bench request for that party's designated work papers. Any party to a proceeding may also file a motion for the inclusion of a party's workpapers, either in part or in their entirety, into the evidentiary record of the proceeding. The commission will receive into evidence the work papers a party provides in response to a bench request or granted motion unless the commission rejects that response, either in response to an objection or on the commission's own motion, as provided in WAC 480-07-405(7)(b). The commission will not rely on any other work papers as the basis for any finding of fact or conclusion of law in the proceeding unless the commission formally admits such work papers into the evidentiary record.

**V. WAC 480-07-510(5)(a) GENERAL RATE PROCEEDING FILINGS - SUMMARY DOCUMENT**

8. WAC 480-07-510(5)(a) lists the items that must be included in the summary document accompanying a company's initial general rate case filing. Under subsection (5)(a)(vii), a company is required to include its current authorized overall rate of return and authorized rate of return on common equity. Public Counsel recommends that this item be modified to also require companies to include their most recently calculated actual rate of return. Having this data readily available and in the record will aid parties with their cost of capital analysis and is not unduly burdensome on companies. If, during the pendency of the proceeding, the company's calculation of its actual rate of return is updated (i.e., for a Commission basis report), the company should be required to file an update to its summary document. Public Counsel recommends the rule be modified with the following language.

WAC 480-07-510(5)(a)(vii) Current authorized and most recently calculated actual overall rate of return and authorized and most recently calculated actual rate of return on common equity. The company must file an update to its summary document if, during the pendency of the general rate case proceeding, the company updates its actual overall rate of return and actual rate of return on common equity.

**VI. WAC 480-07-740(3)(a) SETTLEMENT CONSIDERATION PROCEDURE – SETTLEMENT PRESENTATION – SUPPORTING DOCUMENTATION**

9. The proposed changes to WAC 480-07-740(3)(a) describes the documentation supporting a settlement agreement. While the proposed changes require parties to include or refer to sufficient evidence to support Commission approval of the settlement, the language should be modified to explicitly require parties to provide an explanation of how the settlement agreement is lawful and furthers the public interest. Public Counsel, therefore, recommends the following additions to the language.

WAC 480-07-740(3)(a) Supporting documentation. The supporting documentation must describe the disputed issue(s) and proposed resolution and must include or reference sufficient evidence to support commission approval and adoption of the settlement agreement under applicable law consistent with the public interest. The documentation must include an explanation of how the settlement agreement is lawful and furthers the public interest. The documentation may be in the form of a brief, supporting prefiled testimony, or other form that serves the same functions. Documentation supporting a settlement agreement in a general rate proceeding or other complex proceeding must include prefiled testimony.

**VII. WAC 480-07-740(3)(b) SETTLEMENT CONSIDERATION PROCEDURE –  
SETTLEMENT PRESENTATION – TESTIMONY**

10. The proposed rule 480-07-740(3)(b) requires parties to a settlement agreement “to offer to present one or more witnesses to testify in support of the settlement agreement to answer questions concerning the agreement’s details, costs, and benefits.” The proposed rule also states, “Each party’s witness(es) must be available to respond to questions from the bench and cross-examination by counsel for any party that opposes the settlement.” While the revisions to the rule clarify that witnesses supporting a settlement agreement must be available for cross-examination by counsel, the rule does not clearly state that the proponents to a settlement agreement must provide witnesses who are able answer questions regarding the underlying details of the agreement beyond simply the words and terms included in the agreement.
11. The Commission and opposing parties must have an opportunity to question witnesses regarding calculations, details, data, and values underlying the terms of a settlement agreement, particularly when parties point to such details in their support of the proposed settlement. To the extent that a party’s proffered witness does not have the technical expertise to answer questions beyond the mere language of the agreement, a party must offer additional witnesses who can

substantively respond to questions from the bench and opposing parties. Public Counsel, therefore, recommends the following modifications to the proposed rule.

WAC 480-07-740(3)(b) Testimony. Each party to a settlement agreement must offer to present one or more witnesses to testify in support of the settlement agreement and to answer questions concerning the agreement's details, costs, and benefits. If the commission conducts a hearing on the settlement, counsel for each party must be prepared to make a brief presentation and address any legal matters associated with the settlement agreement. Each party's witness(es) must be available to respond to questions from the bench and cross-examination by counsel for any party that opposes the settlement. To the extent that an offered witness cannot answer the questions of the bench or opposing parties regarding the details underlying the settlement agreement, either due to a lack of expertise in the particular subject matter or other reason, the party must make another witness available who can respond to the questions.

### VIII. CONCLUSION

12. Public Counsel appreciates the opportunity to submit these comments and the continued efforts to modernize the current rules. We look forward to reading the comments of other stakeholders and participating in workshops on these proposed rules.

Dated this 11<sup>st</sup> day of May 2018.

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