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May 17, 2013

VIA ELECTRONIC FILING & ABC/LMI
Steven V. King
Executive Director and Secretary
Washington Utilities and 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
Docket No. A-130355

Dear Mr. King:

Enclosed please find an original copy of the Comments of Public Counsel for filing in the above-entitled docket. A copy was also sent via e-mail on May 17, 2013.

Sincerely,

LISA A. GAFKEN
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Public Counsel Division
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LAG:bc
Enclosure

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

Rulemaking to Consider Possible Corrections and Changes in Rules in WAC 480-07, Relating to Procedural Rules.	DOCKET NO. A-130355

INITIAL COMMENTS OF PUBLIC COUNSEL

May 17, 2013

I. INTRODUCTION

1. Pursuant to the Commission's Notice of Opportunity to File Comments, dated March 22, 2013, and its subsequent Notice Extending Time to File Written Comments, dated April 16, 2013, Public Counsel submits the following comments. These are initial comments, and Public Counsel looks forward to developing recommendations and participating in healthy discussions regarding the topic areas the Commission has identified for this rulemaking docket and those raised by stakeholders. Public Counsel supports the Commission's efforts to improve the rules governing proceedings before it, creating better clarity and efficiency.

II. COMMENTS ON COMMISSION-IDENTIFIED DISCUSSION TOPICS

2. **Revisions to rate case filing requirements.** WAC 480-07-510 contains a list of filing requirements for electric and natural gas general rate cases. WAC 480-07-510(6) and (7), addressing cost studies and other documentation that a company must file with the Commission, do not have a requirement that these items be served upon Public Counsel, unlike the requirements in WAC 480-07-510(1)-(5). Public Counsel often requests such cost studies and

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other information. The Commission should consider requiring companies to serve cost studies and other documentation identified in 480-07-510(6) and (7) on Public Counsel.

3. Additionally, it may be useful to include information in the initial filing that is routinely requested and used in evaluating rate requests, such as a description of any material changes in accounting practices or systems since the company's last general rate case. Such changes are often invisible if not identified. Further discussion would be useful to determine what common discovery requests might be appropriate information to include in this group.

4. **Procedures for initial evaluation of complaints filed against regulated companies.** Public Counsel has no initial comments for this topic, but may have comments in response to other stakeholder comments or further inquiries from the Commission.

5. **Procedures for penalty assessments.** The Commission explored topics related to procedures for penalty assessments when it solicited comments and ultimately issued a policy statement in Docket A-120061, *Inquiry into Issuing a Policy-Interpretive Statement Describing Commission Policy Related to its Enforcement Practices*. Public Counsel participated in that docket. Critical to the inquiry in Docket A-120061 was retention of the Commission's discretion in exercising its ability to obtain regulatory compliance from companies through penalty assessments and complaint actions. The Commission expressly retained its discretion to evaluate each violation on a case-by-case basis and to act accordingly.[1]

6. The Commission has procedures that it follows in processing penalty assessments, and placing the mechanics of how such proceedings operate may be advisable. Public Counsel recommends that the Commission retain its fullest discretion in determining the level of penalty

[1] Docket A-120061, Enforcement Policy of the Washington Utilities and Transportation Commission at ¶ 21 (January 7, 2013).

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in each case and in considering any mitigating and/or enhancing factors. The governing statutes and interpretive policy statement provide adequate guidance with respect to how penalty amounts are calculated.

7. **Procedures for enforcing annual report fling and regulatory fee payment**. Public Counsel has no initial comments for this topic, but may have comments in response to other stakeholder comments or further inquiries from the Commission.

8. **Procedures for Commission consideration of dockets at Open Public Meetings, including filing deadlines.** The Commission recently has held certain items on the Open Meeting agenda rather than setting them for hearing at the meeting at which they are first considered. The effect of holding an item for a prolonged period on the Open Meeting agenda differs with respect to proceedings that have suspension dates and those that do not and with respect to matters that are adjudicative and those that are not.

9. With matters that may become adjudications, holding a matter on the Open Meeting agenda causes uncertainty. Cases held in limbo that have a statutory deadline by which the Commission must act can be disadvantaged because the statutory clock continues to run. Leaving a docket on the Open Meeting agenda reduces the amount of time available for formal process if the Commission eventually determines that an adjudication would be appropriate and desirable. If the time available is too short, the likelihood of an adjudication is greatly reduced, regardless of how advisable it would be to conduct one.

10. In addition, holding matters on the Open Meeting agenda causes uncertainty regarding what is in the agency record. Commission decisions in adjudications must be based solely on the agency record. Under RCW 34.05.413(5), adjudications do not commence until the agency has

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issued a notice of prehearing conference (or hearing or other stage). *See also* WAC 480-07-305(1). It is not until the adjudication commences that the agency record begins. Statements made at Open Meetings, unless presented by a party after the adjudication commences, are not part of the record upon which the Commission bases its decision.[2] The recent practice of holding matters on the Open Meeting agenda without commencing an adjudication creates questions about whether such matters are "quasi-adjudicative" in nature, whether statements made and information presented should be subject to more rigorous standards (e.g., under oath, evidentiary standards, etc.), and whether certain rules and procedural protections should apply (discovery, confidential information, etc.).

11. If an Open Meeting item becomes an "investigation," but no hearing is set, discovery rules should be available and protective orders should be entered, unless parties agree these actions are unnecessary. While parties can agree to engage in discovery without the Commission ruling that discovery rules are in effect for a particular matter, parties do not have a way to bring discovery disputes to the Commission if serious problems arise in such situations. Additionally, although parties may enter into nondisclosure agreements, the protections offered by Commission protective orders and the procedures under which confidential information may be obtained and used are well-accepted and procedurally more straightforward, allowing the parties to focus on the substance of the matter rather than on crafting an appropriate nondisclosure agreement. This is critical when the time allowed for evaluation is limited.

12. With respect to written comments that may be submitted regarding an Open Meeting item, WAC 480-07-900(5) provides that written comments be submitted three business days in

[2] *WUTC v. Avista Corp., d/b/a Avista Utilities,* Docket UE-120436/ UG-120437, Order 04, Order Denying Avista's Motion For Leave to File Letter of Clarification at ¶¶ 6-7 (June 1, 2012).

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advance of the Open Meeting.[3] However, the Commission will publish its Open Meeting agenda only two business days in advance of the Open Meeting. If an interested person is unaware of an issue until the agenda is released, that person will be unable to timely file written comments. Public Counsel suggests that the Commission consider releasing the agenda earlier to allow for written comments from those who become aware of Open Meeting items through reviewing the Commission's agenda.

13. **Procedures for Commission Review of company Integrated Resource Plans (IRP), Requests for Proposals (RFP), Conservation Plans, and other I-937 filings.** This discussion topic includes several areas, which are discussed individually below.

14. **IRP:** Public Counsel is interested in considering changes to how the Commission considers and evaluates IRPs, and we look forward to hearing from other stakeholders on this matter. However, it is of paramount importance that any changes would not result in pre-approval for resource acquisition.

15. **RFP:** Public Counsel believes that some of the procedural rules regarding the Request for Proposal (RFP) process, which are located in Chapter 480-107 WAC, could be refined. Under WAC 480-107-015(2), a utility may participate in its own RFP bidding process as a power supplier, on conditions described in WAC 480-107-135. WAC 480-107-015 continues to say that if a utility does participate, its RFP must declare the company's participation to other bidders and must demonstrate how it will satisfy the requirements of WAC 480-107-135. WAC 480-107-135 states in full:

> (1) The utility, its subsidiary or affiliate may participate in the utility's bidding process. In these circumstances, the solicitation and bidding process will be

[3] Written comments are not required for an interested person to make oral comments at the Open Meeting.

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> subject to additional scrutiny by the commission to ensure that no unfair advantage is given to the utility's subsidiary or affiliate. Commission scrutiny will ensure that ratepayer interests are protected.
>
> (2) As part of its RFP, a utility must include specific notice if it intends to submit a bid or intends to allow its subsidiaries and affiliates to participate in its bidding process. The utility must indicate in its RFP how it will ensure that its subsidiary or affiliate, through association with the utility, will not gain an unfair advantage over potential nonaffiliated competitors. A utility's disclosure of the contents of an RFP or competing project proposals to its own personnel involved in developing the utility's bid, or to its subsidiary or affiliate prior to such information being made public will be construed to constitute an unfair advantage.
>
> (3) The commission may not allow a utility to recover in its rates all or part of the costs associated with the utility's project, or a subsidiary's or affiliate's project(s), if any unfair advantage was given to any bidder.

16. While this rule requires a utility to provide notice if it intends to submit a bid and that the review will be subject to further scrutiny, these requirements have been avoided in some instances. For example, the self-build options are "screened" against or "compared" to the results of the analysis, but are not an official part of the RFP analysis. No notice is issued or additional scrutiny applied. Public Counsel believes this practice allows companies to circumvent the requirements in instances where they should have applied. The rules should clarify that if any self-build options, either in early or later stages of planning, are compared to RFP bids, then these requirements should apply, and would need to be included in the original RFP filed with the Commission. If a company revises its plan to include analysis of a resource it had not originally thought would be considered in an RFP analysis, the company should have to revise its RFP on file with the Commission, notify bidders of any change, and perhaps change the planned course of analysis.

17. It is also worth considering whether additional protections and procedures are needed to ensure that resource selection is fair and unbiased, particularly in situations where a company is

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considering a self-build resource. Allowing additional evaluation and analysis, perhaps from a third party, could be one way to instill greater confidence that the RFP process is fair. It would be useful to get input from parties who regularly respond to RFP responses, and evaluate how other states treat this process to ensure that Washington's practices are best serving ratepayers.

18. Finally, the rules in Chapter 480-107 WAC are not the sole procedures by which utilities acquire new resources. WAC 480-107-001(1) acknowledges that utilities can construct resources, purchase power through contracts, and take other action. Public Counsel understands that utilities need flexibility to meet system demands. However, Public Counsel believes that, at a minimum, before a self-built or affiliate acquisition can be made, the company should issue an RFP, and conduct analysis to ensure that the least cost option has been selected.

19. **Conservation and I-937 filings:** Public Counsel has previously stated a desire to establish consistent practices and formats for the filings, procedures, and assumptions of each utility. Parties have attempted to resolve many of these through the conditions included in the Commission's order approving a company's biennial conservation target. Many of these conditions are common sense, and it would be desirable and efficient to include the conditions in a rule rather than reviewing and renewing them every two years.

20. **Interested party access to confidential documents in non-adjudicative cases.** Under RCW 80.04.095, companies may provide confidential information to Public Counsel, and Public Counsel is subject to the notice provisions under the statute in the event of a public records request. While Public Counsel recognizes that some data is sensitive and should be protected, a transparent and open process before the Commission requires that a company not over-designate

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information as confidential. Open government and the public interest are served when companies judiciously use the ability to designate information as confidential.

21. **Procedures for Commission review of settlement agreements in cases involving suspended tariffs.** Questions regarding how settlement discussions take place and how a docket should proceed following a settlement have been long discussed and have a significant amount of history behind them. Public Counsel and several of the intervenor parties have raised issues regarding settlements in past rulemakings, workshops, bench-bar symposiums, and proceedings before the Commission, as well as before the State Legislature. Prior Commission efforts in evaluating the settlement process have resulted in improvements, and Public Counsel believes that further improvements can and should be achieved through the current inquiry, as we discuss further below.

22. First, protections regarding participation in early and initial settlement conferences should remain intact and be confirmed during the current rulemaking.

23. Second, there is a question of how proposed settlement agreements are reviewed by the Commission. This issue becomes most critical when settlements involving suspended tariffs are non-unanimous: the so-called "multi-party settlement." In such situations, the rights of the non-settling parties can be unduly limited. Important improvements to preserving the non-settling parties' rights include conducting a hearing on the merits rather than simply on whether the Commission will accept, reject, or modify the settlement. Additionally, the non-settling parties should retain the right to present evidence and conduct discovery on the settlement agreement.

24. Currently, settling parties are asked to present a panel of witnesses in support of a settlement agreement. In cases where the settlement is non-unanimous, it would be appropriate

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and desirable to have a corresponding panel of witnesses in opposition to the settlement. This would provide the Commission with valuable additional information on which to base its decision, creating a more complete agency record, and allowing for evaluation of the merits of the case.

25. The Commission could consider whether it should require companies that present a settlement to waive the statutory deadlines that exist for tariff filings. Currently, WAC 480-07-750(2)(a) provides that "if the Commission rejects a settlement, the litigation returns to its status at the time the settlement was offered and the time for completion of the hearing will be extended by the elapsed time for consideration of the settlement and may take into account the need to address other pending business before the Commission." However, RCW 80.04.130(1) provides that the Commission may suspend a rate request for a period *not exceeding* ten months from the time the request would otherwise go into effect. RCW 80.04.130(1) may not be waived without consent from the utility.

26. The Commission finds itself in a difficult position when a company settles, the clock continues to run while the Commission considers the proposed settlement, and the company fails to waive the statutory deadline. If the Commission rejects a settlement agreement, or modifies it such that the settling parties find unacceptable, the time remaining may not be adequate to complete the formal process. This tension may place undue pressure on the Commission to accept, or only minimally modify, a proposed settlement. Because companies enter into settlement agreements voluntarily, it is reasonable to ask that they waive the statutory deadline for decision in the event the Commission rejects the settlement or conditions acceptance of the settlement on terms that are not agreeable to the settling parties.

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27. **Procedures for requesting preliminary relief in adjudicative dockets.** Public Counsel has no initial comments for this topic, but may have comments in response to other stakeholder comments or further inquiries from the Commission.

28. **Creation and maintenance of official service list in adjudications (including courtesy email distribution).** Creation and maintenance of the official service list in adjudications by the Commission, including the courtesy email distribution list, would be a great benefit to parties and would allow the Commission to take significant steps toward increased usage of electronic documents. This will create efficiencies regarding the number of copies that are required for filings with the Commission. Additionally, efficiencies may be realized with respect to service from the Commission to parties and, potentially, with respect to service among the parties.

29. Electronic filing and electronic service are becoming increasingly common with state and federal courts and other tribunals. Public service commissions nationwide appear to be following suit and moving toward allowing electronic filing and service.[4] For example, the Public Utility Commission of Oregon maintains an email service list that it posts on the docket page on its website for each matter it has before it. Practitioners are able to click on a link that will either open their email and populate the newly opened message with the individuals on the service list, or will take them to a list of addresses that they can cut and paste into an email message. An example of this is included in Attachment A to these comments. Attachment A includes the first page of an Oregon docket with the service list links circled and an unsent email that resulted from clicking on the "Email Service List (semi-colon delimited)" link. This example shows it is possible for the Commission to move towards an electronic system that

[4] Public Counsel has not completed an exhaustive national evaluation of electronic filing and electronic service that is allowed before other commissions, but a simple Google search indicates that multiple commissions across the country are incorporating electronic filing and service.

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would greatly reduce the number of copies required to be filed with the Commission and circulated among the parties, which will significantly and materially reduce the administrative burden and cost to parties.[5]

30. One issue that maintenance of the official service list being maintained by the Commission could resolve is the inconsistent use of the courtesy email distribution list by parties. The Commission should require parties to use the courtesy email distribution list rather than leaving the issue to each party's discretion.

31. WAC 480-07-360 provides that the Commission will maintain the master service list for each adjudicative proceeding. The Commission should consider amending the rule to provide that the service list includes the courtesy email distribution list and will be included in the prehearing conference order for the matter, or if there is no prehearing conference order, that the list will be made available to the parties upon request and on the Commission's website.

32. Public Counsel supports the Commission's efforts in moving towards electronic filing and service, reducing the amount of paper generated by proceedings before the Commission, reducing the administrative burden on parties and the Commission, and taking advantage of technological advances to create efficiencies.

33. **Exhibit identification and numbering in adjudicative proceedings.** Exhibit numbering and identification has evolved over time, but there are improvements that the Commission should consider. At a minimum, the Commission should amend the current version

[5] On April 22, 2013, the Commission posted an Earth Day Message on its website. In it, the Commission celebrated Earth Day by recommitting to ensuring that the Commission's work is consistent with the responsibilities we all share in protecting and promoting the health of our planet. In particular, the Commission highlighted its recent decision regarding delivery of telephone directories and the paper that will be saved as a result. http://www.utc.wa.gov/aboutUs/Lists/News/DispForm.aspx?ID=195 Moving towards an electronic filing and service model would likewise be consistent with these responsibilities.

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of WAC 480-07-490 to reflect the current naming convention. The current version of WAC 480-07-490 describes a prior naming convention that includes parentheses and an underlined space. The current convention for naming an exhibit is as follows: Testimony of Witness James Dittmer would be designated as "Exhibit JRD-1T" if not confidential, "Exhibit JRD-1CT" if confidential, and "Exhibit JRD-1HCT" if highly confidential. The numbering convention of beginning with the Arabic numeral 1 and continuing in sequence through the last exhibit or testimony filed for the witness by the party sponsoring the witness is adequately clear, as is the practice of referring to the exhibit name during hearings and in briefs or other pleadings.

34. Less clear is how cross examination exhibits should be named and numbered. The Commission should develop standards regarding how the parties should name and number cross examination exhibits they wish to use during hearings. Considerations include (1) being able to identify which exhibits are cross exhibits versus exhibits filed and sponsored by the witness and (2) how to number exhibits when multiple parties wish to cross examine a particular witness. Guidance on naming and numbering cross exhibits currently varies from case to case, creating unnecessary added administrative burden on parties.

35. **Filing and distribution of cross-examination exhibits.** Filing and distributing cross-examination exhibits is a topic that is ever-evolving, changing from case to case and causing unnecessary administrative burden on the parties. For example, Public Counsel is a party to both the Frontier competitive classification docket (Docket UT-121994) and the PacifiCorp general rate case (Docket UE-130043). The prehearing conferences for each docket were conducted within days of one another by two different Administrative Law Judges. The prehearing conference order in the Frontier docket (Order 02) provides that hard copies of cross exhibits

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will be filed and distributed prior to the hearing, with electronic cross exhibits filed after the hearing concludes. However, the prehearing conference order for the PacifiCorp general rate case (Order 03) provides that unredacted cross exhibits are simply to be filed and distributed prior to the hearing, with any redacted versions filed the day after. A third case, the CenturyLink AFOR (Docket UT-130477), requires parties to distribute and file cross exhibits prior to the hearing, with no delay in filing redacted versions.[6]

36. It is difficult to know how to name an electronic document that has been identified as a potential cross examination exhibit. Additionally, requiring that each document be saved as a separate electronic file prior to the hearing is an administrative burden that is unreasonable immediately before the hearing. Most parties are stretched thin as their administrative staff assists in hearing preparation immediately before a hearing begins. Preparing a single .PDF per witness to be cross examined is administratively easier on parties, but filing any cross exhibit before it has been admitted at hearing has the potential of confusing the official agency record by including documents that end up not being used or are excluded based on an evidentiary ruling during the hearing.

37. Public Counsel's preference would be to distribute hard copies the cross examination exhibits to parties and the bench no earlier than one week prior to the start of the hearing. If an electronic file is needed before the hearing, creating one .PDF document of all of the cross examination exhibits for each witness to be cross examined should be sufficient. Neither the hard copy, nor the electronic version, should be filed with the Commission's Record Center. Once the hearing has concluded, cross examination exhibits that are actually used should be filed

[6] Docket UT-130477, Order 01, Prehearing Conference Order; Notice of Hearing, Appendix B (Procedural Schedule) (May 6, 2013).

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with the Commission's Record Center, so they can be included in the official agency record of the docket. This filing should occur no earlier than one week after the hearing has concluded.

38. **Clarification or revision of initial orders prior to seeking administrative review.** Public Counsel has no initial comments for this topic, but may have comments in response to other stakeholder comments or further inquiries from the Commission.

39. **Possible new requirements for pre-filed responses to standard data requests in rate cases.** Developing a set of "standard" data requests may be reasonable; however, if the stakeholders and Commission agree that this would be a useful exercise, the standard data requests should be developed prior to discussing whether responses to those standard data requests should be pre-filed in rate cases. It is unclear to Public Counsel why such responses would be treated differently than responses to other data requests, which would be available for any party to use as exhibits to their pre-filed presentation or as cross examination exhibits at hearing.

40. It is also worth noting that utility ratemaking is very different from other forms of civil litigation that have pattern interrogatories and requests for production, such as family law or some tort cases. Utility ratemaking cases are extremely complex and technical, often involve numerous issues (a recent PSE general rate case issues list was 47 pages long), and are conducted on a very fast pace. Civil litigation, regardless of how complex, can take several years to complete, whereas the most complex general rate case lasts a maximum of 11 months without company waiver of the statutory deadline.

41. Even the best standard set of discovery requests will include requests that do not apply to every case, and additional discovery will still be necessary throughout the case. Also, it may be

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that not all of the standard data requests would elicit data that should be included in the record. Stakeholders and the Commission should consider whether companies should simply be required file certain data that is not currently filed with their initial filings. This may be a more efficient approach than requiring responses to standard data requests be pre-filed with the Commission.

42. **Possible new or revised rules for settlements, including use of a qualified settlement judge for major cases.** The current practice in utility matters before the Commission is to include settlement process in the procedural case schedule. Parties, for the most part, are well-adept at participating in the settlement process, and many cases do settle.[7] One tool that has not been used extensively is formal mediation. Mediation can be a very effective tool, and while it may not be necessary in all cases, Public Counsel is supportive of exploring the use of mediation in Commission proceedings.

III. ADDITIONAL TOPICS IDENTIFIED BY PUBLIC COUNSEL

43. Public Counsel offers the following topics for discussion during the current rulemaking.

44. **Number of copies.** Parties are often asked to provide a large number of copies with their filings in proceedings before the Commission. For example, in the recent Avista general rate case, the Commission required parties to file the original plus 20 copies of unredacted pre-filed

[7] It is important to note that the Commission cannot delegate its authority to regulate in the public interest, and parties may not unilaterally dispose of a matter. The parties may craft proposed settlement resolutions for the Commission to consider, and the Commission then exercises its authority in evaluating whether the proposed settlements meet the requirements of law and policy. This is strikingly different from general civil litigation, where parties may dispose of disputes and the court does not evaluate the settlement. Indeed, it is common in civil litigation for the parties to simply inform the court that a settlement has been reached, without filing the settlement with the court.

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materials.[8] Similarly, the Commission ordered parties to provide 19 copies in the current PacifiCorp general rate case, but reduced the number to 13 copies in a subsequent notice.[9]

45. Copies filed with the Commission's Record Center are not only used for the agency's official record and distributed to the decision-making body (Commissioners, Administrative Law Judges, and policy and accounting advisors), but also distributed to the Commission's regulatory staff, which participates as a party in proceedings just as any other party. This distribution to Commission Staff is shifts significant cost and administrative burden to other parties who are, in essence, being asked to supply a party with copies beyond what is normally required. Moving towards electronic service, as discussed in comments above, may be one remedy to this issue. Another option may be to provide copies for Staff case leads.

46. **Amendment to WAC 480-07-110 (Exemptions).** The Commission should consider adding a new provision to WAC 480-07-110 that requires companies seeking an exemption from UTC rules to list the exemptions or modifications they currently have authorized. This information would not be burdensome for the companies to include in their petitions for exemption or modification. It is reasonable to review what exemptions or modifications a company already enjoys in evaluating whether the current request is appropriate or what the potential effect the current request might have.

47. **Amendment to WAC 480-07-700(3)(a) (Settlements).** The current rule provides that parties must seek modification of the procedural schedule if they wish to reschedule the initial settlement conference. Seeking formal modification to the procedural schedule may be

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[8] *WUTC v. Avista Corp. d/b/a Avista Utilities*, Docket UE-120436/ UG-120437, Order 03, Prehearing Conference Order at ¶ 21 (May 14, 2012).

[9] WUTC v. PacifiCorp, d/b/a Pacific Power & Light Company, Docket UE-130043, Order 03, Prehearing Conference Order at ¶17 (February 14, 2013); *See also*, Notice of Revision of Prehearing Conference Order (May 6, 2013). The reduction in number of required copies is viewed positively by Public Counsel.

necessary if there is a compelling reason to alter the schedule, but not all parties agree. In most cases, the parties are willing to work with each other on scheduling issues. The Commission should consider adding language to the rule that addresses the situation where all parties agree to reschedule the initial settlement conference. In such cases, the parties should notify the presiding ALJ of the change, but should not be required to seek formal modification of the schedule.

48. **Confirm that redacted documents are not required in their native format.** WAC 480-07-140(6)(b)(iii)(B) provides as follows: "Redacted versions of electronic documents that mask confidential information should be filed exclusively in .PDF format." It appears from the plain language of the rule that the native format of redacted documents (i.e., Word or Excel) is not required, and that parties would be in compliance with Commission rule by preparing redacted files in .PDF format only. Because the practice has been to produce both the native format and a .PDF version of redacted documents, Public Counsel would like to confirm with the Commission that only the .PDF version is required for redacted documents. Native electronic format is and should continue to be required for non-redacted material.

49. **Requirements for production of discovery responses.** In recent cases, parties have provided discovery responses that are double-sided, unmarked as to what request it is responding to, and/or unorganized. Public Counsel is interested in developing simple guidelines that would not overly burden parties, but standardize the way in which information is shared among parties through discovery. At minimum, the Commission should consider requiring that (1) the request be restated with any response provided, including supplemental responses, (2) documents provided in response to a data request be clearly grouped and labeled with respect to which data request they are responsive, and (3) all responses should be one-sided. Additionally, common

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practice is to begin each response on a separate page with the request restated at the top of the first page. It would be appropriate to include this provision as well.

50. **References to Public Counsel.** References to the Public Counsel Division of the Washington Attorney General's Office should be changed from "Public Counsel *Section*" to "Public Counsel *Division*."

IV. CONCLUSION

51. Public Counsel appreciates the opportunity to submit comments regarding the Commission's important inquiry into its procedural rules. Procedural rules touch every aspect of the matters that come before the Commission, and the goal of this review should be greater clarity, efficiency, and stronger assurances of fairness. Public Counsel will be in attendance at the July 2, 2013, workshop to engage in the discussion of these topics and those raised by other stakeholders.

52. Dated this 17th day of May, 2013.

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