BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Rulemaking To Make Corrections And Changes to Rules In WAC 480-07, Relating To Procedural Rules	DOCKET A-130355 SECOND COMMENTS OF THE ENERGY PROJECT (CR 102)

I. INTRODUCTION

1 The Energy Project (TEP) files these comments in response to the Commission's Notice of Opportunity To File Written Comments on Proposed Rules, dated July 2, 2018, filed in conjunction with the Notice of Proposed Rulemaking (CR-102). The Energy Project previously filed comments on December 1, 2017, during the CR 101 phase of the docket. These comments are focused on one aspect of the final draft proposed rules which is of major concern for low-income customers, as well as other Washington energy consumers.

II. COMMENTS

2 In these comments, TEP reiterates the concerns we have previously raised to the proposed amendments to WAC 480-07-505(1). Under the existing rules, a utility company rate request is treated as a "general rate proceeding" (general rate case or GRC) if "the amount requested would increase gross annual revenue of the company from activities regulated by the commission by three percent or more" or if "[t]ariffs would be restructured such that the gross revenue provided by *any customer class* would increase by three percent or more."[1] The draft final rules eliminate the latter provision. The Energy Project continues to believe that this

[1] WAC 480-07-505(1)(a) and (b), emphasis added. A GRC is also defined as a change to the ROE or to the capital structure.

Simon J. ffitch
Attorney at Law
321 High School Rd. NE,
Suite D3, Box No. 383
Bainbridge Island, WA 98110
(206) 669-8197

amendment will significantly disadvantage energy consumers in the ratemaking process for the reasons outlined below.

3 The UTC's procedural rules for rate cases, as currently written and applied, contain protections which are critically important for customers. The rules first establish a threshold amount of three percent as an increase which is of sufficient impact on customers to warrant the in-depth review afforded in a general rate proceeding, whether that impact is overall, or on one class of customers.

4 The rules then ensure that proposals to increase customer rates by a significant amount are supported by extensive evidence publicly filed with the Commission, as delineated in WAC 480-07-510. The scrutiny of this evidence by the Commission Staff, intervenors, and Public Counsel, through discovery, testimony, and hearing, within the procedural framework of the eleven-month GRC process, provides a thorough and fair process for the setting of rates. This process, importantly, aids the Commission by establishing a substantial record upon which to base a decision in the case.

5 As TEP argued in our prior comments, removal of subsection 1(b) from the rule dismantles this protective structure. The amendment creates a situation in which a rate filing could be structured to avoid GRC review by placing a disproportionate share of the increase on the residential class. Under the proposed change, for example, a filing which increased residential customer class revenues by four or five percent, while limiting industrial and commercial classes to a much smaller increase, could result in an overall impact less than three percent, and therefore not require a general rate case review. By its very nature, this would

Simon J. ffitch
Attorney at Law
321 High School Rd. NE,
Suite D3, Box No. 383
Bainbridge Island, WA 98110
(206) 669-8197

create an incentive for utility companies to file cases with unbalanced rate spreads based as much on procedural considerations as on cost-of-service principles.[2]

6 The existing rule is structured with subsections 1(a) and 1(b) working in tandem. Subsection 1(a) sets an overall level for the size of company-wide increase that triggers GRC review. Subsection 1(b) acts as a companion provision clearly designed to prevent "gaming" the effect of subsection 1(a) by filing a case where "tariffs would be restructured" to create a greater than three percent class increase, but fall below the three percent overall threshold. This is a logical approach and TEP is not aware of major problems that have resulted from the existing rule.

7 Staff has responded to this concern by pointing out that the Commission would have discretion under subsection (4) of the rule, to convert a case to a GRC if it chose to do so.[3] This does not sufficiently resolve the concern and would shift a major burden to consumer intervenors, Public Counsel, or Staff, to seek GRC review of the filing, either as part of the "notice and comment" process referenced in the proposed rule, or by motion. This is problematical for several reasons. First, there is an inherent unfairness in eliminating a rule which currently protects customers automatically for any rate increase request over three percent, replacing it with a situation in which the protection of GRC review would only exist if requested by the customer, and only if granted by the Commission. Similarly situated customers are treated quite differently before and after the amendment. This is not a neutral change.

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[2] Alternatively, to the extent a filing were to propose a dramatic rebalancing of rate spread with a substantial shift to the residential class, based on cost-of-service analysis, a decision of that significance should properly be made on a general rate case record.

[3] Draft Summary of 12-01-17 Comments On Proposed Revisions to GRC Rules, April 11, 2018, p. 1.

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Attorney at Law
321 High School Rd. NE,
Suite D3, Box No. 383
Bainbridge Island, WA 98110
(206) 669-8197

8 It is not clear what standards would be applied to determine whether a case should be converted, what amount of increase should trigger conversion, whether that amount would then remain the same for that company or other companies in other rate cases, and what other factors might be considered. The current rule has an easily understood and administered bright line. In addition, the litigation of the GRC conversion issue would consume resources of the consumer parties and the Commission which are not currently expended in GRCs. This is of particular concern to parties with fewer resources.

9 A further problem is that the resolution of the conversion issue would likely expend a portion of the statutory time permitted for the Commission process of tariff review. Under the proposed rule change, an initial rate filing which was not defined as a GRC would not be required to include the supporting evidence designated in WAC 480-07-510.[4] If the Commission decides to convert a rate filing to a GRC, the preparation and filing of the supporting evidence by the company would further consume time from the statutory period for review, to the disadvantage of consumer intervenors, and the Commission itself.[5]

III. CONCLUSION

10 To sum up, the proposed amendment introduces uncertainty, inefficiency, unfairness, and potential cost into a portion of the rate review process where these issues do not currently exist. The current standard has been in place for many years and is well understood by stakeholders. The Energy Project is not aware of any widespread demand for this change nor of significant

[4] This creates uncertainty about the evidence that would be required to support a residential customer increase of three percent or more in a future rate filing not structured as a GRC.

[5] To avoid this scenario, it would be necessary for the tariff to be withdrawn and a new filing to occur. The rules do not address this point.

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Attorney at Law
321 High School Rd. NE,
Suite D3, Box No. 383
Bainbridge Island, WA 98110
(206) 669-8197

procedural problems created by the existing rule that would necessitate this change to current practice. The Energy Project respectfully requests that the Commission not repeal WAC 480-07-505 (1)(b).

Simon J. ffitch
Attorney at Law
321 High School Rd. NE,
Suite D3, Box No. 383
Bainbridge Island, WA 98110
(206) 669-8197