Davison Van Cleve PC
Attorneys at Law
TEL (503) 241-7242 • FAX (503) 241-8160 • pjo@dvclaw.com
Suite 450
1750 SW Harbor Way
Portland, OR 97201

August 1, 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 July 2, 2018. AWEC appreciates the invitation to participate in this rulemaking docket and submits these comments regarding the revised draft rule proposals.

AWEC has serious concerns about the change to the proposed rules that deletes current rule 480-07-505(1)(b), and believes that, if adopted, the proposed rule would likely impact how non-utility parties react to rate filings that unevenly spread rate increases across disparate classes. The fact that AWEC did not raise this issue in its earlier comments should not be considered its acquiescence to the rule deletion or its potential impacts. AWEC's recent review in reaction to the Commission's July 2 request for comments indicated it had previously overlooked this issue.

The current rules state that any change in rates that would increase "the gross revenue provided by any customer class… by three percent or more" will be treated as a general rate case. The proposed rules would eliminate this important ratepayer protection, and for no

obvious reason.[1/] From AWEC's perspective, this very significant rule change would unnecessarily expose ratepayer classes to the risk that rates would be increased by more than three percent, without providing these ratepayers the same procedural protections now allowed by the Commission in general rate cases. For example, a rate increase filing made under the protections afforded by the current rule would not allow the utility to increase rates for one or more classes by more than three percent without triggering a general rate case. Should the proposed rules be adopted, this same protection would only be provided by a showing by the affected class' representatives, Commission Staff or Public Counsel that these same procedural protections would be needed to preserve the due process rights of the affected parties. Under such a scenario, the Commission would be required to make an affirmative decision that treating the company filing as something other than a general rate case would still afford the affected ratepayers due process commensurate with the protection of their rights. In practice, the proposed rule would also mean that affected ratepayers may need to conduct discovery, retain experts, and draft motions and responses just to show that a utility filing should be treated as a GRC, before the substance of the case is litigated at all. This would be time-consuming and costly, both for ratepayers who may be disproportionately affected by a proposed rate increase and others. As commonly applied, the current rule does not require the Commission to hear such evidence or make these difficult decisions in the early stages of a typical rate case.

Commission Staff has argued that proposed section -505(4) provides sufficient protection for ratepayers, as it gives the Commission "discretion to determine whether to initiate a [GRC] in response to any filing.[2/] But as shown above, the deletion of current rule 505(1)(b), effectively shifts the burden to ratepayers to demonstrate that a proposed rate change be considered a general rate case. Under the proposed rules, a rate filing, even one that would raise rates for one or more classes by five percent or more, would *presumptively not be considered* a general rate case. Thus, any affected class would bear the burden to show that additional procedural protections should be put in place. This is a major change from the current rule, which places the burden on the utility to demonstrate that a waiver of the three percent rule is warranted. In AWEC's view, it is appropriate, even necessary, to require the filing utility to show that lesser procedural protections would still protect the rights of its ratepayers. At initial filing, the utility would have produced the evidence and supporting information necessary to make such a showing by and through its case development and presentation. On the other hand, ratepayers would have to go through time-consuming and costly motions practice, and potentially even discovery, to support a request to convert a rate filing to a general rate case. AWEC strongly believes that procedural rules designed to protect ratepayers from significant rate increases should *always* be presumptively enforced, and that the party seeking a waiver of such protections should bear the burden of proof. Importantly, the Commission may always waive the current rule's effect should the circumstances lead it to believe that the parties' due process rights and the public interest would still be served. The party requesting the waiver would bear the burden of making such demonstrations.

1/ The current rules requiring a GRC when any single rate class would receive an increase of at least 3% have been in place for as long as AWEC can remember, with little controversy.

2/ See WUTC Staff Draft Summary of Dec. 1, 2017 Comments on Proposed Revisions to GRC Rules, page 2 (April 11, 2018).

It is worth pointing out why it matters if a filing is treated as a general rate case. The Commission and ratepayers benefit from the opportunity to review the filing utility's complete financial profile and results of operation. Thus, the Commission can fully comprehend the complex interrelationship between a utility's numerous cost and revenue drivers and their impact on rates. In contrast, the Commission has long rejected "single-issue" rate cases that would have the Commission increase rates without examining a utility's complete cost and revenue profile. By rejecting these cases, the Commission has prevented the potential over-recovery of costs driven by one line of a utility's business when its overall cost recovery is sufficient, as demonstrated by examining the costs and revenues of the utility as a whole. This is precisely the risk introduced by the proposed rule deletion – utility rate creep based upon an incomplete review of its entire business. The existing rule does not fully eliminate this risk but mitigates it by requiring a complete examination of a utility's costs and revenues should a three percent or greater rate increase be proposed for one or more customer classes.

In summary, AWEC appreciates the hard work that has gone into these rules. However, it cannot support the elimination of WAC 480-07-505(1)(b). It is part of a suite of rules intended to ensure that ratepayers obtain the procedural protections of a GRC when a utility's proposed rate increases are complex or consequential. This also protects the Commission by providing it sufficient and detailed information to make a rate decision. As there has been no reasonable justification proffered by Staff or the utilities to support the proposed rule deletion, AWEC strongly recommends that the proposed rule deletion be rejected.

Sincerely,

/s/ Patrick J. Oshie

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: pjo@dvclaw.com
rgp@dvclaw.com
Of Attorneys for the Alliance of Western Energy Consumers