



SERVICE DATE

AUG 23 1999

STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250  
(360) 753-6423 • TTY (360) 586-8203

August 20, 1999

Re: Electric Rules, Chapter 480-100 WAC, Docket No. UE-990473  
Natural Gas Rules, Chapter 480-90 WAC, Docket No. UG-990294

TO ALL PARTICIPANTS:

The participants in this rulemaking proceeding have filed with the Commission, and circulated among themselves, several comments relating to process issues. An example is Puget Sound Energy, Inc.'s August 10 comment.

The issues relate to the rulemaking process and whether it is a mutual gains negotiation, and whether these rulemakings comply with Governor Locke's Executive Order 97-02. Because the issues may be of general interest, the Commission is circulating this letter to all commenters and workshop participants.

**Rulemaking Process.**

Some comments take the Commission Staff to task for failing to follow standards of mutual gains negotiation. While the Commission seeks consensus through a candid discussion of issues, the Commission has made it clear from the outset that these rulemaking proceedings are *not* being conducted as mutual gains negotiations, that is, as Negotiated Rulemakings under RCW 34.05.310.

The statute requires a formalized and highly structured process for Negotiated Rulemaking. The present rulemakings do not use that process for many reasons, including the level of Commission resources needed for such a process.

As noted in the CR-101, the Commission process pursues consensus whenever possible. It does so because it is often possible to meet the interests of all constituencies while regulating in the public interest, and because regulations often work better for all affected persons when they are designed knowledgeably after a thorough discussion of the issues.

To this end, the Commission uses a variety of techniques that are designed to give participants an active role in the rulemaking process. These include, but are not limited to, conducting workshops that facilitate the candid discussion of issues and interests, providing feedback through drafting and commenting, and individual discussions about issues of interest.



Some of these techniques are similar to those that are used in mutual gains negotiations. They are used because the Commission's experience demonstrates that they do facilitate consensus and development of rules that work for industry and for consumers. We emphasize again, however, that the process for developing these rulemakings is *not* mutual gains negotiation.

Commission Staff is working openly to address the issues in the rulemaking. For example, it has circulated a first rough draft among participants for comment and will use those comments in developing a "formal" draft for broader circulation. Comments on the latter draft will form the basis for one or more workshops, where participants can refine the substance and the language of the rules and where further discussion of issues can take place. Only after that iterative process has been completed will a draft be prepared for possible filing as a formal rulemaking proposal, and participants will have the opportunity to address remaining concerns to the Commission during the process of notice and adoption. The Commission invites and uses public participation at all of these steps in coming to closure on its legislative function, the rulemaking process.

#### **Executive Order 97-02.**

One of the reasons for conducting this rulemaking is to comply with Governor Locke's Executive Order 97-02, requiring agencies to review significant rules. The Commission Staff has considered the Executive Order in its preliminary review and in its draft proposals. The Commission acknowledges that the generalized language of the executive order may lead individuals to different interpretations regarding its implementation, and those interpretations are proper bases for comment.

A number of comments are addressed to the asserted lack of compliance with elements of Governor Locke's Executive Order 97-02 and to participants' concerns that some proposals may go beyond a strict reading of the requirements of the Executive Order. We do not find these comments to be particularly helpful in these rulemakings, for several reasons.

First, it is clear in the CR-101s filed with the Code Reviser that the Commission's intention was to engage in a thorough review and revision of the two chapters. Both of the CR-101s included the following language: "The review will include consideration of whether substantive changes or additions are required". The rulemaking is clearly not subject to any limitations in the Executive Order review. Participants should be mindful that the Commission has not conducted a comprehensive review of these chapters in nearly 30 years. Much has changed in the industries and in regulatory practice during that time. The purpose of this comprehensive review is to bring each entire chapter up-to-date consistent with contemporary needs by amending, repealing, or adopting provisions as needed.

TO PARTICIPANTS: DOCKET NOS. UE-990473; UG-990294

August 20, 1999

Page 3

Second, the Executive Order directs agencies to review the rules' need, reasonableness, effectiveness, clarity, fairness, stakeholder involvement, coordination among regulatory agencies, and consistency with legislative intent and statutory authority. It is clear to the Commission that the Executive Order in these directions *does* require the creation from time-to-time of additional Administrative Code sections. Thus, it is neither correct nor particularly helpful to our purposes to suggest that a newly proposed provision is contrary to the Executive Order's requirements simply because the topic of a draft rule did not previously exist in the chapter.

Finally, a number of comments merely state that draft language fails to comply with the Executive Order. That sort of comment is of very limited value. Much more helpful would be specific suggestions for change or alternative language, with an explanation of how the alternative proposal meets the goals of the Executive Order as well as the public and private interests that the Commission must consider in adopting rules.

#### **Conclusion.**

The Commission welcomes continuing dialogue and encourages the development of enlightened consensus that meets the public interest. While this is not a negotiated rulemaking, the Commission intends it to be a forum for the candid exchange of information and views as a means to develop rules that meet the standards of Executive Order 97-02. The rule draft, written comment, open communication, and workshop process is designed to afford participants the opportunity to clarify their concerns and express how those concerns may be achieved. It also allows Commission Staff to evaluate and act knowledgeably on each comment. Commission Staff will find comments most helpful if comments are specific in stating their sponsor's preferred rule language and regulatory principles, and a statement of the rationale supporting the language and principles.

Sincerely,



Carole J. Washburn  
Secretary