

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of

Docket No. A-072162

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

**THIRD COMMENTS OF PUBLIC COUNSEL  
(SUPPLEMENTAL CR-101)**

**April 21, 2008**

**I. INTRODUCTION**

The Public Counsel Section of the Washington State Attorney General's Office (Public Counsel) respectfully submits these comments in response to the Notice of Opportunity to File Written Comments and accompanying Second Discussion Draft Rules (Second Draft) issued by the Commission on March 21, 2008. In these comments, we focus on a limited number of the amendments proposed in the Second Draft.

**II. COMMENTS**

**A. Accepted amendments to WAC 480-07-110, 125, 145, and 900**

Public Counsel appreciates the Commission's acceptance of our recommended change to WAC 480-07-110, requiring telephone, gas, and electric companies to serve Public Counsel a copy of petitions for exemptions or modifications from Commission rules. Requiring service

will alert Public Counsel to requests for exemptions that may impact residential and small business customers.

Public Counsel supports the amendments in the Second Draft to the guidelines for submissions in WAC 480-07-125 and 145. Allowing electronic submission in all cases will reduce administrative burdens on all parties. Public Counsel would support similar amendments to *filing* requirements in the event of a future rulemaking or other legislative process.

Finally, we appreciate the Commission's acceptance of our suggested amendment to WAC 480-07-900, clarifying that parties need not file written comments prior to an open meeting in order to make oral comments. This change will foster participation in open meetings.

**B. WAC 480-07-160 – Confidential Designations**

Public Counsel appreciates the Commission's consideration of our recommended amendment to the rule governing confidential designations—WAC 480-07-160. We remain concerned about over-designation and will respond to problems of excessive and/or improper designations on a case-by-case basis as they arise.

**C. WAC 480-07-510(3) – Electronic Workpapers**

**1. Organization**

The Second Draft includes three new subsections: "Organization", "Electronic documents", and "Change in methodologies for adjustments". As written, the three new subsections fall under subsection (b), "Restating and proforma adjustments". Public Counsel agrees that WAC 480-07-510(3) should be reorganized to more clearly define the requirements

for workpapers. However, the organization in the Second Draft makes it unclear whether the requirements in the new subsections apply to *all* workpapers or only those supporting restating or pro forma adjustments. Public Counsel recommends that the Commission consider reorganizing WAC 480-07-510(3) to show that the requirements of the new subsections clearly apply to all workpapers.

## **2. Treatment of proprietary models and/or information**

Public Counsel supports the changes to WAC 480-07-510(3) that appeared in the Commission's first Discussion Draft Rules, issued January 25, 2008. Those changes modified the rule to be consistent with WAC 480-07-140(6)(b), which already provides that electronic versions of spreadsheets may not include "locked, password protected or hidden cells." As the Commission notes in its comments on the Second Draft, "[w]hen documents have these features, the document is of limited use to the Commission and the parties."

Public Counsels strongly opposes the inclusion of the last clause of WAC 480-07-510(3)(b)(ii) in the Second Draft. This clause states that parties are not required to provide a password if "the locked or password protected cells secure the integrity of a proprietary model or proprietary calculations."

PSE's proposal of this clause raises important policy concerns about the openness and public nature of Commission regulatory proceedings, and the potential limitation of Commission regulatory authority. No company seeking a rate increase or other significant regulatory relief should be permitted to support its case on non-transparent grounds, concealing key elements

behind claims that information, models, or calculations are proprietary and may not be disclosed to the Commission or other parties in the proceeding.

If the clause is intended to apply where the model or calculations at issue are property of the company providing the workpapers, the final clause of WAC 480-07-510(3)(b)(ii) is inconsistent with the earlier part of the rule, requiring companies to provide proprietary workpapers with a password, subject to protective order. It is also inconsistent with the general requirements under the WAC that companies provide *all* relevant data in discovery and all evidence that is necessary for the Commission and the parties to analyze a company's request.

If, on the other hand, the intent is to protect models or calculations that are allegedly property of a third party, the rule should expressly address this issue. As an initial matter, for the reasons stated above, regulated companies should be barred from basing any key element of a filing on evidence which cannot be produced due to third party licensing or confidentiality agreements. Regulated companies are aware that they are subject to regulatory and public scrutiny and should avoid entering in to agreements that effectively limit or bar access to important company information. To the extent filings are made reflecting such restrictions, the party providing the workpapers or other exhibits should be required to bear the burden of showing, by motion and supporting material, that the model or calculations could not have been developed without such restrictions, and that they have made a good-faith effort to obtain a waiver of any restrictions (i.e. limited license or confidentiality agreement) from the third party. Copies of relevant licensing or confidentiality agreements should be required to be filed in support of such a motion.

**D. WAC 480-07-710 – Appointment of Mediators**

Public Counsel appreciates the Commission’s consideration of our proposed amendments to WAC 480-07-710. In the future, if requests for mediators and settlement judges become more common and problems arise, Public Counsel would ask the Commission revisit this issue.

**E. WAC 480-07-904 – Delegation of Requests for Authorizations of Transfers of Property**

Public Counsel reiterates its concern with the new provision—WAC 480-07-904(1)(1)—delegating all requests for authorizations of transfers of property by telecommunications companies to the executive secretary. As a policy matter, Public Counsel believes it is important that any significant proposal to transfer telecommunications property be brought before the Commissioners, at a minimum, at the Open Meeting, even if it may not eventually go to adjudication. Past property transfers under this rule have included such major items as the sale of the US West/Qwest DEX Yellow Pages, and company sales of exchanges. With the current scale and nature of change in the telecommunications industry, it would not be surprising to see other major transfer applications in the future. It is important for the Commission itself to exercise some oversight of such transactions.

The initial delegation of any transfer of any size, without guidance as to which matters should be brought to the Commission, is problematic. Outside interested parties, without constant monitoring of the delegation docket, may or may not notice significant proposed

transfers that should be brought to the Commissioner's attention. Public Counsel understands the intent of the new delegation rule and procedure to be the efficient processing of routine matters. The other issues specifically identified in the rule reflect this intent. As written, however, the property transfer delegation goes beyond that scope. Therefore, Public Counsel repeats its recommendation against inclusion of this provision unless it is coupled with some guidance as to the limited scope of the delegation. For example, the provision could be expressly limited to *de minimis* transfers or transfers of property worth less than a stated reasonably small dollar amount (for example \$250,000).

### III. CONCLUSION

Public Counsel appreciates the opportunity to comment on these rules and respectfully requests that the Commission accept our recommendations regarding WAC 480-07-510(3) and WAC 480-07-904.