

Rulemaking Analysis

CONSIDERATIONS REGARDING AGENCY DECISIONS DURING THE RULEMAKING PROCESS¹

Docket number UE-990473

Date: 08/10/99

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Division/Section Regulatory Services Division

Exempt manager authorizing this review: Dixie Linnenbrink

Approved for Rulemaking Proceeding: (mgr's Init/date) _____

Subject of rule Electric Companies

Rule title: Electric Companies

Expected schedule () Firm (x) Target () Expected

CR 101 public meeting 03/31/99

CR 102 public meeting 12/13/00

Adoption hearings 3/14/01; 7/25/01; 9/12/01

Filing with code reviser (effective 30 days later): 5/3/01; 9/28/01; 12/3/01

1. What persons or industries will be affected by this proposal? What agency rulemaking lists identify such persons? Who are significant interests not on these lists?

The proposal will affect investor-owned electric companies and customers of regulated public service companies. The Commission maintains rulemaking lists which would include a number

¹NOTE: Most of the information in this form is required to be contained in the agency's rulemaking file or in one or more of the rulemaking notices (CR-101 and CR-102) for permanent rules. The information is encouraged (in one case required) for emergency rules. *Some of the information called for in this form may not be available when the topic of a rule is first discussed. That information is generally required no later than the time a CR-102 is filed. Please provide all information now available, indicate when other information will be available, and update the information as it becomes available.* This form can be made available on a shared drive and then printed at the conclusion of a proceeding for inclusion in the file.

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of these affected parties -- one which contains all persons who have identified themselves as requesting a copy of all rulemakings for the electric industry; and other lists which contain all persons who have identified themselves as requesting a copy of all rulemakings for the Commission.

2. Why is this rulemaking being proposed?

The Governor's Executive Order 97-02 requires all agencies to review their rules that have significant effects on businesses, labor, consumers, and the environment. Agencies must determine if their rules need to be retained in their current form, amended or repealed.

The following information is required for a statement to be included in the rulemaking file no later than the CR-102 filing date; it must be updated based on additional information received by the agency during the rule making process.

3. What is the objective of this rule?

The objective of the electric companies rulemaking is to comply with the Governor's Order 97-02 to assure that the agencies rules:

1. Comply with statutes that authorize it.
2. Are not obsolete, duplicative, need to be repealed.
3. Are providing the results originally intended.
4. Are written and organized in a clear and concise manner, in order it may be readily understood by those for whom it applies.

4. Would changes to other rules or statutes achieve the same objective? *[What rules? statutes? Why is this approach preferable?]*

No.

5. What are the anticipated environmental and financial consequences of adopting and not adopting the proposal, recognizing the difficulty of quantifying some consequences?

A. Environmental consequences.

None known

B. Financial consequences.

Not material.

6. Why is this a reasonable, cost-effective manner to achieve the regulatory objective, in light of available alternatives including no rulemaking?

The review is designed to determine whether there are changes needed, and whether rules can be

clarified for the benefit of customers and the companies.

7. **Will the proposed changes overlap or conflict with local, state, or federal law or the rules of this or any other state or federal agency?**

No.

How will the proposal be coordinated with other governments?

N/A

Is an Agency Rules Coordinating Committee needed under EO 93-06?

No.

8. (a) **Could alternative forms of regulation achieve the same goals?**

No. Simplification and clarification of rules can only be accomplished in a rulemaking.

(b) **Does the proposed rule include performance standards? Could performance standards be used in lieu of behavior standards or manner of compliance?**

No.

9. **Is this proposal made only to comply with federal law? No If so, does it contain significant differences from comparable federal rules or standards, or does it propose differences in application to public and private entities? N/A If so, provide a written analysis explaining the differences, evaluating their consequences, and stating the reasons for adopting the rule as drafted as opposed to a rule consistent with federal regulation. N/A**

Is a CR-101 required? Yes

[See, RCW 34.05.010(3)(c) --exemptions for emergency rules; internal rules not submitting an outsider to sanctions; rules merely adopting or incorporating federal laws or rules or Washington law or rules; rules whose content is required by statute; rules setting fees that are explicitly and specifically dictated by statute; and rules that adopt, amend or repeal practices or procedures for agency hearings or a process for applying to an agency for a license or permit]. NOTE: to assure constituent involvement and support it may often be better to file a CR-101 and engage in prerulemaking discussions even if not required.

The following information is required for a statement to be included in the preproposal notice (CR-101):

10. What is the specific statutory authority for the rule?

RCW 80.01.040 and RCW 80.04.160

11. List specific reasons why the rule is needed:

See Item 2 above

12. What are the goals of the proposal? Why are rules on the topic needed and what might they accomplish?

See Item 3 above

13. (a) What process will be used for developing the rule?

- Negotiated rulemaking Pilot rulemaking
- Agency study, consisting of [check as many as apply]:
 - Workshops and dialogue Public meetings
 - Written comment Other _____
- Other _____

(b) What is the process by which interested persons can participate in developing the rule? NOTE: If the selected process fails to provide an opportunity for interested persons to "participate" in the rulemaking process prior to publication in the CR-102, the agency must place a written justification for failing to do so in the rulemaking file. "Participate" means the opportunity to do more than the statutory minimum of offering written and oral comments. State the justification here and in your staff support memorandum for the request for Commissioner authorization to file the CR-102

Interested persons can participate in developing the rule through a series of meetings, workshops and public comment opportunities. The first meeting will be a public forum, intended to gather as much information as possible from the regulated public service companies and any other interested persons. Notice of the public forum will be sent to all regulated companies and interested parties. Stakeholders involvement will be beyond written comments. Stakeholders will be asked to participate in the drafting of the rule proposal, aimed at reaching consensus.

(c) What other federal and state agencies have jurisdiction over this subject? What process will be used to coordinate with that/those agencies?

Full notice and opportunity to participate in all phases of the process.

The following information will guide rule drafting and approach and help assure that the rulemaking file contains sufficient evidence to support the eventual decision:

14. Does the rule promote voluntary compliance through technical assistance?

No.

15. List specific evidence (facts) that supports the reasons why the rule is needed:

Need for technological updating and language clarity.

For an emergency rule --

16. Answer either (a) or (b): N/A

- a. Why is the immediate adoption, amendment or repeal necessary for the preservation of the public health, safety, or general welfare, to the extent that observing the time requirements for notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest?
- b. What state or federal law, or federal rule, or federal deadline for receipt of federal funds, requires the immediate adoption of this rule?

Preliminary Small Business Economic Impact Statement (SBEIS) analysis:

Small Business Economic Impact Statements are governed by chapter 19.85 RCW. Sec. 030 requires that the agency prepare an SBEIS if the proposed rule will impose more than minor costs on “businesses in an industry relative to compliance costs under existing rules.” Sec. 020 defines “industry” as “all of the businesses in this state in any one four-digit standard industrial classification”. We believe, and the Asst. A.G.s advise, that if a proposed measure may impose “more than minor” costs within a “substantial” segment of an industry it is to the agency’s advantage to make the effort to prepare an SBEIS. While it is a valuable preemptive way to avoid a legal challenge for failure to do one, it is also a valuable means to gather relevant information, to check the costs and benefits of a rule, to gauge whether changes are worthwhile, and to gain credibility from industry.

17. What industry is (industries are) affected by the proposal (4-digit Standard Industrial Classification[s])?

Electric utilities.

[Does the rule affect more than 20% of all businesses or more than 10% of any one (4-digit) industry? If not, an SBEIS is not required.]

No.

17. What elements of the rule may impose a cost on business?

N/A

18. What are the costs of compliance?

Minimum.

19. Are the costs more than minor as established by the Business Assistance Center? [If not, an SBEIS is not required].

NOTE: If an SBEIS is required, special notice requirements exist under RCW 19.85.070 and the following steps are to be taken: obtain detailed information from businesses regarding the economic impact of the proposed rule; Conduct a detailed economic analysis of costs to determine the economic impact on business and to develop cost ratios; Does the rule impose a proportionately higher economic burden on small business? If so, the agency should modify the proposal to mitigate the impact on small business. Does the rule impose an equal burden on large and small businesses? If so, the agency should take steps to mitigate the costs. In either event, document the ratios and how they were derived; and list all mitigation measures the agency has used, in the SBEIS.

SEPA Requirements:

20. Consult SEPA rules to determine whether the proposed action is exempt from SEPA. With minor exceptions, programs administered by the agency in 1978 are exempt. If the proposal is not exempt, prepare a SEPA checklist and, as needed, an environmental impact statement.

N/A

POST-ADOPTION Requirements:

21. List the commenters at the adoption meeting, state the suggestions they made, identify those that were rejected by the Commission, and state the Commission's reasons for rejecting the suggestions.

Puget Sound Energy, The Boeing Company, Public Counsel, Northwest Industrial Gas Users, Avista Utilities, and Htech. See Adoption Orders 482, dated May3, 2001, 489, dated September 26, 2001, and 495, dated December 3, 2001.

22. List any changes that were made in the text of the rule between filing the CR-102 and adopting the rule, and state the Commission's reasons for making those changes.

WAC 480-100-113 Residential Service Deposit Requirements

6 **Subsection (2)(a).** Northwest Natural Gas suggested revising the subsection to state that a utility may collect a deposit from an applicant for residential service if any of the conditions described in subsection (1) existed on a prior occasion as a customer of the utility or as a customer of another electric utility. The Commission agreed and adopted this language.

7 **Subsection (3).** Avista Utilities, Northwest Natural Gas, and Puget Sound Energy commented that the changes contained in this subsection would make utilities lose flexibility and may lead to undercalculating the appropriate deposit amount if the most recent 12 months actual usage data is required, by not recognizing that dwellings may be unoccupied, but energized, for periods of time. The Commission agreed with the companies' comments and reverted back to existing language that allowed deposits to be based on "estimated billings."

WAC 480-100-118 Nonresidential Service Deposit Requirements

8 **Subsection (2).** Based on comments by Puget Sound Energy and Northwest Natural Gas the Commission added back existing language that allows deposits to be based on estimated annual billings and as well as current rule language that allows the utility to collect a larger, new, or alternative form of deposit if circumstances warrant.

WAC-480-100-123 Refusal of service

1 **Subsection (2)(d).** The Commission revised this subsection and made it more general to include all possibilities in response to PacifiCorp's concern that the proposed language implied that the utility is responsible for securing all rights-of-way, easements, and other permits. It is not the Commission's intent to make the utility responsible for actually obtaining, paying for, or holding all rights-of-way, easements, approvals, and permits. up to the customer's point of attachment.

Subsection (3). The Commission revised this subsection to address the concerns expressed by TrizecHahn Office Properties, Ltd. and the Boeing Company. The Commission removed the language that permitted a utility to refuse new or additional service if "such service will adversely affect service being rendered to other customers" or if to provide service would be "economically unfeasible." The revised rule includes conditions in subsections (1) and (2) under which a utility may refuse to provide service, and provides a "catch all" in subsection (5) that would require a utility to file for Commission approval if the utility proposes to refuse service to a customer for reasons other than those listed in subsections (1) and (2).

The Commission also revised subsection (5) and added subsection (6) to address the process issues raised by Public Counsel, PSE, TrizecHahn Office Properties, Ltd., Boeing, and Mr. Jay Lei. Subsection (5) requires the utility to work with the customer requesting service to resolve the issues before coming to the Commission. Subsection (6) informs applicants and customers about options available under Chapter 480-09 WAC, the Commission's procedural rules.

Subsection (4). The Commission revised this subsection to address Northwest Industrial Gas Users' (NWIGU's) request that the Commission extend the applicability of this subsection beyond residential applicants and customers.

Subsection (5). Based on the comments of Public Counsel and The Energy Project the Commission determined that for the present it will restate the existing rule, which does not limit the number of prior obligations a residential customer or applicant can incur before a utility may refuse service. The Commission believes that more accurate data about the use and consequences of prior obligation is needed to support a substantial change to this rule.

WAC 480-100-148 Service Responsibilities

Subsection (2)(a). The Commission accepted Puget Sound Energy’s recommendation to revert back to existing rule language that made the utilities’ responsibilities for the installation and maintenance of equipment more clear.

Subsection (2)(b). The Commission accepted Puget Sound Energy’s recommendation to revert back to existing rule language to avoid unduly burdensomeness to the utility and an unwelcome and annoying imposition on the customer.

3 **Subsection (2)(d).** The Commission recognized that circumstances surrounding utilities and utility customers vary among utilities and within the same utility. Consequently, the Commission redrafted subsection (2)(d) to read that utilities must make those efforts that are reasonable under the circumstances to avoid interruptions of service and, when such interruptions occur, to reestablish service with a minimum of delay.

5 **Subsection (d).** Puget Sound Energy recommended that the Commission retain language similar to the current WAC 480-100-076 that states that interruptions to service necessary in conjunction with modifications or repairs shall be during working hours when practicable. The Commission agrees and adds back the existing rule language.

WAC 480-90-153 Disclosure of private information

Subsection (1). The Commission accepted Puget Sound Energy and Northwest Natural Gas’ suggestion to strike the first paragraph of the proposed rules, which could limited utilities ability to market Commission regulated and approved services, either by the utility itself or using business partners

Subsection (2). Puget Sound Energy recommended changing the word “share” to “disclose” to provide language consistency with the title of the rule. The Commission agrees with the Company’s suggestion.

WAC 480-100-363 Portable Indicating Instruments.

9 **Subsection (4).** Puget Sound Energy commented that the proposed rule expands the record keeping to all portable indicating instruments, including those used to simply determine if a line is energized., which would significantly expand record keeping requirements. The Commission agreed and revised the language to limit the record keeping requirement to portable indicating instruments used to check power quality.

WAC 480-90-178 (1) Billing requirements and payment date

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The Commission incorporated language requiring terms, kilowatts, and relevant rates for each, and the basic charge to be included on customer's bills.