

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

Rulemaking to Make Corrections and
Changes in Rules in WAC 480-07, Relating
to Procedural Rules.

DOCKET A-130355

TWELFTH COMMENTS OF PUBLIC COUNSEL

November 14, 2018

I. INTRODUCTION

1. Pursuant to the Washington Utilities and Transportation Commission's (Commission) Notice of Opportunity to Submit Written Comments, dated October 17, 2018, Public Counsel submits the following comments regarding the draft Standard Protective Order.

II. DISCUSSION REGARDING PROPOSED REVISIONS

A. Section B – Disclosure of Confidential Information

2. The proposed language for Section B currently states,

Persons Permitted Access. No Confidential Information may be disclosed to anyone other than the Commissioners, Commission Staff, the presiding officer(s), and, subject to the requirements in paragraph 7, below, counsel for each of the parties to this proceeding, each such counsel's administrative staff, and persons designated by the parties as their experts in this matter. No expert other than members of Commission Staff may be an officer, director, direct employee, major shareholder, or principle of any party or any competitor of any party unless the provider of the Confidential Information waives this restriction.

This section explicitly and appropriately exempts members of Commission Staff from the prohibitions placed on direct employees, officers, and directors of a party from acting as an expert witness to a proceeding for which a protective order is sought. Like Commission Staff,

Public Counsel regularly provides testimony from in-house, expert witnesses who are Regulatory Analysts employed by the Attorney General's Office. As written, this section would require Public Counsel to obtain a waiver from parties offering Confidential Information in nearly every proceeding to which it is a party. In the interest of efficiency, given Public Counsel's status as a statutory party to proceedings before the Commission, Public Counsel recommends that the section be modified as proposed below to exempt Public Counsel's experts in addition to the existing exemption for members of Commission Staff.

3. Additionally, Public Counsel presumes that this language is intended to prohibit experts who are officers, directors, direct employees, major shareholders, or principles of any party or any competitor of any party *from obtaining Confidential Information* unless this restriction is waived. As written, however, this language can be interpreted to mean no party may use direct employees or any person in the positions listed above as an expert in the proceeding for which the protective order is sought, regardless of whether or not that expert is seeking access to confidential information, unless they obtain a waiver. Direct employees of numerous intervenors, beyond Staff and Public Counsel, regularly testify in proceedings before the Commission. This language could mean that an expert who is a direct employee of a party cannot offer testimony despite never having sought access to confidential information. While it can be contextually inferred that this is not the intended outcome of this language, Public Counsel recommends the language be modified as proposed below for clarity.

4. To address both these issues, Public Counsel recommends the following language for this section:

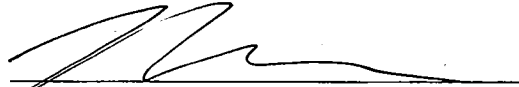
Persons Permitted Access. No Confidential Information may be disclosed to anyone other than the Commissioners, Commission Staff, the presiding officer(s), and, subject to the requirements in paragraph 7, below, counsel for each of the parties to this proceeding, each such counsel's administrative staff, and persons designated by the parties as their experts in this matter. No expert who requests access to Confidential Information, other than members of Commission Staff and Public Counsel, may be an officer, director, direct employee, major shareholder, or principle of any party or any competitor of any party unless the provider of the Confidential Information waives this restriction.

III. CONCLUSION

5. Public Counsel appreciates the opportunity to submit these comments and the continued efforts to modernize the current rules. We look forward to reading the comments of other stakeholders and participating in workshops on these proposed rules.

Dated this 14th day of November 2018.

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