

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Rule-Making
Proceeding Related To

Commission General – Procedure:
Chapter 480-09 WAC

DOCKET NO. A-010648

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Public Counsel files these comments in response to the Commission's July 11, 2001 Revised Notice of Opportunity to File Written Comments. We look forward to further participation in this rulemaking and to attending future workshops.

General Comments

Public Counsel believes there are a number of substantive issues which could be addressed through this rulemaking process. One substantive issue the Commission should consider in the context of this rulemaking is whether to make a fuller commitment to electronic filing of documents. Public Counsel would support adoption of procedural rules which would allow for the filing and service of electronic documents in replacement of, rather than addition to, the traditional paper documents. There are a number of specific rules which would need to be modified or replaced in order to achieve this goal and specific comments can be found below. The Commission may wish to consider creating a subsection of these rules directed specifically at electronic filing.

Another substantive issue is the question of uniform citation to the record. The Commission has begun the practice of paragraph citation for its orders. The same citation system could be applied to all pleadings filed with the Commission as well as direct testimony and textual exhibits. The Commission should consider whether such a uniform system of citation would better serve its needs as well as the needs of the parties which appear before it. One example of a problem that would be addressed by paragraph citation is where electronic documents are exchanged by parties but the differing applications used to print the documents result in different page numbers and make uniform citation to such documents during hearings difficult. Traditional case citation need not be addressed in this context, but conceivably could be included in such an effort.

A general procedural comment is that the Commission should consider removing rules that are simply a restatement of the provisions of the Washington Administrative Procedure Act, Ch. 34.05 RCW, applicable to an issue. Instead, the Commission could adopt a blanket rule that describes the applicability and in-applicability of the APA to WUTC proceedings.

Rule Specific Comments

480-09-012 Incorporated and referenced materials

The Commission should favor making its documents available via the internet at no charge to the public. Where it is feasible to do so, the Commission should make copies of all relevant documents available. A first step in such a process would be to create an archive of significant orders in the different practice areas.

480-09-015 Submission of "confidential" information.

TRACER v. WUTC, 01-2-08089-0 SEA raises, in part, the issue of Commission treatment of aggregated confidential data. The Commission may wish to consider addressing this issue in this rulemaking.

Consider stating a preference for non-confidential transcripts and outlining a process for avoiding inadvertent statements of confidential data by witnesses.

480-09-100 Sending communications to the commission.

Revise (3)(a) by striking "a person who is able to deal with it" and replacing it with "the appropriate person."

Revise (3)(b)(1) to expressly encourage electronic filing of all documents with the Commission as an express substitute for paper filings. Consider creating a separate rule or set of rules to address electronic filing of documents.

480-09-101 When communications are received; required identification of sender; communications from the commission.

Revise to accommodate electronic filing of most documents. Perhaps institute a rule on the Commission's server for the records center to issue return receipts for all submissions.

Also, explore setting up a web-based filing system similar to the complaint form process that could further automate the process and remove some of the burden from the records center.

The definition of "officially received" may also need to be modified if electronic filing is accepted. For example, printing and stamping would be a wasteful process. Either a return receipt time stamp or a presumption that documents are received at the time sent could address this issue. Use of digital signatures could similarly address this issue.

480-09-120 Filing and service filing by telefacsimile; number of copies.

Amend to allow fax filing but indicate electronic filing is preferred.

Email or electronic service should have its own rule, particularly if the Commission decides to expand the allowable use of this communications medium.

Amend (1)(b)(ii) to allow filing of documents in Word 5.0 or greater or WordPerfect 5.1 or greater. Consider making filing of a disk an option when the original document is filed electronically.

Amend (2)(c) to allow service by the Commission to be achieved electronically unless a party affirmatively requests service by mail of hard-copy.

480-09-125 Failure to file sufficient copies--Costs of copying.

Delete or only make applicable when party affirmatively requests to file paper documents.

480-09-150 Informal complaints.

Indicate that the informal complaint process is expressly available to consumers of regulated utility services.

480-09-320 Filing requirements--Master service.

Amend to include email address and make the master service list available on a docket's "home page" on the WUTC website.

480-09-330 Filing requirements--General rate increases.

Amend to indicate preference for electronic filing.

480-09-340 Compliance filings.

Amend to indicate preference for electronic filing.

480-09-420 Pleadings and briefs--Applications for authority--Protests

Consider requiring all petitions, testimony, pleadings, and briefs filed with the Commission to have paragraph numbering in order to promote a more uniform method of citation.

480-09-425 Pleadings-- Verification, time for filing, responsive pleadings, liberal construction, amendments.

Amend to indicate preference for electronic filing with possible provision for electronic (digital) signatures as permitted under state law.

480-09-460 Prehearing and other conferences.

Amend to require setting a prehearing conference in adjudicated disputes within 10 days of filing so that scheduling and other procedural matters such as appearances and confidentiality agreements can be dealt with as early as possible. The Commission may need to revise the notice period required prior to holding the prehearing conference.

480-09-480 Methods for obtaining data in adjudicative proceedings.

Amend (5) to require that a prehearing conference be held as soon as possible after the suspension of a filing which triggers a suspension period or in other adjudicative proceedings that have a limited time period for litigation. The goal should be ten days after suspension. Notice could be given at the open meeting and contemporaneously to an email distribution list of interested parties.

Amend (6)(a)(v) to require each data response to have appended to it the date the response was produced, the name(s) of the person(s) preparing the response, and the name of the witness(es) the producing party will be sponsoring for cross-examination regarding that data response (if different than the person who produced the response). This amendment would imbed in rule a common practice before the Commission and facilitate the development of cross-examination as well as decrease potential confusion or waste of time during cross-examination.

Amend (6)(a)(v) to require production of data responses served by any party to all parties to a proceeding unless the party affirmatively requests in writing or on the record not to receive the responses to the data requests of other parties. This would eliminate the requirement for the request per the current rule, facilitate discovery, and avoid duplicative data requests which create an undue burden on the party responding to the data requests.

Amend (6)(a)(v) to impose upon a party responding to a discovery request an affirmative duty to contact the requesting party to clarify any request to which the responding party would otherwise object to as vague or when the responding party is uncertain as to the interpretation of the request. Such inquiry does not toll the date responses are due except through the agreement of the parties to the inquiry.

Amend (6)(a)(v) to require that any data, documents, or other evidence produced to a requesting party, either in direct response to a data request, or in response to the informal resolution of a dispute regarding production of such data, shall be produced to all parties to the proceeding which have requested production of responses to other parties' data requests.

Amend (6)(a)(v) to require service by email of discovery response where the data or documents produced are available to the responding party in electronic format. A presumption will exist that documents produced by a party in the regular course of its business are available to the party in electronic format. Encourage such production in all other circumstances where electronic production is not an undue burden on the responding party.

Amend (6)(a)(v) to require representatives who are appearing before the commission pursuant to WAC 480-09-710(1)(b), or who are responding to data requests, to either affirm on the record or in a writing to be filed with the Commission in the relevant docket that they have reviewed the Commission's rules relating to discovery, **or** to have an attorney qualified to practice before the Commission pursuant to WAC 480-09-710(1)(a) affirm that the responses produced conform with the Commission's rules. This is to avoid the resultant delay and related discovery disputes that can arise when out of state in-house counsel unfamiliar with practice before the Commission respond to data requests as they would civil discovery in their own

jurisdiction. This requirement imposes a minimal burden upon the responding party relative to the inconvenience and delay non-conforming responses impose on the requesting party and is reasonably calculated to minimize such disputes.

480-09-730 Conduct at hearings.

Question - Should the Commission strike ", so help you god" from the oath required to be administered? It seems to commonly be omitted in practice.

480-09-736 Hearing guidelines.

Add a section detailing the requirements of a prehearing conference for the marking and exchange of exhibits, amendments or corrections to pre-filed testimony and exhibits, as well as providing time estimates for cross-examination and general scheduling matters.

Question - Should there be a default assumption that such a prehearing conference will be held three business days prior to the first scheduled day of hearing? (i.e. Wednesday for a Monday hearing.) Does this pose an unreasonable burden upon the parties to a proceeding? How should this be weighed against the administrative convenience of the Commission?

480-09-750 Rules of evidence; official notice; resolutions..

Amend (1) to indicate that during cross-examination witnesses are required to respond to the question asked but may, at the discretion of the Commission, give a brief explanation of their answer. I.e. if a witness is asked a yes or no question the appropriate answer is "yes" - "No" or "yes/no, may I explain?" Cross-examination is often needlessly slowed by witnesses recitation of their testimony. Answers to questions on cross-examination that are not responsive and instead are a testimonial recitation should be disfavored by the Commission in the interest of a fair and efficient hearing. In particular, witnesses unfamiliar with Commission practice should be admonished to answer the question asked and to avoid unnecessary delay of the proceeding.

480-09-770 Briefs.

Consider requiring all Petitions, testimony, pleadings, and briefs filed with the Commission to have paragraph numbering in order to promote a more uniform method of citation.

480-09-780 Entry of initial and final orders--Administrative review.

Consider requiring all orders filed by the Commission to have paragraph numbering in order to promote a more uniform method of citation, and to imbed in rule a current Commission practice.