

Discussion of Comments
Procedural Rules Governing Delegation
Docket A-060357 -- June 20, 2006

This narrative discusses stakeholder comments and commission responses to the pre-proposal discussion draft rules in this rulemaking. This narrative discusses oral and written comments about the commission's delegation rulemaking, circulated on January 17, 2006. We include stakeholders' comments during and after the May 11, 2006, workshop. We also include changes not prompted by stakeholder comments for reasons that are indicated.

1. Section 307

- a. **Public Counsel** and others noted that the proposal allows assignment of ALJs to cases on which they made probable cause decisions. We will attempt to avoid such assignments, but with limitations involving expertise or staffing it may not always be possible to do so. Protections are afforded by the provision that no finding of probable cause is proof of the matter asserted, and by providing that such decisions are made on representations that may not be proved, or may be rebutted, at hearing – emphasizing that this is a preliminary decision. It is also a decision that is reviewable at hearing by a motion for summary determination and on review by the commissioners.

2. Section 904

- a. The proposed text would identify categories of decisions, all of which would be delegated. **PacifiCorp** suggests that, in addition to proposing categories for delegation, the rule allow the delegation of other routine but unspecified matters. **Avista** supported this concept at the workshop. **Public Counsel** opposes doing so. This suggestion is declined. We are concerned that the initial rules be quite specific to guide the commission and let stakeholders know exactly what will be done. The purpose of delegation is to treat certain repetitive requests quickly and fairly. Given the nature of matters delegated, the opportunity for review is adequate.
- b. **PacifiCorp** suggests that the rule should state that the secretary may defer matters to the commission. We agree that it is appropriate to grant the Secretary the authority to defer decisions, and include the provision in Sec. 903(3) so it is of general applicability.
- c. **PacifiCorp** suggests that a company be allowed to designate upon filing whether the delegated decision would become effective immediately or be deferred until conclusion of the notice period. We decline the suggestion. The matters designated for delegation are generally routine, and we provide that the executive secretary may defer decisions to the commissioners. Every delegated decision is

reviewable promptly and independently of the executive secretary's decision. Allowing designation would add unnecessary complexity and delay to the decision process.

- d. **Public Counsel** suggests that the initial draft's delegation of accounting orders would be too broad, noting that very significant matters are often proposed in requests for accounting orders. We agree, and remove that provision from the delegation list. Accounting orders are relatively infrequent, so removing them from delegation will not interfere with our objectives.
- e. **Public Counsel** suggests that the initial draft's delegation of "LSN"¹ orders would be too broad, noting that very significant matters may be included in tariffs for which LSN treatment is requested. We agree, and delete the broad LSN proposal from the filing. We retain the proposal to delegate a sub-group of LSN orders, those that request a tariff change to allow recovery of costs that the Commission has determined may be passed through directly to customers. Little discretion is involved in such matters.
- f. **Public Counsel** suggests that the initial draft's delegation of unopposed mitigation petitions is too broad, urging that they should be limited to exclude significant petitions. We retain the provision. By definition, these are ex parte matters whose decisions have little precedential value and generally have a small amount in question. We see no harm to the public in these delegations.
- g. **Public Counsel** suggests deleting the delegation of decisions on securities filings. We reject this proposal, noting that our jurisdiction is now limited severely under existing law, but limit the delegation specifically to requests for a commission order establishing that a securities filing complies with RCW 80.08.040.
- h. **Public Counsel** suggests deleting the delegation of decisions on service contracts. **Mr. Finnigan** also made this comment at the workshop. We agree, noting that such matters may be quite significant, and delete this proposed delegation.
- i. **Public Counsel** suggests clarifying the notice process identified in the rule. There will be no change in the current processes for notifying the applicant and any other named party of the decision by electronic means. General notice will be provided by posting accessible by the Internet. We are exploring means to provide regular electronic notice to interested persons of the list of delegated decisions. No change in the rule is necessary.

¹ "LSN" stands for less than statutory notice, that is, a waiver of the requirement to file tariff changes at least 30 days before the proposed effective date.

- j. Decisions on solid waste plans should be deleted. No decision is required in such matters. The delegation of correspondence in 903(2)(a) appears adequate to address this matter.
- 3. Section 905
 - a. The general delegation of authority to sign commission documents (permits, for example) appears in sec. 905 of the draft. We move it to sec. 903, where it is more clearly a delegation of general authority.
- 4. General provisions
 - a. **Public Counsel** urges that the rule require the Commission to report annually on the number and nature of delegated decisions. We agree that such a report may be useful, but do not find it necessary to add it as a requirement of rule.
 - b. We acknowledge the proposals to correct typographical, grammatical, and similar errors by a number of commenters.