

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Rule-Making
Proceeding Related To

Reporting of Transactions Between
Regulated Companies and Their
Subsidiaries.

DOCKET NO. A-021178

COMMENTS
OF PUBLIC COUNSEL

**Comments of Public Counsel
Attorney General of Washington**

March 11, 2003

Public Counsel files these comments in response to the Commission's February 18, 2003, Notice of Opportunity to File Written Comments and the discussion draft. Public Counsel requests leave to file these comments late. Staffing constraints prevented the filing of the comments by 5 p.m. on the due date.

WAC 480-146-240 Application of Rules

This section may need to be clarified. It may be more appropriate to include reference generally to jurisdiction conferred on public service companies under RCW 80.01 and 80.04, or Titles 80 and 81, rather than only to the specific statutes relating to securities or affiliated interests.

WAC 480-146-360 Reporting of Affiliated Interest Transactions

Public Counsel does not necessarily oppose removal of this section to the various sections of the rules relating to specific industries. Since it appears to be restated verbatim in the new locations, it is not clear that it is an improvement to move the rule, leaving the affiliated interest filing requirement standing alone. An alternative would be to leave this rule here and cross-reference to it in the individual industry rules. This is essentially an organizational issue, however.

Industry-Specific Rules For Special Reports

Financial transaction reports. This rule should include a requirement that the contract or other document reflecting the terms of the transaction should be filed with the Commission as part of the report.

Essential services contracts. This rule should specify when such contracts are to be filed. Public Counsel would support filing of the contracts prior their effective dates. There should be further review of whether the telecommunications version of the reporting rules should also include an “essential services contract” requirement to cover telecommunications carrier contracts for operation and maintenance of infrastructure, computer systems, purchase of telecommunications services and construction of infrastructure.

Annual subsidiary transaction report. Public Counsel recommends that the rule also require that, in addition to annual reporting, that the verified copies of the actual contracts reflecting transactions with subsidiaries be filed with the Commission. At least for significant contracts, filing should occur prior to the effective date. This would be only partially addressed by adoption of our suggested change to the financial transaction reporting requirement above.

Annual affiliated interest transactions report. If this section is retained in full in each separate industry section, the language from WAC 480-146-360(5) should be retained and included.

General Comments

In general, the draft discussion rules do not do enough to address the concern which led to the initiation of this rulemaking – lack of reporting and oversight of transactions with subsidiaries. The rules do not appear to require the filing of any agreements between utilities

and subsidiaries, either before or after the agreements take effect. Public Counsel believes that the Commission has the statutory authority, pursuant to RCW 80.04.070 and 80.04.090 *inter alia*, to review any contract entered into by a company subject to its jurisdiction. The annual summary report of subsidiary transactions required in the draft rule will result in dated and incomplete information being provided to the Commission. It is not clear from the rule how much information the summary must provide. It may be quite difficult for the Commission to determine from a cursory summary whether a transaction needs to be investigated.

Public Counsel also reiterates the concern raised in our Initial Comments that transactions between utilities and parent companies should be filed with the Commission. These transactions raise many of the same concerns as subsidiary transactions.

Public Counsel looks forward to further review of these rules with other interested persons at the April 10 workshop and thereafter.