

No. 34523-4-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

QWEST CORPORATION,
APPELLANT,

V.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,
RESPONDENT.

OPENING BRIEF OF APPELLANT

Timothy J. O'Connell, WSBA No. 15372
John H. Ridge, WSBA No. 31885
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101
(206) 624-0900

Lisa Anderl, WSBA No. 13236
Adam Sherr, WSBA No. 25291
1600 Seventh Avenue, Room 3206
Seattle, WA 98191
(800) 214-8043

Attorneys for Appellant Qwest Corporation

Seattle-3323271.5 0053834-00036

COPIES FILED
APR 16 PM 4:12
COURT OF APPEALS
DIVISION II
SEATTLE, WA
35

ORIGINAL

TABLE OF CONTENTS

- I. ASSIGNMENTS OF ERROR..... - 1 -
 - A. Assignments of Error..... - 1 -
 - B. Issues Pertaining to Assignments of Error - 1 -
 - C. Standards of Review..... - 2 -
- II. STATEMENT OF THE CASE - 3 -
 - A. Introduction - 3 -
 - B. The WUTC Rulemaking Process - 4 -
 - C. The Appeal - 9 -
 - D. The Cash Transfer Rule, WAC 480-120-369..... - 9 -
 - E. The Subsidiary Reporting Rule, WAC 480-120-395 ... - 11 -
- III. ARGUMENT..... - 13 -
 - A. Qwest Is Not Required to Prove That It Was
“Substantially Prejudiced” to Obtain the Applicable Relief - 13 -
 - B. The WUTC Exceeded Its Statutory Authority in
Adopting the Cash Transfer Rule - 15 -
 - 1. RCW 80.04.080 Does Not Grant the WUTC
Authority to Adopt the Cash Transfer Rule..... - 15 -
 - 2. The Authorities Raised By the WUTC After
the Rulemaking Do Not Provide the Required
Nexus - 22 -



C. The WUTC Exceeded Its Statutory Authority in
Adopting the Subsidiary Reporting Rule..... - 25 -

IV. CONCLUSION - 28 -

TABLE OF AUTHORITIES

STATE CASES

Cole v. State Utils. & Transp. Comm’n, 79 Wn.2d 302 (1971).....20, 22

In re Electric Lightwave, Inc., 123 Wn.2d 530 (1994).....2, 3

Local 2916, IAFF v. PERC, 128 Wn.2d 375 (1995).....3

Rios v. Wash. Dep’t Labor and Indus., 145 Wn.2d 483 (2002) 14

Simpson Tacoma Kraft Co. v. Dep’t of Ecology, 119 Wn.2d 640
(1992) 14

Stone v. Southwest Suburban Sewer Dist., 116 Wn.App. 434
(2003).....3, 17

Wash. Indep. Tel. Ass’n v. Telecomm. Ratepayers Ass’n for Cost-
Based and Equitable Rates (“TRACER”), 75 Wn. App. 356
(1994)..... 15, 17, 19, 20, 22, 23

Wash. Publ. Ports Ass’n v. Dep’t of Revenue, 148 Wn.2d 637
(2003)..... 14

Waste Management of Seattle, Inc. v. WUTC, 123 Wn.2d 621
(1994)20, 27

DOCKETED CASES

In re Puget Sound Energy, Inc., No. UE-980866 (Wash. Utils. &
Transp. Comm’n Sept. 24, 1998)21, 27

Wash. Utils. & Transp. Comm’n v. U S WEST Commc’ns, Inc.,
No. UT-950200 (Wash. Utils. & Transp. Comm’n Apr. 11, 1996)24

STATE STATUTES AND REGULATIONS

RCW 34.05.570.....2, 3, 8, 13, 14, 15, 27

RCW 80.01.040(3)	19
RCW 80.04.010	16
RCW 80.04.040	20
RCW 80.040.070	1, 23, 27
RCW 80.04.380	10
RCW 80.04.080	15, 16, 17, 19, 22, 25
Chapter 80.08 RCW	18
Chapter 80.12 RCW	18
Chapter 80.16 RCW	11, 18, 20, 26, 27
RCW 80.16.010	26, 27
RCW 81.16.030	20
RCW 80.36.140-180	24, 25
WAC 480-07-510	24
Chapter 480-120 WAC	11
WAC 480-120-369	3, 9, 10, 11
WAC 480-120-395	3, 11, 12
WAC 480-146-360 (2002)	11, 20

I. ASSIGNMENTS OF ERROR

A. Assignments of Error.

The Washington Utilities and Transportation Commission (the “WUTC” or the “Commission”) erred by exceeding its rulemaking authority as follows:

- i. The WUTC’s enactment of WAC 480-120-369 (the “Cash Transfer Rule”) exceeds the statutory authority granted by RCW 80.04.080, the only statutory authority identified by the Commission in adopting the rule.
- ii. The WUTC’s enactment of WAC 480-120-395 (the “Subsidiary Reporting Rule”) exceeds the statutory authority granted by RCW 80.04.080 and RCW 80.04.070, the only statutory authorities identified by the Commission in adopting the rule.

Furthermore, the Superior Court erred in finding that:

- iii. Appellant Qwest Corporation (“Qwest”) had to show that it was “substantially prejudiced” by the actions complained of in order for the Superior Court to grant the requested relief.

B. Issues Pertaining to Assignments of Error.

Corresponding to the assignments of error listed above, the following issues are being appealed:

- i. Did the WUTC exceed its statutory authority under RCW 80.04.080 in enacting the Cash Transfer Rule codified at WAC 480-120-369?
- ii. Did the WUTC exceed its statutory authority under RCW 80.04.070 and RCW 80.04.080 in enacting the Subsidiary Reporting Rule codified at WAC 480-120-395?
- iii. Does RCW 34.05.570(2)(b)—which provides a specific standard governing when a court may grant relief in a declaratory action regarding rulemaking and the type of relief it may grant—apply to Qwest’s appeal, or does

the general standard governing appeals of agency actions set forth in RCW 34.05.570(1)(d) apply?

C. Standards of Review.

Judicial review of rules enacted by the WUTC is governed by RCW 34.05.570,¹ which states in relevant part:

(b)(i) The validity of any rule may be determined upon petition for a declaratory judgment addressed to the superior court of Thurston county, *when it appears that the rule, or its threatened application, interferes with or impairs or immediately threatens to interfere with or impair the legal rights or privileges of the petitioner.* The declaratory judgment order may be entered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question.

....

(c) In a proceeding involving review of a rule, the court shall declare the rule invalid only if it finds that: The rule violates constitutional provisions; *the rule exceeds the statutory authority of the agency;* the rule was adopted without compliance with statutory rule-making procedures; or the rule is arbitrary and capricious.

RCW 34.05.570(2) (emphasis added).

Whether the WUTC exceeded its rulemaking authority is a question of law that is reviewed *de novo* by this court. In re Electric Lightwave, Inc., 123 Wn.2d 530, 536 (1994). Although courts generally give

¹ Appendix (“App.”) A (RCW 34.05.570) at 1-2.

deference to agency decisions, Washington law is clear that courts do not defer to the agency the power to determine the scope of its own statutory authority. *Id.* at 540; Local 2916, IAFF v. PERC, 128 Wn.2d 375, 379 (1995).

Whether the specific standard governing appeals of rulemakings in RCW 34.05.570(2)(b)(i) applies or the general standard governing appeals of agency actions in RCW 34.05.570(1)(d) applies is a question of law that is reviewed *de novo*. Stone v. Southwest Suburban Sewer Dist., 116 Wn. App. 434, 438 (2003) (statutory construction is question of law reviewed *de novo*).

II. STATEMENT OF THE CASE

A. Introduction.

Following a rulemaking process extending over two and a half years, the WUTC on February 28, 2005² adopted several new regulations applicable to public service companies in Washington, including WAC 480-120-369 the “Cash Transfer Rule”³ and WAC 480-120-395, the “Subsidiary Reporting Rule”.⁴

The development of these rules followed a long, tortuous process that began on September 25, 2002, when the WUTC adopted the recommendation of its Staff to file a Preproposal Statement of Inquiry (the

² Administrative Record (“AR”) 1335-1477 (General Order No. R-518 adopted Feb. 28, 2005 (“General Order”) at AR 1335 ¶ 3.

³ App. B (WAC 480-120-369) at 4-5.

⁴ App. C (WAC 480-120-395) at 6-7.

“CR-101”)⁵ “to consider establishing rules that would require reporting of transactions between regulated companies and their subsidiaries to the Commission.”⁶

B. The WUTC Rulemaking Process.

By Notice issued October 9, 2002, the WUTC invited written comments and an opportunity to participate in a workshop.⁷ That Notice and the CR-101 provided very little information about the breadth or depth of the proposed rulemaking, other than that the WUTC was considering establishing rules requiring regulated utilities to (1) “pre-file” certain contracts pertaining to transactions with subsidiaries, (2) file periodic reports detailing transactions that have already occurred with subsidiaries, and (3) “immediately post-file” certain “significant” transactions or arrangements with subsidiaries.⁸ Before the November 5, 2002 workshop, the WUTC received comments from seven interested parties, which were compiled by the WUTC Staff into a Summary of Comments, without any analysis of, or response to, the comments.

Three and a half months after the workshop, on February 18, 2003, the WUTC issued for informal comments a “review draft” of its proposed rules, including the first versions of the Cash Transfer Rule and the

⁵ AR 6-8 (Preproposal Statement of Inquiry CR-101 dated Oct. 2, 2002).

⁶ AR 1-2 (Concise Explanatory Statement dated Sept. 25, 2002) at 1.

⁷ AR 3-9 (Notice of Opportunity to File Written Comments and Notice of Workshop dated Oct. 9, 2002).

⁸ Id. at AR 4.

Subsidiary Reporting Rule.⁹ Parties were given three weeks to comment on the proposed rules, and were notified of a workshop that was rescheduled for May 9, 2003.¹⁰ The WUTC received comments from 11 interested parties, including Qwest.¹¹ Before the workshop, the WUTC Staff summarized the comments received and provided Staff Responses.¹² In response to the comments filed by Qwest, the document simply indicated that Qwest's issues regarding the timing and scope of the financial reporting requirements "will be explored at the May 9 stakeholder workshop."¹³

Nearly seven months later—on December 3, 2003—the WUTC circulated its "second discussion draft" of the proposed rules.¹⁴ Ten parties submitted comments on the second discussion draft. Qwest's comments, among other things, stated that the proposed rules "vastly exceed the Commission's authority, run afoul of both state and federal

⁹ AR 51-85 (Notice of Opportunity to File Written Comments and Notice of Workshop and review draft dated Feb. 18, 2003). AR 78-80 (WAC 480-120-304, Telecommunications Companies) specifically refers to the rules at issue here.

¹⁰ AR 167-168 (Notice: Stakeholder Workshop Rescheduled dated Apr. 1, 2003).

¹¹ AR 96-97 (Qwest's Comments dated Mar. 11, 2003).

¹² AR 122-159 (Summary of Comments and Staff Comments dated Mar. 11, 2003).

¹³ Id. at AR 138.

¹⁴ AR 188-306 (Notice of Opportunity to File Written Comments and second discussion draft dated Dec. 3, 2003).

law, impose undue burden without providing corresponding benefit and are inconsistent with the increasingly competitive nature of the telecommunications industry.”¹⁵

Over three months later, on April 28, 2004, the WUTC issued its “third discussion draft.”¹⁶ Nine parties submitted comments, including Qwest,¹⁷ which noted that “many (if not all) of the arguments” made by Qwest with respect to the second discussion draft remained applicable to the third discussion draft, because the WUTC declined to address the issues raised by Qwest.¹⁸

This process was largely repeated when the WUTC issued its “fourth discussion draft.”¹⁹ Qwest’s comments noted that the fourth discussion draft “remains deeply flawed and, in many respects, unlawful”²⁰ in that the proposed rules “attempt to expand the Commission’s jurisdiction beyond the authority granted by the legislature.”²¹

¹⁵ AR 339-362 (Qwest’s Comments dated Jan. 16, 2004) at AR 340.

¹⁶ AR 374-480 (Notice of Opportunity to Comment and third discussion draft dated Apr. 28, 2004).

¹⁷ AR 501-544 (Qwest’s Comments dated May 18, 2004) at AR 502-522.

¹⁸ Id. at AR 502-503.

¹⁹ AR 554-663 (Notice of Opportunity to Comment and Notice of Consideration of Proposed Rulemaking (CR-102) and fourth discussion draft dated Jul. 2, 2004) at AR 554.

²⁰ AR 679-729 (Qwest’s Comments dated Jul. 16, 2004) at AR 680 ¶ 3.

²¹ Id.

On September 1, 2004, nearly two years after the process commenced, the WUTC moved into the formal part of the rulemaking process by issuing a Notice of Proposed Rulemaking (CR-102) (“Supplemental CR-102”).²² The WUTC considered submitted comments at its October 13, 2004 public meeting.²³

The WUTC did not adopt the proposed final rules, but instead issued a Supplemental CR-102 on December 22, 2004,²⁴ which sought comment on additional revisions to the proposed final rules (the “Revised Final Rules”).²⁵ Notably, the WUTC indicated that its intent was to “renotify the entire proposal”²⁶ and that parties were required to file entirely fresh comments, as earlier comments were not to be considered.²⁷

For the first time, the Revised Final Rules introduced the concept of using corporate credit/issuer rating as the basis for distinguishing among utilities for purposes of the Cash Transfer Rule. The Supplemental CR-102 created a distinction between utilities rated “investment grade”

²² AR 867-981 (Notice of Opportunity to Submit Written Comments on Proposed Rules and Notice of Proposed Rule Adoption Hearing and Proposed Rule Making (CR-102) dated Sept. 1, 2004) at AR 870-884.

²³ AR 1018-1023 (Concise Explanatory Statement dated Oct. 13, 2004).

²⁴ AR 1046-1149 (Opportunity to Submit Written Comments on Proposed Rules and Notice of Proposed Rule Adoption Hearing and Proposed Rule Making dated Dec. 22, 2004) at 1049-1149.

²⁵ *Id.* at AR 1046-1048.

²⁶ *Id.* at AR 1046.

²⁷ *Id.* at 1047.

and utilities not rated investment grade.²⁸ Because few utilities fell within the latter category, the practical effect of creating this distinction was to eliminate the opposition to the rules from the investment-grade-rated utilities and thereby reduce the number of utilities with an interest in mounting a legal challenge to the proposed rules.²⁹ Qwest submitted 27 pages of comments.³⁰

On February 28, 2005, the WUTC issued its General Order adopting the Revised Final Rules.³¹ The Commission did not address all of Qwest's concerns, including, but not limited to, the following:

- The Cash Transfer Rule requires “pre-filing” of reports. There exists no statutory authority permitting the WUTC to require such pre-filings.³²
- There exists no statutory authority permitting the WUTC to require pre-filing of reports of cash transfers between a public service company's subsidiary and the subsidiary's affiliates or subsidiaries.³³

Two of the rules subject to the General Order, the Cash Transfer Rule and the Subsidiary Reporting Rule, are the subject of this appeal.

²⁸ Id. at AR 1049.

²⁹ See AR 1162-1173 (PacifiCorp Comments dated Jan. 19, 2005) at AR 1165.

³⁰ AR 1179-1215 (Qwest's Comments dated Jan. 19, 2005).

³¹ AR 1335-1477 (General Order).

³² See AR 339-362 (Qwest's Comments dated Jan. 16, 2004) at AR 353-354.

³³ AR 501-544 (Qwest's Comments dated May 18, 2004) at AR 518; AR 1179-1215 (Qwest's Comments dated Jan. 19, 2005) at AR 1200.

C. The Appeal.

Pursuant to RCW 34.05.570(2),³⁴ Qwest petitioned for judicial review of the Commission's rulemaking, arguing that the Commission exceeded its rulemaking authority. Qwest filed its Petition for Judicial Review and Declaratory Judgment in Thurston County Superior Court on July 8, 2005.³⁵ After briefing and oral argument, the Superior Court issued its order on February 14, 2006, denying Qwest's petition.³⁶ Qwest filed its notice of appeal with this Court on March 9, 2006.³⁷

D. The Cash Transfer Rule, WAC 480-120-369.³⁸

The Cash Transfer Rule requires a regulated telephone company whose corporate/issuer rating is below the four highest rating categories from either Standard & Poor's, LLC or Moody's Investors Service, Inc. to report cash transfers it contemplates making between it and any affiliate or subsidiary. Additionally, the telecommunications company must also report contemplated cash transfers between its subsidiary and that subsidiary's affiliate or subsidiary. The rule imposes similar reporting requirements whenever a regulated company assumes an obligation or

³⁴ App. A (RCW 34.05.570) at 1-2.

³⁵ Clerk's Papers ("CP") 3-53 (Pet. for Judicial Rev. and Declaratory J. filed Jul. 8, 2005).

³⁶ CP 283-284 (Ord. Denying Pet. for Judicial Rev. and Declaratory J. filed Feb. 14, 2006).

³⁷ CP 285-288 (Notice of Appeal filed Mar. 9, 2006).

³⁸ App. B (WAC 480-120-369) at 4-5.

liability of any of its affiliates or subsidiaries.³⁹ Reports must be filed with the WUTC at least five business days in advance of the actual transfer. Failure to file the required reports could subject the telecommunications company to penalties under RCW 80.04.380-405.

The Cash Transfer Rule applies when the cumulative transactions with a subsidiary or affiliated interest for the prior 12 months exceed a threshold of 5 percent of the telecommunications company's prior calendar year's gross operating revenues subject to WUTC regulation. When this threshold is reached, the regulated company must report each cash transaction that exceeds 1 percent of the telephone company's prior calendar year's gross operating revenues subject to WUTC regulation.

Certain payments are excluded from the reporting requirements, including payments for federal and state taxes, payments for goods or services, and transactions previously approved or ordered by the WUTC, other regulatory agencies, or a court. Some dividends are also excluded so long as they do not exceed the larger of (1) net income during the period, or (2) the average level of dividends over the preceding three years. Sweep or cash management accounts used to transfer cash to or from a subsidiary or affiliate as part of customary or routine cash management

³⁹ Although the Cash Transfer Rule applies to both cash transfers and the assumption of obligation or liabilities by the non-investment-grade telecommunications company or its subsidiary on behalf of its affiliates and subsidiaries, for ease of discussion, Qwest employs the term "cash transfers" to refer to all transactions reportable under WAC 480-120-369.

functions between or among the company and its subsidiary or affiliate are also excluded.

The Cash Transfer Rule does not provide the WUTC with authority to approve, condition, modify or prevent intercompany cash transfers.

The order adopting the Cash Transfer Rule, however, states how the WUTC intends to use the information provided by the companies:

Providing the Commission with five days' advance notice of such transfers would allow the Commission to *immediately commence ratemaking or prudence proceedings, or, in particularly egregious instances, to seek to enjoin the utility* from proceeding with the cash transfer altogether, if necessary to protect the interests of the ratepayers or the public interest.^[40]

E. The Subsidiary Reporting Rule, WAC 480-120-395.⁴¹

Former WAC 480-146-360⁴² required public service companies to file with the Commission annual reports of “all affiliated interest transactions.” The Subsidiary Reporting Rule broadens the annual affiliated interest reporting requirements to include similar reporting of transactions between regulated telecommunications companies and their subsidiaries. This rule, thus, represents an expansion of the scope of regulation by the WUTC.⁴³

⁴⁰ AR 1335-1477 (General Order) at AR 1354 ¶ 26 (emphasis added).

⁴¹ App. C (WAC 480-120-395) at 6-7.

⁴² App. D (*former* WAC 480-146-360 (2001)) at 8-9.

⁴³ WAC 460-120-395 adopts provisions from former WAC 480-146-360, entitled “Rules Relating to: Securities and Affiliated Interests,” which was repealed as a result of the subject rulemaking. AR 1335-1477 (General Order) at AR 1348. The annual reporting requirement was moved to the general

Under this rule, each telecommunications company subject to the provisions of chapter 80.16 RCW must file an annual report summarizing transactions that occurred between the company and its affiliated interests, and the company and its subsidiaries. When total company transactions with an affiliated interest or a subsidiary are less than \$100,000 for the reporting period, the company must provide the name of the affiliated interest or subsidiary participating in the transactions and the total dollar amounts of the transactions. But when total company transactions with an affiliated interest or subsidiary are equal to or exceed \$100,000 for the reporting period, the company must provide:

- a balance sheet and income statement for such affiliated interest;
- a description of the products or services provided to or from the company and each such affiliated interest or subsidiary;
- a description of the pricing basis or costing method, and procedures for allocating costs for such products or services, and the amount and accounts charged during the year;
- a description of the terms of any loans between the company and each such affiliated interest or subsidiary and a listing of the year-end loan amounts and maximum loan amounts outstanding during the year;
- a description of the terms and total amount of any obligation or liability assumed by the company for each such affiliated interest or subsidiary;

telecommunications industry chapter (ch. 480-120 WAC) and expanded to include subsidiary reporting.

- a description of the activities of each such affiliated interest or subsidiary with which the company has transactions; and
- a list of all common officers and directors between the company and each such affiliated interest or subsidiary, along with their titles in each organization.

See WAC 480-120-395(1), (3).

III. ARGUMENT

A. **Qwest Is Not Required to Prove That It Was “Substantially Prejudiced” to Obtain the Applicable Relief.**

Judicial review of agency actions is governed by RCW 34.05.570.

Subsection (1) provides a general standard for review for all agency actions that are applicable “[e]xcept to the extent that this chapter or another statute provides otherwise[.]” RCW 34.05.570(1) (emphasis added). Subsection (1)(d) provides a general standard by which a court may grant relief:

The court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of.

RCW 34.05.570(1)(d). The Superior Court found the standard in subsection (1)(d) applicable to Qwest, which is incorrect.⁴⁴ There is a specific standard in subsection (2) by which courts grant relief when reviewing agency rules.

Subsection (2)(a) specifically governs judicial review of agency rulemaking: “[a] rule may be reviewed by petition for declaratory

⁴⁴ CP 283-284 (Ord. Denying Pet. for Judicial Rev. and Declaratory J. filed Feb. 14, 2006).

judgment filed pursuant to this subsection or in the context of any other review proceeding under this section.” RCW 34.05.570(2)(a). In place of the general standard for relief (quoted above), subsection (2)(b) provides a specific standard governing when a court may grant relief as to a rule and the type of relief it may grant:

The validity of any rule may be determined upon petition for a declaratory judgment addressed to the superior court of Thurston county, *when it appears that the rule, or its threatened application, interferes with or impairs or immediately threatens to interfere with or impair the legal rights or privileges of the petitioner.* The declaratory judgment order may be entered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question.

RCW 34.05.570(2)(b)(i) (emphasis added). In short, the validity of a rule may be tested in a declaratory action—such as commenced by Qwest here—if the rule merely interferes with a party’s legal rights or privileges. Indeed, the statute expressly permits such a challenge if the rule merely “immediately threatens” to interfere with a party’s rights or privileges. Thus, by the plain language of the statute alone, RCW 34.05.570(1)(d) does not apply here, as RCW 34.05.570(2)(b)(i) provides an *exception* to the general standard, as contemplated in RCW 34.05.570(1). Wash. Publ. Ports Ass’n v. Dep’t of Revenue, 148 Wn.2d 637, 645 (2003) (courts must give effect to plain meaning of statute).

Washington courts have similarly applied the standard in RCW 34.05.570(2)(b)(i) to judicial review of agency rules. See Rios v. Wash. Dep't Labor and Indus., 145 Wn.2d 483, 491 (2002); Simpson Tacoma Kraft Co. v. Dep't of Ecology, 119 Wn.2d 640, 646-47 (1992); see also Wash. Indep. Tel. Ass'n v. Telecomm. Ratepayers Ass'n for Cost-Based and Equitable Rates (“TRACER”), 75 Wn. App. 356, 362 (1994) (applying RCW 34.05.570(2)(c) to review of agency rule, and holding that “[o]ur only concern is whether the Commission exceeded its statutory authority in enacting this particular rule”).

In any event, the Superior Court even erred in its application of RCW 34.05.570(1)(d). The statute does not require some specified financial impact before a party may seek review of a facially unlawful rule. By virtue of these rules, Qwest must file unlawfully compelled reports that it previously need not have filed. It is thereby substantially prejudiced.⁴⁵

B. The WUTC Exceeded Its Statutory Authority in Adopting the Cash Transfer Rule.

1. *RCW 80.04.080 Does Not Grant the WUTC Authority to Adopt the Cash Transfer Rule.*

In its General Order, the WUTC only identified RCW 80.04.080⁴⁶ as its authority for adopting the Cash Transfer Rule:

⁴⁵ In contrast, an “investment grade” company (see supra note 37) not subject to the Cash Transfer Rule would not be substantially prejudiced thereby. Qwest is subject to that rule, and its legal rights and privileges are thereby prejudiced.

⁴⁶ App. E (RCW 80.04.080) at 10-11.

RCW 80.04.080 grants the Commission broad authority to require companies to provide special reports “*concerning any matter about which the commission is authorized or required by this or any other law, to inquire into or keep itself informed about.*” This broad authority provides sufficient basis to request notice of the large cash transfers that are encompassed in the rules.^[47]

RCW 80.04.080 applies only to “public service companies.” The term “public service company” is defined in RCW 80.04.010 as “every gas company, electrical company, telecommunications company, and water company.” RCW 80.04.080 enables the WUTC to require such companies to provide certain monthly and periodic reports:

The commission shall have authority to require any *public service company* to file *monthly reports* of earnings and expenses, and to file *periodical or special, or both periodical and special, reports* concerning any matter about which the commission is authorized or required by this or any other law, to inquire into or keep itself informed about, or which it is required to enforce, such periodical or special reports to be under oath whenever the commission so requires.

RCW 80.04.080 (emphasis added).⁴⁸

The Cash Transfer Rule exceeds the authority granted to the WUTC under RCW 80.04.080 because it applies to more than just public service companies. It also applies to subsidiaries and affiliates of

⁴⁷ AR 1335-1477 (General Order) at AR 1353 ¶ 25 (emphasis added).

⁴⁸ App. E (RCW 80.04.080) at 10-11.

telecommunications companies, which, in many instances, may not be public service companies as required by the statute. For example, as written, the rule purports to require reporting of contemplated cash transfers between an unregulated subsidiary and that subsidiary's unregulated affiliate, thus greatly exceeding the Commission's authority. This alone is a sufficient reason to invalidate the rule. TRACER, 75 Wn. App. at 363 ("If an enabling statute does not authorize . . . a particular regulation, that regulation must be declared invalid despite its practical necessity or appropriateness.").

But even as applied to public service companies, the Cash Transfer Rule exceeds the authority granted under RCW 80.04.080. First, the reports required under the Cash Transfer Rule are not "monthly reports of earnings and expenses." They are, in fact, non-periodic and concern yet-to-occur transactions that, as a result, are neither earnings nor expenses. Stone, 116 Wn. App. at 438 (in construing statutes, courts assume legislature means what it says and give words their plain and ordinary meaning). Second, in addition to monthly earnings and expense reports, the statute only permits the WUTC to require companies to provide "periodical" or "special" reports concerning those matters "about which the commission is authorized or required *by this or any other law*, to inquire into or keep itself informed about, or which it is required to enforce[.]" (Emphasis added.)⁴⁹ Not surprisingly, the Commission's

⁴⁹ App. E (RCW 80.04.080) at 11.

General Order does not even attempt to establish the required nexus between the cash transfer regulation and any other express statutory authority. Qwest raised the issue of the lack of express authority to regulate planned cash transfers at every opportunity during the lengthy rulemaking proceeding, but the WUTC never adequately addressed the question.⁵⁰ This is because Washington law contains no statute that authorizes or requires the Commission to “inquire into or stay informed about” contemplated cash transfers between regulated telephone companies and their subsidiaries or affiliates, much less planned transfers by the subsidiaries themselves.

That the legislature has not granted the WUTC authority to require pre-notification of cash transfers is demonstrated by the fact that the legislature has specifically authorized the WUTC to receive pre-notification of other types of transactions when it deemed that information appropriate:

- Chapter 80.08 RCW requires pre-notification for securities issuances.
- Chapter 80.16 RCW requires pre-notification of affiliated interest transactions.
- Chapter 80.12 RCW concerns pre-approval for certain transfers of utility property dedicated to public use.

⁵⁰ See, e.g., AR 339-362 (Qwest’s Comments dated Jan. 16, 2004) at AR 353-355; AR 501-544 (Qwest’s Comments dated May 18, 2004) at AR 517-518; AR 679-729 (Qwest’s Comments dated July 16, 2004) at AR 680; AR 996-999 (Qwest’s Comments dated Sept. 22, 2004) at AR 996; AR 1179-1215 (Qwest’s Comments dated Jan. 19, 2005) at AR 1199-1201.

These statutes specifically designate the types of pre-notification the WUTC is entitled to receive. None of these statutes, however, speak to pre-notification of contemplated cash transfers to or between subsidiaries or affiliates.

The WUTC’s reliance on the general language of RCW 80.04.080—without regard to the required nexus with other expressly granted authority—is similar to an argument rejected by the appeals court in TRACER. There, the WUTC created a community calling fund to support smaller companies experiencing revenue shortfalls due to the expansion of local calling areas. 75 Wn. App at 361. Washington Independent Telephone Association (“WITA”), which supported the WUTC’s creation of the community calling fund, argued that the rule was authorized by the general language of RCW 80.01.040(3), which granted the WUTC authority to “[r]egulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices” of telecommunications companies. Id. at 368-69 (brackets in original). The Court rejected WITA’s argument, holding that the authority of administrative agencies must be *limited to those specific powers* granted to them by the legislature:

Here, WITA has not cited any section of Title 80 of the Revised Code of Washington that permits the Commission to set up a fund, such as the [community calling fund]

[A]n administrative agency must be strictly limited in its operations to those powers granted by the legislature.

Id. (citing Cole v. State Utils. & Transp. Comm'n, 79 Wn.2d 302, 306 (1971)) (emphasis added).

Furthermore, even if the Commission had limited authority to require pre-notification of contemplated cash transfers to *affiliates*, which it does not, the WUTC's own words and opinions acknowledge that it does not have authority to require pre-notification of similar *subsidiary transactions*. Before this rulemaking commenced, the WUTC had not imposed reporting or filing requirements with respect to transactions between a regulated company and its subsidiaries; such filing and reporting requirements were applicable only to transactions between a regulated company and an *affiliate*. See App. D (*former* WAC 480-146-360 (2001)) at 8-9. The WUTC explained its treatment as follows in Waste Management of Seattle, Inc. v. WUTC, 123 Wn.2d 621, 636 (1994):

[T]he WUTC points out that because RCW 81.16.030^[51] does not apply to parent-subsidiary relationships, the WUTC has used its general rate-making authority to review transactions between parent and subsidiary companies.

⁵¹ RCW 81.16.030 is the title 81 (transportation) version of the statute applicable to utilities, including Qwest, in title 80, RCW 80.16.030. Both versions are virtually identical.

In other words, the WUTC exercised oversight over transactions involving *affiliates* under chapter 80.16 RCW, but, in the absence of similar oversight authority with respect to transactions involving *subsidiaries*, the WUTC relied on its ability to review such transactions in ratemaking proceedings when the utility sought to include the impact of such transactions in rates.

This treatment was confirmed in a 1998 order that approved certain transactions between Puget Sound Energy and a wholly owned subsidiary, ConnexT. In its Order Approving Application, the WUTC stated as follows:

6. So long as ConnexT remains a wholly owned *subsidiary* of PSE, Commission Staff shall have access to those books and records of ConnexT pursuant to [Commission's authority] under its general rate making authority to review transactions between parent and subsidiary companies. In the event ConnexT becomes an *affiliate* of PSE, the Commission is authorized, pursuant to RCW 80.16.030, to require satisfactory proof in proceedings of the reasonableness of payment or compensation by PSE to ConnexT.

App. F (No. UE-980866, Order) at 19-20 (emphasis added).⁵²

By initiating the rulemaking on financial reporting rules, the WUTC has sought to extend to *subsidiaries* an oversight scheme similar to what was in place with respect to *affiliates*, disregarding the distinction

⁵² App. F (*In re Puget Sound Energy, Inc.*, No. UE-980866 (Wash. Utils. & Transp. Comm'n Sept. 24, 1998), Ord. Approving Application) at 19-20.

historically acknowledged by the Commission. The WUTC has authority over subsidiaries in the ratemaking process, but the Commission's ratemaking authority is limited to after-the-fact review of test-year transactions in the process of evaluating and determining appropriate end-user rates on a prospective basis. This is discussed in more detail below.

2. *The Authorities Raised By the WUTC After the Rulemaking Do Not Provide the Required Nexus.*

The WUTC is a creature of the legislature, and, as such, it "must be strictly limited in its operations to those powers granted by the legislature." TRACER, 75 Wn. App. at 368-69 (citing Cole, 79 Wn.2d at 306). RCW 80.04.080 only permits the Commission to require public service companies to file "reports concerning any matter about which the commission is authorized or required by *this or any other law*, to inquire into or keep itself informed about[.]"

To be clear, during the rulemaking process, the WUTC only identified RCW 80.04.080 as its authority for adopting the Cash Transfer Rule, and that rule plainly does not grant the Commission the authority to adopt the rules in question. It was not until Qwest filed this lawsuit in Superior Court that the Commission, taking a shotgun approach to finding applicable authorization, set forth several other unrelated statutes ostensibly granting the WUTC authority to adopt the Cash Transfer Rule. But this strategy is wholly inadequate.

RCW 80.04.080 requires the Commission to point to a clear and specific statutory grant of authority; it is not sufficient to simply list out a number of statutes in hopes that a court will latch onto one as suitable authority. In fact, this approach is exactly what this Court rejected in the TRACER case. There, instead of pointing to one clear authority, the appellant likewise listed out a host of tangentially related statutes in an attempt to find a suitable basis for an unlawful rule. The Court rejected the appellant's overly broad readings of the statutes, finding that appellants had not cited a single section of title 80 of the Revised Code of Washington that specifically permitted the Commission to adopt the challenged rule. TRACER, 75 Wn. App. at 368. Moreover, the Court explicitly rejected the appellant's attempts to interpret the Commission's general powers—specifically, the Commission's ratemaking power and its power to regulate in the public interest—as the basis for the rule in question. Id. at 365-68. Neither of these statutes, the Court found, granted the Commission specific and particular authority to adopt the rule in question. Id.

As in the TRACER case, none of the statutes belatedly relied on by the Commission here specifically grants it the requisite authority to require the pre-reporting of contemplated cash transfers. The three relied upon most significantly by the Commission are discussed immediately below. None, however, provides the required nexus.

* RCW 80.04.070. This statute grants the WUTC authority to “inspect the accounts, books, papers and documents of any public service company[.]” But the Cash Transfer Rule requires the creation of reports that are *not* a part of the regulated company’s books and documents. In particular, the Cash Transfer Rule calls for a report about transactions that have not yet occurred.

* RCW 80.36.140 to 80.36.180. These statutes grant the WUTC authority to regulate telecommunications rates and services. Rates are adjusted through a ratemaking process, however, that requires the Commission to hold a *hearing* to set just and reasonable rates. RCW 80.36.140. To determine such rates, the WUTC examines several factors:

The ultimate determination to be made by the Commission in this matter regarding the Company’s rates and charges is whether the rates and charges proposed in revised tariffs are fair, just, reasonable and sufficient, pursuant to RCW 80.28.020. These questions are resolved by establishing the fair value of respondent’s property in-service for intrastate service in the State of Washington, determining the Washington intrastate adjusted results of operations during the test year, determining the proper rate of return permitted respondent on that property, and then ascertaining the appropriate spread of rates charged various customers to recover that return.^[53]

⁵³ App. G (Wash. Utils. & Transp. Comm’n v. U S WEST Commc’ns, Inc., No. UT-950200 (Wash. Utils. & Transp. Comm’n Apr. 11, 1996), Fifteenth Suppl. Ord.) excerpt at 25.

Ratemaking, by its nature, involves after-the-fact review of a Company's transactions during a test-year in the past. Indeed, the Commission's regulations make clear that the ratemaking process involves a review of historical "test-year." WAC 480-07-510(3)(b)(i). In no way do these statutes grant authority to require pre-reporting of cash transfers.

* RCW 80.36.140. This statute also grants the Commission authority to regulate service quality, but specifically limits the WUTC's authority to determining the "adequate and efficient . . . equipment, facilities and service to be thereafter installed" and to "fix the same by order of rule" *after hearing and entering findings* that "the equipment, facilities or service . . . is inadequate[.]" Again, the statute does not authorize the WUTC to require pre-reporting about a company's financial activities which may or may not affect future service quality.

In sum, neither the statute on which the WUTC relies, RCW 80.04.080, nor any other statute, empowers the WUTC to require pre-notification of contemplated cash transfers by regulated companies or their subsidiaries. The WUTC's strategy of pointing to myriad unrelated statutory authorities is legally infirm, and this Court should find the WUTC's adoption of the Cash Transfer Rule invalid.

C. The WUTC Exceeded Its Statutory Authority in Adopting the Subsidiary Reporting Rule.

The Subsidiary Reporting Rule suffers from the same problems discussed in connection with the Cash Transfer Rule. The WUTC relies

on RCW 80.04.080 as its authority to adopt the Subsidiary Reporting Rule.⁵⁴ Again, the WUTC overlooks the fact that RCW 80.04.080 permits the Commission to impose reporting requirements only on those matters that the Commission is “*authorized or required by [RCW 80.04.080] or any other law*, to inquire into or keep itself informed about[.]” (Emphasis added.)

Because RCW 80.04.080 does not specifically grant authority to the WUTC to impose subsidiary reporting requirements, the WUTC must find its authority to impose such regulations in “*other law*” that authorizes or requires the Commission to “inquire into or keep itself informed about” subsidiary transactions. But, again, no such law exists.

As discussed above, chapter 80.16 RCW, imposes requirements and authorizes reports relating to affiliated interest transactions. However, the definition of “affiliated interest” found in RCW 80.16.010⁵⁵ excludes subsidiaries:

Every corporation and person
owning or holding directly or indirectly five
percent or more of the voting securities of
any public service company engaged in any
intrastate business in this state;

Every corporation and person, other
than those above specified, in any chain of
successive ownership of five percent or
more of voting securities, the chain

⁵⁴ AR 1335-1477 (General Order) at AR 1356.

⁵⁵ App. H (RCW 80.16.010) at 26-27.

beginning with the holder of the voting securities of such public service company;

Every corporation five percent or more of whose voting securities are owned by any person or corporation owning five percent or more of the voting securities of such public service company or by any person or corporation in any such chain of successive ownership of five percent or more of voting securities;

Every corporation or person with which the public service company has a management or service contract; and

Every person who is an officer or director of such public service company or of any corporation in any chain of successive ownership of five percent or more of voting securities.

As a matter of law, the plain language of RCW 80.16.010 does not include subsidiary corporations in the class of affiliated interests that are required to report under that section. The WUTC itself recognized that subsidiaries were not within the scope of chapter 80.16 RCW (and the virtually-identical chapter 81.16), as previously indicated in the Waste Management of Seattle and Puget Sound Energy decisions.

Moreover, contrary to the Commission's position,⁵⁶ the language of RCW 80.04.070 plainly does not include subsidiary corporations—many of which may be unregulated—in the class of companies over which the Commission has authority to inspect books and accounts. The statute is limited to public service companies.

⁵⁶ AR 1335-1477 (General Order) at AR 1357.

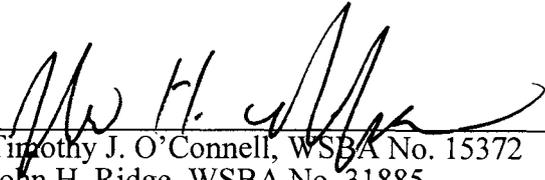
An administrative agency's power and authority is limited to that which is expressly granted by statute or necessarily implied in enabling statutory language. No statute requires or permits the WUTC to "inquire into or keep itself informed about" subsidiary transactions. RCW 34.05.570(2)(c) requires that the court declare a rule invalid if it finds that it exceeds the statutory authority of the agency, and this Court should do so here.

IV. CONCLUSION

Because the WUTC exceeded its rulemaking authority in adopting the Cash Transfer Rule and the Subsidiary Reporting Rule, this Court should find the rules invalid.

Dated: June 16, 2006.

STOEL RIVES LLP



Timothy J. O'Connell, WSBA No. 15372
John H. Ridge, WSBA No. 31885

Lisa Anderl, WSBA No. 13236
Adam Sherr, WSBA No. 25291
Attorneys for Appellant Qwest Corporation

No. 34523-4-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

QWEST CORPORATION,
APPELLANT,

V.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,
RESPONDENT.

APPENDIX

Timothy J. O'Connell, WSBA No. 15372
John H. Ridge, WSBA No. 31885
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101
(206) 624-0900

Lisa Anderl, WSBA No. 13236
Adam Sherr, WSBA No. 25291
1600 Seventh Avenue, Room 3206
Seattle, WA 98191
(800) 214-8043

Attorneys for Appellant Qwest Corporation

TABLE OF APPENDICES

Appendix A: RCW 34.05.570	1
Appendix B: WAC 480-120-369.....	4
Appendix C: WAC 480-120-395.....	6
Appendix D: <i>Former</i> WAC 480-146-360 (2001).....	8
Appendix E: RCW 80.04.080.....	10
Appendix F: <u>In re Puget Sound Energy, Inc.</u> , No. UE-980866 (Wash. Utils. & Transp. Comm'n Sept. 24, 1998), Order Approving Application	12
Appendix G: <u>Wash. Utils. & Transp. Comm'n v. U S WEST Commc'ns, Inc.</u> , No. UT-950200 (Wash. Utils. & Transp. Comm'n Apr. 11, 1996), Fifteenth Supplemental Order (excerpt).....	25
Appendix H: RCW 80.16.010	26

APPENDIX A
RCW 34.05.570. Judicial Review.

(1) Generally. Except to the extent that this chapter or another statute provides otherwise:

(a) The burden of demonstrating the invalidity of agency action is on the party asserting invalidity;

(b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken;

(c) The court shall make a separate and distinct ruling on each material issue on which the court's decision is based; and

(d) The court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of.

(2) Review of rules. (a) A rule may be reviewed by petition for declaratory judgment filed pursuant to this subsection or in the context of any other review proceeding under this section. In an action challenging the validity of a rule, the agency shall be made a party to the proceeding.

(b)(i) The validity of any rule may be determined upon petition for a declaratory judgment addressed to the superior court of Thurston county, when it appears that the rule, or its threatened application, interferes with or impairs or immediately threatens to interfere with or impair the legal rights or privileges of the petitioner. The declaratory judgment order may be entered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question.

(ii) From June 10, 2004, until July 1, 2008:

(A) If the petitioner's residence or principal place of business is within the geographical boundaries of the third division of the court of appeals as defined by RCW 2.06.020(3), the petition may be filed in the superior court of Spokane, Yakima, or Thurston county; and

(B) If the petitioner's residence or principal place of business is within the geographical boundaries of district three of the first division of the court of appeals as defined by RCW 2.06.020(1), the petition may be filed in the superior court of Whatcom or Thurston county.

(c) In a proceeding involving review of a rule, the court shall declare the rule invalid only if it finds that: The rule violates constitutional provisions; the rule exceeds the statutory authority of the agency; the rule was adopted without compliance with statutory rule-making procedures; or the rule is arbitrary and capricious.

(3) Review of agency orders in adjudicative proceedings. The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

(a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;

(b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

(c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;

(d) The agency has erroneously interpreted or applied the law;

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;

(f) The agency has not decided all issues requiring resolution by the agency;

(g) A motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied or, if no motion was made, facts are shown to support the grant of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion;

(h) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or

(i) The order is arbitrary or capricious.

(4) Review of other agency action.

(a) All agency action not reviewable under subsection (2) or (3) of this section shall be reviewed under this subsection.

(b) A person whose rights are violated by an agency's failure to perform a duty that is required by law to be performed may file a petition for review pursuant to RCW 34.05.514, seeking an order pursuant to this subsection requiring performance. Within twenty days after service of the petition for review, the agency shall file and serve an answer to the petition, made in the same manner as an answer to a complaint in a civil action. The court may hear evidence, pursuant to RCW 34.05.562, on material issues of fact raised by the petition and answer.

(c) Relief for persons aggrieved by the performance of an agency action, including the exercise of discretion, or an action under (b) of this subsection can be granted only if the court determines that the action is:

(i) Unconstitutional;

(ii) Outside the statutory authority of the agency or the authority conferred by a provision of law;

(iii) Arbitrary or capricious; or

(iv) Taken by persons who were not properly constituted as agency officials lawfully entitled to take such action.

APPENDIX B
WAC 480-120-369. Transferring cash or assuming obligations.
("Cash Transfer Rule")

This section does not apply to a company classified as competitive pursuant to RCW 80.36.320, or to a local exchange company that serves less than two percent of the access lines in the state of Washington.

(1) At least five business days before a telecommunications company whose corporate/issuer rating is not in one of the four highest rating categories of either Standard & Poor's L.L.C. or Moody's Investors Service, Inc., or its subsidiary transfers cash to any of its affiliated interests or subsidiaries or assumes an obligation or liability of any of its affiliated interests or any of its subsidiaries, the company must report to the commission an estimate of the amount to be transferred and the terms of the transaction when the transaction will exceed thresholds as described in (a) or (b) of this subsection.

(a) The company must report if the cumulative transactions to a subsidiary or affiliated interest for the prior twelve months exceed a threshold of five percent, which is based on the prior calendar year gross operating revenue from Washington intrastate operations subject to commission jurisdiction.

(b) When the threshold in (a) of this subsection has been reached, the company must report each subsequent transaction exceeding a threshold of one percent for the prior twelve-month period, which is based on the prior calendar year gross operating revenue from Washington intrastate operations subject to commission jurisdiction.

(2) The reporting requirements in subsection (1) of this section do not include payments for:

(a) Federal and state taxes;

(b) Goods, services, or commodities;

(c) Transactions, attributed to the regulated entity, previously approved or ordered by the commission, other regulatory agencies, or the court;

(d) Dividends to the extent the level of such dividends over a twelve-

month period does not exceed the larger of:

(i) Net income during such period; or

(ii) The average level of dividends over the preceding three years; or

(e) Sweep or cash management accounts used to transfer funds to or from a subsidiary or affiliate as part of the customary and routine cash management functions between or among the company and its subsidiary or affiliate.

APPENDIX C

WAC 480-120-395. Affiliated interest and subsidiary transactions report.
("Subsidiary Reporting Rule")

- (1) By June 1 of each year, each telecommunications company subject to the provisions of chapter 80.16 RCW must file a report summarizing all transactions, except for transactions provided at tariff rates, that occurred between the company and its affiliated interests, and the company and its subsidiaries, during the period January 1 through December 31 of the preceding year.
- (2) The information required in this subsection must be for total company, total state of Washington, and Washington intrastate. The report must include a corporate organization chart of the company and its affiliated interests and subsidiaries.
- (3) When total company transactions with an affiliated interest or a subsidiary are less than one hundred thousand dollars for the reporting period, the company must provide the name of the affiliated interest or subsidiary participating in the transactions and the total dollar amounts of the transactions. When total company transactions with an affiliated interest or subsidiary equal or exceed one hundred thousand dollars for the reporting period, the company must provide:
 - (a) A balance sheet and income statement for such affiliated interest;
 - (b) A description of the products or services provided to or from the company and each such affiliated interest or subsidiary;
 - (c) A description of the pricing basis or costing method, and procedures for allocating costs for such products or services, and the amount and accounts charged during the year;
 - (d) A description of the terms of any loans between the company and each such affiliated interest or subsidiary and a listing of the year-end loan amounts and maximum loan amounts outstanding during the year;
 - (e) A description of the terms and total amount of any obligation or liability assumed by the company for each such affiliated interest or subsidiary;

(f) A description of the activities of each such affiliated interest or subsidiary with which the company has transactions; and

(g) A list of all common officers and directors between the company and each such affiliated interest or subsidiary, along with their titles in each organization.

(3) The report required in this section supersedes the reporting requirements contained in previous commission orders authorizing affiliated interest transactions pursuant to chapter 80.16 RCW.

(4) The company is obligated to file verified copies of affiliated interest contracts and arrangements as stated in WAC 480-120-375 (Affiliated interests--Contracts or arrangements).

APPENDIX D
Former WAC 480-146-360 (2001). Reporting of affiliated interest transactions.

(1) Every public service company, as defined in the application of rules WAC 480-146-240, must file with the commission by June 1 of every year an annual report of all affiliated interest transactions that occurred during the period January 1 through December 31 of the preceding year.

“Affiliated interest transactions” mean contracts or arrangements between affiliated interests as defined in RCW 80.16.010.

(2) The annual report must include a corporate organization chart of the public service company and its affiliates.

(3) The annual report must contain the following information for each affiliate that had transactions with the public service company during the preceding year:

(a) A description of the products or services flowing between the public service company and any affiliated interest;

(b) A description of the pricing basis or costing method and procedures for allocating costs for such products or services rendered, and the amount and accounts charged;

(c) A description of the terms of any loans between the public service company and its affiliate and a listing of the year-end loan amounts and maximum loan amounts outstanding during the year;

(d) A description of the terms and maximum amount of any debt guarantees by the public service company for any affiliate and a listing of the year end debt amounts and maximum debt amounts outstanding during the year;

(e) A detailed description of the activities of the affiliates with which the public service company has transactions;

(f) A list of all common officers and directors of the affiliated interest company and the public service company along with their titles in each organization, and;

(g) Appropriate financial information for each affiliated interest company including, but not limited to, a balance sheet and income statement.

The commission may request any additional information during its review of the public service company's annual report of affiliated interest transactions.

(4) The annual report required by this section will supersede the reporting requirements contained in previous commission orders authorizing affiliated interest transactions pursuant to chapter 80.16 RCW.

(5) The public service company is obligated to file verified copies of affiliated interest contracts and arrangements as stated in WAC 480-146-350.

APPENDIX E
RCW 80.04.080. Annual Reports.

Every public service company shall annually furnish to the commission a report in such form as the commission may require, and shall specifically answer all questions propounded to it by the commission, upon or concerning which the commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor and the manner of payment for same, the dividends paid, the surplus fund, if any, and the number of stockholders, the funded and floating debts and the interest paid thereon, the cost and value of the company's property, franchises and equipment, the number of employees and the salaries paid each class, the accidents to employees and other persons and the cost thereof, the amounts expended for improvements each year, how expended and the character of such improvements, the earnings or receipts from each franchise or business and from all sources, the proportion thereof earned from business moving wholly within the state and the proportion earned from interstate business, the operating and other expenses and the proportion of such expense incurred in transacting business wholly within the state, and proportion incurred in transacting interstate business, such division to be shown according to such rules of division as the commission may prescribe, the balances of profit and loss, and a complete exhibit of the financial operations of the company each year, including an annual balance sheet. Such report shall also contain

such information in relation to rates, charges or regulations concerning charges, or agreements, arrangements or contracts affecting the same, as the commission may require; and the commission may, in its discretion, for the purpose of enabling it the better to carry out the provisions of this title, prescribe the period of time within which all public service companies subject to the provisions of this title shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept. Such detailed report shall contain all the required statistics for the period of twelve months ending on the last day of any particular month prescribed by the commission for any public service company. Such reports shall be made out under oath and filed with the commission at its office in Olympia on such date as the commission specifies by rule, unless additional time be granted in any case by the commission. The commission shall have authority to require any public service company to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matter about which the commission is authorized or required by this or any other law, to inquire into or keep itself informed about, or which it is required to enforce, such periodical or special reports to be under oath whenever the commission so requires.

APPENDIX F
Order Approving Application
No. UE-980866
(WUTC Sept. 24, 1998)

BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

In the Matter of the Filing of

PUGET SOUND ENERGY, INC.

For Approval of Property Transfers
and Related Transactions with
ConnexT, Inc.

DOCKET UE-980866

ORDER APPROVING
APPLICATION

BACKGROUND

On June 22, 1998, Puget Sound Energy (PSE or Company) filed with the Commission an application for Commission approval of several agreements entered into between PSE (or its predecessor companies, Puget Sound Power & Light Company and Washington Natural Gas Company) and ConnexT, Inc. (ConnexT), a wholly owned subsidiary of PSE. These agreements were executed subject to regulatory review, and certain aspects of these agreements required regulatory approval. In accordance with RCW 80.12.020, WAC 480-100-036, and WAC 480-143-010, PSE seeks an Order of the Commission which:

- (1) authorizes the Company to transfer certain equipment and to assign its rights under certain leases, licenses and agreements to ConnexT;
- (2) authorizes the Company to assign its rights under certain licenses and agreements to ConnexT in exchange for which the Company receives certain royalty payments; and
- (3) approves proposed accounting treatment with respect to transactions between the Company and ConnexT.

The Company included as appendices to its Application the following agreements between the Company and ConnexT:

Appendix Agreement

1 The Master Services Agreement between Puget Sound Power & Light Company and ConnexT, Inc. dated as of April 2, 1996, including (a) the Assignment and Assumption Agreement, (b) the Equipment Transfer Agreement, and (c) the Software License Agreement (as amended by Amendment No.1 dated January 20, 1998), which are included as Exhibits G, I, and K, respectively, to the Master Services Agreement;

2 Assignment and Assumption Agreement between Puget Sound Energy, Inc., and ConnexT, Inc., dated January 20, 1998;

3 Equipment Transfer Agreement between Puget Sound Energy, Inc., and ConnexT, Inc., dated January 20, 1998;

4 Initial Service Contract for Basic Services between Puget Sound Power & Light Company and ConnexT, Inc., dated July 1, 1996;

5 Agreement between Puget Sound Power & Light Company and TELLUS, Inc., dated October 1, 1996; and

6 Service Contract No.153 for Special Projects between Puget Sound Energy, Inc., and ConnexT, Inc., dated December 23, 1996 (the "ConsumerLink Development Agreement"), including the CL3 Software License Agreement.

The Company also included with its Application a copy of its most recent satisfaction of the requirements of WAC 480-143-010.

MEMORANDUM

I. Overview

According to the Application, the agreements will allow the Company to outsource certain billing and customer information technology functions currently performed by the Company. These services will be performed by

ConnexT, a wholly owned subsidiary devoted to providing metering, customer information systems and billing functions, and distribution software for utilities. The Application identifies the following benefits for customers arising from the outsourcing enabled by the agreements:

Spreading the Costs of Developing the Customer Information System (“CIS”): The costs of developing the customer information and billing systems will be spread over a larger customer base, through marketing of these services to other utilities. Under the accounting proposed by PSE, receipt of the royalty payments from marketing by ConnexT –

activities that PSE would not undertake on its own -- will result in monies that will be recorded as revenues by the Company in Accounts 456 and 495. As a result, these revenues will reduce the revenue requirement necessary to fund the cost of the new CIS system. The Application asserts that customers are thus better off than under the alternative; in the absence of this arrangement, customers would bear the entire costs that are associated with developing the CIS software. According to the Application, the arrangement of using a subsidiary is appropriate given the risks involved, and the difficulty for a regulated utility to achieve success in marketing and maintaining this type of product.

Priced Competitively: According to the Application, the price for ConnexT’s services under the Initial Service Contract for Basic Services was established at the outset at a level lower than Puget’s and WNG’s then-existing costs and is expected to continue to be a cost-effective method of obtaining these services.

Advantageous Contract Terms: The Master Services Agreement includes a “Most Favored Pricing” provision which will allow PSE to obtain the best terms that any other client of ConnexT negotiates.

Benefits from Marketing and Development of Software: PSE receives royalty payments from ConnexT’s marketing of software, and free use of derivative software products developed by

ConnexT for a specified period.

More Choices: ConnexT is a separate organization devoted exclusively to metering, customer information systems, billing functions, and distribution software. According to the Application, this specialization will facilitate the implementation of new technology and result in the development of new products and services to provide customers with better information and increased options regarding their use of energy.

Attraction and Retention of Quality Workforce: Formation of a subsidiary allowed ConnexT to attract and retain high-tech computer programmers in an increasingly competitive and specialized labor market. ConnexT has more flexibility to offer an attractive compensation package and career options.

Risk of Developing a New Customer Information System Shifted: The ConsumerLink Development agreement requires ConnexT to develop a new CIS at a fixed cost, thereby protecting PSE from the cost overruns and unsuccessful projects experienced by other utilities. The new CIS system is being developed to meet Year 2000 concerns and to provide operating efficiencies. The Application included a description of the inadequacies of the Company's current CIS and the advantages which ConsumerLink will deliver to customers.

Cost Avoidance: Customers avoid the capital expenditures associated with modernizing a mainframe data center for a period of ten years and providing on-site backup electric generation. These costs are borne by ConnexT under the agreements.

Increased Reliability: Customers are provided a more secure, modern, and reliable mainframe data center with enhanced electric back-up generation capability currently not in place at the Company's mainframe data center.

II. Description of Transactions

Under the transactions, ConnexT will assume complete responsibility for support of customer information systems. ConnexT will own and operate

mainframe data center operating system software and hardware, and will assume responsibility for maintenance of mainframe jobs that are primarily production control and mainframe operating system support. ConnexT will also own and operate bill print/mail equipment. PSE will retain support of systems related to administration; finance; accounting; purchasing; material inventory; engineering construction and maintenance; gas and electric purchase and supply; conservation; local, state, and national regulation; and long-term and business planning.

Because ConnexT assumes responsibility under the transactions to perform a number of activities formerly performed by the Company, certain equipment and software rights formerly used by the Company to perform those operations will no longer be necessary. Under the transactions, the Company transfers to ConnexT the equipment and software no longer needed by the PSE.

This is one aspect of the transactions for which the Company seeks regulatory approval. The agreements further provide that ConnexT will assume the Company's obligations under the associated equipment leases and software licensing arrangements. ConnexT is also authorized under the transactions to market and further develop the software licensed by the Company to ConnexT. To the extent ConnexT realizes software license fees from the sale of such software to third parties, ConnexT will pay the Company a royalty for such revenues as set forth in the Software License Agreement.

As compensation for the services which ConnexT provides to the Company, ConnexT receives fixed monthly payments. Under the Initial Service Contract for Basic Services, the monthly payment is determined by the monthly average number of customer accounts which are being managed and administered by ConnexT. Where ConnexT performs certain special projects for the Company, ConnexT is paid in accordance with hourly rates and reimbursable expenses as determined between the parties, as set forth in the Master Services Agreement.

Other agreements included in the application provide for the development and implementation of Customer Information System, or CIS, software to be known as ConsumerLink, as well as ConnexT's license to market and sell ConsumerLink to other entities. Under the development agreement,

the Company pays to ConnexT a fixed price for the design and development of a system for the collection, processing, and management of customer information. The accompanying software license agreement authorizes ConnexT to use, market, and sell ConsumerLink and derivatives that ConnexT makes from it. ConnexT will pay the Company five percent of any revenues it receives from the sale or use of ConsumerLink. That percentage increases to 20% of revenues in the case of distributor revenues, which are revenues recognized by ConnexT from a distribution sublicense. The arrangement is exclusive with ConnexT through 2003, at which time ConnexT may renew the exclusive license for an additional five years but only if royalties paid during the first five years equal or exceed \$5 million. Under the accounting treatment proposed by the Company, the proceeds PSE receives from ConnexT from these royalties will be recorded as revenues, thereby reducing the revenue requirement needed to fund the cost of the new CIS.

The Application states that the services performed by ConnexT for the Company are completely transparent to the Company's customers, and that the existing relationship between the Company and its customers is unaffected. According to the Application, the Company is merely outsourcing the services to an entity devoted exclusively to billing, metering, and customer information services and distribution software.

III. Requested Approvals

PSE states in its Application that because ConnexT is a wholly owned subsidiary of PSE, it is not an "affiliated interest" within the definition of this term in RCW 80.16.010. This reading of Chapter 80.16 RCW is consistent with our historical interpretation of those statutory provisions. See, *Waste Management, Inc. v. WUTC*, 123 Wn.2d 621, 636 (1994). PSE seeks approval for the property transfers involved in the transactions. PSE requests authorization to:

- (1) Transfer to ConnexT the equipment, components, parts, and other items of tangible personal property described in Exhibit J to the Master Services Agreement. This property, which has a fair market value of \$673,200, will be treated as an equity investment by PSE in ConnexT;

(2) Assign to ConnexT all of PSE's right, title, and interest in the leases, licenses, agreements, and other contracts set forth in Exhibit H to the Master Services Agreement;

(3) Assign to ConnexT all of PSE's right, title, and interest in the leases, licenses, agreements, and other contracts set forth in Appendix 2 to the Application;

(4) Transfer to ConnexT the equipment, components, parts, and other items of tangible personal property described in Appendix 3 to the Application. This property, which has a fair market value of \$14,900, will be treated as an equity investment by PSE in ConnexT; and

(5) Receive, in exchange for the transfers and assignments above, the various royalty payments which ConnexT is obligated to make under the Software License Agreement, the CL3 Software License Agreement, and the TELLUS Agreement.

The Company submits that granting these requested authorizations would be in the public interest. PSE states in its Application that the transactions produce significant benefits for the Company and its customers. Under the transactions, the Company will receive royalty payments from marketing of the products developed by ConnexT. These are benefits which arise from outsourcing this activity and spreading the development costs over a larger customer base;

these revenues would not have been available had the Company developed its CIS internally. Under the Company's proposed accounting treatment, these royalty payments would be included in utility income and thus benefit customers through the rate making process.

With regard to the accounting issues included in PSE's application, PSE submits that our regulatory oversight can be facilitated if the accounting treatment for the transactions with ConnexT are clarified at the outset. Another aspect of regulatory oversight to be clarified, according to the Company, is the access Commission Staff will have to the books and records of ConnexT in connection with the regulatory review of PSE's transactions with ConnexT. PSE also notes that due to competitive

concerns, it may be necessary to impose confidentiality restrictions in making such information available. PSE requests review and approval of its proposed accounting treatment for the payments to and from ConnexT under the agreements, and the proposed discovery procedures associated therewith. PSE proposes the following accounting treatment for payments to and from ConnexT under the agreements:

1. The fair market value of the equipment transferred to ConnexT under the Equipment Transfer Agreements (Exhibit G to the Master Services Agreement and Appendix 3 to the Application) would be recorded as an equity investment by PSE in its wholly owned subsidiary, ConnexT, and salvage related to the retirement of electric utility plant. This fair market value, \$688,100, would be recorded in Account 123.1, Investment in Subsidiary Companies.

2. Amounts paid to ConnexT under the Initial Service Contract for Basic Services shall be recorded in PSE's books of account and treated for accounting purposes as if such costs were paid by PSE to third-party providers.

3. Amounts paid to ConnexT under the ConsumerLink agreements shall be recorded in PSE's books of account and treated for accounting purposes as if such costs were paid by PSE to third-party providers.

4. Royalty payments from ConnexT to PSE under the Software License Agreement and the TELLUS Agreement would be credited to Operating Revenue Account 456, "Other Electric Revenues", and Account 495, "Other Gas Revenues".

5. Royalty payments from ConnexT to PSE under the CL3 Software license Agreement would be credited to Operating Revenue Account 456, "Other Electric Revenues", and Account 495, "Other Gas Revenues".

6. So long as ConnexT remains a wholly owned subsidiary of PSE, Commission Staff shall have access to those books and records of ConnexT pursuant to authority the Commission may have under its general rate making authority to review transactions between

parent and subsidiary companies. In the event ConnexT becomes an affiliate of PSE, the Commission is authorized, pursuant to RCW 80.16.030, to require satisfactory proof in proceedings of the reasonableness of payment or compensation by PSE to ConnexT. Due to competitive concerns, any information made available to Commission Staff under these provisions may be on a confidential basis in accordance with WAC 480-09-015.

7. Amounts to be paid to ConnexT each year by PSE would be reported to the Commission as "Contemplated Payments to Subsidiary Companies" in PSE's filing with the Commission pursuant to WAC 480-140-040.

It appears from the Application that a basis exists for granting the requested authorization for the transfers. The transactions potentially could produce significant benefits for the Company and its customers. Under the transactions, the Company will receive royalty payments from marketing of the products developed by ConnexT. Had the Company developed its CIS internally and not spread the development costs by marketing to a larger customer base, these royalty revenues would not have been available. At this juncture, the level of these royalty payments -- 5% of the revenues derived by ConnexT -- appears reasonable, and will benefit the Company's customers through the Company's proposed accounting to include these royalty payments in utility income. Accordingly, granting these requested authorizations appears to be in the public interest.

As to the subsequent rate making treatment of the transactions, the Commission has authority under the general rate making statutes, in subsequent PSE general rate case proceedings, to evaluate the reasonableness of PSE's expenditures under the contracts with ConnexT. We agree with PSE that our regulatory oversight can be facilitated if the accounting treatment for the transactions with ConnexT are clarified at the outset. It is helpful to clarify as well the access Commission Staff will have to the books and records of ConnexT in connection with our regulatory oversight of PSE's transactions with ConnexT. The accounting treatment proposed by PSE for the payments to and from ConnexT under the agreements is a reasonable measure to facilitate Staff's examination of the rate making implications of these transactions.

The proposed accounting treatment requires modification in one respect, however. Recording the equipment transferred to ConnexT under the Equipment Transfer Agreements at fair market value will result in some of the book value of this equipment remaining on the books of the Company which, in turn, may affect future depreciation charges imposed on the Company's customers. To address this concern, we will require the Company to credit accumulated depreciation reserve and to debit miscellaneous deferred debit for the difference between the net book value of the equipment and the fair market value. (This difference is estimated by Commission Staff to be approximately \$613,000.) The Company has agreed to this modification, and will amortize this difference over the remaining portion of the rate stability period, or prior to December 31, 2001. With this modification, approval of the Company's proposal is appropriate.

The Company's proposal regarding discovery procedures in connection with its transactions with ConnexT is also reasonable, as it comports with our authority under law and our existing practice with respect to transactions between utilities and their affiliated companies.

FINDINGS OF FACT

1. Puget Sound Energy, Inc., is a public service company furnishing electric and gas service primarily in the Puget Sound region of the State of Washington and is subject to the regulatory authority of the Commission as to its rates, service, facilities, and practices.
2. On June 22, 1998, PSE filed with the Commission its application for approval of several agreements entered into between PSE (or its predecessor companies, Puget Sound Power & Light Company and Washington Natural Gas Company) and ConnexT, Inc., a wholly owned subsidiary of PSE. By its application, PSE seeks Commission authorization to transfer certain equipment, and to assign its right under certain leases, licenses, and agreements, to ConnexT. PSE also seeks approval of proposed accounting treatment with respect to transactions between the Company and ConnexT.
3. The application provides a basis for granting the requested authorization

for the transfer and assignment. The transactions potentially could produce significant benefits for PSE and its customers. Granting the requested authorizations is in the public interest.

4. The accounting treatment proposed by PSE for the payments to and from ConnexT under the agreements is reasonable, as modified in the manner described above. The royalty provided under the agreements provides reasonable compensation to the Company's customers for the transfer of equipment and assignment of contract rights. Including these payments as part of utility income is an appropriate method to allow customers to gain benefit from ConnexT's ability to market ConsumerLink and other software developed by ConnexT.

5. The discovery procedures proposed by the Company are reasonable measures to facilitate the Commission's regulatory review of the transactions in subsequent PSE general rate proceedings.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the parties and the subject matter of this application.
2. The application, as modified by this Order, is in the public interest.

ORDER

THE COMMISSION ORDERS:

1. PSE is authorized to (a) transfer to ConnexT the equipment, components, parts, and other items of tangible personal property described in Exhibit J to the Master Services Agreement, and (b) assign to ConnexT all of PSE's right, title, and interest in the leases, licenses, agreements, and other contracts set forth in Exhibit H to the Master Services Agreement.
2. The following accounting treatment for the payments to and from ConnexT under the agreements is adopted:
 - a. The fair market value of the equipment transferred to ConnexT under the Equipment Transfer Agreements (Exhibit G to the

Master Services Agreement and Appendix 3 to the Application) shall be recorded as an equity investment by the Company PSE in its wholly owned subsidiary, ConnexT, and salvage related to the retirement of electric utility plant. The fair market value, \$688,100, shall be recorded in Account 123.1, Investment in Subsidiary Companies.

The Company shall credit accumulated depreciation reserve and debit miscellaneous deferred debit (Account 186) for the difference between this fair market value of the equipment and the net book value of the equipment, and amortize such amount prior to the end of the rate stability period (December 31, 2001). This cost item shall be adjusted out from any test year used in rate making;

b. Amounts paid to ConnexT under the Initial Service Contract for Basic Services shall be recorded in PSE's books of account as if such costs were paid by PSE to third-party providers;

c. Amounts paid to ConnexT under the ConsumerLink agreement shall be recorded in PSE's books of account as if such costs were paid by PSE to third-party providers;

d. Royalty payments from ConnexT to PSE under the Software License Agreement and the TELLUS Agreement shall be credited to Operating Revenue Account 456, "Other Electric Revenues", and Account 495, "Other Gas Revenues";

e. Royalty payments from ConnexT to PSE under the CL3 Software License Agreement shall be credited to Operating Revenue Account 456, "Other Electric Revenues", and Account 495, "Other Gas Revenues"; and

f. Amounts to be paid to ConnexT each year by PSE shall be reported to the Commission as "Contemplated Payments to Subsidiary Companies" in PSE's filing of Annual Budget of Expenditures with the Commission pursuant to WAC 480-140-040.

3. So long as ConnexT remains a wholly owned subsidiary of PSE,

Commission Staff shall have access to those books and records of ConnexT pursuant to authority the Commission may have under its general rate making authority to review transactions between parent and subsidiary companies. In the event ConnexT becomes an affiliate of PSE, the Commission is authorized under RCW 80.16.030 to require satisfactory proof in proceedings of the reasonableness of payment or compensation by PSE to ConnexT. Due to competitive concerns, any information made available to Staff under these provisions may be on a confidential basis in accordance with WAC 480-09-015.

4. Nothing in PSE's application or this Order shall be construed to waive or otherwise impair the jurisdiction of the Commission over the rates, services, accounts, and practices of the Company.

5. The Commission retains jurisdiction over the parties to effectuate the provisions of this Order.

DATED at Olympia, Washington, and effective this day of September 1998.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANNE LEVINSON, Chair

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, Commissioner

APPENDIX G
Excerpt from: Fifteenth Supplemental Order
No. UE-950200
(WUTC Apr. 11, 1996)

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

U S WEST COMMUNICATIONS, INC.,

Respondent.

DOCKET NO. UT-950200

FIFTEENTH
SUPPLEMENTAL ORDER

COMMISSION DECISION
AND ORDER REJECTING
TARIFF REVISIONS;
REQUIRING REILING

....

The ultimate determination to be made by the Commission in this matter regarding the Company's rates and charges is whether the rates and charges proposed in revised tariffs are fair, just, reasonable, and sufficient, pursuant to RCW 80.28.020. These questions are resolved by establishing the fair value of respondent's property in-service for intrastate service in the State of Washington, determining the Washington intrastate adjusted results of operations during the test year, determining the proper rate of return permitted respondent on that property, and then ascertaining the appropriate spread of rates charged various customers to recover that return.

....

[Fifteenth Suppl. Ord. at 29.]

APPENDIX H
RCW 80.16.010. Affiliated Interests – Definitions.

As used in this chapter the term “public service company” shall include every corporation engaged in business as a public utility and subject to regulation as to rates and service by the utilities and transportation commission under the provisions of this title.

As used in this chapter, the term “affiliated interest” means:

Every corporation and person owning or holding directly or indirectly five percent or more of the voting securities of any public service company engaged in any intrastate business in this state;

Every corporation and person, other than those above specified, in any chain of successive ownership of five percent or more of voting securities, the chain beginning with the holder of the voting securities of such public service company;

Every corporation five percent or more of whose voting securities are owned by any person or corporation owning five percent or more of the voting securities of such public service company or by any person or corporation in any such chain of successive ownership of five percent or more of voting securities;

Every corporation or person with which the public service company has a management or service contract; and

Every person who is an officer or director of such public service company or of any corporation in any chain of successive ownership of five percent or more of voting securities.

PROOF OF SERVICE

The undersigned hereby certifies that I am an employee of Stoel Rives LLP. I am a citizen of the United States and a resident of the state of Washington. I am over the age of 18 years, and not a party to this action.

Pursuant to RAP 18.5(a), on June 16, 2006, I served a true and correct copy of **Appellant Qwest Corporation's Opening Brief, Appendix**, and this **Proof of Service** on the following parties in the manner shown below:

Gregory J. Trautman	<input checked="" type="checkbox"/>	Via United States Mail
Assistant Attorney General	<input type="checkbox"/>	Via Legal Messenger
1400 South Evergreen Park Dr. SW	<input type="checkbox"/>	Via Facsimile
P.O. Box 40128	<input checked="" type="checkbox"/>	Via Email
Olympia, WA 98504-0128		
Attorneys for Washington Utilities and Transportation Commission		

DATED this 16th day of June, 2006, at Seattle, Washington.



Sarah Garcia, Legal Secretary
Stoel Rives LLP

FILED
COMPL. OFFICIALS
06 JUN 16 PM 6:12
STATE OF WASHINGTON
BY 