

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.

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I. INTRODUCTION

The Washington Utilities and Transportation Commission (the “WUTC” or “Commission”) stretches the meaning of RCW 80.04.080 in an effort to unilaterally expand its regulatory authority beyond what the Washington legislature has authorized. Cf. Wash. State Human Rights Comm’n ex rel. Spangenberg v. Cheney School Dist. No. 30, 97 Wn.2d 118, 125 (1982) (“Administrative agencies are creatures of the legislature . . . and may exercise only those powers conferred either expressly or by necessary implication.”) (citation omitted). But contrary to the Commission’s arguments, neither RCW 80.04.080, nor any other statute, grants the Commission authority to: (1) require public service companies and their subsidiaries and affiliates to file reports about contemplated cash transfers (as per WAC 480-120-369, the “Cash Transfer Rule”), or (2) require telecommunications companies to file annual reports about transactions between the companies and their subsidiaries (as per WAC 480-120-395, the “Subsidiary Reporting Rule”).

In fact, the plain language of RCW 80.04.080 specifically limits the WUTC’s authority to require reports as follows:

- RCW 80.04.080 limits the Commission’s authority to require reports **only from public service companies**.
- RCW 80.04.080 only permits the Commission to require monthly reports of earnings and expenses, or periodic or special reports about matters that the Commission “**is authorized or required by this or any other law**” to inquire about.

Id. (emphasis added).

The Cash Transfer Rule far exceeds the first limitation by requiring reports from subsidiaries and affiliates which, in many cases, may not be public service companies. What's more, neither the Cash Transfer Rule nor the Subsidiary Reporting Rule are specifically authorized by RCW 80.04.080 or any other statute, and therefore well exceed the second limitation.

This Court should not ignore the limits set forth in the plain language of RCW 80.04.080. If the WUTC wants broader authority to require reports about contemplated cash transfers and about subsidiaries, it should lobby the state legislature for those powers.

II. STANDARD OF REVIEW

Both Qwest and the WUTC agree that review is *de novo* and that RCW 34.05.570(2) contains the applicable standard:¹

(2) Review of rules.

...

(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

¹ See Qwest's Opening Br. at 2 & 13-15; WUTC's Resp. Br. at 11.

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).

In ruling that “Qwest has not shown substantial prejudice by the actions complained of, as required by RCW 34.05.570(1)(d)[,]” the Superior Court thus applied the wrong standard of review.² The WUTC agrees that the “substantial prejudice” standard of RCW 34.05.570(1)(d) is inapplicable here.³

Like the Superior Court, however, the WUTC is also seeking to amend the applicable standard by arguing that this Court should “accord substantial weight to the agency’s construction of statutory language and

² CP 283-284 (Ord. Denying pet. for Judicial Rev. and Declaratory J. filed Feb. 14, 2006) at CP 284.

³ WUTC Resp. Br. at 10, n.7 (“The Superior Court also entered a separate finding that “Qwest has not shown substantial prejudice by the actions complained of, as required by RCW 34.05.570(1)(d).” CP 284. The Commission contended below, as it contends here, that the rules challenged by Qwest should be upheld because they are within the Commission’s statutory authority. The Commission did not seek a separate finding based upon RCW 34.05.570(1)(d). It does not seek such a finding on this appeal”).

legislative intent.”⁴ But this is simply wrong. At issue in this case is the scope of the agency’s statutory authority to adopt the challenged rules. Contrary to the WUTC’s argument, Washington courts will not defer to an agency the power to determine the scope of its own statutory authority. In re Electric Lightwave, Inc., 123 Wn.2d 530, 540 (1994); Local 2916, IAFF v. Publ. Employment Relations Comm’n, 128 Wn.2d 375, 379 (1995). That is well within the expertise and domain of the courts to decide. Moreover, Washington courts “do[] not exercise deference to an agency’s interpretation of a statute if the statute is not ambiguous,” which is the case here. Erection Co. v. Dep’t of Labor and Indus. of State of Wash., 121 Wn.2d 513, 522 (1993).

Thus, this Court—and not the WUTC—must determine through *de novo* review whether the WUTC has established the required nexus between RCW 80.04.080 and another statute, thereby determining whether the Commission had authority to adopt the rules in question.

III. ARGUMENT

A. The Cash Transfer Rule Is Not Authorized by the Limited Authority Granted in RCW 80.04.080.

1. *RCW 80.04.080 Specifically Limits the WUTC’s Authority to Require Reports.*

It is undisputed that the Commission relies upon the last sentence of RCW 80.04.080 as its authority for adopting the Cash Transfer Rule. It

⁴ See id. at 11.

has stated this twice now, both in its General Order and its Responsive Brief.⁵

The Commission argues that this provision grants it “broad authority to require public utilities to provide reports of their activities.”⁶

This argument over-reaches. The statute specifically limits the Commission’s authority to require 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).⁷ In short, the Commission is only authorized to require reports from **public service companies**. It cannot require reports from non-regulated companies. The statute further limits the types of reports the Commission can require. It can only require

- monthly reports of earnings and expenses; or
- periodical or special reports concerning any matter about which the Commission **is authorized by RCW 80.04.080 or any other statute** to inquire into, keep itself informed about, or enforce.

⁵ See AR 1335-1477 (General Order) at AR 1353 ¶ 25; WUTC Resp. Br. at 14.

⁶ See WUTC Resp. Br. at 14.

⁷ Qwest’s App. E (RCW 80.04.080) at 10-11.

In short, RCW 80.04.080 places specific limitations on the Commission's authority to require reports. As discussed below, the Commission's overly broad reading of RCW 80.04.080 ignores these limitations, rendering them virtually meaningless.

2. *The Cash Transfer Rule Exceeds the WUTC's Authority Under RCW 80.04.080.*

As stated in Qwest's Opening Brief, there can be no doubt that the Cash Transfer Rule exceeds the statutory authority granted the Commission under RCW 80.04.080, as the Cash Transfer Rule applies to subsidiaries and affiliates which, in many instances, are not public service companies. Cf. Cole v. Wash. Utils. and Transp. Comm'n, 79 Wn.2d 302, 306 (1971) (finding that administrative agencies have limited jurisdiction and nothing in Title 80 RCW provides the Commission jurisdiction over non-regulated fuel oil companies). Furthermore, the reports necessitated by the Cash Transfer Rule—which describe “contemplated” cash transfers—are obviously not reports regarding “earnings and expenses.” See Barron's Dictionary of Accounting Terms 154 & 170 (3d Ed. 2000) (defining earnings and expenses as revenue earned and assets used up in the ordinary course of business). And no Washington statute explicitly authorizes the Commission to inquire into or keep itself informed about contemplated cash transfers. Cf. Cerrillo v. Esparza, --P.3d--, 2006 WL 2546887, *5 & n.4 (S.Ct. Wash. 2006) (“Where statutory language is plain and unambiguous, courts will not construe the statute but will glean the legislative intent from the words of the statute itself, regardless of

contrary interpretation by an administrative agency.”); Erection Co., 121 Wn.2d at 518 (“court must give words in a statute their plain and ordinary meaning...”).

In fact, the Commission recognizes that no statutes explicitly grant it such authority, which is why it argues that its duties are “implied from” its rate-making authority and authority to inspect the books and accounts of regulated companies: “The authority to require reports of cash transfers is clearly implied from its duties to properly regulate telecommunications rates and services. It is also clearly implied from the Commission’s authority, under RCW 80.04.070, to ‘inspect the accounts, books, papers, and documents of any public service company.’”⁸ But again, the Commission stretches the meaning of “implied statutory authority” to make its case.

Washington courts have uniformly held that:

Agencies do not have implied authority to determine issues outside of that agency’s delegated functions or purpose. See Taylor v. Morris, 88 Wn.2d 586, 564 P.2d 795 (1977). See also Woolery v. Department of Social & Health Servs., 25 Wn.App. 762, 612 P.2d 1 (1980) (following Taylor v. Morris, supra). Nor can agency rules or regulations amend legislative enactments. University of Wash. v. Manson, 98 Wn.2d 552, 562, 656 P.2d 1050 (1983).

⁸ WUTC Resp. Br. at 16-17.

Tuerk v. State Dep't of Licensing, 123 Wn.2d 120, 125 (1994); see also Wash. Publ. Ports Ass'n v. State Dep't of Revenue, 148 Wn.2d 637, 646 (2003) (“Administrative agencies do not have the power to promulgate rules that would amend or change legislative enactment.”); Burlington Northern, Inc. v. Johnston, 89 Wn.2d 321, 333 (1977) (“[A]n administrative agency cannot alter or amend a statute by interpretation, even with legislative acquiescence, and the court must give effect to the plain meaning of the language used.”).

By relying upon its authority to inspect accounts and regulate rates and services to justify its adoption of the Cash Transfer Rule, the Commission is doing exactly what Washington courts have said it cannot do: it is ignoring the plain language of the statutes and effectively amending these specific legislative enactments to find authority for the Cash Transfer Rule. For instance:

* While RCW 80.04.070 grants the WUTC authority to “inspect the accounts, books, papers and documents of any public service company,” the Cash Transfer Rule does not require Qwest to provide its accounts, books, records or documents. Instead, it requires Qwest to **create** a report of an event that has yet to occur. This report is **not** a part of Qwest’s books and documents. Cf. M.C. Dransfield, What Constitutes Books of Original Entry, 17 A.L.R. 235 (1951) (referring to books of accounts as those being made in the ordinary course of business as part of a system of keeping account of transactions). The WUTC is thus

expanding the meaning of this statute in its effort to find authority for the Cash Transfer Rule.

* While RCW 80.36.140 to 80.36.180 grant the WUTC authority to regulate telecommunications rates and services, rates are adjusted through a statutorily mandated ratemaking process that requires the Commission to hold a **hearing** to set just and reasonable rates. RCW 80.36.140. During the ratemaking hearings, 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.^[9]

Ratemaking thus involves after-the-fact review of a Company's transactions during a test year in the past. WAC 480-07-510(3)(b)(i). In no way do the ratemaking statutes grant authority to require pre-reporting

⁹ Qwest's 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 29.

of cash transfers. Again, the WUTC is straining to expand the meaning of these statutes in an attempt to locate authorization for this Rule.

To be sure, Washington courts have previously held that administrative agencies do have implied authority to adopt rules to “fill in the gaps” in legislation. Green River Community College, Dist. No. 10 v. Higher Ed. Personnel Bd., 95 Wn.2d 108, 112 (1980); Wash. Publ. Ports Ass’n, 148 Wn.2d at 646. But the courts have specifically limited this implied authority to those occasions when it is “necessary to the effectuation of a general statutory scheme.” Green River Community College, 95 Wn.2d at 112; Wash. Publ. Ports Ass’n, 148 Wn.2d at 646. The Commission can hardly argue that pre-reporting of contemplated cash transfers is “necessary” to the ratemaking process. The Commission has been conducting rate proceedings for decades and has never before stated that such information was relevant, let alone necessary.

In addition, this very Court dealt with this issue of implied authority to fill in gaps in legislation in Wash. Indep. Tel. Ass’n (“WITA”) v. Telecomm. Ratepayers Ass’n for Cost-Based and Equitable Rates (“TRACER”), 75 Wn.App. 356 (1994). There, the Commission adopted the Community Calling Fund Rule, an action that was subsequently invalidated by the Court of Appeals. See id. at 369. WITA, who agreed with the Commission’s adoption of the Community Calling Fund, was unable to point to any specific authority authorizing the Commission to adopt this rule. Instead, similar to the WUTC’s strategy

here, WITA pointed to the Commission's general authority under RCW 80.01.040 to regulate in the public interest. The Court of Appeals rejected this attempt:

WITA relies on the implied authority of the Commission to fill in gaps through rulemaking to effect the whole statutory scheme. WITA calls our attention to RCW 80.01.040(3)

* * *

We disagree. The Washington Supreme Court addressed this same statute in the context of a different utility and observed that "[a]lthough RCW 80.01.040(3) demands regulation in the public interest, that mandate is qualified by the following clause "as provided by the public service laws . . ." Appellants fail to point out any section of title 80 which suggests that nonregulated fuel oil dealers are within the jurisdictional concern of the commission"

* * *

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 CCF

Id. at 368.

In short, the Court found that the Commission's implied authority to fill in gaps in legislation does not mean that it can ignore clear statutory authority requiring a nexus between RCW 80.01.040(3) and the public service laws in question. The language of RCW 80.01.040(3) plainly

requires the Commission to point to a specific statutory authority. The situation here is exactly the same. Despite clear language in RCW 80.04.080, the Commission fails to point to a specific statutory authority authorizing it to adopt the Cash Transfer Rule. That is, the Commission fails to establish a nexus between RCW 80.04.080 and any other statute.

3. *The Limitations Set Forth in RCW 80.04.080 Do Not Render the Statute Virtually Meaningless, as the WUTC Argues.*

As discussed, the plain language of RCW 80.04.080 limits the WUTC's ability to require reports. When, as here, a statute is unambiguous, courts must determine legislative intent from the statutory language alone. Cerrillo, 2006 WL 2546887, *5 & n.4 (where statutory language is unambiguous, courts glean the legislative intent from the words of the statute itself).

Nevertheless, the WUTC ignores the limiting clauses of RCW 80.04.080, arguing that the "end result" of such a reading "would be the ironic, and nonsensical, conclusion that the Legislature enacted a broadly worded grant of authority that has no real effect at all."¹⁰ It would limit "the Commission's authority to require reports under RCW 80.04.080 . . . to duplicating those situations that are already explicitly addressed elsewhere, thus rendering the authority in RCW 80.04.080 virtually

¹⁰ WUTC Resp. Br. at 15.

meaningless.”¹¹ But again this is just wrong and a misstatement of Qwest’s position in this case.

There are several instances when the authority to require reports under RCW 80.04.080 supplements a concomitant authority granted the Commission under another statute. For example, RCW 80.16.020 expressly requires that the public service company pre-file contracts with affiliated interests. WUTC rule (WAC 480-120-395) requires an annual report summarizing affiliated interest transactions over the prior year. With the exception of the Subsidiary Reporting Rule requirements recently added to the rule and at issue here, Qwest does not dispute that RCW 80.04.080, coupled with RCW 80.16.020, permits the WUTC to require the periodic (annual) report described in WAC 480-120-395. In this case, the statutory nexus required under RCW 80.04.080 is satisfied. Such a statutory nexus, however, does not exist to support the Cash Transfer Rule.

4. *Whether Hypothetical Remedial Actions May Be Permissible is Not Relevant to Whether the WUTC Has Authority to Adopt the Cash Transfer Rule.*

The WUTC spends a considerable amount of time arguing that “the reporting of certain large cash transfers by non-investment grade

¹¹ WUTC Resp. Br. at 26.

companies” is justified because it might hypothetically lead the Commission to “take subsequent remedial actions, if this were necessary and appropriate to protect the interests of ratepayers.”¹² For example, the Commission argues, such reports “might lead the Commission to commence a prudence review . . . or a ratemaking proceeding[.]”¹³ These remedial actions, the Commission argues, are plainly authorized in the following ways:

- “ratemaking relief is clearly within the Commission’s authority[.]”¹⁴
- the Commission “has the authority, pursuant to RCW 80.36.140, following a hearing, to determine whether a company has engaged in ‘practices’ or ‘practices affecting rates’ that are unreasonable and, if so, to fix and determine the appropriate practices ‘by order or rule[.]’”¹⁵ and
- “other courts have recognized and upheld the power of states and state utility commissions to take remedial action against regulated utilities when necessary to protect the interests of ratepayers.”¹⁶

But the WUTC has it exactly backwards. It is irrelevant whether ratemaking or prudence reviews are statutorily authorized. There still remains no statutory authority permitting the WUTC to require a utility to report a cash transfer before it occurs. Nor does any statute necessarily

¹² WUTC Resp. Br. at 17.

¹³ Id. at 18.

¹⁴ Id.

¹⁵ Id. at 19.

¹⁶ Id. at 20.

imply such authority. And the Commission's implication that cash transfers could have an immediate effect on rates—thus requiring remedial action—is plainly wrong. A regulated company can not unilaterally increase regulated rates for any reason, let alone because it has suffered a financial setback due to an imprudent cash transfer. Only the WUTC can set rates for regulated services and, in setting such rates, the WUTC can reject any expenditures it considers imprudent. In short, financial transactions can not affect regulated rates unless the WUTC approves such a change.

The WUTC further argues that the Cash Transfer Rule is authorized because other state courts have found similar remedial actions lawful. First, as the Commission recognizes, this is a challenge as to the facial validity of two rules. The fact that other state courts have upheld the power of their respective state utility commissions to take remedial actions against regulated utilities to protect the interests of ratepayers is irrelevant, a point the Commission admits prior to even discussing these other cases.¹⁷ The fact is that Washington courts cannot grant the WUTC authority to adopt rules—such as the Cash Transfer Rule—simply because other state legislatures have granted similar authority to their state utility commissions. Only the Washington state legislature can grant that authority.

¹⁷ WUTC Resp. Br. at 12-13.

Second, even if the decisions of other state courts were relevant, which they are not, the cases cited by the WUTC hardly stand for the proposition that a state commission's authority to regulate rates grants it implied authority to adopt rules not authorized by statute:

* The court in Baltimore Gas and Elec. Co. v. Heintz, 760 F.2d 1408 (4th Cir. 1985), did find that the state may "control[] certain investments and attempts at diversification by the utility[,]” as the WUTC states in its brief.¹⁸ But the WUTC failed to inform this Court that the case involved a direct challenge to a state statute that specifically granted the state the power to do so. Id. at 1413.

* The court in California Indep. Sys. Operator Corp. v. F.E.R.C., 372 F.3d 395 (D.C. Cir. 2004), found that FERC was drastically overreaching in arguing that it had implied authority to change the composition of a governing board of a utility based on its authority to regulate rates.

* The court in In the Matter of the Publ. Serv. Comm'n v. Jamaica Water Supply Co., 366 N.E.2d 872 (N.Y. 1977) found that the state Public Service Commission ("PSC") had authority to control the disbursement of funds as dividends, but it found such only after the PSC had presumably conducted lawful hearings on the issue and made significant findings of fact. In the Matter of the Publ. Serv. Comm'n v. Jamaica Water Supply Co., 54 A.D.2d 10, 11 (N.Y.A.D. 3 Dept., 1976)

¹⁸ WUTC Resp. Br. at 21-22.

(PSC issued orders on “February 27 and 28, 1974 and an amended order of March 26, 1974,” which included multiple relevant findings of fact). Contrary to the WUTC’s implication, this appeal does not deal with the question whether the Commission may have the authority to regulate dividend disbursements after holding hearings on the issue. That is clearly not the issue in this case. What the WUTC certainly has no authority to do is require pre-reporting of such disbursements, given that the Washington legislature did not empower the Commission to require such filings. Despite the WUTC’s attempts to confuse the matter, this is the only issue before this Court.

B. The Subsidiary Reporting Rule Is Not Authorized by RCW 80.04.080 or Any Other Statute.

As with the Cash Transfer Rule, the Commission recognizes that no statute explicitly grants it authority to adopt the Subsidiary Reporting Rule. Instead, it again relies upon RCW 80.04.080, arguing that this statute is a broad grant of authority.¹⁹ According to the Commission, the “other law[s]” requirement of this statute is fulfilled by RCW 80.36.140-180 (the ratemaking statutes) and RCW 80.04.070 (giving the WUTC authority to inspect accounts), which, the Commission argues, “clearly imply the authority for the Commission to be apprised of information that is relevant to these tasks.”²⁰

¹⁹ WUTC Resp. Br. at 24.

²⁰ Id.

But the Commission’s continued insistence that these statutes imply authority to require reports from subsidiaries is mistaken. Neither the ratemaking statutes nor RCW 80.04.070 grant the Commission authority to require stand-alone subsidiary reports. As discussed above, the ratemaking statutes require the Commission to hold a formal ratemaking hearing, which the Subsidiary Reporting Rule openly ignores. RCW 80.04.070 does not include subsidiary corporations—many of which may be unregulated—in the class of companies over which the Commission has authority.²¹ The statute limits the Commission to “public service companies.”

The Commission further argues that Qwest “contends that . . . there is no authority anywhere else for the Commission to require reports of subsidiary transactions—and that the Legislature thus intended that the Commission be kept in the dark, and uninformed, of these transactions.”²² But this completely misinterprets Qwest’s opening brief, and ignores statutory authorities and prior Commission rulings.

²¹ “The commission and each commissioner, or any person employed by the commission, shall have the right, at any and all times, to inspect the accounts, books, papers and documents of any public service company, and the commission, or any commissioner, may examine under oath any officer, agent or employee of such public service company in relation thereto, and with reference to the affairs of such company: PROVIDED, That any person other than a commissioner who shall make any such demand shall produce his authority from the commission to make such inspection.” RCW 80.04.070

²² WUTC Resp. Br. at 25-26.

As Qwest argued in its opening brief, the Commission has authority to inquire into subsidiary transactions in formal ratemaking hearings.²³ The WUTC itself has confirmed this at least twice now:

[T]he WUTC has used its general rate-making authority to review transactions between parent and subsidiary companies.

Waste Management of Seattle, Inc. v. Wash. Utils. and Transp. Comm'n,
123 Wn.2d 621, 636 (1994).

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.

App. F (No. UE-980866, Order) at 19-20 (emphasis added).²⁴ In short, the WUTC has authority over subsidiaries through the ratemaking process, but this 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. No statutes expressly or by necessary implication grant it the authority otherwise.

²³ Qwest's Opening Br. at 4-8.

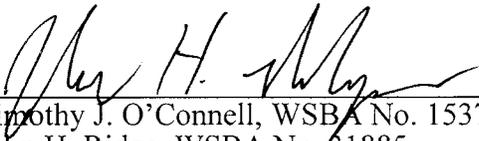
²⁴ Qwest's App. F (In re Puget Sound Energy, Inc., No. UE-980866 (Wash. Utils. & Transp. Comm'n Sept. 24, 1998), Ord. Approving Application) at 19-20.

IV. CONCLUSION

The Commission lacks the authority to promulgate the Cash Transfer and Subsidiary Reporting rules. No statute expressly provides the WUTC authority to inquire into or keep itself informed about cash management or subsidiary transactions. Nor can the WUTC claim that the authority to require reporting of the subject information is “necessarily implied” from the Commission’s powers to set rates and regulate services. The WUTC has overstepped its authority in adopting these rules and the rules should be declared unlawful.

Dated: September 22, 2006.

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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 September 22, 2006, I served a true and correct copy of **Reply Brief of Appellant** and this **Proof of Service** on the following parties in the manner shown below:

Gregory J. Trautman	[] Via United States Mail
Assistant Attorney General	[x] Via Legal Messenger
1400 South Evergreen Park Dr. SW	[] Via Facsimile
P.O. Box 40128	[x] Via Email
Olympia, WA 98504-0128	
Attorneys for Washington Utilities and Transportation Commission	

DATED this 22nd day of September, 2006, at Seattle, Washington.



Sarah Garcia, Legal Secretary
Stoel Rives LLP

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