

July 10, 2018

Mr. Mark L. Johnson  
Executive Director and Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, Washington 98504-7250

Received  
Records Management  
07/10/18 14:53  
State Of WASH.  
UTIL. AND TRANSP.  
COMMISSION

**Re: Docket A-180513, Rulemaking to Consider Possible Corrections and Changes in WAC 480-04, Relating to Public Access to Records, Docket A-180513**

Dear Mr. Johnson:

These comments are submitted on behalf of Puget Sound Energy (“PSE”) in response to the Commission’s Notice of Opportunity to Submit Written Comments dated June 8, 2018 regarding proposed amendments to the Washington Administrative Code (“WAC”) Chapter 480-04. PSE appreciates the opportunity to comment on the proposed rules, and its comments are set forth below.

**WAC 480-04-090(2) Form of request.**

The Public Records Act (“PRA”) authorizes the Commission to recommend that a person use the Commission’s website to request a public record, but the Commission’s proposed amendments to WAC 480-04-090(2) go too far by requiring a person to use the online form unless that person is unable to do so. The proposed amendment to WAC 480-04-090(2)(b) allows a person to submit a letter or email request to the records center only if that person is “unable to use the commission’s Online Records Request Form”. This proposed amendment likely conflicts with RCW 42.56.080(2), which states,

Agencies shall honor requests received in person during an agency's normal office hours, or by mail or email, for identifiable public records unless exempted by provisions of this chapter. No official format is required for making a records request; however, agencies may recommend that requestors submit requests using an agency provided form or web page.

Similarly, WAC 480-04-090(2)(c) goes too far by requiring a person to provide seven pieces of information before the Commission will honor requests made in person or by telephone. PSE recommends editing the proposed amendments to WAC 480-04-090(2) to clarify the Commission’s *preferred* methods without appearing to *require* specific methods.

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**WAC 480-04-095(5)(b)(ii)(A)**

PSE recommends language in WAC 480-04-095(5)(b)(ii)(A) that requires the Commission to notify the “owner” of the confidential information if the Commission has reason to believe the owner has not been designated by the provider as being directly affected by public disclosure. As PSE uses the term, “owner” means the party who first designated the information as confidential. It is critical that the owner of confidential information have notice and an opportunity to protect its confidential information, particularly when a party has not identified the owner as a person who might be directly affected by disclosure of the confidential information pursuant to the proposed WAC 480-07-160(5). For example, it is common that Staff, Public Counsel, or an intervenor, as parties to an adjudication, files testimony containing information that a utility previously designated as confidential. In that case, Staff, Public Counsel, nor the intervenor has any incentive to take steps to maintain the confidentiality of the utility’s information, and the utility and its customers are at significant risk of harm. Therefore, when a public records request has been made for records containing confidential information that was filed in an adjudication, the Commission should notify all parties to the adjudication, as well as the parties’ representatives.

Further, WAC 480-04-095 should designate the method that the Commission will use to notify the parties because the Commission has failed to notify PSE personnel and counsel for PSE, in the past, despite PSE designating such personnel and counsel to be notified. For example, in PSE’s recent expedited rate filing, Docket UE-180532 and UG-180533, PSE identified Jon Piliaris, Sheree Carson, and David Steele as persons to which service of all documents should be sent. PSE also filed a notice of appearance designating Sheree Carson and David Steele as PSE’s representatives for service of all documents in that proceeding. However, the Commission never served Jon Piliaris, Sheree Carson, or David Steele in that docket. In fact, of the 42 people who the Commission served in that docket, the only service ever made to PSE was made to Ken S. Johnson, who was not one of the individuals designated by PSE to receive service in that adjudicative proceeding. In light of the revised rules eliminating hard copy service and the short ten-day notice period in WAC 480-04-095(5)(b)(ii)(B), it is imperative that the owner of confidential information be accurately and timely served notice of any public records request for such confidential information.

PSE suggests the following change to the proposed rule language:

WAC 480-04-095(5)(b)(ii)(A) The public records officer will send a written notice of the request to the provider of the confidential information, ~~as well as to~~ any other person who has been identified as being directly affected by any public disclosure of the information; and, if the confidential information was submitted in a Commission proceeding, then the Commission will

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notify all parties to such proceeding as provided on the Commission's master service list for that proceeding. The Commission and will also send a copy of the notice to the requester.

**WAC 480-04-095(5)(c)(ii)(A) and (B)**

PSE recommends deleting subsections (A) and (B) to WAC 480-04-095(5)(c)(ii) and replacing them with language from the Commission's standard protective order. With proposed subsections (A) and (B), the Commission introduces a new distinction between confidential information protected by a protective order that was provided in a now-closed docket versus an open docket. This distinction is unnecessary and confusing because neither the confidential information, nor the protective order, changes or expires at the conclusion of an adjudication, as is evident in paragraphs 18 and 19 of the standard protective order. Further, RCW 42.56.270 and RCW 80.04.095 provide independent bases for protecting valuable commercial information provided pursuant to a protective order. The Commission should delete subsections (A) and (B) to avoid any inconsistency between the Commission's rule and its standard protective order, as follows:

WAC 480-04-095(5)(c)(ii) If the requester informs the public records officer that the request necessarily includes information that is protected by a protective order, ~~the commission will follow one of the following processes: any Washington state agency that has access to and/or receives copies of the Confidential Information must~~ the commission will treat the Confidential Information as being within the exemption from disclosure provided in RCW 42.56.210.

**WAC 480-04-095(5)(d)**

The proposed WAC 480-04-095(5)(d) should be amended to clarify the distinction between "any other person who has been identified as being directly affected by any public disclosure..." pursuant to proposed subsection WAC 480-04-095(5)(c), and "information that may affect rights of others" pursuant to proposed subsection WAC 480-04-095(5)(d).

Thank you for the opportunity to file comments on behalf of PSE. PSE is available to participate in a workshop if the Commission determines one would be beneficial in resolving any issues raised in these or other comments. If we can be of any further assistance, please contact Donna L. Barnett or Sheree Strom Carson at 425-635-1400.

Sincerely,



Donna L. Barnett