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VIA ELECTRONIC FILING

Steven V. King
Executive Director and Secretary
State of Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, Washington 98504-7250

RE: Docket A-130355: NW Natural's Comments – Rulemaking to Consider Possible Corrections and Changes in Rules in WAC 480-07, Relating to Procedural Rules

Dear Mr. King,

Northwest Natural Gas Company (“NW Natural”) submits these comments in response to the notice issued June 1, 2016, inviting written comments on the rulemaking in the above reference docket. NW Natural previously filed comments in this proceeding on May 17, 2013, and NW Natural appreciates the opportunity to submit these additional comments.

WAC 480-07-160 (2); Confidential Information Defined. NW Natural requests that the definition of “Confidential Information” should not be limited by removing section (a) of the rule, which included “information protected from inspection or copying under an exemption from disclosure requirements under the Public Records Act, chapter 42.56.” The proposed draft limits the definition of confidential information to “valuable commercial information, including trade secrets or confidential marketing, cost, or financial information, or customer-specific usage and network configuration and design information.” By removing section (a), the draft rule narrows the definition of “Confidential Information” beyond what is defined in the Public Records Act. For example, RCW 42.56.330(2) exempts from public disclosure public utility customers’ “addresses, telephone number, electronic contact information, and customer specific utility usage and billing information.” This information should also be considered confidential by the Commission. In order to be consistent with the Public Records Act, NW Natural requests that section (a) remain in the rule to continue to protect sensitive customer information, and other information protected from disclosure by the Public Records Act.

WAC 480-07-160 (4); Challenges to Designations of Confidentiality.

NW Natural requests that the process for challenging confidentiality remain unchanged. Based on NW Natural's understanding of the draft rule, it appears that all challenges to confidentiality – whether by means of a public records request or a party in an adjudicated proceeding – must be resolved by a state court order. NW Natural believes that this change is unnecessary and will have unintended consequences as described below.

Under the existing rules, if parties are involved in an adjudicated proceeding where confidential information is being distributed to the parties, the Provider(s) will seek a protective order to prevent public disclosure of the information. RCW 80.04.095 permits the use of protective orders by the Commission to govern the disclosure of proprietary or confidential information in adjudicated proceedings. The protective order manages the process by which the parties exchange and challenge confidential information. If confidential information is challenged, the Commission will rule on whether the information is confidential and should remain subject to the protections of the protective order, or whether the information is not confidential and can be released publically. During the challenge process, the information remains confidential. NW Natural is not aware of any reason to change this process. The protective order is an efficient tool for the parties to a case to set up a legal framework that promotes an open exchange of information.

Under the draft rules, the Provider will be required to seek and obtain a court order directing the Commission to keep the challenged information confidential, and if the Provider cannot obtain the court order and file it with the Commission within ten days, the Commission will release the information.

NW Natural assumes that the draft rule is modeled from RCW 80.04.095, which states in part:

Records, subject to chapter 42.56 RCW, filed with the commission or the attorney general from any person which contain valuable commercial information, including trade secrets or confidential marketing, cost, or financial information, or customer-specific usage and network configuration and design information, shall not be subject to inspection or copying under chapter 42.56 RCW: (1) Until notice to the person or persons directly affected has been given; and (2) if, within ten days of the notice, the person has obtained a superior court order protecting the records as confidential.

However, RCW 80.04.095 and chapter 42.56 RCW provide the process for resolving public records requests, not discovery disputes. The draft rule is predicated on the fact that a challenge to confidentiality in an adjudicated proceeding at the Commission could be heard at a state court. However, there will be many instances where the Public Records Act will be inapplicable to the controversy and provide no relief to the party seeking public release of the confidential information. For example: Discovery is exchanged between two (non-Commission Staff) parties and one of those parties challenges the confidential designation on a document. In this situation, the Commission would not be in possession of the challenged document. Therefore, the challenging party would not have the legal authority to assert a public records request upon

the Provider, because the Provider of the information is not a governmental entity. If there is not a public record in dispute, the Provider would not have the legal authority to seek a court order to protect the information under RCW 80.04.095.

Because there will be confidentiality disputes that are not governed by the Public Records Act, state courts may refuse to adjudicate the dispute as they will not be obligated to by Commission Rules, and therefore, there will be no guarantee that a decision will be reached within ten days if they do. As such, the ten day window for the Provider to seek a court order before the Commission releases the information is an unnecessarily punitive way to resolve a confidentiality dispute among parties to an adjudicated case. As a matter of fairness to the Provider of the information, the information should remain protected until a decision is reached.

Even if a state court could hear the dispute, the parties should not be required to start a new proceeding in a state court each time a confidentiality designation is challenged. The Commission is thoroughly informed on the utility industry and understands the nuances of proprietary industry information. The Commission is authorized and well suited to make a decision on a confidentiality issue. By sending these disputes to state court, it will only cost the parties more time and resources, and likely slow down the proceeding at the Commission.

For the above reasons, NW Natural respectfully requests that the process to challenge confidential information at the Commission not be modified as proposed in the June 1, 2016 draft rule. NW Natural would be happy to work with the Commission Staff and other interested parties to address any perceived problems with the current process for challenging the designation of confidential information and to collaborate to develop a better process if it is determined that a better process is needed.

Please address correspondence in this matter to me with copies to:

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Sincerely,

/s/ Zachary D. Kravitz

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