

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Repealing Chapter)	DOCKET NO. A-021178 and
480-146 WAC, Amending and)	TO-030288
Adopting Certain Sections of)	
Chapters 480-73, 480-90, 480-100,)	
480-110, and 480-120 WAC, and)	GENERAL ORDER NO. R-522
Amending WAC 480-121-063)	
)	
Relating to reporting of transactions)	ORDER REPEALING,
between regulated utility and)	AMENDING AND ADOPTING
transportation companies and their)	RULES PERMANENTLY
subsidiaries)	
.....)	

1 **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and Transportation Commission takes this action under Notice WSR # 05-10-099, filed with the Code Reviser on May 4, 2005. The Commission brings this proceeding pursuant to RCW 80.01.040, RCW 80.04.160, and RCW 81.04.160.

2 **STATEMENT OF COMPLIANCE:** This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 **DATE OF ADOPTION:** The Commission adopts this rule on the date that this Order is entered.

4 **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW 34.05.325(6) requires that the Commission prepare and provide to commenters a concise explanatory statement about an adopted rule. The statement must include the identification of the Commission’s reasons for adopting the rule, a description of the differences between the version of the proposed rules

published in the register and the rules as adopted (other than editing changes), a summary of the comments received regarding the proposed rule, and the Commission's responses to the comments, reflecting the Commission's consideration of them.

- 5 The Commission often includes a discussion of those matters in its rule adoption order. In addition, most rulemaking proceedings involve extensive work by Commission Staff that includes summaries in memoranda of stakeholder comments, Commission decisions, and Staff recommendations in each of those areas.
- 6 In this docket, to avoid unnecessary duplication, the Commission designates the discussion in this Order as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda presented at the adoption hearing and at the open meetings where the Commission considered whether to begin a rulemaking and whether to propose adoption of specific language. Together, the documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.
- 7 **REFERENCE TO AFFECTED RULES:** This Order repeals, amends, or adopts the following sections of the Washington Administrative Code:

Chapter 480-146 WAC, Commission General – Securities, Liens, Refunding of Notes, Lease of Utility Facilities

Repeal

480-146-240 Application of rules.

Repeal

480-146-250 Filing.

1. This section incorporated in WAC:
 - 480-90-207 (Filing information).
 - 480-100-207 (Filing information).
 - 480-110-457 (Filing information).

480-120-331 (Filing information).

Repeal

480-146-260 Commission may require additional information.

1. This section incorporated in WAC:
 - 480-90-207 (Filing information).
 - 480-100-207 (Filing information).
 - 480-110-457 (Filing information).
 - 480-120-331 (Filing information).

Repeal

480-146-270 Applicant may include information by reference.

1. This section incorporated in WAC:
 - 480-90-207 (Filing information).
 - 480-100-207 (Filing information).
 - 480-110-457 (Filing information).
 - 480-120-331 (Filing information).

Repeal

480-146-280 Applicant duty when information is unavailable.

1. This section incorporated in WAC:
 - 480-90-207 (Filing information).
 - 480-100-207 (Filing information).
 - 480-110-457 (Filing information).
 - 480-120-331 (Filing information).

Repeal

480-146-290 Securities statements and applications.

1. This section incorporated in proposed WAC:
 - 480-90-242 (Issuing securities).
 - 480-100-242 (Issuing securities).
 - 480-110-525 (Issuing securities).
 - 480-120-365 (Issuing securities).

Repeal

480-146-300 Filing requirements for securities statements and applications.

1. This section incorporated in proposed WAC:
 - 480-90-242 (Issuing securities).

- 480-100-242 (Issuing securities).
- 480-110-525 (Issuing securities).
- 480-120-365 (Issuing securities).

Repeal

480-146-310 Commission may set securities application or statement for public hearing.

1. Repealer – No longer relevant.

Repeal

480-146-320 Minimum time required for commission order.

1. This section incorporated in proposed WAC:
 - 480-90-242 (Issuing securities).
 - 480-100-242 (Issuing securities).
 - 480-110-525 (Issuing securities).
 - 480-120-365 (Issuing securities).

Repeal

480-146-330 Supplemental securities filing may be exempt from time limitations.

1. This section incorporated in proposed WAC:
 - 480-90-242 (Issuing securities).
 - 480-100-242 (Issuing securities).
 - 480-110-525 (Issuing securities).
 - 480-120-365 (Issuing securities).

Repeal

480-146- 340(1) Reporting of securities transactions.

1. This section incorporated in proposed WAC:
 - 480-90-262 (Securities report).
 - 480-100-262 (Securities report).
 - 480-110-565 (Securities report).
 - 480-120-389 (Securities report).

Repeal

480-146- 340(2) Reporting of securities transactions.

1. This section incorporated in proposed WAC:
 - 480-90-242 (Issuing securities).
 - 480-100-242 (Issuing securities).
 - 480-110-525 (Issuing securities).

480-120-365 (Issuing securities).

Repeal

480-146-340(3) Reporting of securities transactions.

1. Repealer – No longer relevant.

Repeal

480-146-370 Application for approval of lease of utility facilities.

1. This section incorporated in proposed WAC 480-100-282 (Application for approval of lease of utility facilities).

Repeal

480-146-380 Form of lease application.

1. This section incorporated in proposed WAC 480-100-287 (Form of lease application).

Chapter 480-73 WAC, Hazardous Liquid Pipeline Companies

Amend

480-73-110 Filing information.

1. Adopts procedures for delivering a notice of securities issuance with Commission.

Adopt

480-73-170 Issuing securities.

1. Adopts procedures for filing a notice of a securities issuance with Commission.

Adopt

480-73-200 Securities report.

1. Adopts procedure for annual report of securities transactions and pertinent financial information.

Chapter 480-90 WAC, Gas Companies – Operations

Amend

480-90-207 Filing information.

1. Incorporates language from proposed repealers:
 - 480-146-250 (Filing)
 - 480-146-260 (Commission may require additional information)
 - 480-146-270 (Applicant may include information by reference)

480-146-280 (Applicant duty when information is unavailable)

2. Adds language permitting filing by telefacsimile or electronic mail.

Adopt

480-90-242 Issuing securities.

1. Incorporates language from proposed repealers:
 - 480-146-290 (Securities statements and applications)
 - 480-146-300 (Filing requirements for securities statements and applications)
 - 480-146-320 (Minimum time required for commission order)
 - 480-146-330 (Supplemental securities filings may be exempt from time limitations)
 - 480-146-340(1) (Reporting of securities transactions)
2. Adds clarification of requirement to file a Registration Statement using a shelf registration process.
3. Adds language permitting confidential designation.
4. Adds requirement to report, to the extent known, disposition of proceeds for each purpose allowed by RCW 80.08.030.

Amend

480-90-248 Securities and transfers of property.

1. Removes reference to chapters 80.08 RCW (Securities) and 480-146 WAC (Commission General—Securities, Liens, Refunding of Notes, Lease of Utility Facilities).

Adopt

480-90-262 Securities report.

1. Incorporates language from proposed repealer WAC 480-146-340(2) (Reporting of securities transactions), and revises language to obtain pertinent information on the use of proceeds related to each allowable purpose listed in RCW 80.08.030.

Chapter 480-100 WAC, Electric Companies -- Operations

Amend

480-100-207 Filing information.

1. Incorporates language from proposed repealers:
 - 480-146-250 (Filing)
 - 480-146-260 (Commission may require additional information)
 - 480-146-270 (Applicant may include information by reference)
 - 480-146-280 (Applicant duty when information is unavailable)
2. Adds language permitting filing by telefacsimile or electronic mail.

Adopt

480-100-242 Issuing securities.

1. Incorporates language from proposed repealers:
 - 480-146-290 (Securities statements and applications)
 - 480-146-300 (Filing requirements for securities statements and applications)
 - 480-146-320 (Minimum time required for commission order)
 - 480-146-330 (Supplemental securities filings may be exempt from time limitations)
 - 480-146-340(1) (Reporting of securities transactions)
2. Adds clarification of requirement to file a Registration Statement using a shelf registration process.
3. Adds language permitting confidential designation.
4. Adds requirement to report, to the extent known, disposition of proceeds for each purpose allowed by RCW 80.08.030.

Amend

480-100-248 Securities and transfers of property.

1. Removes reference to chapters 80.08 RCW (Securities) and 480-146 WAC (Commission General—Securities, Liens, Refunding of Notes, Lease of Utility Facilities).

Adopt

480-100-262 Securities report.

1. Incorporates language from proposed repealer WAC 480-146-340(2) (Reporting of securities transactions), and revises language to obtain pertinent information on the use of proceeds related to each allowable purpose listed in RCW 80.08.030.

Adopt

480-100-282 Application for approval of lease of utility facilities.

1. Incorporates language from proposed repealer WAC 480-146-370 (Application for approval of lease of utility facilities).

Adopt

480-100-287 Form of lease application.

1. Incorporates language from proposed repealer WAC 480-146-380 (Form of lease application).

Chapter 480-110 WAC, Water Companies

Amend

480-110-457 Filing information.

1. Incorporates language from proposed repealers:
 - 480-146-250 (Filing)
 - 480-146-260 (Commission may require additional information)
 - 480-146-270 (Applicant may include information by reference)
 - 480-146-280 (Applicant duty when information is unavailable)
2. Adds language permitting filing by telefacsimile or electronic mail.

Adopt

480-110-525 Issuing securities.

1. Incorporates language from proposed repealers:
 - 480-146-290 (Securities statements and applications)
 - 480-146-300 (Filing requirements for securities statements and applications)
 - 480-146-320 (Minimum time required for commission order)
 - 480-146-330 (Supplemental securities filings may be exempt from time limitations)
 - 480-146-340(1) (Reporting of securities transactions)
2. Adds clarification of requirement to file a Registration Statement using a shelf registration process.
3. Adds language permitting confidential designation.
4. Adds requirement to report, to the extent known, disposition of proceeds for each purpose allowed by RCW 80.08.030.

Amend

480-110-555 Securities and transfers of property.

1. Removes reference to chapters 80.08 RCW (Securities) and 480-146 WAC (Commission General—Securities, Liens, Refunding of Notes, Lease of Utility Facilities).

Adopt

480-110-565 Securities report.

1. Incorporates language from proposed repealer WAC 480-146-340(2) (Reporting of securities transactions), and revises language to obtain pertinent information on the use of proceeds related to each allowable purpose listed in RCW 80.08.030.

Chapter 480-120 WAC, Telecommunications Operations

Amend

480-120-331 Filing information.

1. Incorporates language from proposed repealers:
 - 480-146-250 (Filing)
 - 480-146-260 (Commission may require additional information)
 - 480-146-270 (Applicant may include information by reference)
 - 480-146-280 (Applicant duty when information is unavailable)
2. Adds language permitting filing by telefacsimile or electronic mail.

Adopt

480-120-365 Issuing securities.

1. Incorporates language from proposed repealers:
 - 480-146-290 (Securities statements and applications)
 - 480-146-300 (Filing requirements for securities statements and applications)
 - 480-146-320 (Minimum time required for commission order)
 - 480-146-330 (Supplemental securities filings may be exempt from time limitations)
 - 480-146-340(1) (Reporting of securities transactions)
2. Adds clarification of requirement to file a Registration Statement using a shelf registration process.
3. Adds language permitting confidential designation.
4. Adds requirement to report, to the extent known, disposition of proceeds for each purpose allowed by RCW 80.08.030.

Adopt

480-120-389 Securities report.

1. Incorporates language from proposed repealer WAC 480-146-340(2) (Reporting of securities transactions), and revises language to obtain pertinent information on the use of proceeds related to each allowable purpose listed in RCW 80.08.030.

Chapter 480-121 WAC, Registration, Competitive Classification and Price Lists of Telecommunications Companies

Amend

480-121-063 Regulatory requirements that may be waived for competitively classified telecommunications companies.

1. Removes reference to Chapter 480-146 WAC and adds references to new financial reporting rules, WAC 480-120-389 (Securities report) and WAC 480-120-395 (Affiliated interest and subsidiary transactions report).

8 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS**

THEREUNDER: The Commission filed a Preproposal Statement of Inquiry (CR-101) on October 2, 2002, at WSR # 02-20-105, and October 28, 2002, at WSR # 02-22-030, in Docket A-021178. The Commission filed a Preproposal Statement of Inquiry (CR-101) on March 13, 2003, at WSR # 03-07-034, in Docket TO-030288.

9 **ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL**

STATEMENT: The statement at WSR # 02-20-105 advised interested persons that the Commission was considering entering a rulemaking on establishing reporting rules for transactions between regulated utility and transportation companies and their subsidiaries. The statement at WSR # 02-22-030 advised interested persons that other industries, including auto transportation companies may be affected by rules adopted in this docket, and that rules adopted in this docket would not apply to competitive telecommunications companies. The statement at WSR # 03-07-034 advised interested persons that the Commission was considering developing a new chapter applicable to the economic regulation of Hazardous Liquid Pipeline Companies regulated as common carriers by the Commission, including, but not limited to, financial reporting requirements.

10 The Commission also informed persons of the inquiry into these matters by providing notice of the subjects and the CR-101s to all persons on the Commission's list of persons requesting such information pursuant to RCW

34.05.320(3) and by sending notice to all registered companies and the Commission's lists of regulatory attorneys. The Commission posted the relevant rulemaking information on its Internet web site at <http://www.wutc.wa.gov>.

- 11 **WORKSHOP; ORAL COMMENTS; WRITTEN COMMENTS:** Pursuant to the notice, the Commission held three stakeholder workshops. In addition, Staff met informally to discuss issues related to financial reporting rules with representatives from Qwest Corporation (Qwest), PacifiCorp, Puget Sound Energy, Inc., Avista Corporation, and Olympic Pipe Line Company. Representatives of regulated companies and consumer advocacy organizations attended the workshops and/or filed written comments.
- 12 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed with the Code Reviser a notice of Proposed Rulemaking (CR-102) on September 1, 2004, at WSR # 04-18-129, scheduling the matter for oral comment and adoption on October 13, 2004.¹ On December 22, 2004, the Commission filed a Supplemental Notice to WSR # 04-18-129, notifying interested persons of changes to the rules proposed at WSR #05-01-224, and scheduling the matter for oral comment and adoption on February 1, 2005.² On May 4, 2005, the Commission filed a Supplemental Notice to WSR # 05-01-224, notifying interested persons of changes to the rules relating to securities transactions proposed at WSR # 05-10-099, and scheduling the matter for oral comment and adoption on Wednesday, June 15, 2005, at 9:30 a.m., in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 Evergreen Park Drive S.W., Olympia, Washington.

¹ The Commission heard comments from interested persons on the rule proposal on October 13, 2004, but did not adopt the proposal.

² On February 28, 2005, the Commission filed an Adoption Order with the Code Reviser at WSR # 05-06-051, in which it amended, adopted, and repealed the majority of the rules noticed at WSR # 05-01-224. The Commission chose not to adopt certain proposed rules relating to securities transactions in its February 28, 2005, order.

13 **COMMENTERS (WRITTEN COMMENTS):** The Commission received written comments from Qwest and Verizon Northwest, Inc. (Verizon) in response to the supplemental notice of rules proposed at WSR # 05-10-099.

14 **RULEMAKING HEARING:** The rule proposal was considered for adoption, pursuant to the notice, at a rulemaking hearing scheduled during the Commission's regularly scheduled open public meeting on June 15, 2005, before Chairman Mark H. Sidran, and Commissioners Patrick J. Oshie and Philip B. Jones. The Commission heard oral comments from Fred Ottavelli representing Commission Staff, and from representatives of Verizon.

15 **SUGGESTIONS FOR CHANGE THAT ARE REJECTED:**

WAC 480-120-365(1) Verizon suggests that the time frame for filing the required report should be set more realistically and the distinction between investment grade and non-investment grade should be put back into the rule. Verizon proposes reporting 30 days after the end of the month in which the investment grade telecommunications company issues a security.

The Commission does not accept Verizon's proposed change. RCW 80.08.040 specifically requires filing "before" issuance. The previous proposal of a blanket exemption for investment grade companies had been combined with a requirement for non-investment grade companies to report 5 days prior to issuance. The proposed rule now replicates statutory language requiring a report "before" issuance. The Commission may exempt certain issuances by order under the provisions of RCW 80.08.047 if application of the securities statute is not required by the public interest.

WAC 480-120-365(6)(b) and WAC 480-120-389(1)(b) Qwest observes that the proposed rules require reporting the actual use of proceeds "stating the final amount used for each purposed allowed by RCW 80.08.030." Qwest notes

that cash is fungible, and argues that it is impossible to track the ultimate disposition of every dollar raised through a security issue.

The Commission agrees that it would be difficult to track every particular dollar raised through a securities issuance. However, the proposed rules do not require such specificity. The statute limits the use of proceeds to specific purposes, and requires that a company officer certify that the proceeds of a security issuance are used for one of the purposes allowed in the statute. *RCW 80.08.030, RCW 80.08.040(1)*. The Commission may require the company to account for the disposition of proceeds of securities issuances “in such form and detail as it may deem advisable, . . .” *RCW 80.08.090*. The proposed rules, like the statutes on which they are based, do not require the company to track every particular dollar raised through a security issuance.

For example, assume that a company represents that \$100 million in debt will be used for allowed purposes. The company issues the debt and places the cash proceeds in an account commingled with other sources of cash. It subsequently spends \$50 million in cash on construction of its facilities and \$50 million in cash for refunding of its obligation. The company can report these as the use of proceeds without having tracked the actual cash (i.e., each dollar) from that issuance.

WAC 480-120-389(1)(b) Qwest proposes that the requirement for an annual report detailing the actual use of proceeds from securities issuances be qualified with the words “if known” or “to the extent known” to recognize the timing of company expenditures.

The Commission does not accept Qwest’s proposal. Timing should not be a problem. WAC 480-120-389(1)(b) requires a report by April 1 of each year of those transactions that occurred during the period January 1 through December 31 of the preceding year. This gives the reporting company 90 days to ascertain

expenditures actually made during the preceding year. This information should be available by April 1.

16 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission finds and concludes that it should amend, repeal, and adopt the rules in the supplemental CR-102 Notice at WSR #05-10-099 with the changes described below.

17 **CHANGES FROM PROPOSAL:** The Commission adopts the supplemental CR-102 proposal noticed at WSR # 05-10-099 with the following changes:

WAC 480-120-365(6) and comparable sections for each industry Qwest proposes that the requirement for a report sixty days after the issuance of any securities, setting forth actual proceeds from the issuance and the disposition of proceeds, be qualified with the words "if known" or "to the extent known" to recognize that cash raised through a securities issuance may well not be spent within sixty days of the issuance.

The Commission recognizes that cash raised through a securities issuance may not be spent within sixty days of the issuance, and accepts Qwest's proposal to incorporate the words "to the extent known" into WAC 480-120-365(6)(b), as well as WAC 480-73-170(4)(b), WAC 480-90-242(6)(b), WAC 480-100-242(6)(b), and WAC 480-110-525(6)(b).

WAC 480-120-365 and comparable sections for each industry The Commission clarifies the intent of this rule by incorporating language suggested by Qwest that excludes those notes that are exempted from reporting under RCW 80.08.043, and that qualifies the reporting of any obligation or liability pursuant to RCW 80.08.130. This clarification has been incorporated into WAC 480-90-242, WAC 480-100-242, WAC 480-110-525, and WAC 480-120-365. Similar language has been incorporated into WAC 480-73-

170 to qualify the reporting of obligation or liability pursuant to RCW 81.08.130.

18 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the Commission determines that Chapter 480-146 WAC should be repealed; WAC 480-73-110, WAC 480-90-207, WAC 480-90-248, WAC 480-100-207, WAC 480-100-248, WAC 480-110-457, WAC 480-110-555, WAC 480-120-331, WAC 480-121-063 should be amended; and WAC 480-73-170, WAC 480-73-200, WAC 480-90-242, WAC 480-90-262, WAC 480-100-242, WAC 480-100-262, WAC 480-100-282, WAC 480-100-287, WAC 480-110-525, WAC 480-110-565, WAC 480-120-365, and WAC 480-120 389 should be adopted to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the Code Reviser.

ORDER

THE COMMISSION ORDERS:

- 19 (1) The Commission repeals chapter 480-146 WAC.
- 20 (2) The Commission amends and adopts the following sections to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of filing with the Code Reviser pursuant to RCW 34.05.380(2): WAC 480-73-110, WAC 480-90-207, WAC 480-90-248, WAC 480-100-207, WAC 480-100-248, WAC 480-110-457, WAC 480-110-555, WAC 480-120-331, WAC 480-121-063.
- 21 (3) The Commission adopts the following new sections to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of filing

with the Code Reviser pursuant to RCW 34.05.380(2): WAC 480-73-170, WAC 480-73-200, WAC 480-90-242, WAC 480-90-262, WAC 480-100-242, WAC 480-100-262, WAC 480-100-282, WAC 480-100-287, WAC 480-110-525, WAC 480-110-565, WAC 480-120-365, and WAC 480-120 389.

- 22 This Order and the rules set out below, after being recorded in the register of the Washington Utilities and Transportation Commission, shall be forwarded to the Code Reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, this 3rd day of August, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

Note: The following is added at Code Reviser request for statistical purposes:

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 13, amended 8, repealed 13.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 12, amended 7, repealed 13.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.