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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 December 7, 2016, inviting written comments on the rulemaking in the above reference docket. NW Natural previously filed comments in this proceeding on June 30, 2016 and May 17, 2013, and NW Natural appreciates the opportunity to submit these additional comments.

**WAC 480-07-160; Confidential Information under RCW 80.04.095 or 81.77.210.** NW Natural recommends the removal of the last two sentences of the introductory subsection to the rule, which state: “This rule does not apply to information submitted to the commission that is exempt from public disclosure under the Public Records Act, chapter 42.56 RCW, other than RCW 42.56.330(1). A person submitting a document that contains such exempt information should work with the commission to identify the information and, upon commission request, provide an additional copy of the document that redacts that information.” The exempt statute RCW 42.56.330 enumerates the information relating to public utilities that is exempt from public disclosure under 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.” The Commission’s Rules should treat this confidential information in the same manner as it does other sensitive information, as WAC 480-07-160(2) currently does.

Additionally, the last sentence of this rule creates a new process for “work[ing] with the commission to identify” information exempt from disclosure under the Public Records Act. The

proposed rule does not detail what this process would be, and it could potentially create an *ad hoc* process that could provide little certainty to persons working with the commission on confidential matters. Further, there may be times when a person is filing a document with the Commission that contains both confidential information subject to the Commission's Rules and confidential information subject to the Public Records Act. Having separate processes for the same document would be a cumbersome exercise and could unnecessarily confuse the process.

**WAC 480-07-160 (2); Confidential Information Defined.** As previously stated in NW Natural's June 30, 2016 comments and also explained above, NW Natural recommends that the definition of "Confidential Information" should not be changed. Under the proposed rules, the definition of "Confidential Information" is unnecessarily narrowed 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 exempt from disclosure under the Public Records Act. This information should also be considered confidential by the Commission and be subject to the same rules and process as other confidential information at the Commission.

**WAC 480-07-160 (4); Challenges to Designations of Confidentiality.** As described in NW Natural's previous comments, NW Natural requests that the process for challenging confidentiality remain unchanged. The draft rules limit the Commission's authority to resolve challenges to confidentiality designations by requiring the "Provider" to seek a "court order" when a confidentiality designation is challenged in an adjudicatory proceeding. NW Natural believes this change is unnecessary and will result in an inefficient administration of regulatory proceedings.

It is well within the Commission's broad statutory authority to resolve confidentiality disputes in adjudicatory proceedings. As such, under the existing rules, the Commission adjudicates challenges to confidentiality designations in adjudicatory proceedings. During the challenge process, the information remains confidential. Under the proposed 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, unless the party challenging the confidential designation waives the 10-day statutory deadline.

Under the proposed rules, it is not clear what would constitute a "challenge" and when the 10-day deadline would start to toll. It is also unclear what is meant by the term "court order" in this context and under what legal authority the Provider could seek a court order to weigh-in on a dispute between two parties to an adjudicatory proceeding at the Commission if the Commission has not issued a final order in the matter.

NW Natural assumes that the draft rule is modeled from RCW 80.04.095, which is the process for resolving public records requests. However, RCW 80.04.095 expressly provides that

“Nothing in this section shall prevent the use of protective orders by the commission governing disclosure of proprietary or confidential information in contested proceedings.” This is because the Public Records Act is separate and distinct from the information exchange between parties to an adjudicatory proceeding. The current rules recognize these separate processes. WAC 480-07-160(4) allows the Commission or a party in an adjudicatory proceeding to challenge whether a document is properly designated as confidential, and the Commission resolves that dispute. WAC 480-07-160(5) governs the process public records requests, which requires the Provider to seek a court order pursuant to the Public Records Act.

NW Natural does not see a reason to conflate these two concepts. First, parties to an adjudicatory proceeding 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.

Second, a state court may decide not to hear the controversy. If the confidential information in dispute is not a public record, RCW 42.56 would not apply. In that case, 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, 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.

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 December 7, 2016 draft rule.

Sincerely,

/s/ Zachary D. Kravitz

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