

September 29, 2017

Mr. Steven King
Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
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COMMISSION

**Re: Rulemaking to Consider Possible Corrections and Changes in Rules in
WAC 480-07, Relating to Procedural Rules, Docket A-130355**

Dear Mr. King,

Puget Sound Energy ("PSE") provides these additional comments on the rulemaking in the above-referenced docket pursuant to the Commission's revised draft rules and Notice of Opportunity to File Written Comments dated September 6, 2017. PSE filed comments previously in this proceeding, and PSE appreciates the opportunity to submit these additional comments. Please note that in making the comments below, PSE does not waive any objections or concerns stated in its prior comments.

PSE supports the Commission's comprehensive revision of WAC 480-07-160, and it appreciates the significant effort the Commission has made in addressing unresolved issues concerning protection for information that is exempt from disclosure under the Public Records Act, RCW 42.56 *et seq.* The proposed rules will provide much-needed clarity regarding the nature of information a provider intends to restrict. PSE has had a chance to review the comments filed by CenturyLink and concurs in those comments. In addition, PSE has the following recommendations:

WAC 480-07-160(6)(d): *Procedures upon a request for information designated as valuable commercial information.* The Commission should retain the procedures currently in place in WAC 480-07-160(6). The procedures currently in place provide valuable detail and clarity regarding written notice of a request for restricted information, judicial intervention, and potential release of information. Specifically, PSE recommends the Commission revise its proposed WAC 480-07-160(6)(d) as follows:

- (d) ***Procedures upon a request for information designated as valuable commercial information.*** Subject to the requirements of this subsection, the commission will release information designated as valuable commercial information in response to a written request for public records made in compliance with WAC [480-04-090](#).

- (i) *Avoidance of disclosure.* If the public records officer and the requester agree that the commission can satisfy the request for information without disclosing information designated as valuable commercial information, the public records officer will provide or make available for review the publicly available information in the commission's possession that is responsive to the request.
- (ii) *Notice of request for, and release of, information designated as valuable commercial information.* If the requester does not agree that the commission can satisfy the request without disclosing information designated as valuable commercial information, the commission will implement the following procedure:
 - A. Pursuant to RCW [80.04.095](#) or [81.77.210](#), as applicable, the commission will provide written notice of any request for information designated as valuable commercial information to the provider and any person that has been identified as a person who might be directly affected by release of the information. The commission will issue such notice not more than two business days after receiving confirmation that the requester requests information designated as valuable commercial information. The commission will send a copy of the notice to the requester at the same time it sends a copy to the provider.
 - B. The commission need not assist any person in seeking or resisting judicial intervention to protect from disclosure any information designated as valuable commercial information, but the commission may participate in any such proceeding.
 - C. If the provider consents in writing to the release of the information designated as valuable commercial information or does not restrain disclosure of that information by obtaining a court order within ten days following the commission's notice of the request, the commission will consider the information public, remove the valuable commercial information designation from its files, and release the information to the requester.

PSE particularly requests that the Commission reject the proposed revision in WAC 480-07-160(6)(d)(i) that replaces "and any person" with "or any person."

Current WAC 480-07-160(6)(b)

- (i) the commission will provide written notice of any request for information designated as confidential or highly confidential to the provider and any person

that has been identified as a person who might be directly affected by release of the information.

Proposed WAC 480-07-160(6)(d):

- (i) notify the provider or any person or persons identified by the provider as directly affected by the release of the information; and

As explained above, the provider may be different than the person who designated the information as valuable commercial information, and it is imperative that a person who might be directly affected by release of the information be notified of its potential disclosure and provided an opportunity to protect disclosure of the information.

WAC 480-07-160(7): Subsections (e) and (f) should be renumbered (d) and (e).

WAC 480-07-160(7)(e): The subsection heading should be revised as follows to be consistent with respective subsections in WAC 480-07-160(5)(d) and WAC 480-07-160(6)(d):
"Procedures upon a request for information designated as protected."

WAC 480-07-160(8) Highly Confidential Information: It is not uncommon for a company to file testimony that contains highly confidential information before a protective order has been issued, such as in an initial filing of a general rate case. However, both the newly-adopted and proposed rules preclude such designation prior to the issuance of a highly confidential protective order. Therefore, a company could find itself in the position where it cannot file relevant testimony at the initiation of its rate proceeding. PSE recommends the Commission amend the proposed rule to allow a provider to designate information as highly confidential pursuant to this rule rather than a protective order if a protective order has not yet been issued in a proceeding. This proposed edit would also call for a revision to the proposed definition of highly confidential material, WAC 480-07-160(3)(c). Alternatively, PSE recommends that the Commission amend its rules to affirmatively allow a company to file a motion for a highly confidential protective order prior to the initiation of a general rate case or other proceeding.

Violations of WAC 480-07-160: PSE proposes to mirror the language contained in the Commission's standard protective order with regard to remedies for failure to properly designate or protect restricted information. An enforcement provision in this rule is critical because a provider may submit restricted information, but that provider may have no interest in protecting it from disclosure. For example, it is not uncommon for an intervenor to submit testimony containing information that PSE (or another company) has designated as valuable commercial information. Such information may contain sensitive financial information that, if disclosed, would harm PSE but not the intervenor. In this case, the intervenor is the provider but the provider has no incentive to protect such information from disclosure. The Commission's standard protective order contains an enforcement provision, and the revised WAC 480-07-160 should incorporate a similar provision to apply to all restricted information under this rule. PSE proposes a new subsection, as follows:

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WAC 480-07-160(11): Failure to properly designate information as restricted or failure to comply with any requirement in WAC 480-07-160 may subject such provider to liability for damages and shall subject such provider or person to penalties as provided by the Commission or as generally provided by law.

Thank you for the opportunity to file these comments. If you have any questions regarding these comments, or if we can be of any other assistance, please contact Donna Barnett at 425-635-1419.

Sincerely,

A handwritten signature in blue ink that reads "Donna Barnett" with a long horizontal line extending to the right.

Donna L. Barnett
Counsel for PSE