

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of Adopting)	
)	DOCKET NO. UG-990294
)	
WAC 480-90-153)	GENERAL ORDER NO. R-488
)	
)	
Relating to Disclosure of Private)	ORDER ADOPTING RULE
Information)	PERMANENTLY
)	
.....)	

1 **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and
Transportation Commission takes this action under Notice WSR #01-11-148, filed
with the Code Reviser on May 23, 2001. The Commission brings this proceeding
pursuant to RCW 80.01.040 and RCW 80.04.160.

2 **STATEMENT OF COMPLIANCE:** This proceeding complies with the Open
Public Meetings Act (chapter 42.30 RCW), 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 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 reasons for adopting the rule, a summary of the comments
received regarding the proposed rule, and responses reflecting the Commission’s
consideration of the comments.

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 this rulemaking and whether to adopt the specific language proposed by Staff. Together, the documents provide a complete but concise explanation of the agency's actions and the agency's reasons for taking those actions.

7 **PREPROPOSAL STATEMENT OF INQUIRY:** The Commission filed a Preproposal Statement of Inquiry (CR-101) on April 1, 1999, at WSR #99-08-052.

8 **ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL STATEMENT:** The Preproposal Statement of Inquiry advised interested persons that the Commission was considering entering a rulemaking on rules relating to gas companies to review them for content and readability pursuant to Executive Order 97-02, with attention to the rules' need, effectiveness and efficiency, clarity, intent and statutory authority, coordination, cost, and fairness. The review included consideration of whether substantive changes or additions were required.

9 The Commission also informed persons of the inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the Commission's list of persons requesting such information pursuant to RCW 34.05.320(3) or who appeared on lists of interested persons in Docket UG-990294. Pursuant to the notice, the Commission:

- Held four interested person/stakeholder meetings.
- Created inter-institutional discussion and drafting subgroups to prepare initial rules drafts.
- Developed draft rules using the information gathered from stakeholders.
- Circulated three working drafts to stakeholders for comment.
- Updated drafts to incorporate comments received.

10 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a supplemental notice of Proposed Rulemaking (Supplemental CR-102) on May 23, 2001, at WSR #01-11-148. The Commission originally scheduled this matter for oral comment and adoption under Notice WSR #01-11-148 at 9:30 a.m., Wednesday, June 27, 2001, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons an opportunity to submit written comments to the Commission. On June 27, 2001, the Commission postponed consideration of this matter until July 11, 2001. On July 11, 2001, the Commission postponed consideration of this matter until July 25, 2001.

11 **MEETINGS OR WORKSHOPS; ORAL COMMENTS:** Before filing the notice of Proposed Rulemaking, the Commission held four workshops at its headquarters in Olympia, Washington. The workshops were held on June 3 and June 24, 1999, October 14-15, 1999, and May 25, 2000. The following persons attended all or some

of the workshops: Bruce Folsom, Renee Webb, Dick Winters, Doug Young, Dick McCarthy, and Dave de Felice (all representing Avista Utilities), Lynn Logen, Phil Popoff, Karl Karzmar, Christy Omohundro, John McClain, Rick Adams, Lisa Rasmussen, John Thorne, and Stephanie Kreshel (all representing Puget Sound Energy), Onita King and Lois Douglass (representing Northwest Natural Gas), Matt Steuerwalt and Evan Sheffels (representing the Office of Public Counsel), Carole Rockney, Royal Drager, Robin Cross, Gene Cardon, Lauren Panamen, Jim Moore, and Peggy Duke (representing PacifiCorp), Kathie Barnard, Barbara Groff, Julie Marshall, and Debbie Barry (representing Cascade Natural Gas), Michael Karpp (representing the Energy Project), Ed Finklea (representing Energy Advocates), Doug Betzold (with Cost Management Services), Liz Klumpp (representing the Energy Office of the Department of Community, Trade, and Economic Development), Mark Dirstine (representing the International Brotherhood of Gas Workers), and Al Rhoades (with the Washington State Building Code Council). During the workshops, attendees provided oral comments about all the sections under review. Most of the discussions focused on consumer related issues, including refusal of service, prior obligation, and disclosure of private information. The Commission adopted many of the comments offered by various stakeholders. Other comments were not adopted for the reasons stated below.

12 **COMMENTERS (WRITTEN COMMENTS):** The Commission received written comments from Avista Utilities, Northwest Natural Gas, Public Counsel, and Puget Sound Energy. The Commission adopted many of the recommendations presented in written comments filed by these stakeholders. Other comments were not adopted, for the reasons stated below.

13 **SUGGESTIONS FOR CHANGE THAT ARE REJECTED:** The following suggested changes were not adopted for the reasons explained below.

WAC 480-90-153 Disclosure of private information

14 **Public Counsel** expressed concern that the proposed language for WAC 480-90-153 rendered subsection (1) effectively moot and that, as a result of it, gas companies appeared to be precluded from using private information to market services, except their own, energy-related services. Public Counsel considered this a loophole and suggested that the Commission consider which policy goal it is pursuing: 1) to prevent regulated utilities from capturing a competitive edge in the provision of unregulated services by virtue of their position or, 2) to prohibit them from marketing unregulated, non-energy products to customers without the customer's consent. The Commission intends that this rule prohibit companies from disclosing customer private information to affiliates, subsidiaries, or third parties for the purpose of allowing such entities to market services or products to customers who do not already subscribe to those services or products, without the customer's written permission.

- 15 **Avista Utilities** commented that it is not opposed to a rule limiting the disclosure of private information, but Avista believes the proposed rule would lead to outcomes that may not be in utility customers' best interests. In Avista's opinion, subsection (2) of this rule, as proposed in the Supplemental CR-102, would prohibit the sharing of specific customer information with affiliates, subsidiaries, or other third parties. Utilities, in partnership with third parties, currently provide several services to regulated customers that they consider to be beneficial to customers. As an example, some energy efficiency programs available to regulated customers are provided through the Company's trade partners. This third party involvement spans the spectrum from simple product support to complete marketing responsibility. Avista stated that it would need to obtain a waiver from this rule to allow, for example, winning DSM bidders to implement programs under Avista Utilities' Request for Proposals. Third parties aid in marketing end-use products and signing up customers prior to build-out to demonstrate cost-effectiveness of such a project. Avista contends that this rule would prohibit such activities. Avista suggested two possible approaches to modify this proposed rule. One approach would be to add a clarifying section to note exceptions. The other would be to rewrite the rule based on expressed purposes.
- 16 The Commission believes that the customer should have control over how his/her private information is used. The customer should not be marketed to by any company to which the customer has not provided his/her private consumer information, unless the customer has given permission for his/her information to be used in this way. The Commission agrees to delete the proposed subsection (1) of the rule and to change the word "share" to "disclose" in subsection (2) to better achieve the proposed objectives of the rule.
- 17 **RULEMAKING HEARING:** The rule proposal was considered for adoption, pursuant to proper notice, at a rulemaking hearing held during the Commission's regularly scheduled open public meeting on July 25, 2001, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, and Commissioner Patrick J. Oshie.
- 18 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission adopted the rule as proposed in the Supplemental CR-102 at WSR #01-11-148 with the changes described below.
- 19 **CHANGES FROM PROPOSAL:** The Commission adopted the proposal with the following changes from the text noticed at WSR #01-11-148:
- WAC 480-90-153 Disclosure of private information**
- 20 **Subsection (1). Puget Sound Energy (PSE)** stated that the Company has no intention to sell information about its customers and that, consequently, it is generally

supportive of this rule's intent. The Company expressed the concern that, as drafted, the privacy rule is an anti-marketing rule, and could have unintended consequences, such as prohibiting PSE from working with Schedule 48 customers to purchase price hedges. PSE suggested revising the rule to focus more specifically on preventing dissemination of information about customers. The Company suggested that this could be accomplished by striking the first paragraph of the proposed rules, which would still prevent utilities from disseminating the sensitive information to any other party. Another concern expressed by the Company was that subsection (1) focuses on marketing of any product or service. This could have, according to PSE, the unintended consequence of limiting a utility's ability to market Commission regulated and approved services, either by the utility itself or using business partners where such strategies would be more effective. Clarifying that this rule applies only to non-regulated service would help avoid these negative, unintended consequences. The Commission agrees to delete the proposed subsection (1) of the rule.

21 **Northwest Natural Gas (NW Natural)** opposed the inclusion in this rule of the language proposed under subsection (1). The Company stated that, as proposed, the rule would prohibit the utility from using customer information to inform and/or market to its own customers the types of services that, even though they may be unregulated, serve to provide potential benefits to ratepayers generally, such as equipment sales and/or financing services, appliance repair or warranty services, upstream capacity sales services, and many other similar services. NW Natural stated that it believes this section is unnecessary, and is not in the best interests of the utility or its customers.

22 Although NW Natural agreed that the privacy of the consumer should be protected, and that appropriate measures should be taken to ensure customers are properly protected, the Company believes that the consumer's rights to privacy are sufficiently protected under subsection (2). NW Natural suggested eliminating subsection (1) in its entirety or, in the alternative, limiting it to say that a utility may not disclose or permit access to private consumer information to any third party. The Commission agrees to delete the proposed subsection (1) of the rule.

23 **Subsection (2). Puget Sound Energy (PSE)** recommended changing the word "share" to "disclose" to provide language consistency with the title of the rule. The Commission agrees with the Company's suggestion.

24 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** In reviewing the entire record, the Commission determines that WAC 480-90-153 should be adopted to read as set forth in Appendix A, as a rule 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

25 THE COMMISSION ORDERS That:

26 WAC 480-90-153 is adopted to read as set forth in Appendix A, as a rule 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).

27 This Order and the rule 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 day of September, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, 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 1, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, amended 0, repealed 0.

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.

