

A-130355 Procedural Rules

Draft Summary of 9-29-17 Comments on Proposed Revisions to WAC 480-07-160

June 8, 2018

480-07-160	Energy Companies	Consumers	Solid Waste	CenturyLink	Staff Response
Title				Add “Confidential and” to clarify the rule’s applicability.	Staff agrees and has made that change to the proposed draft.
(3)				Move definitions to subsection (2) for ease and clarity of reference and make associated language edits.	Staff agrees and has made those changes to the proposed draft. In addition, Staff has consolidated subsections 3 and 8, resulting in the renumbering of all subsections except 1. The subsection references in this matrix, however, refer to the subsections in the prior draft.
(3)(b)				Expand the definition of exempt information to include other provisions of law.	Staff agrees and has made that change to the revised proposed draft.
(3)(d)				Change “protected” to “confidential” throughout the rule as more accurate and consistent with the statute and past practice.	Staff agrees and has made those changes to the revised proposed draft.
(5)(c)(i); (6)(c)(i); (7)(c)(i); (8)(c)(i)	PPL: Substitute “restricted” for “exempt” in notation on electronic storage medium containing restricted information. In addition, the rule should allow a notation in a text file in the storage device if the exterior cannot be labelled.				Staff agrees in part and has revised these provisions to specify marking the designated information as the type of restricted information it is. Staff disagrees with allowing electronic storage media not to be labelled. Staff believes they can be labelled.

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(5)(c)(iii); (6)(c)(iii); (7)(c)(iii); (8)(c)(iii)	PPL: Include a “reasonable efforts” standard with respect to designating specific restricted information on a page to account for voluminous spreadsheets or other complex documents.				Staff disagrees. Staff appreciates the difficulty with designating restricted information in these circumstances, but a “reasonable efforts” standard would be too nebulous and inconsistent with the strict requirements of the Public Records Act. Staff, however, is open to further discussion on how best to accommodate the competing interests, recognizing that the balance always tips in favor of disclosure under Washington law.
(5)(c)(iv); (6)(c)(iv); (7)(c)(iv); (8)(c)(iv)	PPL: Allow for a single document identifying each file that contains restricted information, rather than requiring a single .pdf page for each confidential file.	JA: Do not allow “bulk redactions” or designations of information as exempt or protected from disclosure.			PPL: Staff disagrees and believes the unredacted version of each document needs to stand alone. JA: Staff disagrees. There are times when multiple pages in their entirety contain information that is not subject to public disclosure. The Commission, however, may question that designation and has done so in the past, including requiring the provider to revise portions of the designation.
(5)(c)(vi); (6)(c)(vi); (7)(c)(vi); (8)(c)(vi)		JA: Reject all submissions that do not include both the redacted and unredacted versions.			WAC 480-07-140 addresses this issue and states that the Commission may reject a submission for filing if it fails to comply with applicable rules. The Commission’s records center routinely enforces the requirement that redacted and unredacted versions be filed simultaneously.

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(6)			<p>WRRRA: (a) Fears abuse or strategic delays in situations where the Commission does not make an initial determination of the propriety of a designation, and parties must resolve the issue in superior court.</p> <p>(b) Clarify that RCW 81.77.210 applies only to companies the Commission regulates and thus does not apply to applicants for solid waste collection authority.</p>		<p>(a) The proposed revisions governing confidential information, like the existing rule, reflect the process in RCW 80.04.095 and 81.77.210. The Commission cannot withhold such information for longer than 10 days without a court order. Staff is not aware that this process has been abused or used to create strategic delays, but any change to this process would require legislative action.</p> <p>(b) Staff disagrees. The Commission has consistently recognized applicants' designations of valuable commercial information under RCW 80.04.095, and because the language is virtually identical, the same interpretation should apply to RCW 81.77.210.</p>
(6)(d)	PSE: Retain the existing procedures when the Commission receives a request for information designated as valuable commercial information.				Staff disagrees. In conjunction with proposed revisions to this rule, the Commission will open WAC 480-04 (Public records) to specify and enhance this process, as well as to make other revisions.
(6)(d)(i)	PSE: Require notification of a request to the provider <i>and</i> (not or) any person identified as directly affected by release of the information.				Staff agrees and has made this change in the revised proposed draft.

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(7)	PPL: “Protected information” is either exempt or valuable commercial information and thus this category is superfluous and has the potential to cause confusion.				Staff agrees in part and has removed this category. Staff has also proposed revisions to WAC 480-07-420 to specifically address information protected under a protective order, which may include information other than exempt, confidential, or highly confidential information.
(7)(e) and (f)	PSE: Renumber these as (d) and (e).				Staff agrees and has made this change in the revised proposed draft.
(7)(e)	PSE: Revise header to be consistent with subsections (5)(d) and (6)(d).				Staff agrees and has made this change in the revised proposed draft.
(8)	PSE: Allow filing of documents containing information designated as highly confidential prior to the Commission entering a protective order.				Staff disagrees. The Commission recognizes highly confidential information only in a protective order which the Commission cannot enter until it initiates an adjudication. Staff nevertheless is open to discussing other ways to address this issue.
(9)	PPL: For documents that include multiple types of restricted information, clarify different highlight shadings for each type.				Staff recognizes the dilemma of designating different types of restricted information in the same document but is concerned with how the Commission and providers could implement this suggestion. Staff, however, is willing to consider this and any other ways to address this issue.

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New subsection (11)	PSE: Mirror the language in the standard protective order with regard to remedies for failure to properly designate or protect restricted information.				Staff disagrees. The issue of remedies for noncompliance arises only when persons other than the Commission and Public Counsel have access to restricted information, i.e., pursuant to a protective order, and that order is the appropriate venue to address that issue.
General	PPL: The revised rule should include provisions governing inter-party exchange of restricted information or at least cross-reference WAC 480-07-420 (Protective orders).				Staff agrees and has included appropriate language and a cross-reference to WAC 480-07-420 in the revised proposed draft.
General	PPL: Expressly state that the rule governs restricted information in both contested and non-contested cases.				Staff disagrees. The language Staff includes in the revised proposed draft makes clear that rule applies to all submissions to the Commission, not just adjudications.
General			WRRRA: Seeks guidance on how the Commission will handle challenges to a designation when no protective order is in place. SLG: Shares the concern with how to handle challenges outside of an adjudication.		Staff intends to move to WAC 480-04 (Public records) and enhance the provisions in the existing rule governing requests for public records that include information designated as restricted under this rule. With respect to valuable commercial information under RCW 81.77.210, that statute and RCW 42.56.330(1) specify that the Commission can withhold such information only pursuant to court order, and the Commission's process will continue to reflect the statutory requirements.

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General	NWN: The proposed revisions are cumbersome and create substantial administrative burdens. The Commission should convene a workshop to develop a collaborative approach to addressing concerns with the existing rule.				Staff disagrees. Staff has substantially revised its proposed modifications to address stakeholder concerns, but the Commission may conduct a workshop if necessary to further discuss any outstanding issues.
Commenter Acronyms	PSE – Puget Sound Energy PPL – Pacific Power and Light Company NWN – NW Natural	JA – James Adcock	SLG – Summit Law Group WRRRA – Washington Refuse & Recycling Association		