

July 11, 2018

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Mr. Mark L. Johnson
Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

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

Dear Mr. Johnson:

These comments are submitted on behalf of Puget Sound Energy (“PSE”) in response to the Commission’s Notice of Opportunity to Submit Written Comments dated June 8, 2018 regarding proposed amendments to WAC 480-07-160 and WAC 480-07-420. PSE appreciates the revisions made to WAC 480-07-160 based on PSE’s earlier comments and the comments of other parties. PSE appreciates the opportunity to further comment on WAC 480-07-160 and to comment on the proposed amendments to WAC 480-07-420, and its comments are set forth below.

WAC 480-07-160(2)

PSE recommends that the Commission reject the proposed amendments to WAC 480-07-160(2) in favor of the current rule. PSE understands the Commission’s desire to separately identify exempt material from valuable commercial information, but the benefits of such distinction are outweighed by the administrative burden, particularly since RCW 42.56.330(1) and RCW 80.04.095 anticipate that commercially valuable information may also be exempt from the public records act. If a document contains exempt information, valuable commercial information, and also highly confidential information (which is not unlikely), the proposed amendments would result in a document containing three lengthy designations on every page containing such information. For example, “Shaded information is designated as exempt per WAC 480-07-160”, “Underlined information is designated as confidential per WAC 480-07-160”, and “Italicized information is designated as highly confidential per protective order in Docket XX-XXXXXX”. On the redacted version, the amended rules would require an additional, fourth marking. If exempt, valuable commercial information, and highly confidential information are all contained in a spreadsheet with thousands of linked cells, then clearly distinguishing such information would be difficult, if not impossible. In any case, it would lead to a confusing and potentially unreadable document.

WAC 480-07-160(3) Waiver

PSE understands the Commission's interest in requiring strict compliance with its confidentiality rule, but the proposed amendments require numerous markings and designations to voluminous filings. Strict compliance is impractical when there are possibly hundreds of thousands of individual cells, any of which may contain confidential, highly confidential and exempt data, in one document.

PSE also renews its request to provide a course of action when Staff, Public Counsel, or an intervenor incorrectly marks information initially designated as restricted by a utility. In the matrix summarizing the September 29, 2017 comments, Staff states, "The issue of remedies for noncompliance arises only when persons other than the Commission and Public Counsel have access to restricted information...". PSE disagrees, because Staff or Public Counsel may file testimony or briefs containing a utility's confidential information, regardless of whether a protective order has been issued, and anyone may request that filing in a public records request. If Staff or Public Counsel incorrectly marks information provided under WAC 480-07-160, the utility has no recourse or ability to correct such errors. In those cases, disclosure of information that was incorrectly marked hurts only the party with no control over how Staff or Public Counsel marked the information. Accordingly, PSE recommends that the Commission amend WAC 480-07-160(3) to provide a method for curing non-compliance. For example, PSE recommends that the proposed amendments to WAC 480-07-160(3) be edited to provide a utility or other "owner" of confidential or other restricted information the ability to move for an order requiring a party to withdraw and re-file documents that do not strictly comply with the Commission's confidentiality rules.

WAC 480-07-160(6) Highly Confidential Information

PSE renews its request to allow filing of documents containing highly confidential information prior to the Commission entering a protective order, but acknowledges Staff's conclusion that, "The Commission recognizes highly confidential information only in a protective order which the Commission cannot enter until it initiates an adjudication." In cases where it is necessary to file highly confidential information before a protective order has been issued, as in the initial filing of a general rate case, PSE requests to be able to reference highly confidential information without actually providing such information until a protective order can be issued. PSE also requests that the Commission recognize that if a utility references but withholds highly confidential information until a protective order can be issued, such withholding will not affect or delay the adjudication's procedural schedule or statutory deadline. Additionally, another party cannot later claim that the utility failed to meet its burden as a result of temporarily withholding highly confidential information.

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Markings

For the reasons set forth above, PSE recommends that the Commission reject the proposed amendments regarding markings in favor of the current rules. The markings necessary to accomplish the distinctions between exempt, confidential and highly confidential information, as well as additional markings proposed in amendments to WAC 480-07-420, will result in a lengthy and confusing marking that is likely to obscure the information it is designating. These obligations will lead to confusion, rather than clarity.

WAC 480-07-420 Discovery - Protective Orders

PSE recommends that the Commission edit the proposed amendments regarding marking documents submitted pursuant to a protective order. It is imprecise to state that a given document is submitted pursuant to both WAC 480-07-160 and a protective order, and the marking should not include both circumstances. A document is submitted for filing either pursuant to the rules or pursuant to a protective order, but not both. If a protective order has not been issued in a proceeding, then confidential information should be submitted pursuant to the rule. If a protective order has been issued in a proceeding, then all documents containing confidential information is filed pursuant to the protective order, not the rule. Requiring each page to state both circumstances is unnecessary.

Thank you for the opportunity to file comments on behalf of PSE. If we can be of any further assistance, please contact Donna L. Barnett or Sheree Strom Carson at 425-635-1400.

Sincerely,

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

Donna L. Barnett