



# PROPOSED RULE MAKING

## CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: July 31, 2018

TIME: 11:37 AM

WSR 18-16-093

**Agency:** Washington Utilities and Transportation Commission

**Original Notice**

**Supplemental Notice to WSR** \_\_\_\_\_

**Continuance of WSR** \_\_\_\_\_

**Preproposal Statement of Inquiry was filed as WSR** 13-07-071 ; or

**Expedited Rule Making--Proposed notice was filed as WSR** \_\_\_\_\_; or

**Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**

**Proposal is exempt under RCW** \_\_\_\_\_.

**Title of rule and other identifying information:** (describe subject) The Washington Utilities and Transportation Commission has been engaged in this rulemaking to consider amendments to the rules in WAC Chapter 480-07, the Commission's procedural rules, governing the conduct of business before the Commission, including rules governing formal proceedings. At this time, the Commission proposes additional rules and modifications of the rules governing confidential and other restricted information, WAC 480-07-160 and WAC 480-07-420.

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
September 10, 2018	9:30 a.m.	Richard Hemstad Building Room 206 1300 S. Evergreen Park Dr. SW Olympia, WA 98503	Public hearing to consider adoption of proposed rules

**Date of intended adoption:** September 10, 2018 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: Washington Utilities and Transportation Commission  
Address: 1300 S Evergreen Park Drive S.W., Olympia, WA 98504-7250  
Email: [records@utc.wa.gov](mailto:records@utc.wa.gov)  
Fax: 360-586-1150  
Other:  
By (date) August 31, 2018

**Assistance for persons with disabilities:**

Contact Ashley Miller  
Phone: 360-664-1130  
Fax: 360-586-1150  
TTY: 360-586-8230 or 360-664-1132  
Email: [ashley.miller@utc.wa.gov](mailto:ashley.miller@utc.wa.gov)  
Other:  
By (date) August 31, 2018

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The Commission proposes to amend the rules in WAC Chapter 480-07 governing confidential and other restricted information to better ensure protection of such information from disclosure, implement statutory authority, and address additional procedural issues.

**Reasons supporting proposal:** The Commission observed the need for further consideration of the rules in WAC Chapter 480-07 governing confidential and other restricted information when the Commission last revised them in March 2017. Since that time, the Commission has worked with stakeholders to develop rule language to address its concerns. The Commission currently proposes to amend the rules to incorporate these revisions.

**Statutory authority for adoption:** RCW 34.05.020

**Statute being implemented:** RCW 80.01.040

**Is rule necessary because of a:**

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

**Name of proponent:** (person or organization) Washington Utilities and Transportation Commission

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Gregory J. Kopta	1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504	360-664-1355
Implementation:	Mark L. Johnson	1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504	360-664-1115
Enforcement:	Mark L. Johnson	1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504	360-664-1115

**Is a school district fiscal impact statement required under RCW 28A.305.135?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

No: Please explain: The Commission is not an agency to which RCW 34.05.328 applies. The proposed rules are not significant legislative rules of the sort referenced in RCW 34.05.328(5).

**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

RCW 34.05.310 (4)(b)  
(Internal government operations)

RCW 34.05.310 (4)(e)  
(Dictated by statute)

RCW 34.05.310 (4)(c)  
(Incorporation by reference)

RCW 34.05.310 (4)(f)  
(Set or adjust fees)

RCW 34.05.310 (4)(d)  
(Correct or clarify language)

RCW 34.05.310 (4)(g)  
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.

Explanation of exemptions, if necessary:

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency’s analysis showing how costs were calculated. **!**

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

**SMALL BUSINESS ECONOMIC IMPACT STATEMENT (SBEIS)**

Re: Procedural Rules Rulemaking Chapter 480-07 WAC, Sections 160 and 420,  
Docket A-130355

**BACKGROUND**

Washington’s Regulatory Fairness Act, chapter 19.85 RCW, is intended to focus an agency’s attention on the economic impact of proposed rules on affected businesses, involve affected businesses in developing rules, and minimize any disproportionate impact of the rules on small businesses. Before adopting a rule that will impose more than minor costs on an industry, a state agency must analyze the compliance costs for both large and small businesses (including lost sales or revenue), involve small businesses in the development of the rule, take feasible steps to reduce the economic impact of the rule on small businesses, and prepare a Small Business Economic Impact Statement (SBEIS). A “small business” is any profit-making entity that has 50 or fewer employees.

Staff of the Washington Utilities and Transportation Commission (Commission) has prepared proposed revisions to WAC 480-07-160 and 480-07-420. The draft rules are posted on the Commission’s web site at <http://www.utc.wa.gov/130355>.

On July 2, 2018, the Commission requested that affected companies provide information concerning whether the draft revised rules create additional costs for their company. The Commission requested the following information, at a minimum, for each draft rule for which a commenter identified a cost impact:

1. Identify the rule number, *i.e.*, WAC 480-07-160 or 480-07-420, of the draft proposed rule the commenter identified as having a cost impact;
2. Identify whether there is any change from the current rule to the draft proposed rule that creates an **additional** cost impact on the company;
3. Explain why there will be a cost impact on the company;
4. Provide a detailed analysis of how the commenter calculated the cost impact of each draft rule the commenter identified as having a cost impact; and
5. Identify any draft proposed rule that may create a cost savings to the company compared to the current rule.

On July 30, 2018, the Commission received comments from Qwest Corporation d/b/a CenturyLink QC, United Telephone Company of the Northwest d/b/a CenturyLink, CenturyTel of Washington, Inc. d/b/a CenturyLink, CenturyTel of Inter Island, Inc. d/b/a CenturyLink, and CenturyTel of Cowiche, Inc. d/b/a CenturyTel (collectively CenturyLink); Northwest Natural Gas Company (NWNG); and Puget Sound Energy (PSE). CenturyLink states that it will incur additional costs in the form of many more staff hours to comply with the proposed provisions in WAC 480-07-160 to designate exempt information separately from confidential information. CenturyLink estimates that “determining the proper designation and preparing the justification necessarily will add at least 5-10 minutes per piece of confidential information and up to 30 minutes or more in some cases.” For documents that contain multiple types of restricted information, CenturyLink estimates that time will double or triple. NWNG similarly estimates that its administrative costs of processing documents that contain restricted information could double or triple if the company must separately designate exempt information. PSE estimates that the additional administrative time required under the revised rules would result in additional costs of \$6,650 in a standard general rate case, and \$18,350 if a new resource is added to the portfolio in that case.

#### ANALYSIS

The available data indicates that the proposed revisions to WAC 480-07-160 and WAC 480-07-420 will have only a minor impact on the costs to the industries the Commission regulates. Most of the restricted information the Commission receives is designated as confidential or highly confidential and thus any additional costs to separately designate exempt information will not be substantial. Under these circumstances, an SBEIS is not required.<sup>1</sup> The Commission nevertheless has prepared an SBEIS in response to stakeholder comments concerning the costs that they believe will result from adopting the revised rules.

#### *Reporting, Recordkeeping, and Other Compliance Requirements (RCW 19.85.040(1))*

The proposed revised provisions in WAC 480-07-160 and WAC 480-07-420 will require companies and parties in adjudications to incur administrative costs to designate exempt information separately from confidential information in the form of additional staff time to review, designate, and mark exempt information. The Commission, however, lacks sufficient information to fully quantify those costs. CenturyLink and NWNG provide information in terms of time, but provide no data on the value of that time. Nor do they estimate the number of filings or documents they have made, or are likely to make in the future, that will include exempt information that must be marked according to the new requirements. The Commission expects that number has been, and will continue to be, small. PSE provides cost estimates, but only for general rate case filings, which that company makes less than once a year. For a company whose annual intrastate revenues exceed \$1 billion, an additional \$6,650 or \$18,350 in additional costs is not significant.

The Commission has no basis on which to find that the costs to comply with the revised rules will fall disproportionately on small businesses. All companies that provide documents containing restricted information currently incur the same legal and administrative costs to comply with the existing rules, and all companies will

---

<sup>1</sup> See RCW 19.85.030(1)(a)(i) (requiring an SBEIS “if the proposed rule imposes more than minor costs on businesses in an industry”).

incur the same such costs under the revised rules. None of those costs will significantly impact company sales or revenues.

The additional costs, moreover, are necessary to comply with existing law. Centurylink contends that “it is difficult to imagine Exempt information not also being Confidential.” The Public Records Act, chapter 42.56 RCW, takes a different view. “Confidential information” is protected from public disclosure under RCW 80.04.095 or RCW 81.77.210, and is only exempt pursuant to a court order.<sup>2</sup> Other types of information, such as utility customers’ personally identifiable information, is exempt under the statute, without the need to obtain a court order.<sup>3</sup> Treating exempt information the same as confidential information fails to recognize this distinction and is inconsistent with applicable law. The proposed revisions to WAC 480-07-160 and WAC 480-07-420 will assist the Commission to ensure full compliance with the Public Records Act.

*Steps Taken to Reduce the Costs to Small Businesses (RCW 19.85.040(2)(a))*

The rules adopt additional requirements for “providers” of exempt and confidential information, which are persons who provide the information to the Commission. The Commission has defined a “provider” for purposes of exempt information to exclude individuals or companies that provide exempt information about themselves, such as financial and personally identifiable information. Self-provided data represents the majority of exempt information the Commission receives. The persons and entities that provide it thus are not required to designate, mark, or justify their own information, relieving them of the additional costs of compliance that result from the proposed revisions to the rules. All companies, however, must comply with the rule requirements if the exempt information concerns their customers or any other third parties.

*Involvement of Small Businesses in Development of the Rules (RCW 19.85.040(2)(b))*

The Commission involved stakeholders, including small businesses, throughout the development of the proposed rules. The Commission requested two sets of comments on revisions to the rules and conducted a workshop to discuss the issues.

*Industries Required to Comply (RCW 19.85.040(2)(c))*

All industries the Commission regulates must comply with the rule.

*Estimate of jobs created or lost (RCW 19.85.040(2)(d))*

Data available to the Commission indicates that no jobs will be created or lost as a result of the proposed revisions to WAC 480-07-160 and WAC 480-07-420.

## **CONCLUSION**

Companies will incur additional costs to comply with revised WAC 480-07-160 and WAC 480-07-420, but those costs will not disproportionately impact small businesses. The Commission has included provisions in the rule to minimize the impact on individuals and companies providing information about themselves. The remaining provisions are necessary for compliance with the Public Records Act and other applicable laws, which justifies the additional costs.

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name: Washington Utilities and Transportation Commission  
Address: 1300 S. Evergreen Park Dr. SE, Olympia, WA 98504  
Phone: 360-664-1160  
Fax: 360-586-1150  
TTY: 360-586-8230 or 360-664-1132

---

<sup>2</sup> RCW 42.56.330(1).

<sup>3</sup> E.g., RCW 42.56.330(2).

Email: records@utc.wa.gov  
Other:

**Date:** July 31, 2018

**Name:** Mark L. Johnson

**Title:** Executive Director and Secretary

**Signature:**

A handwritten signature in black ink, appearing to read "Mark L. Johnson", written in a cursive style.