

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of  
Amending/Adopting/Repealing

WAC 480-07

Relating to  
The Commission's procedural rules,  
governing the conduct of business before  
the Commission, including rules  
governing formal proceedings.

DOCKET A-130355

GENERAL ORDER R-593

ORDER AMENDING AND  
ADOPTING RULES  
PERMANENTLY

- 1     **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and Transportation Commission (Commission) takes this action under Notice WSR #18-16-093, filed with the Code Reviser on July 31, 2018. 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 Administrative Procedure Act (RCW 34.05), the State Register Act (RCW 34.08), the State Environmental Policy Act of 1971 (RCW 43.21C), and the Regulatory Fairness Act (RCW 19.85).
- 3     **DATE OF ADOPTION:** The Commission adopts these rules on the date this Order is entered.
- 4     **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW 34.05.325(6) requires the Commission to prepare and publish a concise explanatory statement about an adopted rule. The statement must identify the Commission's reasons for adopting the rule, describe the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the Commission's responses to the comments reflecting the Commission's consideration of them.
- 5     To avoid unnecessary duplication in the record of this docket, the Commission designates the discussion in this Order, including appendices, as its concise explanatory statement,

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: September 19, 2018**

**TIME: 12:22 PM**

**WSR 18-20-002**

6 supplemented where not inconsistent by the staff memoranda preceding the filing of the  
CR-102 proposal and the adoption hearing. Together, these documents provide a  
complete but concise explanation of the agency actions and its reasons for taking those  
actions.

7 **REFERENCE TO AFFECTED RULES:** This Order amends the following sections of  
the Washington Administrative Code:

**Amend WAC 480-07-160 Confidential and other restricted information.**

**Amend WAC 480-07-420 Discovery—Protective orders.**

8 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:**  
The Commission filed a Preproposal Statement of Inquiry (CR-101) on March 20, 2013,  
at WSR # 13-07-071. The statement advised interested persons that the Commission was  
considering undertaking a rulemaking to consider possible corrections and changes to  
certain sections in WAC 480-07, the Commission’s procedural rules governing the  
conduct of business before the Commission, including in formal proceedings. The  
Commission also informed persons of this inquiry by providing notice of the subject and  
the CR-101 to everyone on the Commission's list of persons requesting such information  
pursuant to RCW 34.05.320(3), to all interested persons in the previous procedural rules  
rulemaking docket A-050802, and to all persons on the Commission’s list of utility  
attorneys, transportation attorneys, and telecommunications attorneys. Pursuant to the  
notice, but rescheduled at later dates, the Commission received comments on May 17,  
2013, and held a stakeholder workshop on August 21, 2013.

9 **SUBSEQUENT COMMENTS AND WORKSHOPS:** The Commission received  
additional comments on the rules that are the subject of this order on or about September  
29, 2017, and July 11, 2018. The Commission also held additional workshops on these  
rules on January 15, 2014, and November 19, 2014.<sup>1</sup>

10 **SMALL BUSINESS ECONOMIC IMPACT ANALYSIS:** On July 3, 2018, the  
Commission issued a Small Business Economic Impact Questionnaire to all interested  
persons. The Commission received responses on July 30, 2018 from CenturyLink,  
Northwest Natural Gas Company (NW Natural), and Puget Sound Energy (PSE). These

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<sup>1</sup> Due to the number of rules and breadth of subject matter in WAC chapter 480-07, the  
Commission considered the rules in stages. The Commission entered General Order R-588 in this  
docket on March 2, 2017, amending, repealing, and adopting rules in Parts I through III A of this  
chapter. On August 31, 2018, the Commission entered General Order R-592 amending, repealing,  
and adopting rules in Parts III B through IV. This is the third and final set of rules the  
Commission will consider in this rulemaking.

companies expressed concern with the additional administrative costs that would result from identifying exempt information separately from confidential information, and CenturyLink and PSE provided estimates of those costs. The Commission considered those responses and the available data and determined 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, a Small Business Economic Impact Statement is not required.

- 11 The Commission nevertheless undertook a small business economic impact analysis using the factors in RCW 19.85.040. The Commission found that 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 law, which justifies the additional costs.
- 12 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a notice of Proposed Rulemaking (CR-102) on July 31, 2018, at WSR #18-16-093. The Commission scheduled this matter for oral comment and adoption under Notice WSR #18-16-093 at 9:30 a.m., Monday, September 10, 2018, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission.
- 13 **WRITTEN COMMENTS:** The Commission received comments on the proposed rules on or about August 31, 2018, from PSE, NW Natural, and Pacific Power & Light Company (Pacific Power). Those comments and the Commission's determinations are summarized in paragraphs 15-17 below.
- 14 **RULEMAKING HEARING:** The Commission considered the proposed rules for adoption at a rulemaking hearing on September 10, 2018, before Chairman David W. Danner, Commissioner Ann E. Rendahl, and Commissioner Jay M. Balasbas. The Commission heard a presentation and comments from Gregory J. Kopta, Administrative Law Judge, representing Commission Staff (Staff), and oral comments from representatives of Pacific Power, PSE, the Public Counsel Unit of the Office of the Washington Attorney General (Public Counsel), and NW Natural.

- 15 **SUGGESTED CHANGES:** Written and oral comments suggested two changes to the proposed rules. The Commission declines to adopt those changes for the reasons discussed below.
- 16 NW Natural in its written comments expressed concern with the administrative burden imposed by the requirement to separately identify exempt information.<sup>2</sup> As discussed in paragraphs 10-11 above, we find that the costs companies will incur to comply with the proposed rule are minor and necessary for compliance with applicable law. In addition, the requirement to separately identify exempt information should not be a substantial burden in most cases, and the benefits of facilitating the Commission's compliance with the Public Records Act outweighs that burden. We therefore adopt the rules as proposed.
- 17 Pacific Power proposes that the Commission expand the scope of WAC 480-07-420 to allow the Commission to enter protective orders outside of adjudicative proceedings. The company contends that such orders would facilitate proceedings other than adjudications, such as Commission review of energy company integrated resource plans (IRPs), by allowing interested persons to access confidential information pursuant to Commission oversight. PSE and Public Counsel agree. The Commission is well aware of the issues of access to confidential information that have arisen in the context of IRPs and other proceedings, but we are also concerned about the practical application of expanding the types of proceedings in which we enter protective orders.
- 18 The Commission considers the vast majority of the matters that come before it outside of adjudications. In addition, not all of the industries the Commission regulates are covered by the provisions of RCW 80.04.095 and RCW 81.77.210, and thus may not file confidential documents with the Commission under those statutes. Making protective orders more broadly available could unnecessarily complicate Commission consideration of non-adjudicative matters and tax the resources of the Commission and regulated companies alike. In addition, protective orders in adjudications allow parties in those proceedings to access confidential information. There are no parties in non-adjudicative proceedings. The Commission thus would be required to determine which interested persons could sign a protective order in those proceedings, including resolving company objections to requests from members of the media and the general public. The Commission also could be required to enforce the obligations of such persons who are permitted to access confidential information. Given these concerns, we are not willing to venture into such uncharted territory at this point in the proceeding or based on the record before us. Accordingly, we adopt the rule as proposed in the CR-102.

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<sup>2</sup> At the adoption hearing, NW Natural stated that it could and would work with the proposed rules if the Commission adopts them without changes.

- 19 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission finds and concludes that it should amend and adopt the rules as proposed in the CR-102 at WSR #18-16-093.
- 20 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the Commission determines that the sections in WAC Chapter 480-07 listed in paragraph 6 above should be amended as applicable to read as set forth in Appendix A, as rules 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

#### THE COMMISSION ORDERS:

- 21 The Commission amends and adopts WAC 480-07-160 and WAC 480-07-420 to read as set forth in Appendix A, as rules 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).
- 22 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 RCW 80.01 and RCW 34.05 and WAC 1-21.

DATED at Olympia, Washington, September 19, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



DAVID W. DANNER, Chairman



ANN E. RENDAHL, Commissioner



JAY M. BALASBAS, 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 0, amended 2, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 2, 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.

## **Appendix A**

### **Revised Rules**