

www.pse.com



**PUGET SOUND ENERGY**

*The Energy To Do Great Things*

*Puget Sound Energy, Inc.*

*P.O. Box 97034*

*Bellevue, WA 98009-9734*

*Filed: via WUTC web portal*

December 6, 2010

Mr. David W. Danner  
Executive Director and Secretary  
Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive S.W.  
P.O. Box 47250  
Olympia, WA 98504-7250

**Subject: Docket No. U-100523**  
***Rulemaking to Consider Paperless Billing for Electric and Gas***  
***Customers***  
**Comments of Puget Sound Energy, Inc.**

Dear Mr. Danner:

Puget Sound Energy, Inc. ("PSE" or the "Company") submits these comments in response to the November 5, 2010, Notice of Opportunity to File Written Comments on Proposed Rules ("Notice"). These comments address the draft rules provided with the Notice and provide suggestions to modify the draft rules in order to provide customers greater flexibility and to clarify certain other issues. PSE appreciates the opportunity to participate in this rulemaking proceeding.

### **Puget Sound Energy Comments**

Puget Sound Energy presents its comments first in a discussion about the specific draft rule provision. The discussion is followed by recommended edits to the draft rules. Also attached is a summary of the recommended edits to the draft rules.

## **Puget Sound Energy Comments on Specific Rule Provisions**

### **WAC 480-90-153 and 480-100-153**

***Discussion:*** The original intent of WAC 480-90-153 and WAC 480-100-153 was to prohibit utilities from disclosing information to its affiliates, subsidiaries, or any other third parties for the purposes of marketing products or services that the consumer has not requested. The rule does not currently require that the utility obtain consent from a consumer prior to fulfilling requests from consumers for products or services that the consumer was requesting. Nor was the rule intended to prohibit utilities from disclosing information to affiliates, subsidiaries, or any other third party for purposes other than for marketing services or product offerings. As discussed below, some of the proposed changes appear to expand the scope of the rule beyond the original intent.

The Company guides its interpretation of WAC 480-90-153 and 480-100-153 and its business practices based on the facts that: (i) these rules prohibit disclosure of private consumer information (without the consumer's permission) for purposes of marketing services or products that the consumer does not already subscribe to; and (ii) these rules do not prohibit disclosure of private consumer information for purposes that do not include marketing services or products.

This is especially true for the hundreds of telephone calls that PSE takes every day. For example, fulfilling a request from a consumer to forward their bill to a third party is not considered marketing a service, even if that third party will provide a service for the consumer. Another example is a request from a consumer to add the name of a spouse or roommate to the bill. In both of these examples private consumer information will be disclosed to a third party, but not for the purposes of marketing services to which the customer does not already subscribe. To change these rules in a manner such that they could be interpreted to prohibit the disclosure of all private consumer information or require written or electronic permission prior to disclosure would cripple the utility's ability to respond to and fulfill consumer's requests.

Yet another example of disclosure of private consumer information without written or electronic permission is the disclosure to an affiliate, subsidiary, or other third party responsible for the design and construction of a utility line extension to deliver energy service to a consumer at a new location. The proposed changes to the WAC rules should be clear that they do not affect this routine utility practice.

## **WAC 480-90-153(2) and 480-100-153(2)**

**Discussion:** With the addition of the new section (3) to this rule the added sentence at the end of section 2 appears redundant and therefore confusing. A similar requirement is also reflected in section (1). PSE suggests deleting the following sentence from the end of section (2): “For each individual service or product offering, the utility must obtain and maintain a record of customer consent for the disclosure of private consumer information.” A sentence containing similar requirements is already included in section (3). That sentence is: “The utility must obtain customer disclosure permission for each individual service, product offering or disclosure and maintain a record of each permission for the disclosure of private customer information.” Revisions to section (3) are discussed below. For these reasons the last sentence in section (2) should be deleted.

### ***Suggested revision to draft rule:***

WAC 480-90-153(2) and WAC 480-100-153(2) Private consumer information includes the customer’s name, address, telephone number, and any other personally identifying information, as well as information related to the quantity, technical configuration, type, destination, and amount of use of service or products subscribed to by a customer of a regulated utility that is available to the utility solely by virtue of the customer-utility relationship. ~~For each individual service or product offering, the utility must obtain and maintain a record of customer consent for the disclosure of private consumer information.~~

## **WAC 480-90-153(3) and 480-100-153(3)**

**Discussion:** This section is as follows: “The utility must obtain customer disclosure permission for each individual service, product offering or **disclosure** and maintain a record of each permission for the disclosure of private customer information.” (Emphasis added). As discussed above, this section is similar and redundant with portions of sections (1) and (2). In addition, the addition of the word “disclosure” renders the provision inconsistent with section (1).

Due to the addition of “disclosure” this rule has been expanded beyond the intent in section (1) which limited disclosures only “for the purposes of marketing services or product offerings”. By including “disclosure” in the rule, the rule could be interpreted to require consent from the consumer for every disclosure. It could be interpreted to mean that prior to discussing a complaint with commission staff the utility must first obtain permission from the consumer to do so. Also, this provision could be interpreted to severely hamper a utility’s ability to operate, including the collection of bad debts by a collection agency and obtaining information from a permitting agency regarding the status of a permit for a new service request.

***Suggested revision to draft rule:***

WAC 480-90-153(3) and WAC 480-100-153(3) The utility must obtain customer disclosure permission for each individual service, or product offering ~~or disclosure~~ with or to an affiliate or subsidiary of the utility or any other third party for purposes of marketing services or products that the consumer does not already subscribe and maintain a record of each permission for the disclosure of private ~~customer~~ consumer information.

**WAC 480-90-179 and 480-100-179**

***Discussion:*** This rule has been revised from the prior draft to include a provision limiting the transmission by electronic means to mean only “by transmission to the customer’s e-mail address”. This change limits the consumer’s options today and in the future to only by e-mail. Today, consumers want bills transmitted by means other than e-mail. In fact, PSE’s tariff book already allows for this as evidenced by PSE’s Schedule 80. Schedule 80, Section 14.a. which provides for electronic billing and payment by large non-residential customers and Section 14.b. which provides for electronic billing presentment and payment by any customer and does not limit such billing or payments to e-mail. Consumers should also be allowed more control over the transmission options to provide them with the ability to more effectively participate in third party online and mobile services designed to help manage bills, achieve greater energy efficiency and save on electricity and natural gas costs. In the future, consumers may want their bills sent to various electronic devices such as their iPhone or iPad or through other electronic means that are yet to be developed. Making revisions now may eliminate the need for an additional rulemaking to take into account such other electronic means.

***Suggested revision to draft rule:***

WAC 480-90-179 and WAC 480-100-179 **Electronic information.** With the prior consent of the customer or applicant, a utility may provide the following by electronic means, ~~by transmission to the customer’s e-mail address,~~ instead of in paper copy sent to the customer’s mailing address:

- Bills;
- Notices of tariff revisions; and
- Bill inserts containing information required to be provided to customers or applicants by statute, rule or commission order (“bill inserts”).

The provision of this electronic information to a customer will be considered compliant with any statute, rule, commission order, or tariff provisions that refers to the mailing of bills, notices of tariff revisions or bill inserts when a customer has consented to receive the information in electronic form, provided that the electronic notice ~~or e-mail~~ includes the information, provides a link to the electronic information, or otherwise advises the customer of the electronic location of such information.

## **WAC 480-90-179(2) and 480-100-179(2)**

**Discussion:** PSE agrees with this section where it provides that the utility must obtain consent from the customer prior to providing bills, notices and bill inserts electronically. The concept of electronic authorizations and communications moves the WAC rules closer to what customers have become accustomed to in other business sectors. However, this proposed section may be too broad in that it could potentially require written or electronic permission to undertake activities that do not currently require consent. For example, this section infers that in order for a customer to pay a bill electronically, the utility must first obtain the customer's consent. Several electronic bill pay options already exist for customers and the proposed rule could be read to impact these providers. The suggested revisions below clarify that when the customer seeks to pay a bill online through one of his or her own electronic options (*i.e.*, through his or her bank online bill pay or other third party bill pay systems with which the customer has a relationship).

All bill payment services, such as automatic bill payment services are made through third-party vendors or banks. The utility has no control over these third party payment services and therefore does not have an opportunity to obtain consent. The only option would be to refuse to accept such payments until the customer provided consent to the utility. One-time bill payments are a convenience provided by a third-party and the service is often used to prevent disconnection of service. If the utility were to require consent prior to accepting such a payment the disconnection may occur even though a customer was trying to make payment (which would have to be refused).

A similar situation could occur with an equal payment plan where the customer sends a note requesting the equal payment plan but not providing consent. During the time that the consent form is passing through the mail the customer may be billed without benefit of the equal payment plan, creating an issue for the customer. PSE is not aware of any situations where placing a customer on an equal payment plan has created a problem for the customer or of any situations where a customer has been placed on an equal payment plan without their request. In addition, the equal payment plan is required to be offered to customers, so requiring prior consent would conflict with the rule requiring the offering of such a plan.

Because of the concerns about automated payments this rule should be limited to the provision of services by or on behalf of the utility and the equal payment plan should not require prior consent from the customer as it is required to be offered to customers in WAC 480-90-138(2) and WAC 480-100-138(2).

***Suggested revision to draft rule:***

WAC 480-90-179(2) and WAC 480-100-179(2) **Obtaining and documenting customer consent.** The utility must obtain prior written or electronic consent to provide bills, notices of tariff revisions and bill inserts ~~prescribed information~~ in electronic form (customer consent). The customer consent must be obtained directly from the customer of record and comply with the following:

- (a) The consent section on the document, screen, or web page may also offer the customer separate, individual opportunities to consent to:
  - (i) Paperless billing offered by the utility.
  - (ii) Automatic payment services offered by the utility, including one-time payment services or other automatic payment services.
  - (iii) Equal payment plan.
  - (iv) Other electronic services offered by the utility.

No other information may be combined on the same document, screen or web page except [electric or gas] utility company contact information. The customer must check each box or space giving his or her consent to one or more services. Each service requires a separate, affirmative consent, but not a separate consent screen. The consent screen must not have the consent box(s) or space(s) already filled in.

- (b) The utility must retain a record of the customer's consent as a part of the customer's account records as evidence of the customer's consent to receive bills, notices of tariff revisions and bill inserts ~~selected documents~~ in electronic form, or to participate in paperless billing or automatic payment services offered by the utility ~~or to participate in the utility's equal payment service.~~

**WAC 480-90-179(2)(c) and 480-100-179(2)(c)**

***Discussion:*** This rule would be in conflict with the draft of WAC 480-90-153(3) and 480-100-153(3) attached to the Notice unless sections (a) and (b) are revised as suggested above. If the above suggestions above are not accepted, then the revisions suggested below, to this section (c) should be made.

***Suggested revision to draft rule:***

WAC 480-90-179(2)(c) and WAC 480-100-179(2)(c) Documentation of the consent must be made available to the customer and to the commission, after receiving permission from the customer for disclosure of private consumer information, at no charge, if requested.

**WAC 480-90-179(2)(d) and 480-100-179(2)(d)**

***Discussion:*** The Company interprets this section to detail what information that the customer must confirm/acknowledge and not what the utility must retain in its record of confirmation.

**WAC 480-90-179(2)(d)(iii) and 480-100-179(2)(d)(iii)**

**Discussion:** This section provides that the customer may request a paper copy of any document sent electronically at no additional charge. While PSE supports this provision in general, the expense of manually sending paper copies upon request needs to be offset with a right for the utility to remove any customer from electronic billing if requests for paper copies are frequent or extensive. Without changes to this section there is a conflict between this section and section 5 which allows a utility to refuse to provide both electronic and paper documents on a continuous basis. PSE suggested adding the phrase “and subject to the limitations provided in this rule” in its September 10<sup>th</sup> comments and that is still a good option, or a new section can be added to eliminate the conflict.

***Suggested revision to draft rule:***

WAC 480-90-179(2)(d)(iii) and WAC 480-100-179(2)(d)(iii) Confirmation that the customer understands the utility will provide, upon request but subject to the limitations in this rule, a paper copy of any document sent electronically at no additional charge and that the customer may opt out of receiving information electronically at any time and revert to paper format through the mail at no additional charge;

OR a new section to eliminate conflict

WAC 480-90-179(2)(d)(vi) and WAC 480-100-179(2)(d)(vi) Acknowledgement that the customer understands that utility may discontinue providing documents electronically at any time and to any customer.

**WAC 480-90-179(2)(d)(iii) and 480-100-179(2)(d)(iii)**

**Discussion:** The Company interprets the provision regarding “no additional charge” as meaning to the specific customer making the request and that the cost of providing such copies is recoverable in general rates for service.

**WAC 480-90-179(7)(a) and (b) and 480-100-179(7)(a) and (b)**

**Discussion:** This rule contains a reference only to email, “or other electronic address” should be added as has been done in other sections. Perhaps an addition to WAC 480-90-023 and WAC 480-100-023 should be considered to fully define e-mail to mean transmission of data by any electronic means so that references to e-mail are not misconstrued to mean only the computer to computer email that we are all familiar with today. Such a definition should not limit the method of transmission (it should be broad enough to include transmission by wires, wireless methods or other future methods) or the format of transmission (it should be broad enough to include the present e-mail formats, but also in formats suitable for iPhone, iPad and other future electronic devices).

***Suggested revision to draft rule:***

WAC 480-90-179(7)(a) and 480-100-179(7)(a) The utility must send the information to the customer-provided e-mail address or other electronic address one additional time, the next business day. If the additional attempt fails, the utility company must send the customer the information by mail the next business day and automatically return the customer to mail notification: and

WAC 480-90-179(7)(b) and 480-100-179(7)(b) The utility must include an explanation with the mailed information that the e-mail address or other electronic address is not functioning. The company utility must explain that future information will be sent via mail until a functioning e-mail or other electronic address has been provided to the company utility. A second verification is not required.

PSE appreciates the opportunity to comment on the draft rules to clarify the use of electronic information. Please direct any questions regarding these comments to Lynn Logen at (425) 462-3872 or at [lynn.logen@pse.com](mailto:lynn.logen@pse.com) or the undersigned at (425) 462-3495.

Sincerely,



Lynn F. Logen, Tariff Consultant

for Tom DeBoer

Director – Federal and State Regulatory Affairs



**Summary of Suggested revisions to draft rule language:**

**WAC 480-90-153(2) and WAC 480-100-153(2)** Private consumer information includes the customer's name, address, telephone number, and any other personally identifying information, as well as information related to the quantity, technical configuration, type, destination, and amount of use of service or products subscribed to by a customer of a regulated utility that is available to the utility solely by virtue of the customer-utility relationship. ~~For each individual service or product offering, the utility must obtain and maintain a record of customer consent for the disclosure of private consumer information.~~

**WAC 480-90-153(3) and WAC 480-100-153(3)** The utility must obtain customer disclosure permission for each individual service, or product offering ~~or disclosure~~ with or to an affiliate or subsidiary of the utility or any other third party for purposes of marketing services or products that the consumer does not already subscribe and maintain a record of each permission for the disclosure of private ~~customer~~ consumer information.

**WAC 480-90-179 and WAC 480-100-179 Electronic information.** With the prior consent of the customer or applicant, a utility may provide the following by electronic means, ~~by transmission to the customer's e-mail address,~~ instead of in paper copy sent to the customer's mailing address:

- Bills;
- Notices of tariff revisions; and
- Bill inserts containing information required to be provided to customers or applicants by statute, rule or commission order ("bill inserts").

The provision of this electronic information to a customer will be considered compliant with any statute, rule, commission order, or tariff provisions that refers to the mailing of bills, notices of tariff revisions or bill inserts when a customer has consented to receive the information in electronic form, provided that the electronic notice or e-mail includes the information, provides a link to the electronic information, or otherwise advises the customer of the electronic location of such information.

**WAC 480-90-179(2) and WAC 480-100-179(2) Obtaining and documenting customer consent.** The utility must obtain prior written or electronic consent to provide bills, notices of tariff revisions and bill inserts ~~prescribed information~~ in electronic form (customer consent). The customer consent must be obtained directly from the customer of record and comply with the following:

- (b) The consent section on the document, screen, or web page may also offer the customer separate, individual opportunities to consent to:
- (i) Paperless billing offered by the utility.
  - (ii) Automatic payment services offered by the utility, including one-time payment services or other automatic payment services.
  - (iii) Equal payment plan.
  - (iv) Other electronic services offered by the utility.

No other information may be combined on the same document, screen or web page except [electric or gas] utility company contact information. The customer must check each box or space giving his or her consent to one or more services. Each service requires a separate, affirmative consent, but not a separate consent screen. The consent screen must not have the consent box(s) or space(s) already filled in.

- (b) The utility must retain a record of the customer's consent as a part of the customer's account records as evidence of the customer's consent to receive bills, notices of tariff revisions and bill inserts ~~selected documents~~ in electronic form, or to participate in paperless billing or automatic payment services offered by the utility ~~or to participate in the utility's equal payment service.~~

**WAC 480-90-179(2)(c) and WAC 480-100-179(2)(c)** Documentation of the consent must be made available to the customer and to the commission, after receiving permission from the customer for disclosure of private consumer information, at no charge, if requested.

**WAC 480-90-179(2)(d)(iii) and WAC 480-100-179(2)(d)(iii)** Confirmation that the customer understands the utility will provide, upon request but subject to the limitations in this rule, a paper copy of any document sent electronically at no additional charge and that the customer may opt out of receiving information electronically at any time and revert to paper format through the mail at no additional charge;

OR add a new section to eliminate conflict

**WAC 480-90-179(2)(d)(vi) and WAC 480-100-179(2)(d)(vi)** Acknowledgement that the customer understands that utility may discontinue providing documents electronically at any time and to any customer.

**WAC 480-90-179(7)(a) and 480-100-179(7)(a)** The utility must send the information to the customer-provided e-mail address or other electronic address one additional time, the next business day. If the additional attempt fails, the utility company must send the customer the information by mail the next business day and automatically return the customer to mail notification: and

**WAC 480-90-179(7)(b) and 480-100-179(7)(b)** The utility must include an explanation with the mailed information that the e-mail address or other electronic address is not functioning. The company utility must explain that future information will be sent via mail until a functioning e-mail or other electronic address has been provided to the company utility. A second verification is not required.