

# Chapter 480-07 WAC

## PROCEDURAL RULES

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**DISPOSITION OF SECTIONS FORMERLY  
CODIFIED IN THIS CHAPTER**

- 480-07-143 Submitting documents in rule-making proceedings. [Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-143, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-143, filed 11/24/03, effective 1/1/04.] Repealed by WSR 17-06-051 (General Order R-588), filed 2/28/17, effective 3/31/17. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-07-145 Filing documents in adjudicative proceedings. [Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 08-18-012 (Docket A-072162, General Order R-550), § 480-07-145, filed 8/22/08, effective 9/22/08; WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-145, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-145, filed 11/24/03, effective 1/1/04.] Repealed by WSR 17-06-051 (General Order R-588), filed 2/28/17, effective 3/31/17. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-07-423 Discovery—Protective orders—Submission requirements for documents. [Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-423, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-423, filed 11/24/03, effective 1/1/04.] Repealed by WSR 17-06-051 (General Order R-588), filed 2/28/17, effective 3/31/17. Statutory Authority: RCW 80.01.040 and 80.04.160.

**WAC 480-07-010 Scope of this chapter.** This chapter includes rules that explain how to conduct business with the Washington utilities and transportation commission (commission). The commission interacts both informally and formally with the public and with the businesses it regulates.

Part I of this chapter includes basic information about the commission, such as the agency's office hours, its physical address and other contact information, and general requirements for communicating with the commission.

Part II includes provisions that relate specifically to rule-making proceedings, such as how a person may submit comments that will be taken into account when the commission considers making changes to its rules.

Part III concerns adjudicative proceedings including hearings on formal complaints, general rate proceedings, applications for authority, petitions for relief, and abbreviated proceedings that may be used in some circumstances.

Part IV concerns other types of commission proceedings, including regular and special open public meetings, interpretive and policy statements, declaratory orders, penalty assessments, and informal complaints.

These rules are authorized by and supplement the Administrative Procedure Act, chapter 34.05 RCW, and the statutes that define the commission's authority and responsibilities found principally in Titles 80 and 81 RCW. The commission's procedural rules should be interpreted in conjunction with these statutes.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-010, filed 2/28/17, effective 3/31/17; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-010, filed 11/24/03, effective 1/1/04.]

**PART I: GENERAL PROVISIONS**

**WAC 480-07-100 Scope of Part I.** Part I of this chapter contains information about the commission and general rules

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that apply in rule-making, adjudicative, and other proceedings described in this chapter.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-100, filed 2/28/17, effective 3/31/17; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-100, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-110 Exemptions from and modifications to commission rules; conflicts with other rules. (1) Exceptions and modifications.** The commission, in response to a request or on its own initiative, may grant an exemption from, or modify the application of, any of its rules in individual circumstances if the exemption or modification is consistent with the public interest, the purposes underlying regulation, and applicable statutes. Consistent with due process and the public interest, the commission may modify the application of procedural rules in this chapter on its own initiative during a particular adjudication or other docket without following the process identified in subsection (2) of this section.

**(2) Process.**

(a) *How to request an exemption from, or modification to, a rule.* To request a rule exemption or modification, a person must file with the commission a written petition identifying the rule for which the person seeks an exemption and providing a full explanation of the reason for requesting the exemption. Telecommunications companies, gas companies, or electric companies filing petitions for exemption under this section must provide an electronic copy of the request to the public counsel unit of the attorney general's office by email on the same day the request is filed with the commission.

(b) *Commission process.* The commission will assign the petition a docket number if the request does not arise in an existing docket, and will schedule the petition for consideration at one of the commission's regularly scheduled open meetings or in an adjudicative proceeding if appropriate under chapter 34.05 RCW. The commission will notify the person requesting the exemption and other interested persons of the date of the open meeting or hearing when the commission will consider the petition.

(c) *Standard for determination.* The commission uses the public interest standard to determine whether to grant an exemption from, or modification to, a commission rule. Factors the commission may consider in making this determination include whether the rule imposes an undue hardship on the requesting person of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule to the requesting person would be contrary to the underlying purposes of the rule and the public interest.

(3) **Conflicts with other rules.** Statutes or other commission rules may establish a process for requesting rule exemption or modification, and if they conflict with this rule, those statutes or other rules govern the request.

(4) **Emergency situations.** In the event of a state of emergency and for good cause shown, the commission may enter an order on its own motion, or upon the motion of any person or public service company affected by the rule, exempting public service companies, the commission, and all

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affected persons from complying with the requirements of specific rules in this title.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-110, filed 2/28/17, effective 3/31/17; WSR 08-18-012 (Docket A-072162, General Order R-550), § 480-07-110, filed 8/22/08, effective 9/22/08; WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-110, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-110, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-120 Office hours.** The commission's offices are open to the public between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except on official state holidays as defined in RCW 1.16.050.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-120, filed 2/28/17, effective 3/31/17; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-120, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-125 Commission contact information.** The information included in this section is current at the time of rule adoption but may change. Persons may obtain current and additional contact information for the commission and its personnel by accessing the commission's internet web site or by requesting the information in person at the commission offices, by a telephone call to the commission's main public number, or through an email to the commission's records center.

Location and mailing address:	Washington Utilities and Transportation Commission 1300 S. Evergreen Park Drive S.W. P.O. Box 47250 Olympia, WA 98504-7250
Telephone:	
Public number	360-664-1160
Records center number	360-664-1234
Consumer inquiries, comments and informal complaints	1-800-562-6150
Conference bridge for participating in proceedings by telephone	360-664-3846
Web portal	www.utc.wa.gov/e-filing
Records center email	records@utc.wa.gov
Internet web site	www.utc.wa.gov

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-125, filed 2/28/17, effective 3/31/17; WSR 08-18-012 (Docket A-072162, General Order R-550), § 480-07-125, filed 8/22/08, effective 9/22/08; WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-125, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-125, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-130 Time periods specified for acts governed by this chapter. (1) Definitions.**

(a) "Day" means calendar day whenever used in this chapter, unless otherwise specified.

(b) "Business day" as used in this chapter, means any day when the commission's offices are open to the public as provided in WAC 480-07-120.

(2) **Computation of time.** The period of time for doing an act governed by this chapter is determined by excluding the first day and including the last day, unless the last day is not a business day, in which circumstance the period runs until the end of the next business day.

(3) **Variation from time limits.** The commission may modify the time limits stated in chapter 34.05 RCW, subject to the requirements of RCW 34.05.080. The commission may modify the time limits stated in a commission rule, subject to other requirements of law. WAC 480-07-385 governs continuances or extensions of time in adjudicative proceedings.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-130, filed 2/28/17, effective 3/31/17; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-130, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-140 General requirements for submitting documents to the commission. (1) General.**

(a) *Informal submissions.* Informal submissions are oral or written comments or communications directed to the commission that do not seek, or respond to, formal commission action, are not required by statute or commission rule, and generally are not filed in a docket. Informal submissions include, but are not limited to, consumer complaints other than complaints requesting commencement of an adjudicative proceeding, and public comments made on matters the commission considers at an open public meeting or in an adjudication when submitted by persons who are not, and do not seek to be, parties to that adjudication. A person may make informal submissions by using the comment form available on the commission's web site or by contacting the commission records center or consumer protection section by telephone, letter, or email at the contact information listed in WAC 480-07-125.

(b) *Formal filings.* Formal filings are written submissions that seek or respond to formal commission action or are required by statute or commission rule and that the commission may file in a docket. Unless otherwise provided in this chapter, all documents submitted to the commission for formal filing, including documents that contain confidential information, must be submitted electronically to the commission records center in conformance with this rule. The commission will not accept a document for formal filing unless the commission receives that document in electronic form.

(2) **Where to send written communications.** Persons should send written communications to the commission using the contact information contained in WAC 480-07-125 or on the commission's web site. Correspondence directed to the commission should be addressed to the commission secretary.

(3) **Cover letters.** Persons submitting documents to the commission for formal filing must include a cover letter with the submission unless the sole document submitted is a letter

or the document is one page in length and includes the information identified in subsection (4) of this section.

(4) **Requirements.** The following requirements enable the commission to identify submissions and to facilitate prompt delivery of communications to commission personnel.

(a) *Identification of sender.* All persons who communicate with the commission should provide their full name, mailing address, telephone number, and email address to assist the commission in responding. Persons who communicate with the commission on behalf of a business, organization, or other entity must state their name and title or position, and the name of the entity on whose behalf they are sending the communication. All submissions on behalf of a company the commission regulates must identify the company using the exact name of the company in the commission's records. The commission's web site includes a list of all such companies by the names in the commission's records. The commission may reject or require resubmission of any submission that does not comply with this requirement.

(b) *Identification of permit, license, or certificate.* Any person or entity holding a commission-issued permit, license, or certificate must identify the permit, license, or certificate number (if any), including the exact name under which the authority is held, when communicating with the commission concerning the permit, license, or certificate.

(c) *Identification of proceeding.* Persons who communicate with the commission concerning a formal commission proceeding (e.g., rule-making or adjudication) must identify the proceeding to the best of their ability, including the docket number and name of the proceeding.

(d) *Identification of documents.* All documents submitted to the commission must be named in conformance with subsection (6)(b) of this section.

(5) **Electronic submission of documents.** The commission accepts only electronic versions of documents for formal filing. Unless required in a specific rule or order, the commission does not require a paper copy of the document.

(a) *Electronic submission via web portal.* Documents submitted electronically must be submitted using the commission's records center web portal except as provided in this rule.

(i) How to use the web portal. To use the web portal to submit documents for filing, persons should navigate to, and follow the instructions on, the web portal at the address specified in WAC 480-07-125.

(ii) Official commission receipt. The commission officially receives a document submitted through the web portal on the date and at the time registered by the portal; provided that documents the commission receives after 5:00 p.m. are not considered officially received or filed until the next business day. The web portal will send an automated notification to the person submitting the document when the commission has received the document.

(iii) Insufficient capacity. If a submission exceeds the size limitations of the commission's web portal for a single submission, the person may submit the documents in multiple web portal submissions, via one or more emails as provided in subsection (6)(c) of this section, or on a disc or other commonly used electronic storage medium delivered by mail or hand delivery. The commission includes on its web site the

current size limitation of submissions on the web portal and instructions for making multiple web portal submissions.

(b) *Electronic submission via email.* If a person is unable to use the web portal to submit documents for filing, the commission will accept a submission via email. The commission may also accept correspondence or comments directed to the commission in the form of an email. An email transmitting documents must explain the reason the documents are not being submitted via the web portal and must comply with the following requirements:

(i) Where to send electronic documents. Emails and emailed submissions for filing must be directed to the commission's records center at the email address specified in WAC 480-07-125. Courtesy or informational copies may be sent to other email addresses for individual commission personnel. The commission will receive for filing only email submissions sent to the records center.

(ii) When deemed received. An email and any transmitted documents are deemed received only when the email and the entire document or set of documents successfully reach the commission's records center electronic mailbox. Emails or documents wholly or partly received by email in the commission's records center after 5:00 p.m. are not considered officially received or filed until the next business day.

(iii) Insufficient capacity. If a submission exceeds the size limitations of the commission's email system for a single message, the person may submit the documents in multiple messages as provided in subsection (6)(c) of this section or on a disc or other commonly used electronic storage medium delivered via mail or hand delivery. The commission includes on its web site the current size limitation of a single email.

(c) *Electronic submission by mail or hand delivery.* A person may submit for filing electronic copies of documents on a disc or other commonly used electronic storage medium by mail or hand delivery (e.g., courier delivery service) to the commission's business address. The commission deems it has received an electronic document submitted by mail or hand delivery when the commission's records center physically receives it. Documents delivered to the commission's records center after 5:00 p.m. are not considered officially received or filed until the next business day.

(d) *Additional requirements.* The following additional requirements apply when submitting documents in the circumstances identified below.

<b>Submissions in these dockets or types of documents:</b>	<b>Must comply with these rules and:</b>
Rule-making dockets	Part II of this chapter
Adjudicative dockets	Part III of this chapter, <b>plus</b> any requirements in the specific adjudication
Utility tariffs and contracts	Chapter 480-80 WAC and WAC 480-07-141
Transportation tariffs and time schedules	WAC 480-07-141; and
(a) For auto transportation companies	(a) Chapter 480-30 WAC;

Submissions in these dockets or types of documents:	Must comply with these rules and:
(b) For commercial ferry companies	(b) Chapters 480-51 and 480-149 WAC;
(c) For solid waste collection companies	(c) Chapter 480-70 WAC
For public records requests	Chapters 42.56 RCW and 480-04 WAC

(6) **Electronic file format requirements.** Electronic versions of all documents filed with the commission must conform to the following file format requirements.

(a) *Acceptable format.*

(i) All documents other than spreadsheets as described in (a)(ii) of this subsection and email correspondence or comments must be filed in searchable .pdf (adobe acrobat or comparable software) format and to the extent feasible should be saved or otherwise converted directly from the native format in which the document was created. Parties that cannot create .pdf files directly from the document in its native format must provide a copy of the document converted to .pdf via scanning or other available technology. Scanned documents must be searchable unless readily available software does not support searchable scanned documents.

(ii) Any document in the form of a spreadsheet that displays results of calculations based on formulas must be filed in its native Excel format (.xls, .xlsx, .xlsm) or the updated version of, or successor to, that software program. The commission will accept spreadsheets created using a different software program only if the commission has a license to use that program and personnel who know how to use it. Spreadsheets must include all formulas and may not include locked, password protected, or hidden cells or tabs, or any other restrictions that impair or hamper the commission's ability to review or modify the data in those cells.

(iii) Correspondence or comments in the form of an email must conform to generally accepted conventions for email communications.

(b) *File naming conventions.* Documents must be named in a way that describes the contents. Each document a person submits must be labeled with the docket number of the proceeding (except in the case of original submissions), any confidentiality designation, the name of the document, the name of the person or party on whose behalf the document is submitted, the last name of any witness sponsoring the document, and the date the document is submitted. The prefix to the docket number (e.g., UE-, TG-, etc.) may be omitted, and words may be abbreviated as necessary in the file name of an electronic document if the full name is too long. The cover letter accompanying the submission must list all of the documents included in the submission using the same identifying information. The commission maintains a sample list of acceptable file names and abbreviations on its web site.

(c) *Acceptable organization.* Except as provided in WAC 480-07-160 (4)(d)(vii) when submitting documents that include information designated as confidential, all files required to meet a single deadline must be submitted at the same time and in the same message, if possible, or on the same disc or commonly used electronic storage medium. A person may submit files in more than one submission or mes-

sage when submitting those files via the commission's web portal or via email as authorized in subsection (5)(a)(iii) and (b)(iii) of this section if the total size of the submission exceeds the size constraints of the commission's web portal or email system for a single submission. If the documents are submitted in multiple email messages, each email message must prominently identify which one it is in the sequence of messages and, to the extent possible, the total number of messages used (e.g., "Message 2 of 4"). The first and final messages in the sequence must be identified as such. The first message also must explain the reason for the multiple messages and must include the cover letter and any required certificate of service. All such messages must be submitted as close to simultaneously as practicable.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-140, filed 2/28/17, effective 3/31/17; WSR 08-18-012 (Docket A-072162, General Order R-550), § 480-07-140, filed 8/22/08, effective 9/22/08; WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-140, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-140, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-141 Commission receipt of a document is not filing or acceptance.** The commission receives documents for administrative purposes, and such receipt alone does not constitute filing or legal acceptance of a document.

(1) **Compliance review.** Upon receipt, the commission will review a submission to determine whether it complies with applicable filing requirements prior to accepting it for filing and assigning a docket number, if applicable.

(2) **Notice of, and opportunity to correct, noncompliance.** The commission will identify any areas of noncompliance in the submission and will notify the person who made the submission within two business days, or as soon thereafter as practicable, of any areas of noncompliance that require corrective action before the commission can accept the document for filing. The notification will indicate one of the following:

(a) A requirement to submit one or more additional documents (e.g., a cover letter, certificate of service, etc.);

(b) A requirement to resubmit the document with the deficiencies corrected within a specified period of time; or

(c) Rejection of the document and its return to the sender.

The commission will consider corrected documents to have been filed on the date the original documents were submitted if the deficiencies are not substantive or otherwise do not impair or hamper the commission's ability to timely review, analyze, or act on the merits of the submission. Otherwise, the commission will consider the documents to have been filed on the date the corrected documents are submitted.

(3) **No waiver of noncompliance.** By accepting a submission for filing in a docket or assigning a docket number, the commission does not necessarily certify that the submission complies with all filing requirements or waive the commission's ability to subsequently reject a document as deficient or require deficiencies to be corrected; provided that in the absence of extraordinary circumstances, the commission will not reject a document for failure to comply with applicable filing requirements more than five business days after the document has been submitted, and documents are deemed

accepted and filed unless the commission provides notice of noncompliance within that time period.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-141, filed 2/28/17, effective 3/31/17; WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-141, filed 7/27/06, effective 8/27/06.]

**WAC 480-07-150 Commission service of documents.**

(1) **Commission service defined.** Commission service means sending or delivering notices, orders, or other commission documents from the commission to parties, regulated companies, or interested stakeholders. Such service includes, but is not limited to, commission service of documents in adjudications pursuant to WAC 480-07-360.

(2) **Designation of person to receive service.**

(a) Each party, regulated company, or interested stakeholder must designate at least one person to receive commission service of documents.

(b) Companies the commission regulates must provide the commission with current, accurate, and complete contact information for the company itself and at least one person who owns the company or who is employed or otherwise authorized by the company to receive commission service of documents on behalf of the company. Companies must inform the commission of any changes to this contact information as soon as practicable. The commission is not responsible for a company not receiving commission service of documents if the company fails to comply with this requirement.

(3) **Contact information.** Each party, regulated company, or interested stakeholder must provide the following information about every individual that it designates to receive commission service of documents:

- (a) Name (and title, if applicable);
- (b) Mailing address;
- (c) Telephone number; and
- (d) Email address.

(4) **Forms of service by commission.**

(a) To the full extent authorized by applicable law, the commission will serve documents only in electronic form except where proof of receipt is required.

(b) When applicable law requires the commission to demonstrate that a person received a document, the commission will serve the document in one of the following ways:

- (i) By certified United States mail, properly addressed with first class postage prepaid, return receipt requested; or
  - (ii) By personal delivery with a declaration of service.
- (c) When required by applicable law or in the exercise of its discretion, the commission will serve paper copies of documents by United States mail, first class postage prepaid.

(5) **When service is deemed complete.** Unless otherwise ordered by the commission in a particular proceeding, commission service of documents is complete as follows:

(a) Electronic service is complete when the commission sends the document to the recipient's designated email address.

(b) Service by certified mail or personal service is complete on the date indicated on the return receipt or declaration of service.

(c) Service by mail is complete when the commission deposits the document, properly addressed, and postage prepaid in the United States mail.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-150, filed 2/28/17, effective 3/31/17; WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-150, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-150, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-160 Confidential information under RCW 80.04.095 or 81.77.210.** The commission will provide special handling of, and will limit access to, confidential information submitted in compliance with this rule or WAC 480-07-423. This rule applies to any information the provider claims to be confidential under RCW 80.04.095 or 81.77.210. Title 81 RCW, other than RCW 81.77.210, does not contain a similar statute, and the commission will not accept documents marked as confidential pursuant to this rule and submitted on behalf of companies regulated under Title 81 RCW other than solid waste collection companies.

(1) **Implementation.**

(a) *Designated official.* The commission's secretary is the designated official responsible for the commission's compliance with the Public Records Act, chapter 42.56 RCW, and for the implementation of this rule. The secretary may designate one or more persons to serve as public records officer to assist in the implementation and application of this rule.

(b) *Provider.* Any person who submits information to the commission or commission staff under a claim of confidentiality pursuant to this rule or a commission protective order is a provider, as that term is used in this rule.

(c) *Requester.* Any person who submits a request for public records under the Public Records Act, chapter 42.56 RCW, or a data request in an adjudicative proceeding is a requester, as that term is used in this rule.

(2) **Confidential information defined.** Confidential information is information that meets any of the following criteria:

(a) Information protected from inspection or copying under an exemption from disclosure requirements under the Public Records Act, chapter 42.56 RCW.

(b) Information protected under the terms of a protective order in an adjudicative proceeding.

(c) Valuable commercial information, including trade secrets or confidential marketing, cost, or financial information, or customer-specific usage and network configuration and design information, as provided in RCW 80.04.095 or 81.77.210. Only information that satisfies this definition may be designated as confidential.

(3) **Highly confidential information.** The commission may authorize protection of information as highly confidential only pursuant to a protective order. Highly confidential information is confidential information to which even more restricted access is necessary to ensure the information is not disclosed to the detriment of the provider (or the party designating the information as confidential, if not the provider). Highly confidential information remains subject to the requirements in RCW 80.04.095 or 81.77.210, and the provisions of this section apply to highly confidential information as well as confidential information unless this rule or the protective order authorizing highly confidential treatment of information states otherwise.

(4) **How to designate and seek protection of confidential information under this section.** A provider may claim the protection of this rule only by strict compliance with the following requirements. The commission may refuse to accept for filing any document that fails to comply with these requirements. Failure to properly designate information as confidential also may result in the information not being treated as confidential.

(a) *Contents.* The provider must submit the claim of confidentiality in writing at the same time the information claimed to be confidential is submitted. The provider must state the basis on which the information is claimed to be confidential, and if the document is not submitted pursuant to a protective order in an adjudicative proceeding, the provider must identify any person (other than the provider) who might be directly affected by disclosure of the confidential information.

(b) *Documents with information designated as confidential or information designated as highly confidential.* The provider must submit two versions of all documents claimed to include either (but not both) confidential or highly confidential information:

(i) An electronic copy (as required in WAC 480-07-140(6)), and any paper copies the commission has required, of the version of the document that contains all information designated as confidential (confidential version) or highly confidential (highly confidential version); and

(ii) An electronic copy in .pdf format, and any paper copies the commission has required, of the version of the document that masks the information claimed to be confidential or highly confidential (redacted version).

(c) *Documents with information designated as confidential and information designated as highly confidential.* The provider must submit three versions of all documents claimed to include both highly confidential and confidential information:

(i) An electronic copy (as required in WAC 480-07-140(6)), and any paper copies the commission has required, of the version of the document that contains all information designated as highly confidential or confidential (highly confidential version);

(ii) An electronic copy (as required in WAC 480-07-140(6)), and any paper copies the commission has required, of the version of the document that contains all information designated as confidential and masks all information designated as highly confidential (confidential version); and

(iii) An electronic copy in .pdf format, and any paper copies the commission has required, of the version of the document that masks all information claimed to be highly confidential or confidential (redacted version).

(d) *Marking and submission.*

(i) Documents containing information designated as confidential or highly confidential must be marked as follows:

(A) The provider must clearly mark each copy of the confidential version of the document with the designation, "Designated information is confidential per protective order in Docket [insert docket number]" if the provider submits confidential information under the provisions of a protective order, or "Designated information is confidential per WAC 480-07-160" if not submitted under the terms of a protective order. The provider must clearly mark each copy of the

highly confidential version of the document with the designation "Designated information is highly confidential per protective order in Docket [insert docket number]." The provider must place the applicable mark on the first page of a multi-page document and each specific page on which the provider claims there is confidential or highly confidential information. In the subject line of the email or in a visible portion of the disc or electronic storage medium containing the electronic copies of the document, the provider also must state that one or more documents contain information designated as confidential or highly confidential under a protective order or WAC 480-07-160, as applicable.

(B) Each page of the electronic document and any required paper copies of the confidential version that includes information claimed to be confidential must clearly designate that information on each page by highlighting the text with no more than twenty percent grey shading or other clearly visible designation. Each such page of any paper copies must be printed on yellow paper.

(C) Each page of the electronic document and any required paper copies of the highly confidential version that contains information designated as highly confidential under a protective order must clearly designate the highly confidential information by highlighting the text with no more than twenty percent grey shading or other clearly visible designation. Each such page of any paper copies must be printed on light blue paper.

(D) If a document includes both confidential and highly confidential information, each page of any paper copies of the confidential version that contains only information designated as confidential must be printed on yellow paper, and pages containing information designated as highly confidential must be printed on light blue paper, including pages that contain both highly confidential and confidential information. The provider is responsible for ensuring that highly confidential information is clearly distinguished from confidential information when a document includes both highly confidential and confidential information.

(E) Any required paper copy of the confidential or highly confidential version of a document, in its entirety, must be submitted in a sealed envelope. A person submitting more than one confidential or highly confidential document in a single submission must collate all of the confidential documents into a set and all of the highly confidential documents into a set, and to the extent feasible, must enclose each entire set in a separate envelope. If the commission requires more than one paper copy of documents to be submitted, each set of confidential or highly confidential documents must be submitted in a separate envelope to the extent feasible.

(F) The redacted version of the document must be labeled as redacted and submitted simultaneously with the corresponding confidential or highly confidential document. The redacted version must completely black out the information claimed to be confidential or highly confidential or leave a blank space where that information is located in the document. The redacted and confidential or highly confidential versions of a document must have the same pagination, and the text on each page must appear on the same lines. If the provider submits a document under a claim that all of the substantive information contained on multiple contiguous pages is confidential or highly confidential, the provider may sub-

mit a single page in the redacted version for the contiguous confidential pages if that page identifies the pages claimed to be confidential or highly confidential.

(ii) Documents containing information designated as confidential or highly confidential must be submitted as follows:

(A) All documents containing information designated as confidential that are required or intended to be submitted to meet a single deadline must be submitted at the same time and in the same message or on the same disc or electronic storage medium, separately from documents that include information designated as highly confidential or that do not include any information designated as confidential.

(B) All documents containing information designated as highly confidential that are required or intended to be submitted to meet a single deadline must be submitted at the same time and in the same message or on the same disc or electronic storage medium, separately from documents that include information designated as confidential or that do not include any such information.

(C) The fully redacted versions of all documents containing information designated as confidential or highly confidential, along with any other nonconfidential documents that are part of the filing, must be submitted separately from the documents containing information designated as confidential or highly confidential, and all of the nonconfidential documents must be submitted in a single message or on the same electronic storage medium.

(D) If the volume of documents of any type exceeds the size constraints of the commission's web portal or email system for a single submission, those documents may be submitted in multiple submissions as provided in WAC 480-07-140 (6)(c).

(E) All submissions comprising a single filing must be made as close to simultaneously as practicable.

(5) **Challenges to claims of confidentiality.** The commission or a party to a proceeding in which a provider submits a document with a claim of confidentiality may challenge the claim. When a challenge is made, the commission will provide an opportunity to respond before ruling on the challenge. If a confidential designation is challenged, the provider of the confidential information bears the burden to show that part or all of a document should be protected from disclosure under chapter 42.56 RCW, RCW 80.04.095, 81.77.210, or a protective order. The commission may express its ruling orally on the record in an adjudicative proceeding, or in a written order.

(6) **Requests for information designated as confidential.** Subject to the requirements of this subsection, the commission will release information designated as confidential or highly confidential in response to a written request for public records made in compliance with WAC 480-04-090.

(a) *Avoidance of disclosure.* If the public records officer and the requester agree that the commission can satisfy the request for information without disclosing information designated as confidential or highly confidential, the public records officer will provide or make available for review the publicly available information in the commission's possession that is responsive to the request.

(b) *Notice of request for, and release of, information designated confidential.* If the requester does not agree that the

commission can satisfy the request without disclosing information designated as confidential or highly confidential, the commission will implement the following procedure:

(i) Pursuant to RCW 80.04.095 or 81.77.210, as applicable, the commission will provide written notice of any request for information designated as confidential or highly confidential to the provider and any person that has been identified as a person who might be directly affected by release of the information. The commission will issue such notice not more than two business days after receiving confirmation that the requester requests information designated as confidential or highly confidential. The commission will send a copy of the notice to the requester at the same time it sends a copy to the provider.

(ii) The commission need not assist any person in seeking or resisting judicial intervention to protect from disclosure any information designated as confidential or highly confidential, but the commission may participate in any such proceeding.

(iii) If the provider consents in writing to the release of the information designated as confidential or highly confidential or does not restrain disclosure of that information by obtaining a court order within ten days following the commission's notice of the request, the commission will consider the information public, remove the confidential or highly confidential designation from its files, and release the information to the requester.

(7) **Designation or redesignation of confidential information.** No later than the time for filing briefs or, if no briefs are filed, within ten days after the close of the record in an adjudication in which a party has designated information as confidential or highly confidential, that party must verify the accuracy of all confidential designations in the record and in the exhibit list for the proceeding, and submit any proposed corrections or changes. Absent a statement of proposed corrections or changes, the designations in the record and in the exhibit list are final, and the commission will change those designations only if the provider (or the party that has designated the information as confidential or highly confidential, if different) voluntarily removes, or is required to remove, a confidential designation. If there is conflict between designations, the commission will adopt the designation that is least restrictive to public access.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-160, filed 2/28/17, effective 3/31/17; WSR 08-18-012 (Docket A-072162, General Order R-550), § 480-07-160, filed 8/22/08, effective 9/22/08; WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-160, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-160, filed 11/24/03, effective 1/1/04.]

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

**WAC 480-07-170 Official communications from the commission.** (1) **Definition.** An official communication from the commission notifies interested parties and the public of the agency's position, anticipated action, or resolution of issues in matters that come within the commission's statutory authority.

(2) **When a communication is official.** A communication from the commission is an official communication only

if it is signed or otherwise verifiably issued or entered by the commissioners, the commission's secretary or other assistant deputized, designated, or delegated to perform commission duties pursuant to RCW 80.01.030, or the secretary's designee. In addition, the presiding administrative law judge or the administrative law judge's designee may sign, issue, or enter official communications relating to an adjudicative proceeding.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-170, filed 2/28/17, effective 3/31/17; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-170, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-175 Inspection and production of documents in commission investigations. (1) Inspection.** Every public service company must make its accounts, books, papers, and documents available for commission inspection at any and all times.

(2) **Production.** The commission may require a public service company to provide copies of documents to the commission for inspection at the commission's offices.

(a) *Format.* The commission will require a public service company to provide documents for commission inspection by serving the company with a letter or other writing signed by the secretary or an administrative law judge.

(b) *Response.* The public service company must provide the required documents, or any objections to providing those documents, to the commission within ten business days of the date the commission serves the letter or other writing unless the commission specifies a different deadline.

(c) *Objections.* Any objections the public service company gives in lieu of providing the requested documents must describe in detail the legal and factual basis for the company declining to provide the documents. Commission staff must file a response to the objections within five business days. The commission will notify the company of the disposition of its objections and the date by which the company must provide any requested documents the commission determines that the company must provide.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-175, filed 2/28/17, effective 3/31/17.]

**WAC 480-07-180 Incorporated and referenced materials in commission rules and orders.** Any document that is incorporated by reference in a commission rule or order is available for public inspection at the commission unless exempt from the public disclosure requirements in chapter 42.56 RCW, or under a protective order in an adjudicative proceeding. The commission's secretary or public records officer will provide a copy of a referenced document upon request, allowing reasonable time for any necessary copying, subject to any applicable charge, and subject to copyright restrictions or statutory exemptions from public disclosure. The commission incorporates or references the version of the incorporated or referenced material that is current on the day the commission adopts a rule, makes a ruling, or enters an order that makes the incorporation or reference, unless the commission specifies another version or unless another version is apparent from the reference. In most instances, such information is available to the public on the commission's web site.

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[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-180, filed 2/28/17, effective 3/31/17; WSR 08-18-012 (Docket A-072162, General Order R-550), § 480-07-180, filed 8/22/08, effective 9/22/08; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-180, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-190 Electronic signatures. (1) Authorization.** To the extent authorized under RCW 19.360.020, the commission will accept electronic signatures on all documents submitted to the commission for filing that applicable law requires or allows to be signed by hand if the electronic signature complies with this rule and any other applicable requirements (e.g., of the entity on whose behalf the person is signing). The commission may use electronic signatures on documents it issues, enters, or serves including, but not limited to, orders, notices, and correspondence, to the extent authorized under RCW 19.360.020.

**(2) Definitions.**

(a) An electronic signature is one or more letters, characters, numbers, or other symbols in digital form incorporated in, attached to, or otherwise logically associated with an electronic document that:

(i) Identifies and authenticates a particular person as the source of the document; and

(ii) Indicates such person's intent to sign the document and approval of the information contained in that document.

(b) A secure electronic signature is an electronic signature that:

(i) Is unique to the person making the signature;

(ii) The technology or process used to make the signature is under the sole control of the person making the signature;

(iii) The technology or process can be used to identify the person using the technology or process; and

(iv) The electronic signature can be linked with the document in such a way that the signature can be used to determine whether the document has been changed since the electronic signature was incorporated in, attached to, or otherwise associated with the document.

**(3) Requirements.**

(a) *Attorney signatures.* An electronic document that requires an attorney's signature must include the date on which the document was signed and be signed:

(i) With a secure electronic signature;

(ii) With the symbol "/s/" followed by the attorney's name, state bar number, and full contact information; or

(iii) By hand and the entire document scanned and submitted in searchable .pdf format (adobe acrobat or comparable software); the party or person submitting the electronic document must maintain the original signed paper document for at least sixty days beyond the close of the docket, proceeding, or matter in which it is filed, including any period of judicial review.

(b) *Other signatures.* An electronic document that requires a signature and is signed by a person who is not an attorney acting in a representative role must include the date on which it was signed and be signed:

(i) With a secure electronic signature;

(ii) With the symbol "/s/" followed by the person's name, title, company, street address, telephone number, and email address; or

(iii) By hand and the entire document scanned and submitted in searchable .pdf format (adobe acrobat or comparable software).

ble software); the party or person submitting the electronic document must maintain the original signed paper document for at least sixty days beyond the close of the docket, proceeding, or matter in which it is filed, including any period of judicial review, or for as long as the document is effective, whichever period of time is longer.

(c) *Signatures subject to penalty of perjury.* An electronic document required to be signed under penalty of perjury must include the date on which it was signed and be signed by the person subject to penalty of perjury:

(i) With a secure electronic signature; or

(ii) By hand and the entire document scanned and submitted in searchable .pdf format (adobe acrobat or comparable software); the party or person submitting the electronic document must maintain the original signed paper document for at least sixty days beyond the close of the docket, proceeding, or matter in which it is filed, including any period of judicial review, or for as long as the document is effective, whichever period of time is longer.

**(4) Effect.**

(a) *Submissions.* An electronic document submitted to the commission in compliance with this rule shall bind each person whose electronic signature is incorporated in, attached to, or otherwise logically associated with the document and shall be deemed the equivalent of an original signed document.

(b) *Commission communications.* All notices, orders, or other documents issued, entered, or served by the commission with one or more electronic signatures in compliance with this rule and WAC 480-07-170 are official communications of the commission.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-190, filed 2/28/17, effective 3/31/17.]

## PART II: RULE-MAKING PROCEEDINGS

**WAC 480-07-200 Scope of Part II.** The rules in this part apply to all rule-making proceedings before the commission.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-200, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-210 Administrative Procedure Act requirements.** The commission conducts rule-making proceedings in compliance with the requirements of RCW 34.05.310 through 34.05.395.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-210, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-220 Monitoring rule-making proceedings; lists of interested persons.** (1) **Information.** The commission's web site includes information about each pending rule-making proceeding under the docket number the commission has assigned to that rule making.

(2) **Notification.** The commission maintains lists of persons interested in potential rule-making proceedings that concern particular regulated industries and other areas of potential interest. The commission sends notice of rule-making proceedings via email to persons on these lists. Any person

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may request in writing that the commission's records center include them on the relevant list or lists. Such requests must include the person's name, entity and title (if the person is representing a company, association, or other organization), and email address. The commission may establish a fee for this service.

(3) **Individual rule making.** The commission also maintains a distribution list of persons to whom it sends electronic copies of notices, orders, or other documents it issues in individual rule making. Any interested person may be included on the distribution list the commission maintains for specific rule making by requesting in writing to be included on that list. Such requests must include the person's name, entity and title (if the person is representing a company, association, or other organization), and email address. In addition, the commission generally will include on that distribution list persons who file comments in the rule making unless those persons submit only generic comments as a member of an organization or other entity that prepared, sponsored, or otherwise generated or arranged for those comments.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-220, filed 2/28/17, effective 3/31/17; WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-220, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-220, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-230 Inquiring about rule-making proceedings.** Persons who wish to inquire about rules being proposed or considered by the commission may contact the commission's rules coordinator, whose contact information is available on the commission's web site.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-230, filed 2/28/17, effective 3/31/17; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-230, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-240 Petitions for rule making, amendment, or repeal.** Any interested person may petition the commission to request that the commission adopt, amend, or repeal any rule. RCW 34.05.330 and chapter 82-05 WAC govern petitions for new rules or for the amendment or repeal of existing rules.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-240, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-250 Submitting documents in rule-making proceedings.** (1) **Scope of rule.** This section governs communications to the commission in rule-making proceedings. These rules are in addition to the general rules for communicating with the commission in WAC 480-07-140.

(2) **Submitting comments.** All written comments submitted in a rule making must be addressed to the commission secretary.

(3) **Methods for delivering comments and other communications.** The commission will accept only electronic copies of comments or other documents submitted for filing in a rule-making proceeding. A person must submit such documents by sending them to the commission through the records center web portal, at the address provided in WAC 480-07-125 or the commission's web site, without providing a paper copy. If a person is unable to use the records center

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web portal to submit documents for filing, the commission will accept a submission via email as provided in WAC 480-07-140 (5)(b) or on a disc or other commonly used electronic storage medium by mail or hand delivery as provided in WAC 480-07-140 (5)(c), without providing a paper copy.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-250, filed 2/28/17, effective 3/31/17.]

### PART III: ADJUDICATIVE PROCEEDINGS

#### Subpart A: Rules of General Applicability

**WAC 480-07-300 Scope of Part III.** (1) **Scope.** The rules in this subpart apply to all adjudicative proceedings described in this chapter, except to the extent of any conflict with special rules that govern general rate proceedings (subpart B of this chapter) or abbreviated adjudicative proceedings (subpart C of this chapter). An adjudicative proceeding for purposes of this chapter is a proceeding in which an opportunity for hearing is required by statute or constitutional right or is a proceeding the commission voluntarily commences as an adjudication as defined and described in chapter 34.05 RCW.

(2) **Examples of adjudicative proceedings before the commission.** The following are nonexclusive examples of adjudicative proceedings for purposes of this chapter once the commission takes formal action to commence such a proceeding pursuant to WAC 480-07-035:

(a) Formal complaint proceedings commenced pursuant to RCW 80.04.110 or 81.04.110 or complaints the commission initiates.

(b) Suspended tariff filings including, but not limited to, tariffs increasing rates.

(c) Applications for authority (e.g., certificates, licenses, and permits) to which a person has filed an objection or protest or as to which the commission has issued a notice of intent to deny the application and grants a request for hearing.

(d) Petitions for enforcement of interconnection agreements.

(e) Objections to closures of highway-railroad grade crossings.

(f) Declaratory order proceedings.

(g) Challenges to, or requests for mitigation of, a penalty assessment when the commission grants a request for a hearing.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-300, filed 2/28/17, effective 3/31/17; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-300, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-305 Commencement of an adjudicative proceeding.** (1) **Commencement.** The commission may commence an adjudicative proceeding at any time with respect to any matter within its jurisdiction and within the scope of its authority. An adjudicative proceeding begins when the commission notifies a party that the commission will conduct a prehearing conference, hearing, or other stage of an adjudicative proceeding.

(2) **Who may seek to commence an adjudicative proceeding.** A person involved in an actual case or controversy subject to the commission's jurisdiction may apply to the

commission to commence an adjudicative proceeding by submitting the appropriate form of pleading.

(3) **Types of pleadings that request an adjudicative proceeding.** The following pleadings, when properly and timely submitted for filing, constitute applications for adjudicative proceedings:

(a) Formal complaints submitted by persons other than commission staff.

(b) Petitions for commission action when the relief requested requires adjudication or when the commission determines the issues presented should be resolved through adjudication.

(c) Petitions for declaratory orders under RCW 34.05.-240, when the commission determines that an adjudicative process is necessary to provide parties the opportunity to resolve contested issues.

(d) Requests for a hearing to contest, or seek mitigation of, penalties assessed without a prior hearing.

(e) Protests of, or objections to, applications for authority.

(f) Requests for hearing to contest a commission notice of intent to deny an unprotested application for authority.

(4) **Commission notification of any deficiencies in a pleading.** Within thirty days after receiving an application for an adjudicative proceeding, the commission may notify the applicant of any obvious errors or omissions, request any additional information the commission requires regarding the application, and notify the applicant of the name, email address, and telephone number of a person on the commission staff who the applicant may contact regarding the application.

(5) **Commission determination whether to conduct an adjudicative proceeding.** Within ninety days after receiving an application for an adjudicative proceeding, the commission will:

(a) Commence an adjudicative proceeding by serving a notice of hearing pursuant to RCW 34.05.434; or

(b) Decide not to conduct an adjudicative proceeding and furnish the applicant with a brief written statement of the reasons for that decision. While other circumstances may justify not commencing an adjudicative proceeding, the commission will not commence an adjudicative proceeding under the following circumstances:

(i) The commission lacks jurisdiction or the authority to grant the requested relief.

(ii) The matter is not ripe for commission determination.

(iii) An adjudicative proceeding would be contrary to statute or rule.

(iv) The subject matter is being, or will be, considered in another proceeding.

(v) The applicant lacks standing to request the relief it seeks from the commission.

(vi) The subject matter is not required to be resolved in an adjudicative proceeding, as defined in chapter 34.05 RCW, or would be better addressed informally or in a different proceeding.

(c) The commission will conduct any administrative review of a decision not to conduct an adjudicative proceeding using the same procedures applicable to review of initial orders set forth in WAC 480-07-825.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-305, filed 2/28/17, effective 3/31/17; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-305, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-307 Probable cause determinations.** An administrative law judge will review the information or evidence supporting any complaint commission staff proposes to have the commission issue and will determine whether probable cause exists to issue the complaint. Upon determining that the information would sustain the complaint if proved at hearing and not rebutted or explained, the judge will sign the complaint on behalf of the commission. The existence of a finding of probable cause may not in any later stage of the proceeding be considered as support for the complaint.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-307, filed 2/28/17, effective 3/31/17. Statutory Authority: 2006 c 246, RCW 80.01.040 and 80.04.160. WSR 06-17-126 (Docket A-060357, General Order No. R-538), § 480-07-307, filed 8/21/06, effective 9/21/06.]

**WAC 480-07-310 Ex parte communication.** (1) **General.** RCW 34.05.455 and this section govern ex parte communications. After an adjudicative proceeding begins and before a final resolution of the proceeding, no person who has a direct or indirect interest in the outcome of the proceeding, including the commission's advocacy or investigative staff, may directly or indirectly communicate about the merits of the proceeding with the commissioners, the administrative law judge assigned to the adjudication, or the commissioners' assistants, advisory staff, legal counsel, or consultants assigned to advise the commissioners in that proceeding, unless reasonable notice is given to all parties to the proceeding so that they may participate in, or respond to, the communication.

(2) **Communications not considered ex parte for purposes of this section.** The following communications are not considered ex parte:

(a) *Procedural aspects.* Communications concerning procedural aspects of the proceeding, such as scheduling, are not ex parte communications prohibited by RCW 34.05.455, or by this section.

(b) *Commissioners,* commission employees, and consultants. As presiding officers, commissioners and administrative law judges may receive legal counsel or consult with assistants, advisory staff, or consultants who are subject to the presiding officer's supervision or who have not participated in the proceeding in any manner, and who are not engaged in any investigative or advocacy functions in the same or a factually related case. The presiding officers and these assistants, advisory staff, and consultants also may communicate with one another regarding the merits of any adjudicative proceeding.

(3) **Communication prior to service as presiding officer.** If, before serving as presiding officer in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while serving in that capacity, the presiding officer, after starting to serve, must promptly disclose the communication as prescribed in subsection (4) of this section.

(4) **What is required if an ex parte communication occurs.** A presiding officer who receives or becomes aware of any communication that appears to violate RCW 34.05.-455 or this section will include documentation of the communication in the record of the pending matter. Such documentation will include any written communication received and any written response, or a memorandum stating the substance of any oral communication received and response made, as well as the identity of each person involved in the communication. The presiding officer will notify all parties that this documentation has been included in the record and will provide parties with the opportunity to file and serve a written rebuttal statement in response to the notice of ex parte communication. Materials pertaining to ex parte communications or rebuttal statements do not constitute evidence of any fact at issue in the proceeding unless a party moves to admit any portion of them into the evidentiary record for purposes of establishing a fact at issue and the commission admits that portion into the record pursuant to RCW 34.05.452.

(5) **Sanctions.** The commission may prescribe appropriate sanctions, including default, for any violation of RCW 34.05.455 or this section. The commission or any party may report a violation of this section to appropriate authorities for any disciplinary proceedings provided by law.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-310, filed 2/28/17, effective 3/31/17; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-310, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-320 Consolidation of proceedings.** The commission, in its discretion, may consolidate two or more proceedings in which the facts or principles of law are related. Parties may request consolidation or may request the severance of consolidated matters by motion to the commission. The commission may act on its own motion to consolidate matters for hearing, or to sever consolidated matters.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-320, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-330 Presiding officers.** (1) **Commissioners.** The commissioners may preside in any adjudicative proceeding with or without the assistance of an administrative law judge. When the commissioners preside, they are presiding officers as that term is used in chapter 34.05 RCW and in this chapter. When the commissioners preside with the assistance of an administrative law judge, the administrative law judge also is a presiding officer, except for purposes of making final decisions on substantive matters in the proceeding. The administrative law judge may enter procedural and other interlocutory orders. When the commissioners preside, they may enter procedural and other interlocutory orders and will enter one or more final orders in the proceeding to resolve the substantive matters presented.

(2) **Administrative law judge.** The director of the administrative law division will designate an administrative law judge to preside in individual proceedings, either to assist the commissioners in their role as presiding officers as described in subsection (1) of this section, or to serve alone as the presiding officer. When serving alone as the presiding officer, the administrative law judge will enter one or more

initial orders, unless the parties and the commission agree to waive an initial order, or applicable law prohibits entry of an initial order. An initial order becomes final if no party petitions for administrative review within twenty days and the commissioners do not review the order on their own motion. The commissioners will enter a final order if a party petitions for, or the commission on its own motion undertakes, administrative review of an initial order, if the parties and the commission agree to waive an initial order, or as otherwise provided by law.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-330, filed 2/28/17, effective 3/31/17; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-330, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-340 Parties—General. (1) Definitions.**

(a) *Person*. As defined in RCW 34.05.010(14), a person is any individual, partnership, corporation, association, governmental subdivision or unit thereof, or public or private organization or entity of any character.

(b) *Party*. As defined in RCW 34.05.010(12), a party is a person to whom the agency action is specifically directed. A party is also a person named as a party to the agency proceeding or allowed to intervene or participate as a party in the agency proceeding.

(2) **Appearance requirement.** The commission will not grant party status to a person who fails to appear at the earliest prehearing conference if one is held, or hearing session if there is no prehearing conference, unless the person is excused from appearing by the presiding officer or shows good cause for failing to timely appear. The commission staff and the public counsel unit of the attorney general's office become parties to an adjudicative proceeding for all purposes upon entering an appearance.

(3) **Classification of parties.** The commission generally will refer to parties in commission proceedings by their names but may refer to them according to their classification in the proceeding, as follows:

(a) *Applicants*. Persons applying for any right or authority that the commission has jurisdiction to grant are applicants.

(b) *Complainants*. Persons who file a formal complaint with the commission are complainants. When the commission commences an adjudicative proceeding on its own complaint, the commission is the complainant.

(c) *Petitioners*. Persons petitioning for relief other than by complaint are petitioners.

(d) *Movants*. Persons filing a motion for relief are movants or moving parties.

(e) *Respondents*. Persons against whom any formal complaint, petition, or motion is filed are respondents.

(f) *Intervenors*. Persons other than the original parties, commission staff, and public counsel that the commission permits to appear and participate as parties are intervenors.

(g) *Protestants*. Persons who file a protest to oppose an application are protestants.

(h) *Objectors*. Persons who file an objection to oppose an application are objectors.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-340, filed 2/28/17, effective 3/31/17; WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-340, filed

(2/28/17)

7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-340, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-345 Appearance and practice before the commission. (1) Minimum qualifications.** No person may appear before the commission as a representative of a party to an adjudicative proceeding without meeting at least one of the following qualifications:

(a) Membership in good standing in the Washington State Bar Association;

(b) Admission to practice, in good standing, before the highest court of any other state or the District of Columbia;

(c) Status as an officer or employee of a party or person seeking party status, if granted permission by the presiding officer to represent the party; or

(d) Status as a legal intern admitted to limited practice under Rule 9 of the Washington state supreme court's admission to practice rules. No legal intern, however, may appear without the presence of a supervising lawyer unless the presiding officer approves the intern's sole appearance in advance.

The presiding officer may refuse to allow a person who does not have the requisite degree of legal training, experience, or skill to appear in a representative capacity.

(2) **Written notice of appearance and withdrawal by counsel or other representative is required.**

(a) Attorneys or other authorized representatives who wish to appear on behalf of a party or person seeking party status must file a written notice of appearance with the commission and serve all parties to the proceeding prior to acting in a representative capacity unless the attorney or authorized representative has previously appeared through the party's initial pleading or written petition to intervene.

(b) A party's initial pleading or written petition to intervene filed in a proceeding must designate the party's attorney or other representative authorized to accept service on behalf of the party.

(c) A party must file a written notice with the commission and serve all parties to make any changes to its designation of authorized representative(s).

(d) Attorneys or other authorized representatives who wish to withdraw from representing a party must file a separate written notice of withdrawal with the commission and serve all parties to the proceeding.

(3) **Unethical conduct is not permitted.** Persons appearing in proceedings before the commission in a representative capacity must conform to the standards of ethical conduct required of attorneys before the courts of Washington. Representatives are required to be familiar with, and conform to, the requirements of the rules of professional conduct that are part of the Washington court rules. If any representative fails to conform to those standards, the commission may exclude the person from the proceeding, may report the ethical violation to any appropriate licensing authority, and may refuse to permit the person to appear before the commission in a representative capacity in any future proceeding.

(4) **Former employees.** Former employees of the commission are subject to the provisions of RCW 42.52.080, which governs employment after public service.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-345, filed 2/28/17, effective 3/31/17; WSR 03-

[Ch. 480-07 WAC p. 13]

24-028 (General Order R-510, Docket No. A-010648), § 480-07-345, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-350 Access for limited-English speakers and hearing-impaired persons.** (1) **Interpreters.** The commission incorporates WAC 10-08-150 (rules of procedure governing interpreters) by reference in this rule so that limited-English-speaking and hearing-impaired persons have equal access to the administrative process and the opportunity for full and equal participation in adjudicative proceedings.

(2) **Notice to limited-English-speaking parties.** When the commission knows that a limited-English-speaking person is a party in an adjudicative proceeding, it will serve on that party a version of all notices concerning the hearing, including notices of hearing, continuances, and dismissals, in the primary language of the party or will include in the service of each notice a supplemental notice in the party's primary language that describes the significance of the notice and how the party may receive assistance in understanding and responding to the notice.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-350, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-355 Parties—Intervention.** (1) **Petition to intervene.**

(a) *Who may petition; when petitions must be filed.* The commission strongly prefers written petitions to intervene from any person who seeks to appear and participate as a party in a proceeding before the commission other than the original parties, commission staff, and public counsel. Written petitions to intervene should be filed at least three business days before the initial hearing date or prehearing conference date, whichever occurs first. A person may petition orally for leave to intervene at the time of the initial hearing or prehearing conference, whichever occurs first, unless the commission requires written petitions to intervene in a notice prior to the first hearing or prehearing date.

(b) *Late-filed petition to intervene.* The commission may grant a petition to intervene made after the initial hearing or prehearing conference, whichever occurs first, only on a showing of good cause, including a satisfactory explanation of why the person did not timely file a petition to intervene.

(c) *Contents of petition.* Any petition to intervene must disclose:

(i) The petitioner's name and contact information as specified in WAC 480-07-360(3);

(ii) The petitioner's interest in the proceeding;

(iii) The petitioner's position with respect to the matters in controversy;

(iv) Whether the petitioner proposes to broaden the issues in the proceeding and, if so, a statement of the proposed issues that clearly and concisely sets forth the basis for the petitioner's proposal to broaden the issues; and

(v) The name and contact information as specified in WAC 480-07-360(3) of the persons the petitioner has authorized to act as the petitioner's representatives, including attorneys, if any.

(2) **Response.** Parties may respond to any petition to intervene. Responses may be written or may be heard orally

at the prehearing conference or hearing at which the commission considers the petition. A party's written response to a timely filed written petition to intervene should be filed and served at least two business days before the prehearing conference or hearing at which the commission will consider the petition, or at such other time as the commission may establish by notice.

(3) **Disposition of petitions to intervene.** The commission generally will consider petitions to intervene at the prehearing conference or at the initial hearing if the commission does not conduct a prehearing conference. The presiding officer may grant a petition to intervene if the petitioner has a substantial interest in the subject matter of the hearing or if the petitioner's participation is in the public interest. If the commission grants intervention, the petitioner becomes a party to the proceeding as an intervenor. The presiding officer may impose limits on an intervenor's participation in accordance with RCW 34.05.443(2).

(4) **Dismissal of intervenor.** The commission may dismiss an intervenor from a proceeding at any time after notice and a reasonable opportunity to be heard if the commission determines that the intervenor has no substantial interest in the proceeding and the public interest will not be served by the intervenor's continued participation.

(5) **Interlocutory review by commission.** The commission may review a decision regarding a petition to intervene or dismissal of an intervenor pursuant to WAC 480-07-810.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-355, filed 2/28/17, effective 3/31/17; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-355, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-360 Parties—Service and master service list.** (1) **Service defined.** Service means sending or delivering, in accordance with RCW 34.05.010(19) and this rule, the following documents in an adjudicative proceeding:

(a) Documents submitted to the commission for filing that must be sent or delivered to the parties in that proceeding;

(b) Documents that are not submitted to the commission for filing but that are formally exchanged between parties (e.g., data requests and responses); or

(c) Orders, notices, or other documents the commission enters or issues that must be sent or delivered to the parties or to any other persons to whom service may be required.

(2) **Designation of person to receive service.** Each party in an adjudicative proceeding must designate at least one person to receive service of documents relating to the adjudication. A party may designate more than one person to receive electronic service subject to any limits the presiding officer may establish on the number of persons each party may designate. Service on the person or persons who a party has designated as its representative(s) is valid service upon the party, except as provided by law.

(3) **Contact information.** In its initial filing in the adjudicative proceeding, each party or person seeking to become a party must designate the individuals to receive service on behalf of the party or person and must supply the following information about each such individual:

(a) Name;

(b) Mailing address;

- (c) Telephone number;
- (d) Email address; and
- (e) Relationship to party (e.g., counsel, executive director, etc.).

(4) **Master service list.** The commission will maintain a master service list for each adjudicative proceeding. The commission will include an initial master service list as an appendix to the prehearing conference order, if any, in the proceeding and will maintain a current master service list on the commission's web site as a separate document under the docket number for the proceeding. Parties must provide written notice to the commission and the other parties of any changes to the master service list.

(5) **Contents of master service list.** The master service list will contain the contact information for each party to the proceeding and each party's designated representative(s) for service. If the commission requires both paper and electronic service, the master service list will identify the one person representing each party who must be served paper copies in addition to electronic service.

(6) **Electronic service required.**

(a) Each party must serve documents by delivering electronic copies to each person on the master service list. Unless otherwise required by law, a party need not deliver a paper copy of the documents to any other party to perfect service but may serve a paper copy of any documents in addition to the electronic copies on a party that requests a paper copy.

(b) The commission will only serve documents electronically on each party's designated representatives, except as required otherwise by law. To the extent a statute requires a party's agreement to electronic service, the commission presumes that by participating as a party to an adjudicative proceeding, each party agrees to electronic service of all documents in that proceeding, including orders and notices the commission serves, unless the party states on the record at or before the initial prehearing conference or the hearing, whichever occurs first, that the party does not agree to electronic service. If a party lawfully insists on paper service, the commission will serve all documents electronically and also will serve on that party the paper documents the applicable statute requires be served in paper form.

(7) **When service is deemed complete.** Unless otherwise ordered by the commission in a particular proceeding, service is complete when the document being served has been verifiably sent to the recipient's designated email address. Parties serving documents should maintain records of documents sent by email and, to the extent practicable, should confirm successful delivery.

(8) **Certificate of service.** Each submission of one or more documents for filing to meet a single deadline in an adjudicative proceeding must include a certificate of service that states substantially as follows:

"I hereby certify that I have this day served [name of document(s)] upon all parties of record in this proceeding, by electronic transmission to the email address(es) of each party or party representative listed in the commission's master service list for this docket."

Dated at . . . . . this . . . . . day of . . . . .

(Signature of person who served the document)

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-360, filed 2/28/17, effective 3/31/17; WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-360, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-360, filed 11/24/03, effective 1/1/04.]

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

**WAC 480-07-365 Filing documents in adjudicative proceedings.** (1) **Scope of rule.** The requirements in this section are in addition to the general requirements for submitting documents to the commission in WAC 480-07-140 and any requirements in a specific adjudication. The commission will not consider documents to be filed until all applicable requirements are satisfied.

(2) **Electronic filing is required.** Except as otherwise required by these rules or other law, documents filed in an adjudicative proceeding must be submitted electronically using the commission's records center web portal no later than 5:00 p.m. on the date the documents are required to be filed unless the commission establishes an earlier time.

(a) *Submissions exceeding size limitations.* If the submission exceeds the size limitations of the commission's web portal, the submission will be timely if the documents are submitted by 5:00 p.m. through one of the options specified in WAC 480-07-140(5).

(b) *Exact copy.* Any paper copies of the document the commission requires by rule or order must conform exactly in form and content to the electronic version.

(c) *Simultaneous delivery to all parties and presiding officer.* All electronic documents submitted to the commission through the web portal or by email on a filing deadline date must be delivered to all parties and the presiding administrative law judge by email at the same time the documents are submitted to the commission or immediately thereafter. Copies intended for the presiding administrative law judge must be sent to the judge's individual email address. Submissions should **not** be sent directly to the commissioners.

(3) **Exception for documents offered and received at hearing.** When authorized by the presiding officer, a document may be officially received for purposes of an adjudicative proceeding when the presiding officer receives the document for the record at a hearing. The commission's receipt of the document for filing is contingent on submission of electronic copies as required in this section by 5:00 p.m. on the next business day, unless the presiding officer establishes a different submission deadline.

(4) **Failure to file required copies.** If a person fails to file the required types of electronic copies of a document and any required paper copies of a document, the commission may reject the filing or may require the person to file the required electronic and paper copies. The commission will not consider the document to be officially filed until the commission receives all required copies.

(5) **Service required.** Submission of any document with the commission for filing in an adjudicative proceeding is not complete until the party submitting the document has served

all other parties to the proceeding pursuant to WAC 480-07-360.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-365, filed 2/28/17, effective 3/31/17.]

**WAC 480-07-370 Pleadings—General. Types of pleadings permitted.** Pleadings include, but are not necessarily limited to, formal complaints, answers to complaints, petitions, responses to petitions, replies, applications for authority, protests, and objections. The commission may allow other pleadings upon written motion or on the commission's own motion.

(1) *Formal complaints.*

(a) Defined. Formal complaints are complaints filed in accordance with RCW 80.04.110 or 81.04.110, complaints filed under RCW 80.54.030, and commission complaints in proceedings designated by the commission as formal commission proceedings. For purposes of this rule, a formal complaint does not include an informal complaint filed pursuant to WAC 480-07-910 or a commission complaint and order suspending a rate increase or other tariff filing.

(b) Contents. A formal complaint must be in writing and must clearly and concisely set forth the grounds for the formal complaint, the relief requested, and the commission's jurisdiction to commence an adjudication and grant the requested relief. A formal complaint must state:

(i) The complainant's name and address and the contact information for the individuals to receive service on behalf of the complainant as required under WAC 480-07-360(3);

(ii) The full name and address of the person complained against, which should be the name and address contained in the commission's records if the respondent is a public service company;

(iii) Facts that constitute the basis of the formal complaint and requested relief, including relevant dates;

(iv) Citations to statutes or commission rules the complainant alleges that the respondent has violated and that provide the commission with jurisdiction to resolve the complaint and grant the relief the complainant requests; and

(v) Facts and law sufficient to demonstrate that the complainant has complied with all other prerequisites including, but not necessarily limited to, the requirements in RCW 80.04.110 or 81.04.110, if applicable.

(2) *Answer to formal complaint.*

(a) Defined. A pleading responding to a formal complaint is an answer.

(b) Timing. If the commission decides to commence an adjudicative proceeding on its own complaint or in response to a formal complaint brought by another person, the commission will serve the complaint on the respondent. A respondent must file any answer to a formal complaint, whether required or optional, within twenty days after the commission serves the complaint or such other time as the commission specifies in the notice accompanying the complaint.

(c) When required. A named respondent must file an answer to a complaint brought by any party other than the commission.

(d) When optional. A party may file an answer to a complaint brought by the commission.

(e) Content. Answers must include the following information:

(i) The name and contact information of the respondent and the individuals to receive service on behalf of the respondent as required under WAC 480-07-360(3);

(ii) Admissions or denials, specifically and in detail, of all material allegations of the formal complaint; and

(iii) Full and complete disclosure of the respondent's affirmative defenses, if any.

(3) *Petitions.*

(a) Defined. All original pleadings that seek relief other than formal complaints and applications as defined in this section and all pleadings that seek relief from a commission order, are petitions. The commission may undertake an action that would be the proper subject of a party's petition, such as authorizing exemption from a commission rule, without receiving a petition from a party. The commission will provide written notice and allow for appropriate process when it acts in the absence of a party's petition.

(b) Contents. A petition must be in writing and must clearly and concisely set forth the grounds for the petition, the relief requested, and the commission's jurisdiction to grant the requested relief. A petition must state:

(i) For original petitions, the name and contact information of the petitioner and the individuals to receive service on behalf of the petitioner as required under WAC 480-07-360(3) if the petitioner is requesting that the commission commence an adjudicative proceeding in response to the petition;

(ii) Facts that constitute the basis of the petition and requested relief, including relevant dates; and

(iii) Citations to statutes or commission rules that provide the commission with jurisdiction and authority to grant the requested relief.

(4) *Response to a petition.*

(a) Defined. A pleading responding to a petition is a response.

(b) Timing of response. Responses to a petition must be filed within twenty days after the petition is filed unless the commission or these rules establish a different deadline or the petition seeks commission action that the commission generally considers taking at an open public meeting (e.g., an accounting petition). Responses to petitions the commission considers at an open meeting should be filed no later than three business days before that open meeting. The presiding officer will establish the time for responses to interlocutory petitions in an adjudicative proceeding.

(c) When permitted. Any person directly affected by an original petition may file a response. Any party to the adjudicative proceeding may file a response to a petition filed in that proceeding except as otherwise provided in this chapter or a commission order.

(d) Content. Responses must include the following information:

(i) For original petitions, the name and address of the respondent and the individuals to receive service on behalf of the respondent as required under WAC 480-07-360(3) if the respondent seeks to become a party to any adjudicative proceeding the commission commences in response to the petition;

(ii) All legal and factual bases that support the respondent's position either to grant or deny the petition.

(5) *Reply to an answer or response.*

(a) **Defined.** The pleading responding to an answer or response is a reply. A party must not file a reply without permission from the commission, which the commission will grant only upon a showing of good cause.

(b) **Motion for permission to reply.** A party that wishes to reply to an answer or response must file a motion requesting permission to reply within five business days after the respondent serves the answer or response. The motion must explain why a reply is necessary including, but not necessarily limited to, whether the answer or response raises new facts or legal argument requiring a reply. A party should file a proposed reply as an attachment to its motion. The motion is deemed denied unless the commission grants the motion within five business days after the movant files it.

(c) **Commission direction or invitation for a reply.** The commission may require or invite a party to file a reply.

(6) *Application.* An application is a request for a license, certificate, permit, or other authority to provide a service regulated by the commission or a request to transfer or amend any such authority.

(7) *Protest.* Persons who assert that their interests would be adversely affected if the commission grants an application other than an application for auto transportation service pursuant to WAC 480-30-096 may file a protest. A protest to an application must conform to the requirements of any rules that apply to the type of application the person is protesting. A protestant must serve a copy of the protest on the applicant.

(8) *Objection.* Persons who assert that their interests would be adversely affected if the commission grants an application for auto transportation service pursuant to WAC 480-30-096 may file an objection. An objection must conform to the requirements of WAC 480-30-116. The objector must serve a copy of the objection on the applicant.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-370, filed 2/28/17, effective 3/31/17; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-370, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-375 Motions.** (1) **Defined.** Except for pleadings identified as petitions under these rules, a party's written or oral request for commission action in the context of an adjudicative proceeding is a motion. Motions should be in writing unless made on the record during a hearing before the presiding officer. The commission may take or require an action that would be the proper subject of a party's motion without receiving a motion from a party. The commission will provide oral or written notice prior to taking or requiring such action and allow for appropriate process when it acts in the absence of a party's motion. The commission recognizes four basic categories of motion:

(a) *Dispositive motions.* Dispositive motions request that the commission terminate a proceeding, resolve one or more of the substantive issues presented in the proceeding, or terminate a party's participation in the proceeding.

(b) *Procedural motions.* Procedural motions request that the commission establish or modify the process or the procedural schedule in a proceeding.

(c) *Discovery motions.* Discovery motions are requests to resolve disputes concerning the exchange of information among parties during the discovery phase of a proceeding.

(d) *Evidentiary motions.* Motions related to evidence are requests to limit or add to the evidentiary record in a proceeding.

(2) **Written motions must be filed separately.** Parties must file motions separately from any pleading or other communication with the commission. The commission will not consider motions that are merely stated in the body of a pleading or within the text of correspondence. The commission may refer to the Washington superior court rules for civil proceedings as guidelines for handling motions.

(3) **Oral motions.** A party may make an oral motion during a hearing, unless foreclosed from doing so by rule or in the presiding officer's discretion. The presiding officer will provide an opportunity for other parties to respond to any oral motion. The presiding officer may require that an oral motion be reduced to writing and may provide an opportunity for written response.

(4) **Responses to written motions that are not dispositive or do not seek a continuance.** A party that opposes a written motion, other than a dispositive motion governed by WAC 480-07-380 or a motion for continuance governed by WAC 480-07-385, may file a written response within five business days after the motion is served, or may make an oral or written response at such other time as the presiding officer may set.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-375, filed 2/28/17, effective 3/31/17; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-375, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-380 Motions that are dispositive— Motion to dismiss; motion for summary determination; motion to withdraw.** (1) **Motion to dismiss.**

(a) *General.* A party may move to dismiss another party's claim or case on the asserted basis that the opposing party's pleading fails to state a claim on which the commission may grant relief. When ruling on such a motion, the commission will consider the standards applicable to a motion made under Washington superior court civil rule 12 (b)(6) and 12(c). If a party presents an affidavit, declaration, or other material in support of its motion to dismiss, the commission will treat the motion as one for summary determination as provided in subsection (2) of this section unless the commission rules on the motion without relying on the material.

(b) *Time for filing motion to dismiss.* A party that opposes a pleading must file any motion directed to the pleading no later than the time the responsive pleading is due, or within twenty days after the pleading is served, whichever time is less, unless the party shows good cause for delay. Filing a motion to dismiss a pleading or seeking a similar remedy does not extend the time for answering the pleading.

(c) *Response.* A party that opposes a written motion to dismiss may file a response within ten days after service of the motion, or at such other time as the commission may set.

(2) **Motion for summary determination.**

(a) *General.* A party may move for summary determination of one or more issues if the pleadings filed in the pro-

ceeding, together with any properly admissible evidentiary support (e.g., affidavits, declarations, fact stipulations, or matters of which the commission may take official notice), show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. When ruling on such a motion, the commission will consider the standards applicable to a motion made under Washington superior court civil rule 56.

(b) *Time for filing motion for summary determination.* A party must file any motion for summary determination at least thirty days before the next applicable hearing session unless the commission establishes by order a different date for any such motion to be filed.

(c) *Response.* A party must file any answer to a motion for summary determination and any cross-motion for summary determination within twenty days after the movant serves the motion unless the commission establishes a different filing date.

(d) *Continuance not automatic.* Filing a motion for summary determination will not automatically stay any scheduled procedures. The commission may order a continuance of any procedure and may order that an oral or written response to a motion for summary determination be made at a time that is consistent with any established hearing schedule in the proceeding.

### (3) Motion to withdraw.

(a) *General.* Once the commission has issued a hearing notice or otherwise commenced an adjudicative proceeding pursuant to chapter 34.05 RCW, a party may withdraw from that proceeding, or may withdraw the party's tariff, complaint, petition, or application on which a proceeding is based, only upon permission granted by the commission in response to a written motion. The motion must include any settlement or other agreement pursuant to which the party is seeking withdrawal.

(b) *Response.* No party may file a response to a motion to withdraw unless the commission authorizes a response. The commission will grant such a motion when the requested withdrawal is in the public interest. A company need not file a motion to withdraw a tariff filing after the commission has entered a complaint and order suspending that tariff but before the commission commences an adjudicative proceeding. In such circumstances, the company need only file a written notice that it is withdrawing that filing.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-380, filed 2/28/17, effective 3/31/17; WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-380, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-380, filed 11/24/03, effective 1/1/04.]

### **WAC 480-07-385 Motion for continuance or suspension. (1) Definitions.**

(a) A continuance is any postponement of a deadline established by commission rule or order or any extension of time to comply with such a deadline.

(b) A suspension holds all procedural deadlines established by the commission in abeyance pending further commission action.

### (2) Procedure.

(a) *Continuance.* Any party may request a continuance by oral or written motion. The commission may require a

confirmation letter or email if a party makes an oral request. The presiding officer may rule on such motions orally at a prehearing conference or hearing session, or by written notice or order. The commission will grant a continuance if the requesting party demonstrates good cause for the continuance and the continuance will not prejudice any party or the commission. A party may request a continuance by email to the presiding administrative law judge if the party accurately represents that all other parties either join or do not oppose the request. The commission will grant such a request unless it is inconsistent with the public interest or the commission's administrative needs.

(b) *Suspension.* A party may request that the commission suspend the procedural schedule through a letter or email to the presiding administrative law judge if the party accurately represents that all other parties either join or do not oppose the request. The commission will grant such a request unless it is inconsistent with the public interest or the commission's administrative needs.

### (3) Timing.

(a) *Written motion for continuance.* A party must file and serve any written motion for continuance other than an agreed request at least five business days prior to the deadline the party requests to continue. Parties must file any written response to the motion within three business days after the motion is served unless the commission establishes a different date for responses. Parties should submit an agreed request for continuance in writing at least two business days prior to the deadline the parties request to continue.

(b) *Oral request for continuance.* A party must make any oral request for continuance on the record in a proceeding at least two business days prior to the deadline the party seeks to continue. The commission will permit oral responses at the time the oral request is made.

(c) *Request for suspension.* A party should request that the commission suspend the procedural schedule at least five business days prior to the next scheduled deadline in that schedule.

(4) **Date certain.** The commission will grant continuances only to a specified date.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-385, filed 2/28/17, effective 3/31/17; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-385, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-390 Briefs; oral argument.** The commission may permit or require the parties to a proceeding to present their arguments and authority in support of their positions after the conclusion of any evidentiary hearing. Such a presentation may be in the form of written briefs, oral argument at the close of the hearing, or both.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-390, filed 2/28/17, effective 3/31/17; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-390, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-395 Pleadings, motions, and briefs—Format requirements; citation to record and authorities; verification; errors; construction; amendment. (1) Format.** All pleadings, motions, and briefs must meet the following format requirements:

(a) *Appearance.*

(i) Text must be double-spaced, 12-point type, and in palatino, times new Roman, or an equally legible serif font, with footnotes in the same font and of at least 10-point type;

(ii) Each paragraph must be numbered;

(iii) Margins must be at least one inch from each edge of the page; and

(iv) Any required paper copies must be submitted on three-hole punched, 8 1/2 x 11 inch paper.

(b) *Length.* Pleadings, motions, and briefs must not exceed sixty pages exclusive of table of contents, table of authorities, signature blocks, exhibits, appended authorities, supporting affidavits or declarations, and other documents. The presiding officer may alter the page limit to accommodate the number and complexity of the disputed issues presented for commission resolution.

(c) *Organization.* Every pleading, motion, and brief must be organized as follows:

(i) *Caption.* The commission notice initiating an adjudicative proceeding will include a caption that parties must use for all pleadings, motions, and briefs they file in that proceeding. Pleadings that request that the commission initiate an adjudicative proceeding should include a preliminary caption. At the top of the first page must appear the phrase, "BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION." On the left side of the page, the name of the proceeding must be set out as either "[Name], Complainant, v. [Name], Respondent." for a formal complaint or "In the matter of the [petition, application, etc.] of [Name of the pleading party] for [identify relief sought]." On the right side of the page for all pleadings, the caption must include the docket number if one has been assigned, the name of the party submitting the document, and the name of the document (e.g., staff motion for continuance).

(ii) *Body of pleading.* A pleading must include the following information:

(A) The pleading party's name and the nature of the pleading, and an initial pleading also must include the contact information as specified in WAC 480-07-360(3) for the party and its representative, if any;

(B) All rules or statutes that the pleading puts in issue;

(C) A statement of facts on which the party relies in a form comparable to complaints in civil actions before the superior courts of this state; and

(D) The relief the pleading party requests.

(iii) *Body of motion.* A motion must include the following information:

(A) A statement of the specific relief the movant requests that the commission grant or deny;

(B) A succinct statement of the facts that the movant contends are material to the requested remedy;

(C) A concise statement of the legal issue or issues on which the movant requests the commission to rule; and

(D) Any evidence on which the motion is based. If a party relies on declarations, affidavits, deposition transcripts, or documentary evidence, the party must specify those documents, quote the cited material verbatim, and attach a copy of relevant pages to a declaration that identifies and verifies the documents. Parties should highlight or otherwise clearly identify the portions of the cited evidence on which they place substantial reliance.

(iv) *Body of brief.* Unless excused by the presiding officer, the parties must include in their briefs that exceed ten pages in length a table of contents in outline format. The conclusion of any brief must state the relief the party requests.

(v) *Citation to record.* Portions of the record relied on or quoted in the body of a brief must be cited using footnotes.

(A) *Transcript.* Transcript references should be as follows: [witness's surname], TR. [page]:[line(s)]. If the transcript reference spans multiple pages, the reference should be as follows: [witness's surname], TR. [page]:[line] - [page]:[line]. Examples: Smith, TR. 21:5-14; Jones, TR. 356:4 - 357:21.

(B) *Exhibits.* Exhibits must be marked as required under WAC 480-07-460, and references to those exhibits should be as follows: Exh. [number]. In the case of prefiled testimony offered or received as an exhibit, page numbers, line numbers, and the witness's surname should be added following the style specified in this section for transcript references (e.g., Smith, Exh. ABS-1T at 21:15-17). In other exhibits, references to pages, lines for text, rows and columns for tables, or other specific references may be added in addition to the sponsoring witness's surname, if applicable, to clarify the information cited (e.g., Smith, Exh. ABS-5 at 12, Table 2).

(vi) *Citation to authority.* Parties must use the citation formats specified in the current edition of the style sheet of the Washington supreme court reporter of decisions. The presiding officer may require parties to file copies of the text of authorities that are cited in parties' briefs and upon which parties place substantial reliance. Unless excused by the presiding officer, parties must include a table of cited authorities, with the full citation of each reference and its location in the brief.

(vii) *Attachments or appendices.* If a party attaches more than one attachment or appendix to a pleading, the party must separate the body of the brief and each attachment or appendix in any required paper copies with a tabbed blank sheet of paper.

(2) **Verification.** All pleadings and motions, except complaints brought by the commission or matters raised by the commission on its own motion, must be dated and signed either by a party representative of record in his or her individual name, or by the party, if the party is not represented. Parties that are not represented by an attorney must include a statement in any pleading that the facts asserted in the pleading are true and correct to the best of the signer's belief. Parties that bring complaints under RCW 80.04.110 or 81.04.-110 challenging the reasonableness of the rates or charges of utilities the commission regulates must provide additional verification as specified in those statutes.

(3) **Errors in pleadings or motions.** The commission may return a pleading or motion to a party for correction when the commission finds the pleading or motion to be defective or insufficient. The commission may disregard or correct obvious typographical errors, errors in captions, or errors in spelling of names of parties.

(4) **Liberal construction of pleadings and motions.** The commission will liberally construe pleadings and motions with a view to effect justice among the parties. The commission will consider pleadings and motions based primarily on the relief they request and will not rely solely on

the name of the document. The commission, at every stage of any proceeding, will disregard errors or defects in pleadings, motions, or other documents that do not affect the substantial rights of the parties.

(5) **Amendments.** The commission may allow amendments to pleadings, motions, or other documents on such terms as promote fair and just results.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-395, filed 2/28/17, effective 3/31/17; WSR 08-18-012 (Docket A-072162, General Order R-550), § 480-07-395, filed 8/22/08, effective 9/22/08; WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-395, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-395, filed 11/24/03, effective 1/1/04.]

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

### **WAC 480-07-400 Discovery. (1) General.**

(a) *No limitation on commission authority to audit and inspect.* Nothing in this section imposes any limitation on the commission's ability to audit or obtain the books and records of public service companies, or public service companies' obligation to provide information to the commission, whether or not in the context of an adjudicative proceeding.

(b) *Informal discovery procedures.* Parties in an adjudicative proceeding may agree to informal discovery procedures in addition to, or in place of, the procedures contained in this section.

(c) *Definitions.* For purposes of WAC 480-07-400 through 480-07-425, the following terms have the following meanings:

(i) **Party.** Any party as defined by WAC 480-07-340.

(ii) **Data.** As used in this section, data is information of any type, in any form.

(iii) **Data request.** A party's written request that calls for another party to produce data in connection with an adjudicative proceeding is a data request. Generally, data requests seek one or more of the following: Existing documents; an analysis, compilation, or summary of existing documents into a requested format; a narrative response describing a party's policy, practice, or position; or the admission of a fact asserted by the requesting party. If a party relies on a cost study, model, or proprietary formula or methodology, the party must be willing, on request, to rerun or recalculate the study, model, formula, or methodology based on different inputs and assumptions, subject to the standards in subsection (3) of this section. The commission otherwise will not order a party to respond to a data request that would require creation of new data or documents unless there is a compelling need for such information.

(iv) **Bench request.** A request for data made by or on behalf of a presiding officer is a bench request.

### **(2) When discovery available.**

(a) *Subpoenas always available.* Subpoenas are available as a means of discovery as provided in Title 80 or 81 RCW and chapter 34.05 RCW.

(b) *When other discovery methods available.* If the commission finds that an adjudicative proceeding meets one of the following criteria, the methods of discovery set forth in WAC 480-07-405 through 480-07-415 will be available to parties:

(i) Any proceeding involving a change in the rate levels of a public service company;

(ii) Any complaint proceeding involving claims of discriminatory or anticompetitive conduct, unjust or unreasonable rates, or violations of provisions in Title 80 or 81 RCW; or

(iii) Any proceeding in which the commission, in its discretion, determines that the needs of the case require the methods of discovery specified in this rule.

(3) **Scope of discovery.** Discovery must seek only information that is relevant to the issues in the adjudicative proceeding or that may lead to the production of information that is relevant. A party may not object to discovery on grounds that the information sought will be inadmissible at the hearing, if that information appears reasonably calculated to lead to discovery of admissible evidence. Parties must not seek discovery that is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive. A discovery request is inappropriate when the party seeking discovery has had ample opportunity to obtain the information the party seeks or the discovery is unduly burdensome or expensive, taking into account the needs of the adjudicative proceeding, limitations on the parties' resources, scope of the responding party's interest in the proceeding, and the importance of the issues at stake in the adjudicative proceeding. Discovery through data requests or otherwise must not be used for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the costs of litigation. The commission may impose sanctions for abusive discovery practice.

(4) **Schedule.** The commission may establish and set forth in a prehearing order a schedule for discovery. Any such schedule will provide deadlines sufficient to allow a timely opportunity for responses and for disputes to be resolved. The presiding officer may impose or modify time limits to the extent necessary to conform to the commission's hearing schedule.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-400, filed 2/28/17, effective 3/31/17; WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-400, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-400, filed 11/24/03, effective 1/1/04.]

### **WAC 480-07-405 Discovery—Data requests and bench requests. (1) Grouping and numbering.**

(a) *Grouping.* Parties must group their data requests by subject or witness.

(b) *Numbering.* Each party must number sequentially its data requests to each other party. Numbering of subsequent data requests to the same party must begin with the number next in sequence following the number of the last previously propounded data request (e.g., if the last data request in an initial set of requests is number 10, the first data request in the next set of requests must be number 11). The presiding officer will ensure that bench requests are adequately described on the record and consecutively numbered.

(2) **Service of data requests.** A party must serve data requests electronically in native format on the party to whom the requesting party makes the requests, with copies to all other parties. When propounding data requests to other parties, a party must not file those data requests with the com-

mission or copy any person who is presiding or advising the presiding officer.

(3) **Motion to compel.** A party's motion to compel responses to data requests must include the relevant data request, any objection to the request, and any response to the objection.

(4) **Limitation on numbers of data requests.** The presiding officer may limit the total number of data requests that a party may propound to another party. Each party must make reasonable efforts to ensure that its data requests do not duplicate other parties' requests. The presiding officer may require parties to coordinate discovery with other parties of similar interest.

(5) **Responding party to seek clarification.** If a party to whom a data request is propounded finds the meaning or scope of a request unclear, the responding party must immediately contact the requesting party for clarification. Lack of clarity is not a basis for objection to a data request unless the responding party has made a good faith effort to obtain clarification.

(6) **Objections; consequence of failure to object.**

(a) *Data requests.* A party must present any objections to a data request to the requesting party in writing by the time the response is due, or at such other time as the presiding officer orders. A party objecting to a data request must state the objection and explain the basis for the objection. A party that fails to interpose a timely objection to providing a full response to a data request waives any right to object for purposes of discovery and must provide a full response. A party that fails to make an objection when responding to data requests does not lose the opportunity to raise an objection at hearing if another party seeks to introduce as evidence all or part of the party's response to a data request.

(b) *Bench requests.* Any party may object to a bench request made orally during a hearing at the time the presiding officer makes the request. A party may subsequently object in writing to such a bench request within five days after the presiding officer makes the request if the objection is based on facts or law the party did not reasonably know at the time the presiding officer made the request. A party may object to a written bench request within five days after the commission serves the request.

(7) **Responses.**

(a) *Data requests.*

(i) *Service.* Parties must serve responses to data requests electronically on the requesting party and on any other party that requests a copy, consistent with the terms of any protective order entered in the proceeding. Except when designated as exhibits to be offered into the evidentiary record, parties must not file responses to data requests with the commission or copy any person who is presiding or advising the presiding officer when serving those responses. The commission will not receive into evidence responses to data requests unless a party offers the responses into evidence. A party may object to the admission of a response to a data request at the time the response is offered into evidence whether or not the party timely objected to providing the response.

(ii) *Timing.* A party to whom a data request is directed must provide a full response within ten business days after the request is served. If the responding party cannot provide a full response within ten business days, the responding party

must give written notice to the requesting party no later than two business days before the response is due. The notice must state why the responding party cannot comply with the ten-day deadline. The responding party must also provide a schedule by which it will produce the requested data and must explain why the party cannot provide any portion of the data. The presiding officer may modify these time limits.

(iii) *Identification of respondent and witness.* Each response to a data request must state the date the response is produced, the name of the person who prepared the response, and the name of any witness testifying on behalf of the responding party who is knowledgeable about, and can respond to, questions concerning the response.

(b) *Bench requests.* Parties must file responses to bench requests with the commission and serve all parties within ten business days after the commission makes the request, unless the presiding officer specifies another deadline. A party may object to a bench request response within five days after filing and service of the response. The commission will receive responses to bench requests in evidence without further process unless a party objects to the response or the commission rejects the response.

(8) **Supplementation.** Parties must immediately supplement any response to a data request or bench request upon learning that the prior response was incorrect or incomplete when made or upon learning that a response that was correct and complete when made, is no longer correct or complete.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-405, filed 2/28/17, effective 3/31/17; WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-405, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-405, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-410 Discovery—Depositions.** (1) **Who may be deposed.** A party may depose any person identified by another party as a potential witness. A party may depose a person who has not been identified as a potential witness only if the presiding officer approves the deposition. The presiding officer may approve the deposition of a person who has not been identified as a potential witness on a finding that the person appears to possess information that is necessary to the party's case, the information cannot reasonably be obtained from another source, and the probative value of the information outweighs the burden on the person proposed to be deposed.

(2) **Required notice; motion.** A party that intends to depose another party's designated potential witness must give notice to the commission and all parties. A party that seeks to depose a person who has not been identified as a potential witness must file a motion requesting permission to depose the person.

(3) **How conducted.** Parties should use Washington superior court civil rule 30 as a guide when conducting depositions. Parties must limit the scope of questioning in a deposition to the same standard set forth in WAC 480-07-400(4). A court reporter provided by the party requesting the deposition will record the deposition. Each party will be responsible for the attendance of any of its designated potential witnesses who have been scheduled for deposition.

(4) **Use of depositions.** Parties may use depositions for any lawful purpose, subject to the requirements of this sub-

section. If a party seeks to offer into evidence the deposition of a potential witness who is available to testify to the matters addressed in that person's deposition, the party must do the following:

(a) Offer only those portions of the deposition on which the party intends to rely; and

(b) Provide at least five business days' written notice to other parties and to the presiding officer prior to the hearing session at which the potential witness is expected to appear. The party must attach to the notice the portion(s) of the deposition that the party proposes to offer in the form of exhibits that are marked for identification as required under WAC 480-07-460(3). If portions of a deposition are admitted into evidence, other parties may offer additional portions of the deposition when necessary to provide a balanced representation of the deponent's testimony.

**(5) Correcting/supplementing deposition testimony.**

(a) *Correction.* A party may file a motion to correct a transcription error in a deposition transcript within ten days after the court reporter delivers the deposition transcript.

(b) *Supplementation.* Every deponent must supplement any response given in a deposition immediately upon learning that the prior response was incorrect or incomplete when made, or upon learning that a response that was correct and complete when made is no longer correct or complete. Each party is responsible for ensuring compliance with this requirement by deponents who are the party's potential witnesses.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-410, filed 2/28/17, effective 3/31/17; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-410, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-415 Discovery conference. (1) General.**

The commission may request or require the parties to attend a discovery conference along with designated witnesses to discuss with each other questions about the party's positions or evidence and the availability of supporting information.

**(2) Purpose.** The purpose of a discovery conference is:

(a) To allow witnesses and others who have knowledge relating to the proceeding (e.g., consultants or employees) to talk directly and informally;

(b) To reduce or avoid the need for written data requests and time for their preparation;

(c) To allow discussions of potential stipulations regarding individual facts and settlement of individual issues to occur in an informal setting;

(d) To discuss the availability of supporting information; and

(e) To enhance the parties' ability to acquire or expand their knowledge about the case of one or more designated other parties.

(3) **Statements not evidence.** Discovery conferences will not be reported and statements made by participants at discovery conferences are not admissible as evidence unless the parties agree otherwise.

(4) **Facilitator.** The commission may designate a person to facilitate a discovery conference. The designated facilitator must not be associated with any party or with the commission advisory staff involved in the proceeding.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-415, filed 2/28/17, effective 3/31/17; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-415, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-420 Discovery—Protective orders. (1)**

**Standard form.** The commission may enter a standard form of protective order designed to promote the free exchange of information and development of the factual record in a proceeding when parties reasonably anticipate that discovery or evidentiary submissions will require the disclosure of information designated as confidential as defined in WAC 480-07-160. Parties must strictly limit the information they designate as confidential to information that is or may be exempt from public disclosure under RCW 80.04.095, 81.77.210, or the Public Records Act, chapter 42.56 RCW, including RCW 42.56.330. Parties must follow the instructions in WAC 480-07-160 for properly marking and submitting documents with the commission containing information designated as confidential in a proceeding governed by a protective order.

(2) **Amendment.** The commission may, upon motion by a party, or on its own initiative, amend its standard form of protective order to meet the parties' and the commission's needs in individual cases.

(a) *Protection for highly confidential information.* A party that wishes to designate information as highly confidential must make a motion, orally at the prehearing conference or in writing, for an amendment to the standard protective order, supported by a declaration, testimony, or representations of counsel that set forth the specific factual and legal basis for the requested level of protection and an explanation of why the standard protective order is inadequate. The motion and declaration or testimony must identify specific parties, persons, or categories of persons, if any, to whom a party wishes to restrict access, and state the reasons for such proposed restrictions.

(b) *Limitations.* If the commission modifies the standard protective order to include protection for highly confidential information, parties must strictly limit the information they designate as highly confidential to the information identified in the amendment to the protective order and must follow the instructions in WAC 480-07-160 for properly marking and submitting documents with the commission as highly confidential.

(3) **Special order.** Upon motion by a party or by the person from whom discovery is sought that establishes a need to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, the presiding officer may order appropriate limitations on discovery including, but not necessarily limited to, one or more of the following:

(a) The discovery will not be allowed;

(b) The discovery will be allowed only on specified terms and conditions;

(c) The discovery will be allowed only by a method of discovery other than the method selected by the party seeking discovery; or

(d) Certain matters may not be inquired into, or the scope of the discovery will be limited to certain matters.

(4) **Denial of motion for protective order.** The presiding officer may order that any party or person provide or permit discovery on such terms and conditions as are just if the

commission denies a motion for a protective order in whole or in part.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-420, filed 2/28/17, effective 3/31/17; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-420, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-425 Discovery disputes. (1) Procedure for resolving disputes.**

(a) *Informal resolution.* Parties must make good faith efforts to resolve informally all discovery disputes. The commission may designate a person to assist the parties to resolve discovery issues, at the request or with the consent of the parties.

(b) *Motion to compel.* A party may file a written motion, or move orally at a prehearing conference, to compel discovery if the parties cannot resolve a dispute informally. The presiding officer will hear a motion to compel discovery at the earliest reasonable time. The presiding officer may conduct telephone hearings or conferences for the argument of discovery disputes. The presiding officer may make discovery rulings orally on the record or by written order. The presiding officer's discovery rulings are subject to review under WAC 480-07-810.

(2) **Sanctions for failure to comply.** Any party may by motion, or the commission may on its own motion, propose that sanctions be imposed if a party fails or refuses to comply with the commission's discovery rules or an oral or written order resolving a dispute under this section. The commission may impose sanctions for such violations including, but not limited to, default, dismissal, striking of testimony, evidence, or cross-examination, or monetary penalties as provided by law.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-425, filed 2/28/17, effective 3/31/17; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-425, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-430 Prehearing conferences. (1) General.** The commission may require that all parties to, and all persons who seek to intervene in, a proceeding attend a prehearing conference. The following topics are proper subjects for discussion at a prehearing conference:

- (a) Identification and simplification of the issues;
- (b) The necessity or desirability of amendments to the pleadings;
- (c) Establishment of a procedural schedule including, but not limited to, the need for, and timing of, prefiled testimony and exhibits;
- (d) Disposition of petitions for leave to intervene;
- (e) Availability of the commission's discovery rules or resolution of discovery disputes;
- (f) Resolution of pending motions;
- (g) Entry of a standard or amended protective order to protect confidential or highly confidential information;
- (h) Service requirements, including creation of a master service list and disposition of any objections to commission service of orders and notices solely in electronic form; and
- (i) Any other matters that may aid in the disposition of the proceeding, whether by commission decision or by settlement.

(2/28/17)

(2) **Notice.** The commission will provide reasonable notice of the time and place established for a prehearing conference and the matters to be addressed. A party's failure to attend a prehearing conference constitutes the party's waiver of all objections to any order or ruling arising out of the conference or any agreement reached at conference, unless the party shows good cause for its failure to attend.

(3) **Oral statement or written order.** The presiding officer may make an oral statement on the record or may enter an order describing the actions taken at the prehearing conference and agreements among the parties concerning all of the matters considered.

(a) *Objections.* Parties may object to the oral statement on the record at the time the oral statement is made, or may object to any written prehearing conference order within ten days after the date the order is served. The commission will consider any objections pursuant to the procedures in WAC 480-07-810.

(b) *Results.* In the absence of a timely objection that the commission sustains, the results of the prehearing conference will control the course of the proceeding unless modified by subsequent order or decision of the presiding officer to accommodate the needs of the case.

(4) **Prehearing conferences to facilitate evidentiary hearing.** The presiding officer may require parties to attend a prehearing conference prior to an evidentiary or other hearing session, or may recess an evidentiary or other hearing session to conduct a prehearing conference.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-430, filed 2/28/17, effective 3/31/17; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-430, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-440 Hearing notice. (1) Initial hearing notice.**

(a) *Timing.* The commission will set the time and place of the first hearing session or prehearing conference in any adjudication in a notice served to all parties at least twenty days before the hearing or conference. The commission may shorten the notice period to seven days, as provided by RCW 34.05.434. The commission will set all hearings sufficiently in advance so that all parties will have a reasonable time to prepare, considering the procedural schedule, other pending matters, and the need to minimize continuances.

(b) *Provisions for appointment of interpreter.* The initial notice of hearing will state that if a limited-English-speaking or hearing-impaired party needs an interpreter, a qualified interpreter will be appointed at no cost to the party or witness. The notice will include a form for a party to indicate whether the party needs an interpreter and to identify the party's primary language or hearing-impaired status.

(2) **Notice of continued hearing sessions.** When a hearing is not concluded as scheduled, the time and place for continued hearing sessions may be set:

- (a) On the record without further written notice to the parties; or
- (b) By letter or formal notice from the presiding officer or the commission secretary.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-440, filed 2/28/17, effective 3/31/17; WSR 03-

24-028 (General Order R-510, Docket No. A-010648), § 480-07-440, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-450 Hearing—Failure to appear.** (1) **Dismissal or default.** The commission may dismiss a party or find a party in default for failure to appear at the time and place set for hearing. The commission will implement any dismissal or default by a written order. When a party is found in default, the commission's order stating that finding also may dispose of the issues in the proceeding, as provided by RCW 34.05.440.

(2) **Review of order of dismissal or default.** A party that a presiding officer dismisses from a proceeding or finds in default may contest the order of dismissal or default by written motion filed within ten days after service of the order. A dismissed party or party found in default may request that the order be vacated and, if the order is dispositive of the proceeding, that the proceeding be reopened for further process.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-450, filed 2/28/17, effective 3/31/17; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-450, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-460 Hearing—Exhibits, exhibit list, and cross-examination estimates.** (1) **Filing exhibits in advance.** Parties must file and serve exhibits that they intend to submit or use in the evidentiary hearing, including proposed cross-examination exhibits, in advance of the hearing. The commission or the presiding officer will establish by notice or in a prehearing conference order the number of paper copies, if any, and deadlines for filing. In rate increase proceedings for electric, natural gas, pipeline, and telecommunications companies, the petitioner must prefile its proposed direct testimony and exhibits at the time it files its rate increase request, in accordance with commission rules.

(a) *Changes or corrections.*

(i) *Substantive changes.* Parties must seek leave from the presiding officer by written motion if they wish to file revised prefiled testimony or exhibits that include substantive changes. A party proposing such changes should submit the proposed revisions with its motion.

(ii) *Minor corrections.* A party may make minor revisions to prefiled testimony and exhibits to correct typographical errors, printing errors, and nonsubstantive changes (e.g., a change in a witness's address or employment) without leave from the presiding officer. Counsel should not ask a witness on the stand to make these corrections, but must submit an errata sheet as provided in subsection (6) of this section.

(iii) *Format requirements for revisions.* Parties that submit a revised version of any prefiled or previously admitted testimony or exhibits must prominently label the documents as "REVISED" and indicate the date of the revision. The document's exhibit number also must include a lower case "r" at the end of the number using the format described in subsection (2) of this section (e.g., Exh. JQW-5HCTr). The revised portions must be highlighted, in legislative style or other manner that clearly indicates the change from the original submission. The header or footer of each revised page in multiple page testimony or exhibit must be labeled "REVISED" and indicate the date of the revision. Parties may indicate changes to spreadsheets by providing a description of the

change and how the change affects other related spreadsheets. For revisions to spreadsheets, counsel must identify partial revisions by page and date when an exhibit is presented or offered into evidence, as appropriate.

(b) *Timing.* A party must file with the commission and serve all other parties with a motion to make substantive changes to any prefiled exhibits as soon as practicable after discovering the need to make that change. A party must file revised exhibits or an errata sheet reflecting minor corrections no later than the deadline for filing errata sheets established in the prehearing conference order.

(c) *Distribution at hearing.* Upon a showing of good cause for not filing and serving new exhibits, revised exhibits, or errata sheets prior to the hearing, the presiding officer may allow a party to distribute such documents at the hearing. The party must provide sufficient copies of the documents for all parties and for the commission's distribution requirements and must file the document as required in WAC 480-07-145. The presiding officer may refuse to admit into evidence any new or revised exhibits if the failure to provide them prior to the hearing impairs the ability of other parties or the commission to review and examine those exhibits during the hearing.

(2) **Prefiled testimony and exhibits.**

(a) *Exhibit numbers.* Parties must mark all written testimony and exhibits in the upper right-hand corner of the first page prior to submission as follows:

(i) State "Exh." followed by the sponsoring witness's initials.

(ii) Place a hyphen after the witness's initials and insert a number, beginning with Arabic numeral 1 for the witness's first prefiled testimony, and sequentially number each subsequent exhibit (including any additional written testimony) throughout the proceeding.

(iii) Place the capital letter "C" immediately after the number if the testimony or exhibit includes information asserted to be confidential under any protective order that has been entered in the proceeding (or "HC" if the document includes information asserted to be highly confidential under the protective order).

(iv) Place the capital letter "T" after the number and "C" or "HC," if applicable, if the exhibit is a witness's prefiled testimony.

For example, John Q. Witness's prefiled testimony and accompanying exhibits must be marked as follows:

Testimony or Exhibit	Marked
John Q. Witness's prefiled direct testimony	Exh. JQW-1T
First exhibit to John Q. Witness's prefiled direct testimony (nonconfidential)	Exh. JQW-2
Second exhibit to John Q. Witness's prefiled direct testimony (confidential)	Exh. JQW-3C
Third exhibit to John Q. Witness's prefiled direct testimony (nonconfidential)	Exh. JQW-4

Testimony or Exhibit	Marked
John Q. Witness's prefiled rebuttal testimony (with portions marked highly confidential)	Exh. JQW-5HCT
First exhibit to John Q. Witness's prefiled rebuttal testimony (nonconfidential)	Exh. JQW-6

(b) *List of exhibits, table of contents, and summary of testimony.* The prefiled testimony of each witness must include a list of exhibits that accompany that testimony. Testimony that exceeds ten pages in length must include a table of contents and a short summary at the beginning of the testimony.

(c) *Form of testimony and exhibits.* All prefiled testimony and exhibits must be paginated, and the lines on each page must be numbered to facilitate transcript or exhibit references. All prefiled testimony and exhibits must be double-spaced and use 12-point type in palatino, times new Roman, or an equally legible serif font, with footnotes in the same font and of at least 10-point type, with margins of at least one inch on all sides. Documents the party did not create need not conform to these typeface and type size requirements but must be legible. All paper copies of prefiled testimony and exhibits, if required, must be provided on 8 1/2 x 11 inch, three-hole punched paper (oversize holes are preferred). Oversized documents may be used at the hearing for illustrative purposes but paper copies, if required, must be provided on 8 1/2 x 11 inch paper if offered into evidence and reduction to that format is feasible.

(3) **Cross-examination exhibits.** Each party must file with the commission and serve on the other parties all exhibits the party proposes to use in its cross-examination of witnesses. The presiding officer will establish in a prehearing conference order or notice the number of paper copies, if any, and deadlines for filing.

(a) *Exhibit numbers.* Parties must mark all cross-examination exhibits in the upper right hand corner of the first page prior to submission as follows:

(i) State "Exh." followed by the initials of the witness the party intends to use the exhibit to cross-examine.

(ii) Place a hyphen after the witness's initials and insert the next number in sequence after the number of the last exhibit sponsored by, or associated with, that witness. If more than two parties are actively participating in a docket, each party should insert an underscored blank space after the initials of a witness who is likely to be cross-examined by more than one party to avoid overlapping numbers with other parties' cross-examination exhibits. The presiding officer will subsequently assign numbers to all cross-examination exhibits for that witness when compiling the exhibit list.

(iii) Place the capital letter "C" immediately after the number (or underscored blank space) if the exhibit includes information asserted to be confidential under any protective order that has been entered in the proceeding (or "HC" if the document includes information asserted to be highly confidential under the protective order).

(iv) Place the capital letter "X" after the number (or underscored blank space), "C," or "HC" whichever is last. For

example, if the last exhibit attached to a witness's prefiled testimony is Exh. JQW-7, the first cross-examination exhibit for that witness should be marked "Exh. JQW-8X" (or "Exh. JQW-8CX" if the exhibit includes information designated as confidential).

(b) *Format.* All cross-examination exhibits must be filed and served electronically in .pdf (adobe acrobat or comparable software) format. The commission may also require the parties to file and serve paper copies of the exhibits.

(c) *Organization.* Cross-examination exhibits must be segregated, labeled, and grouped according to the witness the party intends to cross-examine with the exhibits. Any paper copies of the exhibits must be organized into sets that are tabbed, labeled, and grouped by witness.

(4) **Exhibit lists.** Each party must file with the commission and serve on all parties a list of all exhibits the party intends to introduce into the evidentiary record, including all prefiled testimony and exhibits of that party's witnesses and cross-examination exhibits that party has designated for other witnesses. The presiding officer will establish in a prehearing conference order or notice the deadline for this filing.

(5) **Cross-examination time estimates.** Each party must provide a list of witnesses the party intends to cross-examine at the evidentiary hearing and an estimate of the time that party anticipates the cross-examination of that witness will take. Parties should not file these witness lists or cross-examination time estimates but must provide them in electronic format directly to the presiding administrative law judge and the other parties by the deadline established in a prehearing conference order or notice.

(6) **Errata.** Each party must file with the commission and serve on all parties a list of any corrections or revisions to its witnesses' prefiled testimony and exhibits. Each correction or revision must be identified separately by exhibit number, page, and line (or row, column, cell, etc., as applicable) and must specify the text to be revised, added, or deleted. The presiding officer will establish in a prehearing conference order or notice the deadlines for this filing.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-460, filed 2/28/17, effective 3/31/17; WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-460, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-460, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-470 Hearing guidelines.** These guidelines are of a general nature and are provided to assist the presiding officer in regulating the course of the proceeding. The presiding officer may suspend or modify the guidelines or use measures not specified in this rule.

(1) **Starting times.** The presiding officer will strictly observe starting times. The proceeding may go forward in the absence of counsel, parties, or witnesses who are late. Counsel may advise the bench by message to the records center when an emergency prevents timely arrival.

(2) **Appearances.** The presiding officer conducting the hearing or prehearing conference will require appearances to be stated orally at the initial prehearing or hearing session, and may also ask for oral appearances at subsequent sessions in the same proceeding, so that all persons attending the hearing will know the identity and interest of all parties present. If the representative has previously filed a notice of appearance

or otherwise provided full contact information in a pleading filed in the docket, oral appearances shall consist of the representative's name, law firm, organization, or government entity if any, and the party the person represents. Oral appearance at hearing does not substitute for the requirement for written notice of appearance in WAC 480-07-345(2).

(3) **Matters to be handled at beginning of session.** Parties must notify the presiding officer no later than the start of the hearing session of any motion that a party anticipates may be presented during the hearing, such as one that may require foundation regarding the admissibility of evidence. The presiding officer will give the parties an appropriate opportunity to state and argue any motions related to evidence or to the procedural course of the hearing.

(4) **Evidence; exhibits; stipulations of fact.** The presiding officer may receive evidence as provided by RCW 34.05.452.

(5) **Order of presentation.** Evidence will ordinarily be received in the following order:

(a) Party having the burden of proof;

(b) Parties supporting the party having the burden of proof; and

(c) Parties opposing the party having the burden of proof.

The presiding officer may direct a modified order of presentation considering the needs of the parties, the commission, the proceeding, and the parties' preferences.

(6) **Testimony under oath.** The presiding officer will administer an oath or affirmation to each witness before the witness testifies in an adjudicative proceeding. When members of the public testify, they will be sworn in the same fashion as other witnesses.

(7) **Addressing the presiding officer or witnesses.** All counsel and other party representatives, including parties that are not represented, must address all comments, objections, and statements on the record to the presiding officer and not to other counsel or parties. Questions on the record that concern the substance of testimony or exhibits sponsored by a witness must be addressed to the witness and not to counsel or other parties.

(8) **Resolving matters off the record.** Counsel or other party representatives who request to have discussions with the presiding officer off the record must ask leave to go off the record and state the purpose for the request. Extended colloquies regarding procedural issues may be conducted off the record, but will be summarized for the record by the presiding officer subject to comments from party representatives.

(9) **Witness panels.** The commission may direct or allow two or more witnesses to take the stand simultaneously when doing so allows a benefit, such as the integrated response to a line of questions, minimizing referral of questions from one witness to another, or comparing witnesses' positions. The presiding officer will also allow cross-examination of each witness upon matters within the witness's direct evidence.

(10) **Cross-examination.** The presiding officer will limit cross-examination to one round unless good cause exists for allowing additional questions. Witnesses must not be asked to perform detailed calculations or extract detailed data while on the stand. Any such questions must be provided to the witness at least two business days prior to the date the witness is expected to testify, must ask the witness to provide

the answer for the record later in the hearing session, or must provide an answer and ask the witness to accept it "subject to check." Witnesses must not be asked to accept information subject to check if the information is included in a prefiled exhibit or testimony, or is already in evidence. When a witness accepts information subject to check, the witness must perform the check as soon as practicable. A response given subject to check will be considered accurate unless:

(a) The witness subsequently testifies during the hearing that the witness does not accept the information subject to check and explains the reasons for that position; or

(b) Within five business days following the date of receipt of the hearing transcript, the party sponsoring the witness files and serves a declaration from the witness stating that the witness does not accept the information subject to check and explaining the reasons for that position. Any such declaration must be limited to the information subject to check and may not expand, revise, or otherwise modify the witness's testimony.

(11) **Redirect examination.** A party whose witness has been cross-examined may conduct redirect examination of the witness on issues raised during cross-examination or examination by the presiding officer, if applicable.

(12) **Transcript.** Each party will bear its own costs for transcripts or tape recordings, including charges for expedited service when a party requests it. To protect valuable commercial information unique to the court reporter's work product or services and for which the court reporter charges a fee for copies, the commission will not post on its web site or provide to any parties a copy of the transcript of an evidentiary hearing until after post-hearing briefing has concluded.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-470, filed 2/28/17, effective 3/31/17; WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-470, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-470, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-480 Hearing—Stipulation of facts.** A stipulation is an agreement among parties intended to establish one or more operative facts in a proceeding. The commission encourages parties to enter stipulations of fact. The parties to any proceeding or investigation before the commission may agree to all of the facts or any portion of the facts involved in the controversy. The parties to a stipulation may file it in writing or enter it orally into the record. A stipulation, if accepted by the commission, is binding on the stipulating parties. The parties may present the stipulation as evidence at the hearing. The commission may reject the stipulation or require proof of the stipulated facts, despite the parties' agreement to the stipulation.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-480, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-490 Hearing—Exhibits and documentary evidence.** (1) **Designation of part of document as evidence.** A party that offers only a portion of a document for admission into the evidentiary record must designate that portion as a separate exhibit. If irrelevant matter included in the original document would unnecessarily encumber the record, the presiding officer may admit only the offered por-

tion into evidence but will allow other parties to offer other portions.

(2) **Government records.** A party may offer into evidence an official document prepared and issued by any governmental authority that is not publicly available or readily accessible by all parties in the form of a certified copy.

(3) **Objections.** Any evidence offered is subject to appropriate and timely objection. The presiding officer need not specifically ask each party whether that party objects to an offer of evidence or other motion or proposed action. Parties that have objections must state them. Failure to object constitutes a waiver of the right to object.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-490, filed 2/28/17, effective 3/31/17; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-490, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-495 Hearing—Rules of evidence; official notice.** (1) **Admissibility; exclusion; offer of proof.** All relevant evidence is admissible if the presiding officer believes it is the best evidence reasonably obtainable, considering its necessity, availability, and trustworthiness. The presiding officer will consider, but is not required to follow, the rules of evidence governing general civil proceedings in non-jury trials before Washington superior courts when ruling on the admissibility of evidence.

The presiding officer may exclude evidence that is irrelevant, repetitive, or inadmissible, whether or not a party objects to the evidence. Parties objecting to the introduction of evidence must state the grounds for the objection at the time the evidence is offered. If the presiding officer excludes the evidence from the record, the presiding officer may provide the party offering that evidence with the opportunity to make an oral or written offer of proof briefly describing the nature and purpose of the evidence for subsequent review of the presiding officer's ruling.

(2) **Official notice.**

(a) The commission may take official notice of:

(i) Any judicially cognizable fact, examples of which include, but are not limited to, the following:

(A) Rules, regulations, interpretive and policy statements, administrative rulings, and orders, exclusive of findings of fact, of the commission and other governmental agencies;

(B) Contents of certificates, permits, and licenses issued by the commission; and

(C) Tariffs, classifications, and schedules regularly established by, or filed with, the commission as required or authorized by law;

(ii) Technical or scientific facts within the commission's specialized knowledge;

(iii) Codes or standards that have been adopted by an agency of the United States or a state, or by a nationally recognized organization or association; and

(iv) Records contained in government web sites or publications or in nationally recognized reporting service publications that are in general circulation and readily accessible to all parties.

(b) The commission may, in its discretion upon notice to all parties, inspect physical conditions that are at issue and take official notice of the results of its inspection.

(2/28/17)

(c) The presiding officer will notify parties of documents or information of which the commission takes official notice and the source of that information. The presiding officer will afford parties an opportunity to contest facts and material of which the commission takes official notice. The presiding officer may require a party proposing that the commission take official notice of a document or information to provide copies of that document or information for the record and to all other parties.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-495, filed 2/28/17, effective 3/31/17; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-495, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-498 Hearing—Public comment.** (1)

**General.** The commission will receive as a bench exhibit any public comment submitted by nonparties in connection with an adjudicative proceeding. The exhibit will be treated as an illustrative exhibit that expresses public sentiment received concerning the pending matter. The commission may receive into evidence documents a member of the public presents that are exceptional in their probative value after the commission provides the parties an opportunity to respond to those documents.

(2) **Public comment hearing.** The commission may convene one or more public comment hearing sessions to receive oral and written comments from members of the public who are not parties in the proceeding. When the commission conducts a public comment hearing, a presiding officer will make an opening statement explaining the purpose of the hearing and will briefly summarize the principal issues in the matter. The presiding officer will administer an oath to those members of the public who indicate a desire to testify concerning their views on the issues. The presiding officer will call each member of the public who wishes to testify, will inquire briefly into the identity and interests of the witness, and will provide an opportunity for a brief statement. Typically, public witnesses may expect to have three to five minutes to make an oral statement. A public witness may supplement his or her oral statements with written comments signed by the witness.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 17-06-051 (General Order R-588), § 480-07-498, filed 2/28/17, effective 3/31/17; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-498, filed 11/24/03, effective 1/1/04.]

**Subpart B: General Rate Proceedings**

**WAC 480-07-500 General rate proceedings—Statement of policy.** (1) **Scope of this subpart.**

This subpart explains the special requirements for certain rate increase filings by electric, natural gas, pipeline, telecommunications, and water companies, low-level radioactive waste sites, and solid waste collection companies.

(2) **Inconsistencies with subpart A requirements.** If there is any inconsistency between the requirements in subpart B and those in subpart A, the requirements in subpart B control.

(3) **Purpose of special rules.** The special requirements in subpart B are designed to standardize presentations, clarify issues, and speed and simplify processing.

[Ch. 480-07 WAC p. 27]

(4) **Summary rejection for failure to comply.** The commission may summarily reject any filing for a general rate proceeding that does not conform to the requirements of subpart B. If the commission summarily rejects a filing for a general rate, it will provide a written statement of its reasons and will provide an opportunity for the case to be refiled in conformance with these rules.

(5) **Less than statutory notice.** The commission may grant requests to alter tariffs on less than statutory notice for good cause shown, in accordance with RCW 80.28.060 and 81.28.050. A company that seeks to implement general rate proceeding tariff changes on less than statutory notice must include with its filing a complete explanation of the reasons that support such treatment.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-500, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-505 General rate proceedings—Definition.** (1) **Rate filings that are considered general rate proceedings.** A general rate proceeding filing is a filing by any regulated company specified in WAC 480-07-500 for an increase in rates that meets any of the following criteria:

(a) The amount requested would increase gross annual revenue of the company from activities regulated by the commission by three percent or more.

(b) Tariffs would be restructured such that the gross revenue provided by any customer class would increase by three percent or more.

(c) The company requests a change in its authorized rate of return on common equity or a change in its capital structure.

(d) The company is a solid waste company regulated under chapter 81.77 RCW, except for filings specified under subsection (3)(a) of this section.

(2) **Rate filings under Title 80 RCW that are not considered general rate proceedings.** The following proceedings are not considered general rate increases even though the revenue requested may exceed three percent of the company's gross annual revenue from Washington regulated operations:

(a) Periodic rate adjustments for electric and natural gas companies that may be authorized by the commission (e.g., power cost adjustments and purchased gas cost adjustments).

(b) Emergency or other short-notice increases caused by disaster or weather-related conditions unexpectedly and substantially increasing a public service company's expense.

(c) Rate increases designed to recover government-imposed increases in costs of doing business such as changes in tax laws or ordinances.

(d) Other increases designed to recover increased expenses arising on short notice and beyond a public service company's control.

(3) **Rate filings under chapter 81.77 RCW that are not considered general rate proceedings.** The following filings are not considered general rate proceedings for solid waste companies regulated under chapter 81.77 RCW even though the request may meet one or more criteria identifying general rate proceedings:

(a) Filings by companies that provide neither traditional residential or commercial solid waste operations. This category includes specialized carriers generally hauling specific

waste products for specific customers and carriers providing only on-call or nonscheduled service (i.e., "class C" companies, as defined in WAC 480-70-041).

(b) Disposal fee pass-through charges for drop-box service, provided there are no affiliated interest relationships.

(c) Filings for collection of per-customer pass-through surcharges and taxes imposed by the jurisdictional local government based on the current year customer count either as a specified dollar amount or percentage fee amount.

(d) Filings by existing solid waste companies for the implementation of new solid waste collection programs.

(4) **Commission discretion.** The commission may require that any filing or proposal by a regulated company to increase rates for any customer class, or to restructure rates, is subject to the procedures and protections of subpart B of these rules.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-505, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-510 General rate proceedings—Electric, natural gas, pipeline, and telecommunications companies.** General rate proceeding filings for electric, natural gas, pipeline, and telecommunications companies must include the information described in this section. The commission may reject a filing that fails to meet these minimum requirements, without prejudice to the company's right to refile its request in conformance with this section. For purposes of this rule, "file with the commission," means filed with the commission's executive secretary under WAC 480-07-140 at the time the company files its general rate case; whereas "serve" or "provide" to commission staff or another party, means delivery to such persons, not filed with the commission.

(1) **Testimony and exhibits.** The company must file with the commission nineteen paper copies of all testimony and exhibits that the company intends to present as its direct case if the filing is suspended and a hearing held, unless the commission preapproves the filing of fewer copies. In addition, the company must provide one electronic copy of all filed material in the format identified in WAC 480-07-140(6). Material that the company has not produced under its direction and control and that is not reasonably available to it in electronic format, such as generally available copyrighted published material, need not be provided in electronic format. The company must serve a copy of the materials filed under this section on public counsel at the time of filing with the commission in any proceeding in which public counsel will appear. The utility must provide an exhibit that includes a results-of-operations statement showing test year actual results and the restating and pro forma adjustments in columnar format supporting its general rate request. The utility must also show each restating and pro forma adjustment and its effect on the results of operations. The testimony must include a written description of each proposed restating and pro forma adjustment describing the reason, theory, and calculation of the adjustment.

(2) **Tariff sheets.** The company must file with the commission and provide to public counsel a copy of the proposed new or revised tariff sheets in legislative format, with strike-through to indicate any material to be deleted or replaced and

underlining to indicate any material to be inserted, in paper and electronic format, unless already provided as an exhibit under subsection (1) of this section. The company must also file with the commission copies of any tariff sheets that are referenced by new or amended tariff sheets.

**(3) Work papers and accounting adjustments.**

(a) At the time the company makes its general rate case filing, the company must provide one copy of all supporting work papers of each witness to public counsel and three copies to staff in a format as described in this subsection. Staff and each other party must provide work papers to all other parties within five days after the filing of each subsequent round of testimony filed (e.g., response, rebuttal). If the testimony, exhibits, or work papers refer to a document, including, but not limited to, a report, study, analysis, survey, article or decision, that document must be included as a work paper unless it is a reported court or agency decision, in which case the reporter citation must be provided in the testimony. If a referenced document is voluminous, it need not be provided, but the company must identify clearly the materials that are omitted and their content. Omitted materials must be provided or made available if requested. The following information is required for work papers:

(b) *Organization.* Work papers must be plainly identified and well organized, and must include an index and tabs. All work papers must be cross referenced and include a description of the cross referencing methodology.

(c) *Electronic documents.* Parties must provide all electronic files supporting their witnesses' work papers. The electronic files must be fully functional and include all formulas and linked spreadsheet files. Electronic files that support the exhibits and work papers must be provided using logical file paths, as necessary, by witness, and using identifying file names. A party may file a document with locked, hidden or password protected cells only if necessary to protect the confidentiality of the information within the cells or proprietary information in the document. The party shall designate that portion of the document as confidential under RCW 80.04.095, WAC 480-07-160, and/or a protective order, and the party shall provide it to any person requesting the password who has signed an appropriate confidentiality agreement.

(d) A detailed portrayal of the development of any capital structure and rate of return proposal and all supporting work papers in the format described in this subsection.

(e) *Restating and pro forma adjustments.* Parties must provide work papers that contain a detailed portrayal of restating actual and pro forma adjustments that the company uses to support its filing or that another party uses to support its litigation position, specifying all relevant assumptions, and including specific references to charts of accounts, financial reports, studies, and all similar records relied on by the company in preparing its filing, and by all parties in preparing their testimony and exhibits. All work papers must include support for, and calculations showing, the derivation of each input number used in the detailed portrayal and for each subsequent level of detail. The derivation of all interstate and multiservice allocation factors must be provided in the work papers.

(i) *Change in methodologies for adjustments.* If a party proposes to calculate an adjustment in a manner different

from the method that the commission most recently accepted or authorized for the company, it must also present a work paper demonstrating how the adjustment would be calculated under the methodology previously accepted by the commission, and a brief narrative describing the change. Commission approval of a settlement does not constitute commission acceptance of any underlying methodology unless so specified in the order approving the settlement.

(ii) "Restating actual adjustments" adjust the booked operating results for any defects or infirmities in actual recorded results that can distort test period earnings. Restating actual adjustments are also used to adjust from an as-recorded basis to a basis that is acceptable for rate making. Examples of restating actual adjustments are adjustments to remove prior period amounts, to eliminate below-the-line items that were recorded as operating expenses in error, to adjust from book estimates to actual amounts, and to eliminate or to normalize extraordinary items recorded during the test period.

(iii) "Pro forma adjustments" give effect for the test period to all known and measurable changes that are not offset by other factors. The work papers must identify dollar values and underlying reasons for each proposed pro forma adjustment.

(f) A detailed portrayal of revenue sources during the test year and a parallel portrayal, by source, of changes in revenue produced by the filing, including an explanation of how the changes were derived.

(g) If the public service company has not achieved its authorized rate of return, an explanation of why it has not and what the company is doing to improve its earnings in addition to its request for increased rates.

(h) A representation of the actual rate base and results of operation of the company during the test period, calculated in the manner used by the commission to calculate the company's revenue requirement in the commission's most recent order granting the company a general rate increase.

(i) Supplementation of the annual affiliate and subsidiary transaction reports as provided in rules governing reporting requirements for each industry, as necessary, to include all transactions during the test period. The company is required to identify all transactions that materially affect the proposed rates.

**(4) Summary document.** The company must file with the commission a summary document that briefly states the following information on an annualized basis, if applicable. In presenting the following information, the company must itemize revenues from any temporary, interim, periodic, or other noncontinuing tariffs. The company must include in its rate change percentage and revenue change calculations any revenues from proposed general rate change tariffs that would supersede revenue from noncontinuing tariffs. The summary document must also include:

(a) The date and amount of the latest prior general rate increase authorized by the commission, and the revenue realized from that authorized increase in the test period, based on the company's test period units of revenue.

(b) Total revenues at present rates and at requested rates.

(c) Requested revenue change in percentage, in total, and by major customer class.

(d) Requested revenue change in dollars, in total, and by major customer class.

(e) Requested rate change in dollars, per average customer, by customer class, or other representation, if necessary to depict representative effect of the request. The summary document must also state the effect of the proposed rate increase in dollars per month on typical residential customers by usage categories.

(f) Most current customer count, by major customer class.

(g) Current authorized overall rate of return and authorized rate of return on common equity.

(h) Requested overall rate of return and requested rate of return on common equity, and the method or methods used to calculate rate of return on common equity.

(i) Requested capital structure.

(j) Requested net operating income.

(k) Requested rate base and method of calculation, or equivalent.

(l) Requested revenue effect of attrition allowance, if any is requested.

(5) **Required service of summary document.** The company must serve the summary document on public counsel and mail the summary document described in subsection (4) of this section to the persons designated below on the same date it files the summary document with the commission:

(a) All intervenors on the commission's master service list for the company's most recent general rate proceeding;

(b) All intervenors on the master service list for any other rate proceeding involving the company during the five years prior to the filing, if the rates established or considered in that proceeding may be affected in the company's proposed general rate filing;

(c) All persons who have informed the company in writing that they wish to be provided with the summary document required under this section. The company must enclose a cover letter stating that the prefiled testimony and exhibits and the accompanying work papers, diskettes, and publications specified in this rule are available from the company on request or stating that they have been provided. This provision does not create a right to notice in persons named to receive the summary.

(6) **Cost studies.** The company must file with the commission any cost studies it performed or relied on to prepare its filing, identify all cost studies conducted in the last five years for any of the company's services, and describe the methodology used in such studies.

(7) **Other.** The company must file with the commission its most recent annual report to shareholders, if any, and any subsequent quarterly reports to shareholders; the most recent FERC Form 1 and FERC Form 2, if applicable; and the company's Form 10K's, Form 10Q's, any prospectuses for any issuances of securities, and quarterly reports to stockholders, if any, for the most recent two years prior to the filing date.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 08-18-012 (Docket A-072162, General Order R-550), § 480-07-510, filed 8/22/08, effective 9/22/08; WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-510, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-510, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-520 General rate proceedings—Solid waste collection companies.** General rate increase filings by class A and B haulers as defined in WAC 480-70-041 must include the information described in this rule. The commission may reject a filing that fails to meet these minimum requirements, without prejudice to the company's right to refile its request in conformance with this section.

(1) **Proposed tariff.** The proposed tariff sheets may be filed in electronic form supplemented by one paper copy. The proposed tariff sheets should be in legislative format, with strike-through to indicate any material to be deleted or replaced and underlining to indicate any material to be inserted. The electronic copy must be submitted in the format identified in WAC 480-07-140(6).

(2) **Local government ordinances and notices.** A copy of every local government ordinance related to the request in compliance with WAC 480-70-326, and a copy of the customer notices issued in compliance with the provisions of WAC 480-70-271.

(3) **Transmittal letter.** A transmittal letter prepared in compliance with the provisions of WAC 480-70-326.

(4) **Work papers.** One paper and one electronic copy of all supporting work papers for the test period, which is the most recent or most appropriate consecutive twelve-month period for which financial data are available. The electronic copy must be submitted in the format identified in WAC 480-07-140(6). Work papers must include:

(a) A detailed pro forma income statement separated among solid waste, single family residential recycling, multi-family recycling, and yard waste, with restating actual and pro forma adjustments, including all supporting calculations and documentation for all adjustments.

(i) "Restating actual adjustments" adjust the booked operating results for any defects or infirmities in actual recorded results that can distort test period earnings. Restating actual adjustments are also used to adjust from an as-recorded basis to a basis that is acceptable for rate making. Examples of restating actual adjustments are adjustments to remove prior period amounts, to eliminate below-the-line items that were recorded as operating expenses in error, to adjust from book estimates to actual amounts, and to eliminate or to normalize extraordinary items recorded during the test period.

(ii) "Pro forma adjustments" give effect for the test period to all known and measurable changes that are not offset by other factors. The filing must identify dollar values and underlying reasons for each proposed pro forma adjustment.

(b) A calculation of the revenue impact of proposed tariff revisions.

(c) An income statement listing all revenue and expense accounts by month.

(d) If nonregulated revenue represents more than ten percent of total company test period revenue, a detailed separation of all revenue and expenses between regulated and non-regulated operations.

(e) A detailed list of all nonregulated operations, including the rates charged for the services rendered. Copies of all contracts must be provided on request.

(f) Detailed price-out information that reconciles within five percent, without adjustment, to the test period booked

revenue, including the test period customer count by tariff item.

(g) A consolidated balance sheet, including the percentage of equity and the percentage of debt, and the cost of that debt by component.

(h) A detailed depreciation schedule listing all used and useful assets held by the company during the test period, including the date of purchase, the cost at purchase, the depreciable life, the salvage value, depreciation expense, and accumulated depreciation expense at the end of the test period.

(i) Computed average investment. Average investment is the net book value of allowable assets at the beginning of the test period plus the net book value of allowable assets at the end of the test period, divided by two. Investor supplied working capital may be included, provided a work sheet is submitted detailing the calculations.

(j) Information about every transaction with an affiliated interest or subsidiary that directly or indirectly affects the proposed rates. This must include: A full description of the relationship, terms and amount of the transaction, the length of time the relationship has been ongoing, and an income statement and balance sheet for every affiliated entity.

(5) **Annual report.** The most recent consolidated annual report to shareholders, if any.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-520, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-520, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-530 General rate proceedings—Water companies.** General rate increase filings by water companies must include the information described in this section. The commission may summarily reject a filing that fails to meet these minimum requirements, without prejudice to the company's right to refile its request in conformance with this section.

(1) **Cover letter.** The cover letter must:

(a) Provide a description of the filing, and the requested action, in understandable terms;

(i) Technical terms are acceptable, but descriptions must use common terms so the public can easily understand the impact of the filing;

(ii) Acronyms, if used, must be defined before they are used in the text of the letter;

(b) State why the filing is being made (e.g., increased costs for water testing);

(c) Describe each service that is impacted and the dollar and percentage change for each service as well as the net impact of all changes on the company's total regulated revenue.

(2) **Tariff.** The proposed tariff must include explanatory markings.

(3) **Customer notice.** A copy of the notice mailed to customers.

(4) **Work papers.** The supporting work papers for the test period including:

(a) A calculation of the revenue impact of proposed rates by each class affected;

(b) Balance sheet and statement of revenues and expenses;

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(c) Depreciation schedule;

(d) Adjustments proposed including a schedule showing adjustments to the statement of revenues and expenses, including any restating adjustments and/or pro forma adjustments including the effect of proposed rates;

(e) Work papers that explain both restating and pro forma adjustments that the company proposes, specifying all relevant assumptions, and including specific references to charts of accounts, financial reports, studies, and all similar records relied on by the company in preparing its filing, and its supporting testimony and exhibits.

(i) "Restating actual adjustments" adjust the booked operating results for any defects or infirmities in actual recorded results, which can distort test period earnings. Restating actual adjustments are also used to adjust from an as-recorded basis to a basis that is acceptable for rate making. Examples of restating actual adjustments are adjustments to remove prior period amounts, to eliminate below-the-line items that were recorded as operating expenses in error, to adjust from book estimates to actual amounts, and to eliminate or to normalize extraordinary items recorded during the test period.

(ii) "Pro forma adjustments" give effect for the test period to all known and measurable changes that are not offset by other factors. The filing must identify dollar values and underlying reasons for each proposed pro forma adjustment.

(f) Usage statistics verifying test year revenues and proposed revenues.

(g) Public water system identification number assigned by the Washington department of health for each system that the new rates will affect.

(h) Schedule showing separation of revenues and expenses between regulated and nonregulated operations.

(i) Information about every transaction with an affiliated interest or subsidiary that directly or indirectly affects the proposed rates. This must include: A full description of the relationship, terms and amount of the transaction, the length of time the relationship has been ongoing, and an income statement and balance sheet for every affiliated entity.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-530, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-540 General rate proceedings—Burden of proof.** Public service companies bear the burden of proof in general rate proceedings that propose changes that would increase any rate, charge, rental, or toll, as provided in RCW 80.04.130 or 81.04.130. The burden of proof includes the burden of going forward with evidence and the burden of persuasion. The commission will consider the company's pre-filed evidence to be its full direct case in support of its rate filing for purposes of deciding any prehearing motion to dismiss under WAC 480-07-380.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-540, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-550 General rate proceedings—Compliance filings and other resulting filings.** WAC 480-07-880 and 480-07-883 govern compliance filings and other fil-

ings that the commission authorizes or requires in a general rate proceeding.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-550, filed 11/24/03, effective 1/1/04.]

### Subpart C: Abbreviated and Specialized Forms of Adjudicative Proceedings

**WAC 480-07-600 Scope.** Subpart C of this chapter establishes rules for abbreviated and specialized adjudicative proceedings, including brief adjudicative proceedings, emergency adjudicative proceedings, proceedings under the Telecommunications Act of 1996, and proceedings concerning the closure of highway-railroad grade crossings.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-600, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-610 Brief adjudicative proceedings. (1) When permitted.** The commission may use brief adjudicative proceedings under RCW 34.05.482 when doing so is consistent with other provisions of law, when protection of the public interest does not require the commission to give notice and an opportunity to participate to persons other than the parties, and when the commission believes that the brief adjudication is consistent with the public interest. In exercising its discretion to conduct a brief adjudication, the commission will consider the preferences of the parties, the possible benefits to be gained from a brief adjudication, and the nature of issues involved.

(2) **Matters suitable for brief adjudication.** Categories of proceedings suitable for brief adjudication include, but are not necessarily limited to:

(a) Review of denials or partial denials of applications that are not protested.

(b) Contested applications for temporary authority.

(c) Proceedings that could lead to suspension, cancellation, or revision of authority for failure to maintain tariffs, pay fees, or file required documents.

(d) Formal complaints in which notice and an opportunity to participate in the proceeding need not be given to persons other than the parties.

(e) Petitions for mitigation of penalty assessments under RCW 80.04.405 and 81.04.405, including any challenge to the validity of a penalty assessment or the existence of an underlying violation.

(3) **How to request brief adjudication.** Any person may apply for a brief adjudicative proceeding by filing with the secretary of the commission a letter stating reasons why a brief adjudication should be used and a certificate of service upon all other identified or necessary parties. The commission may set a matter for brief adjudication on its own motion when doing so will not prejudice the rights of any person. Each applicant for a brief adjudicative proceeding must submit a written explanation of its view of the issues along with its application. Parties may file written submissions as provided in the commission's notice that it will conduct the brief adjudicative proceeding.

(4) **Assignment of presiding officer.** If the commission grants the request for a brief adjudication, it will designate a

person to serve as a presiding officer consistent with the requirements of RCW 34.05.485.

#### (5) Requesting and presenting oral comments.

(a) **Request.** A party to a brief adjudicative proceeding may request to make an oral statement in the application or in a response to the application. The presiding officer may grant a request to make an oral statement or may ask the parties to make oral statements if the presiding officer believes an oral statement will help in reaching a decision.

(b) **Notice.** The commission will serve upon the parties a notice of the time and place for the brief adjudicative proceeding and the name and telephone number of the designated presiding officer at least seven days before the proceeding.

(6) **Initial order.** The presiding officer may make an oral statement of the reasons for the decision during the brief adjudication if the party affected is present at the proceeding. The presiding officer will enter an initial order that addresses the issues raised by the application within ten days after the date of the brief adjudication. The initial order will be served on the parties pursuant to WAC 480-07-150 (3) and (7).

#### (7) Review of initial orders.

(a) **Timing.** Any party may file a written petition for review of an initial order in a brief adjudication within twenty-one days after service of the initial order and the commission will review the initial order. The commission may review an initial order on its own motion.

(b) **Format for petition for review.** The commission encourages written petitions for review so parties will have the greatest opportunity to state reasons for their views. A written request for review of an initial order must contain an explanation of the party's view of the matter, with a statement of reasons why the initial order is incorrect, and a certificate of service. Oral petitions for review are permitted under RCW 34.05.488.

(c) **Response.** The commission encourages written responses. Any written response to a petition for review must be filed with the commission and served to the other parties within seven days after service of the petition for review, or on a schedule set by the presiding officer. The commission may hear orally any response to an oral petition for review.

(8) **Final order on review.** The commission may adopt, modify, reject, or remand the initial order for further proceedings consistent with the terms of its final order. The final order on review will be in writing, will include a brief statement of the reasons for the decision, and will be entered within twenty days after the deadline for requesting review or of the request for review, whichever is later. The order must include a notice of any further available administrative review or, if none is available, a notice that judicial review may be available.

(9) **Final order without review.** If no party seeks review of the initial order, the commission may enter an order adopting the initial order as its final order.

(10) **Record.** The record in a brief adjudicative proceeding consists of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. The agency's record need not constitute the exclusive basis for action, unless otherwise required by law.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-610, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-620 Emergency adjudicative proceedings.** (1) **When permitted.** The commission may conduct an emergency adjudicative proceeding pursuant to RCW 34.05.-479 to suspend or cancel authority, to require that a dangerous condition be terminated or corrected, or to require immediate action in any situation involving an immediate danger to the public health, safety, or welfare requiring immediate action by the commission. Such situations include, but are not limited to:

(a) Inadequate service by a public service company when the inadequacy involves an immediate danger to the public health, safety, or welfare; and

(b) Violations of law, rule, or order related to public safety, when the violation involves an immediate danger to the public health, safety, or welfare.

(2) **Complaint.** If time permits, the commission or a complainant must prepare a complaint and serve it on the respondent using a method that best provides actual notice of the adjudication. If a majority of the commissioners are not available to authorize a complaint, one commissioner or, if no commissioner is available, the secretary or executive director of the commission or an administrative law judge may authorize a complaint.

(3) **Who presides.** The commissioners will sit as presiding officers, hear the matter, and enter an order, if a majority of the commissioners are available. Any available commissioner will sit as presiding officer, hear the matter, and enter an order, if a majority of the commissioners is not available. The supervisor of the commission's administrative law judge function will assign an administrative law judge to sit as presiding officer, hear the matter, and enter an order, if no commissioner is available.

(4) **Record and decision.** The official record will include any written submissions of the parties; oral comments by the parties, if the presiding officer has allowed oral comments; and any documents regarding the matter that were considered or prepared by the commission. The agency's record need not constitute the exclusive basis for action, unless otherwise required by law.

(5) **Emergency order.** The presiding officer will enter an emergency order as soon as practicable under the circumstances. The order will include a brief statement of findings of fact, conclusions of law, and justification for the determination of an immediate danger to the public health, safety, or welfare. The order is effective when entered. The commission will serve the order pursuant to WAC 480-07-150 (3) and (7).

(6) **Post-order process.** After entering an emergency order under this section, the commission will proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger to the public health, safety, or welfare, and will enter a final order.

(7) **Review or reconsideration of emergency order.** Any party to an emergency adjudicative proceeding may seek immediate review by the full commission in the case of any order entered by a single commissioner or by an administra-

tive law judge. In the case of any order entered by a majority of the commissioners, any party may seek immediate reconsideration. If either review or reconsideration is requested, the commission will establish appropriate process to complete its review or reconsideration within ten days of the date of any petition for review or reconsideration. A party seeking immediate review or reconsideration is not automatically entitled to a stay of the emergency order.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-620, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-620, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-630 Telecommunications companies—Arbitration under the Telecommunications Act of 1996.**

(1) **Scope.** This rule implements the arbitration provisions of sections 251 and 252 of the Telecommunications Act of 1996, 47 U.S.C. §§ 251 and 252.

(2) **Nature of the proceeding.** Arbitrations that the commission conducts pursuant to 47 U.S.C. § 252 are subject to judicial review. Arbitration under this section, however, is not an adjudicative proceeding under the Washington Administrative Procedure Act, chapter 34.05 RCW. Arbitration decisions are binding only upon the parties to the arbitration. Arbitration under this section should be characterized by fairness, cooperation and openness between or among the parties, and is designed to resolve disputes efficiently and economically.

(3) **Intervention; public counsel.** Arbitrations typically involve only the parties to the negotiation. Others may ask to participate but will be allowed to do so only upon a showing of compelling public interest. The public counsel section of the office of attorney general may elect to participate pursuant to RCW 80.04.510.

(4) **Filing and service of a petition for arbitration.**

(a) **When allowed.** During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under 47 U.S.C. § 252 (b)(1), any party to the negotiation may petition the commission to arbitrate all issues that remain unresolved. Parties may continue to negotiate in good faith and may continue to participate in mediation to resolve the disputed issues after arbitration is requested.

(b) **Filing.** Parties must file petitions for arbitration under section 252 (b)(2) as provided for other petitions under WAC 480-07-145, and must follow the format requirements for pleadings in WAC 480-07-395.

(c) **Service.** A party that files a petition for arbitration must deliver a complete copy of the petition and all accompanying documentation to the other party or parties to the negotiation on the same day that the petition is filed with the commission.

(5) **Contents of petition and documentation.** A petition for arbitration filed under this section must:

(a) State the date on which the original request for negotiation was received, and the dates one hundred thirty-five days and one hundred sixty days after the request was received;

(b) Include a brief statement of each unresolved issue and a summary of each party's position with respect to each issue;

(c) State all proposed rates or charges, if prices are in dispute, and all relevant cost studies and related supporting materials that are available to the petitioner;

(d) State any conditions that the petitioning party requests be imposed;

(e) Recommend any information that the arbitrator should request from the parties pursuant to 47 U.S.C. § 252 (b)(4)(B), including an explanation of why the information is necessary for the arbitrator to reach a decision on the unresolved issues; and

(f) Be accompanied by all relevant documentation including:

(i) A current draft of the interconnection agreement, if available, with all agreed provisions in standard typeface and all unresolved issues in bold typeface;

(ii) A legal brief that addresses the disputed issues, including discussion of how the parties' positions, and any conditions requested, meet or fail to meet the requirements of 47 U.S.C. §§ 251 and 252, any applicable FCC regulations, and any applicable regulation, order, or policy of this commission; and

(iii) Any other documents relevant to the dispute, including copies of all documents the petitioner relies on to support its positions or that it intends to introduce as exhibits at the hearing.

**(6) Filing and service of an answer to a petition for arbitration.**

(a) **When allowed.** Any party to the negotiation may respond to a petition for arbitration and may file with the commission such additional information as it wishes within twenty-five days after the petition is filed.

(b) **Filing.** Answers to petitions for arbitration under section 252 (b)(2) must be filed with the commission in the manner provided for answers to other petitions under WAC 480-07-145, and must follow the format requirements for pleadings under WAC 480-07-395.

(c) **Service.** A party responding to a petition for arbitration must deliver to the petitioner and any other party or parties to the negotiation a complete copy of the answer and all accompanying documentation on the same day that the response is filed with the commission.

**(7) Contents of answer and required documentation.** An answer to a petition for arbitration filed under this section must:

(a) State whether the respondent disputes the date the petitioner asserts was the date on which the respondent received the original request for negotiation, or disputes any subsequent dates stated in the petition in conformance with subsection (5)(a) of this section;

(b) Include a brief statement of each unresolved issue and a summary of each party's position with respect to each issue;

(c) State all proposed rates or charges, if prices are in dispute, and all relevant cost studies and related supporting materials that are available to the respondent;

(d) State any conditions that the responding party requests be imposed;

(e) Recommend any information that the arbitrator should request from the parties pursuant to 47 U.S.C. § 252 (b)(4)(B), including an explanation of why the information is

necessary for the arbitrator to reach a decision on the unresolved issues; and

(f) Be accompanied by all relevant documentation including:

(i) A current draft of the interconnection agreement, if available and different from any draft agreement submitted with the petition, with all agreed provisions in standard typeface and all unresolved issues in bold typeface;

(ii) A legal brief that addresses the disputed issues, including discussion of how the parties' positions, and any conditions requested, meet or fail to meet the requirements of 47 U.S.C. §§ 251 and 252, any applicable FCC regulations, and any applicable regulation, order, or policy of this commission; and

(iii) Any other documents relevant to the dispute, including copies of all documents the respondent relies on to support its positions or that it intends to introduce as exhibits at the hearing.

**(8) Verification.** The petition, answer, and all documentation filed must be verified as provided by WAC 480-07-395, or submitted by affidavit or declaration.

**(9) Confidentiality; protective order.** Petitions, answers, and any documents a party provides to the commission pursuant to a request under section 252 (b)(4)(B) are subject to Washington's public disclosure laws, including chapter 42.56 RCW and RCW 80.04.095. Confidential information submitted with a petition for arbitration or answer is subject to the protections and procedures set out in WAC 480-07-160. A party may include in its petition or response a request that the commission enter a protective order.

**(10) Discovery.** Parties must cooperate in good faith in the voluntary, prompt and informal exchange of all documents and other information relevant to the disputed issues, subject to claims of privilege or confidentiality. A party's failure to cooperate in discovery may be treated as a failure to negotiate in good faith. The arbitrator will schedule a discovery conference for a date ten days after the deadline for responses to the petition for arbitration, subject to rescheduling or cancellation if all parties agree. During the conference, the arbitrator will review the asserted need for any additional discovery, including requests for information by the arbitrator pursuant to 47 U.S.C. § 252 (b)(4)(B). Parties may submit to the arbitrator any discovery requests not responded to by the time of the conference and request that the arbitrator order the discovery. The arbitrator or the commission may request information from the parties pursuant to 47 U.S.C. § 252 (b)(4)(B) at any time.

**(11) Appointment and authority of arbitrator.**

(a) **Appointment.** One or more commissioners, one or more commission employees appointed by the commission, or one or more persons under contract with the commission may be designated as arbitrator(s) when a petition for arbitration is filed. The commission will not appoint an arbitrator who previously mediated a dispute between the same parties concerning the same interconnection agreement, unless the parties consent in writing or no other arbitrator is available to the commission. The commission will advise the parties of the appointment by entry of an order on arbitration procedure. The commission, in its discretion, may permit parties to comment on the selection of the arbitrator.

(b) **Authority.** Arbitrators will exercise all authority reasonable and necessary to conduct arbitration under the provisions of this rule, the commission's orders on arbitration procedure, and other provisions of law. Other members of the commission's staff may assist an arbitrator, but a staff member who has acted as a mediator with respect to the same interconnection agreement between the same parties may not be consulted. The arbitrator will issue the arbitrator's report within one hundred ten days after the date on which the petition for arbitration was filed. The arbitrator's report satisfies the commission's responsibility to resolve the disputed issues under 47 U.S.C. § 252 (b)(4)(C).

(12) **Consolidation.** The commission or an arbitrator may consolidate arbitration proceedings to reduce burdens on telecommunications carriers, parties to arbitration proceedings, and the commission.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 08-18-012 (Docket A-072162, General Order R-550), § 480-07-630, filed 8/22/08, effective 9/22/08; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-630, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-640 Telecommunications companies—Review and approval of interconnection agreements under the Telecommunications Act of 1996.** (1) **Scope.** This rule implements the commission review and approval process provisions of section 252 of the Telecommunications Act of 1996, 47 U.S.C. § 252.

(2) **Review and approval of agreements by the commission.**

(a) **Filing and service of agreements for approval.**

(i) **Negotiated agreements.** Parties to a negotiated interconnection agreement must submit a complete, signed copy of their agreement to the commission for approval under 47 U.S.C. § 252(e) within thirty days after the agreement is signed. Any appendices or attachments to the agreement must be included. The request for approval must summarize the agreement's main provisions. The request for approval must affirm that the agreement does not discriminate against non-party carriers, is consistent with state and federal law, and is in the public interest. The commission will reject a request for approval that does not include all of the information required in this section but will allow it to be refiled when complete. The timelines established for commission review of requests for approval under 47 U.S.C. § 252 do not begin until a complete request is properly filed.

(ii) **Arbitrated agreements—Petition for review; answer.** Any party may petition for commission review of an arbitrator's report and decision within thirty days after the arbitrator's report is issued, or at such other time as is established by notice or order. Other parties to the arbitration proceeding must file an answer within ten days after the petition is served, or at such other time as is established by notice or order. Both petition and answer must be in the form of a brief of the issues, and must address all legal and factual bases in support of the parties' respective arguments that the arbitrator's report and decision should, or should not, be modified.

(iii) **Arbitrated agreements—Request for approval.** The parties must also file, on the date established for answering any petition for review, their request for approval of an arbitrated interconnection agreement and a complete, signed copy of their interconnection agreement including all negoti-

ated terms, all terms requested under section 252(i) of the Telecommunications Act of 1996, and all terms drafted to implement the arbitrator's report and decision. Arbitrated terms must be in bold font style and identify by footnote the arbitrated issue that relates to the text. Any appendices or attachments to the agreement must be included. The request for approval must summarize the agreement's main provisions. The request for approval must affirm that the agreement does not discriminate against nonparty carriers, is consistent with state and federal law, and is in the public interest. The commission will reject a request for approval that does not include all of the information required in this section but will allow it to be refiled when complete. The timelines established for commission review of requests for approval do not begin until a complete request is properly filed.

(iv) **Filing and service.** Parties must file requests for approval with the commission secretary, as provided in WAC 480-07-145. Parties must serve the request for approval on all other parties not filing jointly, as provided in WAC 480-07-150.

(b) **Commission consideration of requests for approval and petitions for review.** The commission will consider a request for approval of a fully negotiated interconnection agreement at a regularly or specially scheduled open public meeting. The commission will consider any petition for review of an arbitrator's report and decision at hearing, which may, in the commission's discretion, be scheduled coincident with a regularly or specially scheduled open public meeting. The commission may hear oral argument by the parties, oral comment from members of the public, or both. The commission will enter an order approving or rejecting a fully negotiated agreement within ninety days after the date on which the request for approval and interconnection agreement are filed. The commission will enter an order resolving a partially or fully arbitrated agreement within thirty days after the request for approval and interconnection agreement are filed.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-640, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-650 Petitions for enforcement of telecommunications company interconnection agreements.**

The purpose of this rule is to provide a speedy and enforceable means to resolve disputes when one party to an interconnection agreement contends that the other party is violating the terms of the agreement.

(1) **Petitions for enforcement.** A telecommunications company that is party to an interconnection agreement with another telecommunications company may petition under this rule for enforcement of the agreement.

(a) **What the petition must contain.** Each petition for enforcement must contain the following elements:

(i) A statement, including specific facts, demonstrating that the petitioner engaged in good faith negotiations to resolve the disagreement, and that despite those negotiations the parties failed to resolve the issue.

(ii) A copy of the provision of the interconnection agreement that the petitioner contends is not being complied with.

(iii) A description of facts demonstrating failure to comply with the agreement. One or more affidavits, declarations,

or other sworn statements, made by persons having personal knowledge of the relevant facts must support the description.

(b) **How to serve the petition.** The petitioner must serve the petition for enforcement on the responding party on the same day the petition is filed with the commission. If the petitioner chooses to serve the respondent by mail or parcel delivery service, it must deliver a copy of the petition and all supporting documents by hand delivery, fax, or email (to the email address specified by the recipient for the purpose of receiving a copy of the petition) on the same day as filed with the commission. For purposes of this section, service must be effected on:

- (i) The responding party's authorized representative, attorney of record, or designated agent for service of process;
- (ii) The responding party's representatives with whom the petitioner conducted the negotiations addressed in (a)(i) of this subsection; and
- (iii) All parties designated in the interconnection agreement to receive notices.

(c) **Prefiling notice of petition.** The petitioner must give at least ten days' written notice to the respondent that the petitioner intends to file a petition for enforcement. The notice must identify each specific provision of the agreement that the petitioner alleges was violated, and the exact behavior or failure to act that petitioner alleges violates the agreement. The written notice must be served as provided in (b) of this subsection. The petitioner must include a copy of this notice with its petition for enforcement. The written notice shall be valid for thirty days from the date of service. If the petitioner wishes to file a petition for enforcement after the thirty-day period, the petitioner must serve another notice to the respondent at least ten days prior to filing the petition.

(2) **Answering a petition.** The respondent may answer the petition. The respondent waives the opportunity to present any matter that is not raised in the answer, except that the answer may be amended under subsection (3) of this section.

(a) **Contents of the answer.** The answer to a petition for enforcement must respond to each allegation of failure to comply with the terms of the interconnection agreement, stating relevant facts. Any facts relied upon must be supported by affidavits, declarations, or other sworn statements by persons having personal knowledge of the facts.

(b) **Filing and service of the answer.** The respondent must file the answer with the commission and serve it on the petitioner within five business days after service of the petition for enforcement. Service must be accomplished so that a copy of the response to the petition for enforcement and all supporting documents reach the petitioner's attorney, or the person who signed the petition if petitioner has no attorney, on the same day the answer is filed with the commission. If the respondent chooses to serve the petitioner by mail, a copy of the petition for enforcement and all supporting documents must be delivered to the person identified above on the same day as filed with the commission.

(3) **Amendment of petition and answer.** The presiding officer may permit the responding party to amend its answer for good cause shown, and to avoid substantial prejudice to the responding party that is not caused by the fault of the responding party. The presiding officer may permit either party to amend its petition or answer to conform to the evidence presented during the proceeding. The presiding officer

may refer to, but is not bound by, CR 15(b) of the Washington superior court civil rules, when determining whether to permit amendment of the petition or answer to conform to the evidence.

(4) **Prehearing conference.** The commission will conduct a prehearing conference regarding each petition for enforcement of an interconnection agreement.

(a) **Schedule; mandatory attendance.** The presiding officer will issue notice of a prehearing conference within five business days after the petition is filed. Both the petitioner and the respondent must attend the prehearing conference. The prehearing conference may be conducted by telephone.

(b) **Procedural determination.** The presiding officer will determine at the prehearing conference whether the issues raised in the petition can be determined on the pleadings, submissions, and any oral statements without further proceedings. When determining whether to schedule an oral enforcement hearing session, the presiding officer will consider the parties' preferences and the reasons they advance, the need to clarify statements by asking questions, whether the issues are largely factual, largely legal, or involve questions of fact and law, the apparent complexity of facts and issues, the need for speedy resolution, and the completeness of information presented. The presiding officer may require the parties to submit written briefs on the issues.

(c) **Means of obtaining additional information.** If the presiding officer determines that further proceedings are necessary, the presiding officer will establish a schedule for receiving additional facts or evidence and may schedule an enforcement hearing session to explore the facts and issues raised in the petition and the answer. The party filing the petition or answer may file with the petition or answer a request for discovery, stating the matters to be inquired into and their relationship to matters directly at issue. The presiding officer may allow limited discovery requiring only the disclosure of facts relating directly to matters at issue, and only if discovery is shown to be essential to the requesting party. The presiding officer will establish a shortened discovery schedule to comply with the timelines of this rule.

(d) **Consideration as a complaint.** If the matter at issue involves policy, technical or accounting issues that require extensive analysis or discovery, the commission may convert the proceeding to a complaint proceeding under RCW 80.04.-110 to allow adequate time and process for the demands of the proceeding.

(5) **Powers of the presiding officer; conversion of proceeding; recommended or final decision.**

(a) **Conduct of proceeding.** The presiding officer has broad discretion to conduct the proceeding in a manner that best suits the nature of the petition, including, but not limited to, converting the proceeding into a complaint proceeding under RCW 80.04.110. Matters may be appropriate for conversion when their complexity requires that they cannot be completed on the schedule provided in this rule; when the petitioner requires discovery beyond a disclosure of facts directly related to the matters at issue; when extensive policy argument or legal briefing is required; or when participation by parties other than the petitioner and the respondent is necessary. The presiding officer may limit the record to written submissions or may schedule an enforcement hearing ses-

sion. The presiding officer may limit the number of exhibits and witnesses and the time for their presentation.

(b) **Recommended decision.** The presiding officer, if other than the commissioners, will serve a recommended decision on the parties within seventy-five days of the date the petition for enforcement was filed, or twenty-one days after the last hearing session or submission, whichever is later. The recommended decision is subject to approval by the commission. If the commissioners preside over the enforcement proceeding, they may enter a final decision within the time requirements applicable to recommended decisions.

(c) **Review of the recommended decision.** Any party may file a petition for administrative review of a recommended decision within seven days after the order is entered. A party opposing review may file an answer within five days after a petition for review is filed. The commission may hear the parties' arguments regarding any recommended decision on the written pleadings or during oral argument, which may, in the commission's discretion, be scheduled coincident with a regular or special open public meeting. The commission may request commission staff to make a presentation at the argument. The commission will conduct this session within ten days after the date of the recommended decision, or as soon thereafter as the commissioners' schedules permit. If no party files a petition for administrative review, the commission may adopt the recommended decision without material change. If the commission considers making a material change in a recommended order to which no petition for review has been filed, the commission must first seek the views of the parties on the issue.

(6) **Commission decision on petition for enforcement.**

(a) **Extent of commission discretion.** The commission will serve a final decision on the parties in the form of a commission order resolving the issues. The commission may adopt, modify, or reject all or part of any recommended decision.

(b) **Time of service.** The commission will enter its order on the petition for enforcement no later than ninety days after the date the petition is filed or fifteen days after the meeting at which it reviews the recommended decision, whichever is later. The commission may extend this time for lack of resources or for other good cause.

(c) **Petition for reconsideration.** The parties may petition for reconsideration within ten days after the commission serves its order on the petition for enforcement. If a party petitions for reconsideration, the commission may request that an answer be filed. The commission may request additional comments, briefing, evidence, or argument from the parties. Filing a petition for reconsideration of the order does not stay the effect of the order. A petition for reconsideration is deemed denied unless the commission grants or denies it by written order within ten days after the date on which petition for reconsideration is filed or the date established for filing an answer or additional comments, briefing, evidence, or argument, whichever is later. The commission may alter the time for entering its order on a petition for reconsideration by notice or letter.

(d) **Failure to comply with the order.** Any party who fails to comply with the terms of the commission's final order on a petition for enforcement is subject to penalties under

RCW 80.04.380 and any other penalties or sanctions as provided by law. A company against whom a penalty is assessed may challenge the penalty or the facts on which it is based, or seek mitigation of the penalty, pursuant to pertinent law and commission rules.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-650, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-650, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-660 Railroad grade-crossing closures—Objections.** (1) **Filing.** Anyone who objects to a highway-railroad grade crossing closure under RCW 81.53.-060 must file an objection in writing within twenty days after publication of notice of the proposed closure. The objection must:

(a) Identify the person or persons who object by full name and mailing address;

(b) Identify the particular crossing that is the subject of the objection;

(c) State the commission docket number, if known; and

(d) Explain the basis for the objection.

If a communication does not meet these requirements, the commission will not treat the communication as an objection when determining whether a hearing is required under RCW 81.53.060.

(2) **Party status; appearances; service of final order.**

Filing an objection does not make a person a party to a proceeding under RCW 81.53.060. A person who wishes to participate as a party must enter an appearance at the first hearing session, as prescribed by WAC 480-07-340. A person who fails to establish party status by appearance may file a "late-filed petition to intervene" as provided in WAC 480-07-355. A person must establish party status to be entitled to service of any initial order or the commission's final order in the matter. Persons who are not parties may receive a courtesy copy of any initial or final order on request.

(3) **Other interested persons.** Interested persons who are not parties will be provided an opportunity to be heard and offer evidence, as required by RCW 81.53.060. Interested persons who are not parties may not call witnesses, cross-examine witnesses, or otherwise participate as a party. Interested persons who are not parties do not have standing to file petitions for administrative review of initial orders or to file petitions for reconsideration of final orders.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-660, filed 11/24/03, effective 1/1/04.]

#### Subpart D: Alternative Dispute Resolution

**WAC 480-07-700 Alternative dispute resolution.** The commission supports parties' informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest, and subject to approval by commission order. Alternative dispute resolution (ADR) includes any mechanism to resolve disagreements, in whole or in part, without contested hearings.

(1) **No delegation of commission authority.** The commission cannot delegate to parties the power to make final decisions in any adjudicative proceeding. The commission

retains and will exercise its authority in every adjudicative proceeding to consider any proposed settlement or agreement for approval.

(2) **Forms of ADR.** Parties to a dispute that is within the commission's jurisdiction may agree to negotiate with any other parties at any time without commission oversight. The commission may direct parties to meet or consult as provided in subsection (3) of this section, or may establish or approve a collaborative process as provided in WAC 480-07-720. The commission may assign commission staff trained in ADR principles and techniques to serve as neutral third parties (e.g., mediator or facilitator) to assist the parties. The commission may assign a settlement judge to assist the parties in appropriate circumstances. The commission may provide an arbitrator whose decision is subject to commission review in matters for which arbitration is authorized.

(3) **Settlement conference.** A settlement conference means any discussion or other communication, in person or otherwise, intended to resolve one or more disputed issues (whether actual or anticipated) between two or more parties in an adjudicative proceeding. Settlement conferences do not include requests for information or clarification, or communications to identify whether a dispute exists or whether another party is willing to negotiate resolution of a disputed issue, or in aid of discovery. Settlement conferences must be informal and without prejudice to the rights of the parties. The procedural requirements of this section relating to settlement conferences may be waived if all parties and the commission agree. Any party and any person who has filed a petition to intervene may participate in an initial or early initial settlement conference. An intervenor's participation in a settlement conference is limited to the interests supporting its intervention, except by agreement of other participants in the conference. No party is required to attend.

(a) **Initial settlement conference.** The commission will set in the procedural schedule for each adjudicative proceeding the date for an initial settlement conference. Parties wishing to reschedule the initial settlement conference must seek modification of the schedule by the presiding officer upon notice to all other parties.

(b) **Early initial settlement conference.** Any party that wishes to initiate a settlement conference with any other party between the filing of the docket and the initial prehearing conference must have included in its notice to customers, if otherwise required, a statement indicating that an early initial settlement conference might be scheduled. In addition, the party proposing an early initial settlement conference must provide ten days prior notice of any such conference to the commission, public counsel, any party, any person that has filed a petition to intervene and any person that was a party in the most recent proceeding of the same type, involving the same filing party and respondent, if any. Such persons may participate in an early initial settlement conference in the docket if they file a petition to intervene prior to the early initial settlement conference.

(4) **ADR guidelines.** In any negotiation, the following apply unless all participants agree otherwise:

(a) The parties, as their first joint act, will consider the commission's guidelines for negotiations, set out in a policy statement adopted pursuant to RCW 34.05.230, and determine the ground rules governing the negotiation;

(b) No statement, admission, or offer of settlement made during negotiations is admissible in evidence in any formal hearing before the commission without the consent of the participants or unless necessary to address the process of the negotiations;

(c) Parties may agree that information exchanged exclusively within the context of settlement negotiations will be treated as confidential, subject to the requirements of RCW 5.60.070; and

(d) Participants in a commission-sanctioned ADR process must periodically advise any nonparticipating parties and the commission of any substantial progress made toward settlement. Participants must immediately advise the commission if a commission-sanctioned ADR process is without substantial prospects of resolving the issue or issues under discussion (i.e., if the participants agree that an impasse has been reached or an impasse is declared by any neutral third party who is assisting the participants in the ADR process).

(e) Any mediator, facilitator, or settlement judge who assists the participants in an ADR process will not participate in any adjudication, arbitration, or approval process for the same proceeding, unless all parties consent in writing.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-700, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-700, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-710 Mediation. (1) Scope.** This rule applies generally to settlement negotiations in which the commission agrees to assign a qualified mediator to assist the parties. This rule applies specifically to implement the mediation provisions of sections 251 and 252 of the Telecommunications Act of 1996, 47 U.S.C. §§ 251 and 252.

(2) **Commission participation.** The parties to a negotiation, including a negotiation under 47 U.S.C. §§ 251 and 252, may ask the commission to mediate any differences that arise during the negotiation. A request for mediation must include a brief statement of the nature of the dispute and the names, postal and email addresses, telephone and fax numbers of the parties and their representatives. Copies of the request must be served on all parties to the negotiation. All parties are required to participate in good faith if the commission agrees to mediate.

(3) **Mediators.** The commission may assign one or more qualified employees to serve as mediator(s). The commission may require the parties to retain the services of a professional mediator acceptable to all parties.

(4) **Process.** Mediators have discretion to regulate the course of the mediation, including scheduling mediation sessions, in consultation with the parties. The following general procedures apply:

(a) The mediator may not impose a settlement but may offer proposals for settlement;

(b) The mediator may meet individually with the parties or attorneys during mediation;

(c) Only the parties to the negotiation and the mediator may attend the mediation session(s), unless all parties and the mediator consent to the presence of others;

(d) Parties must provide the mediator with a brief statement of position and relevant background information prior to the first mediation session;

(e) The mediator may ask for supplemental information;

(f) The mediator may not provide legal advice to the parties, nor are any mediator's stated opinions as to law or policy binding on the commission, unless later adopted by the commission;

(g) The mediation process is confidential to the extent permitted by law, subject to the requirement for a written agreement or other record indicating an expectation that mediation communications will be privileged against disclosure as required under RCW 7.07.020; and

(h) No stenographic or electronic record will be kept.

(5) **Fees and costs.** Each party must bear its own fees and costs. Each party must pay any fees imposed by commission rule or statute.

(6) **Notice to commission.** Parties must advise the commission if they reach a full, partial, or multiparty settlement and may suggest preferred procedural alternatives for review of the settlement, subject to the requirements of WAC 480-07-640 (commission approval of interconnection agreements) or WAC 480-07-740, as appropriate. The commission will determine the appropriate procedure in each proceeding consistent with the requirements of WAC 480-07-640 or 480-07-740.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-710, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-710, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-720 Collaboratives.** (1) **Defined; membership.** A collaborative is a commission-sanctioned negotiation in which interested persons work with each other and representatives of commission staff to achieve consensus on one or more issues, within the commission's jurisdiction, assigned to or identified by the collaborative participants. Any person whose interests may be substantially affected by the result of the collaborative must be given an opportunity to participate. Collaborative participants must inform the commission and seek approval if a collaborative seeks to change its membership or redefine the issues it will address.

(2) **Procedure.** Participants must develop procedural guidelines for their negotiations when beginning a collaborative and should refer to any commission policy statement(s) that relate to ADR for guidance.

(3) **Communication with commission.** Communication between the commission and collaborative participants may be through commission staff assigned to serve as a neutral third party in the collaborative, or through the commission secretary, subject to agreement among the participants to the form and substance of any such communication.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-720, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-730 Settlement.** A settlement is an agreement among two or more parties to a proceeding, filed with the commission as a proposed resolution of one or more issues. Parties must submit an electronic copy of the settlement agreement in the format identified in WAC 480-07-140(6).

(1) **Full settlement.** An agreement of all parties that would resolve all issues in a proceeding may be presented as

a full settlement for commission review. Parties who file a full settlement should file supporting evidence at the same time as the settlement agreement, or within a reasonable time following filing of the settlement agreement.

(2) **Partial settlement.** An agreement of all parties on some issues may be presented as a partial settlement for commission review, and remaining matters may be litigated. Parties who file a partial settlement should file supporting evidence at the same time as the settlement agreement, or within a reasonable time following filing of the settlement agreement.

(3) **Multiparty settlement.** An agreement of some, but not all, parties on one or more issues may be offered as their position in the proceeding along with the evidence that they believe supports it. Nonsettling parties may offer evidence and argument in opposition.

(4) **Notice to commission.** Parties must advise the commission if they reach a full, partial, or multiparty settlement and may suggest preferred procedural alternatives for review of the settlement, subject to the requirements of WAC 480-07-740. The commission will determine the appropriate procedure in each proceeding consistent with the requirements of WAC 480-07-740.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-730, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-730, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-740 Settlement consideration procedure.** The commission must determine whether a proposed settlement meets all pertinent legal and policy standards. The commission must have a reasonable opportunity to hear parties' views on why the settlement should be approved and adopted, to ask questions of the parties, and to conduct its processes in an orderly fashion. Parties must, therefore, consider the timing and the content of the settlement presentation to the commission.

(1) **Settlement presentation timing.** Parties must file a proposed settlement with a recommended effective date that allows the commission sufficient time to schedule a formal settlement hearing and provide an opportunity for public comment when the commission, after consulting the parties, determines that such comment is needed. The commission must have sufficient time to deliberate and to prepare an order responding to the proposal. The parties must allow sufficient time for the filing, review, and approval of any required compliance filing.

(a) **General rate proceedings.** In general rate proceedings or matters of comparable complexity, parties must allow at least thirty days between filing a proposed settlement agreement and the requested effective date of any tariff changes or other terms and conditions of the settlement.

(b) **Less complex matters.** In matters that are less complex, parties must allow at least twenty-one days between filing a proposed settlement agreement and the requested effective date for any tariff changes or other terms and conditions of the settlement.

(c) **Notice to commission; inquiries regarding arrangements for review.** Parties should inform the commission at the earliest opportunity when it appears that they may reach a settlement and ask the commission to make tentative arrange-

ments for review. Parties may direct informal inquiries to the supervisor of the commission's administrative law function or the supervisor's designee.

(d) **Hearing.** The commission will schedule a hearing to consider a proposed settlement if the commission believes that a hearing will assist it to decide whether to adopt the proposal.

(e) **Timing; requested effective date.** The commission will endeavor to meet the parties' requested effective date, but cannot guarantee that it will be able to do so.

(2) **Settlement presentation contents.** When filing a proposed settlement agreement, parties must also file supporting documentation sufficient to demonstrate to the commission that the proposal is consistent with law and the public interest and that it is appropriate for adoption.

(a) **Narrative.** Supporting documentation should include a narrative outlining the scope of the underlying dispute; the scope of the settlement and its principal aspects; a statement of parties' views about why the proposal satisfies both their interests and the public interest; and a summary of legal points that bear on the proposed settlement. The documentation may be in the form of a memorandum, supporting pre-filed testimony, brief, or other form that serves the same functions.

(b) **Testimony.** Each party to a settlement agreement must offer to present one or more witnesses to testify in support of the proposal and answer questions concerning the settlement agreement's details, and its costs and benefits. Proponents of a proposed settlement must present sufficient evidence to support its adoption under the standards that apply to its acceptance. Counsel must make a brief presentation of the settlement, and address any legal matters associated with it. Counsel must be available to respond to questions from the bench regarding those subjects.

(c) **Rights of opponents of a proposed settlement.** Parties opposed to the commission's adoption of a proposed settlement retain the following rights: The right to cross-examine witnesses supporting the proposal; the right to present evidence opposing the proposal; the right to present argument in opposition to the proposal; and the right to present evidence or, in the commission's discretion, an offer of proof, in support of the opposing party's preferred result. The presiding officer may allow discovery on the proposed settlement in the presiding officer's discretion.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-740, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-750 Commission discretion to accept settlement, impose conditions, or reject a proposed settlement.** (1) The commission may decide whether or not to consider a proposed settlement. The commission will approve settlements when doing so is lawful, when the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.

(2) If the commission considers a proposed settlement, it may accept the proposed settlement, with or without conditions, or may reject it.

(a) If the commission rejects a proposed settlement, the litigation returns to its status at the time the settlement was

offered and the time for completion of the hearing will be extended by the elapsed time for consideration of the settlement and may take into account the need to address other pending business before the commission.

(b) If the commission accepts a proposed settlement upon conditions not proposed in the settlement, the parties may seek reconsideration of the decision and the settling parties must within the time for reconsideration state their rejection of the conditions. If a party rejects a proposed condition, the settlement is deemed rejected and (a) of this subsection applies.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-750, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-750, filed 11/24/03, effective 1/1/04.]

### Subpart E: Orders and Post-order Process

**WAC 480-07-800 General; definitions.** (1) "Entry" of an order means the signing of the order by all persons who are to sign the order, as an official act indicating that the order is to be effective. Each order will state the date on which it is entered.

(2) An order is effective when entered, unless an effective date other than the date the order is entered is specified in the order.

(3) "Service" of an order means placing copies of the order in the U.S. mail, postage prepaid, addressed to all parties and any other persons required by law to be served. Each order will state the date on which it is served. The service date of an order governs the determination of time limits for further administrative procedure or for judicial review.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-800, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-810 Interlocutory orders.** (1) **Defined.** Orders entered during the course of an adjudicative proceeding are "interlocutory orders," as distinguished from initial orders that may be entered by an administrative law judge at the conclusion of a proceeding and final orders entered by the commission at the conclusion of a proceeding. Examples of interlocutory orders are orders concerning a party's participation in a proceeding, orders concerning discovery, and orders that relate to proposed evidence.

(2) **When review is available.** Interlocutory review is discretionary with the commission. The commission may accept review of interim or interlocutory orders in adjudicative proceedings if it finds that:

(a) The ruling terminates a party's participation in the proceeding and the party's inability to participate thereafter could cause it substantial and irreparable harm;

(b) A review is necessary to prevent substantial prejudice to a party that would not be remediable by post-hearing review; or

(c) A review could save the commission and the parties substantial effort or expense, or some other factor is present that outweighs the costs in time and delay of exercising review.

(3) **Process for seeking review.** Any party may petition for review of an interlocutory order. Petitions for interlocu-

tory review must be filed and served on other parties within ten days after service of the order or issuance of the ruling for which review is requested. The petition must state why the ruling is in error or should be changed and why interlocutory review is necessary, and must cite reasons that support the petition. Answers must be filed within ten days after the petition is filed. The commission may alter these filing deadlines when doing so is consistent with the public interest.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-810, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-820 Initial and final orders. (1) Defined.**

(a) **Initial orders.** "Initial orders" dispose of the merits in a proceeding that is conducted before an administrative law judge and are entered over the signature of the administrative law judge. Initial orders include those that grant dispositive motions (e.g., motions to dismiss and motions for summary determination) and orders that resolve contested issues on the basis of the official record in a proceeding. All initial orders are subject to further action by the commission as provided in WAC 480-07-825.

(b) **Final orders.** "Final orders" dispose of the merits of a proceeding following consideration by the commissioners and are entered over the signatures of a majority of the commissioners. Final orders include those that grant dispositive motions (e.g., motions to dismiss and motions for summary determination) and orders that resolve contested issues on the basis of the official record in a proceeding. Final orders may be entered whenever:

(i) The commissioners personally preside over a proceeding;

(ii) The commissioners enter an order following administrative review of an initial order in response to a timely petition for administrative review;

(iii) The commissioners enter an order after the period available for petitions for administrative review and no such petition has been filed;

(iv) All of the parties to a proceeding waive their right to an initial order; or

(v) The commissioners enter an order following the timely filing of a petition for reconsideration of a final order or a petition for rehearing of a final order.

(2) **Service.** The commission will serve a copy of any initial order and the commission's final order to each party of record and to the party's attorney or other authorized representative pursuant to RCW 34.05.461(9) and WAC 480-07-150(3).

(3) **Timing.** The presiding officer will enter an initial order within sixty days after the commission receives transcripts following the close of the record, hears oral argument (if allowed or required), initial briefs are filed, or reply briefs are filed, whichever occurs last. The commission will enter its final order within ninety days after the commission receives transcripts following the close of the record, hears oral argument (if allowed or required), initial briefs are filed, or reply briefs are filed, or the commission receives a petition for administrative review or an answer to a petition for review, whichever occurs last. The presiding officer or the

commission may alter the time for entry of an initial or final order by notice to the parties.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-820, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-825 Initial orders—Petitions for administrative review. (1) When a petition for administrative review is appropriate.** A party who wishes to challenge any finding of fact, conclusion of law, remedy, or result proposed by an initial order may file a petition for administrative review. A party also may file a petition for administrative review to challenge the reasons stated in support of any result reached in an initial order. The commission will accept only one petition for administrative review from any party.

(2) **Timing of petition.** Any party to an adjudicative proceeding may file and serve a petition for administrative review within twenty days after the initial order is served. The commission may extend the time on a showing of good cause.

(3) **Contents; length.** Petitions for administrative review must clearly identify the nature of each challenge to the initial order, the evidence, law, rule or other authority that the petitioner relies upon to support the challenge, and state the remedy that the petitioner seeks. Petitions for review of initial orders must be specific. The petitioner must separately state and number every contention. A petition that challenges a finding of fact must cite the pertinent page or part of the record or must otherwise state the evidence it relies on to support its petition, and should include a recommended finding of fact. A petition that challenges a conclusion of law must cite the appropriate statute, rule, or case involved and should include a recommended conclusion of law. A petition that challenges the summary or discussion portion of an initial order must include a statement showing the legal or factual justification for the challenge, and a statement of how the asserted defect affects the findings of fact, the conclusions of law, and the ultimate decision. Petitions for administrative review must not exceed sixty pages, without prior permission from the commission.

(4) **Answers.**

(a) **Who may answer.** Any party to the adjudication may answer another party's petition for administrative review.

(b) **Filing and service.** An answer to a petition for administrative review must be filed and served within ten days after the petition is filed. The commission may designate a different time for filing answers to petitions.

(c) **Challenge to order in answer.** A party who did not file a petition for administrative review of an initial order may challenge the order or portions of the order in its answer to the petition of another party.

(5) **Reply.**

(a) **By right.** A party has the right to reply to new challenges to the order that are raised under subsection (c) of this section.

(b) **By leave of commission.** A party otherwise has no right to reply to an answer, but may petition for leave to reply, citing new matters raised in the answer and stating why those matters were not reasonably anticipated and why a reply is necessary. The petitioner may attach a reply to the petition for leave to accept the reply.

(c) **Timing.** A reply under (a) of this subsection, or a petition for leave to reply under (b) of this subsection, must be filed no later than five days after service of the answer. The commission may extend the time upon a showing of good cause.

(6) **Oral argument.** The commission may hear oral argument on a petition for administrative review at a time and place the commission designates by notice to all parties to the proceeding. A party who desires to present oral argument may request argument, stating why oral argument is necessary to assist the commission in making its decision and why written presentations will be insufficient.

(7) **Initial order finality.**

(a) The initial order of an administrative law judge will become a final order of the commission unless, within the time for filing petitions for administrative review:

(i) A party petitions for administrative review, or receives an extension of time to file a petition for administrative review and files within the extended period; or

(ii) The commission serves a notice to the parties of its intention to review the initial order.

(b) Parties who seek finality of an initial order before the end of the petition period may waive the right to seek administrative review. If all parties waive review, the order will become final on the day the commission declines to exercise administrative review or when the time for exercising review ends. If the commission exercises administrative review, all parties may state objections and responses as permitted in subsection (8) of this section.

(c) An initial order that becomes final by operation of law does not reflect a decision by the commissioners and has no precedential value. Such orders, if cited, must be identified as ALJ orders.

(8) **Designation for review.** The commission may designate an initial order for administrative review by serving on the parties a notice of its intention to review the order. The notice will identify the docket number and the title of the proceeding, a time period within which the parties may state objections to the initial order, and a time to respond to others. The notice may invite the parties to address specific issues relating to the initial order.

(9) **Final order.** The commission may by final order adopt, modify, or reject an initial order after considering the pleadings and the record. Alternatively, the commission may remand the matter for further proceedings with instructions to the presiding officer.

(10) **Judicial review.** The statutory time for filing a petition for judicial review commences when the commission serves its final order, when an initial order becomes final under RCW 80.01.060(3) and subsection (7) of this section, or when a petition for reconsideration is deemed denied as a matter of law, as provided in RCW 34.05.470. However, if a party timely files a petition for reconsideration of the final order, and complies with the commission's procedural rules governing reconsideration, the time for filing a petition for judicial review does not commence until the date on which the agency serves an order disposing of the petition for reconsideration, or the date on which the petition is deemed denied as a matter of law, as provided in RCW 34.05.470.

[Statutory Authority: 2006 c 246, RCW 80.01.040 and 80.04.160. WSR 06-17-126 (Docket A-060357, General Order No. R-538), § 480-07-825, filed

8/21/06, effective 9/21/06. Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-825, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-830 Motion to reopen the record prior to entry of a final order.** Any party may file a motion to reopen the record at any time after the close of the record and before entry of the final order. The commission may reopen the record in a proceeding on its own motion. In uncontested proceedings, the commission may exercise its discretion to reopen the record to allow receipt of written evidence when otherwise lawful. In contested proceedings, the commission may reopen the record to allow receipt of evidence that is essential to a decision and that was unavailable and not reasonably discoverable with due diligence at the time of the hearing or for any other good and sufficient cause. The commission will give all parties an opportunity to respond to any evidence received after the record is closed. The commission may enter a final order or may return the matter to the presiding officer for further consideration, including further hearing or other process when appropriate.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-830, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-835 Clarification of final order by motion.** (1) **Motion - when appropriate.** Any party who does not seek to change the outcome with respect to an issue may file a motion for clarification of a final order within ten days after the order is served. The purpose of a motion for clarification is to ask for clarification of the meaning of an order so that compliance may be enhanced, so that any compliance filing may be accurately prepared and presented, to suggest technical changes that may be required to correct the application of principle to data, or to correct patent error without the need for parties to request reconsideration and without delaying post-order compliance. A motion for clarification may also request that obvious or ministerial errors in orders be corrected by letter from the secretary or by subsequent order, consistent with WAC 480-07-875.

(2) **Motion - when not appropriate.** If a party seeks to change an outcome with respect to one or more issues resolved by a final order, or challenge a finding of fact or conclusion of law stated in the order, it may not do so by motion for clarification, but must file a petition for reconsideration pursuant to WAC 480-07-850.

(3) **Response.** No party may file a response to a motion for clarification unless requested by the commission.

(4) **Tolling.** Filing a petition for clarification tolls the time for judicial review but does not toll the time for compliance with the final order of which clarification is sought.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-835, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-840 Clarification of a final order by conference.** The commission may schedule an order conference on its own motion or at a party's request. The commissioners may personally attend the conference or may designate one or more persons to attend on their behalf. The com-

mission will determine whether an order conference will be recorded.

(1) **Purpose.** The purpose of an order conference is to clarify the meaning of a final order when parties disagree about the order's meaning or requirements. Parties to an order conference may ask for clarification of the meaning of an order to:

- (a) Explore and resolve any barriers to compliance;
- (b) Ensure that any compliance filing can be accurately prepared and presented;
- (c) Propose technical changes that may be required to correct the application of principle to data; or
- (d) Correct patent error.

The conference is not a forum for discussing or challenging the evidentiary, legal, or policy decisions expressed in the order. Parties may pursue those remedies through a petition for reconsideration or other means.

(2) **Effect.** An order conference will not stay the effect of an order, the time for compliance, the time for securing post-order review, or the time for petitioning for judicial review, unless the conference results in a supplemental commission order, which then becomes a final order subject to review. An order conference does not constitute a formal interpretation of an order. The final order that is the subject of an order conference will remain the sole expression of the commission's decision unless supplemented through an additional order.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-840, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-850 Reconsideration of a final order by petition.** (1) **Petition - timing.** Any party may petition for reconsideration of a final order within ten days after the order is served. The purpose of a petition for reconsideration is to request that the commission change the outcome with respect to one or more issues determined by the commission's final order.

(2) **Petition - contents.** The petitioner must clearly identify each portion of the challenged order that it contends is erroneous or incomplete, must cite those portions of the record and each law or commission rule that the petitioner relies on to support its petition, and must present brief argument in support of its petition.

(3) **Answer.** No party may file an answer to a petition for reconsideration unless requested by the commission. If the commission requests answers to a petition for reconsideration, it will issue a notice stating the date by which answers must be filed and the date by which the commission intends to enter an order resolving the petition.

(4) **Oral argument.** The commission will not hear oral argument on a petition for reconsideration unless the commission determines on its own motion that oral argument is required.

(5) **Disposition.** A petition for reconsideration is deemed denied twenty days after the date the petition is filed, unless the commission either:

- (a) Enters an order resolving the petition; or
- (b) Serves the parties with a written notice specifying the date by which it will act on the petition.

(6) **Action.** If the commission grants a petition, the commission may modify its prior order or take other appropriate

action. If the commission denies the petition, no further action will be taken in the matter with respect to the final order. No party may petition for reconsideration of an order on reconsideration.

(7) **Stay.** Filing a petition for reconsideration does not automatically stay the effect of an order or serve as a request for a stay. A party may request that the commission stay the effectiveness of an order pending reconsideration by filing a petition for stay pursuant to WAC 480-07-860.

(8) **Judicial review.** Filing a petition for reconsideration is not a prerequisite for seeking judicial review of a commission final order. If a proper petition for reconsideration is timely filed, the time for filing a petition for judicial review does not commence until the agency serves an order disposing of the petition for reconsideration, or the date on which the petition is deemed denied as a matter of law, as provided in RCW 34.05.470. An order denying reconsideration, or a notice of the time for disposition under subsection (5)(b) of this section is not subject to judicial review.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-850, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-860 Stay.** Any party may petition to stay of the effectiveness of a final order within ten days after its service, unless otherwise provided by statute or stated in the final order. The commission may stay the effect of a final order on its own initiative. The effect of a final order is not automatically stayed when a party files a motion for clarification, a petition for reconsideration, or a petition for rehearing.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-860, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-870 Rehearing.** Any person affected by a final order may file a petition for rehearing. Public service companies may seek rehearing under RCW 80.04.200 or 81.04.200.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-870, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-875 Amendment, rescission, or correction of order.** (1) **Amendment or rescission.** The commission may alter, amend, or rescind any order that it has entered, after notice to the public service company or companies affected and to all parties in the underlying proceeding, and after allowing an opportunity for hearing as in the case of complaints. Any order altering, amending, or rescinding a prior order will have the same effect as any other final order when served upon the public service company or companies affected.

(2) **Correction.** The commission may act on its own initiative or on the motion of any party to correct obvious or ministerial errors in orders. The commission may enter a corrected order or effect any corrections by notice or letter. The commission may direct the secretary to effect any corrections by notice or letter. The time for any available post-hearing review begins with the service of the correction, as to the matter corrected.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-875, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-880 Compliance filing; subsequent filing; reporting requirement.** (1) **Compliance filing; compliance order.** When the commission enters a final order that authorizes or requires a party to make a filing to implement specific terms of the order with respect to the issues resolved in an adjudicative proceeding by implementing a precisely defined result, the filing is a "compliance filing." For example, a commission final order in a general rate proceeding may authorize or require a party to file original or substitute tariff sheets to implement the terms of the final order. A compliance filing is made under the docket number of the final order to which it relates. A compliance order is an order approving or rejecting a compliance filing.

(2) **Subsequent filing.** When the commission enters a final order that authorizes or requires a party to make a filing to implement general instructions (e.g., the formulation of policy, or filing of tariffs other than to implement a precisely defined result), the filing initiates a new proceeding that will be assigned a new docket number, and the filing is deemed a "subsequent filing." For example, a commission final order in a complaint proceeding may authorize or require a party to make a tariff filing by a date certain.

(3) **Reporting requirement.** The commission may enter a final order that requires a party to report periodically to the commission with respect to designated subject matter. The reports must be filed under the docket number of the proceeding in which the final order is entered, unless otherwise specified in the order establishing the requirement or by later letter from the secretary of the commission.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-880, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-883 Compliance filing—Filing requirements; timing; commission action.** A party must strictly limit the scope of its compliance filing to the requirements of the final order to which it relates. If the commission finds that a compliance filing varies from the requirements or conditions of the order authorizing or requiring it, either by falling short of or by exceeding the authorization, conditions, or requirements of the order, the commission may reject the filing unless it has preapproved the variance. If the commission accepts in error a compliance filing that does not comply with the order authorizing the filing, the commission's acceptance does not validate the noncompliant elements of the filing.

**(1) Filing requirements.**

(a) A party who files a compliance filing must make its filing consistent with the filing requirements of the docket authorizing the filing, i.e., file the required number of copies, and serve the filing on all other parties in the docket.

(b) A compliance filing must include the following:

- (i) A cover letter that identifies the order to which the filing relates;
- (ii) All required tariff sheets; and
- (iii) Work papers that clearly demonstrate the derivation of the proposed tariffs.

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(2) **Service requirement.** A party who makes a compliance filing must serve it on each party to the proceeding in which the compliance filing is authorized or required. Service must be initiated on the same day as the filing.

**(3) Timing; effective date.**

(a) The commission will state in its final order authorizing or requiring a compliance filing the date by which the compliance filing must be made and the effective date that should appear on any tariff sheets that are required as part of a compliance filing. The commission may state the amount of time it will require to examine any proposed compliance tariff sheets between their filing and their proposed effective date.

(b) A compliance filing does not become effective automatically on its stated effective date. Commission action is required before any compliance filing can be effective. The commission may enter an order approving a compliance filing or taking other appropriate action. The commission may delegate to the secretary, by written authorization in individual proceedings, the authority to approve or take other appropriate action with respect to a compliance filing.

**(4) Commission action on compliance filing.**

(a) The commission may enter an order in any proceeding in which a compliance filing is authorized or required that:

- (i) Approves the compliance filing; or
- (ii) Rejects a compliance filing or any portion of the filing that apparently fails to comply.

(b) If the commission rejects all or part of a compliance filing, the party may refile. The commission may impose conditions on refile.

(c) If the commission approves a compliance filing, but later discovers that it failed to recognize that the compliance filing was, in fact, incomplete or did not fully comply with the order authorizing or requiring the filing, the commission may take any necessary and lawful steps to secure full compliance.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-883, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-883, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-885 Subsequent filing—Filing requirements; timing; commission action.** (1) **Filing and service requirements.**

(a) A person who makes a subsequent filing must provide a cover letter that identifies the order and the docket in which the commission required the subsequent filing. The commission will assign a new docket number to a subsequent filing.

(b) A person who makes a subsequent filing that includes tariff sheets must comply with all pertinent requirements for tariff filings of the industry, including the required statutory notice period, unless the commission authorizes the subsequent filing to become effective on less than statutory notice.

(c) A person who makes a subsequent filing must serve a copy of the filing on all parties to the proceeding in which the filing was authorized or required.

(2) **Timing.** A final order that authorizes or requires a subsequent filing may state the date by which the subsequent filing must be made. If no date for the subsequent filing is

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specified in the final order, the commission may establish the date by order or by letter from the commission secretary.

(3) **Commission action on subsequent filing.** The commission will act on a subsequent filing that includes tariff sheets in the same manner that it would act on an original tariff filing of the industry.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-885, filed 11/24/03, effective 1/1/04.]

#### PART IV: OTHER COMMISSION PROCEEDINGS

**WAC 480-07-900 Open public meetings.** (1) **Regular meetings.** The commission will hold regular meetings to conduct business under chapter 42.30 RCW, the Open Public Meetings Act. The commission generally schedules two business meetings per month, usually on Thursday at 9:30 a.m. in the commission's office in Olympia, Washington. The specific time and place of each business meeting are published, as required, in the *Washington State Register* and on the commission's internet web site. The commission may cancel a meeting or change the time or place of a meeting and will publish a notice of these changes on its web site.

(2) **Special meetings.** The commission may convene special meetings under RCW 42.30.080.

(3) **Recessed meetings.** The commission may recess a regular or special meeting and reconvene it at a different time or location.

(4) **Agenda.** The commission will distribute an agenda for each regular business meeting. The commission will make its best effort to compile and publish a complete agenda. It may amend its agenda after it is published and may take up matters that do not appear on its published agenda. The agenda and any addendum are posted to the commission's internet site. The commission will provide a copy of the agenda via U.S. mail on request.

(a) **"Discussion" agenda.** The discussion agenda includes items that are scheduled for discussion and action by the commissioners. This part of the agenda is further divided into "utilities" and "transportation" sections.

(b) **"No action" agenda.** The no-action agenda includes items that appear to be noncontroversial and, by law, may take effect without action by the commission. Any item on the no-action agenda will be moved to the discussion agenda at the request of any commissioner. The commission may take such action on the item as it deems appropriate.

(c) **"Consent" agenda.** The consent agenda includes items that appear to be noncontroversial and, by law, require action by the commission to take effect. Any item on the consent agenda will be moved to the discussion agenda at the request of any commissioner. The commission will act on the items on the consent agenda by a single motion and a single vote of the commission.

#### (5) **Deadlines and schedules.**

(a) The commission generally schedules items for consideration at the last regular business meeting before the item would take effect by law. The commission generally schedules items without a stated effective date, such as petitions, for consideration thirty days after filing.

(b) If a company makes a filing and requests action by the commission before the statutory or required notice period

is complete, the commission will schedule consideration of the request at its next regular business meeting, if the request is filed and complete at least seven business days before the meeting. Items filed less than seven business days before a meeting will generally be scheduled for the second business meeting after the filing.

(c) All written comments in response to an open meeting item must be filed with the commission three business days in advance of the meeting. Persons are not required to file written comments about an open meeting item to make oral comments at the meeting.

(d) The commission will publish the agenda for each regular business meeting two business days before the meeting.

(e) The commission may publish an addendum to the agenda prior to the beginning of the meeting.

(6) **Staff contact.** For each item on the discussion agenda, the commission designates a staff member who is assigned to analyze and present a recommendation to the commission at the open meeting. The staff person and a contact number are identified in the agenda. Persons interested in open meeting agenda items may discuss them with staff, subject to time availability.

(7) **Public comment.** The commission will provide an opportunity at the beginning of each business meeting for members of the public to request that items on the consent or no-action sections of the agenda be moved to the discussion section. The commission will provide an opportunity for public comment on each discussion agenda item before taking action on that item.

(8) **Orders.** The commission may direct the secretary to enter any order or sign any document necessary to implement an open meeting decision by the commissioners.

(9) **Modifications.** The commission may exercise its discretion to modify the procedures in this section when appropriate to the conduct of its business.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 08-18-012 (Docket A-072162, General Order R-550), § 480-07-900, filed 8/22/08, effective 9/22/08; WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-900, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-900, filed 11/24/03, effective 1/1/04.]

#### **WAC 480-07-903 Delegation of authority to the executive secretary.** (1) **General provisions.**

(a) The working title of the secretary position authorized in RCW 80.01.030 is "executive secretary."

(b) The commission delegates authority to the executive secretary as set out in this section and WAC 480-07-904 and 480-07-905, pursuant to RCW 80.01.030 and subject to oversight and direction by a majority of the commissioners.

(c) The commission may also delegate functions to the executive secretary by order.

(d) When the executive secretary is absent or otherwise unavailable to perform authorized duties, the commission authorizes the executive secretary's designee to perform the duties on behalf of the executive secretary.

(2) **General delegation of authority.** The commission authorizes the executive secretary to supervise the general administrative functions of the agency, including without limitation the following specific tasks.

(a) **Filings, correspondence and documents.** The executive secretary will sign commission documents to be filed with the code reviser, courts, or other agencies or governmental entities. The executive secretary will sign other official commission correspondence and filings that the commissioners do not sign. The executive secretary will sign all permits and other official commission documents.

(b) **Appointing authority.** The executive secretary is the "appointing authority" for the commission and has authority over appointment, separation, and discipline of commission employees. This authority includes, but is not limited to, appointments, terminations, reductions in force, dismissals, suspensions, and demotions pursuant to WAC 356-30-007 and 356-34-011

(c) **Grievance procedure.** The commission authorizes the executive secretary to hear bargaining unit employee grievances and enter a final agency decision. The commission reserves the right to hear individual grievances or to select another designee to hear grievances on a case-by-case basis.

(d) **Rejection of defective filings.** The executive secretary will sign orders or letters rejecting tariffs, contracts, applications, or other filings that do not comply with statutory requirements or commission rules regarding effective dates, required supporting documents, or other standards for a complete filing.

(3) **Authority to resolve delegated matters.** Matters delegated to the executive secretary by rule are specified in this section and in WAC 480-07-904 and 480-07-905. The executive secretary may exercise discretion to defer any delegated matter to the commissioners for decision.

(4) **Authority to sign discretionary orders implementing commission decisions.**

(a) **Commissioner direction.** A majority of the commissioners may direct the executive secretary to sign an order or decision implementing a decision made by a majority of the commissioners.

(b) **Commissioner unavailability.** When a majority of the commissioners are unavailable to sign and enter decisions and orders of the commission, the executive secretary is authorized to do so without express direction only when:

(i) A majority of the commissioners has previously reached a decision on the merits of the particular matter; and

(ii) In the executive secretary's judgment, in consultation with any available commissioner, entry of the order cannot be deferred pending commissioner availability.

(5) **Commission review.** Commission review of decisions delegated under RCW 80.01.030 is *de novo*.

[Statutory Authority: 2006 c 246, RCW 80.01.040 and 80.04.160. WSR 06-17-126 (Docket A-060357, General Order No. R-538), § 480-07-903, filed 8/21/06, effective 9/21/06.]

**WAC 480-07-904 Delegation of authority to the executive secretary to decide certain matters.** (1) The commission delegates the following matters to the executive secretary for decision. The executive secretary's decision shall take effect immediately on entry of an order or on a later date specified in the order, without prior notice. The executive secretary may set any particular matter for decision by the commission through either the open meeting process or an administrative process the commission otherwise employs.

Upon request, the commission will review the matter under subsection (3) of this section at a commission open meeting.

(a) Applications for funding highway-railroad grade crossing improvements under the grade crossing protection fund for applications under WAC 480-62-405 (1)(a).

(b) Petitions for approval of changes to existing highway-railroad grade crossings, including installation or modification of signals; reconstruction of the crossing; or implementation of changes in design or construction.

(c) Applications by water companies for removal from regulation or for the commission to exercise regulation under RCW 80.04.010.

(d) Applications for approval of:

(i) Fully negotiated telecommunications interconnection agreements; and

(ii) Adoptions of existing interconnection agreements.

(e) Applications for less than statutory notice approval of transportation company fuel surcharges and requests for rate increases limited to passing through costs that are authorized for pass-through, such as tipping fees.

(f) Requests for a commission order establishing that a securities filing complies with RCW 80.08.040.

(g) Requests for assignment or management of telephone number resources.

(h) Petitions for mitigation of penalties when the petitioner does not request a hearing, or when commission staff supports the request for mitigation.

(i) Requests for approval of service area agreements.

(j) Petitions for exemption to allow extensions of time to make filings under deadlines set by rule or order, not including deadlines established in an adjudication.

(k) Requests for registration as a telecommunications company in Washington.

(l) Requests by telecommunications companies for authorization of transfers of property under WAC 480-143-120 (Transfers of property) or determination under WAC 480-143-180 (Disposal and determination of necessary and useful property) that property is not necessary or useful to perform public duties and may be disposed, limited to property that has a market value that does not exceed either one percent of the company's rate base, last established by commission order, or two hundred thousand dollars, whichever is greater.

(2) **Notice.** The commission will post on its internet web site for at least fourteen days a listing of all matters decided pursuant to subsection (1) of this section, showing the docket number, date of entry of decision, company name and last date for a request for review to be filed. The commission will regularly publish electronic notice of listings to persons requesting such notice. Any person may request notice by alternative means.

(3) **Opportunity for review.**

(a) Delegated matters, generally. Any affected person may ask the commission to review any matter delegated under subsection (1) of this section. A person seeking review must file his or her request for commission consideration no later than the fourteenth day after the date of the posting. The commission will grant a late-filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request. The commission will provide a form for this purpose on the commis-

sion's web site. The commission will schedule a request for review promptly for consideration and will notify the affected company, and any person requesting review, of the time and place of the open meeting at which review will be taken.

(b) Orders suspending or canceling permits. Carriers seeking review of orders suspending or canceling a permit for failure to maintain evidence of required insurance coverage, or for other circumstances specified in WAC 480-07-905, must request an adjudicative or brief adjudicative proceeding under WAC 480-07-610.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 08-18-012 (Docket A-072162, General Order R-550), § 480-07-904, filed 8/22/08, effective 9/22/08; WSR 06-17-126 (Docket A-060357, General Order No. R-538), § 480-07-904, filed 8/21/06, effective 9/21/06.]

**WAC 480-07-905 Delegation of authority to executive secretary to enter *ex parte* orders.** The commission authorizes the executive secretary to enter the following *ex parte* orders in the name of the commission in nonadjudicative matters. Notice of the order will be published, and responses must follow the procedure outlined, in WAC 480-07-904 (2) and (3), except that carriers seeking review of orders suspending or canceling a permit for failure to maintain evidence of required insurance coverage, or other circumstance specified in subsections below, must request an adjudicative or brief adjudicative proceeding under WAC 480-07-610.

**(1) Household goods carriers, chapter 480-15 WAC.**

(a) Orders granting authority and permits for permanent, provisional or temporary intrastate transportation of household goods.

(b) Orders and permits authorizing or reflecting change of a carrier's permit name, corporate name, trade name, or addition of a trade name.

(c) Orders authorizing voluntary suspension of permit authority if the carrier satisfies the requirements of chapter 480-15 WAC.

(d) Orders reinstating voluntarily suspended permit authority if the carrier satisfies the requirements of chapter 480-15 WAC.

(e) Orders permanently canceling permit authority or dismissing application by request of carrier or applicant.

(f) Orders suspending a permit if the carrier fails to maintain evidence of required cargo and/or liability insurance coverage. Such orders will inform the carrier that a permit may be reinstated if the carrier corrects conditions leading to suspension and that the carrier may contest the suspension by requesting an adjudicative or brief adjudicative proceeding.

(g) Orders vacating suspension of a permit if the commission receives the insurance filing during the suspension period and orders of abeyance if the carrier requests a hearing or brief adjudicative proceeding.

(h) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension, and fails to request a hearing or brief adjudicative proceeding, during the suspension period.

(i) Orders reinstating previously canceled permit authority if the carrier satisfies the requirements of chapter 480-15 WAC.

(j) Orders rejecting or denying applications for temporary authority if WAC 480-15-285 applies.

(k) Orders rejecting or denying applications for permit authority under WAC 480-15-320 or 480-15-330, or canceling a permit if the carrier does not satisfy conditions for granting authority, or for good cause under WAC 480-15-450.

**(2) Solid waste collection companies—Specialized, chapters 81.77 RCW and 480-70 WAC.**

(a) Orders and permits authorizing intrastate solid waste collection services involving unprotested applications in territory not served by any existing carrier.

(b) Orders and permits authorizing change of carrier's corporate name, trade name, or addition of a trade name.

(c) Orders and permits approving unprotested applications to transfer or lease certificate.

(d) Orders suspending a permit if the carrier fails to maintain evidence of the required liability insurance coverage. The order will inform the carrier that the permit may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest the suspension by requesting an adjudication or brief adjudicative proceeding.

(e) Orders vacating suspension of permit if the commission receives the carrier's insurance filing during the suspension period and orders of abeyance if the carrier requests a hearing or brief adjudicative proceeding.

(f) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension, and fails to request a hearing or brief adjudicative proceeding, during the suspension period.

(g) Orders reinstating a permit canceled for cause if the conditions for reinstatement in chapter 480-70 WAC and in the order of cancellation are met.

(h) Orders dismissing application or canceling permit authority by request of applicant or carrier.

**(3) Solid waste collection companies—Traditional, chapters 81.77 RCW and 480-70 WAC.**

(a) Orders and permits authorizing intrastate solid waste collection services involving unprotested applications in territory not served by an existing carrier.

(b) Orders and permits authorizing change of carrier's name, trade name or addition of a trade name.

(c) Orders suspending a permit if the carrier fails to maintain evidence of the required level of insurance in effect for its operations. The order will inform the carrier that the permit may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest the suspension by requesting a hearing or brief adjudicative proceeding.

(d) Orders vacating suspension of a permit if the commission receives the carrier's insurance filing during the suspension period and orders of abeyance if the carrier requests a hearing or brief adjudicative proceeding.

(e) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension, and fails to request a hearing or brief adjudicative proceeding, during the suspension period.

(f) Orders reinstating a permit canceled for cause if the conditions for reinstatement in chapter 480-70 WAC and in the order of cancellation are met.

(g) Orders dismissing application or canceling permit authority by request of applicant or carrier.

**(4) Private, nonprofit transportation providers, chapter 480-31 WAC.**

(a) Orders and permits authorizing intrastate transportation of persons with special needs.

(b) Orders and permits authorizing sale, assignment, lease, acquisition or transfer.

(c) Orders suspending a permit if the carrier fails to maintain evidence on file that it has the required level of insurance in effect for its operations. The order must inform the carrier that the permit may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest the suspension by requesting a hearing or brief adjudicative proceeding.

(d) Orders vacating suspension of a permit if the commission receives an insurance filing during the suspension period and orders of abeyance if the carrier requests a hearing or brief adjudicative proceeding.

(e) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension, and fails to request a hearing or brief adjudicative proceeding, during the suspension period.

(f) Orders reinstating a permit canceled for cause if the conditions for reinstatement in chapter 480-31 WAC and in the order of cancellation are met.

(g) Orders dismissing application or canceling permit authority by request of applicant or carrier.

**(5) Charter and excursion busses, chapter 480-40 WAC.**

(a) Orders and permits authorizing intrastate transportation of passengers by charter or excursion.

(b) Orders suspending permit if the carrier fails to show that it has the required level of insurance in effect for its operations. The order will inform the carrier that the permit may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest the suspension by requesting a hearing or brief adjudicative proceeding.

(c) Orders vacating suspension of permit if the commission receives an insurance filing during the suspension period or orders of abeyance if the carrier requests a hearing or brief adjudicative proceeding.

(d) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension and fails to request a hearing or brief adjudicative proceeding during the suspension period.

(e) Orders canceling permit authority or dismissing an application by request of the carrier or applicant.

(f) Orders dismissing application after due notice to applicant for failure to meet the requirements of chapter 480-40 WAC.

(g) Orders authorizing lease, assignment, or transfer of permit authority.

**(6) Auto transportation companies, chapter 81.68 RCW.**

(a) Orders and permits authorizing intrastate, intercity transportation of passengers involving unopposed applications to serve routes not served by any existing carrier and that do not fall within the boundaries of a transit district.

(b) Orders and permits involving name changes, including trade names.

(c) Orders authorizing lease, assignment, or transfer of permit authority.

(d) Orders suspending a permit if the carrier fails to maintain evidence on file that it has the required level of insurance in effect for its operations. The order will inform the carrier that the permit may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest the suspension by requesting a hearing or brief adjudicative proceeding.

(e) Orders vacating suspension of a permit if the commission receives an insurance filing during the suspension period and orders of abeyance if the carrier requests a hearing or brief adjudicative proceeding.

(f) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension, and fails to request a hearing or brief adjudicative proceeding, during the suspension period.

(g) Orders reinstating a permit canceled for cause if the conditions for reinstatement in chapter 81.68 RCW and in the order of cancellation are met.

(h) Orders dismissing application or canceling permit authority by request of applicant or carrier.

**(7) Commercial ferries, chapter 480-51 WAC.**

(a) Orders suspending a certificate if the carrier fails to maintain the required insurance coverage. The order will inform the carrier that the certificate may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest suspension by requesting a brief adjudication or an adjudication.

(b) Orders vacating suspension of a certificate if the carrier corrects conditions leading to suspension and orders of abeyance if the respondent requests a brief adjudication or an adjudication.

(c) Orders canceling a previously suspended certificate if the carrier fails to correct conditions leading to suspension and fails to timely request an adjudication or brief adjudication.

**(8) Temporary transportation authority.** The commission delegates to the executive secretary decisions in applications for temporary motor carrier or solid waste authority. The decision takes effect immediately on entry of an order without prior notice of delegation. An applicant whose application is denied, in whole or in part, may obtain review by requesting an adjudication within twenty days following entry of the order. Commission review of delegated decisions under this provision will be *de novo*.

**(9) Cancellation for failure to file annual reports or pay regulatory fees.** The commission delegates to the executive secretary notices to regulated companies concerning their failure to timely file annual reports and pay regulatory fees, as well as orders scheduling hearings and canceling registrations or permit authority for failure to comply with commission rules governing annual reports and regulatory fees.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 08-18-012 (Docket A-072162, General Order R-550), § 480-07-905, filed 8/22/08, effective 9/22/08; WSR 06-17-126 (Docket A-060357, General Order No. R-538), § 480-07-905, filed 8/21/06, effective 9/21/06.]

**WAC 480-07-910 Informal complaints. (1) How to make an informal complaint.** Any person may make an informal complaint to the commission about any business

that the commission regulates. A person may make an informal complaint by telephone, correspondence, fax transmission, email, or by using the complaint form available on the commission's web site.

(2) **Contents.** An informal complaint must identify the business or person to whom the complaint pertains. An informal complaint should:

(a) Present all facts that are needed for the commission to understand the nature of, and reason(s) for, the complaint;

(b) Describe the acts or omissions that led to the complaint, with all relevant dates;

(c) Cite all relevant statutes or rules, if the person who files the complaint knows them.

(3) **Commission response; result.** Commission employees assigned to assist consumers may discuss an informal complaint with the affected persons, by correspondence or otherwise. The commission will investigate to determine if there are violations of any applicable rule or law and if so, will work with the parties to ensure compliance. The commission encourages the informal resolution of disputes whenever possible. An informal complaint will not result in a hearing or in an order that compels a person to do something or forbids a person from doing something.

(4) **Uniform Mediation Act not applicable.** The Uniform Mediation Act (chapter 172, Laws of 2005, codified as chapter 7.07 RCW) does not apply to the commission's informal complaint resolution process.

(5) **Filing of formal complaint regarding subject of informal complaint.** Making an informal complaint does not prevent any party from filing a formal complaint. The commission may initiate a formal complaint proceeding on its own initiative. The commission will stop processing an informal complaint when a person filing an informal complaint files a formal complaint.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-910, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-910, filed 11/24/03, effective 1/1/04.]

#### **WAC 480-07-920 Interpretive and policy statements.**

(1) **General.** Upon the petition of any person, or upon its own motion, the commission may make and issue interpretive and policy statements to advise the public of its current opinions, approaches, and likely courses of action.

(2) **Roster of interested persons.** The commission will maintain a roster of interested persons, consisting of persons who have requested in writing to be notified of all interpretive and policy statements issued by the commission. The commission will periodically update the roster. When the commission issues an interpretive or policy statement, it will send a copy of the statement to each person on the roster.

(3) **Index of current statements.** The commission maintains a file and an index of all currently effective interpretive and policy statements. The statements are available for inspection and copying at the records center in the commission's Olympia headquarters office and are posted on the commission's internet web site.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-920, filed 11/24/03, effective 1/1/04.]

(2/28/17)

**WAC 480-07-930 Declaratory orders under RCW 34.05.240.** (1) **Petition.** Any interested person may petition the commission for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the commission, as provided by RCW 34.05.240.

(a) **Format.** Petitions for declaratory orders under RCW 34.05.240 must conform in style and substance to the requirements for other forms of adjudicative pleading as specified in Part III, subpart A of this chapter.

(b) **Relationship with adjudications.** The commission will dismiss a petition for declaratory order when issues in the petition are at issue in a pending adjudication. The commission will reject a single pleading that seeks a declaratory order or, in the alternative, an adjudicative order. The filing party must choose which process it deems appropriate.

(2) **Notice.** The commission will give notice of any petition for declaratory order within fifteen days after the commission receives the petition. The notice will be served on all persons who are required by law to be given notice and on any other person to whom the commission deems notice to be desirable.

(3) **Response.** Any person may respond to a petition for declaratory order by filing an answer within twenty days after the petition is filed or at such other time as the commission may establish by notice. The commission will not enter a declaratory order under RCW 34.05.240 if any person asserts in response to a petition for declaratory order filed pursuant to RCW 34.05.240 that their rights might be substantially prejudiced by entry of a declaratory order, supports such assertion by sworn affidavit demonstrating the potential for substantial prejudice, and does not consent in writing to the determination of the matter by a declaratory order proceeding under RCW 34.05.240.

(4) **Conversion of proceeding.** The commission may convert the form of a declaratory order proceeding as provided under RCW 34.05.070 and conduct the matter as an adjudicative proceeding under Part III, subpart A of this chapter.

(5) **Commission action on petition.** Within thirty days after it receives a petition for declaratory order, the commission will:

(a) Enter a declaratory order;

(b) Notify the petitioner that the commission will not enter a declaratory order under RCW 34.05.240, and state reasons for its action;

(c) Set a specified time, no later than ninety days after the day the petition was filed, by which the commission will enter a declaratory order; or

(d) Set a reasonable time and place for a hearing. If a hearing is held on a petition for declaratory order under RCW 34.05.240, it must be held no more than ninety days after receipt of the petition. If a hearing is held, the commission will give at least seven days' notice to the petitioner, to all persons to whom notice is required by law, and to any other person it deems desirable. The notice will include the time, place, and a statement of the issues involved.

(6) **Extension of time.** The commission may for good cause extend the times specified in subsection (5)(c) and (d) of this section.

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(7) **Commission action after hearing.** If a hearing is held as provided in subsection (5)(d) of this section, the commission will within a reasonable time:

- (a) Enter a declaratory order; or
- (b) Notify the petitioner that the commission will not enter a declaratory order and state the reasons for its action.

(8) **Service.** The commission will serve its order or notice upon all persons who are required to receive notice under subsection (2) of this section.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-930, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-930, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-940 Conversion of proceedings.** The commission will consider whether to convert a proceeding pursuant to RCW 34.05.070 upon application by any person or upon its own motion.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-940, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-950 Joint hearings with other administrative bodies.** (1) **Federal.** The rules of practice and procedure of the federal agency govern in any proceeding in which the commission participates jointly with a federal agency.

(2) **State.** The rules of the state in which the hearing is held govern in any proceeding in which the commission participates jointly with the administrative body of another state or states, unless otherwise agreed by the participating agencies.

(3) **Who may appear.** Any person entitled to appear in a representative capacity before any of the agencies involved in a joint hearing may appear in the joint hearing.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-950, filed 11/24/03, effective 1/1/04.]