

# Chapter 480-07 WAC

## PROCEDURAL RULES

### WAC

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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 Repealed by WSR 17-06-051 (General Order R-588), filed 2/28/17, effective 3/31/17.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 Repealed by WSR 17-06-051 (General Order R-588), filed 2/28/17, effective 3/31/17.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 Repealed by WSR 17-06-051 (General Order R-588), filed 2/28/17, effective 3/31/17.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.
- 480-07-550 General rate proceedings—Compliance filings and other resulting filings. [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.] Repealed by WSR 18-18-041 (Docket A-130355, General Order R-592), filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 80.01.040 and 80.04.160.
- 480-07-883 Compliance filing—Filing requirements; timing; commission action. [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.] Repealed by WSR 18-18-041 (Docket A-130355, General Order R-592), filed 8/29/18, effective 9/29/18. 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 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 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 com-

mission 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.

Submissions in these dockets or types of documents:	Must comply with these rules and:
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;
(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 message 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. Oth-

erwise, 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 and other restricted information.**

Several statutory provisions limit or prevent disclosure of certain information provided to the commission, including provisions exempting specified public records from disclosure or preventing the release of confidential information until affected parties have an opportunity to obtain a court order forbidding the release. The commission will provide special handling of, and restrict access to, information provided to the commission under these statutory provisions. This rule addresses each of these types of restricted information, including how to designate documents as containing exempt information, confidential information, or highly confidential information. Chapter 480-04 WAC governs the commission's specific process for responding to requests for public records that seek restricted information. WAC 480-07-420 governs access to, and exchange of, restricted information by parties in commission adjudicative proceedings.

(1) **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.

##### **(2) Definitions.**

(a) *Document* means any writing as the legislature has defined that term in the Public Records Act, chapter 42.56 RCW.

(b) *Confidential information* means 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 and 81.77.210.

(c) *Exempt information* means information protected from inspection or copying under an exemption from disclosure under chapter 42.56 RCW or any other provisions of law providing an exemption from public disclosure.

(d) *Highly confidential information* means confidential information subject to heightened protection pursuant to a commission-issued protective order with provisions governing such information.

(e) *Provider* means any person who submits information to the commission or commission staff under a claim that disclosure of the information is restricted pursuant to this rule; provided that for purposes of complying with subsection (5) of this section, "provider" does not include individuals who provide their own financial or personally identifiable information to the commission.

(f) *Redacted version* means the version of a document submitted to the commission with restricted information masked.

(g) *Requester* means any person who submits a request for public records under the Public Records Act, chapter 42.56 RCW.

(h) *Restricted information* means exempt, confidential, or highly confidential information.

(i) *Unredacted version* means the version of a document submitted to the commission with all information unmasked and visible.

(3) **Waiver.** A provider may claim the protection of this rule only by strict compliance with its requirements. The commission may refuse to accept for filing any document that fails to comply with these requirements. Failure to properly designate confidential or highly confidential information as required in this rule, WAC 480-07-420, or a commission protective order may result in disclosure of the information in response to a request for public records or in discovery. If a provider fails to properly designate, or otherwise does not properly treat, exempt, confidential, or highly confidential information that belongs to another person, that person may petition or file a motion with the commission seeking to protect the information and requesting any other appropriate relief.

**(4) Exempt information.**

(a) *Designating information as exempt from disclosure.* Any provider claiming that information provided to the commission is exempt from disclosure must make that claim in writing at the time the provider submits the document containing the information. The provider must also state the basis for the claim of exemption at the time the provider submits information claimed to be exempt.

(b) *Provision of documents with information designated as exempt.* Any provider claiming that a document contains exempt information must submit both a redacted and an unredacted version to the commission.

**(c) Marking and submission.**

(i) The provider must clearly designate information claimed to be exempt on each page of the unredacted version by highlighting the text with no more than twenty percent gray shading. The provider must clearly mark each copy of the document with the designation, "Shaded information is designated as exempt per WAC 480-07-160" on the first page of a multipage document and on each specific page that the provider claims contains exempt information, except as modified pursuant to subsection (7)(a) of this section or WAC 480-07-420 and except as provided in subsection (8) of this section.

(ii) The provider must print on yellow paper any required paper copy of the pages of the unredacted version of a document that contain information designated as exempt and submit that document, in its entirety, in a sealed envelope. A provider submitting more than one document containing infor-

mation designated as exempt as part of the same filing must collate all of these 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, the provider must submit each set of documents containing information designated as exempt in a separate envelope to the extent feasible.

(iii) The provider must label the redacted version of the document as redacted. The provider must either completely black out the information claimed to be exempt or leave a blank space where that information is located in the redacted version. The redacted and unredacted 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 exempt, the provider may submit a single page in the redacted version for the contiguous exempt pages if that page identifies the pages claimed to contain exempt information.

(iv) The provider must file the redacted and unredacted versions with the commission in the same web portal submission. If using another type of submission, the provider must file the redacted and unredacted versions at the same time but in separate submissions. When submitting electronic unredacted versions, the provider must state in the description field of the web portal submission, in the subject line of the transmitting email, or on a visible portion of the disc or electronic storage medium, whichever is applicable, that one or more documents in the filing contain information designated as exempt under this section.

(d) *Procedures upon a request for information designated as exempt.* If a requester submits a public records request for information that a provider has designated as exempt, the commission will follow the procedures outlined in chapter 480-04 WAC.

(e) *Challenges to designations of information as exempt.* The commission or a party to a proceeding in which a provider submits a document with information designated as exempt may challenge that designation. The commission will provide an opportunity to the provider and the parties to any adjudication to respond before ruling on the challenge. The commission may express its ruling orally on the record in an adjudicative proceeding, or in a written order.

**(5) Confidential information.**

**(a) Designating information as confidential information.**

Any provider claiming that information provided to the commission is confidential must make that claim in writing at the same time the provider submits the document containing the information and must state the basis for the claim. To the extent feasible, the provider also must identify any person (other than the provider) who might be directly affected by disclosure of the confidential information.

(b) *Provision of documents with information designated as confidential.* Any provider claiming that a document contains confidential information must submit both a redacted and an unredacted version to the commission.

**(c) Marking and submission.**

(i) The provider must clearly designate information claimed to be confidential on each page of the unredacted version by highlighting the text with no more than twenty percent gray shading. The provider must clearly mark each

copy of the unredacted version of the document with the designation, "Shaded information is designated as confidential per WAC 480-07-160" on the first page of a multipage document and on each specific page the provider claims contains confidential information except as modified pursuant to subsection (7)(a) of this section or WAC 480-07-420 with respect to confidential information provided pursuant to a protective order and except as provided in subsection (8) of this section.

(ii) The provider must print on yellow paper any required paper copy of the pages of the unredacted version of a document that contain information designated as confidential and submit that document, in its entirety, in a sealed envelope. A provider submitting more than one document containing information designated as confidential as part of the same filing must collate all of these 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, the provider must submit each set of documents containing information designated as confidential in a separate envelope to the extent feasible.

(iii) The provider must label the redacted version of the document as redacted. The provider must either completely black out the information claimed to be confidential or leave a blank space where that information is located in the document. The redacted and unredacted 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, the provider may submit a single page in the redacted version for the contiguous confidential pages if that page identifies the pages claimed to contain confidential information.

(iv) The provider must file the redacted and unredacted versions with the commission in the same web portal submission. If using another type of submission, the provider must file the redacted and unredacted versions at the same time but in separate submissions. When submitting electronic unredacted versions, the provider must state in the description field of the web portal submission, in the subject line of the transmitting email, or on a visible portion of the disc or electronic storage medium, whichever is applicable, that one or more documents in the filing contain information designated as confidential under this section.

(d) *Request for information designated as confidential.* If a requester submits a public records request for information that a provider has designated as confidential, the commission will follow the applicable process in chapter 480-04 WAC, WAC 480-07-420, or applicable protective order.

(e) *Challenges to designations of information as confidential.* The commission or a party to a proceeding in which a provider submits a document with information designated as confidential may challenge that designation. The commission will provide an opportunity to the provider and the parties to any adjudication to respond before ruling on the challenge. The provider of the information designated as confidential bears the burden to show that part or all of that information should be protected from disclosure. The commission may express its ruling orally on the record in an adjudicative proceeding, or in a written order.

#### **(6) Highly confidential information.**

(a) *Designating information as highly confidential.* Any provider claiming that information provided to the commission is highly confidential must make that claim in writing at the time the provider submits the document containing the information. The provider also must identify the highly confidential protective order providing the basis for the claim.

(b) *Provision of documents containing highly confidential information.* Any provider claiming that a document contains highly confidential information must submit a redacted and an unredacted version to the commission.

(c) *Marking and submission.*

(i) The provider must clearly designate information claimed to be highly confidential on each page of the unredacted version by highlighting the text with no more than twenty percent gray shading. The provider must clearly mark each copy of the document with the designation, "Shaded information designated as highly confidential per protective order in Docket (insert docket number)" on the first page of a multipage document and on each specific page which the provider claims contains highly confidential information, except as modified pursuant to subsection (7)(a) of this section or WAC 480-07-420 and except as provided in subsection (8) of this section.

(ii) The provider must print on blue paper any required paper copy of the pages of the unredacted version of a document that contain information designated as highly confidential and submit that document, in its entirety, in a sealed envelope. A provider submitting more than one document containing information designated as highly confidential as part of the same filing must collate all of these 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 filed, the provider must submit each set of documents containing information designated as highly confidential in a separate envelope to the extent feasible.

(iii) The provider must label the redacted version of the document as redacted. The provider must either completely black out the information claimed to be highly confidential or leave a blank space where that information is located in the redacted document. The redacted and unredacted 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 highly confidential, the provider may submit a single page in the redacted version for the contiguous restricted pages if that page identifies the pages claimed to be highly confidential.

(iv) The provider must file the redacted and unredacted versions with the commission in the same web portal submission. If using another type of submission, the provider must file the redacted and unredacted versions at the same time but in separate submissions. When submitting electronic unredacted versions, the provider must state in the description field of the web portal submission, in the subject line of the transmitting email, or on a visible portion of the disc or electronic storage medium, whichever is applicable, that one or more documents in the filing contain information designated as highly confidential under the applicable protective order.

(d) *Request for information designated as highly confidential.* If a requester submits a public records request for



information that a provider has designated as highly confidential, the commission will follow the applicable procedures in chapter 480-04 WAC, WAC 480-07-420, or the applicable protective order.

(e) *Challenges to designations of information as highly confidential.* The commission or a party to a proceeding in which a provider submits a document that the provider claims contains highly confidential information may challenge that designation. The commission will provide an opportunity to the provider and the parties to respond before ruling on any challenge. The provider of the information designated as highly confidential bears the burden to show that a part or all of that information should be protected from disclosure under the terms of the protective order. The commission may express its ruling orally on the record or in a written order.

(f) *Initial filing.* A provider may withhold information from an initial filing that the provider intends to designate as highly confidential after the commission enters a protective order under the following conditions:

(i) The provider describes the withheld information with reasonable particularity;

(ii) The provider files and serves complete unredacted and redacted versions of all documents that contain information designated as highly confidential as soon as practicable after the commission enters a protective order; and

(iii) The initial filing otherwise complies with all filing requirements in these rules including, but not limited to, the general rate proceeding filing requirements in subpart B. The commission may reject an initial filing if the withheld information is necessary for the commission to determine whether the filing complies with applicable filing requirements.

(7) **Procedures for documents containing multiple types of restricted information.** Documents submitted to the commission may contain more than one type of restricted information. For example, a document may contain exempt information on one page and highly confidential information on another page. Any provider submitting a document containing more than one type of restricted information must comply with the provisions of this rule for each type of restricted information, subject to the provisions of this subsection. When the commission receives a request for a document containing more than one type of restricted information, the commission will also follow the procedures listed above for each relevant type of restricted information.

(a) *Differentiating types of restricted information.* The provider is responsible for distinguishing each type of restricted information from another when a document contains more than one type of restricted information. Possible methods for doing so include, but are not limited to, underlining or bracketing one type of information. The provider must identify the method used on each page of the document that contains that type of restricted information, e.g., by modifying the required designations to state, "Underlined and shaded information designated as highly confidential per protective order in Docket (insert docket number)," and "Shaded only information designated as exempt under WAC 480-07-160." The method used must be visible on both the redacted and unredacted versions of the document.

(b) *Documents containing no highly confidential information.* When a document contains both exempt and confidential information but no highly confidential information,

the provider must submit a single unredacted version with all restricted information marked in accordance with subsections (4)(c), (5)(c), and (7)(a) of this section except as provided in subsection (8) of this section. The provider must submit a single redacted version with all restricted information masked.

(c) *Documents containing highly confidential information in addition to other types of restricted information.* When the document contains highly confidential information in addition to one or more other types of restricted information, the provider must submit a single unredacted version with all restricted information marked in accordance with subsections (4)(c), (5)(c), (6)(c), and (7)(a) of this section, as applicable, except as provided in subsection (8) of this section. The provider must submit at least two different redacted versions of the document. The first redacted version must mask all highly confidential information, but leave all other restricted information unmasked. The second must mask all highly confidential information and all other restricted information.

(8) **Spreadsheets.** If the cells in a spreadsheet or other tabular document include information that has been designated as exempt, confidential, or highly confidential and that would be impractical or unduly burdensome to mark as required in subsections (4) through (7) of this section, the provider need not comply with those requirements but must identify that information in a way that reasonably provides the commission with sufficient identification of the information to be protected and the basis for that protection.

(9) **Designation or redesignation of exempt, confidential, or highly 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 exempt, confidential, or highly confidential, that party must verify the accuracy of all such designations in the record and in the exhibit list for the proceeding, and submit to the commission 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 voluntarily removes, or is required by law to remove, the designation.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-20-002 (Docket A-130355, General Order R-593), § 480-07-160, filed 9/19/18, effective 10/20/18; 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.]

**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 design-

nee. 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.

[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); 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 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 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.

[Ch. 480-07 WAC p. 12]

(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-

(9/19/18)

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 peti-

tions 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 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 03-24-028 (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 com-

munication 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 proceeding, 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.

(9/19/18)

(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 unreason-

able 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 commission 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 subsection. 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.]

(9/19/18)

**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 the commission finds that parties reasonably anticipate that discovery or evidentiary filings will require information designated as confidential as defined in WAC 480-07-160 to be disclosed to other parties in the adjudication. Parties must comply with the requirements in the protective order and in WAC 480-07-160 for designating, marking, and filing documents containing information claimed to be confidential. In addition, parties must modify the designation required in WAC 480-07-160 (5)(c)(1) to state, "Shaded information designated as confidential per protective order in Docket (insert docket number)." When submitting the electronic unredacted versions, the provider must state in the description field of the web portal submission, in the subject line of the transmitting email, or on a visible portion of the disc or electronic storage medium, whichever is applicable, that one or more documents in the filing contain information designated as confidential under the 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. If the commission amends its standard protective order to include protections for highly confidential information, parties must comply with the requirements in the protective order and in WAC 480-07-160 for designating, marking, and filing documents containing information designated as highly confidential.

(b) *Protection for exempt information.* The commission may modify the standard protective order to include protection for exempt information if the commission finds that parties' access to information designated as exempt as defined in WAC 480-07-160 is necessary for development of the factual record in the adjudication. Parties must comply with the requirements in the protective order and in WAC 480-07-160 for designating, marking, and filing documents containing information designated as exempt. In addition, parties must modify the designation required in WAC 480-07-160 (4)(c)(i) to state, "Shaded information designated as exempt per protective order in Docket (insert docket number)." When submitting the electronic unredacted versions, the provider must state in the description field of the web portal submission, in the subject line of the transmitting email, or on a visible portion of the disc or electronic storage medium, whichever is applicable, that one or more documents in the filing contain information designated as exempt under the protective order.

(c) *Other information.* The commission reserves the right to restrict access to other types of information on a case-by-case basis through the use of a protective order.

(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.

(5) **Challenges to designations.** The commission or a party to a proceeding may challenge a designation of information as confidential, highly confidential, exempt, or otherwise protected from disclosure pursuant to a protective order. The commission will provide an opportunity for the provider of the information and other interested parties to respond before ruling on any challenge. The provider bears the burden to show that a part or all of the information should be protected from disclosure under the terms of the protective order. The commission may render its ruling orally on the record or in a written order. If the commission sustains the challenge to the designation, the commission will determine how and when the designated information must be disclosed.

(6) **Public record request for protected information.** If a requester submits a public records request during the pendency of an adjudicative proceeding, including any judicial review, for information that a provider has designated as confidential, highly confidential, exempt, or otherwise protected from disclosure pursuant to a protective order, the commission will review that request pursuant to the procedures in subsection (5) of this section. If a requester submits a public records request after an adjudicative proceeding has concluded, including any judicial review, for information that a provider has designated as confidential, highly confidential, exempt, or otherwise protected from disclosure pursuant to a protective order, the commission will follow the procedures in WAC 480-04-095.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-20-002 (Docket A-130355, General Order R-593), § 480-07-420, filed 9/19/18, effective 10/20/18; 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) **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 exhib-

its, 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
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 portion 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.

(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 filings to change rates charged by electric, natural gas, pipeline, telecommunications, and water companies, low-level radioactive waste sites, solid waste collection companies, and commercial ferries.

(2) **Inconsistencies with subpart A requirements.** If there is any inconsistency between the requirements in subpart B of these rules 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 of general rate proceedings.

(4) **Failure to comply.** The commission, pursuant to WAC 480-07-141, may reject, or require the company to revise, any filing to initiate a general rate proceeding that does not conform to the requirements of subpart B of these rules. The commission will provide a written statement of its reasons if it rejects a filing. The company may revise or refile a filing that remedies the noncompliance the commission has identified and otherwise fully complies with the rules consistent with the requirements in WAC 480-07-141(2), which governs the date on which the commission considers a filing to have been made.

(9/19/18)

(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 or 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 18-18-041 (Docket A-130355, General Order R-592), § 480-07-500, filed 8/29/18, effective 9/29/18; 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—Tariff suspension. (1) Filings that initiate general rate proceedings.**

Except as otherwise provided in this rule or RCW 80.04.130 (2)(a) (governing rate decreases for telecommunications companies), the commission will initiate a general rate proceeding in response to a filing by any public service company identified in WAC 480-07-500 requesting to change its rates if that filing meets any of the following criteria:

(a) The rates a company requests would alter its gross annual revenue from activities the commission regulates 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 collection company regulated under chapter 81.77 RCW.

(2) **Filings under Title 80 RCW that will not initiate general rate proceedings.** The commission generally will not initiate general rate proceedings in response to the following filings, even though the revenue the company requests may vary by three percent or more from the company's current gross annual revenue from Washington regulated operations:

(a) Periodic rate adjustments the commission has generally authorized for electric and natural gas companies (e.g., power cost adjustments, purchased gas cost adjustments, or decoupling adjustments);

(b) Emergency or other rate increases a company requests on short notice as a result of disasters, adverse weather, or other causes beyond the company's control that unexpectedly and substantially increase a public service company's expenses; or

(c) Rate changes designed to recover only the costs a company incurs to comply with government actions that directly impact the company's costs to provide regulated service (e.g., changes to tax laws or local fees) or to comply with federal or state rules concerning the level of rates for telecommunications companies.

(3) **Filings under chapter 81.77 RCW that will not initiate general rate proceedings.** The commission generally will not initiate general rate proceedings in response to the following filings by solid waste collection 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:

(i) That provide specialized hauling services restricted to certain specific waste products that are limited to specific customers; or

(ii) That provide only on-call or nonscheduled service (i.e., Class C companies, as defined in WAC 480-70-041).

(b) Filings seeking only to pass through a change in fees unilaterally established and imposed by governmental or unaffiliated private entities, including disposal, recycling, yard waste, or processing fees, or to pass through changes to fees charged by affiliated entities if the public service company demonstrates that the total cost of transfer, transport, and fees at the affiliate's facilities is equal to or lower than other reasonable and currently available alternatives;

(c) Filings for rate changes designed to recover only the costs a company incurs to comply with government actions that directly impact the company's costs to provide regulated service (e.g., changes to state or local fees, charges, or taxes directly related to the collection or disposal of solid waste);

(d) Filings implementing new solid waste collection programs; or

(e) Filings for periodic rate adjustments through a cost adjustment mechanism the commission has generally authorized for solid waste collection companies (e.g., fuel or recycling commodity adjustments).

(4) **Commission discretion.** The commission retains discretion to determine whether to initiate a general rate proceeding in response to any filing described in this section or to convert any rate proceeding to a general rate proceeding, following notice and an opportunity to comment, if the commission finds that such action is consistent with the public interest. The commission may require that any filing or proposal by a public service company to change rates for any customer class, or to restructure rates, be subject to the procedures and protections in subpart B of these rules.

(5) **Suspension of tariffs.** The commission may take action at a regularly scheduled open public meeting to suspend the tariff sheets included in any filing that seeks to change rates. A company may waive its right to commission consideration of the filing at an open meeting and request immediate suspension of the tariffs, either in the cover letter accompanying the filing or in a subsequent document. If commission staff confirms that the filing is complete and complies with the applicable rules in subpart B of these rules, the commission may enter a complaint and order suspending the tariffs without further process. The company and statutory parties may engage in discovery pursuant to WAC 480-07-400 through 480-07-415 after the commission issues a notice of prehearing conference prior to the commission entering a prehearing conference order.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-505, filed 8/29/18, effective 9/29/18; 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 proceeding filings—Electric, natural gas, pipeline, and Class A telecommunications companies.** General rate proceeding filings by electric, natural gas, pipeline, and Class A telecommunications companies as defined in WAC 480-120-034 must include the information described in this section. The company and all

parties to an adjudication in a general rate proceeding must file all required documents in electronic form consistent with the requirements in WAC 480-07-140 and by the next business day must file five paper copies of all testimony and exhibits unless the commission establishes a different number. If an exhibit is a database, spreadsheet, or model, the paper copy of that exhibit may simply reference or describe its contents if printing the entirety of the database, spreadsheet, or model would result in a document exceeding five pages and would render the data, spreadsheet cells, or model unusable. The party, however, must submit a complete electronic version of the database, spreadsheet, or model, with all information, formulae, and functionality intact, as part of the party's electronic filing.

(1) **Testimony and exhibits.** The company's initial filing and any supplemental filings the commission authorizes must include all testimony and exhibits the company intends to present as its direct case. The company must serve a copy of the initial filing on the public counsel unit of the Washington state attorney general's office at the time the company makes the filing with the commission if the proceeding is the type in which public counsel generally appears or has appeared in the past. The filing must include a results-of-operations statement showing test year actual results and any restating and pro forma adjustments in columnar format that support the company's general rate request. The company must identify each restating and pro forma adjustment and the effect of that adjustment on the company's operations and revenue requirement. 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's initial filing must include the company's proposed new or revised tariff sheets in legislative format (i.e., with strike-through to indicate the material to be deleted or replaced and underlining to indicate the material to be inserted) consistent with the requirements in WAC 480-80-105, as well as copies of any tariff sheets that are referenced in the new or amended tariff sheets.

(3) **Detailed support for proposals.**

(a) *General.* The company must include in its initial testimony and exhibits, including those addressing accounting adjustments, sufficient detail, calculations, information, and descriptions necessary to meet its burden of proof. Any party responding to the company's proposal also must include in that party's testimony and exhibits sufficient detail, calculations, information, and descriptions necessary to support its filed case.

(b) *Capital structure and rate of return.* The company must include in testimony and exhibits a detailed description of the development of any capital structure and rate of return proposals. Any other party that files testimony or exhibits that propose revisions to the company's current capital structure or authorized rate of return also must provide similar detailed information in testimony and exhibits supporting its proposal.

(c) *Restating and pro forma adjustments.* Each party that proposes restating or pro forma adjustments must include in its testimony and exhibits a detailed portrayal of the restating and pro forma adjustments the party uses to support its proposal or position. That portrayal must specify all relevant

assumptions and include specific references to charts of accounts, financial reports, studies, and all similar records on which the party relies. Testimony and exhibits must include support for, and calculations showing, the derivation of each input number used in the detailed portrayal, as well as the derivation of all interstate and multiservice allocation factors.

(i) Restating adjustments adjust the booked operating results for any defects or infirmities in actual recorded results of operations that can distort test period earnings. Restating adjustments are also used to adjust from an as-recorded basis to a basis that the commission accepts for determining rates. Restating adjustments must be calculated based on the unadjusted test year operating results, not on another party's adjustments. The commission may refuse to consider any adjustment that is not calculated consistent with this requirement. Nonexclusive examples of restating adjustments are adjustments that:

- (A) Remove prior period amounts;
- (B) Eliminate below-the-line items that were recorded as operating expenses in error;
- (C) Adjust from book estimates to actual amounts;
- (D) Annualize ongoing costs that the company began to incur part way through the test year;
- (E) Normalize weather or hydro conditions; or
- (F) Eliminate or 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 company and any other party filing testimony and exhibits proposing pro forma adjustments must identify dollar values and underlying reasons for each proposed pro forma adjustment. Pro forma adjustments must be calculated based on the restated operating results. Pro forma fixed and variable power costs, net of power sales, may be calculated directly based either on test year normalized demand and energy load, or on the future rate year demand and energy load factored back to test year loads.

(iii) If a party proposes to calculate an adjustment in a manner different than the method the commission most recently accepted or authorized for the company, the party must also include in testimony and exhibits the rationale for, and documents that demonstrate, how that adjustment would be calculated under the methodology previously accepted by the commission and must explain the reason for the proposed change. Commission approval of a settlement does not constitute commission acceptance of any underlying methodology unless the commission so states in the order approving the settlement.

(d) *Revenue sources.* The company must include in testimony and exhibits a detailed portrayal of revenue from regulated sources, by source, during the test year and the changes that would result in those revenues if the commission approves the company's request, including an explanation of how the resulting changes were derived.

(e) *Achievement of rate of return.* The company must demonstrate in testimony and exhibits why the company has not achieved its authorized rate of return and what actions the company has taken prior to and during the test year to improve its earnings in addition to its request for increased rates. If the company has not taken any such actions, the company must explain why it has not.

(f) *Rate base and results of operations.* The company's testimony and exhibits must include a representation of the company's actual rate base and results of operations during the test period, calculated in the same manner the commission used to calculate the revenue requirement in the final order in the company's most recent general rate proceeding.

(g) *Affiliate and subsidiary transactions.* The company's testimony and exhibits must supplement, as necessary, the annual affiliate and subsidiary transaction reports required in rules governing reporting for the applicable industry to include all such transactions during the test period. The company must identify all affiliate and subsidiary transactions that materially affect the proposed rates. The company must support the allocation method the company used to distribute common costs between regulated and nonregulated affiliated entities and the dollar amount of those costs.

(h) *Electronic documents and confidentiality.* Electronic files must be fully functional and include all formulas and linked spreadsheet files. Electronic files that support exhibits must use logical file paths, as necessary, by witness and must use identifying file names consistent with the naming requirements in WAC 480-07-140. A party may file a document with locked, hidden, or password protected cells only if such restricted access is necessary to protect the information within the cells that is not subject to public disclosure. The party must identify each locked, hidden, or password protected cell and must designate such cells, as well as any other information the party contends is confidential under RCW 80.04.095 or otherwise protected from public disclosure, in compliance with the requirements in WAC 480-07-160 and any applicable protective order. The party must make such information accessible to all persons who have signed the protective order or are otherwise entitled to access the information including, but not necessarily limited to, commission staff and public counsel. Redacted versions of models or spreadsheets that contain information that is designated as confidential or highly confidential or otherwise protected from public disclosure must be in .pdf format (using Adobe Acrobat or comparable software) and must mask the information protected from public disclosure as required in WAC 480-07-160.

(i) *Referenced documents.* If a party's testimony or exhibits refer to a document including, but not limited to, a report, study, analysis, survey, article, or court or agency decision, the party's testimony and exhibits must include that document except as provided below:

(i) A party may include an official citation or internet Uniform Resource Locator (URL) to a commission order or to a court opinion or other state or federal agency decision, rather than the document itself, if that decision is reported in a generally accepted publication (e.g., Washington Reports Second (Wn.2d), Public Utility Reports (P.U.R.), etc.) or if the document is readily available on the web site of the agency that entered that decision;

(ii) A party may include only the relevant excerpts of a voluminous document if the party also provides a publicly accessible internet URL to the entire document or describes the omitted portions of the document and their content and makes those portions available to the other parties and the commission upon request; and

(iii) A party is not required to file or distribute materials subject to third-party copyright protection but must describe those materials and their content and make them available for inspection upon request by the parties and the commission.

**(4) Work papers.**

(a) *General.* Work papers are documents that support the technical aspects of a party's testimony and exhibits. Work papers may include, but are not limited to, calculations, data analysis and raw data. Work papers are not a part of a party's direct case. Within five business days after each party files and serves its testimony and exhibits, the party also must provide to all other parties the work papers on which each of its witnesses relied when preparing testimony and exhibits. All work papers must comply with the requirements of this subsection.

(b) *Organization.* Work papers must be plainly identified and well organized, with different documents or sections separated by or into tabs, and must include an index. All work papers must be cross-referenced and include a description of the cross-referencing methodology.

(c) Any work papers provided to other parties must comply with requirements governing electronic documents and confidentiality in subsection (3)(h) and referenced documents in subsection (3)(i) of this section.

(d) *Filing designated work papers with the commission.* If the commission determines that it needs information in addition to a party's testimony and exhibits, the commission may issue a bench request for designated portions of that party's work papers. The commission will receive into evidence the work papers a party provides in response to a bench request unless the commission rejects that response, either in response to an objection or on the commission's own motion, as provided in WAC 480-07-405 (7)(b). The commission will not rely on any other work papers as the basis for any finding of fact or conclusion of law in the proceeding unless the commission formally admits such work papers into the evidentiary record.

**(5) Summary document.**

(a) *Contents.* The company must include in its initial filing a document that summarizes the information in this subsection (5)(a) on an annualized basis, if applicable, and 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 include:

(i) The date and amount of the last general rate change the commission authorized for the company and the revenue the company realized from that change during the test period based on the company's test period units of sale (e.g., kilowatt hours, therms, etc.);

(ii) Total revenues the company is realizing at its present rates and the total revenues the company would realize at the requested rates;

(iii) Requested revenue change in percentage, in total and by major customer class;

(iv) Requested revenue change in dollars, in total and by major customer class;

(v) The representative effect of the request in dollars for the average monthly use per customer, by customer class or

other similar meaningful representation, including, but not limited to, the effect of the proposed rate change in dollars per month on residential customers by usage categories;

(vi) Most current customer count, by major customer class;

(vii) Current authorized overall rate of return and authorized rate of return on common equity;

(viii) Actual rate of return and actual rate of return on common equity for the test period;

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

(x) Requested capital structure;

(xi) Requested net operating income;

(xii) Requested rate base and method of calculation, or equivalent; and

(xiii) Revenue effect of any requested attrition allowance.

**(b) Required service.**

(i) *Persons to receive service.* The company must serve the summary document on the persons designated below on the same date it files the summary document with the commission:

(A) The public counsel unit of the Washington state attorney general's office;

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

(C) All intervenors on the master service list for any other rate proceeding involving the company during the five years prior to the company's filing, if the company's rate change request may affect the rates established or considered in that prior proceeding; and

(D) All persons who have informed the company in writing that they wish to be provided with the summary document required under this section.

(ii) *Cover letter.* The company must enclose a cover letter with the summary document stating that the company's prefiled testimony and exhibits, and the accompanying work papers, are available from the company on request, subject to any restrictions on information that is protected from public disclosure, if the company is not serving them along with the summary document.

(iii) *Limitation.* This service requirement does not create a right to service or notice of future filings in the proceeding to the persons named to receive the summary. Any person other than commission staff and public counsel who wishes to be served documents subsequently filed in the general rate proceeding must petition to intervene in that proceeding.

**(6) Cost studies.** The company's initial filing must: (a) Include any cost studies the company performed or relied on to prepare its proposals; (b) identify all cost studies conducted in the last five years for any of the company's services; and (c) describe the methodology the company used in all such cost studies. If the cost studies are in the form of a model, the company must provide a copy of, or reasonable access to, the model that will enable the commission to verify and modify the model's inputs and assumptions.

**(7) Additional documents.** The company's initial filing must include the following documents or an internet URL for each of these documents:



(a) The company's most recent annual report to shareholders, if any, and any subsequent quarterly reports to shareholders;

(b) The company's most recent FERC Form 1 and FERC Form 2 for electric and natural gas companies; and

(c) 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 rate change request.

[Statutory Authority: TRCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-510, filed 8/29/18, effective 9/29/18; 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 proceeding filings—Solid waste collection companies and commercial ferries.** General rate proceeding filings by solid waste collection companies or commercial ferries must include the information described in this rule. The company must file all required documents in electronic form consistent with the requirements in WAC 480-07-140. A solid waste collection company may file a document with locked, hidden, or password protected cells only if such restricted access is necessary to protect the information within the cells that is not subject to public disclosure. The solid waste collection company must identify each locked, hidden, or password protected cell and must designate such cells, as well as any other information the party contends is confidential under RCW 81.77.210 or otherwise protected from disclosure, in compliance with the requirements in WAC 480-07-160 and any applicable protective order. The solid waste collection company must make such information accessible to all persons who have signed the protective order or are otherwise entitled to access the information including, but not necessarily limited to, commission staff. A commercial ferry company may not file a document with locked, hidden, or password protected cells.

(1) **Proposed tariff.** The company's initial filing must include the company's proposed tariff sheets. Sections that are narrative, e.g., that contain rules or notes, must be in legislative format, i.e., with strike-through to indicate any material to be deleted or replaced and underlining to indicate any material to be inserted. Changes to tariff sections that are tabular, e.g., charts containing rates and charges, must be marked with appropriate tariff symbols consistent with the requirements in WAC 480-70-286.

(2) **Local government ordinances and customer notices.** The company's initial filing must include 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.** The company's initial filing must include a transmittal letter in compliance with WAC 480-70-326.

(4) **Work papers.** The company's initial filing must include all work papers that support the company's rate change request. Work papers must include the following:

(a) A detailed pro forma income statement separated by customer class, with restating and pro forma adjustments,

reflected in separate columns, including all supporting calculations and documentation for all adjustments.

(i) Restating adjustments adjust the booked operating results for any defects or infirmities in actual recorded results of operations that can distort test period earnings. Restating adjustments are also used to adjust from an as-recorded basis to a basis that the commission accepts for determining rates. Examples of restating 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 company's initial filing must identify dollar values and underlying reasons for each proposed pro forma adjustment.

(iii) Restating and pro forma adjustments must be calculated as the variance from the booked operating results.

(b) A calculation of the total revenues the company is realizing at its present rates and the total revenues the company would realize at the requested rates.

(c) An income statement listing all revenue and expense accounts by month or a supporting general ledger for the test period.

(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. The company must provide copies of all contracts upon request.

(f) A detailed study that reconciles service pickups or passenger counts, as applicable, to the test year revenue by tariff item or service. The computed revenue must reconcile within five percent of test period revenue.

(g) A consolidated balance sheet for the company with supporting documentation including, but not limited to, detailed cost of debt and a list of all real property and vehicle leases to which the company is a party.

(h) A detailed calculation of net investment in plant and equipment and the net book value of used and useful assets at the end of the test period.

(i) A detailed depreciation schedule listing all used and useful assets the regulated entity that operates under the tariff for which the company files the rate request held 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.

(j) Information about every transaction with an affiliated interest or subsidiary that directly or indirectly affects the proposed rates, including a full description of the relationship, the 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 company's initial filing must include the company's most recent consolidated annual report to shareholders, if any.

(6) **Interim rates.** The commission may grant interim rates subject to refund when considering proposed changes to tariffs requested by solid waste collection companies under

RCW 81.28.050. Interim rates subject to refund granted pursuant to this section shall be limited to those companies that demonstrate, after a brief adjudicative proceeding or limited hearing, an emergency, undue hardship, or inequity. If a solid waste collection company requests interim rate relief, the commission will consider the request on an expedited schedule.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-520, filed 8/29/18, effective 9/29/18; 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 proceeding filings—Water companies and Class B telecommunications companies.** General rate proceeding filings by water companies and Class B telecommunication companies as defined in WAC 480-120-034 must include the information described in this section. The company must file all required documents in electronic form consistent with the requirements in WAC 480-07-140. A party may file a document with locked, hidden, or password protected cells only if such restricted access is necessary to protect the information within the cells from public disclosure. The party must identify each locked, hidden, or password protected cell and must designate such cells, as well as any other information the party contends is confidential under RCW 80.04.095 or otherwise protected from public disclosure, in compliance with the requirements in WAC 480-07-160 and any applicable protective order. The party must make such information accessible to all persons who have signed the protective order or are otherwise entitled to access the information including, but not necessarily limited to, commission staff. The filing must include the following:

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

(a) Provide a description of the filing and the requested rate change in understandable terms;

(i) Explain any technical terms and otherwise use common terms to describe the filing so the public can easily understand its impact;

(ii) Define any acronyms before they are used in the text of the letter;

(b) State why the company is requesting a rate change (e.g., to recover higher costs for water testing);

(c) Describe each service that the filing impacts 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 company's initial filing must include the company's proposed tariff sheets. Sections that are narrative, e.g., that contain rules or notes, must be in legislative format, i.e., with strike-through to indicate any material to be deleted or replaced and underlining to indicate any material to be inserted. Changes to tariff sections that are tabular, e.g., charts containing rates and charges, must be marked with appropriate tariff symbols consistent with the requirements in WAC 480-80-105.

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

(4) **Work papers.** Work papers must support the company's rate change request and, at a minimum, must include the following:

(a) A calculation of the total revenues the company is realizing at its present rates and the total revenues the company would realize at the requested rates by each class affected.

(b) A balance sheet and statement of revenues and expenses.

(c) A depreciation schedule.

(d) A schedule showing any adjustments proposed to the statement of revenues and expenses, including any restating adjustments or pro forma adjustments, and the effect of any adjustments on the proposed rates.

(e) An explanation of all restating adjustments 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 on which the company relied in preparing its initial filing.

(i) Restating adjustments adjust the booked operating results for any defects or infirmities in actual recorded results, which can distort test period earnings. Restating adjustments are also used to adjust from an as-recorded basis to a basis that the commission accepts for determining rates. Examples of restating 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 work papers must identify dollar values and underlying reasons for each proposed pro forma adjustment.

(iii) Restating and pro forma adjustments must be calculated as the variance from the booked operating results.

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

(g) For water companies, the public water system identification number the Washington department of health has assigned for each system that the new rates will affect.

(h) A 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, including a full description of the relationship, the 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 18-18-041 (Docket A-130355, General Order R-592), § 480-07-530, filed 8/29/18, effective 9/29/18; 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 the general rate proceedings described 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 initial

filing and any supplemental filings the commission authorized to be the company's full direct case in support of its rate change request 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 18-18-041 (Docket A-130355, General Order R-592), § 480-07-540, filed 8/29/18, effective 9/29/18; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-540, 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:

- (a) Such proceedings are consistent with other provisions of law;
- (b) Protection of the public interest does not require the commission to give notice and an opportunity to participate to persons other than the parties;
- (c) Discovery and prefiled written testimony are not necessary to provide the commission with sufficient evidence to render a determination; and
- (d) The commission believes that the issues presented can best be resolved through a brief adjudication 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) Challenges to commission notices of intent to deny, in whole or in part, applications for authority 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 that do not require notice and an opportunity to participate to persons other than the parties and the commission can best resolve in a brief adjudication including, but not limited to, complaints the commission initiates to determine whether a company is providing service subject to commission regulation without commission authority;
- (e) Contested penalty assessments under RCW 80.04.-405, 81.04.405, or 19.122.150, or consideration of requests for mitigation of the penalty;
- (f) Applications for authority to provide auto transportation service to which a company properly objects; and

(g) Requests by solid waste collection companies pursuant to WAC 480-07-520(6) for interim rates subject to refund.

**(3) Initiating a brief adjudication.** The director of the administrative law division will determine whether the commission will initiate a brief adjudicative proceeding.

(a) The commission may set a matter for brief adjudication on its own initiative.

(b) Except as otherwise provided in this section, any person may file a petition requesting that the commission commence a brief adjudicative proceeding.

(i) The petition must describe the issues the petitioner seeks to have the commission resolve, the petitioner's position on those issues, and the reasons why a brief adjudicative proceeding would be appropriate to resolve those issues. The petitioner must serve the petition on all other identified or necessary parties and must file a certificate of service with the petition.

(ii) Any identified or necessary party that opposes the petition may file a response within ten days after service of the petition stating the reasons why a brief adjudicative proceeding would not be appropriate to resolve the issues identified in the petition.

(iii) If the commission initiates a brief adjudication, it will issue a notice of the time and place for the proceeding. A decision denying the petition will be in writing, and the petitioner may seek commission review of that decision pursuant to the procedure for requesting review of initial orders in WAC 480-07-825.

(c) Any person requesting a hearing or commission review of orders or letters suspending or canceling a permit for failure to maintain evidence of required insurance coverage or other specified circumstances must submit that request in writing within fourteen days after the commission posts the order or letter on its web site. The director of the administrative law division will determine whether the commission will initiate a brief adjudication in response to the request or if an administrative law judge will enter a decision based on the information provided in the request and commission staff's response. The requestor may seek commission review of any such decision pursuant to the procedure for requesting review of initial orders in WAC 480-07-825.

**(4) Assignment of presiding officer.** If the commission sets a matter for a brief adjudication, the commission will designate a person to serve as a presiding officer consistent with the requirements of RCW 34.05.485.

#### **(5) Hearing.**

(a) *Notice and nature of proceeding.* The commission will serve on the parties a notice of the time and place for the brief adjudicative proceeding at least seven days before the proceeding. That notice or a subsequent procedural order will specify how the commission will conduct the proceeding. The parties may offer written exhibits for inclusion in the record and may make oral statements in support of their positions. The presiding officer also may permit parties to present one or more witnesses to testify in support of their positions subject to cross-examination by the other party.

(b) *Exhibits.* Each party must file with the commission and serve on the other parties all exhibits the party proposes to introduce into the record. The presiding officer may refuse to admit into the evidentiary record any exhibits not provided

in advance of the hearing. The notice of brief adjudicative proceeding or subsequent procedural order will establish the deadlines for filing these exhibits.

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

(A) State "Exh." followed by the initials of the witness who will sponsor the exhibit or the name of the party if no witness will sponsor the exhibit.

(B) Place a hyphen after the witness's initials or party name and insert the number of the exhibit. For example, the first exhibit commission staff designates either would be marked "Exh. Staff-1" or if sponsored by staff witness John Q. Witness, would be marked "Exh. JQW-1"; the second exhibit would be marked either "Exh. Staff-2" or "Exh. JQW-2," etc.

(C) Place the capital letter "C" immediately after the number of the exhibit if the exhibit includes information designated as confidential under WAC 480-07-160. Place the capital letters "HC" immediately after the number of the exhibit if the exhibit includes information designated as highly confidential under WAC 480-07-160 and a protective order.

(ii) **Format.** Any exhibit in the form of a spreadsheet that displays results of calculations based on formulas must be filed and served electronically in its native Excel format in compliance with WAC 480-07-140 (6)(a)(ii). All other exhibits must be filed and served electronically in searchable .pdf (Adobe Acrobat or comparable software) format.

(iii) **Organization.** Each exhibit must be a separate document (i.e., multiple exhibits must not be scanned into a single document), and each document must be labeled with the exhibit name. Any paper copies of the exhibits that the presiding officer requires must be organized into sets that are tabbed, labeled, and grouped by witness, if any.

(c) **Exhibit and witness lists.** Each party must file with the commission and serve on all parties a list of all exhibits the party intends to offer for admission into the record. If the presiding officer permits parties to present witness testimony, each party also must provide a list of all witnesses the party intends to present at the hearing and a brief summary of the testimony each witness will give. The notice of brief adjudicative proceeding or a subsequent procedural order will establish the deadline for filing exhibit and witness lists.

(d) **Testimony.** The presiding officer may refuse to permit a witness to testify if the witness is not on the witness list. The presiding officer also may refuse to hear proposed testimony if it would not be relevant to the issues to be addressed in the proceeding or would be cumulative of the testimony to be offered by another witness. The presiding officer may limit a witness's testimony to the subjects identified in the summary the party provides prior to the hearing.

**(6) Initial order.**

(a) The presiding officer may enter a decision orally and make a brief statement of the reasons for the decision at the conclusion of the hearing. The presiding officer will then enter an initial order more fully explaining that decision in writing within ten days after the date of the hearing.

(b) The presiding officer may take the matter under advisement at the conclusion of the hearing and enter a written initial order that addresses the issues raised in the pro-

ceeding within ten days after the date of the brief adjudication. The presiding officer may extend this deadline for good cause.

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

(a) **Timing.** Any party may petition for review of an initial order within twenty-one days after service of the order. The commission also may review an initial order on its own motion.

(b) **Format for petition for review.** The commission strongly prefers petitions for review to be in writing so parties will have the greatest opportunity to state reasons for their views, but the commission will accept oral petitions for review as authorized in RCW 34.05.488 and this rule. A party's request for review of an initial order must identify the errors the party alleges in the order and must provide an explanation of the reasons why the party contends that the initial order is incorrect. The petitioning party must serve its written petition on all parties when it submits the petition to the commission for filing. A party orally requesting review must make that request in the presence of all parties, the presiding officer, and a court reporter.

(c) **Response.** Any party may file and serve a written response to an oral or written petition for review within seven days after the petitioning party makes its oral request for review or serves the written petition unless the commission establishes a different deadline.

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

(9) **Finality of initial order.** The initial order becomes the commission's final order by operation of law under either of the following conditions:

(a) No party timely seeks administrative review of the initial order, and the commission does not initiate review on its own motion; or

(b) The commission does not enter a final order in response to a petition for administrative review within twenty days after the deadline for requesting review, unless all parties and the commission agree to waive the date by which the commission must enter a final order.

(10) **Record.** The record in a brief adjudicative proceeding consists of any exhibits the presiding officer admits into the record, the transcript of the hearing, and any other documents regarding the matter that the presiding officer considered for the brief adjudicative proceeding or that the commission considered in any review of an initial order. The commission'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 18-18-041 (Docket A-130355, General Order R-592), § 480-07-610, filed 8/29/18, effective 9/29/18; 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 in any situation involving an immediate danger to the public health, safety, or welfare requiring immediate commission action within the commission's jurisdiction.

(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.

(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 initial order if a majority of the commissioners is not available. The director of the commission's administrative law division will assign an administrative law judge either to sit as a presiding officer with the commissioner(s), or if no commissioner is available, to preside alone, hear the matter, and enter an initial order.

(4) **Record and decision.** The official record will include any written submissions of the parties, any testimony or oral comments by the parties the presiding officer allows, and any other documents regarding the matter that the commission considers. The commission's record need not constitute the exclusive basis for action unless otherwise required by law.

(5) **Emergency order.** The commission will take only such action as is necessary to prevent or avoid the immediate danger to the public health, safety, or welfare that justifies use of emergency adjudication. 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.

(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 administrative law judge. In the case of any order entered by a majority of the commissioners, any party may seek reconsideration. If a party requests review or reconsideration, the commission will establish appropriate process to complete its review or reconsideration within ten business days of the date of any petition for review or reconsideration. A party seeking 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 18-18-041 (Docket A-130355, General Order R-592), § 480-07-620, filed 8/29/18, effective 9/29/18; 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.]

(9/19/18)

**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. Secs. 251 and 252.

(2) **Nature of the proceeding.** Arbitrations that the commission conducts pursuant to 47 U.S.C. Sec. 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 unit of the office of the Washington state 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. Sec. 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 a party requests arbitration.

(b) *Filing.* Parties must file petitions for arbitration under 47 U.S.C. Sec. 252 (b)(2) as provided for other petitions under WAC 480-07-370(3), 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 petitioner files the petition with the commission.

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

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

(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 petitioner requests be imposed;

(e) Recommend any information that the arbitrator should request from the parties pursuant to 47 U.S.C. Sec. 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

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(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. Secs. 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 on which the petitioner relies to support its positions or that it intends to introduce as exhibits at the hearing.

**(6) Filing and service of a response 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 the respondent wishes within twenty-five days after the petitioner files the petition.

(b) *Filing.* Responses to petitions for arbitration under 47 U.S.C. Sec. 252 (b)(2) must be filed with the commission in the manner provided for responses to other petitions under WAC 480-07-370(3) 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 response and all accompanying documentation on the same day that the respondent files the response with the commission.

**(7) Contents of response and required documentation.** A response 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 incumbent local exchange carrier 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 respondent requests be imposed;

(e) Recommend any information that the arbitrator should request from the parties pursuant to 47 U.S.C. Sec. 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 the petitioner 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. Secs. 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 on which the respondent relies to support its positions or that it intends to introduce as exhibits at the hearing.

**(8) Verification.** The petition, response, 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, responses, and any documents a party provides to the commission pursuant to a request under 47 U.S.C. Sec. 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 response 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. Sec. 252 (b)(4)(B). Parties may submit to the arbitrator any discovery requests to which a party has not responded 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. Sec. 252 (b)(4)(B) at any time.

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

(a) *Appointment.* The commission will appoint one or more commissioners, one or more commission employees, or one or more persons under contract with the commission to act as arbitrator(s) to resolve a petition for arbitration. 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 appointment 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 the arbitrator may not consult with a staff member who has acted as a mediator with respect to the same interconnection agreement between the same parties. The arbitrator will issue the arbitra-

tor's report within one hundred ten days after the date on which the petitioner filed the petition for arbitration. The arbitrator's report satisfies the commission's responsibility to resolve the disputed issues under 47 U.S.C. Sec. 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 18-18-041 (Docket A-130355, General Order R-592), § 480-07-630, filed 8/29/18, effective 9/29/18; 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 47 U.S.C. Sec. 252.

**(2) Commission review and approval of agreements.**

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

(i) Negotiated agreements. Parties to a negotiated interconnection agreement must file a complete, signed copy of their agreement to the commission for approval under 47 U.S.C. Sec. 252(e) within thirty days after they sign the agreement. The parties must include any appendices or attachments to the agreement. The request for approval must summarize the agreement's main provisions and 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 under 47 U.S.C. Sec. 252 do not begin until a complete request is properly filed.

(ii) Arbitrated agreements—Petition for review; response. Any party may petition for commission review of an arbitrator's report and decision within thirty days after the commission issues the arbitrator's report, or at such other time as is established by notice or order. Other parties to the arbitration proceeding may file a response within ten days after the petitioner serves the petition, or at such other time as the commission establishes by notice or order. Both petition and response 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 commission should or should not modify the arbitrator's report and decision.

(iii) Arbitrated agreements—Request for approval. The parties must also file, on the date established for responding to any petition for review, their request for approval of an arbitrated interconnection agreement and a complete, signed copy of their interconnection agreement including all negotiated terms, all terms requested under 47 U.S.C. Sec. 252(i), 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 and 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 the parties to refile the request when it is complete. The timelines established for commission review of requests for approval do not begin until the parties file a complete request.

(iv) Adopted agreements. If a company adopts an interconnection agreement in its entirety that the commission has previously approved, the parties to the adopted agreement must notify the commission of the adoption within thirty days after they sign the adopted agreement. The commission will include the adopted agreement on the no-action portion of a regularly scheduled open meeting agenda. In the absence of an objection, the commission will allow the agreement to become effective according to its terms.

**(b) Commission consideration of requests for approval and petitions for review.**

(i) Negotiated agreements. The commission delegates authority to the commission secretary to approve or reject a fully negotiated interconnection agreement. The commission will approve or reject a fully negotiated agreement within ninety days after the date on which the parties file the agreement and request for approval.

(ii) Arbitrated agreements. The commission will consider any petition for review of an arbitrator's report and decision using the same procedures in WAC 480-07-825 for review of an initial order. The commission will enter an order approving or rejecting a partially or fully arbitrated agreement within thirty days after the parties file the agreement and request for approval.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-640, filed 8/29/18, effective 9/29/18; 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 a 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 the other party is violating.

(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 electronically on the responding party on the same day the petitioner files the petition with the commission. For purposes of this section, the petitioner must serve:

(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) *Profiling 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 the other party violated, and the exact behavior or failure to act that petitioner alleges violates the agreement. The petitioner must serve the written notice 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) **Responding to a petition.** The respondent may respond to the petition. The respondent waives the opportunity to present any matter that is not raised in the response except as provided under subsection (3) of this section.

(a) *Contents of the response.* The response to a petition for enforcement must respond to each allegation of failure to comply with the terms of the interconnection agreement, stating relevant facts. The respondent must support any facts on which it relies by affidavits, declarations, or other sworn statements by persons having personal knowledge of the facts.

(b) *Filing and service of the response.* The respondent must file the response with the commission and serve it electronically on the petitioner within five business days after the petitioner serves the petition for enforcement.

(3) **Amendment of petition and response.** The presiding officer may permit the respondent to amend its response for good cause shown, and to avoid substantial prejudice to the respondent for which the respondent is not responsible. The presiding officer may permit either party to amend its petition or response to conform to the evidence presented during the proceeding. The presiding officer may refer to, but is not bound by, Washington superior court civil rule 15(b) 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 a petition for enforcement of an interconnection agreement.

(a) *Schedule; mandatory attendance.* The presiding officer will issue a notice of a prehearing conference within five business days after the petitioner files the petition. 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 commission can resolve the disputed issues raised in the petition by relying only on the pleadings, filings, and any oral statements without further proceedings. When determining whether to schedule an oral enforcement hearing session, the presiding officer will consider the following: (i) The parties' preferences and the reasons they advance; (ii) the need to clarify statements by asking questions; (iii) whether the issues are largely factual, largely legal, or involve questions of fact and law; (iv) the apparent complexity of facts and issues; (v) the need for speedy resolution; and (vi) the completeness of information presented. The presiding officer may require the parties to file 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 response. Either party may request that the commission make its discovery rules available, stating the matters into which the party seeks to inquire 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 the requesting party shows that discovery is essential. The presiding officer will establish a shortened discovery schedule to comply with the timelines of this rule.

(5) **Powers of the presiding officer; conversion of proceeding; initial or final order.**

(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: (i) Their complexity requires that they cannot be completed on the schedule provided in this rule; (ii) the petitioner requires discovery beyond a disclosure of facts directly related to the matters at issue; (iii) extensive policy argument or legal briefing is required; or (iv) participation by parties other than the petitioner and the respondent is necessary. The presiding officer may limit the record to written filings or may schedule an enforcement hearing. The presiding officer may limit the number of exhibits and witnesses and the time for their presentation.

(b) *Initial order.* The presiding officer, if other than the commissioners, will enter an initial order resolving the petition within seventy-five days of the date the petitioner submitted the petition, or twenty-one days after the last hearing session or filing, whichever is later. If the commissioners preside over the enforcement proceeding, they may enter a final order within the time requirements applicable to initial orders.

(c) *Commission review.* Any party may file a petition for administrative review of the initial order within seven days after the commission enters the order. The opposing party may file a response within five days after the petitioner files a petition for review.

(6) **Commission decision on petition for enforcement.** The commission will enter its final order on the petition for enforcement no later than ninety days after the date the peti-



tioner filed the petition or thirty days after a party files a petition for review of an initial order, whichever is later. The commission may extend this time for good cause.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-650, filed 8/29/18, effective 9/29/18; 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.**

The commission may grant a petition to close a railroad grade crossing without a hearing unless the commission receives an objection to the proposed closure within twenty days after providing notice of the petition as required in RCW 81.53-.060.

(1) **Objections.** An objection to a petition to close a railroad grade crossing must be in writing and must:

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

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

(c) State the commission docket number; 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) **Parties.** Only parties may fully participate in any proceeding the commission conducts to determine whether to grant a contested petition for a railroad grade crossing closure. A person other than the petitioner and commission staff who wishes to participate as a party including, but not limited to, a person filing an objection to the closure, must petition to intervene prior to or at the initial prehearing conference or first hearing session, whichever is earlier, as prescribed in WAC 480-07-340.

(3) **Interested persons.** The commission will provide interested persons who are not parties with an opportunity to comment on the issues in the proceeding and offer evidence, as required by RCW 81.53.060. Such interested persons, however, may not call witnesses, cross-examine witnesses, or otherwise participate as a party at the hearing and 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 18-18-041 (Docket A-130355, General Order R-592), § 480-07-660, filed 8/29/18, effective 9/29/18; 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. 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

will determine whether to approve and adopt any proposed settlement or other agreement and the extent to which it resolves some or all of the issues presented in the proceeding consistent with the public interest.

(2) **Forms of ADR.** The commission provides the following nonexclusive forms of ADR:

(a) *Voluntary negotiation.* 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.

(b) *Commission-directed negotiation.* 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.

(c) *Mediation.* 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 in formal or informal mediation.

(d) *Assignment of settlement judge.* The commission may assign a settlement judge to assist the parties to resolve their dispute through negotiation in appropriate circumstances.

(e) *Arbitration.* 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 is any discussion or other communication between two or more parties in an adjudicative proceeding intended to resolve one or more disputed issues. Settlement conferences do not include requests for information, for clarification, or in aid of discovery, or communications to identify whether a dispute exists or whether another party is willing to negotiate resolution of a disputed issue. Settlement conferences must be informal and without prejudice to the rights of the parties. The parties may waive the procedural requirements of this section relating to settlement conferences 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 settlement conference as defined in this section. 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 settlement conference, but any party that attends and participates must make a good faith effort to resolve one or more disputed issues in which the party has a substantial interest.

(a) *Initial settlement conference.* The commission will include in the procedural schedule for each adjudicative proceeding the date for at least one settlement conference. Parties may reschedule a settlement conference included in the procedural schedule without seeking to modify the schedule if all parties agree, but the parties must provide notice to the presiding officer of the rescheduled date.

(b) *Early settlement conference.* Any party may initiate a settlement conference with any other party after the commission opens a docket and before the initial prehearing conference, but in general rate proceedings for electric, natural gas, or Class A telecommunications companies, the party initiating the settlement conference must provide ten days prior notice of any such conference to the commission, any statutory party, any person who has submitted a petition to intervene or notice of appearance, and any person who 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 the early settlement conference, as may any other person who submits a petition to intervene prior to the early settlement conference.

(4) **Settlement negotiation guidelines.** In any settlement negotiation, including collaboratives, settlement conferences, and mediations, the following apply unless all participants agree otherwise:

(a) 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;

(b) Information exchanged exclusively within the context of settlement negotiations will be treated as confidential and will be privileged against disclosure to the extent permitted by law;

(c) Participants in a commission-sanctioned ADR process must periodically advise any nonparticipating parties and the commission of any substantial progress made toward settlement and must immediately advise the commission if that process is without substantial prospects of resolving the issue or issues under discussion (i.e., if the participants agree that they are at an impasse or any neutral third party who is assisting the participants in the ADR process declares an impasse); and

(d) 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 18-18-041 (Docket A-130355, General Order R-592), § 480-07-700, filed 8/29/18, effective 9/29/18; 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 also implements the mediation provisions of the Telecommunications Act of 1996, 47 U.S.C. Secs. 251 and 252.

(2) **Commission participation.** The parties to a negotiation 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, and telephone 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 a qualified employee to serve as a mediator. 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 the commission subsequently adopts them;

(g) The mediation process is confidential and the information exchanged is privileged to the extent permitted by law; and

(h) No stenographic or electronic record will be made.

(5) **Fees and costs.** Each party must bear its own costs for the mediation. 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. The commission will review the settlement consistent with the requirements of WAC 480-07-640 or 480-07-740, as applicable.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-710, filed 8/29/18, effective 9/29/18; 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) Definition.** 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 that the commission assigns or the collaborative participants identify.

(2) **Establishment.** The commission may establish a collaborative on its own initiative or in response to a petition. A petition seeking to establish a collaborative must state the issues on which the petitioner seeks consensus, identify potential participants, and explain why a collaborative would be beneficial to resolve the issues. The commission, in its discretion, may approve the petition and establish a collaborative or may deny the petition.

(3) **Participation.** Any person whose interests may be substantially affected by the result of the collaborative may participate in the collaborative. Once the commission establishes a collaborative, the participants may not change the participants or redefine the issues they will address without commission approval.

(4) **Communication with commission.** Collaborative participants must agree on the form and substance of any communication they have with the commission concerning the collaborative. The participants may communicate with the commission through commission staff if staff is not a participant and is serving as a neutral third party in the collaborative, and staff should establish if this will be its role at the

outset of the collaborative. Otherwise, the participants should address their communications to the commission secretary.

(5) **Conclusion.** The participants must inform the commission when they: (a) Have reached consensus on the issues to be addressed in the collaborative; (b) have reached partial consensus on those issues and believe further negotiation would not be fruitful; or (c) have reached an impasse and believe that further negotiations would not be fruitful. The participants should propose any commission action they recommend as a result of the collaborative.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-720, filed 8/29/18, effective 9/29/18; 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 commission adjudication that resolves one or more disputed issues in that proceeding. All settlements must be documented in a written settlement agreement that the parties file with the commission as a proposed resolution of those issues. No settlement is effective unless and until the commission approves it.

(1) **Full settlement.** A full settlement is an agreement of all parties that would resolve all disputed issues in an adjudication.

(2) **Partial settlement.** A partial settlement is an agreement of all parties on some, but not all, of the disputed issues in an adjudication. The parties may litigate the disputed issues the agreement does not resolve.

(3) **Multiparty settlement.** A multiparty settlement is an agreement among some, but not all, parties in an adjudication to resolve one or more disputed issues.

(a) *Full multiparty settlement.* A full multiparty settlement is an agreement among some, but not all, parties to resolve all disputed issues between them. The parties that are not included in the settlement agreement have the rights set forth in WAC 480-07-740 (3)(c).

(b) *Partial multiparty settlement.* A partial multiparty settlement is an agreement among some, but not all, parties to resolve some, but not all, disputed issues between them. The parties may litigate the disputed issues the agreement does not resolve. The parties that are not included in the settlement agreement also have the rights set forth in WAC 480-07-740 (3)(c).

(4) **Notice to commission.** When submitting any type of settlement agreement for commission approval, parties must advise the commission if they have reached a full, partial, full multiparty, or partial multiparty settlement.

(5) **Settlement agreement contents.** A settlement agreement must describe the dispute between the parties and set forth the terms and conditions to which the parties have agreed to resolve that dispute.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-730, filed 8/29/18, effective 9/29/18; 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 will review all settlement agreements to determine whether they comply with applicable legal

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requirements and whether approval of the agreements is consistent with the public interest.

(1) **General.** The timing and content of any settlement agreement submitted to the commission must afford the commission a reasonable opportunity to:

(a) Review the terms of the settlement;

(b) Consider evidence and argument from all parties on why the commission should or should not approve and adopt the settlement;

(c) Consider any public comments the commission receives;

(d) Enter an order prior to the recommended effective date of a settlement agreement and any statutory deadline by which the commission must take action in the proceeding; and

(e) Review and approve any required compliance filing.

(2) **Specific timing requirements.**

(a) *Complex proceedings.* In general rate proceedings for electric, natural gas, and Class A telecommunications companies or matters of comparable complexity, parties must submit a settlement agreement and supporting documentation to the commission at least sixty days prior to any statutory deadline for commission action or 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 submit a settlement agreement and supporting documentation to the commission at least thirty days prior to any statutory deadline for commission action or requested effective date for any tariff changes or other terms and conditions of the settlement.

(c) *Notice to commission.* Parties should inform the presiding administrative law judge as soon as they reach a settlement in principle and request that the commission suspend the procedural schedule or make other arrangements for filing and review of the parties' settlement agreement after the parties have executed it. In the cover letter accompanying the filing of a settlement agreement with the commission, the parties should highlight any time-sensitive provisions in that agreement.

(d) *Statutory deadline.* Upon receiving a request to suspend the procedural schedule for commission consideration of a settlement agreement in general rate proceedings or other proceedings in which a statute requires final commission action within a specified time period, the commission may require the party that submitted the suspended tariff or other initial filing at issue to inform the commission whether the party would be willing to extend the statutory deadline, if necessary, to add the amount of time the commission requires to consider the settlement and take final action in the proceeding. The commission may decline to consider a settlement agreement if the commission determines that it cannot consider the settlement and take final action in the proceeding by the statutory deadline.

(e) *Hearing.* The commission will conduct a hearing if the commission believes that a hearing will assist the commission to decide whether to approve and adopt the settlement.

(f) *Requested effective date.* The commission will endeavor to render a decision on the settlement prior to the parties' requested effective date if the parties submit the set-

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tlement agreement in compliance with this section, but the commission cannot guarantee that it will be able to do so.

(3) **Settlement presentation.** When submitting a settlement agreement for commission approval, the settling parties must include supporting documentation sufficient to demonstrate that the settlement is consistent with the law and the public interest.

(a) *Supporting documentation.* The supporting documentation must describe the disputed issue(s) and proposed resolution and must include or reference sufficient evidence to support commission approval and adoption of the settlement agreement under applicable law consistent with the public interest. The documentation may be in the form of a brief, supporting prefiled testimony, or other form that serves the same functions. Documentation supporting a settlement agreement in a general rate proceeding or other complex proceeding must include prefiled testimony.

(b) *Testimony.* Each party to a settlement agreement must offer to present one or more witnesses to testify in support of the settlement agreement and to answer questions concerning the agreement's details, costs, and benefits. If the commission conducts a hearing on the settlement, counsel for each party must be prepared to make a brief presentation and address any legal matters associated with the settlement agreement. Each party's witness(es) must be available to respond to questions from the bench and cross-examination by counsel for any party that opposes the settlement.

(c) *Rights of parties opposed to a settlement.* Parties opposed to the commission's approval and adoption of a settlement retain the following rights:

(i) The right to cross-examine witnesses supporting the settlement;

(ii) The right to present evidence in support of their opposition to the settlement;

(iii) The right to present argument in opposition to the settlement; and

(iv) The right to present evidence, or in the commission's discretion an offer of proof, in support of their position on how the commission should resolve the disputed issues in the proceeding.

(d) *Discovery.* The presiding officer may allow discovery on the proposed settlement.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-740, filed 8/29/18, effective 9/29/18; 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 consider and approve or reject a settlement.** (1) **Consideration of a settlement.** The commission will decide whether to consider a settlement. The commission generally will consider a settlement that complies with the requirements in WAC 480-07-740.

(2) **Approval or rejection of a settlement.** If it considers a settlement, the commission may approve the settlement, with or without conditions, or may reject it. The commission will approve a settlement if it is lawful, supported by an appropriate record, and consistent with the public interest in light of all the information available to the commission.

(a) *Approval without conditions.* If the commission approves a settlement without conditions, the commission

will adopt the terms set forth in the settlement agreement as the resolution of the disputed issues identified in that agreement.

(b) *Approval with conditions.* If the commission conditions its approval of a settlement on terms that are not included in the settlement agreement, the commission will provide the parties with the opportunity to accept or reject the commission's conditions.

(i) If all parties to the settlement agreement timely notify the commission that they accept the conditions, the terms in the settlement agreement and the commission's conditions will resolve the issues identified in the settlement agreement. The commission's order conditionally approving the settlement agreement will then become final by operation of law with respect to those issues without further action from the commission.

(ii) If a party to the settlement rejects any of the commission's conditions or does not unequivocally and unconditionally accept all of those conditions, the commission will notify the parties that it deems the settlement to be rejected, and (c) of this subsection applies. A party may seek clarification or reconsideration of a commission order approving a settlement agreement with conditions pursuant to WAC 480-07-835, 480-07-840, or 480-07-850.

(c) *Rejection.* If the commission rejects a settlement, the adjudication returns to its status at the time the commission suspended the procedural schedule to consider the settlement. The commission may conduct a prehearing conference to establish a procedural schedule for the remainder of the adjudication. Subject to compliance with any statutory deadline for commission action or an agreed extension of such a deadline, the commission may extend the time for completion of the proceedings by the elapsed time for commission consideration of the settlement.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-750, filed 8/29/18, effective 9/29/18; 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 Order entry, effectiveness, and service.** (1) **Entry.** The commission has entered an order when all authorized persons have signed it as an official act indicating that the order is to be effective, and those persons or their designee have submitted the order to the commission's records center for service. Each order will state the date on which the commission enters it.

(2) **Effectiveness.** An order is effective when the commission enters it unless the order specifies a different effective date.

(3) **Service.** The commission serves an order as provided in WAC 480-07-360. Each order will state the date on which the commission serves it. 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 18-18-041 (Docket A-130355, General Order R-592), § 480-07-800, filed 8/29/18, effective 9/29/18; 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 Interim or interlocutory orders. (1) Defined.** Orders the commission enters in an adjudicative proceeding prior to entering an initial or final order are interim or interlocutory orders. Interim or interlocutory orders include, but are not limited to, orders ruling on a party's participation in a proceeding, scheduling issues, discovery disputes, and evidentiary issues.

(2) **When review is available.** The commission has discretion to review interim or interlocutory orders. The commission may accept review of such orders if it finds that:

(a) The order terminates a party's participation in the proceeding, and the party's inability to participate thereafter could cause it substantial and irreparable harm;

(b) Immediate review is necessary to prevent substantial prejudice to a party that would not be remediable in the commission's final order; or

(c) Immediate 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 interim or interlocutory order.

(a) The party must file and serve a petition for interlocutory review within ten days after the commission serves the order the party is petitioning the commission to review. The petition must provide a full explanation of why the petitioner believes the order is erroneous or otherwise should be changed and why immediate review is necessary.

(b) Any other party may file and serve a response to the petition within ten days after the petitioner files the petition unless the commission establishes a different deadline.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-810, filed 8/29/18, effective 9/29/18; 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 are orders an administrative law judge enters that resolve the disputed issues in adjudications in which the administrative law judge presides without the commissioners. The commission secretary also may enter initial orders in response to challenges to, or requests for mitigation of, commission penalty assessments.

(b) *Final orders.* Final orders are orders that a majority of the commissioners enter that resolve the substantive disputed issues in an adjudication in which the commissioners preside or that a majority of the commissioners enter on review of an initial order entered by an administrative law judge or the commission secretary.

(2) **Service.** The commission will serve initial and final orders on all party representatives included in the master service list in an adjudication.

(3) **Timing.** Except as otherwise provided in these rules or applicable statute, the presiding administrative law judge 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), or receives final briefs, whichever occurs last. Except as otherwise provided in these rules or applicable statute, 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), receives final briefs, or receives a petition for administrative review or a response to a petition for review, whichever occurs last. The commission may alter the time for entering an initial or final order for good cause.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-820, filed 8/29/18, effective 9/29/18; 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—Finality; petitions for administrative review; motions for clarification. (1) Initial order finality.**

(a) An initial order will conclude a proceeding and thus be considered final unless within the time for petitioning for administrative review:

(i) A party timely petitions for administrative review; or

(ii) The commission notifies the parties that it intends to review the initial order.

(b) Parties that 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 issues a notice of finality declining to exercise administrative review or when the time for exercising such review ends.

(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 initial orders.

(2) **Petition for administrative review.** A party may challenge any finding of fact, conclusion of law, remedy, or result in an initial order by petitioning for administrative review. A party also may 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 of an initial order from any party.

(a) *Timing of petition.* A party must file and serve any petition for administrative review within twenty days after the commission serves the initial order. The commission may extend or shorten the time on a showing of good cause.

(b) *Contents.* Petitions for administrative review must not exceed thirty pages in length and must conform to the following requirements:

(i) Every petition must identify with specificity the nature of each challenge to the initial order. The petitioner must separately state and number every contention.

(ii) A petition that challenges a finding of fact must cite the page or part of the record that includes the evidence on which the petitioner relies to support its challenge and should include a recommended finding of fact.

(iii) A petition that challenges a conclusion of law must cite the statute, rule, case law, or other legal authority on which the petitioner relies to support its challenge and should include a recommended conclusion of law.

(iv) 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.

(c) *Responses.*

(i) Who may respond. Any party to the adjudication may respond to another party's petition for administrative review.

(ii) Filing and service. A response to a petition for administrative review must be filed and served within ten days after the petitioner files and serves its petition unless the commission establishes a different deadline.

(iii) Challenge to order in response. A party that did not petition for administrative review of an initial order may challenge the order or portions of the order in its response to the petition of another party if that challenge is in response, or otherwise reasonably related, to the issues raised in the petition.

(d) *Reply.*

(i) By right. A party has the right to reply to new challenges to the order that are included in another party's response as authorized in (c)(iii) of this subsection.

(ii) By leave of commission. A party otherwise has no right to reply to a response, but may petition for leave to reply. Any such petition must cite new issues raised in the response, state why the petitioner could not have reasonably anticipated those issues, and explain why a reply is necessary. The petitioner should attach a reply to the petition for leave to accept the reply.

(iii) Timing. The petitioner must file its reply or a petition for leave to reply no later than five days after the respondent submits its response. The commission may extend the time on a showing of good cause.

(e) *Oral argument.* A party may request oral argument before the commissioners, but any such request must demonstrate that oral argument is necessary to assist the commission in making its decision on the petition for administrative review and that the written presentations are insufficient.

(3) **Motion for clarification of initial order.** Any party that does not seek to change the substantive outcome or reasoning of an initial order may file a motion for clarification of that order within five days after the commission serves the order.

(a) *Purpose.* The purpose of a motion for clarification of an initial order is to correct obvious or ministerial error without the need for parties to request administrative review.

(b) *Response.* No party may file a response to a motion for clarification unless requested by the commission.

(c) *Effect.* Filing a motion for clarification does not automatically toll the time for filing a petition for administrative review or for compliance with the initial order. A party may request in its motion for clarification that the commission toll or otherwise extend the time for filing a petition for administrative review or for complying with the initial order. The party making the request must demonstrate good cause for the extension.

(d) *Order denying or granting clarification.* The presiding administrative law judge will enter an order either denying the motion or granting the motion and providing clarification within five days after the party files the motion. A party may seek administrative review of an order granting or denying clarification either:

(i) In a petition for administrative review of that order filed by the deadline for filing a petition for administrative review of the original initial order; or

(ii) As part of the party's petition for administrative review of the original initial order.

(4) **Commission-initiated review.** The commission may initiate review of an initial order on the commission's own motion by serving a notice that the commissioners intend to review the order. The notice will establish a schedule for parties to state their positions on the initial order and make supporting arguments. The notice may invite the parties to address specific issues relating to the initial order.

(5) **Administrative law judge.** An administrative law judge other than the administrative law judge who entered the initial order will assist the commissioners to enter a final order on review of the initial order.

(6) **Final order.** The commission may enter a final order that adopts, modifies, or rejects an initial order. Alternatively, the commission may remand the matter for further proceedings with instructions to the presiding officer.

(7) **Judicial review.** The statutory time for filing a petition for judicial review commences when the commission serves its final order or when an initial order becomes final under RCW 80.01.060(3) and subsection (1) of this section; provided that, 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 commences on the date on which the commission serves an order granting or denying 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: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-825, filed 8/29/18, effective 9/29/18; 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.** (1) **Record closure.** The evidentiary record in an adjudication closes at the conclusion of the last day of hearing unless the commission rules otherwise; except that the evidentiary record will also include any exhibit containing public comments and responses to bench requests the commission receives after the hearings conclude.

(2) **Reopening the record.** A party may file a motion to reopen the evidentiary record at any time after the record closes and before the commission enters a final order. A party seeking to present additional evidence after the commission has entered a final order must submit a petition for rehearing pursuant to WAC 480-07-870. The commission may reopen the record in a proceeding on its own motion.

(3) **Required showing.** 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. A motion to reopen the record must include the evidence the party proposes to add to the record and must demonstrate that the evidence meets this standard.

(4) **Responses.** The commission will give the other parties an opportunity to respond to a motion to reopen the record, including to the evidence the moving party seeks to

add to the record, unless the commission determines that it can rule on the motion without hearing from the other parties consistent with the requirements of due process.

(5) **Ruling.** The commission will rule on a motion to reopen the record in the final order unless the commission determines that a separate order is warranted. If the commission grants the motion in a separate order, the commission may return the matter to the presiding officer for further proceedings, including additional evidentiary hearings or other process when appropriate.

(6) **Compliance with statutory deadline.** The commission may deny a motion to reopen the record in any proceeding in which the commission must enter a final order within a statutory time frame or by a statutory deadline if the commission determines that it reasonably could not consider the additional evidence offered and enter a final order within the statutory time frame or by the statutory deadline.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-830, filed 8/29/18, effective 9/29/18; 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 for clarification.** Any party may request that the commission clarify a final order by filing a motion for clarification within ten days after the commission serves the order. The purpose of such a motion is to ensure that the parties know their rights and responsibilities under the final order. An appropriate motion for clarification requests that the commission modify the final order or take other action to accomplish one or more of the following goals:

(a) Clarify the meaning of, or requirements in, the order so that the parties can accurately prepare compliance filings;

(b) Make technical changes to reconcile the application of principle to data, resolve inconsistencies, or correct patent error without the need for parties to request reconsideration and without delaying post-order compliance; or

(c) Correct typographical or other ministerial errors.

(2) **Motions that do not seek clarification.** A party may not file a motion for clarification that seeks to change an outcome with respect to one or more issues resolved by a final order, or that challenges a finding of fact or conclusion of law stated in the order. A party seeking such commission action must submit a petition for reconsideration pursuant to WAC 480-07-850.

(3) **Response.** No party may file a response to a motion for clarification unless the commission requests a response.

(4) **No tolling.** Filing a motion for clarification does not toll the time for filing a petition for reconsideration of, or compliance with, the final order of which the party seeks clarification. If the commission enters an order that modifies the final order, the subsequent order will clarify the deadlines for compliance and will be a final order for purposes of further commission or judicial review.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-835, filed 8/29/18, effective 9/29/18; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-835, filed 11/24/03, effective 1/1/04.]

(9/19/18)

**WAC 480-07-840 Clarification of a final order by conference.** After the commission enters a final order, the commission may schedule an order clarification conference on its own motion or at a party's request. The commissioners may attend the conference or may designate one or more persons to attend on their behalf. The commission will determine whether it will record or transcribe an order clarification conference.

(1) **Purpose.** The purpose of an order clarification conference is to clarify the final order when parties disagree about its meaning or requirements. An order clarification conference provides the parties and the commission with the opportunity to:

(a) Explore and resolve any disagreements or lack of understanding about the meaning of, or requirements in, the final order so that parties can accurately prepare any compliance filings; or

(b) Identify and make technical changes to reconcile the application of principle to data, resolve inconsistencies, or correct patent error.

(2) **Limitation.** An order clarification conference is not a forum for discussing or challenging the evidentiary, legal, or policy decisions in the order. Parties may pursue those remedies through a petition for reconsideration or other means.

(3) **Effect.**

(a) An order clarification conference does not stay the effectiveness of an order, the deadlines for compliance, or the time frames for petitioning for further commission or judicial review. If as a result of the conference, the commission enters an order that modifies the final order, the subsequent order will clarify the deadlines for compliance and will be a final order for purposes of further commission or judicial review.

(b) An order clarification conference does not constitute a formal interpretation of an order. The final order that is the subject of an order clarification conference will remain the sole expression of the commission's decision unless the commission modifies that order in a subsequent order.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-840, filed 8/29/18, effective 9/29/18; 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.**

(1) **Petition.** Any party may petition for reconsideration of a final order within ten days after the commission serves the order.

(a) **Purpose.** The purpose of a petition for reconsideration is to request that the commission change the outcome with respect to one or more determinations in a final order.

(b) **Contents.** A petition for reconsideration must:

(i) Identify each portion of the challenged order the petitioner contends is erroneous or incomplete;

(ii) Site those portions of the record and each statute, commission rule, or other law on which the petitioner relies to support its petition; and

(iii) Present brief argument in support of the relief the petitioner requests.

(c) **Response.** No party may file a response to a petition for reconsideration unless the commission authorizes a response in a notice establishing the deadline for submitting

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responses, which may also establish the date by which the commission intends to enter an order resolving the petition. The commission will not grant a petition for reconsideration without providing other parties an opportunity to respond to the petition.

(d) *Oral argument.* The commission will not hear oral argument on a petition for reconsideration unless the commission determines in its discretion that oral argument will assist the commission in resolving the petition.

(2) **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 the commission will act on the petition.

(3) **Action.** If the commission grants a petition for reconsideration, the commission may modify its prior order or take other appropriate action. If the commission denies the petition, the commission will take no further action in the matter with respect to the final order. No party may petition for reconsideration of an order on reconsideration.

(4) **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.

(5) **Judicial review.** Filing a petition for reconsideration is not a prerequisite for seeking judicial review of a commission final order. If a party timely files a proper petition for reconsideration, the time for filing a petition for judicial review does not commence until the commission 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 specifying the date by which the commission will act on a petition for reconsideration pursuant to subsection (2)(b) of this section, is not subject to judicial review.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-850, filed 8/29/18, effective 9/29/18; 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 the commission to stay the effectiveness of a final order within ten days after the commission serves that order, unless the order or applicable statute provides otherwise. The commission may stay the effect of a final order on its own initiative.

(1) **Petition.** A petition for stay must cite those portions of the record and statute, commission rule, or other law on which the petitioner relies to support its petition and must present brief argument in support of the relief the petitioner requests.

(2) **Response.** No party may file a response to a petition for stay unless the commission authorizes a response in a notice establishing the deadline for filing responses, which may also establish the date by which the commission intends to enter an order resolving the petition.

(3) **Disposition.** A petition for stay is deemed denied twenty days after the date the petitioner submits the petition 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 the commission will act on the petition.

(4) **Effect.** Filing a petition for stay does not automatically stay the effect of a final order or the deadline for filing a petition for reconsideration. Commission action is required to stay the effect of a final order.

(5) **Reconsideration or judicial review.** No party may request reconsideration of a commission determination denying a petition for stay. Such a determination also is not subject to judicial review.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-860, filed 8/29/18, effective 9/29/18; 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 commission final order may petition for rehearing of that order.

(1) **Petition.** A petition for rehearing must set forth sufficient grounds for rehearing the commission order and must include substantial evidence or an offer of proof in support of the requested relief. Sufficient grounds for rehearing consist of the following:

(a) Changed conditions since the commission entered the order;

(b) Harm to the petitioner resulting from the order that the commission did not consider or anticipate when it entered the order;

(c) An effect of the order that the commission or the petitioner did not contemplate or intend; or

(d) Any good and sufficient cause that the commission did not consider or determine in the order.

(2) **Filing and service.** The petitioner must file the petition in the docket in which the commission entered the final order and must serve the petition on all parties and persons included in the master service list for that docket.

(3) **Responses.** Any party in the original proceeding may file a response to the petition within twenty days after the petitioner serves the petition unless the commission establishes a different deadline by notice.

(4) **Process.** Pursuant to RCW 80.04.200 or 81.04.200, if the petitioner is a public service company and files its petition either no earlier than two years after the effective date of the commission's final order or no earlier than six months after the effective date of a final order that a court has not reviewed and with which the company is in compliance, the commission will conduct a prehearing conference to establish a procedural schedule for commission consideration of the petition. In all other circumstances, the commission will determine whether to accept the petition and, if so, the proceedings the commission will undertake to consider the petition.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-870, filed 8/29/18, effective 9/29/18; 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 propose, or may act in response to a petition, to alter, amend, or rescind any order that the commission has entered. Any such petition must comply with the require-



ments in WAC 480-07-870 for a petition for rehearing. The commission may take the action it has proposed or grant the petition only after providing:

(a) Notice of the petition or proposed commission action to the affected public service company or companies and to all parties in the underlying proceeding; and

(b) An opportunity for parties to respond in writing or at a hearing consistent with due process.

(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 make any corrections to the order by notice or letter without prior notice or opportunity to respond unless due process requires otherwise. The time for any available review of the corrections begins when the commission serves the corrected order, notice, or letter.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-875, filed 8/29/18, effective 9/29/18; 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 filings. (1) Definition.**

A compliance filing is a party's submission in response to a final order that authorizes or requires that party to implement specific terms of that order. A compliance filing may be a single submission (e.g., a revised tariff) or multiple submissions (e.g., periodic reports). A party must strictly limit the scope of its compliance filing to the requirements of the final order to which it relates. A party's filing in response to general commission direction in an order (e.g., filing a new or revised tariff other than the tariffs that initiated the proceeding) is not a compliance filing but is a subsequent filing governed by WAC 480-07-885.

(2) **Filing and effective dates.** The commission will state in its final order authorizing or requiring a compliance filing the date by which the party must make the compliance filing and the effective date that should appear on any tariff sheets that are required as part of a compliance filing. The commission may delegate to the secretary, by written authorization in individual proceedings, the authority to take appropriate action with respect to a compliance filing. A compliance filing does not become effective automatically on its stated effective date. The commission must approve or accept any compliance filing before it can be effective.

(3) **Where to make filings.** Parties must make compliance filings in the docket of the final order to which they relate unless the commission has required otherwise in that order. Parties must file and serve such filings consistent with the filing and service requirements in that docket. A party making a compliance filing that includes a tariff also must provide work papers to the other parties that demonstrate the derivation of the proposed rates or charges in that tariff.

(4) **Responses.** Commission staff must, and any other party in the docket may, file a response to the compliance filing within five business days from the date it is filed or by such other deadline as the commission may establish. Any such response must be limited to the issue of whether the filing complies with the commission order. Except as otherwise provided in this section, commission staff must review the filing to determine its compliance with the order and, at a

minimum, file a response in the form of a letter informing the commission of the results of that review.

(5) **No dispute.** If no party disputes the filing's compliance with the final order, the commission may issue a notice or letter that the filing appears to comply with the order and that allows the filing to become effective.

(6) **Dispute.** If a party disputes the filing's compliance with the final order, the commission will provide an opportunity to respond. The commission may then enter an order:

(a) Approving the filing;

(b) Rejecting the filing, in whole or in part, for failure to comply with the final order and requiring a revised compliance filing; or

(c) Establishing additional process for commission consideration of the filing.

(7) **Subsequent discovery of noncompliance.** If the commission allows a compliance filing to become effective but later discovers that the filing does not fully comply with the order authorizing or requiring the filing, the commission may take any necessary and lawful steps to secure full compliance with that order. The commission's erroneous acceptance of a compliance filing does not validate the noncompliant elements of the filing or modify the final order requiring that filing.

(8) **Reports.** The commission may enter an order that requires a party to report periodically to the commission with respect to designated subject matter. The reports must be submitted under the docket number of the proceeding in which the commission entered the order unless the order specifies otherwise or the commission establishes a different requirement in a subsequent order or notice. Such compliance filings have no stated effective date, do not become effective by operation of law, and require no commission action in response to the filing.

(9) **Monetary payments.** An order may require a party to pay monetary penalties, either in a single lump sum or periodically over time. No party should file a response to any timely payment made in compliance with the order, and the commission generally will not issue an acknowledgment or approval in response to the payment.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-880, filed 8/29/18, effective 9/29/18; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-880, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-885 Subsequent filings.** When the commission enters a final order that authorizes or requires a party to make a subsequent filing to implement general instructions in that order (e.g., the submission of tariffs other than revisions to the tariffs that initiated the proceeding), the filing initiates a new proceeding to which the commission will assign a new docket number.

#### **(1) Filing and service requirements.**

(a) In the cover letter accompanying a subsequent filing, the party must request a new docket and identify the order and the docket in which the commission required the subsequent filing.

(b) 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 commission entered the final order authorizing or requiring the filing. Any party that believes the subsequent filing is not in compliance with the commission's final order in that proceeding must file its objection in both the original and new dockets within ten days of the service date of the subsequent filing unless the commission establishes a different deadline.

(2) **Timing.** A final order that authorizes or requires a subsequent filing may state the date by which the party must make the subsequent filing. If the final order does not specify a date for the subsequent filing, the commission may establish the date by subsequent order, notice, or letter.

(3) **Commission action.** The commission generally 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, subject to any additional requirements in the final order that authorized or required that filing. If a party to the original proceeding objects to the subsequent filing as not in compliance with the final order in that proceeding, the commission also may take additional action in that docket.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-885, filed 8/29/18, effective 9/29/18; 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 open meetings per month on alternate Thursdays at 9:30 a.m. in the commission's office in Olympia, Washington. The specific time and place of each open meeting are published, as required, in the *Washington State Register* and on the commission's web site. The commission may cancel an open meeting or change the time or place of an open meeting and will publish a notice of these changes on its web site and in the *Washington State Register* for distribution at least twenty days prior to the rescheduled meeting date.

(2) **Special meetings.** The commission may convene special open meetings under RCW 42.30.080.

(3) **Recessed meetings.** The commission may recess a regular or special open meeting and reconvene it at a different time or location.

(4) **Agenda.** The commission will publish an agenda for each regular open meeting at least two business days prior to the meeting. The commission also may publish an addendum or otherwise amend the agenda after publishing it and may take up matters that do not appear on the published agenda consistent with notice and due process requirements. The commission posts the agenda and any addendum on its web site.

(a) *Discussion agenda.* The discussion portion of the 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 portion of the agenda includes items that appear to be noncontroversial and, by law, may take effect without action by the commission. The commission will move any item on the no-action portion of the agenda to the discussion portion of the agenda at the request of any commissioner or other person and may take such action on the item as the commission deems appropriate.

(c) *Consent agenda.* The consent portion of the agenda includes items that appear to be noncontroversial and, by law, require action by the commission to take effect. The commission will act on the items on the consent portion of the agenda by a single motion and a single vote of the commissioners. The commission will move any item on the consent portion of the agenda to the discussion portion of the agenda at the request of any commissioner or other person and may take such action on the item as the commission deems appropriate.

##### (5) **Deadlines and schedules.**

(a) The commission generally schedules items for consideration at the last regular open meeting before the item would take effect by operation of law. The commission generally includes items without a stated effective date on the agenda for the regular open meeting scheduled thirty days or more after the commission receives a complete filing.

(b) A company that requests a filing become effective on less than statutory or other required notice must make that request and a complete filing at least seven business days prior to the next regular open meeting to have the commission consider the filing at that meeting. The commission generally will schedule items filed less than seven business days before an open meeting for the second open business meeting after the filing.

(c) All written comments in response to an open meeting item should be submitted to the commission at least three business days in advance of the meeting to enable the commissioners to consider those comments during the meeting. Persons are not required to submit written comments about an open meeting item to make oral comments at the meeting.

(6) **Staff contact.** The commission will designate a staff member to analyze and present a recommendation to the commissioners for each item on the discussion portion of the agenda. The agenda item description will include the staff person's name and contact information. Persons interested in these items may discuss them with the designated staff person prior to the open meeting.

(7) **Public comment.** The commission will provide an opportunity at the beginning of each open meeting for members of the public to request that items on the consent or no-action portions of the agenda be moved to the discussion portion. The commission will provide an opportunity for public comment on each item on the discussion portion of the agenda before taking action on that item.

(8) **Orders.** The commission may direct the executive 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 18-18-041 (Docket A-130355, General Order R-592), § 480-07-900, filed 8/29/18, effective 9/29/18; 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 unless the commission has delegated signing authority to other commission personnel.

(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.

(e) *Penalty assessment challenges and mitigation.* Unless the commission refers the matter to the administrative law division for hearing, the executive secretary will sign orders or letters:

(i) Denying or sustaining, in whole or in part, challenges to penalties the director of the administrative law division has assessed on delegated authority from the commission pursuant to WAC 480-07-915; or

(ii) Granting or denying, in whole or in part, mitigation of such penalties.

(9/19/18)

(3) **Deferral to the commissioners.** The executive secretary may exercise discretion to defer any delegated matter to the commissioners for decision.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-903, filed 8/29/18, effective 9/29/18. 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 decide certain matters. (1) Delegation by order.** Except as expressly provided in these rules, the commission will establish by order the matters it delegates to the executive secretary or other authorized commission personnel for decision.

(2) **Effect.** A decision made on delegated authority shall take effect immediately on entry of an order or letter or on a later date specified in the order or letter, without prior notice. The executive secretary may set any particular matter for commission decision through the open public meeting process, adjudicative or brief adjudicative proceeding, or other established commission process. Upon request, the commission will review the matter under subsection (4) of this section.

(3) **Notice.** The commission will notify the affected company and post on the commission's web site for at least fourteen days a listing of all matters the executive secretary or other authorized personnel decided on delegated authority, showing the docket number, date of entry of decision, company name, and deadline for filing a request for commission review.

(4) **Commission review.** Except as provided in WAC 480-07-905, any person directly affected by a delegated determination may request commission review of that determination. The person must file that request no later than the fourteenth day after the date the commission serves the order and posts it on the commission's web site. The commission will consider the request using the same process applicable to commission review of initial orders set forth in WAC 480-07-825.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-904, filed 8/29/18, effective 9/29/18; 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 enter ex parte orders. (1)** Except as expressly provided elsewhere in these rules, the commission will authorize by order the executive secretary or other authorized personnel to enter *ex parte* orders or letters in the name of the commission in nonadjudicative matters. The commission will maintain on its web site a list of all nonadjudicative matters the commission has delegated to the executive secretary or other authorized personnel and the personnel to whom the commission delegated that authority.

(2) The commission will notify the affected company and post on its web site notice of all orders or letters entered on delegated authority. Persons affected by the order or letter who wish to respond must follow the procedure in WAC 480-07-904 (2) and (3), except that carriers seeking commission review of orders or letters suspending or canceling a permit

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(e.g., for failure to maintain evidence of required insurance coverage), must request a hearing or brief adjudicative proceeding pursuant to WAC 480-07-610.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-905, filed 8/29/18, effective 9/29/18; 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 or entity the commission regulates or about the commission's operations. A person may make an informal complaint by telephone, correspondence, or email or by using the complaint form available on the commission's web site.

(2) **Contents.** An informal complaint must identify the business, entity, or operations to which 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; and

(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. The commission will investigate the complaint 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 an order.

(4) **Uniform Mediation Act not applicable.** The Uniform Mediation Act, 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 as provided in WAC 480-07-305. The commission also 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 or the commission initiates a formal complaint proceeding.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-910, filed 8/29/18, effective 9/29/18; 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 480-07-915 Penalty assessments. (1) Delegation.** The commission delegates to the director of the administrative law division, or another administrative law judge the director designates, the authority to assess penalties pursuant to RCW 80.04.405, 81.04.405, 81.04.530, 19.122.150, or any other statutes that authorize the commission to assess penalties outside of an adjudicative proceeding for violations of any commission order or any statute, rule, or regulation

within the commission's jurisdiction except as provided in WAC 480-07-917.

(2) **Notice.** At the direction of the director of the administrative law division, the commission will serve a notice on the person assessed a penalty describing the violation with reasonable particularity, specifying the amount of the penalty, and advising the person that the penalty is due and payable.

(3) **Response.** Within fifteen days of receiving the notice, the person subject to the penalty assessment must take one of the following actions:

(a) *Pay the assessed penalty.* The penalized person may admit the violation and pay the full amount of the penalty by the due date.

(b) *Contest the violation.* The penalized person may submit written materials to contest the penalty assessment and may request that the commission make a determination based on those materials or may request the opportunity to present facts described in those materials through evidence at a hearing.

(c) *Request mitigation.* The penalized person may admit the violation but submit written materials in support of a request to reduce the amount of the penalty. The penalized person may request mitigation based solely on the written materials or may request the opportunity to present the facts described in those materials through evidence at a hearing.

(d) *Accept conditions.* If the commission offers to suspend any or all of the penalty based on specified conditions (e.g., to commit no additional violations within a specified period of time), the person may admit the violation, accept the conditions, and pay any unsuspended portion of the penalty by the due date, subject to complying with the conditions by the date specified in the notice of penalty assessment. Failure to comply with those conditions will result in the suspended portion of the original penalty immediately becoming due and payable.

(4) **Written statement.** Any response contesting the violation or requesting mitigation must include a written statement of the reasons supporting the requested relief. The commission may deny any contest to the violation or any mitigation request that does not include such a statement.

(5) **Staff reply.** Commission staff will file any reply to a response contesting the violation or requesting mitigation within ten business days. If the commission conducts a hearing on the request, commission staff will participate as a party in that proceeding.

(6) **Hearing.** The commission will grant a request for hearing to contest the violation or request mitigation only if material issues of law or fact require consideration of evidence and resolution in a hearing. If the commission denies a request for hearing, the commission will consider the contest of the violations or request for mitigation based on the written statement included in the response. If the commission grants a request for hearing, an administrative law judge other than the director of the administrative law division or the designee who signed the penalty assessment will review the evidence supporting the contest of the violation or application for mitigation in a brief adjudicative proceeding pursuant to WAC 480-07-610. The executive secretary will issue a notice establishing the procedures, date, and time for the hearing.

(7) **Order.** The executive secretary will enter an order resolving contested violations or requests for mitigation the commission considers without a hearing. A person aggrieved by the order may request administrative review. The commission will consider the request using the same process and requirements applicable to commission review of initial orders set forth in WAC 480-07-825.

(8) **Compliance with conditions.** An order on mitigation may suspend all or part of an assessed penalty based on one or more conditions.

(a) *Compliance.* If the penalized person complies with all conditions in the order, commission staff will file a letter confirming that compliance. If the commission agrees, the executive secretary will issue a letter or notice waiving the suspended portion of the penalty.

(b) *Noncompliance.* If the penalized person does not comply with any such condition, commission staff will file a letter or motion requesting that the commission impose some or all of the suspended portion of the penalty. The penalized person must file any response to the letter or motion within five business days, including any request for a hearing to assess the person's compliance with the condition. The commission will consider and make a determination on the letter or motion and any request for hearing using the same procedure and requirements in subsections (6) and (7) of this rule.

(9) **Enforcement.** Unless a timely contest of the violation(s) or mitigation request is pending before the commission, failure to pay an assessed penalty by the due date is a violation of law for which the commission may take additional enforcement action including, but not necessarily limited to, one or more of the following:

- (a) Assess additional penalties;
- (b) Suspend or revoke the operating authority of a penalized public service company whose operating authority is subject to commission suspension or revocation until the company pays the penalty in full;
- (c) Refer the debt to a collection agency;
- (d) Initiate an adjudicative or brief adjudicative proceeding; or
- (e) File an enforcement action in superior court.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-915, filed 8/29/18, effective 9/29/18.]

**WAC 480-07-917 Penalties for failure to file annual report and pay regulatory fees.** (1) **Monetary penalties.** Any public service company that fails to file a complete annual report with the commission and pay any required regulatory fees by May 1st of each year, or by a subsequent deadline the commission has previously established in response to a company's timely request to extend the May 1st filing date, must pay the following monetary penalties to the commission:

- (a) Two hundred fifty dollars if the filing is one to thirty days late;
- (b) Five hundred dollars if the filing is thirty-one to sixty days late; or
- (c) One thousand dollars if the filing is sixty-one to ninety days late.

(2) **Alternative penalties.** If a public service company has not filed a complete annual report and paid any required

regulatory fees within ninety days after the filing deadline, the commission in its discretion may impose one or both of the following penalties as an alternative to the monetary penalties in subsection (1) of this section:

(a) Revocation or cancellation of the company's operating authority (unless otherwise prohibited under applicable law) following notice and opportunity for hearing (if required by applicable law); and

(b) Penalties the commission may assess pursuant to RCW 80.04.380, 80.04.405, 81.04.380, or 81.04.405, as applicable.

(3) **Notice.** The commission will serve a notice on each public service company that has failed to file a complete annual report and pay any required regulatory fees by the deadline, specifying the amount of the monetary penalty due as of the date of the notice. The notice will also advise the company that the specified penalty is due and payable and will increase as provided in subsection (1) of this section, or that the company may be subject to the alternative penalties in subsection (2) of this section, if the company continues to fail to file a complete annual report and pay any required regulatory fees.

(4) **Waiver.** The commission may waive a monetary penalty, in whole or in part, if the public service company demonstrates to the commission's satisfaction that the company failed to file its complete annual report and pay any required regulatory fees by the deadline due to circumstances beyond the company's control.

(a) *Request.* The commission must receive any request for waiver of the monetary penalty within fifteen days of the date of the commission notice informing the company that the penalty is due and payable. The request must include a written statement of the reasons the company failed to file a complete annual report and pay any required regulatory fees by the deadline sufficient to demonstrate that the company's failure was due to circumstances beyond its control. Unless those circumstances continue to persist, the company should file a complete annual report and pay any required regulatory fees prior to, or at the same time as, submitting a request for waiver.

(b) *Circumstances beyond a company's control.* Circumstances beyond a company's control that may support a request to waive some or all of the monetary penalty include, but are not limited to:

- (i) Death or serious illness of the person responsible for filing the report, or a member of that person's immediate family;
- (ii) Destruction by fire or other casualty of the company's place of business or business records;
- (iii) An act of fraud, embezzlement, theft, or conversion on the part of an employee; or
- (iv) The commission did not send notice of the annual report filing requirement to the company as a result of commission error. Commission error for these purposes does not include either the commission's inability to send notice to the company or the commission sending notice to an incorrect address if the company has failed to provide the commission with the company's current correct email address (or physical address if the company has notified the commission that it does not have, and cannot obtain, an email address).

(c) *Circumstances not beyond a company's control.* Circumstances that are not beyond a company's control and that will not support a request to waive some or all of the monetary penalty include, but are not limited to:

- (i) Financial hardship;
- (ii) Misunderstanding or lack of knowledge of commission rules;
- (iii) Failure to receive an annual report form from the commission unless the annual report form was not available on the commission's web site, or the commission did not furnish a copy of the form upon request in reasonable time for the company to file the form and pay any required fees;
- (iv) Mistakes or misconduct on the part of an employee other than fraud, embezzlement, theft, or conversion;
- (v) Employee termination or turnover;
- (vi) Personal events such as weddings or graduation ceremonies; and
- (vii) Vacations or business trips.

(d) *No tolling.* A request for waiver of a monetary penalty does not toll a company's obligation to file a complete annual report and pay any required regulatory fees. If the company has not made the required filing, the penalty amount will continue to escalate as provided in subsection (1) of this section unless and until the company makes that filing, regardless of whether the company has requested a waiver of the penalty.

(e) *Commission decision.* Within ten days of receiving a request for waiver, the commission will issue a notice informing the company of the commission's decision on the request.

(f) *No administrative review.* Except for penalties the commission assesses pursuant to subsection (2)(b) of this section, the decision on any request for waiver of a monetary penalty is final and is not subject to further administrative review.

(5) **Delegation.** The commission delegates to the director of regulatory services, or the director's designee, the authority to assess and to determine whether to waive, in whole or in part, the monetary penalties in subsection (1) of this section. The commission delegates to the director of the administrative law division, or an administrative law judge the director designates, the authority to impose the alternative penalties in subsection (2) of this section.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-917, filed 8/29/18, effective 9/29/18.]

### **WAC 480-07-920 Interpretive and policy statements.**

(1) **General.** Upon the petition of any person, or upon its own initiative, the commission may make and issue interpretive and policy statements to advise the public of the commission's current opinions, approaches, and likely courses of action. Interpretive and policy statements are advisory only and are not binding on the commission or any person.

(2) **Roster of interested persons.** The commission will maintain a roster of interested persons who have requested in writing to be notified of all interpretive and policy statements the commission issues. The commission will periodically update the roster. The commission will provide an electronic copy to each person on the roster when the commission issues an interpretive and policy statement.

(3) **Submission of statement to the office of the code reviser.** Whenever it issues an interpretive and policy statement, the commission will submit to the office of the code reviser for publication in the *Washington State Register* a statement describing the subject matter of the interpretive and policy statement and describing how interested persons may obtain a copy of that statement.

(4) **Conversion to rules.** The commission may convert any interpretive and policy statement into rules through a formal rule making. Any interested person may petition the commission to initiate such a rule making. Upon receipt of such a petition, the commission will:

(a) Notify the joint administrative rules review committee of the petition; and

(b) Within sixty days either deny the petition in writing, stating the reasons for the denial, or initiate rule-making proceedings.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-920, filed 8/29/18, effective 9/29/18; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-920, filed 11/24/03, effective 1/1/04.]

### **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 purports to present the commission with the option to enter either a declaratory order or an adjudicative order. The filing party must specify a single process under which it requests that the commission proceed.

(2) **Notice.** The commission will give notice of any petition for declaratory order within fifteen days after the commission receives the petition. The commission will serve notice 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 a response 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:

(a) 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;

(b) Supports such assertion by sworn statement in the form of a declaration or affidavit demonstrating the potential for substantial prejudice; and

(c) 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 the reasons for that decision;

(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. The commission will hold any hearing on a petition for declaratory order under RCW 34.05.240 within ninety days after receipt of the petition. The commission will give at least seven days' notice of any hearing to the petitioner, to all persons to whom notice is required by law, and to any other person the commission deems desirable. The notice will include the time and place for the hearing and a statement of the issues the commission will consider.

(6) **Extension of time.** The commission may extend the times specified in subsection (5)(c) and (d) of this section for good cause.

(7) **Commission action after hearing.** The commission will take one of the following actions within a reasonable time after holding any hearing as provided in subsection (5)(d) of this section:

(a) Enter a declaratory order; or

(b) Notify the petitioner that the commission will not enter a declaratory order and state the reasons for that decision.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-930, filed 8/29/18, effective 9/29/18; 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 may convert a proceeding to a different type of proceeding on the commission's own initiative or upon application by any party or person directly affected. Any such conversion or commission refusal to convert a proceeding will comply with the requirements in RCW 34.05.070 and be consistent with the public interest.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-940, filed 8/29/18, effective 9/29/18; 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.]