

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.]