

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) **Pilot training program stipend.** Any proposed settlement or agreement for pilotage rates must include the necessary tariff surcharge to fund the stipend the board of pilotage commissioners is authorized to pay to pilot trainees and to use in its pilot training program under RCW 88.16.035.

(3) **Commission fee to set pilotage service rates.** The parties to any proposed settlement or agreement for pilotage rates must allow for the commission to apply its reasonable fee for setting rates for marine pilotage services.

(4) **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 (5) 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.

(5) **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 partic-

ipates 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.

(6) **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, 80.04.160, 81.116.020, and 81.116.900. WSR 19-11-012 (Docket TP-180402, General Order R-596), § 480-07-700, filed 5/3/19, effective 6/3/19. 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.]