

**(Clean Version)**

**CHAPTER 480-07 WAC**

**Procedural Rules**

**[Draft]**

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**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 (“the 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 rulemaking 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, and informal complaints.<sup>1</sup>

These rules are authorized by and supplement the Administrative Procedure Act, chapter 34.05 RCW, and the principal statutes that define the commission’s authority and responsibility. These statutes are found principally in Titles 80 and 81 of the Revised Code of Washington (RCW). These procedural rules should be read and understood in conjunction with the Administrative Procedure Act and Titles 80 and 81 RCW. Certain of these statutes establish procedural requirements for conducting particular types of business with the commission.

## **PART I: GENERAL PROVISIONS**

**WAC 480-07-100 Scope of Part I.**<sup>2</sup> Part I of this chapter contains information about the commission, and general rules that apply in rulemaking, adjudicative, and other proceedings described in this chapter.

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<sup>1</sup> Source: WAC 480-09-005.

<sup>2</sup> New section.

**WAC 480-07-110 Exceptions from and modifications to the rules in this chapter; special rules.<sup>3</sup>**

**(1) Exceptions and modifications.** The commission may modify the application of these rules in individual cases if consistent with the public interest, the purposes underlying regulation, and applicable statutes.

**(2) Special rules.** When statutes, or rules in other chapters of Title 480 of the Washington Administrative Code, apply to specific types of companies regulated by the commission or to others who may conduct business with the commission, or to particular proceedings, those statutes or special rules govern if they conflict with the rules in this chapter.

**WAC 480-07-120 Office hours.<sup>4</sup>** “Business day,” as used in this chapter, means any day when the commission’s offices are open to the public. Commission 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 “Legal holidays and legislatively recognized days.”

**WAC 480-07-125 Physical address; telephone; facsimile; e-mail; Internet.**

The information included in this section is current at the time of rule adoption, but may change. Current information and additional contact information are available on the commission’s internet site, in person at the commission offices, or by a telephone call to the commission’s main public number.

Physical address; address for U. S. Mail or hand-delivery	Washington Utilities and Transportation Commission 1300 S. Evergreen Park Drive S.W. P.O. Box 47250 Olympia, WA 98504-7250
Telephone (general)	(360) 664-1160
Telephone (commission records center)	(360) 664-1234
Telefacsimile (commission records center)	(360) 586-1150
Electronic mail (commission records center)	<a href="mailto:records@wutc.wa.gov">records@wutc.wa.gov</a>
Internet	<a href="http://www.wutc.wa.gov">www.wutc.wa.gov</a>

<sup>3</sup> Source: WAC 480-09-010

<sup>4</sup> Source: WAC 480-09-110.

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

**(1) Computation of time.**<sup>5</sup> "Day" means calendar day whenever used in this chapter, unless otherwise specified. 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 an official state holiday, Saturday, or Sunday, in which event the period runs until the end of the next day that is not an official state holiday, Saturday, or Sunday. For example, if a formal complaint is served on the first day of the month, any answer to the complaint must be filed by the twenty-first day of the same month, unless the twenty-first day is an official state holiday, in which case the answer will be timely if filed on the next business day after the holiday.

**(2) Variation from time limits.**<sup>6</sup> 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 sets out procedures for and governs when the commission will grant continuances or extensions of time in adjudicative proceedings.

**WAC 480-07-140 Communicating with the commission.**

**(1) Scope of rule.**<sup>7</sup> This rule includes general requirements for effective communication with the commission. Communications that concern rulemaking proceedings, adjudicative proceedings, or public records requests must also conform to specific requirements as follows:

- (a) In rulemaking proceedings, WAC 480-07-143 and Part II of this chapter.
- (b) In adjudicative proceedings, WAC 480-07-145 and Part III of this chapter.
- (c) For public records requests, chapter 42.17 RCW and chapter 480-04 WAC.

**(2) Content of letters and electronic mail messages to the commission.**<sup>8</sup> Letters and electronic mail messages to the commission should include only one subject.

**(3) Where to send letters and electronic mail messages.**

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<sup>5</sup> Source: WAC 480-09-130.

<sup>6</sup> Source: WAC 480-09-135.

<sup>7</sup> Source: WAC 480-09-100.

<sup>8</sup> Source: WAC 480-09-100(1).

WAC 480-07-125 includes the commission's mailing address and other contact information current at the time of rule publication. The commission's internet site includes current and additional contact information.

**(4) Identification of sender; Identification of permit, license, or certificate; Identification of proceeding.**<sup>9</sup>

**(a) Identification of sender.**<sup>10</sup> Persons who communicate with the commission must provide their name and a mailing address. Persons who communicate with the commission on behalf of a business, organization, or other entity must state their name and title or position, the name of the entity on whose behalf the communication is sent, and provide a mailing address. Persons who communicate with the commission are also encouraged to provide their electronic mail address and any other contact information that may assist the commission to respond.

**(b) Identification of permit, license, or certificate held by sender.** Any person or entity that holds 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.**<sup>11</sup> Persons who communicate with the commission concerning a formal commission proceeding (e.g., rulemaking or adjudication) must identify the proceeding to the best of their ability, including the docket number and name of the proceeding, if known.

**(5) Electronic mail file attachment format requirements.** Electronic submissions may be provided by electronic mail (e-mail) file attachment addressed to the commission's records center, or submitted to the records center on a 3 1/2 inch IBM formatted high-density disk or compact disc (CD) labeled with the docket number of the proceeding, the name of the company and/or the name of the individual submitting the document. The commission prefers to receive electronic documents in Word or WordPerfect file format supplemented by a copy in Adobe Acrobat (i.e., .pdf) file format created directly from the word processing software used for the original document. Parties that cannot create Adobe Acrobat files directly are requested to provide a copy of the document converted to Adobe Acrobat via scanning or other available technology.

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<sup>9</sup> Source: WAC 480-09-100(2).

<sup>10</sup> Source: WAC 480-09-100(2)(a).

<sup>11</sup> Source: WAC 480-09-100(2)(b).

**WAC 480-07-143 Submitting documents in rulemaking proceedings.**

**(1) Scope of rule.**<sup>12</sup> This section governs communications to the commission in rulemaking proceedings (including letters, electronic mail messages, comments, and other documents). 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 rulemaking must be addressed to the commission secretary.

**(3) Methods for delivering comments and other communications.**

**(a) By electronic mail message or telefacsimile.**<sup>13</sup> A person may submit comments in rulemaking proceedings by electronic mail message (e-mail), e-mail file attachment, or telefacsimile transmission without supplementation by paper copy.<sup>14</sup>

*(i) Where to send electronic documents.* All electronic mail and telefacsimile transmissions made under this rule should be directed to the commission's records center. Courtesy or informational copies may be sent to other electronic mail addresses or telefacsimile numbers for individual commission staff members. When a person files a document by e-mail or telefacsimile, the document should not be sent more than once except to cure transmission or receiving errors.

*(ii) When deemed received.* A document submitted by electronic mail or telefacsimile is deemed received only when the entire electronically mailed document successfully reaches the commission's records center electronic mailbox or telefacsimile machine. Documents received electronically in the commission's records center after 5:00 p.m. are not considered officially received or filed until the next business day when they are stamped with the date and time.<sup>15</sup>

**(b) By mail or hand delivery (e.g., courier delivery service).** A person may submit comments or otherwise communicate with the commission concerning rulemaking proceedings by mail or by hand delivery (e.g., courier delivery service).

*(i) When deemed received/ filed.* A document submitted in a rulemaking proceeding by mail or hand delivery is deemed received or filed when physically received by the commission records center and stamped with the date and time.<sup>16</sup> Documents delivered to the commission's records center after 5:00 p.m. are not

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<sup>12</sup> Source: WAC 480-09-100.

<sup>13</sup> Source: WAC 480-09-100(3)(b)(ii).

<sup>14</sup> Source: WAC 480-09-120(1)(b)(ii).

<sup>15</sup> Source: WAC 480-09-101(1).

<sup>16</sup> Source: WAC 480-09-120(1).

considered officially received or filed until the next business day when they are stamped with the date and time.<sup>17</sup>

(ii) *Electronic file supplement.* The commission encourages parties who submit written comments in rulemaking proceedings to supplement any paper filing delivered by mail or courier with an electronic version, as specified in WAC 480-07-140(5).<sup>18</sup>

**WAC 480-07-145. Filing documents in adjudicative proceedings.**

**(1) Scope of rule.**<sup>19</sup> This section governs communications to the commission by parties in adjudicative proceedings (including letters and electronic mail messages, pleadings, and other documents). These rules are in addition to the general rules for communicating with the commission in WAC 480-07-140.

**(2) Mail or hand delivery service is required for all documents.** Parties to adjudicative proceedings before the commission must file original, signed documents and paper copies by mail or hand delivery (e.g., courier delivery service) as provided in this rule to satisfy official filing requirements and meet the commission's administrative needs. The commission may provide for the expedited exchange of documents among parties and the commission by electronic mail and telefacsimile transmission when necessary for process requirements in individual adjudicative proceedings.

**(a) When deemed received/ filed.** A document submitted in an adjudicative proceeding is officially received for filing only when the original document, including the required certificate of service under subsection (6) of this rule, and the required number of copies, are physically received at the commission's records center by mail or in-hand delivery and stamped with the date and time. The date-stamped time will determine whether a document meets any deadline that applies and will determine the timing of any later deadlines based on filing.<sup>20</sup> Documents that are delivered to the commission's records center after 5:00 p.m. are not considered officially received or filed until the next business day when they are stamped with the date and time.<sup>21</sup>

**(b) Exception for documents offered and received at hearing.** When authorized by the presiding officer in an adjudicative proceeding before the commission, a document may be officially received for purposes of the proceeding when the presiding officer receives the document for the record at

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<sup>17</sup> Source: WAC 480-09-101(1).

<sup>18</sup> Source: WAC 480-09-120(1)(b)(ii).

<sup>19</sup> Source: WAC 480-09-100.

<sup>20</sup> Source: WAC 480-09-101(1).

<sup>21</sup> Source: WAC 480-09-101(1).

hearing.<sup>22</sup> The presiding officer may also require that a copy be filed in the commission records center.

**(c) Where to mail/deliver.** All written communications mailed or hand-delivered to the commission must be addressed to the commission's secretary at the address specified in WAC 480-07-125.

**(d) Filings must be supplemented by an electronic version of the document.** Parties filing pleadings, motions, prefiled testimony and exhibits, and briefs must supplement their filing by submitting the document in electronic form, as specified in WAC 480-07-140(5), unless excused from the obligation by the presiding officer.<sup>23</sup>

**(3) Number of copies; failure to file sufficient number of copies.**

**(a) Number of copies.**<sup>24</sup> Unless the commission specifies a different number of copies, every pleading, motion, response, and brief submitted to the commission by mail or courier must be filed with 19 copies. A party for whom providing the required number of copies would be a hardship may describe the hardship and request permission to file fewer copies.

**(b) Failure to file sufficient number of copies.**<sup>25</sup> If a person files fewer than the required number of copies of a document, the commission may reject the filing or the commission may make the additional copies for distribution and processing within the commission. If the commission makes copies to meet the total number required, the commission will bill the filing person at a rate of thirty cents per page, plus sales tax. This rate compensates for the loss of the worker's attention to assigned duties, the unscheduled use of equipment, and the cost of materials.

**(4) Filing and service are separate requirements.**<sup>26</sup> Filing documents with the commission under this rule and service of the documents to parties under WAC 480-07-150 are both required in all adjudicative proceedings. Filing a document with the commission does not constitute service upon the assistant attorney general or any other party. Likewise, service upon the assistant attorney general does not constitute a filing with the commission.

**(5) Service and certificate of service are required.**<sup>27</sup> Filing a pleading, motion, response, or brief with the commission in an adjudicative proceeding is not complete unless service has been made upon all parties to the proceeding pursuant to WAC 480-07-150. Service must be confirmed by submitting with the

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<sup>22</sup> Source: WAC 480-09-120(1).

<sup>23</sup> Source: WAC 480-09-120(1)(b)(ii).

<sup>24</sup> Source: WAC 480-09-120(1)(b), (b)(i), 420(4).

<sup>25</sup> Source: WAC 480-09-125.

<sup>26</sup> Source: WAC 480-09-120(1)(c).

<sup>27</sup> Source: WAC 480-09-120(1)(d).

filing a valid certificate of service, or its equivalent, as provided in WAC 480-07-150(9).

**(6) Electronic mail or telefacsimile transmission may be used to expedite the filing process, when authorized.**

**(a) When permitted; paper copy supplementation is required.** The presiding officer may, when necessary because of the demands of schedule or other sufficient reason, provide a one-day extension of the filing requirement by authorizing electronic mail or telefacsimile delivery of documents on the date established for filing under the procedural schedule in an adjudicative proceeding subject to the following conditions:

*(i) Paper copy supplementation is required.* The commission must physically receive the original and required number of copies by 12:00 noon on the first business day following the filing deadline established under the procedural schedule.

*(ii) Exact copy is required.* The original and paper copies of the document delivered to the commission on the day following the filing deadline must conform exactly in form and content to the electronic version or the document will not be considered to have been timely filed and may be rejected on that basis.

*(iii) Authorization for electronic submission must be indicated.* All electronic documents submitted to the commission by electronic mail message or facsimile transmission on a filing deadline date must be accompanied by an electronic message or facsimile cover sheet that states the basis for authority to effect timely filing and service by electronic mail or telefacsimile transmission.

*(iv) Simultaneous delivery to all parties is required.* All electronic documents submitted to the commission by electronic mail message or facsimile transmission on a filing deadline date must be simultaneously delivered to all parties by electronic message or telefacsimile. Service by other required means is not excused, subject to the requirements of WAC 480-07-150.<sup>28</sup>

**(b) Where to send electronic mail message or telefacsimile transmission.**<sup>29</sup> All electronic mail and telefacsimile transmissions made under this rule should be directed to the commission's records center. Courtesy or informational copies may be sent to other electronic mail addresses or telefacsimile numbers for individual commission staff members.<sup>30</sup> When a person files a document by telefacsimile or e-mail, the document should not be sent more than once except to cure transmission or receiving errors.

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<sup>28</sup> Source: WAC 480-09-120(1)(e).

<sup>29</sup> Source: WAC 480-09-100(3)(b)(ii).

<sup>30</sup> Source: WAC 480-09-120(1)(e).

**(c) When deemed received.** A document submitted by electronic mail or telefacsimile is deemed received when the entire document successfully reaches the commission's records center electronic mailbox or telefacsimile machine.<sup>31</sup>

**(7) Additional rules regarding adjudicative proceedings.**<sup>32</sup> Rules relating to general rate proceedings (subpart B of this chapter) and abbreviated adjudicative proceedings (subpart C of this chapter) govern filing requirements in those proceedings.

**WAC 480-07-150 Service of documents in adjudicative proceedings.**<sup>33</sup>

**(1) Service defined.** Service means sending or delivering, in accordance with pertinent law and rule, documents relating to commission adjudications, to parties and any other persons to whom service may be required by statute. Service includes the formal exchange of documents among parties to adjudicative proceedings.

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

**(a)** Each party in an adjudicative proceeding must designate one person to receive service of documents relating to the adjudication.

**(b)** When any party has appeared by an attorney or other authorized representative in a proceeding before the commission, the party must name the representative, or one of the representatives if there is more than one, to receive service of documents. Service on the representative is valid service upon the party. When an individual party appears on his or her own behalf, she or he must be the person to receive service.

**(c)** The commission may order different arrangements for service in individual proceedings.

**(3) Person to receive service of orders.**

**(a)** The commission will serve orders in adjudicative proceedings upon the party's representative and also on the party. Therefore, all parties must provide their names and mailing addresses for purposes of service.

**(b)** In addition, parties that are a partnership, corporation, association, governmental subdivision or other entity other than an individual person must designate one individual person within their business, government unit, or organization to receive service of commission orders.

**(4) Contact information.** Each party must supply the following information about every individual that it names to receive service:

**(a)** Name.

**(b)** Mailing address.

**(c)** Telephone number.

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<sup>31</sup> Source: WAC 480-09-101(1).

<sup>32</sup> New section.

<sup>33</sup> Source: WAC 480-09-120(2).

(d) Facsimile number, if any.

(e) Electronic mail address, if any.

(f) Relationship to party (e.g., executive director, etc.)

**(5) Waiver of service by statutory means.**

(a) A party may choose to waive service of process by means of personal delivery, United States mail or parcel delivery service, in whole or in part, and elect to receive service by electronic means.

(b) Waiver must be made in writing, filed with the Commission, and must specify alternative methods of communication to effect service. Alternates may include telefacsimile or electronic mail.

(c) Waiver excuses other parties and the Commission from the obligation to use methods of service specified in rule or statute.

Neither the commission nor any party is foreclosed from making service by statutory means upon a party that has waived such service, and timely service by a method specified in the statute will satisfy legal requirements for service when it is used.

**(6) Service by parties.** Parties must serve documents by delivering one copy to each other party by one of the following methods:

(a) In person.

(b) By mail, properly addressed with first class postage prepaid.

(c) By delivering to a commercial parcel delivery company and making or arranging payment of the pertinent fee.

(d) By telefacsimile transmission, if other forms of service are waived.

(e) By electronic mail, if other forms of service are waived.

**(7) Service by commission.** All notices, complaints, petitions, findings of fact, opinions, and orders required to be served by the commission may be served by one of the following methods:

(a) In person.

(b) By mail, properly addressed with first class postage prepaid.

(c) By commercial parcel delivery company.

(d) By telefacsimile transmission, when a paper copy is simultaneously mailed or tendered to a commercial parcel delivery company.

(e) By electronic mail if originals are simultaneously mailed or sent by commercial parcel delivery company.

**(8) When service is deemed complete.** Unless otherwise ordered by the Commission in a particular proceeding, service is complete as follows:

(a) Service by mail is complete when a copy of the document is properly addressed, stamped, and deposited in the United States mail.

(b) Service by commercial parcel delivery is complete when the parcel delivery company accepts a copy of the document for delivery.

(c) Service by telefacsimile transmission is complete when the party receiving service has filed a waiver of service by statutory methods and requested service by telefacsimile transmission, and the document being served has been entirely received in the recipient's telefacsimile machine.

(d) Service by electronic mail is complete when the party receiving service has filed a waiver of service by statutory methods and requested service by electronic mail, and the document being served has been entirely received at the recipient's designated electronic mail address.

(e) Proof of service by electronic means. Parties effecting service by electronic means are encouraged to secure electronic return receipts or otherwise confirm successful delivery.

**(9) Certificate of service.** Each person filing a pleading, motion, response, or brief with the commission must include with or on the original of the document either an acknowledgment of service or the following certificate:

"I hereby certify that I have this day served this document upon all parties of record in this proceeding, by (state the authorized method of service selected under WAC 480-07-150)"

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

(signature of person  
who served the document)

**WAC 480-07-160 Confidential information.**<sup>34</sup> The commission will provide special handling and limited access to confidential information submitted in compliance with this rule. This rule applies to any information submitted under a claim of confidentiality. See, also, WAC 480-07-420 regarding protective orders in adjudicative proceedings.

**(1) Implementation.**

**(a) Designated official.** The commission's secretary is the designated official responsible for the commission's compliance with the public records act, chapter 42.17 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.

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<sup>34</sup> Source: WAC 480-09-015.

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

**(c) Requester.** Any person who submits a request for public records under the public records act, chapter 42.17 RCW, or a data request in an adjudicative proceeding is a “requester,” as that term is used in this rule.

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

**(a)** Information protected from inspection or copying under an exemption from disclosure requirements under the public records act, chapter 42.17 RCW.

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

**(c)** Valuable commercial information, including trade secrets or confidential marketing, cost, or financial information, or customer-specific usage and network configuration and design information, as provided in RCW 80.04.095.

**(3) How to designate and seek protection of confidential information under this section.** A provider may claim the protection of this rule only by strict compliance with the following requirements. Any failure to comply with these requirements may result in the submission not being accepted as one including confidential information and its return to the provider for correction and resubmission.

**(a) Contents.** The provider must submit the claim of confidentiality in writing, in the same form (i.e., paper or electronic) and at the same time the information claimed to be confidential is submitted. The provider must state the basis upon which the information is claimed to be confidential under this rule, and must identify any person (other than the provider) that might be directly affected by disclosure of the confidential information.

**(b) Marking.**

*(i) Paper copies.* When the document is in paper format, the provider must clearly mark each copy with the designation “Confidential Per WAC 480-07-160.” The provider must place this mark on the first page of a multi-page document and each specific page where the provider claims there is confidential information.

*(ii) Electronic copies.* When the document is in electronic format, such as an electronic mail message, or a word processing or spreadsheet file, the “Confidential Per WAC 480-07-160” mark must be inserted on the first page in the file and on each page that the provider claims contains confidential information.

*(iii) Protective order, if any, must be cited.* If the provider submits confidential information under the provisions of a protective order, the

"confidential" mark on each page that includes confidential information must state: "Confidential per Protective Order in WUTC Docket No. [insert docket number]."

**(c) Unredacted version under seal; redacted version.** The provider must submit a version of the document as to which confidentiality is claimed as a complete document ("unredacted version") and a version of the document with the information claimed to be confidential masked ("redacted version"). The unredacted version must be so labeled and submitted in a sealed envelope or similar wrapping. Each page of the unredacted version that includes information claimed to be confidential must be printed on yellow or canary paper. The redacted version must be submitted in the same manner as a document as to which confidentiality is not claimed. The redacted version will be available for public disclosure if requested. The redacted and unredacted versions must have the same pagination and line numbering.

**(4) Challenges to claims of confidentiality.** The commission or a party to a proceeding in which a provider submits a document with a claim of confidentiality may challenge the claim. When a challenge is made, the commission will provide an opportunity to respond before ruling on the challenge. If a confidential designation is challenged, the provider of the confidential information bears the burden to show that part or all of a document should be protected from disclosure under chapter 42.17 RCW, RCW 80.04.095, or a protective order. The commission may express its ruling orally on the record in an adjudicative proceeding, or in a written order.

**(5) Requests for "confidential" information.** Subject to subsections (6) and (7) of this section, the commission will release information designated confidential in response to a request properly filed under the following requirements:

**(a)** The requester must submit a written request to the commission's secretary on a form provided by the commission or in a letter containing equivalent supporting information, including the requester's name and address and the name and address of any organization on whose behalf or for whose benefit the request is being made. The requester must state whether the information sought is to be used for a commercial purpose.

**(b)** The request must be sufficiently specific to allow the secretary to readily identify the document or other material that contains the requested information. Following receipt of a request for confidential information, the secretary will notify the requester of any deficiency in the request. The requester is required to correct the request and resubmit it pursuant to this rule. The commission will take no action pending resubmission.

(c) If a requester wants copies of any documents identified in response to a request, the requester must make arrangements with the commission's secretary to pay the designated copying fees, if any.

**(6) Informal resolution.** When the secretary and the requester agree that the requester's need for information can be satisfied without disclosing confidential information, the secretary will make the information available.

**(7) Notice of request for information designated confidential; release of information designated confidential.** The commission will provide written notice of any request for information designated confidential to the provider and any person identified by the provider as a person who might be directly affected by release of the information. This is to permit any person asserting confidentiality or who might be affected by the release of the information to invoke the statutory procedures for securing a court order to protect the records from disclosure or to take similar steps in compliance with a protective order in an adjudicative proceeding. The commission will issue such notice not more than two days after the requested materials are located and it determines that they contain information claimed to be confidential. The commission will send a copy of the notice to the requester at the same time it sends a copy to the provider.

If the provider consents in writing to the release of the information, or does not restrain disclosure by way of court order within ten days following notice, the commission will consider the information public, remove the confidential designation from its files, and release the information to the requester.

**(8) Judicial intervention by the commission.** The commission need not assist any person in seeking or resisting judicial intervention, but may participate in any such proceeding.

**(9) Designation or Redesignation of confidential information in adjudications.** At the conclusion of an adjudication in which confidentiality was asserted as to documents or portions of the record, the party originally asserting confidentiality must, no later than the time for filing briefs or, if no briefs are filed, within 10 days after the close of the record, do the following:

**(a)** Verify the accuracy of all confidential designations in the record and in the exhibit list for the proceeding, and submit any proposed corrections or changes. Absent a statement of proposed corrections or changes, the designations in the record and in the exhibit list are final and will be changed only if the party asserting confidentiality voluntarily removes, or is required to remove, a confidential designation. If there is conflict between designations, the designation that is least restrictive to public access will be adopted.

**(b)** File a redacted and unredacted copy of any document as to which confidentiality was asserted during the proceeding but which is not reflected in the record or exhibit list as a document designated confidential.

**(c)** File an unredacted version of any document designated as confidential during the proceeding, but as to which the party claiming confidentiality wishes to remove the confidential designation, or as to which the confidential designation was terminated by order. In the case of briefs, testimony, and similar documents, the authoring party must file the unredacted version.

**WAC 480-07-170 Official communications from the commission.**<sup>35</sup> A communication from the commission is not an “official communication” unless the commissioners, the commission’s secretary, or the secretary’s designee signs it. In addition, the presiding administrative law judge or the administrative law judge’s designee may sign official communications relating to an adjudicative proceeding.

**WAC 480-07-180 Incorporated and referenced materials in commission rules and orders.**<sup>36</sup> 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 42.17 RCW, or under a protective order in an adjudicative proceeding. The commission’s secretary will provide a copy of a referenced document upon request, allowing reasonable time for any necessary copying, subject to any pertinent 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 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 website (*see*, WAC 480-07-125).

## **PART II: RULEMAKING PROCEEDINGS**

**WAC 480-07-200 Scope of Part II.**<sup>37</sup> The rules in this part apply to all rulemaking proceedings before the commission.

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<sup>35</sup> Source: WAC 480-09-101(2).

<sup>36</sup> Source: WAC 480-09-012.

<sup>37</sup> New section.

**WAC 480-07-210 Administrative Procedure Act requirements.**<sup>38</sup> The commission conducts rulemaking proceedings in compliance with the requirements of RCW 34.05.310 through 34.05.395.

**WAC 480-07-220 Monitoring rulemaking proceedings; lists of interested persons.**<sup>39</sup>

**(1) Internet.** The commission's internet web site includes information about pending rulemaking proceedings.

**(2) Mail or electronic mail.** The commission maintains lists of persons interested in potential rulemaking proceedings that concern particular regulated industries and other areas of potential interest. The commission sends notice of rulemaking proceedings 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 for the person's area(s) of interest. The commission may establish a fee for this service.

**WAC 480-07-230 Inquiring about rulemaking proceedings.**<sup>40</sup> 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 internet web site

**WAC 480-07-240 Petitions for rulemaking, amendment, or repeal.**<sup>41</sup> 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.

### **PART III: ADJUDICATIVE PROCEEDINGS**

#### **SUBPART A: Rules of General Applicability**

**WAC 480-07-300. Scope of Part III.**<sup>42</sup>

**(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

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<sup>38</sup> Source: WAC 480-09-210(1).

<sup>39</sup> Source: WAC 480-09-210(2).

<sup>40</sup> Source: WAC 480-09-210(3).

<sup>41</sup> Source: WAC 490-09-220.

<sup>42</sup> New section.

proceeding,” for purposes of this chapter, is a proceeding in which an opportunity for hearing is required by statute or constitutional right before or after the commission enters an order, or as to which the commission voluntarily enters an adjudication, and as defined and described in Chapter 34.05 RCW.

**(2) Examples of adjudicative proceedings before the commission.** The following are examples of proceedings that are adjudicative proceedings for purposes of this chapter, if set for hearing:

**(a)** Formal complaint proceedings commenced pursuant to RCW 80.04.110 or RCW 81.04.110.

**(b)** General rate proceedings.

**(c)** Applications for authority (e.g., certificates, licenses, and permits).

**(d)** Petitions for enforcement of interconnection agreements.

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

**(f)** Declaratory order proceedings.

**WAC 480-07-305 Commencement of an adjudicative proceeding.**

**(1) Commencement.**<sup>43</sup> 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 or presiding officer notifies a party that a prehearing conference, hearing, or other stage of an adjudicative proceeding will be conducted.

**(2) Who may file a pleading seeking to initiate an adjudicative proceeding.**<sup>44</sup> A person involved in an actual case or controversy subject to the commission’s jurisdiction may apply to the commission for an adjudicative proceeding by filing the appropriate form of pleading.

**(3) Types of pleadings that may initiate an adjudicative proceeding.**<sup>45</sup> The following pleadings, when properly and timely filed, constitute applications for adjudicative proceedings:

**(a)** Formal complaints.

**(b)** Petitions, when the action sought requires 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)** Filings for general rate increases, as defined in this chapter.

**(e)** Applications for authority that are not protested, if the commission is required by law to conduct a hearing or determines, in its discretion, that it should set the matter for hearing.

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<sup>43</sup> New section (based on RCW 34.05.413(5)).

<sup>44</sup> Source: WAC 480-09-400(1).

<sup>45</sup> Source: WAC 480-09-400(2), (3).

**(f)** Petitions for review of the denial of unprotested authority and petitions for mitigation of penalties assessed without hearing.

**(g)** Protests to applications for authority.

The commission will not initiate an adjudicative proceeding in response to such an application when contrary to statute or rule, when the application is presented during an existing adjudication (except pursuant to the commission's discretion under RCW 34.05.413(1)), or when the subject raised by the application is not required to be resolved in an adjudicative proceeding, as defined in chapter 34.05 RCW.

**(4) Commission notification of any deficiencies in a pleading.**<sup>46</sup> 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 it requires regarding the application for adjudicative proceeding, and notify the applicant of the name, mailing address, and telephone number of a person on the commission staff that may be contacted regarding the application.

**(5) Commission determination to conduct adjudicative proceeding.**<sup>47</sup> Within ninety days after a party files and serves a pleading or a party files and serves a response, whichever comes later, the commission will:

**(a)** Commence an adjudicative proceeding by serving the parties with 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 copy of its written decision, which will include a brief statement of reasons and notice of any administrative review available.

**WAC 480-07-310 Ex parte communication.**<sup>48</sup>

**(1) General.** RCW 34.05.455 and this section govern ex parte communications. After an adjudicative proceeding begins and before a final determination, no person who has a direct or indirect interest in the outcome of the proceeding, including the Commission's advocacy, investigative, or prosecutorial staff, may directly or indirectly communicate about the merits of the proceeding with the commissioners, the administrative law judge, or the commissioners' staff assistants, 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:

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<sup>46</sup> Source: WAC 480-09-400(4).

<sup>47</sup> Source: WAC 480-09-400(5).

<sup>48</sup> Source: WAC 480-09-140.

**(a) Procedural aspects.** Communications necessary to procedural aspects of maintaining an orderly process, such as scheduling, are not ex parte communications prohibited by RCW 34.05.455, or by this section.

**(b) Commissioners.** The commissioners may communicate with one another regarding the merits of any adjudicative proceeding.

**(c) Commission employees and consultants.** A presiding officer may receive legal counsel, or consult with staff assistants 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 prosecutorial functions in the same or a factually related case.

**(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, the presiding officer must disclose the communication as prescribed in subsection (4) of this section promptly after starting to serve.

**(4) What is required if an ex parte communication occurs.** A presiding officer who receives any communication that appears to violate RCW 34.05.455, or this section, will place on the record of the pending matter any such written communication received, any written response to the communication, and a memorandum stating the substance of any such oral communication received, any response made, and the identity of each person from whom the presiding officer received an ex parte communication. The presiding officer will advise all parties that these matters have been placed on the record. Upon request made within ten days after notice of the ex parte communication, any party who wants to respond to the communication may place a written rebuttal statement on the record. Portions of the record 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 the record for purposes of establishing a fact at issue and that portion is admitted 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 will, and any party may, report any violation of this section to appropriate authorities for any disciplinary proceedings provided by law.

**WAC 480-07-320 Consolidation of proceedings.**<sup>49</sup> 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

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<sup>49</sup> Source: WAC 480-09-610.

commission may act on its own motion to consolidate matters for hearing, or to sever consolidated matters.

**WAC 480-07-330 Presiding officers.**<sup>50</sup>

**(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 supervisor of the administrative law judge function within the agency will designate one or more administrative law judges to preside in individual proceedings, subject to the commissioners’ approval. An administrative law judge may be designated to assist the commissioners in their role as presiding officers as described in subsection (1) of this rule, or may be designated to serve alone as 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 law prohibits entry of an initial order. The commissioners will enter a final order following the opportunity for administrative review of an initial order, upon waiver of an initial order, or as otherwise provided by law.

**WAC 480-07-340 Parties--General.**

**(1) Defined; appearance requirement.** A "party" is a person (meaning an individual, partnership, corporation, association, governmental subdivision or unit, or public or private organization or entity of any character) that has complied with all requirements for establishing and maintaining party status in any proceeding before the commission.<sup>51</sup> 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 party is excused from appearing by the presiding officer or shows good cause for failing to timely appear.<sup>52</sup> The commission staff and the public counsel section of the attorney general's office become parties to an adjudicative proceeding for all purposes upon entering an appearance. When the Commission’s regulatory staff

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<sup>50</sup> Source: New rule based on RCW 34.05.425 and RCW 80.01.060

<sup>51</sup> Source: WAC 480-09-410; RCW 34.05.010(14).

<sup>52</sup> Source: WAC 480-09-720.

appears as a party it will be called “commission staff” or “staff.” When the public counsel section of the office of the Washington attorney general appears as a party it will be called “public counsel.”

**(2) Classification of parties.** Parties to proceedings before the commission will be called applicants, complainants, petitioners, respondents, intervenors, or protestants, according to the nature of the proceeding and the relationship of the parties, 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 seeking to impose a penalty or other sanction based upon alleged acts or omissions of the respondent, 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." In general rate proceedings that are set for hearing on the commission’s motion or complaint, the party seeking to increase rates is a “respondent,” but bears the burden of proof in the proceeding pursuant to RCW 80.04.130 or RCW 81.04.130.

**(f) Intervenors.** Persons, other than the original parties, that are permitted to appear and participate as parties are "intervenors."

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

#### **WAC 480-07-345 Appearance and practice before the commission.<sup>53</sup>**

**(1) Minimum qualifications.** No person may appear before the commission as a representative of a party to an adjudicative proceeding without meeting 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;

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<sup>53</sup> Source: WAC 480-09-710.

**(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 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.** Attorneys or other authorized representatives that wish to appear on behalf of a party or person seeking party status, or to withdraw from a proceeding, must immediately provide separate written notice to the commission and all parties to the proceeding. A party's initial pleading filed in the proceeding must designate the party's representative. Later changes to the designation of authorized representative must be made by written notice to the Commission, and a copy must be served on each other party in the proceeding. The party's initial pleading must also designate one person as its representative to accept service for the party itself.

**(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 it 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.

**WAC 480-07-350 Access for limited English speakers and hearing-impaired persons.**

**(1) Interpreters.**<sup>54</sup> 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.

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<sup>54</sup> Source: WAC 480-09-450.

**(2) Notice to limited-English-speaking parties.**<sup>55</sup> 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.

**WAC 480-07-355 Parties—Intervention.**<sup>56</sup>

**(1) Petition to intervene.**

**(a) Who may petition; when petitions must be filed.** Any person (other than the original parties to any proceeding before the commission, commission staff, and public counsel) who desires to appear and participate as a party should file a written petition for leave to intervene 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, unless the commission requires written petitions to intervene in a notice prior to the first hearing or prehearing date. The commission may extend the period for filing timely petitions to intervene.

**(b) Late-filed petition to intervene.** Any petition to intervene made after the deadline for filing or presenting the petition is a "late-filed petition to intervene." The commission will grant a late-filed petition to intervene only on a showing of good cause, including a satisfactory explanation of why the person did not timely file a petition.

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

- (i) The petitioner's name and address.
- (ii) The petitioner's interest in the proceeding.
- (iii) The petitioner's position(s) 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 and an affidavit or declaration that clearly and concisely sets forth the facts supporting the petitioner's interest in broadening the issues.
- (v) The name and address of petitioner's attorney or other representative, if any. Attorneys and other party representative must separately file their notice of appearance as required by WAC 480-07-345(2).

**(2) Response.** Parties may respond to any petition to intervene. Responses may be written, or may be heard orally at a prehearing conference or at hearing. A party's written response to a petition to intervene must be filed

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<sup>55</sup> Source: WAC 480-09-705.

<sup>56</sup> Source: WAC 480-09-430.

and served at least 2 business days before the next prehearing conference or hearing date, or at such other time as the commission may establish by notice.

**(3) Disposition of petitions to intervene.** The commission may consider petitions to intervene at hearings or prehearing conferences, or, if persons have responded to a petition, before or after a hearing or prehearing conference. If the petition discloses a substantial interest in the subject matter of the hearing or if the petitioner's participation is in the public interest, the presiding officer may orally grant the petition at a hearing or prehearing conference, or in writing at any time. The presiding officer may impose limits on an intervenor's participation in accordance with RCW 34.05.443(2). If the commission grants intervention, the petitioner becomes a party to the proceeding as an "intervenor."

**(4) Dismissal of intervenor.** The commission may dismiss an intervenor from a proceeding after notice and a reasonable opportunity to be heard if the commission determines at any time that the intervenor has no substantial interest in the proceeding, or that 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.

**WAC 480-07-360 Parties—Master service list.**<sup>57</sup> The commission will maintain a master service list for each adjudicative proceeding, which will be available upon request and which will to the extent feasible be available on the commission's web site. The list will contain the name, mailing address, e-mail address, telephone number, and telefacsimile number of each party to the proceeding and of each party's representative. The commission will provide a courtesy copy to the parties of contact information provided by each party at the initial prehearing conference. Each party must also designate one person to receive service of all documents that are required to be served and may request that additional representatives receive courtesy service. Parties that are individuals will be individually served with all commission orders entered in the proceeding. Parties that are a partnership, corporation, association, governmental subdivision or unit, or public or private organization or entity of any character, must designate an individual within their organization for purposes of service of commission orders.

**WAC 480-07-370 Pleadings—General.**

**(1) Types of pleadings permitted.**<sup>58</sup> Pleadings include formal complaints, petitions, answers, replies, counterclaims, answers to counterclaims, cross-

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<sup>57</sup> Source: WAC 480-09-320.

<sup>58</sup> Source: WAC 480-09-420.

claims, answers to cross-claims, third party complaints, answers to third party complaints, applications for authority, and protests. The commission may allow other pleadings upon written motion or on the commission's own motion.

**(a) Formal Complaints.**<sup>59</sup>

(i) *Defined.* "Formal complaints" are complaints filed in accordance with RCW 80.04.110 and 81.04.110, complaints filed under RCW 80.54.030, and commission complaints in proceedings designated by the commission as formal commission proceedings.

(ii) *Contents.* A formal complaint must be in writing and must clearly and concisely set forth the ground(s) for the formal complaint and the relief requested. A formal complaint must state:

(A) The name and address of the complainant and the name and address of complainant's attorney or other representative, if any,

(B) The full name and address of the person complained against,

(C) Facts that constitute the basis of the formal complaint, including relevant dates, and

(D) Citations to relevant statutes or commission rules.

(iii) *Proceedings under RCW 80.04.110 or 81.04.110.* In proceedings under RCW 80.04.110 or 81.04.110, the provisions of the respective statute will also apply.

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<sup>59</sup> Source: WAC 480-09-420(5).

**(b) Petitions.**<sup>60</sup>

(i) *Defined.* Except for formal complaints and applications, as defined in this section, all original pleadings that seek relief and all pleadings that seek relief from a commission order are "petitions." Examples of petitions are petitions to intervene, petitions for declaratory orders that the commission converts into adjudications under RCW 34.05.310, petitions for enforcement of interconnection agreements under WAC 480-07-650, petitions for accounting orders, petitions for crossing or alteration of railroad crossings under RCW 81.53.030 and RCW 81.53.060 and petitions for exemptions from or waiver of commission rules. Petitions that seek relief from a commission order include petitions for administrative review of an initial order, petitions for reconsideration of a final order, petitions for rehearing of a final order, and petitions for stay of the effectiveness of a final order. 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.

(ii) *Contents.* A petition must be in writing and must clearly and concisely set forth the ground(s) for the petition and the relief requested. A petition must state:

- (A) The petitioner's name and address and the name and address of the petitioner's attorney or other representative, if any,
- (B) Facts that constitute the basis of the petition, including relevant dates,
- (C) Citations to relevant statutes or commission rules.

**(c) Answer to formal complaint or petition.**

(i) *Defined.*<sup>61</sup> A response to a formal complaint or petition is an answer. Answers must admit or deny specifically, and in detail, all material allegations of the formal complaint or petition and must fully and completely disclose the nature of the respondent's affirmative defenses, if any. A respondent must separately state and number each affirmative defense asserted.

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

(iii) *When optional; when prohibited.* A party may file an answer in any case, but an answer may not be filed in response to petition for reconsideration unless the commission expressly requests an answer be filed.

(iv) *Timing of answer.*<sup>62</sup> A respondent must answer a formal complaint within twenty days after the commission serves the formal complaint on the respondent or such shorter time as the Commission specifies in its notice. A

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<sup>60</sup> Source: WAC 480-09-420(7).

<sup>61</sup> Source: WAC 480-09-420(9)(a).

<sup>62</sup> Source: WAC 480-09-425(3)(a), (c).

person who desires to respond to a petition must file the answer within twenty days after the petition is filed. The presiding officer will establish the time for answers to interlocutory petitions. The commission may alter the time allowed for any answer to be filed.

**(d) Reply.**

(i) *Defined.*<sup>63</sup> The pleading responding to an answer is a “reply.” A party must not file a reply without authorization from the commission, upon a showing of cause.

(ii) *Motion for permission to reply.*<sup>64</sup> A party that wishes to respond to an answer must file a motion requesting permission to reply within five business days after the answer is served. Motions for permission to reply should address whether the answer raises new material requiring a response, or state other reason(s) why a reply is necessary. A party may file a proposed reply as an attachment to its motion. If the commission grants a motion to file a reply and no reply is attached to the motion, the commission will set the time for filing the reply. Unless the commission grants a motion for permission to reply within five business days after filing, it is deemed denied.

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

**(e) Application.** An “application” is a request for authority, license, or a certificate authorizing a person to provide a service regulated by the commission. The term also includes a request to transfer or amend any such authority, license, or certificate. Examples of applications are requests for certificates of convenience and necessity under Title 81 RCW and requests for transfers of property under chapter 80.12 RCW or chapter 81.12 RCW.

**(f) Protest.**<sup>65</sup> A person who asserts that its interests would be adversely affected if an application is granted may file a “protest.” A protest to an application must conform to the requirements of any special rules that apply to the type of application being protested. A protestant must serve a copy of the protest upon the applicant.

**WAC 480-07-375 Motions.**

**(1) Defined.** A party’s written or oral request for commission action in the context of an adjudicative proceeding is a “motion.” Persons who file motions are “movants” or “moving parties.” Motions should be in writing unless made during a hearing session before the presiding officer. The commission may require an action that would be the proper subject of a party’s motion, such as the rejection of proffered evidence without receiving a motion

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<sup>63</sup> Source: WAC 480-09-420(9)(b).

<sup>64</sup> Source: WAC 480-09-425(3)(b), (c).

<sup>65</sup> Source: WAC 480-09-420(6).

from a party. The commission will provide oral or written notice 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 the commission to determine one or more of the issues in a proceeding or to terminate a party's participation. Examples of dispositive motions are motions to dismiss all or part of a complaint, petition, or application (see WAC 480-07-380(1)); motions for summary determination (see WAC 480-07-380(2)); and motions to dismiss an intervenor (see WAC 480-07-355(4) and WAC 480-07-450) or find a party in default (see WAC 480-07-450).

**(b) Procedural motions.** Procedural motions request establishment of or modifications to process or the procedural schedule in a proceeding. Examples of procedural motions are motions for continuance (see WAC 480-07-385), motions for extensions of time (see WAC 480-07-385), and motions to reopen the record (see WAC 480-07-830).

**(c) Discovery motions.** Discovery motions are requests to promote or limit the exchange of information among parties during the discovery phase of a proceeding. Examples of discovery motions are motions to compel (see WAC 480-07-405(3) and WAC 480-07-425), motions for sanctions (see WAC 480-07-425), and motions for protective orders (see WAC 480-07-420).

**(d) Evidentiary motions.** Motions related to evidence are requests to limit or add to the record in a proceeding. Examples of motions related to evidence are motions to strike, motions in limine, and motions requesting authority to file supplemental or additional testimony.

**(2) Written motions must be filed separately.**<sup>66</sup> Parties must file motions separately from any pleading or other communication with the commission. The commission will not consider motions that are merely stated in the body of a pleading or within the text of correspondence. The commission may refer to the Washington superior court rules for civil proceedings as guidelines for handling motions.

**(3) Oral motions.** A party may bring 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.** A party who opposes a written motion, other than a dispositive motion (WAC 480-07-380) or a motion for continuance (WAC 480-07-385), may file a written response within five business

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<sup>66</sup> Source: WAC 480-09-420(8).

days after the motion is served, or may make an oral or written response at such other time as the presiding officer may set.

**WAC 480-07-380 Motions that are dispositive—Motion to dismiss; motion for summary determination; motion to withdraw.**<sup>67</sup>

**(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. The commission will consider the standards applicable to a motion made under CR 12 (b)(6) and 12(c) of the Washington superior court's civil rules in ruling on a motion made under this subsection.<sup>68</sup> If a party presents an affidavit or other material in support of its motion to dismiss, and the material is not excluded by the commission, the commission will treat the motion as one for summary determination as provided in subsections (2) and (3) of this section.<sup>69</sup>

**(b) Time for filing motion to dismiss.**<sup>70</sup> 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 who opposes a written motion to dismiss may file a response within ten days after service of the motion, or at such other time as may be set by the commission or the presiding officer. The commission may allow oral argument.

**(2) Motion for summary determination.**<sup>71</sup>

**(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, fact stipulations, matters of which official notice may be taken), show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In considering a motion made under this subsection, the commission will consider the standards applicable to a motion made under CR 56 of the Washington superior court's civil rules.

**(b) Time for filing motion for summary determination.**<sup>72</sup> A party must file any motion for summary determination at least thirty days before the next

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<sup>67</sup> Source: WAC 480-09-426.

<sup>68</sup> Source: WAC 480-09-426(1).

<sup>69</sup> New language (based on CR 12(b) and 12(c)).

<sup>70</sup> Source: WAC 480-09-425(2).

<sup>71</sup> Source: WAC 480-09-426.

applicable hearing session, unless the commission establishes by order a different specific date for any such motion to be filed.

**(c) Response.** A party that answers a motion for summary determination must file its answer and any cross-motion for summary determination within twenty days after the motion is served, unless the commission establishes by order a different specific date for a response to be filed.

**(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 party may withdraw from a proceeding only upon permission granted by the commission in response to a written motion if:

**(a)** In the case of a matter initiated by a tariff filing, the commission has entered a complaint and order suspending the filing; or

**(b)** In all other cases, the commission has issued a hearing notice or otherwise commenced an adjudicative proceeding pursuant to chapter 34.05 RCW.

The commission will grant a party's motion to withdraw from a proceeding when the party's withdrawal is in the public interest.

### **WAC 480-07-385 Motion for continuance, postponement, or extension of time.**<sup>73</sup>

#### **(1) Definitions.**

**(a)** "Continuance," means any postponement or extension of time.

**(b)** A continuance to which all parties agree is an "agreed request."

**(2) Procedure.** Any party may request a continuance by oral or written motion. The commission may require a confirmation letter 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 letter, 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. The commission will grant a timely request to which all parties expressly agree unless it is inconsistent with the public interest or the commission's administrative needs.

#### **(3) Timing.**

**(a)** A party must file any written motion for continuance at least five business days prior to the deadline as to which the continuance is requested and must serve the motion by means that ensure its receipt by other parties the next

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<sup>72</sup> Source: WAC 480-09-426.

<sup>73</sup> Source: WAC 480-09-440.

business day after filing. Parties must file any written response within three business days after the motion is served, or two days prior to the deadline that is sought to be continued, whichever is earlier. Parties may orally respond when a hearing session is held prior to the stated deadline for a written response.

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

**(c)** The commission may consider requests for continuance that are made after the deadlines stated in this rule if the requester demonstrates good cause that prevented a timely request.

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

**WAC 480-07-390 Briefs; oral argument; findings and conclusions.**<sup>74</sup>

The commission may require the parties to a proceeding to present their arguments and authority orally at the close of the hearing, by written brief, or both. The commission may require parties to file proposed findings of fact and conclusions of law. The first brief filed following the close of hearing, if any, should be captioned “Initial Brief of [party].” A responding brief, if any, should be captioned “Reply Brief of [party].”

**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) Paper size; legibility; margins.**<sup>75</sup> All pleadings, motions, and briefs must be:

- Submitted on three-hole punched 8-1/2” x 11” inch paper.
- Presented in double-spaced, 12 point type, Palatino, Times New Roman, or an equally legible serif font, with footnotes in the same font and of at least 10 point type.
- Printed with margins at least one inch from each edge of the page.

Documents that are electronically filed must meet these requirements when printed.

**(b) Length.**<sup>76</sup> Pleadings, motions, and briefs must not exceed sixty pages (exclusive of exhibits, appended authorities, supporting affidavits and other

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<sup>74</sup> Source: WAC 480-09-770.

<sup>75</sup> Source: WAC 480-09-420(1), 770.

<sup>76</sup> Source: WAC 480-09-770.

documents). The presiding officer may alter the page limitation, either shortening or lengthening the number of pages allowed, considering the number and complexity of the issues.

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

(i) *Caption.*<sup>77</sup> 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 caption of the proceeding must be set out or, if no caption exists, the following: "In the Matter of the (Complaint, Petition, Motion, etc.) of (name of the pleading party) for (identify relief sought)." On the right side of the page, opposite the caption, the pleading party must identify the name of the document (e.g., Petition, Motion, Answer, Reply, etc., of (role of party: e.g., petitioner, respondent, protestant, etc., and name of the party if more than one party has the same role in the proceeding)). The caption also must briefly state the relief sought (e.g., "Petition for an Accounting Order;" "Motion for Continuance").

(ii) *Body of pleading.*<sup>78</sup> The body of the pleading must be set out in numbered paragraphs. The first paragraph must state the pleading party's name and address and if it is the party's initial pleading, the name and address of its representative, if any. The second paragraph must state all rules or statutes that the pleading puts in issue. Succeeding paragraphs must set out the statement of facts relied upon in a form similar to complaints in civil actions before the superior courts of this state. The concluding paragraphs must state the relief the pleading party requests.

(iii) *Body of motion.*<sup>79</sup> A motion must include the following information:

(A) *Relief Requested.* A statement of the specific relief the commission is requested to grant or deny.

(B) *Statement of Facts.* Succinct statements of the facts that the moving party contends are material to the requested remedy.

(C) *Statement of Issues.* A concise statement of the legal issue or issues upon which the commission is requested to rule.

(D) *Evidence Relied Upon.* Any evidence on which the motion or opposition is based must be specified. Any affidavits, depositions or portions of affidavits or depositions relied upon must be specified. If a party relies on affidavits, deposition transcripts, or documentary evidence, the party must quote the cited material verbatim or attach a photocopy of relevant pages to an affidavit that identifies and verifies the documents. Parties should highlight or otherwise clearly identify the portions of the cited evidence upon which they place substantial reliance.

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<sup>77</sup> Source: WAC 480-09-420(3).

<sup>78</sup> Source: WAC 480-09-420(3).

<sup>79</sup> New section (based on King County Superior Court Local Rule 7).

(iv) *Body of brief.* The commission may require the parties to organize their briefs according to a common outline. The presiding officer, in consultation with the parties, will establish the elements of the common outline taking into account the issues in the proceeding, the parties' preferences, and the commission's needs.

(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: TR. [page]: [line(s)], ([witness's surname]). If the transcript reference spans multiple pages, the reference should be as follows: TR [page]: [line] – [page]: [line] ([witness's surname]).

(B) *Exhibits.* Exhibit references should be as follows: Exh. No. [insert number assigned at hearing]. In the case of prefiled testimony offered or received as an exhibit, page number(s), line number(s), and the witness's surname should be added following the style specified in this section for transcript references. In other exhibits, references to page(s), line(s) for text, row(s) and column(s) for tables, or other specific references may be added to clarify the information cited.

(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 non-Washington authorities that are cited in parties' briefs and upon which parties place substantial reliance.

**(2) Verification.**<sup>80</sup> 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 by at least one attorney or representative of record in his or her individual name, stating his or her address, or by the party, if the party is not represented. Parties who 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 who bring certain complaints under RCW 80.04.110 or RCW 81.04.110 that challenge the reasonableness of the rates or charges of jurisdictional utilities must provide additional verification as specified in those statutes.

**(3) Errors in pleadings or motions.**<sup>81</sup> 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.

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<sup>80</sup> Source: WAC 480-09-425(1).

<sup>81</sup> Source: WAC 480-09-420(2).

**(4) Liberal construction of pleadings and motions.**<sup>82</sup> The commission will liberally construe pleadings and motions with a view to effect justice among the parties. 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.**<sup>83</sup> The commission may allow amendments to pleadings, motions, or other documents on such terms as promote fair and just results.

**WAC 480-07-400 Discovery.**

**(1) General.**

**(a) No limitation on commission authority to audit and inspect.**<sup>84</sup> 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 the public service companies' obligation to provide information to the commission, whether or not in the context of an adjudicative proceeding.

**(b) Informal discovery procedures.**<sup>85</sup> 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.**<sup>86 87</sup> 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" means 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 documents, an analysis, compilation or summary of documents into a requested format, a narrative response explaining a policy, position, or a document, or the admission of a fact asserted by the requesting party. If a party relies on a cost study, it is expected that the party will, on request, rerun the study based on different assumptions, subject to the standards in subsection (5) of this section. The commission will not order a party to respond to a data request that seeks production of a new cost study unless there is a compelling need for such production.

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<sup>82</sup> Source: WAC 480-09-425(4).

<sup>83</sup> Source: WAC 480-09-425(5).

<sup>84</sup> Source: WAC 480-09-480(1).

<sup>85</sup> Source: WAC 480-09-480(1).

<sup>86</sup> Source: WAC 480-09-480(3)(a)-(f).

<sup>87</sup> Source: WAC 480-09-480(6).

(iv) *Record requisition.* A request for data made on the record during a conference or hearing session or during a deposition is a “record requisition.”

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

(vi) *Depositions.* Depositions are described in WAC 480-07-410.

**(2) When discovery available.**

**(a) Subpoenas always available.** The only discovery procedure available in all adjudicative proceedings before the commission is the subpoena, including a subpoena duces tecum.<sup>88</sup> A commissioner, an administrative law judge, or the attorney of any party to the proceeding may issue a subpoena. Witnesses are required to comply with subpoenas in the manner prescribed in Title 80 or 81 RCW and chapter 34.05 RCW. Witnesses will be paid as provided in RCW 34.05.446(7). Each subpoena must bear the name of the party requesting or issuing the subpoena and the party responsible for paying witness fees.<sup>89</sup>

**(b) When other discovery methods available.**<sup>90</sup> If the commission finds that an adjudicative proceeding meets one of the following criteria, the methods of discovery described in subsections (1)(c)(iii-vi) of this section and in WAC 480-07-410 and 480-07-415 will be available to parties:

(i) Any proceeding involving a change in the rate levels of an electric company, natural gas company, pipeline company, telecommunications company, water company, solid waste company, low-level radioactive waste disposal site, or a segment of the transportation industry;

(ii) Any proceeding that the commission declares to be of a potentially precedential nature;

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

(iv) 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) Signature on discovery requests.**<sup>91</sup> A party, or the party’s attorney or other representative, must sign each discovery request or group of requests issued. The signature constitutes a certification that the request complies with the standards of CR 26(g) of the Washington superior court civil rules and that no request made substantially duplicates a request previously made by the requesting party to the same party in the same proceeding, unless the duplication is reasonably necessary and the reason for duplication is clearly stated.

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<sup>88</sup> Source: WAC 480-09-480(2).

<sup>89</sup> Source: WAC 480-09-475.

<sup>90</sup> Source: WAC 480-09-(2), (4).

<sup>91</sup> Source: WAC 480-09-480(6)(a)(ii).

**(4) Frequency, extent, and scope of discovery.**<sup>92</sup> Data requests 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 a data request on grounds that the information sought will be inadmissible at the hearing, if the information sought 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 sought 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.

**(5) Schedule.**<sup>93</sup> 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. .

**WAC 480-07-405 Discovery—Data requests, record requisitions, and bench requests.**

**(1) Grouping and numbering.**

**(a) Grouping.**<sup>94</sup> Parties must group their data requests by subject or witness and present data requests in an electronic format agreed by the parties whenever possible, unless the parties agree to a different procedure or the presiding officer orders a different procedure. Requests not presented in electronic format must include no more than one request per page. Parties with similar interests are encouraged, and may be required, to coordinate their issuance of data requests to avoid duplication.

**(b) Numbering.**<sup>95</sup> Each party must number sequentially its data requests, as submitted. The presiding officer will ensure that record requisitions and bench requests are adequately described on the record and consecutively numbered.

**(2) Service of data requests, records requisitions, and responses to parties.**<sup>96</sup> Written data requests must be sent to the party to whom the request is

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<sup>92</sup> Source: WAC 480-09-480(6)(a)(vi).

<sup>93</sup> Source: WAC 480-09-480(5).

<sup>94</sup> Source: WAC 480-09-480(6)(a)(i), (ii).

<sup>95</sup> Source: WAC 480-09-480(6)(a)(iv).

<sup>96</sup> Source: WAC 480-09-480(6)(a)(iii).

made, with copies to all other parties. The commission staff copy must be sent to the assistant attorney general who represents the commission staff. The commission encourages parties to agree to exchange data in electronic format by e-mail, on diskette, or by other mutually acceptable electronic means.

**(3) Motion to compel; filing data requests, objections, and responses.**

Parties must not file data requests and responses to data requests with the commission or provide them to any presiding officer, except when a party files a motion to compel. A party's motion to compel must include the relevant data request, any objection, and any response.

**(4) Limitation on numbers of data requests.**<sup>97</sup> The presiding officer may limit the number of data requests that a party may submit and may require parties to certify that they have coordinated discovery with other parties of similar interest and that no substantial duplication exists with other parties' submissions.

**(5) Responding party to seek clarification.**<sup>98</sup> If a party to whom a data request is submitted finds the meaning or scope of a request to be unclear the responding party must immediately initiate a clarification call to the requesting party. 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 request.** A party that wishes to object to a data request must present the objection to the requesting party in writing by the time the response is due, or at such other time as may be ordered. 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) Records requisition.** A party to whom a record requisition is addressed may object to the request at the time it is made or, if it later discovers a reason for objection not reasonably known at the time of the record requisition, within five days thereafter. A party may object to the admission of its response to a records requisition at the time the response is offered into evidence.

**(7) Responses.**<sup>99</sup>

**(a) Data requests and records requisitions.** Parties must send responses to data requests and record requisitions to the requesting party and to any other party who requests a copy, consistent with the terms of any protective order entered in the proceeding. Parties must send the commission staff copy to the

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<sup>97</sup> Source: WAC 480-09-480(6)(a)(ii).

<sup>98</sup> Source: WAC 480-09-480(6)(a)(i).

<sup>99</sup> Source: WAC 480-09-480(6)(a)(v).

assistant attorney general who represents the commission staff unless the attorney requests an alternative method.

**(b) Timing.** A party to whom a data request is directed must provide a full response to the data request within ten business days after the request is received. If the data cannot be supplied 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 ten-day limit cannot be met. The responding party must also provide a schedule by which it will produce the requested data and must explain why any portion of the data cannot be supplied. The presiding officer may modify these time limits.

**(c) Identification of respondent and witness.** Each data response must state the date the response is produced, the name of the person who prepared the response, and the name of any witness who is knowledgeable about and can respond to questions concerning the response.

**(d) Bench requests.** Parties must file responses to bench requests with the commission and serve all parties within ten business days after the request is made, unless the presiding officer specifies another schedule.

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

**(9) Use of responses to data requests, record requisitions or bench requests.**<sup>100</sup> The commission will not consider or treat as evidence any response to a data request, record requisition, or bench request unless and until it is entered into the record.

#### **WAC 480-07-410 Discovery—Depositions.**

**(1) Who may be deposed.**<sup>101</sup> 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, if the presiding officer approves the deposition on a finding that the person appears to possess information significant to the party's case.

**(2) Required notice; deposition conference.**<sup>102</sup> A party who intends to depose one or more persons must give notice to the commission and all parties. The presiding officer will consult with the parties and may schedule a deposition conference to facilitate the deposition process. The deposition conference schedule will be adjusted as needed considering any changes in the case

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<sup>100</sup> Source: WAC 480-09-480(6)(a)(v).

<sup>101</sup> Source: WAC 480-09-480(6)(b).

<sup>102</sup> Source: WAC 480-09-480(6)(b).

schedule. Deposition conferences will be convened at the commission's offices in Olympia unless the parties and the presiding officer agree to another location.

**(3) How conducted.**<sup>103</sup> Parties should use CR 30 of the Washington superior court civil rules 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 prospective witnesses, or any of its employees, who have been scheduled for deposition. A party may interrupt a deposition, if necessary, to present a dispute regarding the deposition process to the presiding officer. However, to avoid interruption, such disputes should be reserved to the conclusion of the deposition, if possible.

**(4) Use of depositions.**<sup>104</sup> Parties may use depositions for any lawful purpose, subject to the requirements of this subsection. A party may use a deposition to impeach a witness. If a party seeks to offer into evidence the deposition of a witness who is available to testify to the matters addressed in the witness'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 five business-days' written notice to other parties and to the presiding officer prior to the hearing session at which the witness is expected to appear. The party must attach to the notice the portion(s) of the deposition that the party proposes to offer so that the presiding officer can mark it for identification as in the case of all other proposed hearing exhibits.

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 witness' testimony.

**(5) Correcting/supplementing deposition testimony.**<sup>105</sup>

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

**(b) Supplementation.** Every witness 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, correct and complete when made, is no longer correct or complete.

**WAC 480-07-415 Discovery conference.**<sup>106</sup> The purpose of a discovery conference is to allow witnesses and others who have knowledge relating to the

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<sup>103</sup> Source: WAC 480-09-480(6)(b)(i).

<sup>104</sup> Source: WAC 480-09-480(6)(b)(ii).

<sup>105</sup> Source: WAC 480-09-480(6)(b)(ii)(C).

proceeding (e.g., consultants or employees) to talk directly and informally, to reduce or avoid the need for written data requests and time for their preparation, to allow discussions of potential stipulations regarding individual facts and settlement of individual issues to occur in an informal setting, to discuss the availability of supporting information, and to enhance the parties' ability to acquire or expand their knowledge about the case of one or more designated other parties. 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 position or evidence and the availability of supporting information. Discovery conferences will not be reported and statements made by participants at discovery conferences are not admissible as evidence unless the parties agree otherwise. The commission may designate a person to facilitate a discovery conference. The designated facilitator must not be associated with any party or with a member of the commission advisory staff who is involved in the proceeding.

**WAC 480-07-420 Discovery—Protective orders.**<sup>107</sup>

**(1) Standard form.** The commission may enter a standard form of protective order designed to promote the free exchange of information when parties reasonably anticipate that discovery in a proceeding will call for the production of confidential information.

**(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.

**(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 make any order, including one or more of the following, that :

- (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,
- (d)** Certain matters may not be inquired into, or that the scope of the discovery will be limited to certain matters,
- (e)** Discovery will be conducted with no one present except persons designated by the commission or the presiding officer,
- (f)** The contents of a deposition will not be disclosed or will be disclosed only in a designated way,

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<sup>106</sup> Source: WAC 480-09-460(4)

<sup>107</sup> New section (based on CR 26(c) of the Superior Court Civil Rules).

(g) A trade secret or other confidential research, development, or commercial information will not be disclosed or will be disclosed only in a designated way, or

(h) The parties must file specified documents or information enclosed in sealed envelopes to be opened as directed by the commission or the presiding officer.

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.

**WAC 480-07-423 Discovery—Protective orders—Submission requirements for documents.** Protective orders entered in individual proceedings may allow for parties to designate portions of documents exchanged during discovery or submitted during a proceeding (e.g., by filing, or by offering as an exhibit) as “confidential” or “highly confidential.” In general, parties must strictly limit the amount of information they designate as confidential or highly confidential. Designation of documents as highly confidential is not permitted under the commission’s standard form of protective order, and may only occur if the commission so orders.

**(1) Designations.**

(a) The “confidential” designation is intended to protect information that might compromise a company’s ability to compete fairly or that otherwise might impose a business risk if disseminated without the protections provided in the commission’s protective order.

(b) The “highly confidential” designation is reserved for information the dissemination of which, for example, imposes a highly significant risk of competitive harm to the disclosing party without enhanced protections provided in the commission’s protective order. A party that wishes to designate information as highly confidential must first file a motion for an amendment to the standard protective order, supported by a sworn statement that sets forth the specific factual and/or legal basis for the requested level of protection and an explanation of why the standard protective order is inadequate. The motion and sworn statement 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.

**(2) Submission.**

(a) **Confidential information.** The first page and individual pages of a document determined in good faith to include confidential information must have the legend that reads: “Confidential Per Protective Order in WUTC Docket No. [insert].” Placing a confidential legend on the first page of an exhibit indicates only that one or more pages contain confidential information and will

not serve to protect the entire contents of the multipage document. Each page that contains confidential information must be marked separately to indicate where confidential information is redacted. Confidential information must be submitted on yellow or canary paper with contrasting highlighter (e.g., gray or blue) used to mark the confidential portions.

**(b) Highly confidential information.** The first page and individual pages of a document determined in good faith to include highly confidential information must be marked by a stamp that reads: "Highly Confidential Per Protective Order in WUTC Docket No. [insert]." A "highly confidential" stamp on the first page of a document indicates only that one or more pages contain highly confidential information and will not serve to protect the entire contents of a multipage document. Each page that contains highly confidential information must be highlighted to indicate where highly confidential information is redacted. The unredacted versions of each page containing highly confidential information, and provided under seal, also must be marked with the "highly confidential . . ." stamp and must be submitted on light blue paper with contrasting highlighter (e.g., gray or yellow) used to mark the highly confidential portions.

**(c) Redacted version.** A separate version of each document that is designated as confidential or highly confidential must be provided on white paper with all of the confidential or highly confidential information redacted either by blacking out the information or replacing it with brackets and blank space. The first page must be marked as required in subsections (a) and (b) of this section, and additionally must be marked "redacted."

#### **WAC 480-07-425 Discovery disputes.**

**(1) Procedure for resolving disputes.**<sup>108</sup> 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 disputants. A party may file a written motion, or move orally at prehearing conference, to compel discovery if a dispute cannot be informally resolved. The presiding officer will hear discovery disputes, on shortened notice, 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

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<sup>108</sup> Source: WAC 480-09-480(7).

fails or refuses to comply with an oral or written order resolving a dispute under this section. The commission may impose sanctions including but not limited to default, dismissal, striking of testimony, evidence, or cross-examination, or monetary penalties as provided by law.

**WAC 480-07-430 Prehearing conferences.**<sup>109</sup>

**(1) General.** The commission may require, by written notice or by oral notice on the record of the hearing, that all parties and all persons who seek to intervene 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)** The possibility of obtaining stipulations of fact and to documents that might avoid unnecessary proof;
- (d)** Limitations on the number of witnesses;
- (e)** Coordinated examination of witnesses;
- (f)** Procedure at the hearing;
- (g)** The need for, and timing of, distribution of written testimony and exhibits to the parties and the bench prior to the hearing;
- (h)** Disposition of petitions for leave to intervene;
- (i)** Resolution of discovery disputes;
- (j)** Resolution of pending motions; and
- (k)** 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. The notice may provide that failure to attend may result in a party being dismissed, being found in default, or the commission's refusal to consider a later petition for intervention except upon a showing of good cause for the failure to attend. 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. 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 results of

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<sup>109</sup> Source: WAC 480-09-460.

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.

**WAC 480-07-440 Hearing notice.**

**(1) Initial hearing notice.**

**(a) Timing.**<sup>110</sup> 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 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.**<sup>111</sup> The initial notice of hearing must 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 an interpreter is needed and to identify the primary language or hearing impaired status of the party.

**(2) Notice of continued hearing sessions.**<sup>112</sup>

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

- (i) On the record without further written notice to the parties;
- (ii) By letter or formal notice from the secretary of the commission; or
- (iii) By letter or formal notice from the presiding officer.

**(b) Timing.** There are no specific timing requirements for giving prior notice of continued hearing sessions.

**WAC 480-07-450 Hearing—Failure to appear.**

**(1) Dismissal or default.**<sup>113</sup> 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 presiding officer may recess a hearing for a brief period to provide an additional opportunity for the party to appear. If the party is not present or represented

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<sup>110</sup> Source: WAC 480-09-700(1)(a).

<sup>111</sup> Source: WAC 480-09-700(2).

<sup>112</sup> Source: WAC 480-09-700(1)(b).

<sup>113</sup> Source: WAC 480-09-700(3)(a)-(b).

when the hearing resumes, the commission may dismiss the party or find the party in default. When the commission dismisses a party or finds a party in default, it will implement the dismissal or default by a written order. When a party is found in default, the commission's order stating that finding may also dispose of the issues in the proceeding, as provided by RCW 34.05.440.

**(2) Review of order of dismissal or default.**<sup>114</sup> A party who is dismissed from a proceeding or found 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.

**WAC 480-07-460 Hearing—Pre-distribution of exhibits and prefiled testimony.**

**(1) Pre-distribution of evidence.**<sup>115</sup> The commission may require parties to distribute their proposed evidence to other parties before the start of the evidentiary hearing. In general rate 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 WAC 480-07-510. The commission may convene a prehearing conference shortly before a scheduled hearing and require all parties to pre-distribute their proposed cross-examination exhibits.

**(a) Number of copies to be filed or submitted; service.** When pre-distribution of evidence other than proposed exhibits for use in cross-examination is required, each party must file the original plus ten copies of its evidence with the commission unless the commission specifies a different number. When the commission requires parties to pre-distribute their proposed exhibits for use in cross-examination, each party must submit six copies to the bench if the commissioners are sitting as presiding officers and three copies if the commissioners are not sitting. The presiding officer may change the number of copies required. All proposed evidence must be served on all other parties to a proceeding whenever pre-distribution of evidence is required.

**(b) Changes or corrections.**

**(i) Substantive corrections.** Prefiled testimony may be revised to correct mistakes of fact asserted by a witness. Such mistakes may arise from a variety of causes such as scrivener's error, error in calculation, or error of misreported fact. Each party must advise all other parties of substantive corrections to any prefiled evidence as soon as the need for correction is discovered.

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<sup>114</sup> Source: WAC 480-09-700(3)(c).

<sup>115</sup> Source: WAC 480-09-736(6).

(ii) *Substantive changes.* Parties must seek leave from the Presiding Officer by written motion if they wish to submit testimony that includes substantive changes other than to simply correct errors of fact asserted by a witness. A party proposing such changes may submit the proposed revisions with its motion.

(iii) *Minor corrections.* Minor revisions to prefiled testimony and exhibits may be made to correct typographical errors, printing errors, and non-substantive changes (e.g., a change in a witness's address or employment). Counsel should not ask a witness on the stand to correct obvious typographical errors in the prefiled testimony or to make more than three minor substantive changes. If more than three minor revisions are required, parties must prepare an errata sheet or a revised exhibit for submission at least one business day prior to the hearing to show such corrections to the prefiled evidence.

Parties that submit revisions to pre-distributed or previously admitted testimony or exhibits must prominently label them "REVISED" and indicate the date of the revision. The revised portions must be highlighted, in legislative style or other manner that clearly indicates the change from the original submission. This practice must be followed even with minor changes that involve only one page of an exhibit. Counsel must identify partial revisions by page and date when an exhibit is presented for identification, sponsored, or offered into evidence, as appropriate.

(c) ***Distribution at hearing.*** When a party offers new exhibits, revised exhibits, or errata sheets at a hearing, the party must provide sufficient copies for all parties and for the commission's distribution requirements. When the commission requires parties to pre-distribute their exhibits, a party may be required to establish good cause for any failure to pre-distribute a proposed exhibit, other than an exhibit offered solely for impeachment of the witness's testimony on the stand, or the exhibit may be excluded.

**(2) Prefiled testimony.**<sup>116</sup>

(a) ***Exhibit numbers—official record.*** The presiding officer will assign exhibit numbers to all prefiled testimony and exhibits at the final prehearing conference prior to hearing, or at hearing. These assigned numbers will be the exhibit numbers for purposes of the official record in the proceeding.

(b) ***Parties are required to mark prefiled testimony and exhibits for identification.*** Parties must mark all written testimony and exhibits for identification in the upper right-hand corner of the first page prior to submission as follows:

(i) State "Exhibit No.", followed by a blank underline. Then, on the same line, identify the sponsoring witness by including the witness's initials.

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<sup>116</sup> Source: WAC 480-09-736(7)-(10)

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

(iii) Place the capital letter "C" 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.

(iv) Place the capital letter "T" after the number 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 for identification
John Q. Witness's prefiled direct testimony	Exhibit No. ____ (JQW- 1T)
First exhibit to John Q. Witness's prefiled direct testimony (non-confidential)	Exhibit No. ____ (JQW-2)
Second exhibit to John Q. Witness's prefiled direct testimony (confidential)	Exhibit No. ____ (JQW- 3C)
Third exhibit to John Q. Witness's prefiled direct testimony (non-confidential)	Exhibit No. ____ (JQW-4)
John Q. Witness's prefiled rebuttal testimony (with portions marked confidential)	Exhibit No. ____ (JQW-5CT)
First exhibit to John Q. Witness's prefiled rebuttal testimony (non-confidential)	Exhibit No. ____ (JQW-6)

Counsel and other party representatives who are unfamiliar with this method of identification may ask the presiding officer for further guidance.

**(c) Summary of testimony.** Each witness must present a short summary of his or her prefiled testimony on the opening page or two of the testimony. Counsel or other party representative will be expected to ask as a foundation question when the witness takes the stand the subjects that will be covered by the witness. This foundation question should request, and the witness's response should include, only a statement of the subject(s) to be covered by the witness (e.g., rate of return on equity, cost of debt, prudence) and not a summary of the witness's positions on the subject(s) identified.

**(d) Form of testimony and exhibits.** All prefiled testimony and exhibits must be paginated. In addition, line numbers must be set out on all prefiled testimony to facilitate transcript or exhibit references. All copies of prefiled testimony and exhibits must be provided on 8-1/2 by 11 inch, three-hole punched paper, with margins of at least one inch on all sides. Oversized documents may be used at the hearing for illustrative purposes but must be provided on 8-1/2 by 11 inch paper if offered into evidence and reduction to that format is feasible.

**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.<sup>117</sup>

**(1) Starting times.**<sup>118</sup> Starting times will be strictly observed. 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.**<sup>119</sup> All persons who will be representing a party in a formal proceeding must give their names and addresses in writing to the court reporter immediately before the first hearing session in which they appear. 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. 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.**<sup>120</sup> 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

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<sup>117</sup> Source: WAC 480-09-736.

<sup>118</sup> Source: WAC 480-09-736(1).

<sup>119</sup> Source: WAC 480-09-720.

<sup>120</sup> Source: WAC 480-09-736(2).

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) Summary by public counsel.**<sup>121</sup> At the beginning of a hearing session during which the commission will hear testimony from members of the public, the commission may provide public counsel an opportunity to inform the public of the major contested issues and to state public counsel's positions on those issues. The commission will give other parties an opportunity to respond.

**(5) Evidence; exhibits; stipulations of fact.**<sup>122</sup> The presiding officer may receive evidence as provided by RCW 34.05.452.

**(6) Order of presentation.**<sup>123</sup> 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;

**(c)** Parties opposing the party having the burden of proof;

**(d)** Rebuttal by 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, and the proceeding, and the parties' preferences.

**(7) Testimony under oath.**<sup>124</sup> 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.

**(8) Addressing the presiding officer or witnesses.**<sup>125</sup> All counsel and other party representatives must address all comments, objections, and statements to the presiding officer and not to other counsel. Questions that concern testimony or exhibits sponsored by a witness must be addressed to the witness and not to counsel or other party representatives.

**(9) Resolving matters off the record.**<sup>126</sup> Counsel or other party representatives who request off-the-record discussions 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

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<sup>121</sup> Source: WAC 480-09-736(12).

<sup>122</sup> Source: WAC 480-09-740.

<sup>123</sup> Source: WAC 480-09-735.

<sup>124</sup> Source: WAC 480-09-730(2), (3).

<sup>125</sup> Source: WAC 480-09-736(3).

<sup>126</sup> Source: WAC 480-09-736(4), (5).

the record by the presiding officer subject to comments from party representatives.

**(10) Witness panels.**<sup>127</sup> 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.

**(11) Cross-examination.**<sup>128</sup> Counsel and other party representatives should be prepared to provide time estimates for cross-examination of witnesses. 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." When a witness accepts information "subject to check," the witness must perform the "check" as soon as possible. A response given "subject to check" will be considered accurate unless the witness disputes it by filing an affidavit, stating reasons, within five business days following the witness's testimony.

**(12) Redirect examination.** A party whose witness has been cross-examined may conduct redirect examination of the witness on those issues raised during cross-examination.

**(13) Post-hearing planning.**<sup>129</sup> The presiding officer will confer with the parties concerning post-hearing process. The presiding officer will determine whether oral argument, briefs, or both will be required, taking into consideration the needs of the commission and the parties' preferences. The presiding officer may determine a common format or outline to be used by all parties if briefs are required. Briefs must comply with the requirements of WAC 480-07-395.

**(14) Transcript.**<sup>130</sup> Each party will bear its own costs for transcripts or tape recordings, including charges for expedited service when a party requests it.

**WAC 480-07-480 Hearing—Stipulation of facts.**<sup>131</sup> 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

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<sup>127</sup> Source: WAC 480-09-751.

<sup>128</sup> Source: WAC 480-09-736(11), (18).

<sup>129</sup> Source: WAC 480-09-736(16).

<sup>130</sup> Source: WAC 480-09-736(17).

<sup>131</sup> Source: WAC 480-09-470.

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.

**WAC 480-07-490 Hearing—Exhibits and documentary evidence.**

**(1) Designation of part of document as evidence.**<sup>132</sup> A party who offers evidence that consists of a portion of a document must designate the portion that is offered. If irrelevant matter included in the document would unnecessarily encumber the record, the document will not be received in evidence, but the relevant or material matter may be read into the record, or the presiding officer may receive a copy of the excerpt as an exhibit. If only a portion is offered or received, other parties may examine the document and offer other portions into evidence.

**(2) Official records.**<sup>133</sup> An official document prepared and issued by any governmental authority may be introduced in the form of a certified copy. Official records contained in official publications or nationally recognized reporting service publications that are in general circulation and readily accessible to all parties may be introduced by reference, provided that the party offering the document clearly identifies the record and its source. The presiding officer may require the party offering such evidence to provide a copy for the record and to each party.

**(3) Commission's files.**<sup>134</sup> The presiding officer may receive documents on file with the commission by reference to number, date, or by any other method of identification satisfactory to the presiding officer. If only a portion of a document is offered in evidence, the part offered must be clearly designated. The presiding officer may require the party offering the evidence to provide a copy to the record and to each party.

**(4) Records in other proceedings.**<sup>135</sup> A portion of the record of any other commission proceeding that is otherwise admissible may be received as an exhibit in the form of a copy; by citation to the transcript or exhibit number; or by incorporation into the transcript of the current proceeding, as determined by the presiding officer.

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<sup>132</sup> Source: WAC 480-09-745(1).

<sup>133</sup> Source: WAC 480-09-745(2).

<sup>134</sup> Source: WAC 480-09-745(3).

<sup>135</sup> Source: WAC 480-09-745(4).

**(5) Documents from the public.**<sup>136</sup> When a member of the public presents a document in conjunction with his or her testimony, the commission may receive the document as an illustrative exhibit. The commission may receive as illustrative exhibits any letters that have been received by the secretary of the commission and by public counsel from members of the public regarding a proceeding. Documents a public witness presents that are exceptional in their detail or probative value may be separately received into evidence as proof of the matters asserted after an opportunity for cross-examination.

**(6) Resolutions.**<sup>137</sup> The presiding officer may receive in evidence authenticated resolutions of the governing bodies of municipal corporations and of chambers of commerce, boards of trade, commercial, mercantile, agricultural, or manufacturing societies and other civic organizations. Any recital of facts contained in a resolution may not be considered as proof of those facts.

**(7) Objections.**<sup>138</sup> Any evidence offered is subject to appropriate and timely objection. The presiding officer need not specifically ask each representative 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.

**WAC 480-07-495 Hearing—Rules of evidence; official notice.**<sup>139</sup>

**(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. The presiding officer may permit the party offering rejected evidence to describe briefly for the record its nature and purpose as an offer of proof. A written offer of proof may be required.

**(2) Official notice.**

**(a)** The commission may take official notice of:

*(i)* Any judicially cognizable fact. Examples of such facts include, but are not limited to:

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<sup>136</sup> Source: WAC 480-09-736(19).

<sup>137</sup> Source: WAC 480-09-750(3).

<sup>138</sup> Source: WAC 480-09-736(20), 745(5).

<sup>139</sup> Source: WAC 480-09-750.

(A) Rules, regulations, 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; and

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

(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 material officially noticed and its source. The presiding officer will afford parties an opportunity to contest facts and material so noticed. The presiding officer may require a party proposing that official notice be taken to provide copies of officially noted matter to the record and to all other parties.

**WAC 480-07-498 Hearing—Public Comment.** The commission will receive as a bench exhibit any public comment filed, or otherwise submitted by non-parties, 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 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, the 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 that 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 by the party. Typically, public witnesses may expect to have three to five minutes to make an oral statement. Oral statements may be supplemented by written comments.

## **SUBPART B: General Rate Proceedings**

**WAC 480-07-500 General rate proceedings—Statement of policy.**<sup>140</sup>

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

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

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

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

**(5) Less than statutory notice.** The commission may grant requests to alter tariffs on less than statutory notice for good cause shown, in accordance with RCW 80.28.060 and RCW 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.

**WAC 480-07-505 General rate proceedings—Definition.**<sup>141</sup>

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

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

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

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

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

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

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<sup>140</sup> Source: WAC 480-09-300.

<sup>141</sup> Source: WAC 480-09-310.

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

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

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

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

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

(a) Filings by companies that provide neither traditional residential or commercial solid waste operations. This category includes specialized carriers generally hauling specific waste products for specific customers and carriers providing only on-call or nonscheduled service (i.e., "class C" companies, as defined in WAC 480-70-041).

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

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

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

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

**WAC 480-07-510 General rate proceedings—Electric, natural gas, pipeline, and telecommunications companies.**<sup>142</sup> General rate proceeding filings for electric, natural gas, pipeline, and telecommunications companies must include the information described in this section. The commission may reject a filing that fails to meet these minimum requirements, without prejudice to the company's right to refile its request in conformance with this section. The company must provide:

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<sup>142</sup> Source: WAC 480-09-330.

**(1) Testimony and exhibits.** Ten paper copies of all testimony and exhibits that the company intends to present as its direct case if the filing is suspended and a hearing held. In addition, the company must provide one electronic copy of the testimony and exhibits in a format or formats authorized in these rules or by the commission secretary. Material that has not been produced under the company's direction and control and is not reasonably available to it in electronic format, such as generally available copyrighted published material, need not be provided in electronic format. A copy of the testimony and exhibits filed under this section must be served on public counsel at the time of filing with the commission.

**(2) Tariff sheets.** Three copies of the proposed new or revised tariff sheets in legislative format, with strike-through to indicate any material to be deleted or replaced and underlining to indicate any material to be inserted.

**(3) Work papers and accounting adjustments.** Three copies of all supporting work papers as described in this subsection. If the testimony, exhibits, or work papers refer to a document, including but not limited to a report, study, analysis, survey, article or decision, that document must be provided as a work paper unless it is a reported court or agency decision, in which case the reporter citation must be provided in the testimony. If a referenced document is voluminous it need not be provided with the filing but must be made available if requested. The following information must be included in the company's work papers, if it is not included in the testimony or exhibits:

**(a)** A detailed portrayal of the development of the company's requested rate of return.

**(b)** A detailed portrayal of restating actual and pro forma adjustments that the company uses to support the filing, specifying all relevant assumptions, and including specific references to charts of accounts, financial reports, studies, and all similar records relied on by the company in preparing its filing, supporting testimony, and exhibits. If the company proposes to calculate an adjustment in a manner different from the method that the commission most recently accepted or authorized for the company, it must also present a work paper demonstrating how the adjustment would be calculated under the methodology previously accepted by the commission, and a brief narrative describing the change. Commission approval of a settlement does not constitute commission acceptance of any underlying methodology unless so specified in the order approving the settlement.

*(i)* "Restating actual adjustments" adjust the booked operating results for any defects or infirmities in actual recorded results that can distort test period earnings. Restating actual adjustments are also used to adjust from an as-recorded basis to a basis that is acceptable for rate making. Examples of restating

actual adjustments are adjustments to remove prior period amounts, to eliminate below-the-line items that were recorded as operating expenses in error, to adjust from book estimates to actual amounts, and to eliminate or to normalize extraordinary items recorded during the test period.

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

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

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

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

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

**(4) Summary document.** A summary document that briefly states the following information on an annualized basis, if applicable. In presenting the following information, the company must itemize revenues from any temporary, interim, periodic, or other non-continuing 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 non-continuing tariffs.

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

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

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

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

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

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

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

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

**(i)** Requested capital structure.

**(j)** Requested net operating income.

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

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

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

**(a)** Public counsel;

**(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 filing, if the rates established or considered in that proceeding may be affected in the company's proposed general rate filing;

**(d)**<sup>143</sup> All persons who have informed the company in writing that they wish to be provided with the summary document required under this section. The company must enclose a cover letter stating that the prefiled testimony and exhibits and the accompanying work papers, diskettes, and publications specified in this rule are available from the company on request or stating that they have been provided. This provision does not create a right to notice in persons named to receive the summary.

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

**(7) Other.** The company must include its most recent annual report to shareholders, if any, and any subsequent quarterly reports to shareholders; the most recent FERC Form 1 and FERC Form 2, if applicable; and the company's Form 10K's, Form 100's, any prospectuses for any issuances of securities, and quarterly reports to stockholders, if any, for the most recent two years prior to the filing date.

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<sup>143</sup> Source: new

**WAC 480-07-520 General rate proceedings--solid waste collection companies.**<sup>144</sup> General rate increase filings by class A and B haulers as defined in WAC 480-70-041 must include the information described in this rule. The commission may reject a filing that fails to meet these minimum requirements, without prejudice to the company's right to refile its request in conformance with this section.

**(1) Proposed tariff.** Two copies of the proposed tariff, in legislative format, with strike-through to indicate any material to be deleted or replaced and underlining to indicate any material to be inserted.

**(2) Local government ordinances and notices.** A copy of every local government ordinance related to the request, and a copy of the customer notices issued in compliance with the provisions of WAC 480-149-120.

**(3) Transmittal letter.** A transmittal letter prepared in compliance with the provisions of WAC 480-149-120 and 480-70-326.

**(4) Work papers.** All supporting work papers for the test period, which is the most recent or most appropriate consecutive twelve-month period for which financial data are available. Work papers must include:

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

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

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

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

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

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

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<sup>144</sup> Source: WAC 480-09-335.

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

(f) Detailed price-out information that reconciles within five percent, without adjustment, to the test period booked revenue, including the test period customer count by tariff item.

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

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

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

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

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

**WAC 480-07-530 General rate proceedings—Water companies.**<sup>145</sup>

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

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

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

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

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

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

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<sup>145</sup> Source: WAC 480-09-337.

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

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

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

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

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

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

(c) Depreciation schedule;

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

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

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

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

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

(g) Public water system identification number assigned by the Washington department of health for each system that the new rates will affect. (h) Schedule showing separation of revenues and expenses between regulated and nonregulated operations.

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

**WAC 480-07-540 General rate proceedings—Burden of proof.<sup>146</sup>**

Public service companies bear the burden of proof in general rate proceedings that propose changes that would increase any rate, charge, rental, or toll, as provided in RCW 80.04.130 or RCW 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 prefiled evidence to be its full direct case in support of its rate filing for purposes of deciding any prehearing motion to dismiss under WAC 480-07-380.

**WAC 480-07-550 General rate proceedings—Compliance filings and other resulting filings.** WAC 480-07-880 and WAC 480-07-883 govern compliance filings and other filings that the commission authorizes or requires in a general rate proceeding.

**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.

**WAC 480-07-610 Brief adjudicative proceedings.**

**(1) When permitted.<sup>147</sup>** The commission may use brief adjudicative proceedings under RCW 34.05.482 when doing so is consistent with other provisions of law, when protection of the public interest does not require the commission to give notice and an opportunity to participate to persons other than the parties, and when the commission believes that the brief adjudication is consistent with the public interest. In exercising its discretion to conduct a brief adjudication, the commission will consider the preferences of the parties, the possible benefits to be gained from a brief adjudication, and the nature of issues involved.

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

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

**(b)** Contested applications for temporary authority;

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<sup>146</sup> New Section.

<sup>147</sup> Source: WAC 480-09-500(1).

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

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

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

**(3) How to request brief adjudication.**<sup>148</sup> Any person may apply for a brief adjudicative proceeding by filing with the secretary of the commission a letter stating reasons why a brief adjudication should be used and a certificate of service upon all other identified or necessary parties. The commission may set a matter for brief adjudication on its own motion when doing so will not prejudice the rights of any person. Each applicant for a brief adjudicative proceeding must submit a written explanation of its view of the issues along with its application. Parties may file written submissions as provided in the commission's notice that it will conduct the brief adjudicative proceeding.

**(4) Assignment of presiding officer.**<sup>149</sup> If the commission grants the request for a brief adjudication, it will designate a person to serve as a presiding officer consistent with the requirements of RCW 34.05.485.

**(5) Requesting and presenting oral comments.**<sup>150</sup>

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

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

**(6) Initial order.**<sup>151</sup> The presiding officer may make an oral statement of the reasons for the decision during the brief adjudication if the party affected is present at the proceeding. The presiding officer will enter an initial order that addresses the issues raised by the application within ten days after the date of the brief adjudication. The initial order will be served on the parties pursuant to WAC 480-07-150(3) and (7).

**(7) Review of initial orders.**<sup>152</sup>

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<sup>148</sup> Source: WAC 480-09-500(2).

<sup>149</sup> Source: WAC 480-09-500(2).

<sup>150</sup> Source: WAC 480-09-500(2)(a), (b).

<sup>151</sup> Source: WAC 480-09-500(3)-(5).

<sup>152</sup> Source: WAC 480-09-500(6)-(7).

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

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

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

**(8) Final order on review.**<sup>153</sup> The commission may adopt, modify, reject, or remand the initial order for further proceedings consistent with the terms of its final order. The final order on review will be in writing, will include a brief statement of the reasons for the decision, and will be entered within twenty days after the deadline for requesting review or of the request for review, whichever is later. The order must include a notice of any further available administrative review or, if none is available, a notice that judicial review may be available.

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

**(10) Record.**<sup>154</sup> The record in a brief adjudicative proceeding consists of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. The agency's record need not constitute the exclusive basis for action, unless otherwise required by law.

### **WAC 480-07-620 Emergency adjudicative proceedings.**<sup>155</sup>

**(1) When permitted.** The commission may conduct an emergency adjudicative proceeding pursuant to RCW 34.05.479 to suspend or cancel authority, to require that a dangerous condition be terminated or corrected, or to require immediate action in any situation involving an immediate danger to the public health, safety, or welfare requiring immediate action by the commission. Such situations include, but are not limited to:

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<sup>153</sup> Source: WAC 480-09-500(8).

<sup>154</sup> Source: WAC 480-09-500(9).

<sup>155</sup> Source: WAC 480-09-510.

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

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

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

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

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

**(5) 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.

**(6) 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 immediate reconsideration. If either review or reconsideration is requested, the commission will establish appropriate process to complete its review or reconsideration within ten days of the date of any petition for review or reconsideration. A party seeking immediate review or reconsideration is not automatically entitled to a stay of the emergency order.

### **WAC 480-07-630 Telecommunication companies—Arbitration under the Telecommunications Act of 1996<sup>156</sup>**

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<sup>156</sup> Source: Interpretive and Policy Statement, and current practice

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

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

**(3) Intervention; public counsel.** Arbitrations typically involve only the parties to the negotiation. Others may ask to participate but will be allowed to do so only upon a showing of compelling public interest. The Public Counsel Section of the Office of Attorney General may elect to participate pursuant to RCW 80.04.510.

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

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

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

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

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

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

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

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

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

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

(f) Be accompanied by all relevant documentation including:

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

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

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

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

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

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

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

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

**(a)** State whether the respondent disputes the date the petitioner asserts was the date on which the respondent received the original request for negotiation, or disputes any subsequent dates stated in the petition in conformance with section (6)(a) of this rule,

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

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

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

**(e)** Recommend any information that the arbitrator should request from the parties pursuant to 47 USC § 252(b)(4)(B), including an explanation of why

the information is necessary for the arbitrator to reach a decision on the unresolved issues, and

**(f)** Be accompanied by all relevant documentation including:

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

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

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

**(9) Verification.** The petition, answer, and all documentation filed must be verified as provided by WAC 480-10-390, or submitted by affidavit or declaration.

**(10) Confidentiality; protective order.** Petitions, answers, and any documents a party provides to the commission pursuant to a request under Section 252(b)(4)(B) are subject to Washington's public disclosure laws, including chapter 42.17 RCW and RCW 80.04.095. Confidential information submitted with a petition for arbitration or answer is subject to the protections and procedures set out in WAC 480-07-160. A party may include in its petition or response a request that the commission enter a protective order.

**(11) 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 USC § 252(b)(4)(B). Parties may submit to the arbitrator any discovery requests not responded to by the time of the conference and request that the arbitrator order the discovery. The arbitrator or the commission may request information from the parties pursuant to 47 USC § 252(b)(4)(B) at any time.

**(12) Appointment and Authority of Arbitrator.**

**(a) Appointment.** One or more commissioners, one or more commission employees appointed by the commission, or one or more persons under contract with the commission may be designated as arbitrator(s) when a petition for arbitration is filed. The commission will not appoint an arbitrator who

previously mediated a dispute between the same parties concerning the same interconnection agreement, unless the parties consent in writing or no other arbitrator is available to the commission. The commission will advise the parties of the appointment by entry of an order on arbitration procedure. The commission, in its discretion, may permit parties to comment on the selection of the arbitrator.

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

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

### **WAC 480-07-640 Telecommunication companies—Review and approval of interconnection agreements under the Telecommunications Act of 1996.<sup>157</sup>**

**(1) Scope.** This rule implements the commission review and approval process provisions of section 252 of the Telecommunications Act of 1996, 47 USC §252.

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

##### **(a) Filing and Service of Agreements for Approval.**

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

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<sup>157</sup> Source: Policy and interpretive statement

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

(iii) *Arbitrated Agreements—Request for approval.* The parties must also file, on the date established for answering any petition for review, their request for approval of an arbitrated interconnection agreement and a complete, signed copy of their interconnection agreement including all negotiated terms, all terms requested under Section 252(i) of the Telecommunications Act of 1996, and all terms drafted to implement the arbitrator’s report and decision. Arbitrated terms must be in bold font style and identify by footnote the arbitrated issue that relates to the text. Any appendices or attachments to the agreement must be included. The request for approval must summarize the agreement’s main provisions. The request for approval must confirm that the agreement does not discriminate against non-party carriers, is consistent with state and federal law, and is in the public interest. The commission will reject a request for approval that does not include all of the information required in this section but will allow it to be refiled when complete. The time lines established for commission review of requests for approval do not begin until a complete request is properly filed.

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

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

**WAC 480-07-650 Petitions for enforcement of telecommunication company interconnection agreements.**<sup>158</sup> The purpose of this rule is to provide a speedy and enforceable means to resolve disputes when one party to an interconnection agreement contends that the other party is violating the terms of the agreement.

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

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

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

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

*(iii)* A description of facts demonstrating failure to comply with the agreement. One or more affidavits, declarations, or other sworn statements, made by persons having personal knowledge of the relevant facts must support the description.

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

*(i)* The responding party's authorized representative, attorney of record, or designated agent for service of process;

*(ii)* The responding party's representatives with whom the petitioner conducted the negotiations addressed in (a)(i) of this subsection; and

*(iii)* All parties designated in the interconnection agreement to receive notices.

**(c) Pre-filing notice of petition.** The petitioner must give at least ten day's written notice to the respondent that the petitioner intends to file a petition for enforcement. The notice must identify the contract provision the petitioner alleges was violated, and the exact behavior or failure to act that petitioner alleges violates the agreement. The written notice must be served as provide in

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<sup>158</sup> Source: WAC 480-09-530.

subsection (1)(b) of this section. The petitioner must include a copy of this notice with its petition for enforcement.

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

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

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

**(3) Amendment of petition and answer.** The presiding officer may permit the responding party to amend its answer for good cause shown, and to avoid substantial prejudice to the responding party that is not caused by the fault of the responding party. The presiding officer may permit either party to amend its petition or answer to conform to the evidence presented during the proceeding. The presiding officer may refer to, but is not bound by, CR 15(b) of the Washington superior court civil rules, when determining whether to permit amendment of the petition or answer to conform to the evidence.

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

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

**(b) Procedural determination.** The presiding officer will determine at the prehearing conference whether the issues raised in the petition can be determined on the pleadings, submissions, and any oral statements without further proceedings. When determining whether to schedule an oral enforcement hearing session, the presiding officer will consider the parties' preferences and the reasons they advance, the need to clarify statements by

asking questions, whether the issues are largely factual, largely legal, or involve questions of fact and law, the apparent complexity of facts and issues, the need for speedy resolution, and the completeness of information presented. The presiding officer may require the parties to submit written briefs on the issues.

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

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

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

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

**(c) Review of the recommended decision.** The commission may hear the parties' arguments or comments regarding any recommended decision during a regular or special open public meeting. The parties may file written comments prior to the meeting on a schedule established in the recommended decision. The commission may request commission staff to make a presentation at the

meeting. The commission will conduct this session within ten days after the date of the recommended decision, or as soon thereafter as the commissioners' schedules permit.

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

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

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

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

**(d) Failure to comply with the order.** Any party who fails to comply with the terms of the commission's final order on a petition for enforcement is subject to penalties under RCW 80.04.380 and any other penalties or sanctions as provided by law. A company against whom a penalty is assessed may challenge the penalty or the facts on which it is based, or seek mitigation of the penalty, pursuant to pertinent law and commission rules.

**WAC 480-07-660 Railroad grade-crossing closures—Objections.**<sup>159</sup>

**(1) Filing.** Anyone who objects to a highway-railroad grade crossing closure under RCW 81.53.060 must file an objection in writing within twenty days after publication of notice of the proposed closure. The objection must:

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

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

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

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<sup>159</sup> Source: WAC 480-09-390.

**(d)** Explain the basis for the objection.

If a communication does not meet these requirements, the commission will not treat the communication as an objection when determining whether a hearing is required under RCW 81.53.060.

**(2) Party status; appearances; service of final order.** Filing an objection does not make a person a party to a proceeding under RCW 81.53.060. A person who wishes to participate as a party must enter an appearance at the first hearing session, as prescribed by WAC 480-07-340. A person who fails to establish party status by appearance may file a “late-filed petition to intervene” as provided in WAC 480-07-355. A person must establish party status to be entitled to service of any initial order or the commission’s final order in the matter. Persons who are not parties may receive a courtesy copy of any initial or final order on request.

**(3) Other interested persons.** Interested persons who are not parties will be provided an opportunity to be heard and offer evidence, as required by RCW 81.53.060. Interested persons who are not parties may not call witnesses, cross-examine witnesses, or otherwise participate as a party. Interested persons who are not parties do not have standing to file petitions for administrative review of initial orders or to file petitions for reconsideration of final orders.

## **SUBPART D: Alternative Dispute Resolution**

**WAC 480-07-700 Alternative dispute resolution.**<sup>160</sup> The commission supports parties' informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest, and subject to approval by commission order. Alternative dispute resolution (ADR) includes any mechanism to resolve disagreements, in whole or in part, without contested hearings.

**(1) No delegation of commission authority.** The commission cannot delegate to parties the power to make final decisions in any adjudicative proceeding. The Commission retains and will exercise its authority in every adjudicative proceeding to consider any proposed settlement or agreement for approval.

**(2) Forms of ADR.** Parties to a dispute that is within the commission's jurisdiction may agree to negotiate with any other parties at any time without commission oversight. The commission may direct parties to meet or consult as provided in subsection (3) of this section, or may establish or approve a collaborative process as provided in WAC 480-07-720. The commission may assign commission staff trained in ADR principles and techniques to serve as neutral third parties (e.g., mediator or facilitator) to assist the parties. The

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<sup>160</sup> Source: WAC 480-09-465.

commission may assign a settlement judge to assist the parties in appropriate circumstances. The commission may provide an arbitrator whose decision is subject to commission review in matters for which arbitration is authorized.

**(3) Settlement conference.**<sup>161</sup> The commission may invite or direct the parties to confer among themselves, or with a designated person. Settlement conferences must be informal and without prejudice to the rights of the parties. Any resulting settlement or stipulation must be submitted to the commission in writing and is subject to commission approval.

**(4) ADR guidelines.** In any negotiation, the following apply unless all participants agree otherwise:

**(a)** The parties, as their first joint act, will consider the commission's guidelines for negotiations, set out in a policy statement adopted pursuant to RCW 34.05.230, and determine the ground rules governing the negotiation;

**(b)** No statement, admission, or offer of settlement made during negotiations is admissible in evidence in any formal hearing before the commission without the consent of the participants or unless necessary to address the process of the negotiations;

**(c)** Parties may agree that information exchanged exclusively within the context of settlement negotiations will be treated as confidential, subject to the requirements of RCW 5.60.070; and

**(d)** Participants in a commission-sanctioned ADR process must periodically advise any non-participating parties and the commission of any substantial progress made toward settlement. Participants must immediately advise the commission if a commission-sanctioned ADR process is without substantial prospects of resolving the issue or issues under discussion (i.e., if the participants agree that an impasse has been reached or an impasse is declared by any neutral third party who is assisting the participants to the ADR process).

**(e)** Any mediator, facilitator, or settlement judge who assists the participants in an ADR process will not participate in any adjudication, arbitration, or approval process for the same proceeding, unless all parties consent in writing.

### **WAC 480-07-710 Mediation<sup>162</sup>**

**(1) Scope.** This rule applies generally to settlement negotiations in which the commission agrees to assign a qualified mediator to assist the parties. This rule applies specifically to implement the mediation provisions of sections 251 and 252 of the Telecommunications Act of 1996, 47 USC §§ 251 and 252.

**(2) Commission participation.** The parties to a negotiation, including a negotiation under 47 USC §§ 251 and 252, may ask the commission to mediate

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<sup>161</sup> Source: WAC 480-09-466.

<sup>162</sup> Source: new section based in part on Telco Act Interpretive and Policy Statement

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 electronic mail addresses telephone and fax numbers of the parties and their representatives. Copies of the request must be served on all parties to the negotiation. All parties are required to participate in good faith if the commission agrees to mediate.

**(3) Mediators.** The commission may assign one or more qualified employees to serve as mediator(s). . The commission may require the parties to retain the services of a professional mediator acceptable to all parties.

**(4) Process.** Mediators have discretion to regulate the course of the mediation, including scheduling mediation sessions, in consultation with the parties. The following general procedures apply:

**(a)** The mediator may not impose a settlement but may offer proposals for settlement,

**(b)** The mediator may meet individually with the parties or attorneys during mediation,

**(c)** Only the parties to the negotiation and the mediator may attend the mediation session(s), unless all parties 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 should not provide legal advice to the parties, nor are any mediator's statements as to law or policy binding on the commission, unless later adopted by the commission,

**(g)** The mediation process is confidential to the extent permitted by law, subject to the requirement for a written agreement as required under RCW 5.60.70, and

**(h)** No stenographic record will be kept.

**(5) Fees and costs.** Each party must bear its own fees and costs. Each party must pay any fees imposed by commission rule or statute.

**(6) Notice to commission.** Parties must advise the commission if they reach a full, partial, or multiparty settlement and may suggest preferred procedural alternatives for review of the settlement, subject to the requirements of WAC 480-07-640 (commission approval of interconnection agreements) or WAC 480-07-740, as appropriate. The commission will determine the appropriate procedure in each proceeding consistent with the requirements of WAC 480-07-640 or WAC 480-07-740.

### **WAC 480-07-720 Collaboratives.**<sup>163</sup>

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<sup>163</sup> Source: WAC 480-09-467.

**(1) Defined; membership.** A collaborative is a commission-sanctioned negotiation in which interested persons work with each other and representatives of commission staff to achieve consensus on one or more issues, within the commission's jurisdiction, assigned to or identified by the collaborative participants. Any person whose interests may be substantially affected by the result of the collaborative must be given an opportunity to participate. Collaborative participants must inform the commission and seek approval if a collaborative seeks to change its membership or redefine the issues it will address.

**(2) Procedure.** Participants must develop procedural guidelines for their negotiations when beginning a collaborative and should refer to any commission policy statement(s) that relate to ADR for guidance.

**(3) Communication with commission.** Communication between the commission and collaborative participants may be through commission staff assigned to serve as a neutral third party in the collaborative, or through the commission secretary, subject to agreement among the participants to the form and substance of any such communication.

**WAC 480-07-730 Settlement.**<sup>164</sup> A settlement is an agreement among two or more parties to a proceeding that is filed with the commission as a proposed resolution of one or more issues.

**(1) Full settlement.** An agreement of all parties that would resolve all issues in a proceeding may be presented as a full settlement for commission review. Parties that file a full settlement should file supporting evidence at the same time as the settlement agreement, or within a reasonable time following filing of the settlement agreement.

**(2) Partial settlement.** An agreement of all parties on some issues may be presented as a partial settlement for commission review, and remaining matters may be litigated. Parties that file a partial settlement should file supporting evidence at the same time as the settlement agreement, or within a reasonable time following filing of the settlement agreement.

**(3) Multiparty settlement.** An agreement of some, but not all, parties on one or more issues may be offered as their position in the proceeding along with the evidence that they believe supports it. Non-settling parties may offer evidence and argument in opposition.

**(4) Notice to commission.** Parties must advise the commission if they reach a full, partial, or multiparty settlement and may suggest preferred procedural alternatives for review of the settlement, subject to the requirements

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<sup>164</sup> Source: WAC 480-09-466.

of WAC 480-07-740. The commission will determine the appropriate procedure in each proceeding consistent with the requirements of WAC 480-07-740.

**WAC 480-07-740 Settlement consideration procedure.** The commission must determine whether a proposed settlement meets all pertinent legal and policy standards. The commission must have a reasonable opportunity to hear parties' views on why the settlement should be approved and adopted, to ask questions of the parties, and to conduct its processes in an orderly fashion. Parties must, therefore, consider the timing and the content of the settlement presentation to the commission.

**(1) Settlement presentation timing.** Parties must file a proposed settlement with a recommended effective date that allows the Commission sufficient time to schedule a formal settlement hearing and provide an opportunity for public comment when the commission, after consulting the parties, determines that such comment is needed. The commission must have sufficient time to deliberate and to prepare an order responding to the proposal. The parties must allow sufficient time for the filing, review, and approval of any required compliance filing.

**(a) General rate proceedings.** In general rate proceedings or matters of comparable complexity, parties must allow at least 30 days between filing a proposed settlement agreement and the requested effective date of any tariff changes or other terms and conditions of the settlement.

**(b) Less complex matters.** In matters that are less complex, parties must allow at least 21 days between filing a proposed settlement agreement and the requested effective date for any tariff changes or other terms and conditions of the settlement.

**(c) Notice to commission; inquiries regarding arrangements for review.** Parties should inform the commission at the earliest opportunity when it appears that they may reach a settlement and ask the commission to make tentative arrangements for review. Parties may direct informal inquiries to the supervisor of the commission's administrative law function or the supervisor's designee.

**(d) Hearing.** The commission will schedule a hearing to consider a proposed settlement if the commission believes that a hearing will assist it to decide whether to adopt the proposal.

**(e) Timing; requested effective date.** The commission will endeavor to meet the parties' requested effective date, but cannot guarantee that it will be able to do so.

**(2) Settlement presentation contents.** When filing a proposed settlement agreement, parties must also file supporting documentation sufficient to demonstrate to the commission that the proposal is consistent with law and the public interest and that it is appropriate for adoption.

**(a) Narrative.** Supporting documentation should include a narrative outlining the scope of the underlying dispute; the scope of the settlement and its principal aspects; a statement of parties' views about why the proposal satisfies both their interests and the public interest; and a summary of legal points that bear on the proposed settlement. The documentation may be in the form of a memorandum, supporting prefiled testimony, brief, or other form that serves the same functions.

**(b) Testimony.** Each party to a settlement agreement must offer to present one or more witnesses to testify in support of the proposal and answer questions concerning the settlement agreement's details, and its costs and benefits. Proponents of a proposed settlement must present sufficient evidence to support its adoption under the standards that apply to its acceptance. Counsel must make a brief presentation of the settlement, and address any legal matters associated with it. Counsel must be available to respond to questions from the bench regarding those subjects.

**(c) Rights of opponents of a proposed settlement.** Parties opposed to the commission's adoption of a proposed settlement retain the following rights: the right to cross-examine witnesses supporting the proposal; the right to present evidence opposing the proposal; the right to present argument in opposition to the proposal, and the right to present evidence or, in the commission's discretion, an offer of proof, in support of the opposing party's preferred result. The presiding officer may allow discovery on the proposed settlement in the presiding officer's discretion.

**WAC 480-07-750 Commission discretion to accept settlement, impose conditions, or reject a proposed settlement.**<sup>165</sup>

**(1)** The commission may decide whether or not to consider a proposed settlement. The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.

**(2)** If the commission considers a proposed settlement, it may accept the proposed settlement, with or without conditions, or may reject it.

**(a)** If the commission rejects a proposed settlement, the litigation returns to its status at the time the settlement was offered and the time for completion of the hearing will be extended by the elapsed time for consideration of the settlement.

**(b)** If the commission accepts a proposed settlement upon conditions not proposed in the settlement, the parties may seek reconsideration of the decision

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<sup>165</sup> Source: WAC 480-09-466.

and the settling parties must within the time for reconsideration state their rejection of the conditions. If a party rejects a proposed condition, the settlement is deemed rejected and subsection (2)(a) of this rule applies.

## **SUBPART E: Orders and Post-Order Process**

### **WAC 480-07-800—General; definitions.**

(1) “Entry” of an order means the signing of the order by all persons who are to sign the order, as an official act indicating that the order is to be effective. Each order will state the date on which it is entered.

(2) An order is effective when entered, unless an effective date other than the date the order is entered is specified in the order.

(3) “Service” of an order means placing copies of the order in the U.S. Mail, postage prepaid, addressed to all parties and any other persons required by law to be served. Each order will state the date on which it is served. The service date of an order governs the determination of time limits for further administrative procedure or for judicial review.

### **WAC 480-07-810 Interlocutory orders.<sup>166</sup>**

(1) **Defined.** Orders entered during the course of an adjudicative proceeding are “interlocutory orders,” as distinguished from initial orders that may be entered by an administrative law judge at the conclusion of a proceeding and final orders entered by the Commission at the conclusion of a proceeding. Examples of interlocutory orders are orders concerning a party’s participation in a proceeding, orders concerning discovery, and orders that relate to proposed evidence.

(2) **When review is available.** Interlocutory review is discretionary with the commission. The commission may accept review of interim or interlocutory orders in adjudicative proceedings if it finds that:

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

(b) A review is necessary to prevent substantial prejudice to a party that would not be remediable by post-hearing review; or

(c) A review could save the commission and the parties substantial effort or expense, or some other factor is present that outweighs the costs in time and delay of exercising review.

(3) **Process for seeking review.** Any party may petition for review of an interlocutory order. Petitions for interlocutory review must be filed and served

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<sup>166</sup> Source: WAC 480-09-760.

on other parties within ten days after service of the order or issuance of the ruling for which review is requested. The petition must state why the ruling is in error or should be changed and why interlocutory review is necessary, and must cite reasons that support the petition. Answers must be filed within ten days after the petition is filed. The commission may alter these filing deadlines when doing so is consistent with the public interest.

**WAC 480-07-820 Initial and final orders.**<sup>167</sup>

**(1) Defined.**

**(a) Initial orders.** “Initial orders” dispose of the merits in a proceeding that is conducted before an administrative law judge and are entered over the signature of the administrative law judge. Initial orders include those that grant dispositive motions (e.g., motions to dismiss and motions for summary determination) and orders that resolve contested issues on the basis of the official record in a proceeding. All initial orders are subject to further action by the commission as provided in WAC 480-07-825.

**(b) Final orders.** “Final orders” dispose of the merits of a proceeding following consideration by the commissioners and are entered over the signatures of a majority of the commissioners. Final orders include those that grant dispositive motions (e.g., motions to dismiss and motions for summary determination) and orders that resolve contested issues on the basis of the official record in a proceeding. Final orders may be entered whenever:

- (i) The commissioners personally preside over a proceeding,
- (ii) The commissioners enter an order following administrative review of an initial order in response to a timely petition for administrative review,
- (iii) The commissioners enter an order after the period available for petitions for administrative review and no such petition has been filed,
- (iv) All of the parties to a proceeding waive their right to an initial order, or
- (v) The commissioners enter an order following the timely filing of a petition for reconsideration of a final order or a petition for rehearing of a final order.

**(2) Service.** The commission will serve a copy of any initial order and the commission’s final order to each party of record and to the party’s attorney or other authorized representative pursuant to RCW 34.05.461(9) and WAC 480-07-150(3).

**(3) Timing.** The presiding officer will enter an initial order within 60 days after the commission receives transcripts following the close of the record, hears oral argument (if allowed or required), initial briefs are filed, or reply briefs are

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<sup>167</sup> Source: WAC 480-09-780.

filed, whichever occurs last. The commission will enter its final order within 90 days after the commission receives transcripts following the close of the record, hears oral argument (if allowed or required), initial briefs are filed, or reply briefs are filed, or the commission receives a petition for administrative review or an answer to a petition for review, whichever occurs last. The presiding officer or the commission may alter the time for entry of an initial or final order by notice to the parties.

**WAC 480-07-825.<sup>168</sup> Initial orders—Petitions for administrative review.**

**(1) When a petition for administrative review is appropriate.** A party who wishes to challenge any finding of fact, conclusion of law, remedy, or result proposed by an initial order may file a petition for administrative review. A party also may file a petition for administrative review to challenge the reasons stated in support of any result reached in an initial order. The commission will accept only one petition for administrative review from any party.

**(2) Timing of petition.** Any party to an adjudicative proceeding may file and serve a petition for administrative review within twenty days after the initial order is served. The commission may extend the time on a showing of good cause.

**(3) Contents; length.** Petitions for administrative review must clearly identify the nature of each challenge to the initial order, the evidence, law, rule or other authority that the petitioner relies upon to support the challenge, and state the remedy that the petitioner seeks. Petitions for review of initial orders must be specific. The petitioner must separately state and number every contention. A petition that challenges a finding of fact must cite the pertinent page or part of the record or must otherwise state the evidence it relies on to support its petition, and should include a recommended finding of fact. A petition that challenges a conclusion of law must cite the appropriate statute, rule, or case involved and should include a recommended conclusion of law. A petition that challenges the summary or discussion portion of an initial order must include a statement showing the legal or factual justification for the challenge, and a statement of how the asserted defect affects the findings of fact, the conclusions of law, and the ultimate decision. Petitions for administrative review must not exceed sixty pages, without prior permission from the commission.

**(4) Answers.**

**(a) Who may answer.** Any party to the adjudication may answer another party's petition for administrative review.

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<sup>168</sup> Source: WAC 480-09-780

**(b) Filing and service.** An answer to a petition for administrative review must be filed and served within ten days after the petition is filed. The commission may designate a different time for filing answers to petitions.

**(c) Challenge to order in answer.** A party who did not file a petition for administrative review of an initial order may challenge the order or portions of the order in its answer to the petition of another party.

**(5) Reply.**

**(a) By right.** A party has the right to reply to new challenges to the order that are raised under subsection 4(c), above.

**(b) By leave of commission.** A party otherwise has no right to reply to an answer, but may petition for leave to reply, citing new matters raised in the answer and stating why those matters were not reasonably anticipated and why a reply is necessary. The petitioner may attach a reply to the petition for leave to accept the reply.

**(c) Timing.** A reply under subsection (5)(a), or a petition for leave to reply under subsection 5(b), must be filed no later than five days after service of the answer. The commission may extend the time upon a showing of good cause.

**(6) Oral argument.** The commission may hear oral argument on a petition for administrative review at a time and place the commission designates by notice to all parties to the proceeding. A party who desires to present oral argument may request argument, stating why oral argument is necessary to assist the commission in making its decision and why written presentations will be insufficient.

**(7) Final order.** The commission may by final order adopt, modify, or reject an initial order after reviewing the initial order and any petitions for review, answers, replies, briefs, and oral arguments, and the record. Alternatively, the commission may remand the matter for further proceedings with instructions to the presiding officer. The statutory time for filing a petition for judicial review commences when the commission serves its final order. However, if a party timely files a petition for reconsideration of the final order, and complies with the commission's procedural rules governing reconsideration, the time for filing a petition for judicial review does not commence until the date on which the agency serves an order disposing of the petition for reconsideration, or the date on which the petition is deemed denied as a matter of law, as provided in RCW 34.05.470.

**WAC 480-07-830 Motion to reopen the record prior to entry of a final order.**<sup>169</sup> Any party may file a motion to reopen the record at any time after the close of the record and before entry of the final order. The commission may

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<sup>169</sup> Source: WAC 480-09-820.

reopen the record in a proceeding on its own motion. In uncontested proceedings, the commission may exercise its discretion to reopen the record to allow receipt of written evidence when otherwise lawful. In contested proceedings, the commission may reopen the record to allow receipt of evidence that is essential to a decision and that was unavailable and not reasonably discoverable with due diligence at the time of the hearing or for any other good and sufficient cause. The commission will give all parties an opportunity to respond to any evidence received after the record is closed. The commission may enter a final order or may return the matter to the presiding officer for further consideration, including further hearing or other process when appropriate.

**WAC 480-07-835 Clarification of final order by motion.**<sup>170</sup>

**(1) Motion—when appropriate.** Any party who does not seek to change the outcome with respect to an issue may file a motion for clarification of a final order within ten days after the order is served. The purpose of a motion for clarification is to ask for clarification of the meaning of an order so that compliance may be enhanced, so that any compliance filing may be accurately prepared and presented, to suggest technical changes that may be required to correct the application of principle to data, or to correct patent error without the need for parties to request reconsideration and without delaying post-order compliance. A motion for clarification may also request that obvious or ministerial errors in orders be corrected by letter from the secretary or by subsequent order, consistent with WAC 480-07-875.

**(2) Motion—when not appropriate.** If a party seeks to change an outcome with respect to one or more issues resolved by a final order, or challenge a finding of fact or conclusion of law stated in the order, it may not do so by motion for clarification, but must file a petition for reconsideration pursuant to WAC 480-07-850.

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

**(4) Tolling.** Filing a petition for clarification tolls the time for judicial review but does not toll the time for compliance with the final order of which clarification is sought.

**WAC 480-07-840 Clarification of a final order by conference.**<sup>171</sup> The commission may schedule an order conference on its own motion or at a party's request. The commissioners may personally attend the conference or may

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<sup>170</sup> Source: new

<sup>171</sup> Source: WAC 480-09-460(5).

designate one or more persons to attend on their behalf. The commission will determine whether an order conference will be recorded.

**(1) Purpose.** The purpose of an order conference is to clarify the meaning of a final order when parties disagree about the order's meaning or requirements. Parties to an order conference may ask for clarification of the meaning of an order to:

**(a)** Explore and resolve any barriers to compliance,

**(b)** Ensure that any compliance filing can be accurately prepared and presented,.

**(c)** Propose technical changes that may be required to correct the application of principle to data, or

**(d)** Correct patent error.

The conference is not a forum for discussing or challenging the evidentiary, legal, or policy decisions expressed in the order. Parties may pursue those remedies through a petition for reconsideration or other means.

**(2) Effect.** An order conference will not stay the effect of an order, the time for compliance, the time for securing post-order review, or the time for petitioning for judicial review, unless the conference results in a supplemental commission order, which then becomes a final order subject to review. An order conference does not constitute a formal interpretation of an order. The final order that is the subject of an order conference will remain the sole expression of the commission's decision unless supplemented through an additional order.

**WAC 480-07-850 Reconsideration of a final order by petition.**<sup>172</sup>

**(1) Petition—timing.** Any party may petition for reconsideration of a final order within ten days after the order is served. The purpose of a petition for reconsideration is to request that the commission change the outcome with respect to one or more issues determined by the commission's final order.

**(2) Petition—contents.** The petitioner must clearly identify each portion of the challenged order that it contends is erroneous or incomplete, must cite those portions of the record and each law or commission rule that the petitioner relies on to support its petition, and must present brief argument in support of its petition.

**(3) Answer.** No party may file an answer to a petition for reconsideration unless requested by the commission. If the commission requests answers to a petition for reconsideration, it will issue a notice stating the date by which answers must be filed and the date by which the commission intends to enter an order resolving the petition.

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<sup>172</sup> Source: WAC 480-09-810.

**(4) Oral argument.** The commission will not hear oral argument on a petition for reconsideration unless the commission determines on its own motion that oral argument is required.

**(5) Disposition.** A petition for reconsideration is deemed denied twenty days after the date the petition is filed, unless the commission either:

**(a)** Enters an order resolving the petition; or

**(b)** Serves the parties with a written notice specifying the date by which it will act on the petition.

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

**(7) Stay.** Filing a petition for reconsideration does not automatically stay the effect of an order or serve as a request for a stay. A party may request that the commission stay the effectiveness of an order pending reconsideration by filing a petition for stay pursuant to WAC 480-07-860.

**(8) Judicial review.**<sup>173</sup> Filing a petition for reconsideration is not a prerequisite for seeking judicial review of a commission final order. If a proper petition for reconsideration is timely filed, the time for filing a petition for judicial review does not commence until the agency serves an order disposing of the petition for reconsideration, or the date on which the petition is deemed denied as a matter of law, as provided in RCW 34.05.470. An order denying reconsideration, or a notice of the time for disposition under subsection (5)(b) of this section is not subject to judicial review.

**WAC 480-07-860 Stay.**<sup>174</sup> Any party may petition to stay of the effectiveness of a final order within ten days after its service, unless otherwise provided by statute or stated in the final order. The commission may stay the effect of a final order on its own initiative. The effect of a final order is not automatically stayed when a party files a motion for clarification, a petition for reconsideration, or a petition for rehearing.

**WAC 480-07-870 Rehearing.**<sup>175</sup> Any person affected by a final order may file a petition for rehearing. Public service companies may seek rehearing under RCW 80.04.200 or RCW 81.04.200.

**WAC 480-07-875 Amendment, rescission, or correction of order.**<sup>176</sup>

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<sup>173</sup> New section (based on RCW 34.05.470(5)).

<sup>174</sup> Source: WAC 480-09-800.

<sup>175</sup> Source: WAC 480-09-820.

<sup>176</sup> Source: WAC 480-09-815.

**(1) Amendment or rescission.** The commission, may alter, amend, or rescind any order that it has entered, after notice to the public service company or companies affected and to all parties in the underlying proceeding, and after allowing an opportunity for hearing as in the case of complaints. Any order altering, amending, or rescinding a prior order will have the same effect as any other final order when served upon the public service company or companies affected.

**(2) Correction.** The commission may act on its own initiative or on the motion of any party to correct obvious or ministerial errors in orders. The commission may enter a corrected order or effect any corrections by notice or letter. The commission may direct the secretary to effect any corrections by notice or letter. The time for any available post-hearing review begins with the service of the correction, as to the matter corrected.

**WAC 480-07-880 Compliance filing; subsequent filing; reporting requirement.**<sup>177</sup>

**(1) Compliance filing; compliance order.** When the commission enters a final order that authorizes or requires a party to make a filing to implement specific terms of the order with respect to the issues resolved in an adjudicative proceeding by implementing a precisely defined result, the filing is a “compliance filing.” For example, a commission final order in a general rate proceeding may authorize or require a party to file original or substitute tariff sheets to implement the terms of the final order. A compliance filing is made under the docket number of the final order to which it relates. A compliance order is an order approving or rejecting a compliance filing.

**(2) Subsequent filing.** When the commission enters a final order that authorizes or requires a party to make a filing to implement general instructions, (e.g., the formulation of policy, or filing of tariffs other than to implement a precisely defined result), the filing initiates a new proceeding that will be assigned a new docket number, and the filing is deemed a “subsequent filing.” For example, a commission final order in a complaint proceeding may authorize or require a party to make a tariff filing by a date certain.

**(3) Reporting requirement.** The commission may enter a final order that requires a party to report periodically to the commission with respect to designated subject matter. The reports must be filed under the docket number of the proceeding in which the final order is entered, unless otherwise specified in the order establishing the requirement or by later letter from the Secretary of the commission.

**WAC 480-07-883 Compliance filing—filing requirements; timing; commission action.** A party must strictly limit the scope of its compliance filing to the requirements of the final order to which it relates. If the commission finds that a compliance filing varies from the requirements or conditions of the order authorizing or requiring it, either by falling short of or by exceeding the authorization, conditions, or requirements of the order, the commission may reject the filing unless it has pre-approved the variance.

**(1) Filing requirements.** A compliance filing must include the following:

- (a)** A cover letter that identifies the order to which the filing relates,
- (b)** All required tariff sheets, and
- (c)** Work papers that clearly demonstrate the derivation of the proposed tariffs.

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<sup>177</sup> Source: WAC 480-09-340.

**(2) Service requirement.** A party who makes a compliance filing must serve it on each party to the proceeding in which the compliance filing is authorized or required. Service must be initiated on the same day as the filing.

**(3) Timing; effective date.**

**(a)** The commission will state in its final order authorizing or requiring a compliance filing the date by which the compliance filing must be made and the effective date that should appear on any tariff sheets that are required as part of a compliance filing. The commission may state the amount of time it will require to examine any proposed compliance tariff sheets between their filing and their proposed effective date.

**(b)** A compliance filing does not become effective automatically on its stated effective date. Commission action is required before any compliance filing can be effective. The commission may enter an order approving a compliance filing or taking other appropriate action. The commission may delegate to the secretary, by written authorization in individual proceedings, the authority to approve or take other appropriate action with respect to a compliance filing.

**(4) Commission action on compliance filing.**

**(a)** The commission may enter an order in any proceeding in which a compliance filing is authorized or required that:

*(i)* Approves the compliance filing, or

*(ii)* Rejects a compliance filing or any portion of the filing that apparently fails to comply.

**(b)** If the commission rejects all or part of a compliance filing, the party may refile. The commission may impose conditions on refileing.

**(c)** If the commission approves a compliance filing, but later discovers that it failed to recognize that the compliance filing was, in fact, incomplete or did not fully comply with the order authorizing or requiring the filing, the commission may take any necessary and lawful steps to secure full compliance.

**WAC 480-07-885 Subsequent filing—filing requirements; timing; commission action.**

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

**(a)** A person who makes a subsequent filing must provide a cover letter that identifies the order and the docket in which the commission required the subsequent filing. The commission will assign a new docket number to a subsequent filing.

**(b)** A person who makes a subsequent filing that includes tariff sheets must comply with all pertinent requirements for tariff filings of the industry, including the required statutory notice period, unless the commission authorizes the subsequent filing to become effective on less than statutory notice.

(c) A person who makes a subsequent filing must serve a copy of the filing on all parties to the proceeding in which the filing was authorized or required.

**(2) Timing.** A final order that authorizes or requires a subsequent filing may state the date by which the subsequent filing must be made. If no date for the subsequent filing is specified in the final order, the commission may establish the date by order or by letter from the commission secretary.

**(3) Commission action on subsequent filing.** The commission will act on a subsequent filing that includes tariff sheets in the same manner that it would act on an original tariff filing of the industry.

#### **PART IV: OTHER COMMISSION PROCEEDINGS**

##### **WAC 480-07-900 Open public meetings.**<sup>178</sup>

**(1) Regular meetings.** The commission will hold regular meetings to conduct business under chapter 42.30 RCW, the Open Public Meetings Act. The meetings will begin at 9:30 a.m., on the second, fourth, and fifth Wednesday of each month in the commission's office in Olympia, Washington. If the regular meeting day is a legal holiday, the regular meeting will be held on the next business day or on an alternate schedule published in the *Washington State Register*.

**(2) Changes to regular meetings.** Regular meetings may be canceled. The commission may change the time and place of regular meetings from the information set out in this section. The current times and places are published, as required, in the *Washington State Register*, on the commission's Internet web site, and are available through telephone inquiry.

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

**(4) Agenda.** The commission secretary will distribute an agenda for each open public meeting. The commission will make its best effort to compile and publish a complete agenda, but may amend its agenda after it is published, and may take up matters that do not appear on its published agenda. The agenda is posted to the commission's internet site at [www.wutc.wa.gov](http://www.wutc.wa.gov). Persons without internet access capability may request the commission records center to provide a copy of the agenda via U.S. mail.

**(a) "Discussion" agenda.** In general, the agenda will identify each item scheduled for discussion and action, as relating to utility regulation under Title 80 RCW; as relating to transportation regulation under Title 81 RCW; or "other." The secretary will group similarly identified items together on the agenda.

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<sup>178</sup> Source: WAC 480-09-115.

**(b) "No action" agenda.** Any request, proposal, or other filing that can take effect without commission action may be placed on a "no action required" portion of the agenda. Any item on this portion of the agenda will be discussed at any commissioner's request, and the commission may take such action on the item as it deems appropriate.

**(c) "Consent" agenda.** The secretary may place any item that the secretary believes to be noncontroversial on a "consent agenda" portion of the open meeting agenda. The commission will ask at the meeting if any person wants to address any consent agenda item, and an item will be removed from the consent agenda for individual discussion and action at the request of any commissioner. Items on the consent agenda may be collectively moved for approval by a single motion and may be collectively approved by a single vote of the commission.

**(5) Staff contact.** A commission staff member is ordinarily assigned to analyze and, if appropriate, present each open meeting item to the commission at the open meeting. The staff person and a contact number are identified in the draft agenda. Persons interested in open meeting agenda items may discuss them with staff, subject to time availability. Any person interested in an item on the open meeting agenda may address the item during the meeting.

**(6) Orders.** The commission may direct the secretary to enter any order or sign any document necessary to implement an open meeting decision by the commissioners.

**(7) Modifications.** The commission may exercise its discretion to modify the procedures in this section when appropriate to the conduct of its business.

#### **WAC 480-07-910 Informal complaints.**<sup>179</sup>

**(1) How to make an informal complaint.** Any person may make an informal complaint to the commission about any business that the commission regulates. A person may make an informal complaint by telephone, correspondence, facsimile transmission, or electronic mail.

**(2) Contents.** An informal complaint must identify the business or person to whom the complaint pertains. An informal complaint should:

**(a)** Present all facts that are needed for the commission to understand the nature of, and reason(s) for, the complaint;

**(b)** Describe the acts or omissions that led to the complaint, with all relevant dates;

**(c)** Cite all relevant statutes or rules, if the person who files the complaint knows them.

**(3) Commission response; result.** Commission employees assigned to assist consumers may discuss an informal complaint with the affected persons,

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<sup>179</sup> Source: WAC 480-09-150.

by correspondence or otherwise. The commission will try to assist the parties to resolve the informal complaint by agreement without the need for a formal complaint, hearing, and order. The commission encourages the informal resolution of disputes whenever possible. An informal complaint will not result in a hearing or in an order that compels a person to do something or forbids a person from doing something.

**(4) Conversion of informal complaint to formal complaint.** Making an informal complaint does not prevent any party from filing a formal complaint, which may constitute an application for an adjudicative proceeding. The commission may initiate a formal complaint proceeding on its own initiative.

**WAC 480-07-920 Interpretive and policy statements.**<sup>180</sup>

**(1) General.** Upon the petition of any person, or upon its own motion, the commission may make and issue interpretive and policy statements to advise the public of its current opinions, approaches, and likely courses of action.

**(2) Roster of interested persons.** The commission will maintain a roster of interested persons, consisting of persons who have requested in writing to be notified of all interpretive and policy statements issued by the commission. The commission will periodically update the roster. When the commission issues an interpretive or policy statement, it will send a copy of the statement to each person on the roster.

**(3) Index of current statements.** The commission maintains a file and an index of all currently effective interpretive and policy statements. The statements are available for inspection and copying at the records center in the commission's Olympia headquarters office and are posted on the commission's Internet web site.

**WAC 480-07-930 Declaratory orders under RCW 34.05.240.**<sup>181</sup>

**(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. Petitions for declaratory orders under RCW 34.05.240 must conform in style and substance to the requirements for other forms of pleading as specified in Part III, subpart A of this chapter.

**(2) Notice.** The commission will give notice of any petition for declaratory order within fifteen days after the commission receives the petition. The notice will be served on all persons who are required by law to be given notice and on any other person to whom the commission deems notice to be desirable.

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<sup>180</sup> Source: WAC 480-09-200.

<sup>181</sup> Source: WAC 480-09-230.

**(3) Response.** Any person may respond to a petition for declaratory order by filing an answer within 20 days after the petition is filed or at such other time as the commission may establish by notice. The commission will not enter a declaratory order under RCW 34.05.240 if any person asserts in response to a petition for declaratory order filed pursuant to RCW 34.05.240 that their rights might be substantially prejudiced by entry of a declaratory order, supports such assertion by sworn affidavit demonstrating the potential for substantial prejudice, and does not consent in writing to the determination of the matter by a declaratory order proceeding under RCW 34.05.240.

**(4) Conversion of proceeding.** The commission may convert the form of a declaratory order proceeding as provided under RCW 34.05.070 and conduct the matter as an adjudicative proceeding under Part III, subpart A of this chapter.

**(5) Commission action on petition.** Within thirty days after it receives a petition for declaratory order, the commission will:

**(a)** Enter a declaratory order,

**(b)** Notify the petitioner that the commission will not enter a declaratory order under RCW 34.05.240, and state reasons for its action,

**(c)** Set a specified time, no later than ninety days after the day the petition was filed, by which the commission will enter a declaratory order, or

**(d)** Set a reasonable time and place for a hearing. If a hearing is held on a petition for declaratory order under RCW 34.05.240, it must be held no more than ninety days after receipt of the petition. If a hearing is held, the commission will give at least seven days' notice to the petitioner, to all persons to whom notice is required by law, and to any other person it deems desirable. The notice will include the time, place, and a statement of the issues involved.

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

**(7) Commission action after hearing.** If a hearing is held as provided in subsection (5)(d) of this section, the commission will within a reasonable time:

**(a)** Enter a declaratory order, or

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

**(8) Service.** The commission will serve its order or notice upon all persons who are required to receive notice under subsection (2) of this section.

**WAC 480-07-940 Conversion of proceedings.**<sup>182</sup> The commission will consider whether to convert a proceeding pursuant to RCW 34.05.070 upon application by any person or upon its own motion.

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<sup>182</sup> Source: WAC 480-09-600.

**WAC 480-07-950 Joint hearings with other administrative bodies.**<sup>183</sup>

**(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.

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<sup>183</sup> Source: WAC 480-09-620.