

Chapter 480-07 WAC

PROCEDURAL RULES Last Update: 8/22/08 WAC

PART III: ADJUDICATIVE PROCEEDINGS

Subpart A: Rules of General Applicability

480-07-300	Scope of Part III.
480-07-305	Commencement of an adjudicative proceeding.
480-07-307	Probable cause determinations.
480-07-310	Ex parte communication.
480-07-320	Consolidation of proceedings.
480-07-330	Presiding officers.
480-07-340	Parties--General.
480-07-345	Appearance and practice before the commission.
480-07-350	Access for limited-English speakers and hearing-impaired persons.
480-07-355	Parties--Intervention.
480-07-360	Parties-- <u>Service Mand</u> master service list.
480-07-365	Filing documents in adjudicative proceedings.
480-07-370	Pleadings--General.
480-07-375	Motions.
480-07-380	Motions that are dispositive--Motion to dismiss; motion for summary determination; motion to withdraw.
480-07-385	Motion for continuance or suspension, postponement, or extension of time.
480-07-390	Briefs; oral argument; findings and conclusions.
480-07-395	Pleadings, motions, and briefs--Format requirements; citation to record and authorities; verification; errors; construction; amendment.

80-07-400	Discovery.
80-07-405	Discovery--Data requests, record requisitions, and bench requests.
80-07-410	Discovery--Depositions.
80-07-415	Discovery conference.
80-07-420	Discovery--Protective orders.
80-07-423	Discovery--Protective orders--Submission requirements for documents.
80-07-425	Discovery disputes.
80-07-430	Prehearing conferences.
80-07-440	Hearing notice.
80-07-450	Hearing--Failure to appear.
80-07-460	Hearing-- Predistribution of eExhibits, and prefiled testimony exhibit lists, and cross-examination estimates.
80-07-470	Hearing guidelines.
80-07-480	Hearing--Stipulation of facts.
80-07-490	Hearing--Exhibits and documentary evidence.
80-07-495	Hearing--Rules of evidence; official notice.
80-07-498	Hearing--Public comment.

PART III: ADJUDICATIVE PROCEEDINGS

Subpart A: Rules of General Applicability

WAC 480-07-300 Scope of Part III. (1) **Scope.** The rules in this subpart apply to all adjudicative proceedings described in this chapter, except to the extent of any conflict with

WAC (~~6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM~~)
 [2]

special rules that govern general rate proceedings (subpart B of this chapter) or abbreviated adjudicative proceedings (subpart C of this chapter). An "adjudicative proceeding," for purposes of this chapter, is a proceeding in which an opportunity for hearing is required by statute or constitutional right ~~before or after the commission enters an order,~~ or is a proceeding as to which the commission voluntarily ~~commences a~~enters an adjudication, ~~and~~ as defined and described in chapter 34.05 RCW.

(2) **Examples of adjudicative proceedings before the commission.** The following are nonexclusive examples of ~~proceedings that are~~ adjudicative proceedings for purposes of this chapter once the commission takes formal action to commence such a proceeding pursuant to WAC 480-07-305, if set for hearing:

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

(b) Suspended tariff filings seeking a~~General~~ rate increase~~proceedings~~.

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

(d) Petitions for enforcement of interconnection agreements.

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

(f) Declaratory order proceedings.

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

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-300, filed 11/24/03, effective 1/1/04.]

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

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

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

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

(a) Formal complaints filed by persons other than

commission staff.

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

(c) Petitions for declaratory orders under RCW 34.05.240, when the commission determines that an adjudicative process is necessary to provide parties the opportunity to resolve contested issues.

(d) Requests for a hearing to contest, or seek mitigation of, penalties assessed without a prior hearing~~Filings for general rate increases, as defined in this chapter.~~

(e) Protests of, or objections to, a 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.~~

(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.** Within thirty days after receiving an application for an adjudicative proceeding, the commission may notify the applicant of any obvious errors or omissions, request any additional information ~~the commission~~ requires regarding the application ~~for adjudicative proceeding~~, and notify the applicant of the name, ~~emailing~~ address, and telephone number of a person on the commission staff ~~that who the applicant may be~~ contacted regarding the application.

(5) **Commission determination whether to conduct an adjudicative proceeding.** Within ninety days after ~~receiving an application for an adjudicative proceeding~~ ~~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~~ written statement of the reasons for that decision ~~and notice of any administrative review available.~~ While other circumstances may justify not commencing an adjudicative proceeding, the commission will not commence an adjudicative proceeding under the following circumstances:

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

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

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

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

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

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

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-305, filed 11/24/03, effective 1/1/04.]

WAC 480-07-307 Probable cause determinations. An administrative law judge will review the information or evidence supporting ~~any proposed complaint or penalty assessment~~ commission staff proposes to have the commission issue and will determine whether probable cause exists to issue the complaint-~~or assess penalties~~. ~~UponIf the judge determininges~~ that the information would ~~support the proposed penalties or~~ sustain the

WAC (~~6/1/166/1/165/3/16 1:22 PM~~~~9:37 AM~~~~7:11 AM~~) [7]

complaint, if proved at hearing and ~~if~~ not rebutted or explained, the judge will sign the complaint ~~or penalty assessment~~ on behalf of the commission. The existence of a finding of probable cause may not in any later stage of the proceeding be considered as support for ~~the proposed penalties~~ ~~or~~ the complaint.

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

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

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

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

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

(4) of this section ~~promptly after starting to serve.~~

(4) **What is required if an ex parte communication occurs.** A presiding officer who receives or becomes aware of any communication that appears to violate RCW 34.05.455~~,~~ or this section~~,~~ will include documentation of the communication in place on the record of the pending matter. Such documentation will include any ~~such~~ written communication received and, any written response ~~to the communication,~~ or a memorandum stating the substance of any ~~such~~ oral communication received and, any response made, as well as the identity of each person involved in the ~~from whom the presiding officer received an ex parte~~ communication. The presiding officer will notify ~~advise~~ all parties that this documentation ~~these matters~~ has ~~ve~~ been included in the record and will provide parties with the opportunity to file and serve a written rebuttal statement in response to ~~placed on the record.~~ Upon request made within ten days after notice of the notice of ex parte communication, ~~any party who wants to respond to the communication may place a written rebuttal statement on the record.~~ Materials ~~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 them into the evidentiary 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 ~~or will, and~~ any party may, report ~~any~~ violation of this section to appropriate authorities for any disciplinary proceedings provided by law.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-310, filed 11/24/03, effective 1/1/04.]

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

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

WAC 480-07-330 Presiding officers. (1) Commissioners. The commissioners may preside in any adjudicative proceeding with or without the assistance of an administrative law judge. When the commissioners preside, they are "presiding officers" as

that term is used in chapter 34.05 RCW and in this chapter. When the commissioners preside with the assistance of an administrative law judge, the administrative law judge also is a presiding officer, except for purposes of making final decisions on substantive matters in the proceeding. The administrative law judge may enter procedural and other interlocutory orders. When the commissioners preside, they may enter procedural and other interlocutory orders and will enter one or more final orders in the proceeding to resolve the substantive matters presented.

(2) **Administrative law judge.** The ~~director~~^{supervisor} of the administrative law ~~division~~^{judge function within the agency} will designate ~~an one or more~~ administrative law judges to preside in individual proceedings, ~~either 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 section, or ~~may be designated~~ to serve alone as the presiding officer. When serving alone as the presiding officer, the administrative law judge will enter one or more initial orders, unless the parties and the commission agree to waive an initial order, or applicable law prohibits entry of an initial order. An initial order becomes final if no party petitions for administrative review within 20 days and the commissioners do not review the order on their own motion. The commissioners will enter a final order if a party petitions for, or the commission

~~on its own motion undertakes, following the opportunity for~~
administrative review of an initial order, if the parties and
~~the commission agree to~~~~upon~~ waiver ~~of~~ an initial order, or as
otherwise provided by law.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028
(General Order R-510, Docket No. A-010648), § 480-07-330, filed
11/24/03, effective 1/1/04.]

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

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

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

(c) *Interested person*. An "interested person" is a person
who ~~chooses~~~~does~~ not ~~want~~ to participate in a pending docket as a
party or is not permitted to do so, but who requests~~wants~~ to
receive copies of all documents that the commission serves on
parties, simultaneous with such service, ~~as well as documents~~
~~served on the commission and other parties.~~ ~~The commission may~~

~~charge for this service.~~

~~(d) **Docket monitor.** A "docket monitor" is a person who would like to receive orders entered by the commission in a docket.~~

~~(2) **Appearance requirement.** The commission will not grant party status to a person who fails to appear at the earliest prehearing conference, if one is held, or hearing session, if there is no prehearing conference, unless the personparty is excused from appearing by the presiding officer or shows good cause for failing to timely appear. The commission staff and the public counsel unitsection 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 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."~~~~

(3) **Classification of parties.** The commission generally will refer to parties into commission proceedings before the commission by their names but may will be called refer to themapplicants, complainants, petitioners, respondents, ~~interveners, or protestants,~~ according to their classification in 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 81.04.130.~~

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

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

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

[Statutory Authority: RCW 80.01.040 and 80.04.160. 06-16-053 (Docket A-050802, General Order R-536), § 480-07-340, filed 7/27/06, effective 8/27/06; 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-340, filed 11/24/03, effective 1/1/04.]

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

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

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

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

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

The presiding officer may refuse to allow a person who does

not have the requisite degree of legal training, experience, or skill to appear in a representative capacity.

(2) **Written notice of appearance and withdrawal by counsel or other representative is required.** Attorneys or other authorized representatives ~~who~~^{that} wish to appear on behalf of a party or person seeking party status, ~~or to withdraw from representing a party to a proceeding,~~ must ~~immediately file~~ ~~provide separate~~ written notice ~~of appearance with~~^{to} the commission and ~~serve~~ all parties to the proceeding ~~prior to acting in a representative capacity unless the attorney or authorized representative has previously appeared through the party's initial pleading or written petition to intervene.~~

~~Parties must supplement the written notice by submitting the document in electronic form as specified in WAC 480-07-140(5).~~

A party's initial pleading ~~or written petition to intervene~~ filed in ~~at~~^{the} proceeding must designate the party's representative ~~and the person to accept service for the party itself.~~ ~~Attorneys or other authorized representatives who wish to withdraw from representing a party must file a separate written notice of withdrawal with the commission and serve all parties to the proceeding. A party must file and serve a written notice to subsequently~~^{Later} ~~changes its~~^{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 ~~the commission~~ in a representative capacity in any future proceeding.

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

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-345, filed 11/24/03, effective 1/1/04.]

WAC 480-07-350 Access for limited-English speakers and hearing-impaired persons. (1) **Interpreters.** The commission incorporates WAC 10-08-150 (rules of procedure governing interpreters) by reference in this rule so that limited-English-

speaking and hearing-impaired persons have equal access to the administrative process and the opportunity for full and equal participation in adjudicative proceedings.

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

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

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

(a) *Who may petition; when petitions must be filed.* The commission strongly prefers written petitions to intervene from any person who seeks to appear and participate as a party in a proceeding before the commission ~~other than the original parties to any proceeding before the commission~~, commission

WAC (6/1/166/1/165/3/16 1:22 PM~~9:37 AM~~7:11 AM) [19]

staff, and public counsel) ~~who desires to appear and participate as a party.~~ Written petitions to intervene should be filed 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, whichever occurs first, 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.* The commission may grant a~~Any~~ petition to intervene made after the initial hearing or prehearing conference, whichever occurs first,~~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 to intervene.

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

(i) The petitioner's name and contact information as specified in WAC 480-07-360 (c)~~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 basis for facts supporting the petitioner's proposal ~~to interest in broadening the issues; and-~~

(v) The name and contact information ~~address as specified in~~ WAC 480-07-360(c) of the 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 ~~the~~ prehearing conference or at hearing at which the commission considers the petition. A party's written response to a timely filed written petition to intervene must be filed and served at least two business days before the ~~next~~ prehearing conference or hearing at which the commission will consider the petition ~~date,~~ or at such other time as the commission may establish by notice.

(3) **Disposition of petitions to intervene.** The commission generally will ~~may~~ consider petitions to intervene at the prehearing conference or at the initial hearing ~~if the commission does not conduct a prehearing conference, or, if persons have responded to a petition, before or after a hearing or prehearing conference.~~ The presiding officer may grant a petition to intervene if the petitioner has ~~if the petition discloses~~ a substantial interest in the subject matter of the hearing ~~and~~ 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."** The presiding officer may impose limits on an intervenor's participation in accordance with RCW 34.05.443(2).

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

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

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-355, filed 11/24/03, effective 1/1/04.]

WAC 480-07-360 Parties--~~Service and m~~Master service list.

(1) Service defined. Service means sending or delivering, in accordance with RCW 34.05.010(19) and this rule, the following

documents in an adjudicative proceeding:

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

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

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

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

(a) Each party in an adjudicative proceeding must designate at least one person to receive service of documents relating to the adjudication. An individual appearing as a party on his or her own behalf must be the person to receive service.

(b) When one or more attorneys or other authorized representatives have appeared for a party in a proceeding before the commission, the party must name at least one of those representatives to receive service of documents. Service on the representative is valid service upon the party, except as provided by law.

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

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

information about each such individual:

(a) Name;

(b) Mailing address;

(c) Telephone number;

(d) Email address; and

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

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

(5) **Contents of master service list.** The master service list will contain the ~~contact information for~~ ~~name, mailing address, e-mail address, telephone number, and fax number of~~ each party to the proceeding and ~~of each party's~~ designated representative for service, as well as the name and email address of additional persons a party requests to receive service. ~~The commission~~ If the commission requires both paper and electronic service, the master service list will identify the persons who must be served paper copies in addition to

~~electronic service will provide a courtesy copy to the parties of contact information provided by each party at the initial prehearing conference. Parties must designate persons to receive service in accordance with WAC 480-07-150.~~

(6) Electronic service required.

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

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

(7) When service is deemed complete. Unless otherwise

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

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

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

(Signature of person who served the document)

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

WAC 480-07-365 Filing documents in adjudicative

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

(2) Electronic filing is required. Documents filed in an adjudicative proceeding must be submitted electronically using the commission's records center web portal no later than 5:00 p.m. on the date the documents are required to be filed unless the commission establishes an earlier time.

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

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

(c) Simultaneous delivery to all parties and presiding officer. All electronic documents submitted to the commission through the web portal or by email on a filing deadline date must be delivered to all parties and the presiding administrative law judge by email at the same time the documents

are submitted to the commission or immediately thereafter.
Copies intended for the presiding administrative law judge must
be sent to the judge's individual email address. Submissions
should **not** be sent directly to the commissioners.

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

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

(5) **Service required.** Submission of any document with the
commission for filing in an adjudicative proceeding is not
complete until the party submitting the document has served all
other parties to the proceeding pursuant to WAC 480-07-360.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 08-18-012 (Docket A-072162, General Order R-550), § 480-07-145, filed 8/22/08, effective 9/22/08; 06-16-053 (Docket A-050802, General Order R-536), § 480-07-145, filed 7/27/06, effective 8/27/06; 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-145, filed 11/24/03, effective 1/1/04.]

WAC 480-07-370 Pleadings--General. (1) **Types of pleadings permitted.** Pleadings include, but are not necessarily limited to, formal complaints, ~~petitions,~~ answers to complaints, ~~petitions, responses to petitions, replies, counterclaims, answers to counterclaims, cross-claims, answers to cross-claims, third-party complaints, answers to third-party complaints,~~ applications for authority, ~~and~~ protests, and objections. The commission may allow other pleadings upon written motion or on the commission's own motion.

(a) *Formal complaints.*

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

WAC (6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM)
[29]

increase or other tariff filing.

(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, and the commission's jurisdiction to commence an adjudication and grant the requested relief. A formal complaint must state:

(A) The complainant's name and address ~~of the complainant~~ and the contact information for the individuals to receive service on behalf of the complainant as required under WAC 480-07-360(3) ~~name and address of complainant's attorney or other representative, if any;~~

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

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

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

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

~~(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.~~

~~_____ (b) Answer to formal complaint.~~

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

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

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

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

~~_____ (v) Content. Answers must include the following information:~~

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

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

~~_____ (C) Full and complete disclosure of the respondent's~~

affirmative defenses, if any.

~~(c)~~ *Petitions.*

(i) Defined. ~~Except for formal complaints and applications, as defined in this section, a~~All original pleadings that seek relief other than formal complaints and applications as defined in this section and all pleadings that seek relief from a commission order, are "petitions." ~~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 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,

WAC ~~(6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM)~~

~~and~~ the relief requested, and the commission's jurisdiction to grant the requested relief. A petition must state:

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

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

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

~~(i) Defined. 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~~

WAC (6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM)

~~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.* 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 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) *Response to a petition.*~~

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

~~(ii) Timing of response. Responses to a petition must be filed within twenty days after the petition is filed unless the commission or these rules establish a different deadline or the petition seeks commission action that the commission generally considers taking at an open public meeting (e.g., an accounting petition). The presiding officer will establish the time for responses to interlocutory petitions in an adjudicative proceeding.~~

~~(iii) When permitted. Any person directly affected by an original petition may file a response. Any party to the adjudicative proceeding may file a response to a petition filed~~

in that proceeding except as otherwise provided in this chapter or a commission order.

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

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

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

(ed) Reply to an answer or response.

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

(ii) Motion for permission to reply. A party that wishes to ~~reply/respond~~ to an answer or response must file a motion requesting permission to reply within five business days after the respondent serves the answer or response is served. The ~~Motions for permission to reply should~~ must explain why a reply is necessary, including but not necessarily limited to ~~address~~ whether the answer or response raises new facts or legal argument/material requiring a response, or state other reason(s) why a reply is necessary. A party should/may file a proposed reply as an attachment to its motion. ~~If the commission grants~~

WAC (6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM)

~~a motion to file a reply and no reply is attached to the motion, the commission will set the time for filing the reply. The motion is deemed denied unless the commission grants a the motion for permission to reply within five business days after the movant files iting, it is deemed denied.~~

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

(fe) Application. An "application" is a request for authority, license, or a certificate authorizing a person to provide a service regulated by the commission or. ~~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 or 81.12 RCW.~~

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

(h) Objection. Persons who assert that their interests would be adversely affected if the commission grants an application for auto transportation service pursuant to WAC 480-

30-096 may file an objection. An objection must conform to the requirements of WAC 480-30-116. The objector must serve a copy of the objection on the applicant.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-370, filed 11/24/03, effective 1/1/04.]

WAC 480-07-375 Motions. (1) **Defined.** 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 on the record during a hearing ~~session~~ before the presiding officer. The commission may take or 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 from a party. The commission will provide oral or written notice prior to taking or requiring such action and allow for appropriate process when it acts in the absence of a party's motion. The commission recognizes four basic categories of motion:

(a) *Dispositive motions.* Dispositive motions request that the commission terminate a proceeding, to resolve ~~determine~~ one or more of the substantive issues presented in the ~~the~~ proceeding,

WAC (6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM)
[37]

or ~~to~~ terminate a party's participation in the proceeding.

~~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 480-07-450) or find a party in default (see WAC 480-07-450).~~

(b) *Procedural motions.* Procedural motions request that the commission establishment of or modifications to the 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 resolve disputes concerning ~~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 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 evidentiary 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.** Parties must

WAC ([6/1/166/1/1610/18/138/14/13](#) 1:22 PM9:37 AM1:10 PM3:46 PM)

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

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-375, filed 11/24/03, effective 1/1/04.]

WAC 480-07-380 Motions that are dispositive--Motion to dismiss; motion for summary determination; motion to withdraw.

(1) Motion to dismiss.

(a) *General.* A party may move to dismiss another party's claim or case on the asserted basis that the opposing party's pleading fails to state a claim on which the commission may grant relief. When ruling on such a motion, tThe commission will consider the standards applicable to a motion made under ~~CR-12 (b) (6) and 12(c) of the~~ Washington superior court's Ceivil ~~*Rule 12(b) (6) and 12(c)* in ruling on a motion made under this subsection.~~ If a party presents an affidavit, declaration, 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 unless the commission rules on the motion without relying on the material.

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

(c) *Response.* A party ~~that~~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~~

WAC (6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM)

~~the presiding officer may set. The commission may allow oral argument.~~

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

(a) *General.* A party may move for summary determination of one or more issues if the pleadings filed in the proceeding, together with any properly admissible evidentiary support (e.g., affidavits, declarations, fact stipulations, or matters of which ~~the commission may take official notice may be taken~~), show that there is no genuine issue ~~of~~ as to any material fact and that the moving party is entitled to judgment as a matter of law. When ruling on such~~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 ~~is~~ Civil Rule 56s.

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

(c) *Response.* A party ~~must file any answer to~~ must file any answer to ~~the answers~~ a motion for summary determination ~~must file its answer~~ and any cross-motion for summary determination within twenty days after the movant serves the motion ~~is served~~, unless the commission establishes a different filing 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.** Once the commission has issued a hearing notice or otherwise commenced an adjudicative proceeding pursuant to chapter 34.05 RCW, a party may withdraw from that proceeding, or may withdraw the party's tariff, complaint, petition, or application on which a proceeding is based, only upon permission granted by the commission in response to a written motion-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 motion must include any settlement or other agreement pursuant to which the party is seeking withdrawal.~~

~~— The commission will grant such a party's motion to withdraw from a proceeding when the requested party's withdrawal is in the public interest. A company need not file a motion to withdraw a tariff filing after the commission has entered a complaint and order suspending that tariff but before the~~

commission commences an adjudicative proceeding, but the company must file a written notice that it is withdrawing that filing.

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

**WAC 480-07-385 Motion for continuance or suspension,
postponement, or extension of time. (1) **Definitions.****

(a) A c"Continuance is," means any postponement of a deadline established by statute, rule, or commission order or any extension of time to comply with such a deadline.

(b) A suspension holds all procedural deadlines established by the commission in abeyance pending further commission action. A continuance to which all parties agree is an "agreed request."

(2) **Procedure.**

(a) Continuance. Any party may request a continuance by oral or written motion. The commission may require a confirmation letter or email if a party makes an oral request. The presiding officer may rule on such motions orally at a prehearing conference or hearing session, or by ~~letter,~~ notice, or order. The commission will grant a continuance if the

WAC (~~6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM~~)
[43]

requesting party demonstrates good cause for the continuance and the continuance will not prejudice any party or the commission.

A party may request a continuance by email to the presiding administrative law judge if the party accurately represents that all other parties either join or do not oppose the request. The commission will grant such a timely request ~~to which all parties expressly agree~~ unless it is inconsistent with the public interest or the commission's administrative needs.

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

(3) **Timing.**

(a) A party must file and serve any written motion for continuance other than an agreed request at least five business days prior to the deadline the party requests ~~as to which the continuance is requested and must serve the motion by means that ensure its receipt by other parties the next business day after filing.~~ Parties must file any written response to the motion within three business days after the motion is served unless the commission establishes a different date for responses, ~~or two days prior to the deadline that is sought to be continued,~~ ~~whichever is earlier.~~ Parties may orally respond when a hearing

WAC (6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM)

~~session is held prior to the stated deadline for a written response.~~ Parties should submit an agreed request for continuance in writing at least two business days prior to the deadline the parties request to continue.

(b) A party must make any oral request for continuance on the record in a proceeding at least two business days prior to the deadline ~~the party seeks to 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.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-385, filed 11/24/03, effective 1/1/04.]

WAC 480-07-390 Briefs; oral argument; ~~findings and conclusions.~~ The commission may permit or require the parties to a proceeding to present their arguments and authority in support of their positions after the conclusion of any evidentiary hearing. Such a presentation may be in the form of

WAC (~~6/1/166/1/1610/18/138/14/13~~ 1:22 PM~~9:37 AM1:10 PM3:46 PM~~)
[45]

~~written briefs, orally argument 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]."~~

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-390, filed 11/24/03, effective 1/1/04.]

NOTES:

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

WAC 480-07-395 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 Appearance; margins. All pleadings, motions, and briefs must :~~

~~☐ Submitted on three hole punched (oversize holes are preferred) 8 1/2 x 11 inch paper.~~

(i) ☐ ~~Text must be Presented in~~ double-spaced, 12-point type,

WAC (6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM)
[46]

~~and in Ppalatino, Ttimes Nnew Roman, or an equally legible serif font, with footnotes in the same font and of at least 10-point type;~~

~~(ii) Each Presented with paragraphs must be numbered;~~

~~(iii) Printed with margins must be at least one inch from each edge of the page; and~~

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

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

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

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

(i) *Caption.* The commission notice initiating an adjudicative proceeding will include a caption that parties must use for all pleadings, motions, and briefs they file in that proceeding. Pleadings that request that the commission initiate an adjudicative proceeding should include a preliminary caption.

At the top of the first page must appear the phrase, "BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION" ~~before the~~

WAC (6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM)

~~Washington utilities and transportation commission.~~" On the left side of the page, the ~~name~~caption of the proceeding must be set out as either "[Name], Complainant, v. [Name], Respondent." ~~for a formal complaint or, if no caption exists, the following:~~ "In the matter of the ~~(complaint,~~ [petition, application, motion, etc.]) of ~~[(Name of the pleading party)]~~ for ~~[(identify relief sought)]~~." On the right side of the page for all pleadings, ~~opposite the caption,~~ the ~~caption~~pleading party must include the docket number if one has been assigned, the name of the party submitting the document, and ~~identify~~ the name of the document (e.g., Staff Motion for Continuance)~~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. ~~The body of the A~~ pleading must ~~be set out in numbered paragraphs.~~ include the following information:

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

(B) . ~~The second paragraph must state a~~All rules or statutes that the pleading puts in issue;~~—~~

~~(C) A succeeding paragraphs must set out the~~ statement of facts on which the party relies~~ed upon~~ in a form comparable~~similar~~ to complaints in civil actions before the superior courts of this state; and

~~(D) . The concluding paragraphs must state t~~The relief the pleading party requests.

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

(A) ~~Relief requested.~~ A statement of the specific relief the movant requests that the commission ~~is requested to~~ grant or deny;-

(B) ~~Statement of facts.~~ A succinct statement of the facts that the movanting party contends are material to the requested remedy;-

(C) ~~Statement of issues.~~ A concise statement of the legal issue or issues upon which the movant requests the commission ~~is requested~~ to rule; and-

(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 declarations, affidavits, deposition transcripts, or documentary evidence, the party must specify those documents, quote the cited material verbatim, and~~er~~ attach a ~~photo~~copy of relevant pages to an ~~affidavit~~ declaration 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.

(iv) Body of brief. Unless excused by the presiding officer, the parties must include in their briefs that exceed 10 pages in length a table of contents in outline format. ~~The commission may require parties to organize their briefs according to a common outline. The presiding officer, in consultation with the parties, will establish the elements of any common outline taking into account the issues in the proceeding, the parties' preferences, and the commission's needs. The conclusion of any brief must state the relief the party requests.~~

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

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

(B) Exhibits. Exhibits must be marked as required under WAC 480-07-460, and references to those exhibits should be as follows: Exh. ~~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 WAC ~~(6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM)~~
[50]

transcript references (e.g., Exh. ABS-1T, Smith 21:15-17). 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 in addition to the sponsoring witness's surname, if applicable, to clarify the information cited (e.g., Exh. ABS-5, Smith Cross, at 12, Table 2).

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

(vii) Attachments or appendices. If a party attaches more than ~~one~~~~two~~ attachments or ~~appendixes~~ to a pleading, the party must individually separate the attachments or appendices in any required paper copies by blank sheets with tabs.

(2) **Verification.** All pleadings and motions, except complaints brought by the commission or matters raised by the commission on its own motion, must be dated and signed either by ~~at least one attorney or party~~ 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 ~~that~~~~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 ~~that~~^{who} bring ~~certain~~ complaints under RCW 80.04.110 or RCW 81.04.110 ~~that~~^{challenging} 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.** The commission may return a pleading or motion to a party for correction when the commission finds the pleading or motion to be defective or insufficient. The commission may disregard or correct obvious typographical errors, errors in captions, or errors in spelling of names of parties.

(4) **Liberal construction of pleadings and motions.** The commission will liberally construe pleadings and motions with a view to effect justice among the parties. The commission, at every stage of any proceeding, will disregard errors or defects in pleadings, motions, or other documents that do not affect the substantial rights of the parties.

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

[Statutory Authority: RCW 80.01.040 and 80.04.160. 08-18-012 (Docket A-072162, General Order R-550), § 480-07-395, filed 8/22/08, effective 9/22/08; 06-16-053 (Docket A-050802, General Order R-536), § 480-07-395, filed 7/27/06, effective 8/27/06; WAC ~~(6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM)~~
[52]

03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-395, filed 11/24/03, effective 1/1/04.]

NOTES:

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

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

(a) *No limitation on commission authority to audit and inspect.* Nothing in this section imposes any limitation on the commission's ability to audit or obtain the books and records of public service companies, or ~~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.* Parties in an adjudicative proceeding may agree to informal discovery procedures in addition to, or in place of, the procedures contained in this section.

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

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

(ii) Data. As used in this section, "data" ~~means~~ information of any type, in any form.

(iii) Data request. A party's written request that calls
WAC (~~6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM~~)
[53]

for another party to produce data in connection with an adjudicative proceeding is a "data request." Generally, data requests seek one or more of the following: existing documents; an analysis, compilation, or summary of existing documents into a requested format; a narrative response describing ~~explaining~~ a party's policy, practice, or position, ~~or a document;~~ or the admission of a fact asserted by the requesting party. If a party relies on a cost study, model, or proprietary formula or methodology, ~~it is expected that~~ the party must be willing, on request, to rerun or recalculate the study, model, formula, or methodology based on different inputs and assumptions, subject to the standards in subsection (35) of this section. The commission otherwise will not order a party to respond to a data request that ~~seeks~~ would require creation of new data or documents ~~production of a new cost study~~ unless there is a compelling need for such information ~~production~~.

~~(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.* Subpoenas are available as a means of discovery as provided in Title 80 or 81 RCW and

WAC ~~(6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM)~~

chapter 34.05 RCW.

(b) *When other discovery methods available.* If the commission finds that an adjudicative proceeding meets one of the following criteria, the methods of discovery set forth~~described~~ in ~~subsections (1)(c)(iii) through (vi) of this section and in~~ WAC 480-07-405~~10~~ and 480-07-410~~5~~ will be available to parties:

(i) Any proceeding involving a change in the rate levels of a ~~public service company, 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, or violations of provisions in Titles 80 ~~and~~ 81 RCW; or

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

(3) ~~Frequency, extent, and s~~**Scope of discovery.**

~~Discovery~~~~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 ~~discovery~~~~data request~~ on grounds that

the information sought will be inadmissible at the hearing, if ~~that~~ 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 ~~the party seeks~~~~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. Discovery through data requests or otherwise must not be used for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the costs of litigation. The commission may impose sanctions for abusive discovery practice.

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

7/27/06, effective 8/27/06; 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-400, filed 11/24/03, effective 1/1/04.]

WAC 480-07-405 Discovery--Data requests, ~~record~~ ~~requisitions~~, and bench requests. (1) Grouping and numbering.

(a) *Grouping.* Parties must group their data requests by subject or witness ~~and present data requests in an electronic format agreed upon 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.* Each party must number sequentially its data requests to each other party, as submitted. Numbering of subsequent data requests to the same party must begin with the number next in sequence following the number of the last previously propounded data request (e.g., if the last data request in an initial set of requests is number 10, the first data request in the next set of requests must be number 11). The presiding officer will ensure that ~~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.~~**

~~(a) Written d~~Data requests must be served~~nt~~ electronically in native format on~~to~~ the party to whom the request is 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.~~

~~(b) If parties agree to the service of data requests and responses to requests by e-mail, the party serving the data requests or responses must serve copies electronically on all parties, including the assistant attorney general who represents the commission staff.~~

~~(c) Except when appropriate for other purposes~~When propounding data requests to other parties, a party~~ies~~ must not file those data requests ~~or responses to data requests~~ with the commission, ~~or copy~~provide them to any person who is presiding or advising the presiding officer. ~~Responses that are later offered in evidence must be distributed as required for other proposed exhibits.~~

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

(4) **Limitation on numbers of data requests.** The presiding officer may limit the total number of data requests that a party

WAC (6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM)

may propound to another party. Each party must make reasonable efforts to ensure that its data requests do not duplicate other parties' requests. The presiding officer ~~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' discovery requests~~ submissions.

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

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

(a) *Data request.* A party ~~who wishes to object to a data request~~ must present any ~~the~~ objections to a data request to the requesting party in writing by the time the response is due, or at such other time as the presiding officer ~~may be ordered~~ is. A party objecting to a data request must state the objection and explain the basis for the objection. A party ~~that~~ who 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~~ who 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 after discovering the reason. A party may object to the admission of its response to a records requisition at the time the response is offered into evidence.~~

~~(be) Bench request. Any party may object to the issuance of, or response to, a bench request made orally during a hearing. A party may object at the time the presiding officer makes the bench request is made, or A party may subsequently object in writing to such a bench request within five days after the presiding officer makes the request if the objection is based onif made in writing or the party later discovers a reason for an objection facts or law the party did not reasonably know at the time the presiding officer made the bench request was made in hearing, within five days after discovery. A party may object to a written bench request within five days after the commission serves the request. A party may raise an objection based on the content of a bench request response within five days after distribution of the response. Responses to bench requests will be received in evidence unless a party objects to the bench request or response, or the commission rejects the response.~~

(7) **Responses.**

(a) ~~Data requests and record requisitions.~~ Parties must serve responses to data requests electronically and record requisitions on the requesting party and on any other party ~~that~~who requests a copy, consistent with the terms of any protective order entered in the proceeding. Except when designated as exhibits to be offered into the evidentiary record, parties must not file responses to data requests with the commission or copy any person who is presiding or advising the presiding officer when serving those responses. The commission will not receive into evidence responses to data requests unless a party offers the responses into evidence. A party may object to the admission of a response to a data request at the time the response is offered into evidence whether or not the party timely objected to providing the response.~~Parties must send the commission staff copy to the assistant attorney general who represents the commission staff unless the attorney requests an alternative method. Parties may agree to serve responses to data requests and record requisitions through e-mail.~~

(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 served or made received. If the responding party data cannot provide a full response~~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 responding party cannot comply with the ten-day deadline~~limit cannot be met~~. The responding party must also provide a schedule by which it will produce the requested data and must explain why the party cannot provide any portion of the data ~~cannot be supplied~~. The presiding officer may modify these time limits.

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

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

(8) **Supplementation.** Parties must immediately supplement any response to a data request, ~~record requisition~~, or bench request upon learning that the prior response was incorrect or incomplete when made or upon learning that a response that was,

WAC (6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM)

correct and complete when made, is no longer correct or complete.

~~(9) Use of responses to data requests, record requisitions or bench requests. 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.~~

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

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

(2) ~~Required notice; motion; deposition conference.~~ A
WAC ~~(6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM)~~
[63]

party ~~that, who~~ intends to depose ~~one or more persons~~ another party's designated potential witness must give notice to the commission and all parties. A party that seeks to depose a person who has not been identified as a potential witness must file a motion requesting permission to depose the person. ~~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 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.** Parties should use ~~CR 30 of the~~ Washington superior court ~~e~~Civil ~~#~~Rules 30 as a guide when conducting depositions. Parties must limit the scope of questioning in a deposition to the same standard set forth in WAC 480-07-400(4). A court reporter provided by the party requesting the deposition will record the deposition. Each party will be responsible for the attendance of any of its designated potential~~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.** Parties may use depositions for
WAC (6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM)
[64]

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 in the form of exhibits that are so ~~that the presiding officer can~~ marked it for identification as ~~required under WAC 480-07-460(3) 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's testimony.

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

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

Formatted: Font: Not Bold

Formatted: Font: Not Bold

upon learning that a response that was correct and complete when made is no longer correct or complete.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-410, filed 11/24/03, effective 1/1/04.]

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

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-415, filed 11/24/03, effective 1/1/04.]

WAC 480-07-420 Discovery--Protective orders. (1) Standard form. The commission may enter a standard form of protective order designed to promote the free exchange of information and development of the factual record in a proceeding when parties reasonably anticipate that discovery or evidentiary submissions in a proceeding will require call for the disclosure production of confidential information designated as confidential as defined in WAC 480-07-160. Parties must strictly limit the information they designate as confidential to information that is or may be exempt from public disclosure under RCW 80.04.095, RCW 81.77.210, or the Public Records Act, RCW 42.56, including RCW 42.56.330. Parties must follow the instructions in WAC 480-07-160 for properly marking and submitting documents with the commission containing information designated as confidential in a proceeding governed by a protective order.

(2) **Amendment.** The commission may, upon motion by a party⁷ or on its own initiative, amend its standard form of protective order to meet the parties' and the commission's needs in individual cases. ___

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

Formatted: Font: Italic

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

Formatted: Font: Italic

(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 appropriate limitations on discovery, including but not necessarily limited to, 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; or

(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; —~~

~~— (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.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028
(General Order R-510, Docket No. A-010648), § 480-07-420, filed
11/24/03, effective 1/1/04.]

~~WAC 480-07-423 Discovery Protective orders Submission requirements for documents.~~ (1) ~~General.~~

~~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." Parties must strictly limit the amount of information they designate as confidential or highly confidential.~~

~~(2) Standard for highly confidential designation. A party who wishes to designate information as highly confidential may file the documents designated as highly confidential, but must also 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.~~

~~(3) 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.~~

~~(4) **Submission.** Parties must follow the instructions in WAC 480-07-160(3) for properly marking and submitting documents with the commission as confidential or highly confidential in a proceeding governed by a protective order.~~

~~[Statutory Authority: RCW 80.01.040 and 80.04.160. 06-16-053 (Docket A-050802, General Order R-536), § 480-07-423, filed 7/27/06, effective 8/27/06; 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-423, filed 11/24/03, effective 1/1/04.]~~

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

WAC ([6/1/166/1/1610/18/138/14/13](#) 1:22 PM9:37 AM1:10 PM3:46 PM)
[71]

~~parties disputants~~. A party may file a written motion, or move orally at a 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 fails or refuses to comply with the commission's discovery rules or an oral or written order resolving a dispute under this section. The commission may impose sanctions for such violations including, but not limited to, default, dismissal, striking of testimony, evidence, or cross-examination, or monetary penalties as provided by law.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-425, filed 11/24/03, effective 1/1/04.]

WAC 480-07-430 Prehearing conferences. (1) **General.** The commission may require, ~~by written notice or by oral notice on~~ WAC ~~(6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM)~~
[72]

~~the record of the hearing,~~ that all parties to, and all persons who seek to intervene in, a proceeding attend a prehearing conference. The following topics are proper subjects for discussion at a prehearing conference:

(a) Identification and simplification of the issues;

(b) The necessity or desirability of amendments to the pleadings;

(c) 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) Availability of the commission's discovery rules or
rResolution of discovery disputes;

(j) Resolution of pending motions;

(k) Entry of a standard or amended protective order to
protect confidential or highly confidential information;

(l) Objections to commission service of orders and notices
solely in electronic form; and

(m) 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 the prehearing conference will control the course of the proceeding unless modified by subsequent order or decision of the presiding officer to accommodate the needs of the case.

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

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-430, filed 11/24/03, effective 1/1/04.]

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

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

Formatted: Font: Not Bold

(b) *Provisions for appointment of interpreter.* The initial notice of hearing ~~will~~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.

Formatted: Font: Not Bold

(2) Notice of continued hearing sessions.

~~(a) *Permitted forms of notice.*~~ When a hearing is not
WAC (6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM)
[75]

Formatted: Font: Not Bold

concluded as scheduled, the time and place for continued hearing sessions may be set:

(~~a~~) On the record without further written notice to the parties; or

(~~b~~) By letter or formal notice from the presiding officer ~~or the 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.~~

Formatted: Font: Not Bold

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-440, filed 11/24/03, effective 1/1/04.]

WAC 480-07-450 Hearing--Failure to appear. (1) Dismissal or default. The commission may dismiss a party or find a party in default for failure to appear at the time and place set for hearing. The 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 when the hearing resumes, the commission may dismiss the party or find the party in default. ~~When t~~The commission ~~dismisses a party or finds a party in default, it~~ will implement anythe dismissal or default by a written order. When a party is found in default, WAC (~~6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM~~)
[76]

the commission's order stating that finding also may ~~also~~ dispose of the issues in the proceeding, as provided by RCW 34.05.440.

(2) **Review of order of dismissal or default.** A party ~~that~~ who a presiding officer is dismisses ~~ed~~ from a proceeding or ~~finds~~ 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.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-450, filed 11/24/03, effective 1/1/04.]

WAC 480-07-460 Hearing--~~Predistribution of e~~Exhibits, and ~~pre~~filed testimony exhibit list, and cross-examination estimates.

(1) **~~Predistribution of evidence~~Filing exhibits in advance.**
Parties must file and serve exhibits that they intend to submit or use in the evidentiary hearing, including proposed cross-examination exhibits, in advance of the~~The commission may require parties to distribute their proposed evidence to other parties before the start of the evidentiary~~ hearing. The commission or the presiding officer will establish by notice or

WAC (~~6/1/166/1/1610/18/138/14/13~~ 1:22 PM~~9:37 AM1:10 PM3:46 PM~~)
[77]

in a prehearing conference order the number of copies and deadlines for filing. In ~~general~~ rate increase proceedings for electric, natural gas, pipeline, and telecommunications companies, the petitioner must prefile its proposed direct testimony and exhibits at the time it files its rate increase request, in accordance with commission rules~~WAC 480-07-510~~. ~~The commission may convene a prehearing conference shortly before a scheduled hearing and require all parties to predistribute their proposed cross-examination exhibits.~~

(a) ~~Number of copies to be filed or submitted; service.~~

~~When predistribution of evidence other than proposed exhibits for use in cross-examination is required, each party must file the original plus twelve copies of its evidence with the commission unless the commission specifies a different number. When the commission requires parties to predistribute 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 predistribution of evidence is required.~~

~~(b) Changes or corrections.~~

(i) ~~Substantive corrections~~Mistakes of fact. A party may revise its pPrefiled testimony or exhibits ~~may be revised~~ to correct mistakes of fact asserted by a witness without leave

Formatted: Font: Not Bold

Formatted: Font: Not Bold

~~from the presiding officer. 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 such revisions ~~substantive corrections to any prefiled evidence~~ as soon as the party discovers the need for the corrections ~~is discovered~~.

(ii) *Substantive changes.* Parties must seek leave from the presiding officer by written motion if they wish to file revised prefiled ~~submit~~ testimony or exhibits that includes substantive changes other than ~~to simply correcting~~ errors of fact asserted by a witness. A party proposing such changes ~~should~~ may submit the proposed revisions with its motion.

(iii) *Minor corrections.* A party may make mMinor revisions to prefiled testimony and exhibits ~~may be made~~ to correct typographical errors, printing errors, and nonsubstantive changes (e.g., a change in a witness's address or employment) without leave from the presiding officer. Counsel should not ask a witness on the stand to make these corrections, ~~obvious typographical errors in the prefiled testimony or to make more than three minor substantive corrections.~~ ~~If more than three minor revisions are required, parties but~~ must submit ~~prepare~~ an errata sheet as provided in subsection (6) of this section ~~a revised exhibit for submission at least one business day prior to the hearing to show such corrections to the prefiled evidence.~~

(iv) *Format requirements for revisions.* Parties ~~that~~ who
WAC ~~(6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM)~~
[79]

submit a revised version of any~~ions to~~ prefileddistributed or previously admitted testimony or exhibits must prominently label them documents as "REVISED" and indicate the date of the revision. The document's exhibit number also must include a lower case "r" at the end of the number using the format described in subsection (2) of this section (e.g., Exh. JQW-5HCTr). The revised portions must be highlighted, in legislative style or other manner that clearly indicates the change from the original submission. ~~This practice must be followed even with minor changes that involve only one page of an exhibit. If one or more~~ The header or footer of each revised pages of in multiple page testimony or exhibits ~~are revised, the header or footer of the affected pages~~ must be labeled "REVISED" and indicate the date of the revision. Parties may indicate changes to spreadsheets by providing a description of the change and how the change affects other related spreadsheets. For revisions to spreadsheets, counsel must identify partial revisions by page and date when an exhibit is presented ~~for identification, sponsored,~~ or offered into evidence, as appropriate.

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

conference order.

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

Formatted: Font: Not Bold

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

(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.~~

Formatted: Font: Not Bold

~~(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 "Exh~~.ibit No.,~~" followed by ~~a blank underline.~~ ~~Then, on the same line, identify the sponsoring witness by including the~~ witness's initials.

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

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

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

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

Testimony or Exhibit	Marked for Identification
John Q. Witness's prefiled direct testimony	Exh .ibit No. __ (JQW-1T)
First exhibit to John Q. Witness's prefiled direct testimony (nonconfidential)	Exh .ibit 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 (nonconfidential)	Exhibit No. ___ (JQW-4)
John Q. Witness's prefiled rebuttal testimony (with portions marked <u>highly</u> confidential)	Exhibit No. ___ (JQW-5HCT)
First exhibit to John Q. Witness's prefiled rebuttal testimony (nonconfidential)	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.~~

Formatted: Font: Not Bold

(~~be~~) ~~List of exhibits, table of contents, and~~ ~~Summary of~~ testimony. Each witness's prefiled testimony must include a list of exhibits that accompany that testimony. If the testimony exceeds ten pages in length, it must include a table of contents and ~~present~~ a short summary of ~~the~~ ~~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.~~

Formatted: Font: Not Bold

(~~cd~~) ~~Form of testimony and exhibits.~~ All prefiled testimony and exhibits must be paginated, and the. ~~In addition,~~

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

~~(c) Submission requirements. Paper copies of all prefiled
exhibits, both direct examination and cross-examination
exhibits, must be individually separated by blank sheets with
tabs.~~

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

Formatted: Font: Not Bold

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

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

(ii) Place a hyphen after the witness's initials and insert the next number in sequence after the number of the last exhibit sponsored by, or associated with, that witness. For example, if the last exhibit attached to a witness' prefiled testimony is Exh. JQW-7, the first cross-examination exhibit for that witness should be marked "Exh. JQW-8." If more than two parties are actively participating in a docket, each party may insert an underscored blank space after the witness's initials to avoid overlapping numbers with other parties' cross-examination exhibits. The presiding officer will subsequently assign numbers to all cross-examination exhibits for that witness when compiling the exhibit list.

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

(b) Format. All cross-examination exhibits must be filed and served electronically in .pdf (Adobe Acrobat) format. The Commission may also require the parties to file and serve paper copies of the exhibits.

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

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

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

(6) Errata. Each party must file with the commission and serve on all parties a list of any corrections or revisions to its witnesses' prefiled testimony and exhibits. Each correction or revision must be identified separately by

exhibit number, page, and line (or row, column, cell, etc., as applicable) and must specify the text to be revised, added, or deleted. The presiding officer will establish in a prehearing conference order the deadlines for this filing.

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

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

(1) **Starting times.** 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.** ~~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

WAC ~~(6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM)~~
[87]

conducting the hearing or prehearing conference will require appearances to be stated orally at the initial prehearing or hearing session, and may also ask for oral appearances at subsequent sessions in the same proceeding, so that all persons attending the hearing will know the identity and interest of all parties present. If the representative has previously filed a notice of appearance or otherwise provided full contact information in a pleading filed in the docket, oral appearances shall consist of the representative's name, law firm (if any), and the party the person represents. Oral appearance at hearing does not substitute for the requirement for written notice of appearance in WAC 480-07-345(2).

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

~~(4) **Summary by public counsel.** 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.~~

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

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

(a) Party having the burden of proof;

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

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

~~(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.

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

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

(89) **Resolving matters off the record.** 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 the record by the presiding officer subject to comments from party representatives.

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

(110) **Cross-examination.** ~~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." Witnesses must not be asked to accept information

"subject to check" if the information is included in a prefiled exhibit or testimony, or is already in evidence. When a witness accepts information "subject to check," the witness must perform the "check" as soon as practicable possible. A response given "subject to check" will be considered accurate unless

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

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

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

(123) **Post-hearing planning.** 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

Formatted: Indent: First line: 0.5"

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.~~

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

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

WAC 480-07-480 Hearing--Stipulation of facts. A stipulation is an agreement among parties intended to establish one or more operative facts in a proceeding. The commission encourages parties to enter stipulations of fact. The parties to any proceeding or investigation before the commission may

WAC ~~(6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM)~~
[92]

agree to all of the facts or any portion of the facts involved in the controversy. The parties to a stipulation may file it in writing or enter it orally into the record. A stipulation, if accepted by the commission, is binding on the stipulating parties. The parties may present the stipulation as evidence at the hearing. The commission may reject the stipulation or require proof of the stipulated facts, despite the parties' agreement to the stipulation.

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

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

(1) **Designation of part of document as evidence.** A party ~~that~~ offers only evidence that consists of a portion of a document for admission into the evidentiary record must designate ~~that~~ portion as a separate exhibit that is offered. If irrelevant matter included in the original document would unnecessarily encumber the record, the presiding officer may admit only the offered portion into ~~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,~~ will allow other parties to ~~may examine the document and~~

WAC (6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM)
[93]

offer other portions ~~into evidence.~~

(2) ~~Official Government records.~~ A party may offer into evidence an official document prepared and issued by any governmental authority that is not publicly available or readily accessible by all parties ~~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.~~ 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.~~ 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

WAC (6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM)

~~presiding officer.~~

~~(5) Documents from the public.~~ 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. 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.~~

~~(47) Objections.~~ Any evidence offered is subject to appropriate and timely objection. The presiding officer need not specifically ask each ~~party 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.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028

WAC ~~(6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM)~~

(General Order R-510, Docket No. A-010648), § 480-07-490, filed 11/24/03, effective 1/1/04.]

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

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

(2) **Official notice.**

WAC (~~6/1/166/1/1610/18/138/14/13~~ 1:22 PM~~9:37 AM1:10 PM3:46 PM~~)
[96]

(a) The commission may take official notice of:

(i) Any judicially cognizable fact, ~~Examples of~~ which such facts include, but are not limited to, the following:

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

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

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

(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; ~~and~~

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

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

(c) The presiding officer will notify parties of documents or information ~~material~~ of which the commission takes official ~~ly~~ notice ~~and~~ the its source of that information. The presiding

officer will afford parties an opportunity to contest facts and material ~~of which the commission takes official~~ notice. The presiding officer may require a party proposing that the commission take official notice of a document or information ~~be taken~~ to provide copies of that document or information ~~officially noted matter~~ for the record and to all other parties.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-495, filed 11/24/03, effective 1/1/04.]

WAC 480-07-498 Hearing--Public comment. (1) General. The commission will receive as a bench exhibit any public comment filed, or otherwise submitted by nonparties, in connection with an adjudicative proceeding. The exhibit will be treated as an illustrative exhibit that expresses public sentiment received concerning the pending matter.

(2) Public comment hearing. The commission may convene one or more public comment hearing sessions to receive oral and written comments from members of the public who are not parties in the proceeding. When the commission conducts a public comment hearing, ~~at~~ 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

WAC (6/1/166/1/1610/18/138/14/13 1:22 PM9:37 AM1:10 PM3:46 PM)
[98]

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Indent: First line: 0.5"

officer will administer an oath to those members of the public ~~who 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. A public witness may supplement his or her oral statements ~~with may be supplemented by~~ written comments signed by the witness.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-498, filed 11/24/03, effective 1/1/04.]