

A-130355 Procedural Rules

Summary of Comments on Proposed Revisions to Rules in Parts I and IIIA

July 2016

480-07-	Energy Utilities	Rail	Solid Waste	ICNU/Public Counsel	Staff Recommendation
110(1)				ICNU: Delete last sentence as posing potential conflict with due process and modify other language to recognize that the Commission may initiate a rule waiver	Disagree in part – The Commission has the authority to waive or modify its rules and has done so on its own motion when justice or the public interest required. Staff has revised the language to clarify that this sentence only applies to Commission-initiated waivers that are consistent with due process and the public interest.
110(2)(d)				ICNU: Retain this subsection as important to due process	Disagree – The disposition of petitions for rule waiver or modification is the same as any other petition, and this subsection is unnecessary.
120	PSE: Delete “or when closed due to inclement weather, emergencies, or other similar circumstances” as unnecessary and potentially confusing				Agree. Staff has deleted that language.
140(1)	PSE: Retain section on electronic filing of public records requests as helpful in providing instructions for using the web portal			ICNU: Cross reference to WAC 480-07-143 should be changed to WAC 480-07-140(5)(c)	PSE – Disagree. The rules already provide instructions on use of the web portal and need not do so in the context of RFPRs. ICNU – Agree in part. The reference to 143 is incorrect, but the correction should be to other provisions in the rules.

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140(1)(a)			SLG: Why allow public comments in adjudication from nonparties?		The Commission has always accepted public comment from nonparties in adjudications, particularly energy rate cases in which the Commission conducts hearings specifically for this purpose. The Commission also recently received comments from non-parties in an adjudication concerning solid waste collection (Docket TG-151573).
140(1) & (5)	PSE: Delete reference to submissions as “formal” and “informal” as unnecessarily confusing				Disagree. The Commission has long distinguished its handling of formal and informal submissions, the latter including such documents as consumer complaints and comments on open meeting items. The proposed rules simply recognize this distinction, but Staff has revised the language to make it more clear.
140(3)	PPL: Exclude workpapers from requirement that cover letters identify all submitted documents as overly burdensome				Disagree. The purpose of listing in the cover letter all of the documents submitted is to ensure that the Commission has received all documents persons believe they have submitted. This is just as necessary for workpapers as it is for other documents.
140(5)			WRRRA, WK: Extend time for electronic submission beyond 5:00 p.m. on due date	PC: Include email size limitations on the website	WRRRA, WK – Disagree. Commission staff, as well as presiding officers, often want access to documents on the date they are due, even if that is at, or just prior to, 5:00. In addition, documents should be filed when records center staff is available to provide assistance, if necessary. PC – Agree. Staff has added appropriate language.

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140(6)(a)	PSE: Delete reference to Excel to allow for alternative spreadsheet software applications		SLG: Allow for .pdf other than Adobe Acrobat; clarify whether Excel documents must also be provided in .pdf; clarify “standard conventions” for email communications	PC: Clarify labeling of .pdf documents depending on how they were created (i.e., whether or not they are searchable)	<p>PSE – Disagree. The rule specifies Excel because the Commission has a license to use that program and personnel who use it, which may not be true for other programs. Staff, however, has added language to provide some flexibility for future change.</p> <p>SLG – Agree with respect to .pdf issues. Staff has revised the language accordingly. Disagree on email. The language is intentionally broad to allow for future changes in technology, but staff has substituted “generally accepted” for “standard” conventions.</p> <p>PC – Agree. Staff has deleted the segregation requirement.</p>
140(6)(b)	PPL: Use exhibit numbers rather than document/witness name to identify documents			PC: Use only docket numbers without prefix (UE, TG, etc.) in document name; include examples in rule	<p>PPL – Disagree. Staff has explored various alternatives for identifying documents and concluded that the current method with a slight modification is the best option.</p> <p>PC – Agree on prefixes. Staff has revised the language accordingly. Disagree with including illustrative examples. The Commission will include such examples on its website to which the proposed rule refers.</p>
141	PSE: Add “Once the commission has assigned a docket number to a document, such submission is deemed accepted by the commission.”		SLG: Clarify whether “material” standard for notification of noncompliance is the same as the standard for changing the receipt date of submissions		<p>PSE – Agree on need for clarification but disagree with proposed language. The rule addresses submission and filing of all documents, not just initial submissions. Staff has included language that states that documents are accepted unless the Commission notifies the party otherwise.</p> <p>SLG – Agree. Staff has clarified the language.</p>
150					Staff has reinstated and modified a portion of this rule to address requirements for Commission service of documents.

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160	PSE, PPL: Exclude workpapers from requirements for marking confidential documents as administratively burdensome and unnecessary		SLG: Clarify applicability of confidentiality procedures to informal data request responses WRRRA, WK: Clarify that applicants for solid waste certificate may not designate information as confidential		<p>PSE, PPL – Disagree. Documents submitted to the Commission are public records, and any information the provider seeks to have protected from public disclosure pursuant to this rule and the underlying statutes must be identified. Workpapers are no exception.</p> <p>SLG – As explained with respect to workpapers, the rule applies to all documents submitted to the Commission or its staff, which includes documents provided in response to informal data requests.</p> <p>WRRRA, WK – Disagree. The Commission has consistently applied this rule to applicants for authority to provide utility service, and because RCW 81.77.210 is virtually identical to RCW 80.04.095, the rule also should apply to applicants for solid waste collection authority.</p>
160(2)	PSE, PPL, NWN: Retain language recognizing other PRA exemptions from disclosure; Delete last sentence concerning designation of entire document as confidential as redundant	UP: Recognize exemptions from PRA in addition to those specified; better define what is protected as “valuable information”			<p>PSE, PPL, NWN – Agree in part. The rule is specific to information designated as confidential under RCW 80.04.095 or RCW 81.77.210, but Staff has included a statement that other information may be exempt from disclosure under the PRA. Although the result of the restrictions is that a document will rarely be properly designated as confidential in its entirety, the rule does not need to include that statement so Staff has deleted it.</p> <p>UP – Agree with recognition of other exemptions. Disagree with defining “valuable information.” The statutes use the term “valuable commercial information,” and the rule simply incorporates that statutory term.</p>

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160(3)		UP: Do not distinguish between confidential and highly confidential protection; if retain, provide more guidance on characteristics of highly confidential information			Disagree. The Commission has long distinguished between confidential and highly confidential information, and the proposed rule reflects current practice. The protective order can provide any necessary additional guidance on distinguishing highly confidential information from confidential information.
160(4)				PC: Proposed language seems to shift the burden of correctly designating confidential information to the Commission, rather than having the party claiming confidentiality appropriately bear that burden	Agree in part. The provider bears the burden to properly designate confidential information, but the Commission also will not accept facially deficient submissions. Staff has clarified the language.
160(4)(b)	PPL: For clarity, change heading to “Submitting documents including confidential or highly confidential information”				Agree, and Staff modified the heading for clarity.
160(4)(c)	PPL: For clarity, change heading to “Submitting documents including both confidential and highly confidential information”				Agree, and Staff modified the heading for clarity.

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160(4)(d)	PSE, PPL: Delete “Shaded information” from confidential designation language as unnecessary, cumbersome, and too limiting; Reject proposed amendments to language on shading as unnecessary, confusing, and too limiting				Disagree in part. Generally only a portion of the information on a page, if any, is designated as confidential, so the running footer needs to specify the information claimed to be confidential. Staff, however, has substituted “Designated” for “Shaded” to reflect that the information may be identified in another way. Similarly, Staff has revised the language on shading to allow for other options as long as they are clear designations. The provider, of course, will be responsible for ensuring that the designations are clear.
160(4)(d)	PPL: Clarify whether disc must physically be labeled or the documents contained on the disc must be labeled				Agree. Staff has revised the language to be more clear.
160(4) (second)	<p>PSE, PPL, Avista: Renummer this and following subsections; replace “confidentiality” with “confidential” in first sentence</p> <p>PSE: Delete sentence that commission will disclose information without a court order within 10 days as too limiting</p> <p>NWN: Reject proposed change to existing process for challenging confidentiality in adjudications as unnecessary and presenting unintended consequences</p>			ICNU: In first sentence, “confidentiality” should be “confidential”	<p>Agree, and Staff has corrected the errors.</p> <p>PSE: Disagree with deleting sentence requiring a court order within 10 days. That is a statutory requirement. Staff, however, has modified the language to allow for waiver of the deadline or withdrawal of the challenge.</p> <p>NWN: Disagree. The process Staff proposes is consistent with the statutes and the commission’s process for responding to requests for public records. It is irrelevant that the challenge to a confidentiality designation comes from a party in an adjudicative proceeding rather than from a member of the public requesting public records. The statutes do not differentiate those circumstances, and neither should the Commission. Only a court is authorized to determine whether information designated as confidential pursuant to these statutes is exempt from disclosure. RCW 42.56.330(1).</p>

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160(6)			SLG: Clarify whether a provider gets notice if confidential information is requested or just when the designation is challenged		No clarification in the rule is necessary. The rule accurately describes the Commission’s process in responding to requests for public records. Requesters often do not insist on obtaining information once they are aware it is designated as confidential, so the commission notifies the provider only when the requester continues to request information knowing it is designated as confidential.
175		UP: Requiring access to all documents at any and all times is wildly and impracticably overbroad	SLG: clarify impact of PRA on documents reviewed at company locations or provided; clarify “send” as used in this section WRRRA, WK: Extend application to applicants for solid waste collection authority		UP – Disagree. Staff’s proposed language properly incorporates the authority in RCW 81.04.070 that the Commission “shall have the right, at any and all times, to inspect the accounts, books, papers, and documents of any public service company.” <i>See also</i> RCW 81.04.090. SLG – Disagree with PRA clarification. The courts, not the Commission, determine the applicability of the PRA. Agree on the use of “send.” Staff has changed to “serve.” WRRRA, WK – Disagree. The statute limits the Commission’s authority to public service companies, and the Commission cannot extend that authority by rule. The Commission, moreover, does not need this rule to request any additional information necessary to determine whether to grant an application.

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300(2)			SLG: Clarify whether classification complaints under RCW 81.04.510 are adjudicative proceedings; clarify nature of tariff filings that are not suspended		Agree with respect to classification complaints. Staff has included Commission-initiated complaints. Disagree with respect to suspended tariff filings. The proposed rule conditions all items on the list on the Commission taking formal action to commence an adjudication, and thus suspended tariff filings are not an adjudication unless the Commission issues a notice of prehearing conference.
304(1)(c)					Delete definition of “Interested Person” as a term that is not used in the rule.
305			WRRRA: Require Commission to give notice of commencement of adjudications to persons who have requested such notice		Disagree. The Commission is working with stakeholders to make such information more broadly available, but codifying a requirement to maintain a list of interested persons and provide notice of all adjudications to those persons is not warranted.
305(5)(b)	PPL: Consider including standing among the list of circumstances in which the Commission will not commence an adjudication			ICNU: Do not adopt language stating that Commission may decline to commence adjudication if the matter would be better addressed informally as improperly restricting access to adjudicative process	PPL – Agree. Staff has added lack of standing to the list. Disagree. The Commission handles the vast majority of consumer complaints informally, and the Commission will decline to commence an adjudication if the complaint is better handled in that way.
307			SLG: Consider requiring probable cause determination to third-party complaints		Disagree. Probable cause findings at least arguably are limited to Commission-initiated complaints. <i>See</i> RCW 80.01.060(1). Such findings are a check on government action, which is not implicated in third-party complaints.

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310			WRRRA, WK: On Commission review of an initial order, prohibit contact between Commissioners and advisory staff that worked on that order		Disagree. The Commission’s practice is to have a different ALJ assist the Commissioners on review than the judge who entered the initial order, but this is not an ex parte issue. To the extent this practice should be codified, it would be more appropriately addressed in WAC 480-07-825, which governs review of initial orders.
340(3)(e)				ICNU: Retain second sentence as valuable to reinforcing that the utility in a rate case bears the burden of proof even though it is the respondent	Disagree. This rule is intended to define the terms used to identify different parties, and assigning the burden of proof is beyond that limited scope.
345(2)				ICNU: Substitute “one additional person authorized to receive service on behalf of the party” for “the person to accept service for the party itself” with corresponding change to last sentence to make consistent with other rules in this chapter; divide into three subsections for clarity	Agree on need for revision but not proposed language. Staff has revised the proposed rule to address only service on the attorney or other authorized representative. Agree on breaking this subsection into further subsections, and Staff has made that change.
355(1)(a)				ICNU: Require petitions to intervene to be filed within 20 days or two business days, whichever is less	Disagree. Staff sees no reason to require petitions to intervene to be filed more or less than three business days prior to the initial hearing or prehearing conference as currently required.
355(1)(c)				ICNU: Revise consistent with ICNU’s proposed revisions to subsection 345(2); cross reference to 360(c) should be to 360(3)	Agree to correct cross reference and clarify language in this subsection.

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355(3)				ICNU: Retain current requirement of substantial interest or (rather than and) public interest	Agree. Staff has retained the existing requirement.
360(2)				ICNU: Clarify rules on service to ensure consistency and that designating multiple persons to receive service is permitted	Agree. Staff has provided clarification.
360(5)	PSE: Include designation of which representatives have executed a protective order			ICNU: Revise language to not constrain electronic service to only two persons per party	PSE – Disagree. The Commission creates the initial master service list as an attachment to the prehearing conference order, which the Commission generally serves before anyone has signed any protective order. The Commission may develop a process to identify on the master service list which persons have signed the protective order, but the rule should not require that. ICNU – Agree. Staff has clarified the language.
360(6)	PPL: Add “except as otherwise required by law” to the beginning of the subsection on mandatory electronic filing			ICNU: Revise last sentence to recognize paper service may be required and to encourage parties to work together on any requests for paper service PC: Require paper service on parties that request it; language limiting paper documents Commission will serve is too narrow	PPL – Agree in part. Staff has included comparable language at the beginning of the second sentence in subsection (a). ICNU – Agree to the extent described above. Disagree on expressly encouraging parties to cooperate on distribution of paper copies. The Commission generally expects parties to cooperate and need not state so here. PC – Disagree. Paper service should not be mandatory unless required by statute. The rule also appropriately provides that the Commission will serve only those paper documents that a statute requires, not necessarily all documents served in a particular proceeding. Staff nevertheless has clarified the language.

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365(2)	PPL: Add “except as otherwise required by law” to the beginning of the subsection on mandatory electronic filing		WRRRA, WK: Extend time for electronic submission beyond 5:00 p.m. on due date		PPL – Agree. Staff has added comparable language to this subsection. WRRRA, WK – Disagree. Commission staff, as well as presiding officers, often want access to documents on the date they are due, even if that is at, or just prior to, 5:00. In addition, documents should be filed when records center staff is available to provide assistance, if necessary.
370	Avista: In subpart (1)(d), subsection (v) should be (iv)			PC: Clarify when responses are due to petitions that will be considered at an open meeting	Avista – Agree, and Staff has made that correction. PC – Agree. Staff has included responsive language.
385(3)					Staff added a timing requirement for requests for suspension of the procedural schedule.
395(1)(b)				ICNU: Exclude table of contents and authorities and signature blocks from page limits consistent with existing Commission practice	Agree. Staff has revised the language accordingly.
395(4)					Staff added language to clarify that it will rely primarily on the relief requested in a pleading or motion, rather than rely solely on the name.
400(1)(c)	PSE, PPL: Condition with “reasonable efforts” or limit time period within which a company must rerun or recalculate a model to exclude models that are obsolete or no longer available and allow for additional time to rerun the model				Disagree. Any cost study or model on which a party relies should not be obsolete or no longer available, and the party must be willing to rerun it with different inputs and assumptions. As with any other data request, if the party cannot respond within the required time frame, the rules already allow for a reasonable extension of time in which to provide a response. WAC 480-07-405(7)(b).

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400(2)(b)				ICNU: Include section 415 in discovery rules that are available	Agree, and Staff has made that change.
405(7)(b)				ICNU: Delete “or made” after service because only service of DRs is required	Agree, and Staff has made that correction.
410				ICNU: Do not adopt constraints on deposition of potential witnesses; retain sentence on use of depositions for impeachment for clarity; clarify that depositions apply to both witnesses and potential witnesses	Disagree on depositions of persons not identified as potential witnesses. The proposed constraints are reasonable for purposes of Commission adjudications. Disagree on retaining sentence about using a deposition to impeach a witness. That is a lawful purpose and need not be separately specified. Agree as to nomenclature. Staff has modified the language to use “potential witness” or “deponent” where appropriate. Staff has also clarified that a party is responsible for its potential witnesses’ supplementing deposition testimony.
415					Staff has reorganized the language to make it more clear.
430					Staff has further consolidated the list of subjects to be considered at a prehearing conference and clarified procedure following objection.
460				PC: Permit some flexibility for errors discovered after the deadline for submitting errata	Disagree with the need for more flexibility. The rule authorizes the presiding officer to establish the deadline for submitting errata, which provides sufficient flexibility.
460(1)(a)					Staff has revised the language to eliminate subsection on revising prefiled testimony to correct mistakes of fact.

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460(3)(a)				<p>ICNU: Insert “or underscored blank space” after “number” in subsection (iii) to reflect cross exhibits that do not yet have a number</p> <p>PC: Require blank space rather than numbers on cross exhibits in multi-party cases to avoid confusion</p>	<p>ICNU – Agree, and Staff has made that change.</p> <p>PC – Agree in part. Not all witnesses in a multi-party case will be cross-examined by more than one other party, so requiring an underscored blank space may not be necessary. Staff, however, has substituted “should” for “may” use an underscored blank space in multi-party cases when the witness is likely to have cross exhibits from more than one party.</p>
470					<p>Staff has deleted the subsection on post-hearing planning as duplicative of WAC 480-07-390.</p>
490(3)					<p>Staff has deleted the subsection regarding comments and documents received by members of the public as duplicative of WAC 480-07-498 (and has revised and moved to that section language concerning admitting such documents into evidence).</p>
General			<p>WK: Differentiate procedures for handling tariff filings that are not suspended and adjudicated</p>	<p>ICNU: Clarify standard protective order or revise WAC 480-07-420 to add language to provide that administrative staff do not need to sign protective order if supporting an attorney or expert who has signed; include commentary in future drafts to explain proposed changes from prior drafts or existing rules</p>	<p>WK – Tariff filings that are not suspended and adjudicated are handled the same as other items on the Commission’s open meeting agenda. The procedural rules do not address the open meeting process, and Staff does not recommend amending the rules to do so.</p> <p>ICNU – This clarification would be more appropriate for the Commission’s standard protective order, which would need to be amended in either event. Any such modification, however, should come only after a broader discussion with stakeholders.</p>

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Commenter Acronyms	PSE – Puget Sound Energy PPL – Pacific Power and Light Company Avista – Avista Corporation NWN – Northwest Natural Gas Company	UP – Union Pacific Railroad Company	SLG – Summit Law Group WRRA – Washington Refuse & Recycling Association WK – Williams Kastner	ICNU – Industrial Customers of Northwest Utilities PC – Public Counsel	