COMMENTS SUMMARY
PROCEDURAL RULES TUNE-UP
Docket No. A-050802

WAC 480-07-110 Exceptions and modifications.

CR-101 RECOMMENDATION	COMMENTS	RESPONSE
Revise subsection (1) so the exemptions provisions of other rule chapters can simply point to this rule.	**Qwest** is not opposed to this suggested change **PacifiCorp:** The suggested changes set forth in the Report are reasonable. Subsection (1) should be modified, as proposed, to make it clear that the exemption process applies to *all* Commission rules, not just the procedural rules.	**The substance of this rule change, discussed as a proposed revision in the CR-101 Notice is reflected in the proposed rules in subsection (1). The title and text of the rule are modified to reflect that the exemption process applies to all commission rules, but that the commission may modify procedural rules in litigated cases.**
Add provisions to describe exemption process (based on Telco WAC 480-120-115)	**Qwest** is not opposed to this suggested change **PacifiCorp:** It is an improvement to provide greater detail regarding the procedures and standards for obtaining exemptions from the rules.	**The changes to this rule discussed in the CR-101 Notice are included in the proposed rule. In addition, the final sentence in subsection (2)(a) is stricken because it is unnecessary and does not help explain how to request an exemption or waiver.**
	BNSF Railway Company: The proposed revisions would greatly complicate discretionary modifications to the procedural rules in individual cases, which was the original intent of WAC 480-07-110. BNSF requests that the rule be left unchanged, or that authority be explicitly granted to ALJs and Commissioners to grant modifications or exemptions to procedural rules in individual cases.	**Existing WAC 480-07-110(1) is preserved so it remains clear that presiding officers have the discretion to modify procedural requirements in individual cases, as appropriate to the needs of the case.**

WAC 480-07-140 Communicating with the Commission.

CR-101 RECOMMENDATION	COMMENTS	RESPONSE
Change subsection (4)(a) to provide more flexibility in required identifying information in communications with the Commission. Specifically, require name of person or entity and only one of the following: mailing address, e-mail address, telephone number, fax number.	**Qwest** does not support the proposed changes to subsection (4). The current requirements of the rule (name and mailing address, with other e-mail, phone and facsimile information requested but not required) are not burdensome, and enable the Commission and other parties to have sufficient contact information to fulfill notice or other requirements. **PacifiCorp:** The suggested changes are appropriate.	**The proposed rules do not modify the current requirements for communicating with the commission. The commission's Records Center staff find all forms of identification useful in contacting persons who communicate with the commission. In addition, other persons and parties find the identifying information useful when providing notices or responses in appropriate circumstances.**
Change subsection (5)(b) to address the format requirements for confidential electronic versions of documents for access by those entitled to review confidential information and the different format requirements for redacted electronic versions	**Qwest** states that the suggested change is acceptable; the Commission may wish to address formatting of confidential information in the rule on filing confidential information, as well as in this rule. **PacifiCorp:** The suggested changes in the Report are appropriate.	**The changes to subsection (5)(b) discussed in the CR-101 Notice are included in the proposed rules.** **In addition, the rule is revised to reflect the option to use the commission's web portal for submitting or filing documents electronically.**

WAC 480-07-141 Docketing conventions. (NEW)

CR-101 RECOMMENDATION	COMMENTS	RESPONSE
1. Coordinate with Records Center and others to develop rule language to standardize procedures for assigning docket numbers	Qwest is not opposed to codifying and clarifying the current docketing process, including issues such as when the original docket number should be used, and when a new one should be assigned. One suggestion addresses the Commission's ability to "accept" or "reject" a document after filing – Qwest is unsure of how and when this issue might arise, and would be interested in exploring the extent to which problems such as these exist, and whether a rulemaking is necessary. **PacifiCorp:** The items mentioned in the first, second and fourth bullet points in the Report may not be appropriate for inclusion in rules. These seem to be internal administrative matters that are not necessary for the regulated industries to know. Inclusion in the rules would make it more difficult to make changes to these practices in the future, if necessary. The third bullet point is probably worth including to clarify that assignment of a docket number does not necessarily signify acceptance of a filing.	**In response to recommendation # 1, procedures for assigning docket numbers, including docket numbers for follow up or reporting filings, are internal administrative practices for which formal rules are not necessary.** **WAC 480-07-885 addresses docketing conventions for subsequent filings, so there does not appear to be a need for the suggested new rule provision in recommendation # 2. In response to recommendation # 3, the significance of assigning a docket number or receiving a document in a docket should be reflected in rule to notify persons filing documents with the commission that the commission may reject the document for failure to comply with filing requirements in chapter 480-07 WAC. Language could be included in an existing rule or in a separate new rule. For now, language is included in a suggested new rule.** **With respect to recommendation # 4, closing such dockets is an internal administrative action that does not require formal rules.**
2. One suggestion is that follow-up reporting required in a docket be filed under the original number, but any new pleading (*e.g.*, a required "subsequent filing," or a request to change or be relieved from a reporting requirement) will get a new docket number.		
3. Discuss in rule the significance (*i.e.*, procedural and/or substantive consequences), if any, of the Records Center assigning a docket number to a filing [*note one suggestion received:* "Receipt of a document for filing, and the assignment of a docket number, does not mean that the Commission has "accepted" a document and waived any flaws that would entitle the Commission not to		

accept it. Docket numbers are assigned, and documents received, for administrative purposes, to facilitate review, and not to denote legal acceptance. A document is not accepted until the Commission takes an action inconsistent with acceptance. Flaws entitling the Commission to reject a document may be addressed, and the document rejected, after its acceptance."]		
4. Consider adding a rule discussing circumstances and procedures for closing dockets that do not go through an adjudicative process (*e.g.*, a "no action" item can be administratively closed once it has appeared on the open meeting agenda)		

WAC 480-07-142 Filing requirements. (NEW)

CR-101 RECOMMENDATION	COMMENTS	RESPONSE
Include a roadmap to rules for various types of filings *[Note—include references to WAC 480-07-143, 145, 510(2) [tariffs in utility rate filings], 520(1) [tariffs in solid waste rate filings], and 883 [compliance filings]]*. State that all companies are now strongly encouraged to file electronically all tariffs, time schedules, and price lists, using e-mail attachments. There is no need for parties to file an original paper document for tariffs, time schedules, or price lists.	**Qwest:** This is a proposal to include a new rule that provides a roadmap to other rules for various types of filings. Qwest believes that such a rule is redundant and unnecessary. The proposal was also made that the rules should state that "all companies are now strongly encouraged to file electronically all tariffs, time schedules, and price lists, using e-mail attachments, supplemented by one paper copy for Record Center's files." However, a rule that simply "encourages" rather than mandates is of no force and effect. The rules should either be amended to require electronic filing, or not, but the draft rule would serve no purpose. **PacifiCorp:** A roadmap to rules for various types of filings would be helpful, and should be included for consideration.	**This suggested rule is not necessary. Including a roadmap to filing requirements can be included in WAC 480-07-140, concerning communications with the commission, where there is already a road map to filing documents in rulemaking, adjudicative proceedings and public records requests. As draft changes to that rule reflect the option of using the web portal to submit or file documents electronically, it makes sense to expand the roadmap in the rule to enhance use of the web portal. The commission continues to need printed versions of some tariff filings, as specified in various rules.**

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

CR-101 RECOMMENDATION	COMMENTS	RESPONSE
NONE	**Public Counsel (supported by ICNU and WeBTEC):** Recognize in rule the increasingly common practice of parties filing and exchanging documents electronically with hard copy following by next day. Allowing the administrative law judge (ALJ) to invoke this as a standard at the prehearing conference would eliminate additional transactional costs to parties of having to seek leave of the assigned ALJ when a deadline approaches and time is already short. While Public Counsel supports all parties' use of e-mail communications, it is important to maintain the opportunity for comments, concerns, or complaints to be filed with the Commission by those who do not have ready access to, or the ability to provide, electronic communications.	**WAC 480-07-145(6) is revised to provide that the presiding officer will establish at the first prehearing conference, or by notice or prehearing order if there is no prehearing conference, whether "filing" by electronic mail or fax will be standard operating procedure in each case. The proposed rule includes language requiring that such filings be made according to the procedural schedule deadlines by 1:00 p.m. The proposed rule includes language that states the official filing date is the date following electronic filing, when an exact copy is received via mail or courier delivery.** **The commission's procedural rules governing filing documents (WAC 480-07-140, WAC 480-07-143, and WAC 480-07-145) allow persons to file electronically, by facsimile or by filing a paper copy. The rules do not preclude persons from filing a paper document with the commission.**

WAC 480-07-160 Confidential information.

CR-101 RECOMMENDATION	COMMENTS	RESPONSE
Clarify subsection (3)(b)(i) to distinguish circumstance where no protective order is in place. Consider whether this rule should apply in adjudicative (or other?) proceedings where a protective order is in place; in such cases, WAC 480-07-420 and 423 control.	Qwest agrees that this rule could benefit from some fine tuning. In addition to the issues noted in the June 30, 2005 memorandum, Qwest would like to discuss ways of meeting the Commission's needs regarding public information while making the filing process less burdensome to parties. Qwest would also like to discuss the issues that arise when an entire document is claimed to be confidential, such as a settlement agreement, or a purchase and sale agreement related to the transfer of utility property. PSE raises the issue of cross references between WAC 480-07-160, WAC 480-07-420, and WAC 480-07-423. PSE notes that in making an initial filing such as in rate cases, companies often must file confidential or highly confidential information. By necessity, that material is designated confidential pursuant to WAC 480-07-160. Typically, a protective order is then entered shortly after the initial filing. It would be helpful, for clarity, to indicate in the procedural rules and in protective orders issued pursuant to WAC 480-07-420 and WAC 480-07-423 that the terms of the protective order apply as well to material in the docket that was designated confidential pursuant to WAC 480-07-160 prior to entry of the protective order, without the need to remark and resubmit such materials to include specific reference to the protective order.	**The suggested change to subsection (3)(b) (i) is included in the proposed rules. While the current rule expressly applies in adjudicative proceedings where a protective order is in place, giving a second layer of protection, further clarification would be useful.** **The proposed rules clarify the requirements for filing redacted and unredacted (confidential) versions of confidential documents.** **These issues are also addressed in comments concerning WAC 480-07-423 and proposed changes to the rule.**

	PacifiCorp comments that the proposed amendment to 3(b)(i) is necessary, and should be included for consideration. It may be appropriate to include language clarifying that this rule applies in proceedings in which a protective order is *not* in place. Without this clarification, there is a redundancy between the provisions of the protective order and this rule, and it is not clear which would apply in the event of a conflict between the two. Including the clarifying language would make it easier to change the provisions of the standard form of protective order, as necessary based on experience, since it would not require a rule change.	
Amend (3)(c) to specify highlighting colors that work from a practical standpoint. Some documents are being filed with highlighted with colors that cause the confidential version of the document to be "redacted" when copied or scanned. Practical experience in Records Center shows that grey highlighting of 20% saturation works well. Greater saturation can cause the information to “black-out” during reproduction.	PSE suggests that the sentence that references "contrasting highlighter" be expanded to include "or other marking showing the material on the unredacted page that is designated confidential or highly confidential." For example, PSE has found that outlining the confidential material in a box or italicizing the confidential material sometimes works better than highlighting to preserve legibility in copied or scanned versions of confidential documents. PacifiCorp comments that amending [(3)(c)] to specify colors for highlighting confidential documents would be helpful, to standardize Commission practice and reduce possible confusion among the parties.	**The suggested change to specify how to highlight (grey scale) or mark confidential information in a document by outlining with box or border is included in the proposed rules. The proposed rules do not allow for the use of italics to designate confidential information, because parties often use italics for emphasis in documents filed with the commission.**
Amend to provide that redacted electronic versions of documents containing	PacifiCorp comments that the suggested amendment should be included for consideration.	**The draft rules include a reference, at subsection (3)(b)(ii), to the electronic formatting requirements in WAC 480-07-140(5).**

confidential information should be filed exclusively in "read-only .pdf" format while nonredacted versions are to be filed in a "readable" format (*e.g.,* .doc) to facilitate their use by those privileged to see them (*e.g.,* ALJ's).		
Open this rule to general discussion in connection with the protective orders rules, WAC 480-07-420 and 423	Public Counsel (supported by ICNU and WeBTEC)refer to *comments under WAC 480-07-423 Discovery—Protective Orders—Submission requirements for documents]* PacifiCorp comments that it may be appropriate to open this rule to discussion in connection with the protective order rules, as suggested in the fifth bullet point.	**The topic of confidentiality was opened to general discussion. These issues are also addressed in comments concerning WAC 480-07-423.**

WAC 480-07-190 Definitions. (NEW)

CR-101 RECOMMENDATION	COMMENTS	RESPONSE
Define the status of various participants in adjudicative proceedings (i.e., add definitions for "person", "party", "docket monitor" and "interested person".)	**Qwest** does not oppose defining these terms, but notes that "person" and "party" are defined terms under RCW 34.05.010. The Commission may wish to consider whether those terms need a definition in this chapter, and if so whether they should be defined in exactly the same way as they are in the APA. "Person" is also defined in WAC 480-120-021, and thought should be given to whether the definitions should be the same for all purposes, or whether different definitions are necessary or would cause confusion. **PacifiCorp:** Including the proposed definitions would be helpful. In particular, the use of a "docket monitor" category *[note change to "interested person" in attached proposed language]* may reduce requests for intervention from persons who simply want to follow the proceeding and receive copies of filings.	**Including more definitions in the procedural rules will give greater clarity to those participating in proceedings. Instead of adding a new rule for definitions, however, the proposed rule expands the terms identified in WAC 480-07-340, and reflects the definitions in the Washington Administrative Procedure Act.**

PART II: RULE-MAKING PROCEEDINGS (WAC 480-07-200—240)

CR-101 RECOMMENDATION	COMMENTS	RESPONSE
Should rulemaking procedures be implemented by more detailed rules?	**Public Counsel (supported by ICNU and WeBTEC)** supports the Commission's existing process for rulemaking. Workshops and multiple rounds of formal comments provide the opportunity to hear all sides of an issue and make a fully informed decision. Public Counsel comments that issues raised by commentators are not always included in the matrix after a round of comments are provided and thus commentators such as Public Counsel are left not knowing if the comment or suggestion omitted from the matrix was rejected, was considered duplicative of another comment included elsewhere in the matrix, or was simply missed. **PSE** does not believe that Part II of the existing rules needs revision. However, in conducting rulemakings, PSE requests that the Commission Staff responsible for rulemakings seek to provide, on a more consistent basis, information about proposed revisions to existing rules. In particular, it would be helpful if: (i) proposed revisions were blacklined or otherwise identified to show all proposed changes to current rules, and (ii) a brief explanation were provided of the reason(s) for each proposed change. When a rulemaking goes through one or more rounds of informal comment, it would also be helpful if Staff would provide some explanation of the reasons it is	**As there is no strong support by stakeholders for any modifications to the commission's procedural rules governing rulemaking, the commission will not address any rulemaking issues in this docket. If stakeholders seek changes to Commission rulemaking practices, the issues can be addressed in a separate inquiry.**

	accepting, rejecting or modifying proposals set forth in the various comments. Among other things, this would likely streamline future rounds of comments, alert interested persons to the existence of any misunderstandings regarding a proposal that has been rejected, and assist all parties in creatively addressing fundamental interests that may be at issue in a rulemaking. **Qwest** believes that this inquiry is best addressed in a separate rulemaking. Qwest would preliminarily recommend that such a rulemaking consider including explicit statements that the Commission must address the various parties' positions in the rulemaking process, that there be detailed requirements for summarizing parties' positions, and that there be detailed requirements for explaining the Commission's decision process in adopting new rules or modifying existing rules. **PacifiCorp:** There is probably no need to conduct a general inquiry into whether rulemaking procedures need to be modified. The existing rules (at WAC 480-07-210) incorporate the requirements of the Administrative Procedure Act (Chapter 34.05 RCW), which provides sufficient guidance for the processing of rulemakings at the Commission.	

WAC 480-07-310—Ex parte communication.

CR-101 RECOMMENDATION	COMMENTS	RESPONSE
NONE	**Public Counsel (supported by ICNU and WeBTEC)** believes that the Commission has an exemplary record of dealing with matters of ex parte communications and commends the Commission's sensitivity to matters that might create an impression of impropriety as well as impropriety in fact. However, it has been a matter of increasing concern in recent years that it has become a practice of many regulated companies to meet with Commissioners and discuss issues and policies when the company intends to make a related filing in fairly short order with the Commission. The matter discussed then becomes the subject of an adjudicative proceeding to which the ex parte rule applies, and where the Commissioners sit as the quasi-judicial decision makers. Recommend amendment of the rule to address this issue through disclosure as follows: WAC 480-07-310(b) – ADD: <u>When a regulated company has communicated directly with one or more commissioners regarding an issue which was later set for adjudication by the Commission, the nature and content of the communication shall be disclosed by the company in a filing in the docket established by the commission.</u>	**The Commissioners, in addition to their role as adjudicators, have responsibilities with regard to rulemakings and open meetings, and must maintain a high level of awareness concerning regulated industries and regulated companies. The statutory standards governing communication for agency heads provide for different limitations with regard to matters relating to the open meeting, to rulemaking, to administrative matters, and to adjudications. Those limitations are functional to the kind of matter addressed. Yet, the proposed change to the ex parte rule, in effect, would have the Commissioners treat every matter as an adjudication. This would inhibit or even eliminate opportunities for the Commissioners to communicate as needed in other forums to make effective decisions.** **Literal compliance with the proposed change to the ex parte rule would require the Commissioners to keep notes of all contacts with all potential parties to all potential adjudications. There is no time limit and there is no clear definition about what constitutes an issue. Thus, the proposal is impractical.**

		This matter is already addressed in the APA (RCW 34.05.455(4)) and in a Commission rule (WAC 480-07-310(3)). The Commissioners are diligent about disclosure, as Public Counsel acknowledges. They are sensitive to contacts when an adjudicative proceeding is pending and during periods when no matter is pending if those contacts could rise to the level of advocacy on an issue in a later-filed adjudication or if the contacts could raise questions about possible bias, influence, or other potential cause for recusal. It is better to retain the present standards and the present behaviors, in which preadjudicative matters that are out of bounds are appropriately reported, all post-adjudicative ex parte communications are reported, and the Commissioners are both sensitive and diligent in their response to such communications. This is consistent with the statute and the existing rule, yet permits communication that is necessary to the conduct of business in all areas of the Commissioners' obligations.

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

CR-101 RECOMMENDATION	COMMENTS	RESPONSE
WAC 480-07-380(2)(c) Concerning responses to motions for summary determination, revise the rule to allow for schedule changes by notice as well as by order	**Qwest** agrees that this change should be made. **PacifiCorp:** The proposed revision is reasonable, and should be included for consideration.	**The change to this rule discussed in the CR-101 Notice is included in the proposed rules.**

WAC 480-07-395 Pleadings, motions, and briefs—Format requirements

PRE—CR-101 RECOMMENDATION	COMMENTS	RESPONSE
Provide a cross-reference to 480-07-460 for "format requirements for prefiled testimony and exhibits."	**Qwest** does not object to including additional requirements in the rule to the extent those requirements are already routinely imposed (e.g., oversize holes), but does not believe that cross references to other rules such as 480-07-460 serve any useful purpose, and does not agree that it is appropriate to include matters in the rule that are not routinely required. For example, the ALJ in a proceeding already has the authority to require the parties to organize their briefs using a common outline, but that is not done in all cases – reference to that unduly clutters the rule and does not provide guidance to a party with regard to what the requirement will be in a specific case. Qwest does not generally oppose a requirement regarding the form of citation, or for a table of contents. However, it may be that a table of contents is not necessary in every case, nor is a table of authorities – this matter could be discussed in any workshops scheduled in this proceeding. It may also be helpful to parties if the Commission were to establish a standard form for citation of Commission orders, which could be included in this rule. **PacifiCorp:** We recommend against including the "oversize hole" requirement, as suggested in the first bullet item. All parties make reasonable efforts to follow the expressed preference for "oversize holes," but production logistics sometimes make it difficult to do this in all cases. Including it in the rules would be too prescriptive.	**The proposed rule includes a preference, but not a requirement for oversize holes.** **The proposed rule provides that the Commission may require a table of contents and/or table of authorities.** **The proposed rule clarifies, using examples, a standard form for making transcript references in briefs.**
Include the "oversize hole" requirement in 480-07-395(1)(a)		
Edit subsection(1)(c)(iv) to require a table of contents in all briefs		
Edit subsection (1)(c)(v)(A) to provide for transcript references in the form: **witness surname, TR. [page]:[line(s)]**		
Edit subsection(1)(c)(vi) to specify citation formats and require a table of authorities in all briefs		

	The suggested [revision to require a Table of Contents] is reasonable, and should be included for consideration. Designating a standard format for citing transcript references would be helpful, and seems appropriate for consideration. The inclusion of a table of authorities in briefs, as suggested by the fourth bullet item, should be discussed further. It may not be appropriate to impose this requirement in all proceedings, but rather allow the flexibility for case-by-case consideration.	

WAC 480-07-400 Discovery

CR-101 RECOMMENDATION	COMMENTS	RESPONSE
Provide that parties may not seek discovery from Staff until Staff files its response case in a proceeding initiated by complaint or petition. This was formerly included in 480-09-480(5), but was dropped in chapter 480-07 (in favor of it being something parties could request in individual cases, along with other discovery scheduling, as appropriate). Consider broadening this to include Public Counsel and Intervenors. Consider broadening this to provide for a "black-out" period on discovery sought from the utility prior to rebuttal and from all parties prior to and during hearing.	**PSE:** This rule should *not* be revised to prevent a party from seeking discovery from Staff or from Public Counsel or other intervenors until they file their testimony and exhibits in a case. As PSE pointed out in the procedural rulemaking that led to dropping the original prohibition, such a rule would be particularly inappropriate in an adjudicative proceeding that has been commenced against a company at the request of Staff or another entity based on factual allegations stated in a complaint or memorandum to the Commissioners. In such a case, the complaining party should be expected to have to answer data requests about the bases for such allegations, facts or analyses supporting any claim of harm or any relief requested, etc. Such a prohibition should not be established with respect to proceedings such as rate cases or other company filings. As a practical matter, parties rarely seek discovery from Staff, Public Counsel or intervenors until they have completed their analyses and filed testimony and exhibits in such cases. Even if data requests were issued prior to that point, the responding party retains the ability to answer that they have not yet completed their analysis. In some cases, requests for factual information, historical documentation, or other materials might be perfectly appropriate prior to the filing of Staff or intervenor testimonies, and could be important to a company having adequate time to prepare its case. Disputes about such matters should be left to objections and motions to compel in individual cases.	**The current rules appear to be working. Allowing certain parties, but not others, a "black-out" period of discovery is not appropriate. The scheduling of discovery periods and issues of improper discovery are best addressed on a case-by-case basis in the initial prehearing conference and any hearings on discovery disputes.** **Similarly, while all stakeholders appear to support a prohibition on discovery during hearings, the rules currently allow the use of bench requests and record requisitions, a form of discovery, during hearings. Any prohibition on the use of discovery during hearings is best addressed on a case-by-case basis.**

	PSE also does not believe that "black out" periods should be established through a blanket rule, except for a prohibition on discovery among the parties during hearing. In PSE's experience, the parties tend to discover that they have a need for limited additional information during the course of hearing preparation. The existing rules already protect parties from unduly burdensome discovery. Discovery requests that would interfere in a parties' ability to prepare its case could be addressed as needed through existing processes. It *would* be very helpful to limit by general rule promulgation of discovery during hearings, when parties are typically away from their offices for several days attending the hearings. Disputes regarding the availability of information at that time can be addressed by the hearing officer as part of the hearing process such as through bench requests or records requisitions.	
	Qwest is opposed to a blanket limitation on discovery prior to the filing of a party's response case. This should be left open to be decided on a case by case basis. There are situations where such discovery will be necessary, and there is no compelling reason to create two classes of parties, some who are exempt from discovery for a time, and others who are not. It is unclear what problem, if any, this revision would address. In addition, Qwest believes that "black out" periods are sometimes necessary, but suggests that they may be best handled on a case by case basis.	**See discussion of the issue above.**
	ICNU believes that this discovery "black out" period is appropriate, if the rule is extended to include intervenors and Public Counsel. Staff should be treated like any	**See discussion of the issue above.**

	other independent party and should have the same rights, privileges, and responsibilities as intervenors. Therefore, intervenors should also be exempt from discovery until they file their responsive case.	
	PacifiCorp: We support the suggestion of including a "black out" or moratorium period on discovery sought (1) from the utility during the period between the filing of Staff/Public Counsel/Intervenor testimony and the filing of rebuttal testimony, and (2) from all parties immediately before and during hearings. This measure is commonly sought in prehearing conferences as part of the case schedule, and it would simplify and streamline the process if it is addressed by rule. With respect to seeking discovery from Staff, Public Counsel and intervenors prior to filing a responsive case, this measure should be limited to the statutory parties (Staff and Public Counsel) but not extended to intervenors. Discovery in this circumstance is rarely used, but it may be necessary to conduct limited discovery on intervenors given their reliance on outside consultants and considering the limited time available between the prefiling dates for responsive testimony and rebuttal.	**See discussion of the issue above.**
The reference to "subsection (5)" in -400 (1)(c)(iii) should probably be to (4)	**PacifiCorp:** The correction should be made.	**The change suggested in the CR-101 Notice is included in the proposed rules.**
	Public Counsel (supported by ICNU and WeBTEC): Recognize the increasingly common practice of filing and exchanging documents electronically with hard copy following by next day. Allowing the ALJ to invoke this as a standard at the prehearing conference would eliminate the additional transactional cost to parties of having to seek leave of the assigned ALJ when a deadline approaches and time is already short.	**The proposed rules address the issue of exchanging documents electronically. (See response to comments on suggested changes to WAC 480-07-145 and 405(2).) In addition, proposed changes to WAC 480-07-400(3) allow parties to dispense with providing a signature when issuing or responding to discovery requests electronically.**

WAC 480-07-405 Discovery—Data requests, records requisitions, and bench requests

CR-101 RECOMMENDATION	COMMENTS	RESPONSE
Revise subsection 6(a) to require that a party objecting to a data request must state the objection and explain the basis for the objection. For example, if an "unduly burdensome" objection is interposed, the objecting party must describe the nature of the burden and the effort that would be required to respond to the request.		**The suggested change is included in the proposed rule in subsection (6)(a).**
Add new subsection 6(c) to make clear that any party may object to a Bench Request or to a response to a Bench Request (set a time frame for action), and should provide that in the absence of objection or a Commission rejection, the Bench Request response(s) will be received in evidence.	**Qwest** does not object to this proposal. **PacifiCorp:** Clarifying the procedure for and use of bench requests is appropriate, and should be included for consideration.	**The suggested changes are included in the proposed rules as a new subsection (6)(c).**
	Public Counsel (supported by ICNU and WeBTEC): Recognize the increasingly common practice of parties filing and exchanging documents electronically with hard copy following by next day. Allowing the	**The suggested changes are included in subsections (2) and (7) of the proposed rules. (See also response to comments on suggested changes to WAC 480-07-145 and WAC 480-**

	administrative law judge (ALJ) to invoke this as a standard at the prehearing conference would eliminate the additional transactional cost to parties of having to seek leave of the assigned ALJ when a deadline approaches and time is already short.	**07-400.)**

WAC 480-07-420—Discovery—Protective Orders

CR-101 RECOMMENDATION	COMMENTS	RESPONSE
Clarify that Staff and Public Counsel need only sign one confidentiality form to be privy to both Confidential and Highly Confidential under the Protective Order (or modify the standard form protective order to provide this and leave the rule alone)	Qwest believes that the rule should not be modified. While Qwest does not necessarily object to the attorneys for Staff and Public Counsel signing a single form, there are issues that arise in connection with experts for those parties where it may be necessary and appropriate for those witnesses or consultants to specifically agree to the heightened protections afforded highly confidential information. It is unclear what concerns are driving this proposed change, but Qwest believes that those concerns should be articulated in order that they may properly be addressed, and that parties may evaluate whether the proposed solution is best tailored to the problem. PacifiCorp: The clarifications should probably be made in the standard form of protective order rather than by rule, which would constrain flexibility.	**In order to maintain flexibility, the commission finds it best to modify the standard protective order to allow staff and public counsel to sign only one affidavit of the protective order. The issues are best addressed on a case-by-case basis rather than by rule.**
Make provision for support staff and whether they need to sign a confidentiality form (or modify the standard form protective order to provide this and leave the rule alone)	Qwest does not object to the issue of support staff being addressed in the standard form protective order. In general, it has been Qwest's practice to have paralegals and others who handle confidential material simply sign a protective order – that process does not seem to be burdensome, and ensures that each party knows exactly who will have access to particular documents. It may be that the Commission could carve out an exception where individuals who simply handle the material (for copying, distribution, etc.) do not have to sign the agreement, and only those people who actually read or review the material should sign. This issue could be further addressed in a workshop.	**As above, this issue is best addressed by modifying the standard protective order rather than by rule.**

	PSE: It would be good to clarify that support staff must sign a confidentiality agreement. Doing so would serve as a reminder of the importance of confidentiality restrictions and an opportunity to ensure that support staff understand the terms of a particular protective order, since terms can differ from case to case. The standard protective order seems the more appropriate place to do so than the procedural rules because the rules do not address specifics regarding access to information and handling of confidential information in a particular case. **PacifiCorp:** The clarifications should probably be made in the standard form of protective order rather than by rule, which would constrain flexibility.	

WAC 480-07-423 Discovery—Protective Orders—Submission requirements for documents

CR-101 RECOMMENDATION	COMMENTS	RESPONSE
Clarify that parties must file a complete version of the document with confidential material on colored paper and highlighted; it is not acceptable to file a set of confidential sheets for replacement of pages in the redacted version	**Qwest:** Qwest has followed the practice of submitting two versions of complete documents, and agrees that this procedure could be codified in rule. **PacifiCorp:** We recommend against the suggestion stated in the first bullet point. In many cases, only one or two pages of a lengthy document contain confidential information, and the proposed revision would require providing the entire document rather than just the replacement sheets for confidential pages. This seems wasteful, since the extra set of non-confidential pages will likely be discarded. Moreover, it would create additional production challenges to prepare a complete version of the document with only a few sheets on colored paper.	**The requirements for marking and filing confidential documents should be the same under WAC 480-07-160 and WAC 480-07-423. The practice of submitting only confidential pages increases time and costs for commission records center and other staff to log in, file, collate and distribute documents with confidential information. "Waste" and production burdens on parties are reduced by further amendments to this rule, as discussed below.**
Indicate in the rule that parties will be informed how many confidential sets and redacted sets they need to file to meet the Commission's internal distribution needs	**Qwest** does not object to having this set forth in the rule, but the rule should then be specific as to when and how parties will be so informed, and provide for a default number if no other is specified. It would seem reasonable that parties should only provide one copy of the redacted documents, and the standard number of the confidential documents. This could also be accomplished in the prehearing conference order. **PacifiCorp:** This seems reasonable, and should be included for consideration.	**New subsection (2)(e) provides that initial filings that include information regarded as confidential must include 3 sets of the redacted version. All remaining copies must be unredacted versions. The rule provides that parties should inquire of the presiding ALJ what numbers of each version will be required for filings after the initial filing.**

ADDITIONAL COMMENTS	
Public Counsel: remove the words "for example" from WAC 480-07-423(3)(b) (formerly (1)(b)) because "the sentence describes a category of information rather than an example." **Qwest** comments that the use of the term "'for example' . . . makes the definition flexible enough to be applied across a variety of materials or cases and over time."	The provision, as drafted, provides an example of a type of information that might be classified "highly confidential." Other types of information that might be similarly classified. This recognizes the importance of Commission discretion to determine what is appropriate in individual circumstances. Public Counsel's suggestion would change the intent of the rule by limiting the highly confidential designation to one category of information.
Public Counsel: "use restrictions, rather than employment restrictions, should be applied in all circumstances where access to documents needs to be restricted." **WeBTEC** comments that some of the Commission's protective orders that include employment restrictions are vague and too broad. **ICNU** is "generally opposed" to the use of employment restrictions in protective orders, but does not recommend changes to the rules concerning confidential and highly confidential documents. **PSE, PacifiCorp and Qwest:** address the question of employment restrictions on a case-by-case basis considering such factors as whether a potential reviewer is in a position to make competitive use of, or facilitate the competitive use of information and whether it is reasonable to believe the reviewer could mentally segregate such information so that it would not be used inadvertently.	The Commission recognizes that employment restrictions on outside consultants who wish to have access to confidential information are sometimes burdensome. On the other hand, such restrictions are sometimes necessary to protect highly sensitive information in particular circumstances. For example, information obtained by a company in response to a competitive bidding process might need to be protected from disclosure to any person who consults with the company's competitors, or one or more potential participants in the bidding process. The Commission must retain its discretion to fashion protective orders that will facilitate the exchange of information among parties and its presentation for the record without unduly prescriptive rules. The Commission endeavors to limit the use of employment restrictions in protective orders and will continue to work with the parties in individual cases to fashion acceptable limitations in terms of scope and duration.
PSE comments that the rules need to address circumstances in which a company wishes to file information with a highly confidential designation before a protective order is in place.	The Commission addresses this, and related comments in its discussion of WAC 480-07-160.

WAC 480-07-460—Hearing-Predistribution of exhibits and prefiled testimony

PRE—CR-101 RECOMMENDATION	COMMENTS	RESPONSE
Modify subsection (1)(b)(iii) by moving the format requirements for revised testimony to a new subsection (1)(b)(iv)	**Qwest:** This proposal would add a sentence to subsection (1)(b) of the rule regarding revisions to testimony, as follows: "If one or more pages of 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." This change is acceptable to Qwest. **PacifiCorp:** This proposed change is necessary, as the existing provision applies only to "minor" corrections. Inclusion of a new subsection (iv) makes it clear that this process must be followed in the case of any revisions to prefiled testimony.	**The suggested change is included in the proposed rules. The suggestion to move the discussion of format requirements for revisions to a new section is intended to cover all revisions discussion in subsection (b) of the rule, not just minor corrections. Applying the requirements to all corrections will produce a clearer record.**
Modify subsection (2)(b) to require that every page of an exhibit bears the premark (e.g., Exhibit No. ___(JQW-1T)) rather than just the first page	**Qwest** believes that these requirements should be discussed at a workshop. Might be unduly burdensome or unnecessary in some cases. **PacifiCorp:** This suggested change may be unnecessary, and would create a significant burden in the case of very lengthy documents included as exhibits. The current rule requires page numbers on each page, and that should be sufficient for purposes of avoiding potential confusion at hearings.	**The recommended modification to subsection (2)(b) is not included in the proposed rules because it is not necessary and may create a burden on parties.**
Modify subsection (2)(d) to include the "oversize hole" requirement, font requirements, and a requirement for tabs separating all prefiled exhibits (*i.e.*, direct and cross)	**Qwest** believes that these requirements should be discussed at a workshop. Might be unduly burdensome or unnecessary in some cases. **PSE:** With respect to the proposal to add font requirements, PSE notes that exhibits often consist of materials that do not lend themselves well to such a requirement. Examples include photocopies of published articles, spreadsheets that have been	**The proposed rule states a preference for oversize holes, but does not require them.** **The proposed rule clarifies that the font requirements do not apply to preprinted documents or spreadsheets.**

	reduced to fit an 8 ½ x 11 page, graphs or charts, etc. **PacifiCorp:** We recommend against including the "oversize hole" requirement [All parties make reasonable efforts to follow the expressed preference for "oversize holes," but production logistics sometimes make it difficult to do this in all cases. Including it in the rules would be too prescriptive]. The remaining two bullet items seem reasonable, and should be included for consideration.	

WAC 480-07-470—Hearing Guidelines

CR-101 RECOMMENDATION	COMMENTS	RESPONSES
WAC 480-07-470(11) [concerning "subject to check" practice in cross-x] Recommend that the deadline for confirmation of subject to checks flow from the date of the receipt of the transcript, not from the date the testimony occurs. You may not get it accurately from memory. Revisit this subsection re obligations it imposes and options that might work better *(It is not to promote expedient questioning re something in evidence (or prefiled); in that instance the witness should be referred to the evidence or asked to assume the fact for purposes of the question(s).)*	**PSE** supports the limits in the current rules on this practice. Questions stated "subject to check" should not be used as a substitute for referring a witness to a document or exhibit, or in order to avoid pre-distribution of cross examination exhibits, or as a means of getting information into the record that a party has failed to submit as part of its case. **Qwest** does not object to changing the rule so that the deadline for confirmation of subject to checks flow from the date of the receipt of the transcript, not from the date the testimony occurs. Qwest recommends that parties asking "subject to check" questions should be prepared to provide details on the "subject to check" process and the timeframe the witness has for response, as well as be required to provide the witness with information necessary to perform the check. **PacifiCorp:** We support both recommended changes with respect to the "subject to check" process. With respect to the second bullet point in particular, it would be helpful to clarify when the "subject to check" process should be used, *e.g.*, in the case of numerical calculations and extracting detailed data and *not* in the case of references to exhibits or testimony already in evidence.	**Subsection (11) of the proposed rule provides that the deadline for confirmation of a fact accepted "subject to check" follows from the date the transcript is received.** **Subsection (11) is also amended by clarifying that "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."**

WAC 480-07-510 General rate proceedings-Electric, natural gas, pipeline, and telecommunications companies.

CR-101 RECOMMENDATION	COMMENTS	RESPONSE
Staff has reviewed this rule and suggests specific language	**Qwest** believes that it would be beneficial to discuss all of the proposed changes in a workshop.	**Based on experience over the past two years, the commission has found that it generally needs 19 copies of testimony and exhibits for internal distribution in general rate proceedings instead of the 12 copies now specified in this rule. The proposed rule changes the number to 19.**
WAC 480-07-510(2) practices apparently are in place for utilities to file tariffs electronically; acknowledge this change; the rules currently require utilities to file three copies of their revised tariff sheets	**PacifiCorp:** This rule should be modified to eliminate the filing of three copies of the tariff sheets as part of a general rate proceeding. The proposed tariff sheets are typically included as an exhibit in the case, and it is redundant (and seemingly of limited value) to include three copies separately in the filing. Moreover, an electronic copy of the tariff sheets would be included with the filing as well, in compliance with the electronic filing requirements for general rate case filings. The rule could be modified to provide that it is necessary to separately include three copies of the revised tariff sheets only if the proposed tariffs are not otherwise included.	**Subsection (2) is modified in the proposed rules to allow filing of one paper and one electronic copy of the tariff. The Commission's Records Center still needs one paper copy.**

WAC 480-07-510(3)(b) Should this rule provide that any adjustment offered by a party must be accompanied by a full explanation of each of the assumptions and underlying calculations. If these are not set forth in the direct testimony and exhibits, they must be set forth in workpapers. For example, if an adjustment uses a percentage relationship or an allocation factor, the workpaper must contain the detailed support for the development of that percentage or factor, together with an explanation why that factor is appropriate. Also, if the adjustment is connected to any other adjustment, that connection should be stated and explained, and a cross-reference provided. Should the rule require a standard format for presentation of adjustments?	**PSE:** It would be helpful to add the proposed requirement that each adjustment offered by any party be accompanied by a full explanation in testimony and exhibits or workpapers. Similarly, it would be helpful and would streamline the process to require all parties to provide workpapers to other parties along with their pre-filed testimony and exhibits, just as companies are required to do with their initial rate case filings. Such requirements should probably be organized into a new subsection (8), since subsections (1) through (7) set forth what "the company must provide" in its initial general rate case filing. **PacifiCorp:** We do not recommend pursuing many of the suggestions included in the first bullet item. A "full explanation of each of the assumptions and underlying calculations" is not necessary in most instances. The discussion cites as an example a requirement to provide detailed support for the development of *any* percentage relationship or allocation factor, together with an explanation why that percentage or factor is appropriate. In many instances, there is no dispute or controversy regarding the use of a particular percentage or allocation factor – it could be widely used in the utility industry, or have been followed for many years by the individual utility – but this suggested change would nonetheless require a detailed support and a full explanation. In the case of a multi-state utility, for example, percentages and allocation factors are used in virtually all calculations. This suggestion seems burdensome, and of limited benefit in most instances. The filing utility has the burden of proof to substantiate and explain its adjustments, and in satisfying that burden it is likely that the support and explanation will be provided in the circumstances where it is warranted. With respect to the second bullet item, it may be difficult to standardize the presentation of adjustments, given the varying	**The proposed rule applies to all parties. As a matter of practice, workpapers that underlie all witnesses' testimonies and exhibits are typically sought via discovery. The changes in the proposed rule should expedite the exchange of information in general rate proceedings and reduce the burdens of discovery.** **The type of information addressed in this rule is almost always sought via discovery. The proposed amendment to the rule is meant to promote efficiency by making the exchange of this information standard operating procedure without the need for numerous data requests and the delay associated with the discovery process. PacifiCorp's concerns can be addressed through informal discussions between staff and the utility; specific criteria for presentation can be based upon the utility's particular circumstances, which should result in an appropriate balance between benefit and burden.**

	circumstances and complexities among utilities and among the types of adjustments. This objective would seem to be better pursued through informal discussions between Staff and the utility, where Staff could present its preference for presentation based upon the utility's particular circumstance. Trying to do so in a rule seems to be overly prescriptive and would unnecessarily burden the rules with detail.	

WAC 480-07-520 General rate proceedings -- Solid waste collection companies.

CR-101 RECOMMENDATION	COMMENTS	RESPONSE
Practices apparently are in place for solid waste companies to file tariffs electronically; acknowledge this change; the rules currently require solid waste companies to file two copies (WAC 480-07-520(1))	**Qwest** believes that it would be beneficial to discuss all of the proposed changes in a workshop.	**The Commission's Records Center requires an electronic file and one paper copy. The proposed rules reflect this requirement.**

WAC 480-07-620 Emergency adjudicative proceedings.

CR-101 RECOMMENDATION	COMMENTS	RESPONSE
Add a new subsection (2) to provide for the preparation and service of a complaint when time permits; renumber existing subsections (2) – (6)	**Qwest** would recommend that this change also be discussed at a workshop. **PacifiCorp:** Clarifying the process for authorizing a complaint to be issued is appropriate, and should be included for consideration.	**The proposed rules include a new subsection (2) to provide for preparation and service of a complaint when time permits. Existing subsections (2) – (6) are renumbered.**

WAC 480-07-650 Petitions for enforcement of telecommunications company interconnection agreements.

CR-101 RECOMMENDATION	COMMENTS	RESPONSE
Change subsection (1)(c) by editing the second sentence as follows: **The notice must identify ~~the contract~~ <u>each</u> <u>specific</u> provision <u>of the agreement</u> <u>that</u> the petitioner alleges was violated, . . .**	Qwest: The changes proposed to this rule are acceptable to Qwest as they appear to simply be language changes to make the rule internally consistent (i.e., the process is started by "petition", not "complaint").	**The suggested change is included in the proposed rules to provide greater clarity of the issues in an enforcement proceeding.**
Change subsection (4)(c) by editing the second sentence to read as follows: **The party filing the ~~complaint~~ <u>petition</u> or answer may file with the ~~complaint~~ <u>petition</u> or answer a request for discovery, . . .**		**The suggested change is included in the proposed rules to create internal consistency within the rule.**

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WAC 480-07-710 Mediation.

CR-101 RECOMMENDATION	COMMENTS	RESPONSE
WAC 480-07-710(4)(g)—The new Uniform Mediation Act (C. 172, L.2005) broadens the applicability of confidentiality; consider whether the rule applies to negotiations to resolve informal complaints (i.e., matters that can be resolved prior to anything being filed); if so, should we say so? If not, should we provide for confidentiality for such negotiations anyway?		**Suggested changes to subsection (4)(g) of this rule are made to reflect changes in law (*i.e.*, repeal of RCW 5.60.070 and adoption of new Uniform Mediation Act.)** **Informal Complaints: Language in WAC 480-07-910 is modified to clarify that commission staff efforts in informally resolving complaints between regulated companies and consumers are not intended to be mediation covered under the new Mediation Act.**

WAC 480-07-730 Settlement.

CR-101 RECOMMENDATION	COMMENTS	RESPONSE
Should we do away with the term "multi-party settlement" and use "stipulation" instead? *[Some argue it isn't really a settlement if all do not agree]*. Should we modify procedures for consideration of comprehensive stipulations that are supported by some, but not all parties?	**Qwest** believes that the term "multi-party settlement" is well-understood and need not be changed. A settlement is not a stipulation, and a settlement agreement between some parties remains a settlement agreement, even if opposed by some parties. Qwest also believes that it is unnecessary to modify the procedures for the consideration of settlements that are not joined by all parties. This matter was discussed at some length at the Bench/Bar Conference on July 22, 2005, and Qwest expressed its views at that time, and is prepared to further discuss this issue at a workshop if necessary. **PSE** would support changing the term "multiparty settlement" to "multiparty stipulation" in subsection (3). The current rule permits parties opposed to such a stipulation to "offer evidence and argument in opposition", which permits appropriate procedures to be ordered on a case by case basis. As an example, disagreement on a single issue or on a legal point might require less time and less extensive procedures to present to the Commissioners and hearing officer than disagreement across a large number of factual issues. **PacifiCorp:** Use of the term "settlement" seems to be appropriate even if not all parties are involved; it does represent a settlement of the issues as among the settling parties. Use of the term "stipulation" does not	**The issues concerning commission settlement rules and practice were opened to general discussion. Participant's comments and the commission's responses are included in an addendum to this comment matrix.**

	make much difference.	

ADDITIONAL COMMENTS

Public Counsel (supported by ICNU and WeBTEC): Multiparty, non-unanimous settlements have become an increasing area of concern for Public Counsel and others, and have resulted in procedural litigation entirely unrelated to the merits of the matters brought before the Commission.

Public Counsel requests that the Commission initiate a separate rulemaking docket to address this rule specifically and in an expedited fashion given the significance of the issues that have arisen regarding this rule. We believe this issue is one which would otherwise dominate the time available for a broader workshop, and impair the full consideration of other rules and issues, as it did during the recent Bench-Bar conference.

Public Counsel recommends the Commission adopt the following language to resolve what it regards as the on-going problems surrounding multi-party settlements:

(5) Notice of Settlement Negotiations Required:

(a) Prior to engaging in settlement negotiations with a regulated company in an adjudicative proceeding, commission Staff must provide notification to other parties. Five calendar days before a settlement negotiation with a regulated company, the commission staff shall notify in writing, and by electronic mail, all parties on the master service list of the time and location of the proposed settlement negotiation. If a prehearing conference has not yet been held in the case, notice shall be sent to all persons who regularly appear before the commission in similar adjudicative proceedings. Staff shall maintain a copy of the notice and a record that it was provided.

(b) Any party given notice under this section may attend settlement negotiations. Additional notice of continuing settlement negotiations involving the same issue need only be provided to parties attending the initial settlement negotiation, or who have requested continuing notice.

(c) For purposes of this section 5, "settlement negotiations" means any discussion or other communication, in person or otherwise, between Commission Staff and a company regulated by the Commission whose purpose is to pursue resolution of one or more issues in an adjudicative proceeding. Settlement negotiations do not include requests for information or clarification in aid of discovery.

Adopting the foregoing language would resolve Public Counsel's concerns and eliminate an area of litigation which continues to be a costly distraction to the Commission and the parties that appear before it.

PacifiCorp: On the broader issue of procedures for consideration of comprehensive stipulations in which there are non-settling parties, the Commission's existing rules in WAC 480-07-730(c) provide considerable remedies for non-settling parties. Opponents of a multi-party settlement have the right to cross-examine witnesses supporting the settlement, to present evidence in opposition to the settlement, and to present argument in opposition to the settlement. If appropriate, opponents may also conduct discovery on the proposed settlement. Given

the adequacy of these procedures, there is probably no need to revisit this particular rule.

A related issue that may warrant discussion concerns the process followed for achieving settlement, and whether or not a prescriptive rule is warranted to ensure an opportunity for all parties to participate in settlement discussions. Some parties have also raised an issue regarding the assertedly unique role that Staff performs in Commission proceedings, and claim that Staff accordingly should be subject to particular restrictions before commencing settlement discussions with any party. On the issue of all-party participation in settlement discussions, this has been largely addressed through the Commission's practice in recent contested cases to include settlement conferences as part of the procedural schedule. By inclusion in the formal schedule, all parties will have adequate notice of the settlement discussions and an opportunity to participate, if desired. With respect to the role of Staff in settlement discussions, Staff certainly has a principal role in Commission proceedings, due in part to its ability to present a complete case on all the issues rather than the more limited scope of intervenors' involvement. At the same time, it is precisely because of this principal role that Staff should not be unduly constrained by prescriptive notice requirements before commencing any discussions regarding resolution of any issues in a rate case. This issue probably warrants further discussion in the rulemaking process, which would enable a more thorough examination involving all interested persons.

RESPONSE: The issues concerning commission settlement rules and practice were opened to general discussion. Participant's comments and the commission's responses are included in an addendum to this comment matrix.

WAC 480-07-740 Settlement consideration procedure.

CR-101 RECOMMENDATION	COMMENTS	RESPONSE
NONE		**Issues concerning settlement rules and practice were opened to general discussion. Participant's comments and the commission's responses are included in an addendum to this comment matrix.**

ADDITIONAL COMMENTS
PSE: *(directed to WAC 480-07-730, but pertinent here)* The current rule permits parties opposed to multi-party settlements to "offer evidence and argument in opposition", which permits appropriate procedures to be ordered on a case by case basis. As an example, disagreement on a single issue or on a legal point might require less time and less extensive procedures to present to the Commissioners and hearing officer than disagreement across a large number of factual issues. **Public Counsel (supported by ICNU and WeBTEC)** recommends the Commission amend subsection (c) "Rights of opponents of a proposed settlement" to clarify that parties opposing a settlement retain the following rights: to conduct discovery, present evidence, have a hearing, cross-examine witnesses, and present arguments on all disputed material issues of fact and law. And that the commission's final order shall be based upon substantial evidence in the record and shall include findings and conclusions on all disputed issues of fact, law, or discretion presented on the record. It is almost axiomatic that proposed multiparty settlements commonly do not address issues considered critical by non-settling parties. Fundamental fairness requires that non-settling parties have a meaningful opportunity to be heard on not just the facts *[sic]* proposed multiparty settlement, but on all disputed material issues of fact and law. This provides a superior record for Commission decision. Doing so prevents the risk that a subset of parties will attempt to dictate the scope of the Commission's review of facts and issues. And as a practical matter, the Commission's final order will be far less subject to appeal. It is Public Counsel's belief that the transactional costs to the Commission of providing the extra day or two of hearing, or considering a brief that may be somewhat longer, and of issuing a final order that encompasses the proposed settlement as well as any additional disputed material issues of fact or law is far less than the transactional costs to the Commission and interested parties of being involved in subsequent judicial review.
RESPONSE: The issues concerning commission settlement rules and practice were opened to general discussion. Participant's comments and the commission's responses are included in an addendum to this comment matrix.

WAC 480-07-750 Commission discretion to accept settlement, impose conditions, or reject a proposed settlement.

CR-101 RECOMMENDATION	COMMENTS	RESPONSE
WAC 480-07-750(2)(a): **"If the commission rejects a proposed settlement, the litigation returns to its status at the time the settlement was offered and the time for completion of the hearing will be extended by the elapsed time for consideration of the settlement."** We may wish to amend this to add the concept that the extension will also take into account other pending business. It may be necessary in some cases to extend a procedural schedule for significantly more time that has "elapsed for consideration of the settlement." We will want to consider this in the context of general rate proceedings and complaint proceedings where the 10 month rule imposes an additional constraint that can be problematic. In such cases, if the Company isn't willing to adjust the schedule to meet needs of the parties and the	**Qwest** agrees that additional time may be necessary, but does not agree that it should be unbounded. **PacifiCorp:** Some amendment of this rule may be appropriate to provide some flexibility to accommodate the Commission's other pending business when determining the length for which the time for completion of the hearings will be extended. At the same time, the absence of a scheduling constraint may create unintended consequences in which the Commission would be less inclined to accord deference to the settlement process, given its increased ability to impose different terms and conditions in the absence of concerns about suspension periods. The filing utility bears the consequences of failing to receive necessary rate relief within the suspension period, and the extension of that suspension period is probably best considered on a case-by-case basis – where the utility can evaluate the prospects for Commission approval before agreeing to extend the suspension period – rather than a standardized approach that would be required under a Commission rule.	**The issues concerning commission settlement rules and practice were opened to general discussion. Participant's comments and the commission's responses are included in an addendum to this comment matrix.**

Commission, then the Commission arguably shouldn't take the time to consider the proposal for settlement.		

WAC 480-07-883 Compliance filings

CR-101 RECOMMENDATION	COMMENTS	RESPONSE
[Note—compliance filings, including tariff sheets, should require an original on paper for the docket file in Records Center, but otherwise can be submitted electronically]	**Qwest** supports this proposal. **PacifiCorp:** It seems appropriate to permit compliance filings to be submitted electronically, given the time constraints that may come into play near the expiration of suspension period.	**The suggested change to subsection (1) of the rule is included in the proposed rules.**

MISCELLANEOUS

CR-101 RECOMMENDATION	COMMENT	RESPONSE
Consider adding rule(s) concerning hearing transcripts (where would these fit best?): E.G.: add a rule providing that parties may make motions to correct hearing transcripts, but providing that readily identified typographical errors need not be corrected. *[Note that the Civil Rules don't include anything like this. The idea appears to be that the official transcript is the most accurate record of what was said (and heard) by everyone in the hearing room. Inviting argument to the contrary may not be well-advised. If a party believes an answer, as transcribed, fails to reflect what the witness said, or meant to say, one option would be to allow for a motion to reopen the record]*.	**Qwest** is not certain that such a rule is necessary – parties are currently permitted to file motions, and it is not necessary to specifically define or enumerate each type of motion that might exist. **PSE** supports adding a rule providing that parties may make a motion to correct hearing transcripts, but need not do so for readily identifiable typographical errors or errors that are not material to the issues in dispute. Proceedings before the Commission often include technical terms or terms of art with which court reporters are not familiar. It is not uncommon for transcripts to contain errors such that all parties would agree that the official transcript is *not* an accurate record of what was said and heard by everyone in the hearing room. Yet, the transcript is what is cited in briefs and the Commission's orders and any appeal there from, as well as in future Commission proceedings that may involve persons who were not in the hearing room or who are less familiar with the terms or issues in dispute at the time. Indeed, because Commission proceedings involve the same regulated companies and potentially similar issues over time, errors that may exist in transcripts filed in Commission proceedings arguably are potentially more harmful to the parties and public than errors in transcripts in civil cases. Taken all together, it would appear to be better practice to correct the record and address any disputes regarding such corrections very shortly after the hearing rather than leaving substantive errors in the record. PSE submits that in most cases, proposed corrections would not be controversial. In that regard,	**It does not appear that transcription errors occur with a frequency or degree that warrants a new rule. Parties can file a motion to correct a transcription error if it is important to do so.**

	PSE has in mind corrections regarding what was actually said in a question or answer, not what someone "meant to say." Explanations or changes to testimony should be addressed only through a motion to reopen the record and not to correct a transcript. To the extent the Commission looks to civil rules in considering this matter, PSE notes that the Federal Rules of Appellate Procedure provide: "If any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record confirmed accordingly." FRAP 10(e)(1). Both the district court and court of appeals are empowered to correct the record "[i]f anything material to either party is omitted from or misstated in the record by error or accident." FRAP 10(e)(2). **PacifiCorp:** Substantive corrections to the transcript (*i.e.*, revisions other than to correct typographical revisions) should require some sort of process allowing responses by other parties – such as a motion to re-open the record – before they can be effected. With respect to the second bullet item, the current process of maintaining confidential treatment of transcript segments seems to have worked reasonably well, given the skill and competence of the Commission's court reporters. Requiring parties to submit redacted versions of transcripts may not be necessary.	

Consider adding a rule to require parties to submit proposed redacted versions of transcripts that include confidential information rather than maintaining confidential treatment of entire segments of transcripts.	**Qwest** is opposed to this proposal. It is already highly burdensome to redact confidential testimony and exhibits, and no purpose would be served by extending this burden to transcripts. A transcript is either public or confidential, depending upon whether the testimony was transcribed in a public hearing or in a closed session. If such sessions are appropriately designated, the transcript would follow that designation. No purpose would be served by trying to redact words or phrases from a confidential transcript.	**The burden of requiring parties to provide redacted versions of transcript pages appears to outweigh any potential benefits. If confidential portions of a transcript are within the scope of a public records request, a redacted version could be prepared, if appropriate.**

ADDITIONAL COMMENTS	
WAC 480-07-XXX – Electronic Interested Person Lists **Public Counsel (supported by ICNU and WeBTEC)** recommends an email-only interested person list for significant case types that would allow interested persons to receive only electronic copies of Commission notices, orders, etc. Public Counsel states that third parties occasionally report they were learned of a case through informal discussions. Some form of additional out-reach along these lines would further facilitate the Commission's communications with the public and all persons interested in the matters that come before the Commission. For example, common intervenors could request notice of all electric and natural gas general rate suspensions and staff could add them as a matter of course to an interested persons "external mail group" as is now commonly used to send email notices of prehearing conferences to parties.	The Commission's current notice requirements in WAC 480-07-510(5) require notice of general rate proceedings to those who participated in a company's most recent prior rate proceeding and any other rate proceeding during the five years prior to the filing, if rates established or considered in the prior proceeding may be affected, and to all persons who have informed the company in writing that they wish to be provided with the summary document that is required for all general rate filings. The Commission's web pages also are kept current in their reporting of filings and proceedings.