

**A-130355 Procedural Rules**

**Summary of Comments on CR 102 Proposed Revisions to Rules in Parts I, II, and IIIA  
 January 25, 2017**

480-07-	Utilities	Rail	Solid Waste	Consumers	Staff Response
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 and benefits both the Commission and the company submitting the documents.
140(6)(a)	PPL: Allow flexibility in using “hidden cells” to permit lines and columns to be hidden to present the information in a more expansive format.				Disagree. The rule precludes information and its source in the cells of a spreadsheet from being hidden, not the format of the spreadsheet itself. Accordingly, the rule does not preclude the expansion of the size of a cell as PPL describes, even if that is technically accomplished by “hiding” lines or columns.
141			SLG: Concerned that staff review of all filings would be overbroad and burdensome to Commission staff; such review would be better included in the rules specifically governing rate case filings		Disagree. Staff appreciates SLG’s concern but continues to propose that Staff, particularly in the Records Center, review all submissions within a reasonable time to determine whether they comply with applicable requirements.

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150			SLG: When initiating an adjudication, Commission should use the same service required to commence a lawsuit in court; Create a procedural mechanism for filing and maintaining contact information, perhaps including verification in annual reports		<p>Disagree. All documents the Commission serves on a regulated company are important, and no more specialized service should be required for documents initiating an adjudication than for other documents requiring company action, including but not limited to penalty assessments, requests for information, and annual report reminders.</p> <p>Staff will explore and implement appropriate procedures for obtaining and maintaining current contact information, but such procedures need not be included in this rule.</p>

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160		<p>UP: Opposes the revisions to this rule, which are vague and confusing as to scope and purpose</p>	<p>WRRRA: Clarify that applicants for solid waste certificate may not designate information as confidential</p> <p>SLG: Clarify whether the rule applies to information that companies provide in the context of informal data requests.</p>		<p>UP – The proposed revisions consolidate into a single rule the process and requirements for designating information as confidential and better tailor those requirements to RCW 80.04.095, RCW 81.77.210, and RCW 42.56.</p> <p>WRRRA – Disagree. RCW 81.77 applies to all solid waste collection companies, not just certificated solid waste collection companies, and there is no basis in the language of RCW 81.77.210 to limit its applicability to certificated companies. The Commission has consistently applied WAC 480-07-160 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> <p>SLG –The rule applies to all documents submitted to the Commission or its staff, which includes documents companies provide in response to informal Commission data requests.</p>
160(2)	<p>PSE, PPL, NWN: Protect additional information that is exempt from public disclosure under the PRA (e.g., customers’ personal, financial, and contact information) as confidential information</p>				<p>Disagree. See separate Staff memo on information designated as confidential.</p>

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160(3)		UP: Commission should not create and impose its own definition of “confidential Information,” including highly confidential protection; revised rule fails to recognize other exemptions, specifically federal law			Disagree. With respect to the highly confidential designation, the rule does not alter the statutory definition of “valuable commercial information” but only provides more restrictive limits on persons other than Commission or attorney general personnel who can have access to such information. That protection is part of the existing rule and has been part of Commission practice for over 20 years. See separate Staff memo on information designated as confidential for the response to the more general objections.
160(4)(d)	PPL: Use a “reasonable efforts” standard with respect to designating confidential information, particularly for extremely voluminous documents or designations.				Disagree. The proposed rule language allows for greater flexibility than the existing rule by requiring that information designated as confidential be highlighted through shading <i>or other clearly visible designation</i> . To the extent that even with this flexibility, the requirement imposes an extraordinary burden on the provider of a specific document, the provider may seek a waiver of the requirement. The Commission’s ultimate goal is to ensure that it is fully aware of all information that a company has designated as confidential, and requiring only “reasonable efforts” is too vague a standard for accomplishing that goal.

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160(5)	CL, NWN, PPL, PSE: Retain existing rule provision requiring Commission resolution of dispute over confidentiality designation in adjudications		SLG: Commission should review any challenge to a confidentiality designation to ensure it is made in good faith, rather than to burden or harass an opposing party		Disagree. See separate Staff memo on information designated as confidential.
160(6)	PPL: Clarify that any release of information designated as confidential is conditioned on that release not being prohibited by law, rule, or Commission order		SLG: Commission should notify provider whenever its confidential information is requested, not just when the designation is challenged, to enable the requester and the company to resolve the request agreeably		PPL – Disagree. The rule is sufficiently clear that the Commission will not release information designated as confidential if a court order prohibits such release. A Commission rule or order can delay that release by 10 days but cannot otherwise authorize the Commission to withhold production of such information.  SLG – Disagree. Requesters often do not continue to request 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 its confidential designation. The requester and the company may then negotiate a resolution of the request short of resorting to a superior court determination.

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175		<p>UP: Opposes this rule; Requiring access to all documents at any and all times is wildly and impracticably overbroad, and Commission cannot circumvent protections for privileged or proprietary information or warrant requirements</p>	<p>SLG: Clarify impact of PRA on documents reviewed at company locations; Lack of limitation on production is troubling; Need to understand the formality of the requests contemplated by this rule</p> <p>WRRRA: Extend application to applicants for solid waste collection authority</p>		<p>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. To the extent that a company believes that other legal authority supersedes this statutory authority, the company may make such an objection in response to the Commission’s request for inspection or documents, and the Commission will address that objection before proceeding.</p> <p>SLG – Disagree. A court, not the Commission, determines the applicability of the PRA, and the Commission will not render a legal opinion on that applicability. As discussed above, the rule reflects the breadth of the statute, and the company can object if it believes the Commission is exceeding its authority. The formality of the rule is similar to a bench request in an adjudication – the company is obligated to provide the requested information unless the Commission sustains an objection to the request.</p> <p>WRRRA – Disagree. The statute limits the Commission’s authority to public service companies, and the Commission cannot extend that authority by rule. The Commission, moreover, has subpoena power and does not need this rule to request any additional information the Commission believes is necessary to determine whether to grant an application.</p>

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190			SLG: A digital image of a signature copied onto the signature line should qualify as a “secure” electronic signature		Disagree. The proposed rule establishes general guidelines for secure electronic signatures to accommodate evolving technology. A digital image of a signature must satisfy all of the requirements in the rule to be considered a secure electronic signature. The Commission should make that determination based on the specific technology being used, which is a fact-specific inquiry, rather than incorporating that technology into the rule.
305(5)(b)	PPL: Consider adding circumstances in which the person seeking to initiate an adjudication is not “involved in an actual case or controversy” or otherwise aggrieved to the list of circumstances in which the Commission will not commence an adjudication				Disagree. The circumstances PPL describes are already covered under the rule ( <i>e.g.</i> , as lack of standing or Commission authority). Even if that were not the case, the rule expressly provides that the list of circumstances is not exclusive, and as a matter of practice, the Commission will not initiate an adjudication where no actual case or controversy exists or where no harm is alleged.
307			SLG: Add more substantive review of third-party complaints prior to initiating an adjudication to preclude nuisance actions		Disagree. The Commission reviews all third party complaints and only serves those that comply with the rules. The Commission commences an adjudication only after receiving the respondent company’s answer to the complaint. If that answer contends that the complaint is frivolous or brought in bad faith, the Commission will take that into consideration before initiating an adjudication.

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310			WRRRA: 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. Staff intends to propose revisions to WAC 480-07-825, which governs review of initial orders, to codify the requirement that a different ALJ and advisory staff assist the Commissioners when reviewing an initial order.
355(2)				ICNU: Require responses to petitions to intervene to be filed within 20 days of the date the petition is filed or two business days prior to the prehearing conference, whichever is less	Disagree. The Commission receives the vast majority of petitions to intervene much less than 20 days before the prehearing conference. Having a single deadline for filing responses to such petitions is preferable to adding the alternative deadline that the Commission has established for petitions in general.
370				SLG: Include motions in the list of pleadings?	No. Pleadings under the rules are documents that seek to initiate formal Commission action or that respond to such requests. Motions are requests for relief within an adjudication that the Commission has already initiated. Some petitions are also filed in existing adjudications, but no motions are filed outside of such proceedings.



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400(1)(c)	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).
460(1)(a)				ICNU: Clarify reasons for eliminating existing subsection on revising prefiled testimony to correct mistakes of fact	Staff proposes to distinguish only between corrections that are substantive and corrections that are minor ( <i>i.e.</i> , nonsubstantive). Corrections to mistakes of fact could be either. Accordingly, Staff proposes to delete the existing subsection on correcting mistakes of fact as redundant and potentially confusing.
Commenter Acronyms	PSE – Puget Sound Energy PPL – Pacific Power and Light Company NWN – Northwest Natural Gas Company CL – CenturyLink	UP – Union Pacific Railroad Company	SLG – Summit Law Group WRRRA – Washington Refuse & Recycling Association	ICNU – Industrial Customers of Northwest Utilities	