

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-300 Scope of Part III.** (1) **Scope.** The rules in this subpart apply to all adjudicative proceedings described in this chapter, except to the extent of any conflict with special rules that govern general rate proceedings (subpart B of this chapter) or abbreviated adjudicative proceedings (subpart C of this chapter). An adjudicative proceeding for purposes of this chapter is a proceeding in which an opportunity for hearing is required by statute or constitutional right or is a proceeding the commission voluntarily commences as an adjudication as defined and described in chapter 34.05 RCW.

(2) **Examples of adjudicative proceedings before the commission.** The following are nonexclusive examples of adjudicative proceedings for purposes of this chapter once the commission takes formal action to commence such a proceeding pursuant to WAC 480-07-035:

(a) Formal complaint proceedings commenced pursuant to RCW 80.04.110 or 81.04.110 or complaints the commission initiates.

(b) Suspended tariff filings including, but not limited to, tariffs increasing rates.

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

(d) Petitions for enforcement of interconnection agreements.

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

(f) Declaratory order proceedings.

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

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

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-305 Commencement of an adjudicative proceeding. (1)**

**Commencement.** The commission may commence an adjudicative proceeding at any time with respect to any matter within its jurisdiction and within the scope of its authority. An adjudicative proceeding begins when the commission notifies a party that the commission will conduct

a prehearing conference, hearing, or other stage of an adjudicative proceeding.

(2) **Who may seek to commence an adjudicative proceeding.** A person involved in an actual case or controversy subject to the commission's jurisdiction may apply to the commission to commence an adjudicative proceeding by submitting the appropriate form of pleading.

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

(a) Formal complaints submitted by persons other than commission staff.

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

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

(d) Requests for a hearing to contest, or seek mitigation of, penalties assessed without a prior hearing.

(e) Protests of, or objections to, applications for authority.

(f) Requests for hearing to contest a commission notice of intent to deny an unprotested application for authority.

**(4) Commission notification of any deficiencies in a pleading.**

Within thirty days after receiving an application for an adjudicative proceeding, the commission may notify the applicant of any obvious errors or omissions, request any additional information the commission requires regarding the application, and notify the applicant of the name, e-mail address, and telephone number of a person on the commission staff who the applicant may contact regarding the application.

**(5) Commission determination whether to conduct an adjudicative proceeding.** Within ninety days after receiving an application for an adjudicative proceeding, the commission will:

(a) Commence an adjudicative proceeding by serving a notice of hearing pursuant to RCW 34.05.434; or

(b) Decide not to conduct an adjudicative proceeding and furnish the applicant with a brief written statement of the reasons for that decision. While other circumstances may justify not commencing an adjudicative proceeding, the commission will not commence an adjudicative proceeding under the following circumstances:

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

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

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

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

(v) The applicant lacks standing to request the relief it seeks from the commission.

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

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

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

AMENDATORY SECTION (Amending WSR 06-17-126, filed 8/21/06, effective 9/21/06)

**WAC 480-07-307 Probable cause determinations.** An administrative law judge will review the information or evidence supporting any complaint commission staff proposes to have the commission issue and will determine whether probable cause exists to issue the complaint. Upon determining that the information would sustain the complaint if proved at hearing and not rebutted or explained, the judge will sign the complaint on behalf of the commission. The existence of a finding of probable cause may not in any later stage of the proceeding be considered as support for the complaint.

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

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-310 Ex parte communication.** (1) **General.** RCW 34.05.455 and this section govern ex parte communications. After an adjudicative proceeding begins and before a final resolution of the proceeding, no

person who has a direct or indirect interest in the outcome of the proceeding, including the commission's advocacy or investigative staff, may directly or indirectly communicate about the merits of the proceeding with the commissioners, the administrative law judge assigned to the adjudication, or the commissioners' assistants, advisory staff, legal counsel, or consultants assigned to advise the commissioners in that proceeding, unless reasonable notice is given to all parties to the proceeding so that they may participate in, or respond to, the communication.

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

(a) *Procedural aspects.* Communications concerning procedural aspects of the proceeding, such as scheduling, are not ex parte communications prohibited by RCW 34.05.455, or by this section.

(b) *Commissioners, commission employees, and consultants.* As presiding officers, commissioners and administrative law judges may receive legal counsel or consult with assistants, advisory staff, or consultants who are subject to the presiding officer's supervision or who have not participated in the proceeding in any manner, and who are not engaged in any investigative or advocacy functions in the same or a factually related case. The presiding officers and these assistants,

advisory staff, and consultants also may communicate with one another regarding the merits of any adjudicative proceeding.

(3) **Communication prior to service as presiding officer.** If, before serving as presiding officer in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while serving in that capacity, the presiding officer, after starting to serve, must promptly disclose the communication as prescribed in subsection (4) of this section.

(4) **What is required if an ex parte communication occurs.** A presiding officer who receives or becomes aware of any communication that appears to violate RCW 34.05.455 or this section will include documentation of the communication in the record of the pending matter. Such documentation will include any written communication received and any written response, or a memorandum stating the substance of any oral communication received and response made, as well as the identity of each person involved in the communication. The presiding officer will notify all parties that this documentation has been included in the record and will provide parties with the opportunity to file and serve a written rebuttal statement in response to the notice of ex parte communication. Materials pertaining to ex parte communications or rebuttal statements do not constitute evidence of any fact at issue in



the proceeding unless a party moves to admit any portion of them into the evidentiary record for purposes of establishing a fact at issue and the commission admits that portion into the record pursuant to RCW 34.05.452.

(5) **Sanctions.** The commission may prescribe appropriate sanctions, including default, for any violation of RCW 34.05.455 or this section. The commission or any party may report a violation of this section to appropriate authorities for any disciplinary proceedings provided by law.

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

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-330 Presiding officers.** (1) **Commissioners.** The commissioners may preside in any adjudicative proceeding with or without the assistance of an administrative law judge. When the commissioners preside, they are presiding officers as that term is used in chapter 34.05 RCW and in this chapter. When the commissioners preside with the assistance of an administrative law judge, the administrative law

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

(2) **Administrative law judge.** The director of the administrative law division will designate an administrative law judge to preside in individual proceedings, either to assist the commissioners in their role as presiding officers as described in subsection (1) of this section, or to serve alone as the presiding officer. When serving alone as the presiding officer, the administrative law judge will enter one or more initial orders, unless the parties and the commission agree to waive an initial order, or applicable law prohibits entry of an initial order. An initial order becomes final if no party petitions for administrative review within twenty days and the commissioners do not review the order on their own motion. The commissioners will enter a final order if a party petitions for, or the commission on its own motion undertakes, administrative review of an initial order, if the parties and the commission agree to waive an initial order, or as otherwise provided by law.

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

AMENDATORY SECTION (Amending WSR 06-16-053, filed 7/27/06, effective 8/27/06)

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

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

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

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

office become parties to an adjudicative proceeding for all purposes upon entering an appearance.

(3) **Classification of parties.** The commission generally will refer to parties in commission proceedings by their names but may refer to them according to their classification in the proceeding, as follows:

(a) *Applicants.* Persons applying for any right or authority that the commission has jurisdiction to grant are applicants.

(b) *Complainants.* Persons who file a formal complaint with the commission are complainants. When the commission commences an adjudicative proceeding on its own complaint, the commission is the complainant.

(c) *Petitioners.* Persons petitioning for relief other than by complaint are petitioners.

(d) *Movants.* Persons filing a motion for relief are movants or moving parties.

(e) *Respondents.* Persons against whom any formal complaint, petition, or motion is filed are respondents.

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

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

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

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-16-053

(Docket A-050802, General Order R-536), § 480-07-340, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-340, filed 11/24/03, effective 1/1/04.]

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-345 Appearance and practice before the commission. (1)**

**Minimum qualifications.** No person may appear before the commission as a representative of a party to an adjudicative proceeding without meeting at least one of the following qualifications:

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

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

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

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

The presiding officer may refuse to allow a person who does not have the requisite degree of legal training, experience, or skill to appear in a representative capacity.

**(2) Written notice of appearance and withdrawal by counsel or other representative is required.**

(a) Attorneys or other authorized representatives who wish to appear on behalf of a party or person seeking party status must file a written notice of appearance with the commission and serve all parties to the proceeding prior to acting in a representative capacity unless the attorney or authorized representative has previously appeared through the party's initial pleading or written petition to intervene.

(b) A party's initial pleading or written petition to intervene filed in a proceeding must designate the party's attorney or other representative authorized to accept service on behalf of the party.

(c) A party must file a written notice with the commission and serve all parties to make any changes to its designation of authorized representative(s).

(d) Attorneys or other authorized representatives who wish to withdraw from representing a party must file a separate written notice of withdrawal with the commission and serve all parties to the proceeding.

(3) **Unethical conduct is not permitted.** Persons appearing in proceedings before the commission in a representative capacity must conform to the standards of ethical conduct required of attorneys before the courts of Washington. Representatives are required to be familiar with, and conform to, the requirements of the rules of professional conduct that are part of the Washington court rules. If any representative fails to conform to those standards, the commission may exclude the person from the proceeding, may report the ethical violation to any appropriate licensing authority, and may refuse to permit the person to appear before the commission in a representative capacity in any future proceeding.

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

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

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

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

(a) *Who may petition; when petitions must be filed.* The commission strongly prefers written petitions to intervene from any person who seeks to appear and participate as a party in a proceeding before the commission other than the original parties, commission staff, and public counsel. Written petitions to intervene should be filed at least three business days before the initial hearing date or prehearing conference date, whichever occurs first. A person may petition orally for leave to intervene at the time of the initial hearing or prehearing conference, whichever occurs first, unless the commission requires written petitions to intervene in a notice prior to the first hearing or prehearing date.



(b) *Late-filed petition to intervene.* The commission may grant a petition to intervene made after the initial hearing or prehearing conference, whichever occurs first, only on a showing of good cause, including a satisfactory explanation of why the person did not timely file a petition to intervene.

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

(i) The petitioner's name and contact information as specified in WAC 480-07-360(3);

(ii) The petitioner's interest in the proceeding;

(iii) The petitioner's position with respect to the matters in controversy;

(iv) Whether the petitioner proposes to broaden the issues in the proceeding and, if so, a statement of the proposed issues that clearly and concisely sets forth the basis for the petitioner's proposal to broaden the issues; and

(v) The name and contact information as specified in WAC 480-07-360(3) of the persons the petitioner has authorized to act as the petitioner's representatives, including attorneys, if any.

(2) **Response.** Parties may respond to any petition to intervene. Responses may be written or may be heard orally at the prehearing con-

ference or hearing at which the commission considers the petition. A party's written response to a timely filed written petition to intervene should be filed and served at least two business days before the prehearing conference or hearing at which the commission will consider the petition, or at such other time as the commission may establish by notice.

(3) **Disposition of petitions to intervene.** The commission generally will consider petitions to intervene at the prehearing conference or at the initial hearing if the commission does not conduct a prehearing conference. The presiding officer may grant a petition to intervene if the petitioner has a substantial interest in the subject matter of the hearing or if the petitioner's participation is in the public interest. If the commission grants intervention, the petitioner becomes a party to the proceeding as an intervenor. The presiding officer may impose limits on an intervenor's participation in accordance with RCW 34.05.443(2).

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

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

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

AMENDATORY SECTION (Amending WSR 06-16-053, filed 7/27/06, effective 8/27/06)

**WAC 480-07-360 Parties—Service and master service list.** (1) **Service defined.** Service means sending or delivering, in accordance with RCW 34.05.010(19) and this rule, the following documents in an adjudicative proceeding:

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

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

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

(2) **Designation of person to receive service.** Each party in an adjudicative proceeding must designate at least one person to receive service of documents relating to the adjudication. A party may designate more than one person to receive electronic service subject to any limits the presiding officer may establish on the number of persons each party may designate. Service on the person or persons who a party has designated as its representative(s) is valid service upon the party, except as provided by law.

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

- (a) Name;
- (b) Mailing address;
- (c) Telephone number;
- (d) E-mail address; and
- (e) Relationship to party (e.g., counsel, executive director, etc.).

(4) **Master service list.** The commission will maintain a master service list for each adjudicative proceeding. The commission will in-

clude an initial master service list as an appendix to the prehearing conference order, if any, in the proceeding and will maintain a current master service list on the commission's web site as a separate document under the docket number for the proceeding. Parties must provide written notice to the commission and the other parties of any changes to the master service list.

(5) **Contents of master service list.** The master service list will contain the contact information for each party to the proceeding and each party's designated representative(s) for service. If the commission requires both paper and electronic service, the master service list will identify the one person representing each party who must be served paper copies in addition to electronic service.

(6) **Electronic service required.**

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

(b) The commission will only serve documents electronically on each party's designated representatives, except as required otherwise

by law. To the extent a statute requires a party's agreement to electronic service, the commission presumes that by participating as a party to an adjudicative proceeding, each party agrees to electronic service of all documents in that proceeding, including orders and notices the commission serves, unless the party states on the record at or before the initial prehearing conference or the hearing, whichever occurs first, that the party does not agree to electronic service. If a party lawfully insists on paper service, the commission will serve all documents electronically and also will serve on that party the paper documents the applicable statute requires be served in paper form.

(7) **When service is deemed complete.** Unless otherwise ordered by the commission in a particular proceeding, service is complete when the document being served has been verifiably sent to the recipient's designated e-mail address. Parties serving documents should maintain records of documents sent by e-mail and, to the extent practicable, should confirm successful delivery.

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

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

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

(Signature of person who served the document)

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-16-053

(Docket A-050802, General Order R-536), § 480-07-360, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-360, filed 11/24/03, effective 1/1/04.]

NEW SECTION

**WAC 480-07-365 Filing documents in adjudicative proceedings. (1)**

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

(2) **Electronic filing is required.** Except as otherwise required by these rules or other law, documents filed in an adjudicative proceeding must be submitted electronically using the commission's records center web portal no later than 5:00 p.m. on the date the documents are required to be filed unless the commission establishes an earlier time.

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

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

(c) *Simultaneous delivery to all parties and presiding officer.* All electronic documents submitted to the commission through the web portal or by e-mail on a filing deadline date must be delivered to all parties and the presiding administrative law judge by e-mail at the same time the documents are submitted to the commission or immediately thereafter. Copies intended for the presiding administrative law judge must be sent to the judge's individual e-mail address. Submissions should **not** be sent directly to the commissioners.

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



next business day, unless the presiding officer establishes a different submission deadline.

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

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

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AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-370 Pleadings—General. Types of pleadings permitted.**

Pleadings include, but are not necessarily limited to, formal complaints, answers to complaints, petitions, responses to petitions, replies, applications for authority, protests, and objections. The com-

mission may allow other pleadings upon written motion or on the commission's own motion.

(1) *Formal complaints.*

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

(b) Contents. A formal complaint must be in writing and must clearly and concisely set forth the grounds for the formal complaint, the relief requested, and the commission's jurisdiction to commence an adjudication and grant the requested relief. A formal complaint must state:

(i) The complainant's name and address and the contact information for the individuals to receive service on behalf of the complainant as required under WAC 480-07-360(3);

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

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

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

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

(2) *Answer to formal complaint.*

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

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

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

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

(e) Content. Answers must include the following information:

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

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

(iii) Full and complete disclosure of the respondent's affirmative defenses, if any.

(3) *Petitions.*

(a) Defined. All original pleadings that seek relief other than formal complaints and applications as defined in this section and all pleadings that seek relief from a commission order, are petitions. The commission may undertake an action that would be the proper subject of a party's petition, such as authorizing exemption from a commission rule, without receiving a petition from a party. The commission will provide written notice and allow for appropriate process when it acts in the absence of a party's petition.

(b) Contents. A petition must be in writing and must clearly and concisely set forth the grounds for the petition, the relief requested, and the commission's jurisdiction to grant the requested relief. A petition must state:

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

(ii) Facts that constitute the basis of the petition and requested relief, including relevant dates; and

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

(4) *Response to a petition.*

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

(b) Timing of response. Responses to a petition must be filed within twenty days after the petition is filed unless the commission or these rules establish a different deadline or the petition seeks commission action that the commission generally considers taking at an open public meeting (e.g., an accounting petition). Responses to peti-

tions the commission considers at an open meeting should be filed no later than three business days before that open meeting. The presiding officer will establish the time for responses to interlocutory petitions in an adjudicative proceeding.

(c) When permitted. Any person directly affected by an original petition may file a response. Any party to the adjudicative proceeding may file a response to a petition filed in that proceeding except as otherwise provided in this chapter or a commission order.

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

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

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

(5) *Reply to an answer or response.*

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

(b) Motion for permission to reply. A party that wishes to reply to an answer or response must file a motion requesting permission to reply within five business days after the respondent serves the answer or response. The motion must explain why a reply is necessary including, but not necessarily limited to, whether the answer or response raises new facts or legal argument requiring a reply. A party should file a proposed reply as an attachment to its motion. The motion is deemed denied unless the commission grants the motion within five business days after the movant files it.

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

(6) *Application*. An application is a request for a license, certificate, permit, or other authority to provide a service regulated by the commission, or a request to transfer or amend any such authority

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

(8) *Objection.* Persons who assert that their interests would be adversely affected if the commission grants an application for auto transportation service pursuant to WAC 480-30-096 may file an objection. An objection must conform to the requirements of WAC 480-30-116. The objector must serve a copy of the objection on the applicant.

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

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-375 Motions.** (1) **Defined.** Except for pleadings identified as petitions under these rules, a party's written or oral request for commission action in the context of an adjudicative proceeding is a motion. Motions should be in writing unless made on the record during a hearing before the presiding officer. The commission may take or require an action that would be the proper subject of a party's motion without receiving a motion from a party. The commission will provide oral or written notice prior to taking or requiring such action and allow for appropriate process when it acts in the absence of a party's motion. The commission recognizes four basic categories of motion:



(a) *Dispositive motions.* Dispositive motions request that the commission terminate a proceeding, resolve one or more of the substantive issues presented in the proceeding, or terminate a party's participation in the proceeding.

(b) *Procedural motions.* Procedural motions request that the commission establish or modify the process or the procedural schedule in a proceeding.

(c) *Discovery motions.* Discovery motions are requests to resolve disputes concerning the exchange of information among parties during the discovery phase of a proceeding.

(d) *Evidentiary motions.* Motions related to evidence are requests to limit or add to the evidentiary record in a proceeding.

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

(3) **Oral motions.** A party may make an oral motion during a hearing, unless foreclosed from doing so by rule or in the presiding officer's discretion. The presiding officer will provide an opportunity

for other parties to respond to any oral motion. The presiding officer may require that an oral motion be reduced to writing and may provide an opportunity for written response.

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

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

AMENDATORY SECTION (Amending WSR 06-16-053, filed 7/27/06, effective 8/27/06)

**WAC 480-07-380 Motions that are dispositive—Motion to dismiss; motion for summary determination; motion to withdraw. (1) Motion to dismiss.**

(a) *General.* A party may move to dismiss another party's claim or case on the asserted basis that the opposing party's pleading fails to

state a claim on which the commission may grant relief. When ruling on such a motion, the commission will consider the standards applicable to a motion made under Washington superior court civil rule 12(b)(6) and 12(c). If a party presents an affidavit, declaration, or other material in support of its motion to dismiss, the commission will treat the motion as one for summary determination as provided in subsection (2) of this section unless the commission rules on the motion without relying on the material.

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

(c) *Response.* A party that opposes a written motion to dismiss may file a response within ten days after service of the motion, or at such other time as the commission may set.

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

(a) *General.* A party may move for summary determination of one or more issues if the pleadings filed in the proceeding, together with any properly admissible evidentiary support (e.g., affidavits, decla-

rations, fact stipulations, or matters of which the commission may take official notice, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. When ruling on such a motion, the commission will consider the standards applicable to a motion made under Washington superior court civil rule 56.

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

(c) *Response.* A party must file any answer to a motion for summary determination and any cross-motion for summary determination within twenty days after the movant serves the motion unless the commission establishes a different filing date.

(d) *Continuance not automatic.* Filing a motion for summary determination will not automatically stay any scheduled procedures. The commission may order a continuance of any procedure and may order that an oral or written response to a motion for summary determination be made at a time that is consistent with any established hearing schedule in the proceeding.

**(3) Motion to withdraw.**

(a) *General*. Once the commission has issued a hearing notice or otherwise commenced an adjudicative proceeding pursuant to chapter 34.05 RCW, a party may withdraw from that proceeding, or may withdraw the party's tariff, complaint, petition, or application on which a proceeding is based, only upon permission granted by the commission in response to a written motion. The motion must include any settlement or other agreement pursuant to which the party is seeking withdrawal.

(b) *Response*. No party may file a response to a motion to withdraw unless the commission authorizes a response. The commission will grant such a motion when the requested withdrawal is in the public interest. A company need not file a motion to withdraw a tariff filing after the commission has entered a complaint and order suspending that tariff but before the commission commences an adjudicative proceeding. In such circumstances, the company need only file a written notice that it is withdrawing that filing.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-16-053

(Docket A-050802, General Order R-536), § 480-07-380, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-380, filed 11/24/03, effective 1/1/04.]

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-385 Motion for continuance or suspension. (1) Definitions.**

(a) A continuance is any postponement of a deadline established by commission rule or order or any extension of time to comply with such a deadline.

(b) A suspension holds all procedural deadlines established by the commission in abeyance pending further commission action.

**(2) Procedure.**

(a) *Continuance.* Any party may request a continuance by oral or written motion. The commission may require a confirmation letter or e-mail if a party makes an oral request. The presiding officer may rule on such motions orally at a prehearing conference or hearing session, or by written notice or order. The commission will grant a continuance if the requesting party demonstrates good cause for the continuance and the continuance will not prejudice any party or the commission. A party may request a continuance by e-mail to the presiding administrative law judge if the party accurately represents that all other parties either join or do not oppose the request. The commission will

grant such a request unless it is inconsistent with the public interest or the commission's administrative needs.

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

(3) **Timing.**

(a) *Written motion for continuance.* A party must file and serve any written motion for continuance other than an agreed request at least five business days prior to the deadline the party requests to continue. Parties must file any written response to the motion within three business days after the motion is served unless the commission establishes a different date for responses. Parties should submit an agreed request for continuance in writing at least two business days prior to the deadline the parties request to continue.

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

mission will permit oral responses at the time the oral request is made.

(c) *Request for suspension.* A party should request that the commission suspend the procedural schedule at least five business days prior to the next scheduled deadline in that schedule.

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

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

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-390 Briefs; oral argument.** The commission may permit or require the parties to a proceeding to present their arguments and authority in support of their positions after the conclusion of any evidentiary hearing. Such a presentation may be in the form of written briefs, oral argument at the close of the hearing, or both.

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



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

AMENDATORY SECTION (Amending WSR 08-18-012, filed 8/22/08, effective 9/22/08)

**WAC 480-07-395 Pleadings, motions, and briefs—Format requirements; citation to record and authorities; verification; errors; construction; amendment.** (1) **Format.** All pleadings, motions, and briefs must meet the following format requirements:

(a) *Appearance.*

(i) Text must be double-spaced, 12-point type, and in palatino, times new Roman, or an equally legible serif font, with footnotes in the same font and of at least 10-point type;

(ii) Each paragraph must be numbered;

(iii) Margins must be at least one inch from each edge of the page; and

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

(b) *Length.* Pleadings, motions, and briefs must not exceed sixty pages exclusive of table of contents, table of authorities, signature blocks, exhibits, appended authorities, supporting affidavits or dec-

larations, and other documents. The presiding officer may alter the page limit to accommodate the number and complexity of the disputed issues presented for commission resolution.

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

(i) *Caption*. The commission notice initiating an adjudicative proceeding will include a caption that parties must use for all pleadings, motions, and briefs they file in that proceeding. Pleadings that request that the commission initiate an adjudicative proceeding should include a preliminary caption. At the top of the first page must appear the phrase, "BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION." On the left side of the page, the name of the proceeding must be set out as either "[Name], Complainant, v. [Name], Respondent." for a formal complaint or "In the matter of the [petition, application, etc.] of [Name of the pleading party] for [identify relief sought]." On the right side of the page for all pleadings, the caption must include the docket number if one has been assigned, the name of the party submitting the document, and the name of the document (e.g., staff motion for continuance).

(ii) *Body of pleading*. A pleading must include the following information:

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

(B) All rules or statutes that the pleading puts in issue;

(C) A statement of facts on which the party relies in a form comparable to complaints in civil actions before the superior courts of this state; and

(D) The relief the pleading party requests.

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

(A) A statement of the specific relief the movant requests that the commission grant or deny;

(B) A succinct statement of the facts that the movant contends are material to the requested remedy;

(C) A concise statement of the legal issue or issues on which the movant requests the commission to rule; and

(D) Any evidence on which the motion is based. If a party relies on declarations, affidavits, deposition transcripts, or documentary evidence, the party must specify those documents, quote the cited material verbatim, and attach a copy of relevant pages to a declaration

that identifies and verifies the documents. Parties should highlight or otherwise clearly identify the portions of the cited evidence on which they place substantial reliance.

(iv) Body of brief. Unless excused by the presiding officer, the parties must include in their briefs that exceed ten pages in length a table of contents in outline format. The conclusion of any brief must state the relief the party requests.

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

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

(B) Exhibits. Exhibits must be marked as required under WAC 480-07-460, and references to those exhibits should be as follows: Exh. [number]. In the case of prefiled testimony offered or received as an exhibit, page numbers, line numbers, and the witness's surname should be added following the style specified in this section for transcript references (e.g., Smith, Exh. ABS-1T at 21:15-17). In other exhibits, references to pages, lines for text, rows and columns for tables, or

other specific references may be added in addition to the sponsoring witness's surname, if applicable, to clarify the information cited (e.g., Smith, Exh. ABS-5 at 12, Table 2).

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

(vii) Attachments or appendices. If a party attaches more than one attachment or appendix to a pleading, the party must separate the body of the brief and each attachment or appendix in any required paper copies with a tabbed blank sheet of paper.

(2) **Verification.** All pleadings and motions, except complaints brought by the commission or matters raised by the commission on its own motion, must be dated and signed either by a party representative of record in his or her individual name, or by the party, if the party is not represented. Parties that are not represented by an attorney must include a statement in any pleading that the facts asserted in

the pleading are true and correct to the best of the signer's belief. Parties that bring complaints under RCW 80.04.110 or 81.04.110 challenging the reasonableness of the rates or charges of utilities the commission regulates must provide additional verification as specified in those statutes.

(3) **Errors in pleadings or motions.** The commission may return a pleading or motion to a party for correction when the commission finds the pleading or motion to be defective or insufficient. The commission may disregard or correct obvious typographical errors, errors in captions, or errors in spelling of names of parties.

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

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

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 08-18-012 (Docket A-072162, General Order R-550), § 480-07-395, filed 8/22/08, effective 9/22/08; WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-395, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-395, filed 11/24/03, effective 1/1/04.]

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

AMENDATORY SECTION (Amending WSR 06-16-053, filed 7/27/06, effective 8/27/06)

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

(a) *No limitation on commission authority to audit and inspect.*

Nothing in this section imposes any limitation on the commission's ability to audit or obtain the books and records of public service companies, or public service companies' obligation to provide information to the commission, whether or not in the context of an adjudicative proceeding.

(b) *Informal discovery procedures.* Parties in an adjudicative proceeding may agree to informal discovery procedures in addition to, or in place of, the procedures contained in this section.

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

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

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

(iii) Data request. A party's written request that calls for another party to produce data in connection with an adjudicative proceeding is a data request. Generally, data requests seek one or more of the following: Existing documents; an analysis, compilation, or summary of existing documents into a requested format; a narrative response describing a party's policy, practice, or position; or the admission of a fact asserted by the requesting party. If a party relies on a cost study, model, or proprietary formula or methodology, the party must be willing, on request, to rerun or recalculate the study, model, formula, or methodology based on different inputs and assumptions, subject to the standards in subsection (3) of this section. The commission otherwise will not order a party to respond to a data request that would require creation of new data or documents unless there is a compelling need for such information.

(iv) Bench request. A request for data made by or on behalf of a presiding officer is a bench request



(2) **When discovery available.**

(a) *Subpoenas always available.* Subpoenas are available as a means of discovery as provided in Title 80 or 81 RCW and chapter 34.05 RCW.

(b) *When other discovery methods available.* If the commission finds that an adjudicative proceeding meets one of the following criteria, the methods of discovery set forth in WAC 480-07-405 through 480-07-415 will be available to parties:

(i) Any proceeding involving a change in the rate levels of a public service company;

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

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

(3) **Scope of discovery.** Discovery must seek only information that is relevant to the issues in the adjudicative proceeding or that may lead to the production of information that is relevant. A party may not object to discovery on grounds that the information sought will be inadmissible at the hearing, if that information appears reasonably

calculated to lead to discovery of admissible evidence. Parties must not seek discovery that is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive. A discovery request is inappropriate when the party seeking discovery has had ample opportunity to obtain the information the party seeks or the discovery is unduly burdensome or expensive, taking into account the needs of the adjudicative proceeding, limitations on the parties' resources, scope of the responding party's interest in the proceeding, and the importance of the issues at stake in the adjudicative proceeding. Discovery through data requests or otherwise must not be used for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the costs of litigation. The commission may impose sanctions for abusive discovery practice.

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

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-16-053 (Docket A-050802, General Order R-536), § 480-07-400, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-400, filed 11/24/03, effective 1/1/04.]  
AMENDATORY SECTION (Amending WSR 06-16-053, filed 7/27/06, effective 8/27/06)

**WAC 480-07-405 Discovery—Data requests and bench requests. (1)**

**Grouping and numbering.**

(a) *Grouping.* Parties must group their data requests by subject or witness.

(b) *Numbering.* Each party must number sequentially its data requests to each other party. Numbering of subsequent data requests to the same party must begin with the number next in sequence following the number of the last previously propounded data request (e.g., if the last data request in an initial set of requests is number 10, the first data request in the next set of requests must be number 11). The presiding officer will ensure that bench requests are adequately described on the record and consecutively numbered.

(2) **Service of data requests.** A party must serve data requests electronically in native format on the party to whom the requesting party makes the requests, with copies to all other parties.

When propounding data requests to other parties, a party must not file those data requests with the commission or copy any person who is presiding or advising the presiding officer.

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

(4) **Limitation on numbers of data requests.** The presiding officer may limit the total number of data requests that a party may propound to another party. Each party must make reasonable efforts to ensure that its data requests do not duplicate other parties' requests. The presiding officer may require parties to coordinate discovery with other parties of similar interest.

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

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

(a) *Data requests.* A party must present any objections to a data request to the requesting party in writing by the time the response is due, or at such other time as the presiding officer orders. A party objecting to a data request must state the objection and explain the basis for the objection. A party that fails to interpose a timely objection to providing a full response to a data request waives any right to object for purposes of discovery and must provide a full response. A party that fails to make an objection when responding to data requests does not lose the opportunity to raise an objection at hearing if another party seeks to introduce as evidence all or part of the party's response to a data request.

(b) *Bench requests.* Any party may object to a bench request made orally during a hearing at the time the presiding officer makes the request. A party may subsequently object in writing to such a bench request within five days after the presiding officer makes the request if the objection is based on facts or law the party did not reasonably know at the time the presiding officer made the request. A party may object to a written bench request within five days after the commission serves the request.

(7) **Responses.**

(a) *Data requests.*

(i) Service. Parties must serve responses to data requests electronically on the requesting party and on any other party that requests a copy, consistent with the terms of any protective order entered in the proceeding. Except when designated as exhibits to be offered into the evidentiary record, parties must not file responses to data requests with the commission or copy any person who is presiding or advising the presiding officer when serving those responses. The commission will not receive into evidence responses to data requests unless a party offers the responses into evidence. A party may object to the admission of a response to a data request at the time the response is offered into evidence whether or not the party timely objected to providing the response.

(ii) Timing. A party to whom a data request is directed must provide a full response within ten business days after the request is served. If the responding party cannot provide a full response within ten business days, the responding party must give written notice to the requesting party no later than two business days before the response is due. The notice must state why the responding party cannot comply with the ten-day deadline. The responding party must also provide a schedule by which it will produce the requested data and must

explain why the party cannot provide any portion of the data. The presiding officer may modify these time limits.

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

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

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

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

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

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

(2) **Required notice; motion.** A party that intends to depose another party's designated potential witness must give notice to the commission and all parties. A party that seeks to depose a person who



has not been identified as a potential witness must file a motion requesting permission to depose the person.

(3) **How conducted.** Parties should use Washington superior court civil rule 30 as a guide when conducting depositions. Parties must limit the scope of questioning in a deposition to the same standard set forth in WAC 480-07-400(4). A court reporter provided by the party requesting the deposition will record the deposition. Each party will be responsible for the attendance of any of its designated potential witnesses who have been scheduled for deposition.

(4) **Use of depositions.** Parties may use depositions for any lawful purpose, subject to the requirements of this subsection. If a party seeks to offer into evidence the deposition of a potential witness who is available to testify to the matters addressed in that person's deposition, the party must do the following:

(a) Offer only those portions of the deposition on which the party intends to rely; and

(b) Provide at least five business days' written notice to other parties and to the presiding officer prior to the hearing session at which the potential witness is expected to appear. The party must attach to the notice the portion(s) of the deposition that the party proposes to offer in the form of exhibits that are marked for identi-

fication as required under WAC 480-07-460(3). If portions of a deposition are admitted into evidence, other parties may offer additional portions of the deposition when necessary to provide a balanced representation of the deponent's testimony.

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

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

(b) *Supplementation.* Every deponent must supplement any response given in a deposition immediately upon learning that the prior response was incorrect or incomplete when made, or upon learning that a response that was correct and complete when made is no longer correct or complete. Each party is responsible for ensuring compliance with this requirement by deponents who are the party's potential witnesses. [Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-410, filed 11/24/03, effective 1/1/04.]

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-415 Discovery conference.** (1) **General.** The commission may request or require the parties to attend a discovery conference along with designated witnesses to discuss with each other questions about the party's positions or evidence and the availability of supporting information.

(2) **Purpose.** The purpose of a discovery conference is:

(a) To allow witnesses and others who have knowledge relating to the proceeding (e.g., consultants or employees) to talk directly and informally;

(b) To reduce or avoid the need for written data requests and time for their preparation;

(c) To allow discussions of potential stipulations regarding individual facts and settlement of individual issues to occur in an informal setting;

(d) To discuss the availability of supporting information; and

(e) To enhance the parties' ability to acquire or expand their knowledge about the case of one or more designated other parties.

(3) **Statements not evidence.** Discovery conferences will not be reported and statements made by participants at discovery conferences are not admissible as evidence unless the parties agree otherwise.

(4) **Facilitator.** The commission may designate a person to facilitate a discovery conference. The designated facilitator must not be associated with any party or with the commission advisory staff involved in the proceeding.

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

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-420 Discovery—Protective orders. (1) Standard form.**

The commission may enter a standard form of protective order designed to promote the free exchange of information and development of the factual record in a proceeding when parties reasonably anticipate that discovery or evidentiary submissions will require the disclosure of information designated as confidential as defined in WAC 480-07-160. Parties must strictly limit the information they designate as confidential to information that is or may be exempt from public disclosure

under RCW 80.04.095, 81.77.210, or the Public Records Act, chapter 42.56 RCW, including RCW 42.56.330. Parties must follow the instructions in WAC 480-07-160 for properly marking and submitting documents with the commission containing information designated as confidential in a proceeding governed by a protective order.

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

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

(b) *Limitations.* If the commission modifies the standard protective order to include protection for highly confidential information, parties must strictly limit the information they designate as highly

confidential to the information identified in the amendment to the protective order and must follow the instructions in WAC 480-07-160 for properly marking and submitting documents with the commission as highly confidential.

(3) **Special order.** Upon motion by a party or by the person from whom discovery is sought that establishes a need to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, the presiding officer may order appropriate limitations on discovery including, but not necessarily limited to, one or more of the following:

(a) The discovery will not be allowed;

(b) The discovery will be allowed only on specified terms and conditions;

(c) The discovery will be allowed only by a method of discovery other than the method selected by the party seeking discovery; or

(d) Certain matters may not be inquired into, or the scope of the discovery will be limited to certain matters.

(4) **Denial of motion for protective order.** The presiding officer may order that any party or person provide or permit discovery on such terms and conditions as are just if the commission denies a motion for a protective order in whole or in part.

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

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

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

(a) *Informal resolution.* Parties must make good faith efforts to resolve informally all discovery disputes. The commission may designate a person to assist the parties to resolve discovery issues, at the request or with the consent of the parties.

(b) *Motion to compel.* A party may file a written motion, or move orally at a prehearing conference, to compel discovery if the parties cannot resolve a dispute informally. The presiding officer will hear a motion to compel discovery at the earliest reasonable time. The presiding officer may conduct telephone hearings or conferences for the argument of discovery disputes. The presiding officer may make discovery rulings orally on the record or by written order. The presiding officer's discovery rulings are subject to review under WAC 480-07-810.

(2) **Sanctions for failure to comply.** Any party may by motion, or the commission may on its own motion, propose that sanctions be imposed if a party fails or refuses to comply with the commission's discovery rules or an oral or written order resolving a dispute under this section. The commission may impose sanctions for such violations including, but not limited to, default, dismissal, striking of testimony, evidence, or cross-examination, or monetary penalties as provided by law.

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

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-430 Prehearing conferences.** (1) **General.** The commission may require that all parties to, and all persons who seek to intervene in, a proceeding attend a prehearing conference. The following topics are proper subjects for discussion at a prehearing conference:

- (a) Identification and simplification of the issues;
- (b) The necessity or desirability of amendments to the pleadings;



(c) Establishment of a procedural schedule including, but not limited to, the need for, and timing of, prefiled testimony and exhibits;

(d) Disposition of petitions for leave to intervene;

(e) Availability of the commission's discovery rules or resolution of discovery disputes;

(f) Resolution of pending motions;

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

(h) Service requirements, including creation of a master service list and disposition of any objections to commission service of orders and notices solely in electronic form; and

(i) Any other matters that may aid in the disposition of the proceeding, whether by commission decision or by settlement.

(2) **Notice.** The commission will provide reasonable notice of the time and place established for a prehearing conference and the matters to be addressed. A party's failure to attend a prehearing conference constitutes the party's waiver of all objections to any order or ruling arising out of the conference or any agreement reached at conference, unless the party shows good cause for its failure to attend.

(3) **Oral statement or written order.** The presiding officer may make an oral statement on the record or may enter an order describing the actions taken at the prehearing conference and agreements among the parties concerning all of the matters considered.

(a) *Objections.* Parties may object to the oral statement on the record at the time the oral statement is made, or may object to any written prehearing conference order within ten days after the date the order is served. The commission will consider any objections pursuant to the procedures in WAC 480-07-810.

(b) *Results.* In the absence of a timely objection that the commission sustains, the results of the prehearing conference will control the course of the proceeding unless modified by subsequent order or decision of the presiding officer to accommodate the needs of the case.

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

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

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

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

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

(b) *Provisions for appointment of interpreter.* The initial notice of hearing will state that if a limited-English-speaking or hearing-impaired party needs an interpreter, a qualified interpreter will be appointed at no cost to the party or witness. The notice will include a form for a party to indicate whether the party needs an interpreter

and to identify the party's primary language or hearing-impaired status.

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

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

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

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

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-450 Hearing—Failure to appear.** (1) **Dismissal or default.** The commission may dismiss a party or find a party in default for failure to appear at the time and place set for hearing. The commission will implement any dismissal or default by a written order. When a party is found in default, the commission's order stating that

finding also may dispose of the issues in the proceeding, as provided by RCW 34.05.440.

(2) **Review of order of dismissal or default.** A party that a presiding officer dismisses from a proceeding or finds in default may contest the order of dismissal or default by written motion filed within ten days after service of the order. A dismissed party or party found in default may request that the order be vacated and, if the order is dispositive of the proceeding, that the proceeding be reopened for further process.

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

AMENDATORY SECTION (Amending WSR 06-16-053, filed 7/27/06, effective 8/27/06)

**WAC 480-07-460 Hearing—Exhibits, exhibit list, and cross-examination estimates.** (1) **Filing exhibits in advance.** Parties must file and serve exhibits that they intend to submit or use in the evidentiary hearing, including proposed cross-examination exhibits, in advance of the hearing. The commission or the presiding officer will establish by notice or in a prehearing conference order the number of

paper copies, if any, and deadlines for filing. In rate increase proceedings for electric, natural gas, pipeline, and telecommunications companies, the petitioner must prefile its proposed direct testimony and exhibits at the time it files its rate increase request, in accordance with commission rules.

(a) *Changes or corrections.*

(i) *Substantive changes.* Parties must seek leave from the presiding officer by written motion if they wish to file revised prefiled testimony or exhibits that include substantive changes. A party proposing such changes should submit the proposed revisions with its motion.

(ii) *Minor corrections.* A party may make minor revisions to prefiled testimony and exhibits to correct typographical errors, printing errors, and nonsubstantive changes (e.g., a change in a witness's address or employment) without leave from the presiding officer. Counsel should not ask a witness on the stand to make these corrections, but must submit an errata sheet as provided in subsection (6) of this section.

(iii) *Format requirements for revisions.* Parties that submit a revised version of any prefiled or previously admitted testimony or exhibits must prominently label the documents as "REVISED" and indicate

the date of the revision. The document's exhibit number also must include a lower case "r" at the end of the number using the format described in subsection (2) of this section (e.g., Exh. JQW-5HCTr). The revised portions must be highlighted, in legislative style or other manner that clearly indicates the change from the original submission. The header or footer of each revised page in multiple page testimony or exhibit must be labeled "REVISED" and indicate the date of the revision. Parties may indicate changes to spreadsheets by providing a description of the change and how the change affects other related spreadsheets. For revisions to spreadsheets, counsel must identify partial revisions by page and date when an exhibit is presented or offered into evidence, as appropriate.

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

(c) *Distribution at hearing.* Upon a showing of good cause for not filing and serving new exhibits, revised exhibits, or errata sheets prior to the hearing, the presiding officer may allow a party to dis-

tribute such documents at the hearing. The party must provide sufficient copies of the documents for all parties and for the commission's distribution requirements and must file the document as required in WAC 480-07-145. The presiding officer may refuse to admit into evidence any new or revised exhibits if the failure to provide them prior to the hearing impairs the ability of other parties or the commission to review and examine those exhibits during the hearing.

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

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

(i) State "Exh." followed by the sponsoring witness's initials.

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

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



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

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

Testimony or Exhibit	Marked
John Q. Witness's prefiled direct testimony	Exh. JQW-1T
First exhibit to John Q. Witness's prefiled direct testimony (nonconfidential)	Exh. JQW-2
Second exhibit to John Q. Witness's prefiled direct testimony (confidential)	Exh. JQW-3C
Third exhibit to John Q. Witness's prefiled direct testimony (nonconfidential)	Exh. JQW-4
John Q. Witness's prefiled rebuttal testimony (with portions marked highly confidential)	Exh. JQW-5HCT
First exhibit to John Q. Witness's prefiled rebuttal testimony (nonconfidential)	Exh. JQW-6

(b) *List of exhibits, table of contents, and summary of testimony.* The prefiled testimony of each witness must include a list of exhibits that accompany that testimony. Testimony that exceeds ten pages in length must include a table of contents and a short summary at the beginning of the testimony.

(c) *Form of testimony and exhibits.* All prefiled testimony and exhibits must be paginated, and the lines on each page must be numbered to facilitate transcript or exhibit references. All prefiled testimony and exhibits must be double-spaced and use 12-point type in

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

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

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

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

(ii) Place a hyphen after the witness's initials and insert the next number in sequence after the number of the last exhibit sponsored by, or associated with, that witness. If more than two parties are actively participating in a docket, each party should insert an underscored blank space after the initials of a witness who is likely to be cross-examined by more than one party to avoid overlapping numbers with other parties' cross-examination exhibits. The presiding officer will subsequently assign numbers to all cross-examination exhibits for that witness when compiling the exhibit list.

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

(iv) Place the capital letter "X" after the number (or underscored blank space), "C," or "HC" whichever is last. For example, if the last exhibit attached to a witness's prefiled testimony is Exh. JQW-7, the first cross-examination exhibit for that witness should be marked "Exh. JQW-8X" (or "Exh. JQW-8CX" if the exhibit includes information designated as confidential).

(b) *Format.* All cross-examination exhibits must be filed and served electronically in .pdf (adobe acrobat or comparable software) format. The commission may also require the parties to file and serve paper copies of the exhibits.

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

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

(5) **Cross-examination time estimates.** Each party must provide a list of witnesses the party intends to cross-examine at the evidentiary hearing and an estimate of the time that party anticipates the cross-examination of that witness will take. Parties should not file these witness lists or cross-examination time estimates but must pro-

vide them in electronic format directly to the presiding administrative law judge and the other parties by the deadline established in a prehearing conference order or notice.

(6) **Errata.** Each party must file with the commission and serve on all parties a list of any corrections or revisions to its witnesses' prefiled testimony and exhibits. Each correction or revision must be identified separately by exhibit number, page, and line (or row, column, cell, etc., as applicable) and must specify the text to be revised, added, or deleted. The presiding officer will establish in a prehearing conference order or notice the deadlines for this filing.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-16-053

(Docket A-050802, General Order R-536), § 480-07-460, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-460, filed 11/24/03, effective 1/1/04.]

AMENDATORY SECTION (Amending WSR 06-16-053, filed 7/27/06, effective 8/27/06)

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

(1) **Starting times.** The presiding officer will strictly observe starting times. The proceeding may go forward in the absence of counsel, parties, or witnesses who are late. Counsel may advise the bench by message to the records center when an emergency prevents timely arrival.

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

(3) **Matters to be handled at beginning of session.** Parties must notify the presiding officer no later than the start of the hearing session of any motion that a party anticipates may be presented during the hearing, such as one that may require foundation regarding the ad-

missibility of evidence. The presiding officer will give the parties an appropriate opportunity to state and argue any motions related to evidence or to the procedural course of the hearing.

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

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

(a) Party having the burden of proof;

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

(c) Parties opposing the party having the burden of proof.

The presiding officer may direct a modified order of presentation considering the needs of the parties, the commission, the proceeding, and the parties' preferences.

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

(7) **Addressing the presiding officer or witnesses.** All counsel and other party representatives, including parties that are not represented, must address all comments, objections, and statements on the record to the presiding officer and not to other counsel or parties.

Questions on the record that concern the substance of testimony or exhibits sponsored by a witness must be addressed to the witness and not to counsel or other parties.

(8) **Resolving matters off the record.** Counsel or other party representatives who request to have discussions with the presiding officer off the record must ask leave to go off the record and state the purpose for the request. Extended colloquies regarding procedural issues may be conducted off the record, but will be summarized for the record by the presiding officer subject to comments from party representatives.

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

(10) **Cross-examination.** The presiding officer will limit cross-examination to one round unless good cause exists for allowing additional questions. Witnesses must not be asked to perform detailed calculations or extract detailed data while on the stand. Any such ques-



tions must be provided to the witness at least two business days prior to the date the witness is expected to testify, must ask the witness to provide the answer for the record later in the hearing session, or must provide an answer and ask the witness to accept it "subject to check." Witnesses must not be asked to accept information subject to check if the information is included in a prefiled exhibit or testimony, or is already in evidence. When a witness accepts information subject to check, the witness must perform the check as soon as practicable. A response given subject to check will be considered accurate unless:

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

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

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

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

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-16-053

(Docket A-050802, General Order R-536), § 480-07-470, filed 7/27/06, effective 8/27/06; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-470, filed 11/24/03, effective 1/1/04.]

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-490 Hearing—Exhibits and documentary evidence. (1)**

**Designation of part of document as evidence.** A party that offers only

a portion of a document for admission into the evidentiary record must designate that portion as a separate exhibit. If irrelevant matter included in the original document would unnecessarily encumber the record, the presiding officer may admit only the offered portion into evidence but will allow other parties to offer other portions.

(2) **Government records.** A party may offer into evidence an official document prepared and issued by any governmental authority that is not publicly available or readily accessible by all parties in the form of a certified copy.

(3) **Objections.** Any evidence offered is subject to appropriate and timely objection. The presiding officer need not specifically ask each party whether that party objects to an offer of evidence or other motion or proposed action. Parties that have objections must state them. Failure to object constitutes a waiver of the right to object.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-490, filed 11/24/03, effective 1/1/04.]

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-495 Hearing—Rules of evidence; official notice. (1)**

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

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

**(2) Official notice.**

(a) The commission may take official notice of:

(i) Any judicially cognizable fact, examples of which include, but are not limited to, the following:

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

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

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

(ii) Technical or scientific facts within the commission's specialized knowledge;

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

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

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

(c) The presiding officer will notify parties of documents or information of which the commission takes official notice and the source of that information. The presiding officer will afford parties an opportunity to contest facts and material of which the commission takes official notice. The presiding officer may require a party proposing that the commission take official notice of a document or information to provide copies of that document or information for the record and to all other parties.

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

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-07-498 Hearing—Public comment.** (1) **General.** The commission will receive as a bench exhibit any public comment submitted by nonparties in connection with an adjudicative proceeding. The exhibit will be treated as an illustrative exhibit that expresses public sentiment received concerning the pending matter. The commission may receive into evidence documents a member of the public presents that are

exceptional in their probative value after the commission provides the parties an opportunity to respond to those documents.

(2) **Public comment hearing.** The commission may convene one or more public comment hearing sessions to receive oral and written comments from members of the public who are not parties in the proceeding. When the commission conducts a public comment hearing, a presiding officer will make an opening statement explaining the purpose of the hearing and will briefly summarize the principal issues in the matter. The presiding officer will administer an oath to those members of the public who indicate a desire to testify concerning their views on the issues. The presiding officer will call each member of the public who wishes to testify, will inquire briefly into the identity and interests of the witness, and will provide an opportunity for a brief statement. Typically, public witnesses may expect to have three to five minutes to make an oral statement. A public witness may supplement his or her oral statements with written comments signed by the witness.

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

