

**PROCEDURAL RULES CLEAN UP RULEMAKING – DOCKET A-072162**

**DRAFT CHANGES TO SELECTED PROCEDURAL RULES - WAC 480-07  
Second Discussion Draft Accompanying Supplemental CR-101  
March 21, 2008**

- WAC 480-07-110 Exemptions from and modifications to commission rules; conflicts involving rules.**
- WAC 480-07-125 Physical address; telephone; fax; web portal; e-mail; internet**
- WAC 480-07-140 Communicating with the commission**
- WAC 480-07-145 Filing documents in adjudicative proceedings**
- WAC 480-07-160 Confidential information.**
- WAC 480-07-180 Incorporated and referenced materials in commission rules and orders.**
- WAC 480-07-307 Probable cause determinations.**
- WAC 480-07-395 Pleadings, motions, and briefs — Format requirements; citation to record and authorities; verification; errors; construction; amendment.**
- WAC 480-07-510 General Rate Proceedings – Electric, natural gas, pipeline and telecommunications companies.**
- WAC 480-07-630 Telecommunications companies — Arbitration under the Telecommunications Act of 1996.**
- WAC 480-07-710 Mediation.**
- WAC 480-07-900 Open Public Meetings.**
- WAC 480-07-903 Delegation of authority to the executive secretary.**
- WAC 480-07-904 Delegation of authority to the executive secretary to decide certain matters.**
- WAC 480-07-905 Delegation of authority to executive secretary to enter ex parte orders.**

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**WAC 480-07-110 Exemptions from and modifications to commission rules; conflicts involving rules.**

(1) **Exceptions and modifications.** The commission may grant an exemption from or modify the application of its rules in individual cases if consistent with the public interest, the purposes underlying regulation, and applicable statutes. The commission may modify the application of procedural rules in this chapter during a particular adjudication consistent with other adjudicative decisions, without following the process identified in subsection (2) of this section.

(2) **Process.**

(a) **How to request an exemption to or modification of a rule.** To request a rule exemption or modification, a person must file with the commission a written petition

identifying the rule for which an exemption is sought, and provide a full explanation of the reason for requesting the exemption. Telecommunications companies, gas companies or electric companies filing petitions for exemption under this section shall provide a copy of the request with the Public Counsel section of the Attorney General's Office by mail or email, within one business day of the day the request is filed with the commission.

**COMMENTS:** Public Counsel proposed in its first set of comments that the rule be modified to require the person requesting an exemption to serve a copy on Public Counsel as follows:

To request a rule exemption or modification, a person must file with the commission a written petition identifying the rule. At the time of the filing, the person requesting the exemption or modification must serve a copy of the petition on Public Counsel.

- Avista does not object to Public Counsel's request for copies of petitions for exemptions filed with the Commission.
- WITA does not oppose Public Counsel's proposed language, but notes that including the requirement for every request may be "procedural overkill" and Public Counsel should work with the industries to receive only those waiver requests Public Counsel truly wants to receive.
- Public Counsel in its second set of comments modifies its recommendation to include only those related to telecommunications, electric and gas industry requests.

**REVISED PROPOSAL:** Public Counsel's modified recommendation is acceptable and no stakeholder objects to the proposal. The rule should be amended consistent with Public Counsel's modified request.

(b) **Commission process.** The commission will assign the petition a docket number, if it does not arise in an existing docket, and will schedule the petition for consideration at one of its regularly scheduled open meetings or, if appropriate under chapter 34.05 RCW, in an adjudication. The commission will notify the person requesting the exemption, and other interested persons, of the date of the open meeting or hearing when the commission will consider the petition.

(c) **Standard for consideration.** ~~The commission may consider~~ The standard for consideration is the public interest standard. Factors the commission may consider include whether application of the rule would impose undue hardship on the requesting person, of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule would be contrary to the underlying purposes of the rule.

**COMMENTS:** Public Counsel proposed in its first set of comments that the rule be modified to include language to add a heightened standard for rule exemptions:

The commission may consider whether application of the rule would impose undue hardship on the requesting person, of a degree or a kind different from hardships imposed on other similarly situated person, and whether the effect of applying the rule would be contrary to the underlying purpose of the rule. The commission will consider whether the request for an exemption or modification: (1) undermines the original purpose or intent of the rule; (2) creates hardship for those customers who are beneficiaries of the rule; (3) restates arguments or objections that the requesting party made during the rulemaking adopting the challenged rule; or (4) results in undue discriminatory treatment of similarly situated customers.

- Qwest opposes Public Counsel’s proposal to adopt a heightened standard for rule exemptions. Qwest asserts that the existing language in WAC 480-07-110 prescribes appropriate considerations, and does not preclude the Commission from applying other factors.
- Public Counsel in its second set of comments (responding to comments at Bench-Bar Conference) asserts the existing standard has “an unduly narrow focus, referring only to the interests of the person requesting the modification,” and a balance is required.
- Verizon opposes Public Counsel’s proposal as unnecessary as the “consistent with the public interest” standard in WAC 480-07-110(1) is sufficient and gives the Commission discretion to include other factors, such as those included in Public Counsel’s proposal. In addition, Verizon asserts that Public Counsel’s mandated list may result in the Commission not being able to consider other factors that are not listed.
- Avista opposes Public Counsel’s suggestion, asserting that the Commission’s broad discretion under the current public interest standard is sufficient.
- WITA opposes Public Counsel’s proposed language, asserting that the conditions and criteria that Public Counsel proposes are already included within the existing public interest standard. WITA argues that simply because a party raised a concern in a rulemaking does not preclude the party from seeking an exemption for that reason or preclude the Commission from considering the exemption.

**REVISED PROPOSAL:** Regarding WAC 480-07-110(2)(c), the commission observes that the current rule states only that the commission “may” evaluate these considerations; *i.e.*, the list is not exhaustive. WAC 480-07-110(1) identifies the “public interest” standard, which encompasses all relevant factors. For example, if a waiver would result in “undue discrimination,” that would likely violate RCW 80.28.100. It is not necessary to place such a consideration in the rule, as Public

Counsel suggests.

Moreover, Public Counsel is not correct that the list of considerations in subsection (2)(c) focuses solely on the person seeking the waiver, because the phrase “contrary to the underlying purposes of the rules” encompasses the impact of the rule on others. Public Counsel cites no example where the commission has granted a waiver and used the rule as a basis for refusing to consider the factors Public Counsel urges the commission to include. Consequently, the concerns Public Counsel addresses regarding subsection (2)(c) are not well taken.

Nonetheless, the Commission will re-emphasize that the public interest standard applies, and the listed considerations are not exclusive, by changing the first part of (2)(c) to read:

**“Standard for consideration.** The standard for consideration is the public interest standard. Factors the commission may consider include  
~~The commission may consider whether the whether the application of~~  
the rule would ....”.

(d) **Disposition.** The commission will enter an order granting or denying the petition, or setting it for hearing.

(3) **Conflicts involving rules.** In the event of conflict between these rules and statutes, or rules in other chapters of Title 480 of the Washington Administrative Code, applicable to specific types of companies regulated by the commission or to others who may conduct business with the commission, or to particular proceedings, those statutes or special rules govern.

(4) **Emergency Situations.** In the event of a state of emergency, and for good cause shown, the commission may enter an order on its own motion, or upon the motion of any person or public service company affected by the rule, exempting public service companies, the commission and all affected persons, from complying with the requirements of specific rules in this Title.

**DRAFT PROPOSAL.** In the event of a statewide or localized emergency, such as an earthquake, volcanic eruption, or pandemic flu, the Commission may have a significant staffing shortage and may not be able to meet certain time deadlines or enforce certain rules. Because a Governor’s declaration of a state of emergency or Executive Order prohibiting compliance with certain statutes may not relieve the Commission of its obligations relative to certain rules, the Commission may need to enter an order exempting itself, public service companies and others from complying with certain rules in Title 480 WAC in such an emergency.

**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Public Counsel, Verizon, Avista, and WITA support the Commission's draft proposal.

**WAC 480-07-125 Physical address; telephone; fax; web portal; e-mail; internet.**

The information included in this section is current at the time of rule adoption, but may change. Current information and additional contact information are available on the commission's internet site, in person at the commission offices, or by a telephone call to the commission's main public number.

Location and mailing address:	Washington Utilities and Transportation Commission  1300 S. Evergreen Park Drive S.W. P.O. Box 47250 Olympia, WA 98504-7250
Telephone:	
Public number	360-664-1160
Records center number	360-586664-1234
Consumer inquiries, comments and informal complaints	1-800-562-6150
Fax:	
Public and records center	360-586-1150
Web portal	<a href="http://www.wutc.wa.gov/e-filing">www.wutc.wa.gov/e-filing</a>
Records center e-mail	<a href="mailto:records@wutc.wa.gov">records@wutc.wa.gov</a>
Internet web site	<a href="http://www.wutc.wa.gov">www.wutc.wa.gov</a>

**DRAFT PROPOSAL.** This rule is updated to reflect the current web addresses: [utc.wa.gov](http://utc.wa.gov), not [wutc.wa.gov](http://wutc.wa.gov), and to correct the prefix for the phone number for the Records Center.

**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Public Counsel, Verizon, Avista, and WITA support the Commission's draft proposal.

## WAC 480-07-140 Communicating with the commission

(1) **Scope of rule.** This rule includes general requirements for effective communication with the commission.

The commission encourages use of the commission's records center web portal for filing and submitting documents with the commission. Customers of regulated companies who have a complaint about their service provider are encouraged to contact the commission as described in WAC [480-07-910](#). Anyone wishing to comment on a matter before the commission may submit comments by telephone, letter, fax, e-mail or by using the comment form available on the commission's web site.

(a) **Electronic filing, limitations.** You may *file* documents electronically using the commission's records center web portal (see WAC [480-07-125](#)) if you are submitting documents that are not part of an adjudicative proceeding. Examples include registration applications, tariffs, contracts, ~~price lists~~, rule-making comments, and comments on open meeting items. Electronic filing means the commission accepts the electronic version of the document as the official filing and does not require a paper copy of the documents.

**DRAFT PROPOSAL.** The references to telecommunications company price lists in subsection (1)(a) and (e) are deleted, now that companies are no longer required to maintain price lists.

**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Public Counsel, Verizon, Avista, and WITA support the Commission's draft proposal.

(b) **Electronic submission, adjudications.** You may *submit* documents electronically using the commission's records center web portal (see WAC [480-07-125](#)) or e-mail if you are submitting documents in an adjudicative proceeding. Electronic submission means the commission allows submission of electronic versions of documents, but requires a paper copy of the document as the official filing. Except for testimony and exhibits filed in general rate cases, parties may submit one paper copy of documents of less than 25 pages, but must follow the filing requirements in WAC 480-07-510(1) (19 copies) and WAC 480-07-150(3)(a) (12 copies) for documents exceeding 25 pages .

**DRAFT PROPOSAL.** The Records Center requires only one paper copy of adjudicative documents containing less than 25 pages, and distributes these documents electronically within the Commission. The suggested change amends the rule to cross reference other rules and numbers of copies to be filed (19 in rate cases – see WAC 480-07-510(1), 12 in all other adjudications – see WAC 480-07-150(3)(a)).

**COMMENTS:** Public Counsel recommends the Commission allow electronic filing in all proceedings, including adjudications, and eliminate the requirement of special permission to file paper copies one day after the deadline to promote efficiency. Public Counsel argues the Commission would not need to consider this at every prehearing conference on a piecemeal basis.

- Qwest supports Public Counsel’s proposal to routinely allow electronic filing of documents with hard copies provided the next day, to the extent allowed under the APA.
- Public Counsel (2<sup>nd</sup> comments) reiterates its recommendation that rules on electronic filing in WAC 480-07-140 and WAC 480-07-145 be amended to authorize electronic filing. Public Counsel also requests -145 be amended to allow hard copy filing by first class mail rather than next day delivery to avoid the expense of overnight mail or messenger delivery.
- Verizon supports Public Counsel’s suggestion to allow electronic filing with next-day filing of paper in all proceedings, including adjudications to avoid the unnecessary step of seeking special permission.
- WITA supports Public Counsel’s proposal to the extent it is statutorily possible.

**REVISED PROPOSAL:** To address concerns about efficiency of submitting documents electronically to the Commission in adjudicative proceedings, the Commission suggests that WAC 480-07-145(6)(a) be modified to allow electronic submission in each proceeding without requiring approval of the presiding officer. This proposal does not require amendment to WAC 480-07-140(1)(b). The question of “filing” documents with the Commission electronically is an issue that will require changes in statutes, rules, and Commission process, and should be considered in a future rulemaking. Requirements in RCW 34.05.010 and RCW 80.04.075 require filing or service by U.S. mail or personal delivery. There are detailed requirements in RCW 19.34 and WAC 434-180 for using electronic signatures when using electronic documents that the Commission would have to consider in allowing electronic filing.

(c) **Electronic filing of public records requests.** You may file requests for public records electronically using the commission's records center web portal (see WAC [480-07-125](#)). You do not have to file a paper copy of the public records request if it is filed electronically.

(d) **Use of e-mail for electronic filing or submission.** The commission encourages you to use its records center web portal for filing or submitting electronic documents, because it is more reliable and secure than e-mail. If you are unable to use the records center web portal to file or submit documents, the commission will accept a filing or submission received via e-mail addressed to the records center.

(e) You must also comply with other requirements when submitting certain documents, as shown below.

Submissions in these dockets or filings:	Must comply with these rules:
Rule-making dockets	This rule, WAC <a href="#">480-07-143</a> , and Part II of this chapter
Adjudicative dockets	This rule, WAC <a href="#">480-07-145</a> , and Part III of this chapter, <i>plus</i> any requirements in the specific adjudication
Utility tariffs and <del>telecommunications price lists and contracts</del>	This rule, chapter <a href="#">480-80</a> WAC, and WAC <a href="#">480-07-14X</a>
Transportation tariffs and time schedules	This rule, WAC <a href="#">480-07-14X</a> ; and
(i) For auto transportation companies	Chapters <a href="#">480-30</a> and <a href="#">480-149</a> WAC;
(ii) For commercial ferry companies	Chapters <a href="#">480-51</a> and <a href="#">480-149</a> WAC;
(iii) For solid waste collection companies	Chapter <a href="#">480-70</a> WAC
For public records requests	Chapter <del>42.17</del> <a href="#">42.56</a> RCW and chapter <a href="#">480-04</a> WAC

**COMMENTS AND REVISED PROPOSAL:** WITA, counsel at the February 6, 2008, Bench Bar Conference and Don Trotter, AAG, all noted that the references to the Public Records Act in the chapter are incorrect. The correct reference is to RCW 42.56. The rule should be amended to reflect the correct reference.

(2) **Content of letters and e-mail messages to the commission.** Letters and e-mail messages to the commission should include only one subject.

(3) **Where to send letters and e-mail messages.** WAC [480-07-125](#) includes the commission's mailing address and other contact information current at the time of rule publication. Persons who communicate with the commission are encouraged to do so by e-mail to the commission's records center. The commission's internet site includes current and additional contact information.



(4) **Cover letters.** Persons submitting or filing documents with the commission must include a cover letter with the filing, unless the letter or document is one page and includes the information identified in subsection (5) of this section.

(5) **Identification of sender; identification of permit, license, or certificate; identification of proceeding.** The following requirements will make sure your message to the commission is delivered promptly to the person or persons who need to receive it, and to allow a prompt response. If you do not include the necessary information, we may not be able to promptly handle your message or provide a prompt response.

(a) **Identification of sender.** All persons who communicate with the commission must provide their full name and are asked to provide a mailing address, telephone, fax, and e-mail address to assist the commission in responding. Persons who communicate with the commission on behalf of a business, organization, or other entity must state their name and title or position, and the name of the entity on whose behalf the communication is sent, in addition to the contact information described above.

(b) **Identification of permit, license, or certificate held by sender.** Any person or entity that holds a commission-issued permit, license, or certificate must identify the permit, license, or certificate number (if any), including the exact name under which the authority is held, when communicating with the commission concerning the permit, license, or certificate.

(c) **Identification of proceeding.** Persons who communicate with the commission concerning a formal commission proceeding (e.g., rule-making or adjudication) must identify the proceeding to the best of their ability, including the docket number and name of the proceeding, if known.

(6) **Electronic file format requirements.** The commission requires electronic versions of all documents filed with the commission, including confidential versions of documents that include confidential information.

(a) **Acceptable media.** You may submit documents electronically through the commission's records center web portal, by e-mail file attachment addressed to the commission's records center, or submitted to the records center on a 3 1/2 inch IBM formatted high-density disk or compact disc (CD) labeled with the docket number of the proceeding, if a number has been assigned, the name of the entity and the name of the individual submitting the document, and a description of the contents (e.g., "direct evidence," "motion to dismiss," etc.).

(b) **Acceptable format.** Electronic versions of all documents, including confidential versions of documents that include confidential information, must be filed in .pdf

(Adobe Acrobat) format, supplemented by a separate file in .doc, .docx, .docm (MS Word), .wpd (WordPerfect), .xls, .xlsx, .xslm (Excel), or .ppt, pptx, .pptm (Power Point) formats, so that spreadsheets displaying results of calculations based on formulas include all formulas, and do not include locked, password protected or hidden cells.

**DRAFT PROPOSAL.** The Commission no longer uses WordPerfect. While the Records Center is able to open documents in the most current version of WordPerfect, the conversion usually changes the formatting.

**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Public Counsel, Verizon, Avista, and WITA support the Commission's draft proposal.

**REVISED PROPOSAL:** The Commission has now converted from the Microsoft Office 2003 suite of programs to Microsoft Office 2007. Given this software change, the rule should be modified to reflect that the Commission will accept documents filed with the following suffixes: .docx, .docm, .xlsx, .xslm, .pptx, and .pptm.

(i) The following documents are exempt from the requirement in (b) of this subsection for formatting other than .pdf (Adobe Acrobat):

(A) Documents not created by, for, or on behalf of a party to or a witness in the proceeding for which no version in the required formatting is available; and

(B) Published, copyrighted material and voluminous material not originally prepared in the required format.

(ii) Any person who requests a document to be provided in a format other than .pdf (Adobe Acrobat), whose request is denied, may request relief from the commission.

(ii) Confidential and redacted versions.

(A) Parties must separately submit and clearly identify electronic versions of confidential and redacted documents when submitting documents via e-mail or the commission's Web portal.

(B) Redacted versions of electronic documents that mask confidential information should be filed exclusively in .pdf format. Parties who cannot create Adobe Acrobat files directly must provide a copy of the document converted to Adobe Acrobat via scanning or other available technology.

**DRAFT PROPOSAL.** To avoid confusion and unintentional posting and release of confidential information on the Commission's Records Management System (RMS), parties should be required to electronically submit confidential and redacted data in separate clearly identified e-mails or Web portal submissions.

**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Public Counsel, Verizon, Avista, and WITA support the Commission's draft proposal.

(c) **File naming conventions.** Electronic files must be named in a way that describes the file contents. Parties should use the format identified in the following examples, identifying the docket number, the nature of the document, and the party submitting it:

Testimony	UE-010101 Smith direct (name of party) (date) UT-020202 Jones rebuttal attachment 1 (name of party) (date)
Motions	UG-030303 motion to dismiss (name of party) (date) UW-040404 answer to motion to dismiss (name of party) (date)
Correspondence	TG-010203 (name of party) request for continuance (date)

(d) **Acceptable organization.** Each party must submit all files to meet a single deadline at the same time and in the same message or diskette. When a party submits two or more files at the same time, the files must be organized into folders, and the party must provide a printed index. The index may be included in a cover letter or provided as an attachment to a cover letter. The index also must be provided in the form of an electronic file.

**Example:**

Folder and diskette name	I. U-020304 (name of party) direct evidence (date)
Subfolders	A. U-020304 (name of party) (name of witness) direct (date) B. U-020304 (name of party) (name of witness) direct (date)

- |       |   |
|-------|---|
| Files | 1. U-020304 (name of witness) direct (name of party) (date)       |
|       | 2. U-020304 (name of witness) direct att 1 (name of party) (date) |

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

(1) **Scope of rule.** This section governs communications to the commission by parties in adjudicative proceedings. These rules are in addition to the general rules for communicating with the commission in WAC 480-07-140 and any requirements in a specific adjudication.

(2) **Mail or hand delivery service is required for all documents.** Parties to adjudicative proceedings before the commission must file original, signed documents and paper copies by mail or hand delivery (e.g., courier delivery service) as provided in this rule to satisfy official filing requirements and meet the commission's administrative needs. The commission ~~may provide~~ for the expedited exchange of documents among parties and the commission by e-mail and fax transmission ~~when necessary for process requirements in individual~~ in adjudicative proceedings.

**COMMENTS:** Public Counsel recommends the Commission allow electronic filing in all proceedings, including adjudications, and eliminate the requirement of special permission to file paper copies one day after the deadline to promote efficiency. Public Counsel argues the Commission would not need to consider this at every prehearing conference on a piecemeal basis.

- Qwest supports Public Counsel’s proposal to routinely allow electronic filing of documents with hard copies provided the next day, to the extent allowed under the APA.
- Public Counsel (2<sup>nd</sup> comments) reiterates its recommendation that rules on electronic filing in WAC 480-07-140 and WAC 480-07-145 be amended to authorize electronic filing. Public Counsel also requests WAC 480-07-145 be amended to allow hard copy filing by first class mail rather than next day delivery to avoid the expense of overnight mail or messenger delivery.
- Verizon supports Public Counsel’s suggestion to allow electronic filing with next-day filing of paper in all proceedings, including adjudications to avoid the unnecessary step of seeking special permission.
- WITA supports Public Counsel’s proposal to the extent it is statutorily possible.

**REVISED PROPOSAL:** The Commission supports the suggestion to allow electronic submission in all proceedings without first seeking approval from the presiding officer, and suggests this subsection be amended to reflect the suggested

(a) ***When deemed received/ filed.*** A document submitted in an adjudicative proceeding is officially received for filing only when the original document, including the required certificate of service under subsection (6) of this section, and the required number of copies, are physically received at the commission's records center by mail or in-hand delivery and stamped with the date and time. The date-stamped time will determine whether a document meets any deadline that applies and will determine the timing of any later deadlines based on filing. Documents that are delivered to the commission's records center after 5:00 p.m. are not considered officially received or filed until the next business day when they are stamped with the date and time.

(b) ***Exception for documents offered and received at hearing.*** When authorized by the presiding officer in an adjudicative proceeding before the commission, a document may be officially received for purposes of the proceeding when the presiding officer receives the document for the record at hearing. The presiding officer may also require that a copy be filed in the commission records center.

(c) ***Where to mail/deliver.*** All written communications mailed or hand-delivered to the commission must be addressed to the commission's secretary at the address specified in WAC 480-07-125.

(d) ***Filings must be supplemented by an electronic version of the document.*** Parties filing pleadings, motions, prefiled testimony and exhibits, and briefs must supplement their filing by submitting the document in electronic form, as specified in WAC 480-07-140(5), unless excused from the obligation by the presiding officer.

**(3) Number of copies; failure to file sufficient number of copies.**

(a) ***Number of copies.*** Unless the commission specifies a different number of copies, every pleading, motion, response, and brief submitted to the commission by mail or courier must be filed with twelve copies. A party for whom providing the required number of copies would be a hardship may describe the hardship and request permission to file fewer copies.

(b) ***Failure to file sufficient number of copies.*** If a person files fewer than the required number of copies of a document, the commission may reject the filing or the commission may make the additional copies for distribution and processing within the commission. If the commission makes copies to meet the total number required, the commission will bill the filing person at a rate of thirty cents per page, plus sales tax. This rate compensates for the loss of the worker's attention to assigned duties, the unscheduled use of equipment, and the cost of materials.

**(4) Filing and service are separate requirements.** Filing documents with the commission under this rule and service of the documents to parties under WAC 480-

07-150 are both required in all adjudicative proceedings. Filing a document with the commission does not constitute service upon the assistant attorney general or any other party. Likewise, service upon the assistant attorney general does not constitute a filing with the commission.

(5) **Service and certificate of service are required.** Filing a pleading, motion, response, or brief with the commission in an adjudicative proceeding is not complete unless service has been made upon all parties to the proceeding pursuant to WAC 480-07-150. Service must be confirmed by submitting with the filing a valid certificate of service, or its equivalent, as provided in WAC 480-07-150(9).

(6) **Web portal, e-mail or fax transmission may be used to expedite the filing process, when authorized.**

(a) ~~When permitted; paper copy required.~~ The presiding officer may, at a prehearing conference or by notice or order, provide a one-day extension of the paper filing requirement by authorizing submission. Parties may submit documents to the commission electronically through the web portal, e-mail or fax for delivery of documents on the date established for paper filing under the procedural schedule in an adjudicative proceeding, subject to the following conditions:

**COMMENTS:** Public Counsel recommends the Commission allow electronic filing in all proceedings, including adjudications, and eliminate the requirement of special permission to file paper copies one day after the deadline to promote efficiency. Public Counsel argues the Commission would not need to consider this at every prehearing conference on a piecemeal basis.

- Qwest supports Public Counsel's proposal to routinely allow electronic filing of documents with hard copies provided the next day, to the extent allowed under the APA.
- Public Counsel (2<sup>nd</sup> comments) reiterates its recommendation that rules on electronic filing in WAC 480-07-140 and WAC 480-07-145 be amended to authorize electronic filing. Public Counsel also requests WAC 480-07-145 be amended to allow hard copy filing by first class mail rather than next day delivery to avoid the expense of overnight mail or messenger delivery.
- Verizon supports Public Counsel's suggestion to allow electronic filing with next-day filing of paper in all proceedings, including adjudications to avoid the unnecessary step of seeking special permission.
- WITA supports Public Counsel's proposal to the extent it is statutorily possible.

**REVISED PROPOSAL:** The Commission supports the suggestion to allow electronic submission in all proceedings without first seeking approval from the presiding officer. To address concerns about efficiency of submitting documents electronically to the Commission in adjudicative proceedings, the Commission

suggests that WAC 480-07-145(6)(a) be modified to allow electronic submission in each proceeding without requiring approval of the presiding officer. The Commission declines the suggestion to amend the rule to allow submission of paper copies by First Class U.S. mail instead of delivery the following business day. Staff requires the paper copies be filed as soon as possible in many cases to allow them to efficiently review and act on the information in the filing. Delaying filing of paper copies would increase copying costs for the agency.

The question of “filing” documents with the Commission electronically is an issue that will require changes in statutes, rules, and Commission process, and should be considered in a future rulemaking. Provisions in RCW 34.05.010 and RCW 80.04.075 require filing or service by U.S. mail or personal delivery. There are detailed requirements in RCW 19.34 and WAC 434-180 for using electronic signatures when using electronic documents that the Commission would have to consider in allowing electronic filing.

(i) *Timing.* Electronic submissions must be completed by 3:00 p.m. on the date established for filing. The commission encourages the use of the web portal rather than via e-mail or fax.

(ii) *Paper copy required.* The commission must physically receive the original and required number of copies by 12:00 noon on the first business day following the filing deadline established under the procedural schedule.

(iii) *Exact copy is required.* The original and paper copies of the document delivered to the commission on the day following the filing deadline must conform exactly in form and content to the electronic version or the document will not be considered to have been timely filed and may be rejected on that basis.

~~—(iv) *Authorization for electronic submission must be indicated.* If you submit electronic documents to the commission through the commission's records center web portal, by e-mail message or by fax transmission on a filing deadline date without providing the original document by that date, you must include an electronic message or fax cover sheet that states the authority to submit the document electronically through the web portal, by e-mail, or fax transmission without simultaneously filing a paper copy.~~

**REVISED PROPOSAL:** In response to Public Counsel’s suggestion to allow electronic submission in all proceedings without first seeking approval from the presiding officer, the Commission suggests this subsection be deleted and language included in the following subsection to require a courtesy copy be e-mailed to the presiding officer at the time the electronic document is submitted to the Commission.

(v) *Simultaneous delivery to all parties and presiding officer is required.* All electronic documents submitted to the commission through the web portal, by e-mail message or fax transmission on a filing deadline date must be simultaneously delivered to all parties by e-mail or fax. ~~At the discretion of the presiding officer, you may be required to~~ must also provide courtesy copies via e-mail to the presiding officer, ~~commission staff, or others.~~ Service by other required means is not excused, subject to the requirements of WAC 480-07-150.

**REVISED PROPOSAL:** In response to Public Counsel's suggestion to allow electronic submission in all proceedings without first seeking approval from the presiding officer, the Commission suggests this subsection be amended to require a courtesy copy be e-mailed to the presiding officer at the time the electronic document is submitted to the Commission.

(b) *Where to send web portal or e-mail message or fax transmission.* Persons using the commission's records center web portal to submit filings electronically should access the following web page: [www.wutc.wa.gov/e-filing](http://www.wutc.wa.gov/e-filing). All e-mail and fax transmissions made under this rule should be directed to the commission's records center. Courtesy or informational copies may be sent to other e-mail addresses for the presiding officer or other individual commission employees. When a person submits a document through the web portal, by e-mail or fax, the document should not be sent more than once except to cure transmission or receiving errors.

**REVISED PROPOSAL:** The rule should be modified to reflect that the Commission's Web site address is now [www.utc.wa.gov](http://www.utc.wa.gov), instead of [www.wutc.wa.gov](http://www.wutc.wa.gov).

(c) *When deemed received.* A document submitted through the commission's records center web portal is deemed received only when the sender receives notification from the commission that the document has been received. A document submitted by e-mail or fax is deemed received when the entire document successfully reaches the commission's records center electronic mailbox or fax machine. Documents submitted electronically are not considered officially received or filed until the commission receives the original and paper copies the next business day, when they are stamped with the date and time received.

(7) **Additional rules regarding adjudicative proceedings.** Rules relating to general rate proceedings (subpart B of this chapter) and abbreviated adjudicative proceedings (subpart C of this chapter) govern filing requirements in those proceedings.



**WAC 480-07-160 Confidential information.** The commission will provide special handling and limited access to confidential information submitted in compliance with this rule. This rule applies to any information submitted under a claim of confidentiality under RCW 80.04.095. Title 81 RCW does not contain a similar statute. See also, WAC 480-07-420 regarding protective orders in adjudicative proceedings.

**DRAFT PROPOSAL.** The rule should notify parties filing confidential information that Title 81 does not offer the same protection as Title 80 in RCW 80.04.095..

**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Public Counsel, Verizon, Avista, and WITA support the Commission's draft proposal.

(1) Implementation.

(a) *Designated official.* The commission's secretary is the designated official responsible for the commission's compliance with the Public Records Act, chapter ~~42.17~~ 42.56 RCW, and for the implementation of this rule. The secretary may designate one or more persons to serve as public records officer to assist in the implementation and application of this rule.

**COMMENTS AND REVISED PROPOSAL:** WITA, counsel at the February 6, 2008, Bench Bar Conference and Don Trotter, AAG, all noted that the references to the Public Records Act in the chapter are incorrect. The correct reference is to RCW 42.56. The rule should be amended to reflect the correct reference.

(b) *Provider.* Any person who submits information to the commission or commission staff under a claim of confidentiality pursuant to this rule is a "provider," as that term is used in this rule.

(c) *Requester.* Any person who submits a request for public records under the Public Records Act, chapter ~~42.17~~ 42.56 RCW, or a data request in an adjudicative proceeding is a "requester," as that term is used in this rule.

**COMMENTS AND REVISED PROPOSAL:** WITA, counsel at the February 6, 2008, Bench Bar Conference and Don Trotter, AAG, all noted that the references to the Public Records Act in the chapter are incorrect. The correct reference is to RCW 42.56. The rule should be amended to reflect the correct reference.

(2) Confidential information defined. Confidential information is information that meets any of the following criteria:

(a) Information protected from inspection or copying under an exemption from disclosure requirements under the Public Records Act, chapter ~~42.17~~ 42.56 RCW.

**COMMENTS AND REVISED PROPOSAL:** WITA, counsel at the February 6, 2008, Bench Bar Conference and Don Trotter, AAG, all noted that the references to the Public Records Act in the chapter are incorrect. The correct reference is to RCW 42.56. The rule should be amended to reflect the correct reference.

(b) Information protected under the terms of a protective order in an adjudicative proceeding.

(c) Valuable commercial information, including trade secrets or confidential marketing, cost, or financial information, or customer-specific usage and network configuration and design information, as provided in RCW 80.04.095.

(3) How to designate and seek protection of confidential information under this section. A provider may claim the protection of this rule only by strict compliance with the following requirements. Any failure to comply with these requirements may result in the submission not being accepted as one including confidential information.

(a) *Contents.* The provider must submit the claim of confidentiality in writing, in the same form (i.e., paper or electronic) and at the same time the information claimed to be confidential is submitted. The provider must state the basis upon which the information is claimed to be confidential under this rule, and must identify any person (other than the provider) that might be directly affected by disclosure of the confidential information.

(b) *Marking.*

(i) *Paper copies.* When the document is in paper format, and there is no protective order in place, the provider must clearly mark each copy with the designation "confidential per WAC 480-07-160." The provider must place this mark on the first page of a multipage document and each specific page where the provider claims there is confidential information.

(ii) *Electronic copies.* When the document is in electronic format, such as an e-mail message, or a word processing or spreadsheet file, the "confidential per WAC 480-07-160" mark must be inserted in the e-mail message or on the disk or diskette, on the first page in the file and on each page that the provider claims contains confidential information. The provider must follow the requirements in (c) of this subsection and the format requirements in WAC 480-07-140(6) for submitting electronic documents. Specifically, parties must separately submit and clearly identify electronic versions of confidential and redacted documents when submitting documents via e-mail or the commission's Web portal.

**DRAFT PROPOSAL.** To avoid confusion and unintentional posting and release of confidential information on (RMS), parties should be required to electronically submit confidential and redacted data in separate clearly identified e-mails or Web portal submissions.

**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Public Counsel, Verizon, Avista, and WITA support the Commission's draft proposal.

(iii) *Protective order, if any, must be cited.* If the provider submits confidential information under the provisions of a protective order, the "confidential" identification on the disk, diskette, or e-mail, on the first page of the document and each page that includes confidential information must state: "Confidential per protective order in WUTC Docket [insert docket number]." When the provider submits confidential information in an electronic format, the provider must mark the document as with a paper copy and follow the format requirements in WAC 480-07-140(6) for submitting electronic documents.

(c) *Unredacted version under seal; redacted version.* The provider must submit an original and the required number of a complete copies of the version of the document as to which confidentiality is claimed (unredacted version) and a-an original and one complete copy of the version of the document with the information claimed to be confidential masked (redacted version). If the provider submits a document under a claim that the entire document is confidential, the provider may submit only the first page of the redacted version if the page indicates that the entire document is claimed to contain confidential information.

**DRAFT PROPOSAL.** As Commission employees assigned to adjudicative matters are allowed to view confidential documents, requiring companies to file the required number of both confidential and redacted copies creates unnecessary expense and use of resources. Amending this rule will result in more efficient filings with the Commission.

**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Public Counsel, Verizon, Avista, and WITA support the Commission's draft proposal.

(i) *Sealing and labels.* The redacted version must be so labeled and submitted along with a set of any confidential documents. The confidential unredacted version must be so labeled and submitted in a sealed envelope or similar wrapping. A party submitting multiple confidential documents must collate the documents into sets and, to the extent feasible, must enclose each set of confidential documents in a separate envelope and each set of highly confidential documents for filing in a separate envelope.

(ii) *Marking*. Each page of the unredacted version that includes information claimed to be confidential must be printed on yellow or canary paper with the confidential information clearly designated (e.g., by highlighting text with no more than twenty percent grey shading, outlining the confidential information in a box or border, or setting the text off with asterisks). Similarly, each page of the unredacted version that contains information designated highly confidential under a protective order, must be printed on light blue paper with the highly confidential information clearly designated (e.g., by highlighting text with no more than twenty percent grey shading, outlining the highly confidential information in a box or border, or setting the text off with asterisks). The redacted version will be available for public disclosure if requested. The redacted and unredacted versions must have the same pagination and line numbering.

(iii) *Number of copies*. The provider must submit an original and ~~three~~one redacted ~~copies~~ copy of each confidential or highly confidential document and an original and *twelve* copies of the unredacted version of each confidential or highly confidential document, unless the commission has required a different number of copies to be filed. If a document includes both confidential and highly confidential information, the provider ~~may~~ must submit unredacted copies including both the confidential and highly confidential information in the same document.

**DRAFT PROPOSAL.** Commission staff and commissioners require a set with both confidential and highly confidential documents, and often end up recycling the duplicative redacted documents. Such an amendment would avoid unnecessary filing of multiple complete sets of redacted, confidential and highly confidential documents, saving company and Commission resources.

**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Public Counsel, Verizon, Avista, and WITA support the Commission's draft proposal.

(4) Challenges to claims of confidentiality. The commission or a party to a proceeding in which a provider submits a document with a claim of confidentiality may challenge the claim. When a challenge is made, the commission will provide an opportunity to respond before ruling on the challenge. If a confidential designation is challenged, the provider of the confidential information bears the burden to show that part or all of a document should be protected from disclosure under chapter ~~42.17~~ 42.56 RCW, RCW 80.04.095, or a protective order. The commission may express its ruling orally on the record in an adjudicative proceeding, or in a written order.

**COMMENTS:** Public Counsel (1<sup>st</sup> set of comments) recommends the Commission amend the rule to allow for possible sanctions for bad faith confidentiality designations. Public Counsel recommends adding at the end of this section the

following language: “If the commission determines that a provider has made an improper or bad faith designation of material as confidential, the commission may impose sanctions, including, but not limited to monetary penalties.”

- Qwest opposes Public Counsel’s proposal to consider including language imposing sanctions or monetary penalties for improper designations of confidentiality. Qwest asserts the existing rule already provides a means to contest confidential designations and there is no evidence that a problem currently exists.
- In its 2<sup>nd</sup> set of comments, Public Counsel asserts the Commission has authority to impose monetary penalties for violating rules and orders, such as protective orders, citing RCW 80.04.380 and to address abusive discovery practice under WAC 480-07-400(3).
- Verizon asserts that aside from a question of whether the Commission has authority to impose sanctions, that there is not a sufficient need to require such draconian steps. Verizon also asserts that the Commission’s current rules and governing statutes already provide sufficient means to address the problem of over designation of confidential materials.
- Avista opposes Public Counsel’s suggestion for sanctions, as the Commission’s existing procedures are sufficient and there is no evidence that the problem warrants further attention.
- WITA opposes Public Counsel’s proposal, asserting there is no demonstration of a practice of abusing confidential designation. WITA also questions whether the Commission has statutory authority to impose monetary penalties.

Regarding WAC 480-07-160(4), the area of controversy surrounds challenges to claims of confidentiality of a document. Public Counsel’s recommendation is not well taken. First, the proposal is redundant to the extent of monetary penalties, because a person who designates all or part of a document as confidential that is not confidential likely violates the protective order, and subjects that person to whatever sanctions are available to the Commission for violations of orders. *E.g.*, RCW 80.04.385, .387 and .390.

Second, the commission likely can impose other sanctions in these situations, such as removing a person from party status, dismissing the case, referring the matter to the Bar Association or similar professional group, or other similar remedies. However, the Commission likely does not have authority to issue monetary penalties beyond what is provided in statute. In any event, Public Counsel’s proposed language that would focus more on monetary penalties is not balanced.

Third, while Public Counsel asserts there is an “over-designation” problem, the Commission does not recall this being raised as a substantial issue in any proceeding. Consequently, this does not appear to be a substantial problem that needs to be “fixed.” The Commission will consider the issue at the next opportunity for amending these procedural rules.

**OTHER COMMENTS AND REVISED PROPOSAL:** WITA, counsel at the February 6, 2008, Bench Bar Conference and Don Trotter, AAG, all noted that the references to the Public Records Act in the chapter are incorrect. The correct reference is to RCW 42.56. The rule should be amended to reflect the correct reference.

(5) Requests for "confidential" information. Subject to subsections (6) and (7) of this section, the commission will release information designated confidential in response to a request properly filed under the following requirements:

(a) The requester must submit a written request to the commission's secretary on a form provided by the commission or in a letter containing equivalent supporting information, including the requester's name and address and the name and address of any organization on whose behalf or for whose benefit the request is being made. The requester must state whether the information sought is to be used for a commercial purpose.

(b) The request must be sufficiently specific to allow the secretary to readily identify the document or other material that contains the requested information. Following receipt of a request for confidential information, the secretary will notify the requester of any deficiency in the request. The requester is required to correct the request and resubmit it pursuant to this rule. The commission will take no action pending resubmission.

(c) If a requester wants copies of any documents identified in response to a request, the requester must make arrangements with the commission's secretary to pay the designated copying fees, if any.

(6) Informal resolution. When the secretary and the requester agree that the secretary can satisfy the requester's need for information without disclosing confidential information, the secretary will make the information available.

(7) Notice of request for information designated confidential; release of information designated confidential. The commission will provide written notice of any request for information designated confidential to the provider and any person identified by the provider as a person who might be directly affected by release of the information. This is to permit any person asserting confidentiality or who might be affected by the release of the information to invoke the statutory procedures for securing a court order to protect the records from disclosure or to take similar steps in compliance with a protective order in an adjudicative proceeding. The commission will issue such notice not more than two days after the requested materials are located and it determines that they contain information claimed to be confidential. The commission will send a copy of the notice to the requester at the same time it sends a copy to the provider.

If the provider consents in writing to the release of the information, or does not restrain disclosure by way of court order within ten days following notice, the commission will consider the information public, remove the confidential designation from its files, and release the information to the requester.

(8) Judicial intervention by the commission. The commission need not assist any person in seeking or resisting judicial intervention, but may participate in any such proceeding.

(9) Designation or redesignation of confidential information in adjudications. At the conclusion of an adjudication in which confidentiality was asserted as to documents or portions of the record, the party originally asserting confidentiality must, no later than the time for filing briefs or, if no briefs are filed, within ten days after the close of the record, do the following:

(a) Verify the accuracy of all confidential designations in the record and in the exhibit list for the proceeding, and submit any proposed corrections or changes. Absent a statement of proposed corrections or changes, the designations in the record and in the exhibit list are final and will be changed only if the party asserting confidentiality voluntarily removes, or is required to remove, a confidential designation. If there is conflict between designations, the designation that is least restrictive to public access will be adopted.

(b) File a redacted and unredacted copy of any document as to which confidentiality was asserted during the proceeding but which is not reflected in the record or exhibit list as a document designated confidential.

(c) File an unredacted version of any document designated as confidential during the proceeding, but as to which the party claiming confidentiality wishes to remove the confidential designation, or as to which the confidential designation was terminated by order. In the case of briefs, testimony, and similar documents, the authoring party must file the unredacted version.

**WAC 480-07-180. Incorporated and referenced materials in commission rules and orders.**

Any document that is incorporated by reference in a commission rule or order is available for public inspection at the commission unless exempt from the public disclosure requirements in chapter ~~42.17~~ 42.56 RCW, or under a protective order in an adjudicative proceeding. The commission's secretary will provide a copy of a referenced document upon request, allowing reasonable time for any necessary copying, subject to any pertinent charge, and subject to copyright restrictions or statutory exemptions from public disclosure. The commission incorporates or references the version of the incorporated or referenced material that is current on the day the commission adopts a rule or enters an order that makes the incorporation or reference, unless the commission specifies another version or unless another version is apparent from the reference. In most instances, such information is available to the public on the commission's web site (see WAC 480-07-125).

**COMMENTS AND REVISED PROPOSAL:** WITA, counsel at the February 6, 2008, Bench Bar Conference and Don Trotter, AAG, all noted that the references to the Public Records Act in the chapter are incorrect. The correct reference is to RCW 42.56. The rule should be amended to reflect the correct reference.

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

**DRAFT PROPOSAL.** The Commission does not propose any change to this rule, but requests comments on whether there is a need for a separate rule identifying matters that may be delegated to administrative law judges (ALJ) under RCW 80.01.060.

**COMMENTS:** No interested person filed comments specific to this rule. The Commission continues to find that there is no need to modify this rule.



**WAC 480-07-395 Pleadings, motions, and briefs — Format requirements; citation to record and authorities; verification; errors; construction; amendment.**

(1) Format. All pleadings, motions, and briefs must meet the following format requirements:

(a) **Paper size; legibility; margins.** All pleadings, motions, and briefs must be:

- Submitted on three-hole punched (oversize holes are preferred) 8 1/2 x 11 inch paper.
- Presented in double-spaced, 12-point, palatino, times new Roman, or an equally legible serif font, with footnotes in the same font and of at least 10-point type
- Presented with paragraphs numbered.
- Printed with margins at least one inch from each edge of the page.

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

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

**COMMENTS.** In its first set of comments, Public Counsel suggests the Commission should consider how much flexibility to allow parties in using formatting changes to meet page limits for briefs.

- Qwest opposes Public Counsel's proposal, asserting there is no need to amend the rule.
- WITA cannot comment on Public Counsel's suggestion as Public Counsel provides no analysis to support its suggestion.

While the issue Public Counsel raises appeared in one recent proceeding, it has not been a substantial issue in any other proceeding. There does not appear to be a demonstrated or pressing need to modify the rule. The Commission will consider the issue at the next opportunity for amending these procedural rules.

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

(i) **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 caption of the proceeding must be set out or, if no caption exists, the following: "In the matter of the (complaint, petition, motion, etc.) of (name of the pleading party) for

(identify relief sought)." On the right side of the page, opposite the caption, the pleading party must include the docket number if one has been assigned, identify the name of the document (e.g., petition, motion, answer, reply, etc., of (role of party: E.g., petitioner, respondent, protestant, etc., and name of the party if more than one party has the same role in the proceeding)). The caption also must briefly state the relief sought (e.g., "petition for an accounting order"; "motion for continuance").

(ii) *Body of pleading.* The body of the pleading must be set out in numbered paragraphs. The first paragraph must state the pleading party's name and address and if it is the party's initial pleading, the name and address of its representative, if any. The second paragraph must state all rules or statutes that the pleading puts in issue. Succeeding paragraphs must set out the statement of facts relied upon in a form similar to complaints in civil actions before the superior courts of this state. The concluding paragraphs must state the relief the pleading party requests.

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

(A) *Relief requested.* A statement of the specific relief the commission is requested to grant or deny.

(B) *Statement of facts.* A succinct statement of the facts that the moving party contends are material to the requested remedy.

(C) *Statement of issues.* A concise statement of the legal issue or issues upon which the commission is requested to rule.

(D) *Evidence relied upon.* Any evidence on which the motion or opposition is based must be specified. Any affidavits, depositions or portions of affidavits or depositions relied upon must be specified. If a party relies on affidavits, deposition transcripts, or documentary evidence, the party must quote the cited material verbatim or attach a photocopy of relevant pages to an affidavit that identifies and verifies the documents. Parties should highlight or otherwise clearly identify the portions of the cited evidence upon which they place substantial reliance.

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

(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*. Exhibit references should be as follows: Exh. No. [insert number assigned at hearing]. In the case of prefiled testimony offered or received as an exhibit, page number(s), line number(s), and the witness's surname should be added following the style specified in this section for transcript references. In other exhibits, references to page(s), line(s) for text, row(s) and column(s) for tables, or other specific references may be added to clarify the information cited.

(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 two attachments or appendices to a pleading, the party must individually separate the attachments by blank sheets with tabs.

**DRAFT PROPOSAL.** Consistent with the requirement in WAC 480-07-460(2)(e) for filing pre-filed testimony, this rule should be amended to require pleadings with more than two or three attachments to be separated by blank sheets with tabs.

**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Public Counsel, Verizon, Avista, and WITA support the Commission's draft proposal.

(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 by at least one attorney or representative of record in his or her individual name, stating his or her address, or by the party, if the party is not represented. Parties who are not represented by an attorney must include a statement in any pleading that the facts asserted in the pleading are true and correct to the best of the signer's belief. Parties who bring certain complaints under RCW 80.04.110 or 81.04.110 that challenge the reasonableness of the rates or charges of jurisdictional utilities must provide additional verification as specified in those statutes.

(3) **Errors in pleadings or motions.** The commission may return a pleading or motion to a party for correction when the commission finds the pleading or motion to

be defective or insufficient. The commission may disregard or correct obvious typographical errors, errors in captions, or errors in spelling of names of parties.

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

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

**WAC 480-07-510 General Rate Proceedings – Electric, natural gas, pipeline and telecommunications companies.** General rate proceeding filings for electric, natural gas, pipeline, and telecommunications companies must include the information described in this section. The commission may reject a filing that fails to meet these minimum requirements, without prejudice to the company's right to refile its request in conformance with this section. For purposes of this rule, “file with the commission,” means filed with the commission’s executive secretary per WAC 480-07-140 at the time the company files its general rate case; whereas “serve” or “provide” to commission staff or another party, means delivery to such persons, not filed with the commission. ~~The company must provide:~~

**DRAFT PROPOSAL:** The suggested amendments to this rule are intended to reflect what the company and other parties must file with the Commission as opposed to the documents or information that parties are required to serve on each other, distinguishing between formal pleadings and testimony, versus data request responses and work papers.

**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Public Counsel, Verizon, Avista, and WITA support the Commission’s draft proposal.

(1) **Testimony and exhibits.** The company must file with the commission nNineteen paper copies of all testimony and exhibits that the company intends to present as its direct case if the filing is suspended and a hearing held, unless the commission preapproves the filing of fewer copies. In addition, the company must provide one electronic copy of all filed material in the format identified in WAC 480-07-140(6). Material that the company has not produced under its direction and control and that is not reasonably available to it in electronic format, such as generally available copyrighted published material, need not be provided in electronic format. The company must serve a copy of the materials filed under this section on public counsel at the time of filing with the commission in any proceeding in which public counsel

will appear. The utility must provide an exhibit that includes a results-of-operations statement showing test year actual results and the restating and pro forma adjustments in columnar format supporting its general rate request. The utility must also show each restating and pro forma adjustment and its effect on the results of operations. The testimony must include a written description of each proposed restating and pro forma adjustment describing the reason, theory, and calculation of the adjustment.

(2) **Tariff sheets.** The company must file with the commission and provide to public counsel a copy of the proposed new or revised tariff sheets in legislative format, with strike-through to indicate any material to be deleted or replaced and underlining to indicate any material to be inserted, in paper and electronic format, unless already provided as an exhibit under subsection (1) of this section. The company must also file provide with the commission copies of any tariff sheets that are referenced by new or amended tariff sheets.

(3) **Work papers and accounting adjustments.** At the time the company makes its general rate case filing, the company must provide one copy ~~Three copies~~ of all supporting work papers of each witness to public counsel and three copies to staff in a format as described in (b) of this subsection ~~must be filed with the utility's general rate request.~~ Parties Staff and each other party must file provide work papers to all other parties within five days after the filing of each subsequent round of testimony filed (e.g., response, rebuttal). If the testimony, exhibits, or work papers refer to a document, including, but not limited to, a report, study, analysis, survey, article or decision, that document must be ~~provided~~ included as a work paper unless it is a reported court or agency decision, in which case the reporter citation must be provided in the testimony. If a referenced document is voluminous, it need not be provided ~~with the filing~~, but the company must identify clearly the materials that are omitted and their content. Omitted materials must be provided or made available if requested. The following information is required for work papers ~~that accompany the company's filing and all parties' testimony and exhibits:~~

(a) A detailed portrayal of the development of any capital structure and rate of return proposal and all supporting work papers in the format described in (b) of this subsection.

(b) Restating and proforma adjustments. Parties must ~~file~~ provide work papers that contain a detailed portrayal of restating actual and pro forma adjustments that the company uses to support its filing or that another party uses to support its litigation position, specifying all relevant assumptions, and including specific references to charts of accounts, financial reports, studies, and all similar records relied on by the company in preparing its filing, and by all parties in preparing their testimony and exhibits. All work papers must include support for, and calculations showing, the derivation of each input number used in the detailed portrayal and for each subsequent level of detail. The derivation of all interstate and multiservice allocation factors must be provided in the work papers.

*(i) Organization.* Work papers must be plainly identified and well organized, and must include an index and tabs. All work papers must be cross referenced and include a description of the cross referencing methodology.

*(ii) Electronic documents.* Parties must ~~file~~ provide all electronic files supporting their witnesses' work papers. The electronic files must be fully functional and include all formulas and linked spreadsheet files. Electronic files that support the exhibits and work papers must be ~~submitted~~ provided using logical file paths, as necessary, by witness, and using identifying file names. Any party filing a document with locked, hidden or password protected cells may do so only if necessary to protect the confidentiality of the document. In such circumstances, that party shall provide a version to the commission that does not have locked or hidden cells, and if a cell is password protected, that party shall supply the parties the password. The party shall designate the document confidential under WAC 480-07-160 and/or a protective order. If the document is designated confidential pursuant to a protective order, the party shall provide it to any person requesting the password who has signed an appropriate confidentiality agreement. If cells are locked or password protected, a password must be provided, unless the locked or password protected cells secure the integrity of a proprietary model or proprietary calculations.

*(iii) Change in methodologies for adjustments.* If a party proposes to calculate an adjustment in a manner different from the method that the commission most recently accepted or authorized for the company, it must also present a work paper demonstrating how the adjustment would be calculated under the methodology previously accepted by the commission, and a brief narrative describing the change. Commission approval of a settlement does not constitute commission acceptance of any underlying methodology unless so specified in the order approving the settlement.

**DRAFT PROPOSAL:** The Commission included in its January 25, 2008, draft rules Public Counsel's suggestion to modify the rule to be consistent with language in WAC 480-07-140(b), which provides that electronic versions of spreadsheets not include "locked, password protected or hidden cells."

**COMMENTS:**

- Qwest has no objection to Public Counsel's suggested change to this subsection.
- PSE opposes Public Counsel's proposed language because there can be legitimate reasons for having locked or password protected cells. PSE proposes alternative language, identified in bold: "Electronic files that support the exhibits and work papers must be ~~submitted~~ provided using logical file paths, as necessary, by witness, and using identifying file names **and may not include locked, password protected, or hidden cells. If cells are password protected, a password must be provided, unless the password protected**

**cell secures the integrity of a proprietary model or proprietary calculations. If cells are locked and password protected, the password must be similarly provided.**” PSE also suggests this language be adopted in WAC 480-07-140(b).

- WITA does not object to Public Counsel’s suggestion, as long as it does not severely limit the use of confidential designations.

**REVISED PROPOSAL:** Regarding WAC 480-07-510(3)(b), the controversy surrounds the use of computer data files that have “locked, password protected, or hidden cells.” When documents have these features, the document is of limited use to the Commission and the parties because they cannot determine the underlying logic and/or formulae, and may be prevented from changing assumptions and testing the results.

Accordingly, the general rule should be that all documents not contain cells with such restrictions. On the other hand, there may be proprietary reasons for having restricted cells. These issues should be worked out between the parties, or by the Commission at a prehearing conference or other hearing held as soon as possible after the issue arises, which will usually be the initial filing. The protective order can protect proprietary items while permitting the parties to use the material.

For these reasons, the Commission will accept PSE’s proposal, but suggests further amendments to the rule. In addition to changing rule language relating to electronic documents, the Commission recommends the subsection be broken down into specific subsections. The following new language relating to electronic documents appears in new subsection (3)(b)(ii) of the rule draft above:

*(ii) Electronic documents. Parties must ~~file~~ provide all electronic files supporting their witnesses' work papers. The electronic files must be fully functional and include all formulas and linked spreadsheet files. Electronic files that support the exhibits and work papers must be ~~submitted~~ provided using logical file paths, as necessary, by witness, and using identifying file names. Any party filing a document with locked, hidden or password protected cells may do so only if necessary to protect the confidentiality of the document. In such circumstances, that party shall provide a version to the commission that does not have locked or hidden cells, and if a cell is password protected, that party shall supply the parties the password. The party shall designate the document confidential under WAC 480-07-160 and/or a protective order. If the document is designated confidential pursuant to a protective order, the party shall provide it to any person requesting the password who has signed an appropriate confidentiality agreement. If cells are locked or password protected, a password must be provided, unless the locked or password protected cells secure the integrity of a*

proprietary model or proprietary calculations.

(i) "Restating actual adjustments" adjust the booked operating results for any defects or infirmities in actual recorded results that can distort test period earnings. Restating actual adjustments are also used to adjust from an as-recorded basis to a basis that is acceptable for rate making. Examples of restating actual adjustments are adjustments to remove prior period amounts, to eliminate below-the-line items that were recorded as operating expenses in error, to adjust from book estimates to actual amounts, and to eliminate or to normalize extraordinary items recorded during the test period.

(ii) "Pro forma adjustments" give effect for the test period to all known and measurable changes that are not offset by other factors. The filing workpapers must identify dollar values and underlying reasons for each proposed pro forma adjustment.

(c) A detailed portrayal of revenue sources during the test year and a parallel portrayal, by source, of changes in revenue produced by the filing, including an explanation of how the changes were derived.

(d) If the public service company has not achieved its authorized rate of return, an explanation of why it has not and what the company is doing to improve its earnings in addition to its request for increased rates.

(e) A representation of the actual rate base and results of operation of the company during the test period, calculated in the manner used by the commission to calculate the company's revenue requirement in the commission's most recent order granting the company a general rate increase.

(f) Supplementation of the annual affiliate and subsidiary transaction reports as provided in rules governing reporting requirements for each industry, as necessary, to include all transactions during the test period. The company is required to identify all transactions that materially affect the proposed rates.

**(4) Summary document.** The company must file with the commission aA summary document that briefly states the following information on an annualized basis, if applicable. In presenting the following information, the company must itemize revenues from any temporary, interim, periodic, or other noncontinuing tariffs. The company must include in its rate change percentage and revenue change calculations any revenues from proposed general rate change tariffs that would supersede revenue from noncontinuing tariffs. The summary document must also include:

(a) The date and amount of the latest prior general rate increase authorized by the commission, and the revenue realized from that authorized increase in the test period, based on the company's test period units of revenue.



- (b) Total revenues at present rates and at requested rates.
  - (c) Requested revenue change in percentage, in total, and by major customer class.
  - (d) Requested revenue change in dollars, in total, and by major customer class.
  - (e) Requested rate change in dollars, per average customer, by customer class, or other representation, if necessary to depict representative effect of the request. ~~Filings~~ The summary document must also state the effect of the proposed rate increase in dollars per month on typical residential customers by usage categories.
  - (f) Most current customer count, by major customer class.
  - (g) Current authorized overall rate of return and authorized rate of return on common equity.
  - (h) Requested overall rate of return and requested rate of return on common equity, and the method or methods used to calculate rate of return on common equity.
  - (i) Requested capital structure.
  - (j) Requested net operating income.
  - (k) Requested rate base and method of calculation, or equivalent.
  - (l) Requested revenue effect of attrition allowance, if any is requested.
- (5) Required service of summary document. The company must serve the summary document on Public Counsel and mail the summary document ~~required~~ described in subsection (4) of this section to the persons designated below on the same date it files the summary document with the commission:
- (a) ~~Public counsel;~~
  - ~~(b) All intervenors on the commission's master service list for the company's most recent general rate proceeding;~~
  - (~~b~~) All intervenors on the master service list for any other rate proceeding involving the company during the five years prior to the filing, if the rates established or considered in that proceeding may be affected in the company's proposed general rate filing;
  - (~~c~~) All persons who have informed the company in writing that they wish to be provided with the summary document required under this section. The company must

enclose a cover letter stating that the prefiled testimony and exhibits and the accompanying work papers, diskettes, and publications specified in this rule are available from the company on request or stating that they have been provided. This provision does not create a right to notice in persons named to receive the summary.

**COMMENTS:** Public Counsel requests that this subsection be amended to provide that the summary document be served on Public Counsel at the same time as the other rate case documents listed in subsections (1) – (3). As companies are routinely doing so, Public Counsel requests the rule be amended to conform to current practice.

**REVISED PROPOSAL:** Public Counsel’s proposal is appropriate and the rule should be modified to reflect the proposal.

(6) **Cost studies.** The company must ~~include~~ file with the commission any cost studies it performed or relied on to prepare its filing, identify all cost studies conducted in the last five years for any of the company's services, and describe the methodology used in such studies.

(7) **Other.** The company must ~~include~~ file with the commission its most recent annual report to shareholders, if any, and any subsequent quarterly reports to shareholders; the most recent FERC Form 1 and FERC Form 2, if applicable; and the company's Form 10K's, Form 10Q's, any prospectuses for any issuances of securities, and quarterly reports to stockholders, if any, for the most recent two years prior to the filing date.

### **WAC 480-07-630. Telecommunications companies — Arbitration under the Telecommunications Act of 1996.**

(1) **Scope.** This rule implements the arbitration provisions of sections 251 and 252 of the Telecommunications Act of 1996, 47 U.S.C. §§ 251 and 252.

(2) **Nature of the proceeding.** Arbitrations that the commission conducts pursuant to 47 U.S.C. § 252 are subject to judicial review. Arbitration under this section, however, is not an adjudicative proceeding under the Washington Administrative Procedure Act, chapter 34.05 RCW. Arbitration decisions are binding only upon the parties to the arbitration. Arbitration under this section should be characterized by fairness, cooperation and openness between or among the parties, and is designed to resolve disputes efficiently and economically.

(3) **Intervention; public counsel.** Arbitrations typically involve only the parties to the negotiation. Others may ask to participate but will be allowed to do so only upon a showing of compelling public interest. The public counsel section of the office of attorney general may elect to participate pursuant to RCW 80.04.510.

**(4) Filing and service of a petition for arbitration.**

(a) **When allowed.** During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under 47 U.S.C. § 252 (b)(1), any party to the negotiation may petition the commission to arbitrate all issues that remain unresolved. Parties may continue to negotiate in good faith and may continue to participate in mediation to resolve the disputed issues after arbitration is requested.

(b) **Filing.** Parties must file petitions for arbitration under section 252 (b)(2) as provided for other petitions under WAC 480-07-145, and must follow the format requirements for pleadings in WAC 480-07-395.

(c) **Service.** A party that files a petition for arbitration must deliver a complete copy of the petition and all accompanying documentation to the other party or parties to the negotiation on the same day that the petition is filed with the commission.

**(5) Contents of petition and documentation.** A petition for arbitration filed under this section must:

(a) State the date on which the original request for negotiation was received, and the dates one hundred thirty-five days and one hundred sixty days after the request was received;

(b) Include a brief statement of each unresolved issue and a summary of each party's position with respect to each issue;

(c) State all proposed rates or charges, if prices are in dispute, and all relevant cost studies and related supporting materials that are available to the petitioner;

(d) State any conditions that the petitioning party requests be imposed;

(e) Recommend any information that the arbitrator should request from the parties pursuant to 47 U.S.C. § 252 (b)(4)(B), including an explanation of why the information is necessary for the arbitrator to reach a decision on the unresolved issues; and

(f) Be accompanied by all relevant documentation including:

(i) A current draft of the interconnection agreement, if available, with all agreed provisions in standard typeface and all unresolved issues in bold typeface;

(ii) A legal brief that addresses the disputed issues, including discussion of how the parties' positions, and any conditions requested, meet or fail to meet the

requirements of 47 U.S.C. §§ 251 and 252, any applicable FCC regulations, and any applicable regulation, order, or policy of this commission; and

(iii) Any other documents relevant to the dispute, including copies of all documents the petitioner relies on to support its positions or that it intends to introduce as exhibits at the hearing.

**(6) Filing and service of an answer to a petition for arbitration.**

(a) *When allowed.* Any party to the negotiation may respond to a petition for arbitration and may file with the commission such additional information as it wishes within twenty-five days after the petition is filed.

(b) *Filing.* Answers to petitions for arbitration under section 252 (b)(2) must be filed with the commission in the manner provided for answers to other petitions under WAC 480-07-145, and must follow the format requirements for pleadings under WAC 480-07-395.

(c) *Service.* A party responding to a petition for arbitration must deliver to the petitioner and any other party or parties to the negotiation a complete copy of the answer and all accompanying documentation on the same day that the response is filed with the commission.

**(7) Contents of answer and required documentation.** An answer to a petition for arbitration filed under this section must:

(a) State whether the respondent disputes the date the petitioner asserts was the date on which the respondent received the original request for negotiation, or disputes any subsequent dates stated in the petition in conformance with subsection (5)(a) of this section;

(b) Include a brief statement of each unresolved issue and a summary of each party's position with respect to each issue;

(c) State all proposed rates or charges, if prices are in dispute, and all relevant cost studies and related supporting materials that are available to the respondent;

(d) State any conditions that the responding party requests be imposed;

(e) Recommend any information that the arbitrator should request from the parties pursuant to 47 U.S.C. § 252 (b)(4)(B), including an explanation of why the information is necessary for the arbitrator to reach a decision on the unresolved issues; and

(f) Be accompanied by all relevant documentation including:

(i) A current draft of the interconnection agreement, if available and different from any draft agreement submitted with the petition, with all agreed provisions in standard typeface and all unresolved issues in bold typeface;

(ii) A legal brief that addresses the disputed issues, including discussion of how the parties' positions, and any conditions requested, meet or fail to meet the requirements of 47 U.S.C. §§ 251 and 252, any applicable FCC regulations, and any applicable regulation, order, or policy of this commission; and

(iii) Any other documents relevant to the dispute, including copies of all documents the respondent relies on to support its positions or that it intends to introduce as exhibits at the hearing.

(8) **Verification.** The petition, answer, and all documentation filed must be verified as provided by WAC 480-07-395, or submitted by affidavit or declaration.

(9) **Confidentiality; protective order.** Petitions, answers, and any documents a party provides to the commission pursuant to a request under section 252 (b)(4)(B) are subject to Washington's public disclosure laws, including chapter ~~42.17~~ 42.56 RCW and RCW 80.04.095. Confidential information submitted with a petition for arbitration or answer is subject to the protections and procedures set out in WAC 480-07-160. A party may include in its petition or response a request that the commission enter a protective order.

<p><b>COMMENTS AND REVISED PROPOSAL:</b> WITA, counsel at the February 6, 2008, Bench Bar Conference and Don Trotter, AAG, all noted that the references to the Public Records Act in the chapter are incorrect. The correct reference is to RCW 42.56. The rule should be amended to reflect the correct reference.</p>
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(10) **Discovery.** Parties must cooperate in good faith in the voluntary, prompt and informal exchange of all documents and other information relevant to the disputed issues, subject to claims of privilege or confidentiality. A party's failure to cooperate in discovery may be treated as a failure to negotiate in good faith. The arbitrator will schedule a discovery conference for a date ten days after the deadline for responses to the petition for arbitration, subject to rescheduling or cancellation if all parties agree. During the conference, the arbitrator will review the asserted need for any additional discovery, including requests for information by the arbitrator pursuant to 47 U.S.C. § 252 (b)(4)(B). Parties may submit to the arbitrator any discovery requests not responded to by the time of the conference and request that the arbitrator order the discovery. The arbitrator or the commission may request information from the parties pursuant to 47 U.S.C. § 252 (b)(4)(B) at any time.

(11) **Appointment and authority of arbitrator.**

(a) **Appointment.** One or more commissioners, one or more commission employees appointed by the commission, or one or more persons under contract with the commission may be designated as arbitrator(s) when a petition for arbitration is filed. The commission will not appoint an arbitrator who previously mediated a dispute between the same parties concerning the same interconnection agreement, unless the parties consent in writing or no other arbitrator is available to the commission. The commission will advise the parties of the appointment by entry of an order on arbitration procedure. The commission, in its discretion, may permit parties to comment on the selection of the arbitrator.

(b) **Authority.** Arbitrators will exercise all authority reasonable and necessary to conduct arbitration under the provisions of this rule, the commission's orders on arbitration procedure, and other provisions of law. Other members of the commission's staff may assist an arbitrator, but a staff member who has acted as a mediator with respect to the same interconnection agreement between the same parties may not be consulted. The arbitrator will issue the arbitrator's report within one hundred ten days after the date on which the petition for arbitration was filed. The arbitrator's report satisfies the commission's responsibility to resolve the disputed issues under 47 U.S.C. § 252 (b)(4)(C).

(12) **Consolidation.** The commission or an arbitrator may consolidate arbitration proceedings to reduce burdens on telecommunications carriers, parties to arbitration proceedings, and the commission.

**WAC 480-07-710 Mediation.** (1) **Scope.** This rule applies generally to settlement negotiations in which the commission agrees to assign a qualified mediator to assist the parties. This rule applies specifically to implement the mediation provisions of sections 251 and 252 of the Telecommunications Act of 1996, 47 U.S.C. §§ 251 and 252.

(2) **Commission participation.** The parties to a negotiation, including a negotiation under 47 U.S.C. §§ 251 and 252, may ask the commission to mediate any differences that arise during the negotiation. A request for mediation must include a brief statement of the nature of the dispute and the names, postal and e-mail addresses, telephone and fax numbers of the parties and their representatives. Copies of the request must be served on all parties to the negotiation. All parties are required to participate in good faith if the commission agrees to mediate.

(3) **Mediators.** The commission may assign one or more qualified employees to serve as mediator(s). The commission may require the parties to retain the services of a professional mediator acceptable to all parties.

(4) **Process.** Mediators have discretion to regulate the course of the mediation, including scheduling mediation sessions, in consultation with the parties. The following general procedures apply:

- (a) The mediator may not impose a settlement but may offer proposals for settlement;
- (b) The mediator may meet individually with the parties or attorneys during mediation;
- (c) Only the parties to the negotiation and the mediator may attend the mediation session(s), unless all parties and the mediator consent to the presence of others;
- (d) Parties must provide the mediator with a brief statement of position and relevant background information prior to the first mediation session;
- (e) The mediator may ask for supplemental information;
- (f) The mediator may not provide legal advice to the parties, nor are any mediator's stated opinions as to law or policy binding on the commission, unless later adopted by the commission;
- (g) The mediation process is confidential to the extent permitted by law, subject to the requirement for a written agreement or other record indicating an expectation that mediation communications will be privileged against disclosure as required under RCW [7.07.020](#); and
- (h) No stenographic or electronic record will be kept.

(5) **Fees and costs.** Each party must bear its own fees and costs. Each party must pay any fees imposed by commission rule or statute.

(6) **Notice to commission.** Parties must advise the commission if they reach a full, partial, or multiparty settlement and may suggest preferred procedural alternatives for review of the settlement, subject to the requirements of WAC [480-07-640](#) (commission approval of interconnection agreements) or WAC [480-07-740](#), as appropriate. The commission will determine the appropriate procedure in each proceeding consistent with the requirements of WAC [480-07-640](#) or [480-07-740](#).

**DRAFT PROPOSAL.** In a recent adjudication, a question arose whether one party may request mediation, or whether both or all parties must request mediation. In the January 25, 2008, draft proposal, the Commission sought clarification about whether one party may request mediation under the rule.

**COMMENTS:** Public Counsel suggests the Commission amend the rule to allow one party to request appointment of a mediator or settlement judge and allow other parties to comment on the requested appointment prior to determining whether a mediator or settlement judge is appropriate.

The language in the current rule does not preclude one party from requesting appointment of a mediator or settlement judge. There does not appear to be a

demonstrated or pressing need to amend the rule as Public Counsel suggests.

**WAC 480-07-900. Open Public Meetings.** (1) **Regular meetings.** The commission will hold regular meetings to conduct business under chapter [42.30](#) RCW, the Open Public Meetings Act. The commission generally schedules two business meetings per month, usually on ~~Wednesday~~ Thursday at 9:30 a.m. in the commission's office in Olympia, Washington. The specific time and place of each business meeting are published, as required, in the *Washington State Register* and on the commission's internet web site. The commission may cancel a meeting or change the time or place of a meeting and will publish a notice of these changes on its web site.

**DRAFT PROPOSAL.** The Commission is evaluating whether to change its regular open meeting day from Wednesday to Thursday to allow staff and the Commissioners additional time to prepare for the meeting. The Commission began a trial period of holding open meetings on Thursday beginning with the January 10, 2008, open meeting and will determine whether to make this change permanent through this rulemaking.

**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Public Counsel, Verizon, Avista, and WITA support the Commission's draft proposal.

(2) **Special meetings.** The commission may convene special meetings under RCW [42.30.080](#).

(3) **Recessed meetings.** The commission may recess a regular or special meeting and reconvene it at a different time or location.

(4) **Agenda.** The commission will distribute an agenda for each regular business meeting. The commission will make its best effort to compile and publish a complete agenda. It may amend its agenda after it is published and may take up matters that do not appear on its published agenda. The agenda and any addendum are posted to the commission's internet site. The commission will provide a copy of the agenda via U.S. mail on request.

(a) **"Discussion" agenda.** The discussion agenda includes items that are scheduled for discussion and action by the commissioners. This part of the agenda is further divided into "utilities" and "transportation" sections.

(b) **"No action" agenda.** The no-action agenda includes items that appear to be noncontroversial and, by law, may take effect without action by the commission. Any item on the no-action agenda will be moved to the discussion agenda at the request of any commissioner. The commission may take such action on the item as it deems appropriate.



(c) **"Consent" agenda.** The consent agenda includes items that appear to be noncontroversial and, by law, require action by the commission to take effect. Any item on the consent agenda will be moved to the discussion agenda at the request of any commissioner. The commission will act on the items on the consent agenda by a single motion and a single vote of the commission.

**(5) Deadlines and schedules.**

(a) The commission generally schedules items for consideration at the last regular business meeting before the item would take effect by law. The commission generally schedules items without a stated effective date, such as petitions, for consideration thirty days after filing.

(b) If a company makes a filing and requests action by the commission before the statutory or required notice period is complete, the commission will schedule consideration of the request at its next regular business meeting, if the request is filed and complete at least ~~five~~ seven business days before the meeting. Items filed less than ~~five~~ seven business days before a meeting will generally be scheduled for the second business meeting after the filing.

(c) All written comments in response to an open meeting item must be filed with the commission three business day(s) in advance of the meeting. Persons are not required to file written comments about an open meeting item to make oral comments at the meeting.

(d) The commission will publish the agenda for each regular business meeting two business days before the meeting.

(e) The commission may publish an addendum to the agenda prior to the beginning of the meeting.

**DRAFT PROPOSAL.** In conjunction with the proposal to change the regular open meeting day from Wednesday to Thursday, the Commission is also considering whether to change the deadline for filing open meeting items from five to seven days prior to the meeting and whether to establish a deadline for comments filed in response to an open meeting item.

**COMMENTS AND REVISED PROPOSAL:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Verizon, Avista, and WITA support the Commission's draft proposal.

- Public Counsel recommends the Commission amend this rule to clarify that persons are not required to file written comments before an open meeting in order to make oral comments. Public Counsel's suggestion is appropriate and the rule should be modified to reflect Public Counsel's suggestion.
- Public Counsel also requests the Commission develop a "listserv" so that parties who wish to receive copies of the open meeting agenda may do so. Public Counsel's suggestion to develop a listserv is a useful one, but an improvement the Commission can make to the open meeting process without including it in rule.

- Following comments made during the Bench Bar Conference, it appears that requiring comments three business days in advance of the open meeting would result in comments being filed by Monday at the close of business to allow 2 full business days prior to the meeting for the Commissioners to review the information, which was the intent of the January 25, 2008, proposal.

(6) **Staff contact.** For each item on the discussion agenda, the commission designates a staff member who is assigned to analyze and present a recommendation to the commission at the open meeting. The staff person and a contact number are identified in the agenda. Persons interested in open meeting agenda items may discuss them with staff, subject to time availability.

(7) **Public comment.** The commission will provide an opportunity at the beginning of each business meeting for members of the public to request that items on the consent or no-action sections of the agenda be moved to the discussion section. The commission will provide an opportunity for public comment on each discussion agenda item before taking action on that item.

(8) **Orders.** The commission may direct the secretary to enter any order or sign any document necessary to implement an open meeting decision by the commissioners.

(9) **Modifications.** The commission may exercise its discretion to modify the procedures in this section when appropriate to the conduct of its business.

### **WAC 480-07-903. Delegation of authority to the executive secretary.**

(1) **General provisions.**

(a) The working title of the secretary position authorized in RCW [80.01.030](#) is "executive secretary."

(b) The commission delegates authority to the executive secretary as set out in this section and WAC [480-07-904](#) and [480-07-905](#), pursuant to RCW [80.01.030](#) and subject to oversight and direction by a majority of the commissioners.

(c) The commission may also delegate functions to the executive secretary by order.

(d) When the executive secretary is absent or otherwise unavailable to perform authorized duties, the commission authorizes the executive secretary's designee to perform the duties on behalf of the executive secretary.

(2) **General delegation of authority.** The commission authorizes the executive secretary to supervise the general administrative functions of the agency, including without limitation the following specific tasks.

(a) **Filings, correspondence and documents.** The executive secretary will sign commission documents to be filed with the code reviser, courts, or other agencies or governmental entities. The executive secretary will sign other official commission

correspondence and filings that the commissioners do not sign. The executive secretary will sign all permits and other official commission documents.

(b) **Appointing authority.** The executive secretary is the "appointing authority" for the commission and has authority over appointment, separation, and discipline of commission employees. This authority includes, but is not limited to, appointments, terminations, reductions in force, dismissals, suspensions, and demotions pursuant to WAC [356-30-007](#) and [356-34-011](#)

(c) **Grievance procedure.** The commission authorizes the executive secretary to hear bargaining unit employee grievances and enter a final agency decision. The commission reserves the right to hear individual grievances or to select another designee to hear grievances on a case-by-case basis.

(d) **Rejection of defective filings.** The executive secretary will sign orders or letters rejecting tariffs, contracts, applications, or other filings that do not comply with statutory requirements or commission rules regarding effective dates, required supporting documents, or other standards for a complete filing.

(3) **Authority to resolve delegated matters.** Matters delegated to the executive secretary by rule are specified in this section and in WAC [480-07-904](#) and [480-07-905](#). The executive secretary may exercise discretion to defer any delegated matter to the commissioners for decision.

(4) **Authority to sign discretionary orders implementing commission decisions.**

(a) **Commissioner direction.** A majority of the commissioners may direct the executive secretary to sign an order or decision implementing a decision made by a majority of the commissioners.

(b) **Commissioner unavailability.** When a majority of the commissioners are unavailable to sign and enter decisions and orders of the commission, the executive secretary is authorized to do so without express direction only when

(i) A majority of the commissioners has previously reached a decision on the merits of the particular matter; and

(ii) In the executive secretary's judgment, in consultation with any available commissioner, entry of the order cannot be deferred pending commissioner availability.

(5) **Commission review.** Commission review of decisions delegated under RCW [80.01.030](#) is *de novo*.

**DRAFT PROPOSAL.** The Commission does not propose any change to this rule, but includes the rule in this set of draft rules for reference, as the Commission does suggest changes to the other two delegation rules, WAC 480-07-904 and WAC 480-07-905.

**COMMENTS:** No interested person filed comments specific to this rule. The Commission continues to find that there is no need to modify this rule.

**WAC 480-07-904 Delegation of authority to the executive secretary to decide certain matters.** (1) The commission delegates the following matters to the executive secretary for decision. The executive secretary's decision shall take effect immediately on entry of an order or on a later date specified in the order, without prior notice. The executive secretary may set any particular matter for decision by the commission through either the open meeting process or an administrative process the commission otherwise employs. Upon request, the commission will review the matter under subsection (3) of this section at a commission open meeting.

**DRAFT PROPOSAL.** The suggested change will allow the Commission flexibility in how it evaluates and addresses company filings.

**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Public Counsel, Verizon, Avista, and WITA support the Commission's draft proposal.

(a) Applications for funding highway-railroad grade crossing improvements under the grade crossing protection fund for applications under WAC 480-62-405 (1)(a).

(b) Petitions for approval of changes to existing highway-railroad grade crossings, including installation or modification of signals; reconstruction of the crossing; or implementation of changes in design or construction.

(c) Applications by water companies for removal from regulation or for the commission to exercise regulation under RCW 80.04.010.

(d) Applications for approval of:

- (i) Fully negotiated telecommunications interconnection agreements; and
- (ii) Adoptions of existing interconnection agreements.

(e) Applications for less than statutory notice approval of transportation company fuel surcharges and requests for rate increases limited to passing through costs that are authorized for pass-through, such as tipping fees.

(f) Requests for a commission order establishing that a securities filing complies with RCW 80.08.040.

(g) Requests for assignment or management of telephone number resources.

(h) Petitions for mitigation of penalties when the petitioner does not request a hearing, or when commission staff supports the request for mitigation.

(i) Requests for approval of service area agreements.

(j) ~~Requests~~ Petitions for exemption to allow extensions of time to make filings under deadlines set by rule or order, not including deadlines established in an adjudication.

**DRAFT PROPOSAL.** The suggested change is intended to clarify the matter that is subject to delegation.

**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Public Counsel, Verizon, Avista, and WITA support the Commission's draft proposal.

(k) Requests for registration as a telecommunications company in Washington.

(l) Requests for authorization of transfers of property by telecommunications companies pursuant to WAC 480-120-379, including applications for commission determination that the property is not necessary or useful pursuant to WAC 480-143-180.

**DRAFT PROPOSAL.** The suggested additions to this delegation rule will allow the Commission to more efficiently process certain filings by telecommunications companies.

**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Verizon, Avista, and WITA support the Commission's draft proposal. Public Counsel raises a concern that the intent of the draft proposal is to limit the use of this provision to items of small value, but notes the current wording reflects all transfers, which can involve millions of dollars and significant consumer impact. Public Counsel recommends expressly limiting the provision to *de minimis* transfers, i.e., those less than a small dollar amount such as \$20,000.

The Commission does not find Public Counsel's suggestion necessary. The proposed amendment to Section (1) of this rule allows flexibility and discretion in determining whether a request for transfer of property should be included as an open meeting agenda item or considered as a delegated item. The specific facts of a filing requesting approval for a transfer of property, including the monetary value of the property being transferred are likely to determine treatment of the request. If a specific request is handled as a delegated item, any interested person may request the Commission review the delegated decision under the process identified in Section (3) of this rule.

(2) Notice. The commission will post on its internet web site for at least fourteen days a listing of all matters decided pursuant to subsection (1) of this section, showing the docket number, date of entry of decision, company name and last date for a request for review to be filed. The commission will regularly publish electronic notice of listings to persons requesting such notice. Any person may request notice by alternative means.

(3) Opportunity for review.

(a) Delegated matters, generally. Any affected person may ask the commission to review any matter delegated under subsection (1) of this section. A person seeking review must file his or her request for commission consideration no later than the fourteenth day after the date of the posting. The commission will grant a late-filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request. The commission will provide a form for this purpose on the commission's web site. The commission will schedule a request for review promptly for consideration and will notify the affected company, and any person requesting review, of the time and place of the open meeting at which review will be taken.

(b) Orders suspending or cancelling permits. Carriers seeking review of orders suspending or cancelling a permit for failure to maintain evidence of required insurance coverage, delegated for decision under WAC 480-07-905, must request an adjudicative or brief adjudicative proceeding under WAC 480-07-610.

**DRAFT PROPOSAL.** The current review process, i.e., discussion at an open meeting, may not work well for orders to suspend or cancel permits for failure to maintain insurance. The suggested amendment would create an exception in this section for such matters.

**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Public Counsel, Verizon, Avista, and WITA support the Commission's draft proposal.

**WAC 480-07-905 Delegation of authority to executive secretary to enter ex parte orders.** The commission authorizes the executive secretary to enter the following *ex parte* orders in the name of the commission in nonadjudicative matters. Notice of the order will be published, and responses must follow the procedure outlined, in WAC [480-07-904](#) (2) and (3), except that carriers seeking review of orders suspending or cancelling a permit for failure to maintain evidence of required insurance coverage, or other circumstance specified in subsections below, must request an adjudicative or brief adjudicative proceeding under WAC 480-07-610.

**DRAFT PROPOSAL** The current review process, i.e., discussion at an open meeting, may not work well for orders to suspend or cancel permits for failure to maintain insurance. The suggested amendment would create an exception in WAC 480-07-904(3) for such matters.

**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Public Counsel, Verizon, Avista, and WITA support the Commission's draft proposal.

~~(1) Motor freight carriers, chapter [480-14](#) WAC, (excluding household goods carriers).~~

~~—(a) Orders and permits authorizing intrastate transportation of general commodities, materials transported by armored car, or hazardous materials if the applicant satisfies the requirements of chapter [480-14](#) WAC.~~

~~—(b) Orders and permits authorizing or reflecting change of carrier name and business structure if the carrier satisfies the requirements of chapter [480-14](#) WAC.~~

~~—(c) Orders and permits reinstating previously held authority if the carrier meets the requirements of chapter [480-14](#) WAC.~~

~~—(d) Orders suspending and/or canceling a permit if the carrier fails to show that it has the required level of insurance in effect for its operations. The order will inform the carrier:~~

~~—(i) That the permit may be reinstated prior to cancellation if the carrier corrects conditions leading to suspension; and~~

~~—(ii) That the carrier may contest the suspension and/or cancellation by requesting an adjudication or brief adjudication.~~

~~—(e) Orders permanently canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension, and fails to request an adjudication or brief adjudication.~~

~~—(f) Orders permanently canceling permit authority or dismissing an application by request of carrier or applicant.~~

~~—(g) Orders dismissing an application after notice to the applicant of failure to meet the requirements of chapter 480-14 WAC.~~

**DRAFT PROPOSAL.** Prior to adopting this subsection, the Commission issued permits to motor freight carriers and entered orders suspending or cancelling such permits without assigning a docket number, and these matters were not typically posted in the Commission’s Records Management System (RMS). To comply with this subsection, the Commission must assign a docket number to these matters, which poses an increase in workload and costs for the Records Center to manage, create files and enter into RMS approximately 500 additional orders per year.

To avoid treating motor carrier orders as delegated matters that follow the procedures for posting and review in WAC 480-07-905(2) and (3), one option is to delete these matters from WAC 480-07-905, and delegate the matters to the Executive Secretary by a general order under WAC 480-07-903(1)(c). Under that option, the Commission could use the prior process for these orders, allowing carriers to seek review of an order through a brief adjudicative proceeding. When a carrier seeks review, the Commission would assign a docket number and track the review process under RMS.

A second option is to retain motor freight carrier matters in this section, but include them under the proposed exception for seeking review through a brief adjudicative proceeding.

**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Public Counsel, Verizon, Avista, and WITA support the Commission’s draft proposal.

**(12) Household goods carriers, chapter 480-15 WAC.**

(a) ~~Permit authority granted by a commission order authorizing~~ Orders granting authority and permits for permanent, provisional or temporary intrastate transportation of household goods.

**DRAFT PROPOSAL.** The suggested change clarifies that orders grant permit authority.



**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Public Counsel, Verizon, Avista, and WITA support the Commission's draft proposal.

~~(b) Orders and permits authorizing permanent intrastate transportation of household goods if the applicant satisfies the requirements of chapter [480-15](#) WAC.~~

**DRAFT PROPOSAL.** The amendment deletes subsection (b) as duplicative of subsection (a).

**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Public Counsel, Verizon, Avista, and WITA support the Commission's draft proposal.

(be) Orders and permits authorizing or reflecting change of a carrier's permit name, corporate name, trade name, or addition of a trade name.

~~(cd)~~ Orders authorizing voluntary suspension of permit authority if the carrier satisfies the requirements of chapter [480-15](#) WAC.

(de) Orders reinstating voluntarily suspended permit authority if the carrier satisfies the requirements of chapter [480-15](#) WAC.

(ef) Orders permanently canceling permit authority or dismissing application by request of carrier or applicant.

~~(fg)~~ Orders suspending ~~and/or canceling~~ a permit if the carrier fails to maintain evidence of required cargo and/or liability insurance coverage. Such orders will inform the carrier that a permit may be reinstated if the carrier corrects conditions leading to suspension and that the carrier may contest the suspension ~~and/or cancellation~~ by requesting an adjudicative or brief adjudicative proceeding.

**DRAFT PROPOSAL.** Subsection (h) below addresses orders cancelling permit authority, so including language about cancellation in this subsection is duplicative and may be confusing.

**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Public Counsel, Verizon, Avista, and WITA support the Commission's draft proposal.

(gh) Orders vacating suspension of a permit if the commission receives the insurance filing during the suspension period and orders of abeyance if the carrier requests a hearing or brief adjudicative proceeding.

(hi) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension, and fails to request a hearing or brief adjudicative proceeding, during the suspension period.

(ij) Orders reinstating previously canceled permit authority if the carrier satisfies the requirements of chapter [480-15 WAC](#).

(jk) Orders rejecting or denying applications for temporary authority if WAC [480-15-285](#) applies.

**DRAFT PROPOSAL.** The language in this subsection is amended to mirror the language in WAC 480-15-285 concerning the Commission's authority to reject and deny applications for temporary authority.

**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Public Counsel, Verizon, Avista, and WITA support the Commission's draft proposal.

(k) Orders rejecting or denying applications for permit authority under WAC 480-15-320 or WAC 480-15-330, or cancelling a permit if the carrier does not satisfy conditions for granting authority, or for good cause under WAC 480-15-450.

**DRAFT PROPOSAL.** When carriers do not comply with conditions for applying for permits or granting authority under WAC 480-15-320 and WAC 480-15-330, or engage in activities that constitute good cause to cancel under WAC 480-15-450, the order cancelling should be a delegated order with an opportunity for hearing through a brief adjudicative proceeding.

**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Public Counsel, Verizon, Avista, and WITA support the Commission's draft proposal.

~~(23)~~ **Solid waste collection companies -- Specialized, chapters [81.77 RCW](#) and [480-70 WAC](#).**

(a) Orders and permits authorizing intrastate solid waste collection services involving unprotested applications in territory not served by any existing carrier.

(b) Orders and permits authorizing change of carrier's corporate name, trade name, or addition of a trade name.

(c) Orders and permits approving unprotested applications to transfer or lease certificate.

(d) Orders suspending a permit if the carrier fails to maintain evidence of the required liability insurance coverage. The order will inform the carrier that the permit may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest the suspension by requesting an adjudication or brief adjudicative proceeding.

(e) Orders vacating suspension of permit if the commission receives the carrier's insurance filing during the suspension period and orders of abeyance if the carrier requests ~~an adjudication~~ a hearing or brief adjudicative proceeding.

(f) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension, and fails to request a hearing or brief adjudicative proceeding, during the suspension period.

(g) Orders reinstating a permit canceled for cause if the conditions for reinstatement in chapter 480-70 WAC and in the order of cancellation are met.

(h) Orders dismissing application or canceling permit authority by request of applicant or carrier.

**(34) Solid waste collection companies -- Traditional, chapters 81.77 RCW and 480-70 WAC.**

(a) Orders and permits authorizing intrastate solid waste collection services involving unprotested applications in territory not served by an existing carrier.

(b) Orders and permits authorizing change of carrier's name, trade name or addition of a trade name.

(c) Orders suspending a permit if the carrier fails to maintain evidence of the required level of insurance in effect for its operations. The order will inform the carrier that the permit may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest the suspension by requesting a hearing or brief adjudicative proceeding.

(d) Orders vacating suspension of a permit if the commission receives the carrier's insurance filing during the suspension period and orders of abeyance if the carrier requests a hearing or brief adjudicative proceeding.

(e) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension, and fails to request a hearing or brief adjudicative proceeding, during the suspension period.

(f) Orders reinstating a permit canceled for cause if the conditions for reinstatement in chapter 480-77 WAC and in the order of cancellation are met.

(g) Orders dismissing application or canceling permit authority by request of applicant or carrier.

**DRAFT PROPOSAL.** The current language does not allow delegation of orders to suspend or cancel for failure to maintain insurance, or reinstate or allow dismissal or cancellation at the request of the carrier. The Commission's Licensing Section receives notices of lapsed insurance for solid waste carriers and orders suspending, or cancelling authority under these circumstances must be signed by the Commissioners. Including orders suspending and canceling for failure to maintain insurance, and other cancellation orders, as delegated matters would streamline the Commission's current processes.

**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Public Counsel, Verizon, Avista, and WITA support the Commission's draft proposal.

**(45) Private, nonprofit transportation providers, chapter 480-31 WAC.**

(a) Orders and permits authorizing intrastate transportation of persons with special needs.

(b) Orders and permits authorizing sale, assignment, lease, acquisition or transfer.

(c) Orders suspending a permit if the carrier fails to maintain evidence on file that it has the required level of insurance in effect for its operations. The order must inform the carrier that the permit may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest the suspension by requesting a hearing or brief adjudicative proceeding.

(d) Orders vacating suspension of a permit if the commission receives an insurance filing during the suspension period and orders of abeyance if the carrier requests a hearing or brief adjudicative proceeding.

(e) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension, and fails to request a hearing or brief adjudicative proceeding, during the suspension period.

(f) Orders reinstating a permit canceled for cause if the conditions for reinstatement in chapter 480-70 WAC and in the order of cancellation are met.

(g) Orders dismissing application or canceling permit authority by request of applicant or carrier.

**DRAFT PROPOSAL.** The current rule language allows for delegation of orders suspending private non-profit provider permits, but does not allow delegation of orders to cancel, reinstate or allow dismissal or cancellation at the request of the carrier. The proposed language adds these types of actions to the list of delegated matters for this class of carriers.

**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Public Counsel, Verizon, Avista, and WITA support the Commission's draft proposal.

**(56) Charter and excursion busses, chapter 480-40 WAC.**

(a) Orders and permits authorizing intrastate transportation of passengers by charter or excursion.

**DRAFT PROPOSAL** The word "permits" is omitted from the rule. The proposal to include the words "and permits" would make the subsection consistent with other subsections of the rule.

**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Public Counsel, Verizon, Avista, and WITA support the Commission's draft proposal.

(b) Orders suspending permit if the carrier fails to show that it has the required level of insurance in effect for its operations. The order will inform the carrier that the permit may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest the suspension by requesting a hearing or brief adjudicative proceeding.

(c) Orders vacating suspension of permit if the commission receives an insurance filing during the suspension period or orders of abeyance if the carrier requests a hearing or brief adjudicative proceeding.

(d) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension and fails to request a hearing or brief adjudicative proceeding during the suspension period.

(e) Orders canceling permit authority or dismissing an application by request of the carrier or applicant.

(f) Orders dismissing application after due notice to applicant for failure to meet the requirements of chapter 480-40 WAC.

(g) Orders authorizing lease, assignment, or transfer of permit authority.

**(67) Auto transportation companies, chapter 81.68 RCW.**

(a) Orders and permits authorizing intrastate, intercity transportation of passengers involving unprotested applications to serve routes not served by any existing carrier and that do not fall within the boundaries of a transit district.

(b) Orders and permits involving name changes, including trade names.

(c) Orders authorizing lease, assignment, or transfer of permit authority.

(d) Orders suspending a permit if the carrier fails to maintain evidence on file that it has the required level of insurance in effect for its operations. The order will inform the carrier that the permit may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest the suspension by requesting a hearing or brief adjudicative proceeding.

(e) Orders vacating suspension of a permit if the commission receives an insurance filing during the suspension period and orders of abeyance if the carrier requests a hearing or brief adjudicative proceeding.

(f) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension, and fails to request a hearing or brief adjudicative proceeding, during the suspension period.

(g) Orders reinstating a permit canceled for cause if the conditions for reinstatement in chapter 480-68 WAC and in the order of cancellation are met.

(h) Orders dismissing application or canceling permit authority by request of applicant or carrier.

**DRAFT PROPOSAL.** The current rule language does not allow for delegation of orders granting sales or transfers of control, orders suspending auto transportation company permits, or orders to cancel, reinstate or allow dismissal or cancellation at the request of the carrier. The proposed language adds these types of actions to the list of delegated matters for these companies.

**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Public Counsel, Verizon, Avista, and WITA support the Commission's draft proposal.

**(78) Commercial ferries, chapter 480-51 WAC.**

(a) Orders suspending a certificate if the carrier fails to maintain the required insurance coverage. The order will inform the carrier that the certificate may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest suspension by requesting a brief adjudication or an adjudication.

(b) Orders vacating suspension of a certificate if the carrier corrects conditions leading to suspension and orders of abeyance if the respondent requests a brief adjudication or an adjudication.

(c) Orders canceling a previously suspended certificate if the carrier fails to correct conditions leading to suspension and fails to timely request an adjudication or brief adjudication.

**DRAFT PROPOSAL** The Commission seeks guidance on whether there is a need to include additional delegated matters or orders for commercial ferry companies, consistent with other regulated transportation companies under this rule.

**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Public Counsel, Verizon, Avista, and WITA support the Commission's draft proposal.

**(89) Temporary transportation authority.** The commission delegates to the executive secretary decisions in applications for temporary motor carrier or solid waste authority. The decision takes effect immediately on entry of an order without prior notice of delegation. An applicant whose application is denied, in whole or in part, may obtain review by requesting an adjudication within twenty days following entry of the order. Commission review of delegated decisions under this provision will be *de novo*.

**(9) Cancellation for failure to file annual reports or pay regulatory fees.** The commission delegates to the executive secretary notices to regulated companies concerning their failure to timely file annual reports and pay regulatory fees, as well as orders scheduling hearings and canceling registrations or permit authority for failure to comply with commission rules governing annual reports and regulatory fees.

**DRAFT PROPOSAL.** Currently orders scheduling hearings and canceling regulated companies for failure to file annual reports and pay regulatory fees must either be signed by an administrative law judge or the Commissioners. Including such notices and orders as delegated matters would streamline the Commission's process of enforcing its rules governing annual reports and regulatory fees.

**COMMENTS:** In written comments on the January 25, 2008, draft rules, Qwest, PSE, Public Counsel, Verizon, Avista, and WITA support the Commission's draft proposal.