

A-130355 Procedural Rules

Draft Summary of 1-31-18 Comments on Proposed Revisions to Part III C – IV

April 11, 2018

480-07	Energy Companies	ICNU	WKG	Public Counsel	Staff Response
610(3)(a)	PSE: Delete “when doing so will not prejudice the rights of any person” as unnecessary and in conflict with other provisions				Staff agrees and has deleted this language.
610(3)(b)			Proposes revisions to provide that any party may request a BAP and would add a subsection (c) providing an opportunity for another party to oppose such a request		Staff disagrees in part. Staff’s proposed language already allows any person to request a BAP, and WKG’s proposed revisions would unnecessarily narrow the scope to petitions, applications, and complaints. Staff, however, agrees that in circumstances in which there are multiple parties, they should have the opportunity to oppose the request. Accordingly, Staff has added language to that effect in subsection (b).
610(5)(b)			Proposes language stating that the Commission will issue a determination on whether to initiate a BAP, as well as any notice		Staff agrees but believes additional language addressing this issue should be in subsection (b)(3). Staff has revised that subsection accordingly.
610(5)(b)(i)	PSE: Include parallel language for highly confidential information				It is unlikely that the record in a BAP will include highly confidential information, but to be thorough Staff has made the suggested addition with a modification.
610(5)(b)(ii)	PSE: Include language for Excel spreadsheets				The record in a BAP generally will not include Excel spreadsheets, but to be thorough, Staff has made the suggested addition with modifications.

A-130355 Procedural Rules
Summary of 1-31-18 Comments on Part III C - IV
April 11, 2018

480-07	Energy Companies	ICNU	WKG	Public Counsel	Staff Response
700(4)(b)	PSE: Clarify that all forms of settlement discussions are confidential				Staff agrees and has made the suggested edits.
710(4)(g)	PSE: Remove statutory reference and related text as confusing				Staff agrees and has made the suggested edits with a modification.
720(2)	PSE: Proposes clarifying language				Staff agrees and has made the suggested edits.
720(4)				Clarify Staff's role in the collaborative to ensure communications are properly directed.	Staff agrees and has added language to address this issue.
720(5)	PSE: Proposes language to address partial consensus				Staff agrees and has made the suggested edits with modifications.
730(3)	PSE: Delete last sentence or modify it to state that non-settling parties may dispute the settlement				Staff agrees in part and has modified the proposed language, including referring to section 740(3)(c) with respect to non-settling parties' rights and distinguishing full from partial multiparty settlements.
740(1)(b)	PSE: Revise language to reflect that a time period for public comment is not necessary for all settlements				Staff disagrees in part. The Commission must have time to consider any public comments, solicited or not, but Staff has modified the language to segregate party filings on the settlement from any public comment that may or may not be specific to the settlement.
740(2)			Retain existing time for filing settlement agreement for Title 81 companies		Staff generally agrees in concept and has revised the language accordingly.

A-130355 Procedural Rules
Summary of 1-31-18 Comments on Part III C - IV
April 11, 2018

480-07	Energy Companies	ICNU	WKG	Public Counsel	Staff Response
740(2)(d)	<p>PSE: Entire subsection should be deleted – requiring filing a GRC settlement 30 days before the evidentiary hearing is not realistic; requiring the company to extend the statutory deadline is an opportunity for gamesmanship and a disincentive to settlement; and the consequences for failing to extend that deadline are punitive, require unnecessary extra work for the parties, and would discourage settlement. Alternatively, substitute voluntary, shorter deadlines for requirements and consequences.</p> <p>PPL: Supports PSE’s comments and proposes additional edits</p>	<p>Questions whether the Commission can extend statutory deadlines and suggests eliminating the practical risk of a challenge to such an extension by requiring all parties to consent</p>		<p>Requests that the Commission be flexible regarding when parties settle so as not to decrease the likelihood of compromise or lead to less robust records.</p>	<p>Staff disagrees with deleting this subsection but has revised the proposed language to provide that the company that filed the tariff must state only whether it would be willing to extend the statutory deadline, if necessary, and that the Commission may decline to consider a settlement agreement if it cannot do so and take final action by the statutory deadline. Such language would provide the flexibility Public Counsel requests and the ability to tailor Commission action to the individual circumstances as ICNU suggests.</p>
740(3)	<p>PSE: Subsection should be numbered “3” instead of “2”</p>	<p>Subsection should be numbered “3”</p>			<p>Staff agrees and has made that edit.</p>
750	<p>PPL: Requests guidance in rule language on the appropriate time necessary for the Commission to consider settlement agreements</p>				<p>Staff disagrees. The Commission determines the amount of time necessary to consider settlement agreements on a case-by-case basis in light of all the circumstances presented, a process which does not lend itself to meaningful general guidance on appropriate time frames beyond those provided in section 740.</p>

A-130355 Procedural Rules
Summary of 1-31-18 Comments on Part III C - IV
April 11, 2018

480-07	Energy Companies	ICNU	WKG	Public Counsel	Staff Response
750(2)(b)(ii)	PSE: Questions need for proposed revisions on conditional approval of settlements; alternatively would strike “unequivocally and unconditionally” and add sentence allowing for requests for clarification or reconsideration	The rule should not eliminate a party’s ability to seek reconsideration of the Commission’s conditional approval of a settlement		Affirmative acceptance of conditions could lead to unintended consequences of automatic rejection even if all parties accept the conditions	Staff disagrees with modifying the proposed language requiring unequivocal and unconditional acceptance of Commission conditions. In a recent case, a party equivocated on accepting Commission conditions on approving a settlement and subsequently sought judicial review of the conditions in that order. Staff, however, does not intend to preclude a party from being able to seek clarification or reconsideration of Commission conditions and has added PSE’s suggested language on that issue with some modification.
820	PPL: Proposes to add a new subsection requiring the Commission to provide workpapers showing its calculations of ordered adjustments in energy rate cases				Staff disagrees. If a party seeks more information about the Commission’s calculations in a final order, the appropriate procedure is for that party to file a motion for clarification pursuant to section 835 or request an order conference pursuant to section 840.
825(1)(c)			Delete language about initial orders not being final orders as confusing		Staff agrees and has made the suggested edit.
825(3)(a)	PPL: Suggests additional language to allow a party to seek clarification of an issue that was not expressly raised or discussed in the initial order				Staff disagrees. As the rule states, the purpose of clarifying an initial order is to correct obvious ministerial error. A missing number or word could be such an error. An alleged failure to address or discuss an issue, however, is substantive, and the appropriate recourse of a party seeking to change that alleged shortcoming would be to petition for administrative review of the initial order.
825(3)(b)	PPL: Requests that the Commission consider allowing a motion for clarification of an initial order to toll the time to petition for administrative review				Staff disagrees that a motion for clarification of an initial order should automatically toll the time to petition for administrative review but has added language to clarify that a party may request an extension of the deadline in its motion.

A-130355 Procedural Rules
Summary of 1-31-18 Comments on Part III C - IV
April 11, 2018

480-07	Energy Companies	ICNU	WKG	Public Counsel	Staff Response
830	PPL: Proposed language to clarify that only bench request responses and a public comment exhibit will be admitted into the evidentiary record after the conclusion of the hearing				Staff agrees in concept and has added clarifying language.
835(4)	PPL: Requests that the Commission consider allowing a motion for clarification to toll the time for filing a petition for reconsideration				Staff disagrees. RCW 34.05.467(1) allows only 10 calendar days for a party to petition for reconsideration of a final agency order, and the Commission cannot toll or extend that time consistent with the statute. Staff also notes that this subsection conflicts with WAC 480-07-825(7) and 840(3). To resolve this conflict, Staff proposes to revise this subsection to delete the language providing for tolling of the time for seeking judicial review and add language from 840(3) concerning the effect of a subsequent order.
850		Change deadline to file reconsideration petitions to 10 business (rather than calendar) days; provide other parties with right to respond or at least file motions for leave to respond			Staff disagrees. This provision complies with RCW 34.05.467(1), which allows only 10 calendar days for a party to petition for reconsideration of a final agency order. Allowing a response only upon Commission request is consistent with many superior court local rules. <i>E.g.</i> , King County LCR 59(b). Staff, however, has added language from the King County local rule clarifying that the Commission will not grant a motion for reconsideration without first requesting a response.
870			Proposes language to require a petition for rehearing to make, and the Commission to find, a prima facie case in support of the requested rehearing		Staff disagrees that the proposed additional language is needed or necessarily consistent with RCW 80.04.160. Staff, however, has added language to require evidence or an offer of proof in support of any petition for rehearing.

A-130355 Procedural Rules
Summary of 1-31-18 Comments on Part III C - IV
April 11, 2018

480-07	Energy Companies	ICNU	WKG	Public Counsel	Staff Response
880(3)	PSE: Revise language to provide that workpapers in support of compliance filings be provided to the parties, not filed				Staff agrees and has modified the proposed language accordingly.
880(4)	PSE: Reduce time for filing responses to compliance filings from 10 days to 5 business days PPL: Require Staff's response within 15 days				PSE: Staff agrees and has made the suggested edit. PPL: Staff has clarified that Staff's response to a compliance filing is due at the same time as any other party's response.
890				Include information on how the Commission will assess whether an order is "significant"; allow for parties to request inclusion of an order in the index; include a summary of the main issues in significant orders	WAC 480-04-065 currently addresses this subject, and Staff intends to initiate a rulemaking to update this chapter of the Commission's rules. Accordingly, Staff has withdrawn this proposed new section in Chapter 480-07 and will consider Public Counsel's comments in the context of the rulemaking in Chapter 480-04.
900(4)				Consider making the agendas for open meetings available earlier than the two business days in advance in the proposed rule to allow for timely written comments; ensure that Staff memos are published in the dockets they address.	Staff disagrees with modifying the rule to publish the agenda more than two business days in advance or to address Staff memos on discussion agenda items. RCW 42.30.077 requires that agendas be made available online no later than 24 hours in advance of the meeting, and Staff proposes to double that time in this rule. As a matter of practice, moreover, the Commission makes its agendas available on the Friday before the Thursday open meeting and does not intend to change that practice. The Commission also includes Staff memos on agenda discussion items in the associated docket on the Monday before the open meeting.

A-130355 Procedural Rules
Summary of 1-31-18 Comments on Part III C - IV
April 11, 2018

480-07	Energy Companies	ICNU	WKG	Public Counsel	Staff Response
904		Sees no reason to change the current rule but suggests clarifying the process by which the Commission will delegate authority and provide limits as to what types of matters it may delegate			Staff disagrees. RCW 80.01.030 authorizes the Commission to delegate duties by rule or order, and the Commission currently has made delegations both in rule and order. Staff proposes to include delegation of specific matters only in orders to consolidate them into a single location that is more amenable to future changes. In addition, Staff does not believe the Commission should adopt any limits on the matters the statute authorizes the Commission to delegate.
915(8)	PSE: Modify enforcement of penalty payment to account for contest of violation or request for mitigation of penalty				Staff agrees and has added language to address this issue. Staff has also added a subsection to address failure to comply with any condition in an order suspending all or any part of an assessed penalty.
917					Staff has added a new draft rule to implement SB 6179, the recently enacted legislation modifying the process for penalizing companies that fail to file their annual report and pay any regulatory fees by the deadline.
General					Staff has deleted its proposed substitution of “submit” for “file,” believing that the existing term is generally accepted and its meaning sufficiently understood. Staff has also made minor clarifying corrections to the language in the draft.

A-130355 Procedural Rules
Summary of 1-31-18 Comments on Part III C - IV
April 11, 2018

480-07	Energy Companies	ICNU	WKG	Public Counsel	Staff Response
Commenter Acronyms	PSE – Puget Sound Energy PPL – Pacific Power and Light Company (which also supports PSE’s comments) AU – Avista Utilities (which supports PSE’s and PPL’s comments)		WKG – Williams Kastner & Gibbs PLLC		