

**Chapter 480-07 WAC**

**PROCEDURAL RULES** Last Update: 8/22/08 WAC

**PART III: ADJUDICATIVE PROCEEDINGS**

**Subpart C: Abbreviated and Specialized Forms of Adjudicative Proceedings**

- 480-07-600 Scope.
- 480-07-610 Brief adjudicative proceedings.
- 480-07-620 Emergency adjudicative proceedings.
- 480-07-630 Telecommunications companies--Arbitration under the Telecommunications Act of 1996.
- 480-07-640 Telecommunications companies--Review and approval of interconnection agreements under the Telecommunications Act of 1996.
- 480-07-650 Petitions for enforcement of telecommunications company interconnection agreements.
- 480-07-660 Railroad grade-crossing closures--Objections.

**Subpart D: Alternative Dispute Resolution**

- 480-07-700 Alternative dispute resolution.
- 480-07-710 Mediation.
- 480-07-720 Collaboratives.
- 480-07-730 Settlement.
- 480-07-740 Settlement consideration procedure.
- 480-07-750 Commission discretion to accept settlement, impose conditions, or reject a proposed settlement.

**Subpart E: Orders and Post-order Process**

80-07-800 Order entry, effectiveness, and service.

80-07-810 Interlocutory orders.

80-07-820 Initial and final orders.

80-07-825 Initial orders--Petitions for administrative review.

80-07-830 Motion to reopen the record prior to entry of a final order.

80-07-835 Clarification of final order by motion.

80-07-840 Clarification of a final order by conference.

80-07-850 Reconsideration of a final order by petition.

80-07-860 Stay.

80-07-870 Rehearing.

80-07-875 Amendment, rescission, or correction of order.

80-07-880 Compliance filing; subsequent filing; reporting requirement.

80-07-883 Compliance filing--Filing requirements; timing; commission action.

80-07-885 Subsequent filing--Filing requirements; timing; commission action.

#### **PART IV: OTHER COMMISSION PROCEEDINGS**

80-07-900 Open public meetings.

80-07-903 Delegation of authority to the executive secretary.

80-07-904 Delegation of authority to the executive secretary to decide certain matters.

80-07-905 Delegation of authority to executive secretary to enter *ex parte* orders.

80-07-910 Informal complaints.

80-07-915 Penalty assessments.

80-07-917 Penalties for failure to file annual reports or pay regulatory fees.

80-07-920 Interpretive and policy statements.

80-07-930 Declaratory orders under RCW 34.05.240.

80-07-940 Conversion of proceedings.

**Subpart C: Abbreviated and Specialized Forms of  
Adjudicative Proceedings**

**WAC 480-07-600 Scope.** Subpart C of this chapter establishes rules for abbreviated and specialized adjudicative proceedings, including brief adjudicative proceedings, emergency adjudicative proceedings, proceedings under the Telecommunications Act of 1996, and proceedings concerning the closure of highway-railroad grade crossings.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-600, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-610 Brief adjudicative proceedings. (1) When permitted.** The commission may use brief adjudicative proceedings under RCW 34.05.482 when:

(a) Such proceedings are consistent with other provisions of law;

(b) Protection of the public interest does not require the commission to give notice and an opportunity to participate to

WAC (4/11/18 7:24 AM) [ 3 ]

persons other than the parties;

(c) Discovery and prefiled written testimony are not necessary to provide the commission with sufficient evidence to render a determination; and

(d) The commission believes that the issues presented can best be resolved through a brief adjudication consistent with the public interest. In exercising its discretion to conduct a brief adjudication, the commission will consider the preferences of the parties, the possible benefits to be gained from a brief adjudication, and the nature of issues involved.

(2) **Matters suitable for brief adjudication.** Categories of proceedings suitable for brief adjudication include, but are not necessarily limited to:

(a) Challenges to commission notices of intent to deny, in whole or in part, applications for authority that are not protested;

(b) Contested applications for temporary authority;

(c) Proceedings that could lead to suspension, cancellation, or revision of authority for failure to maintain tariffs, pay fees, or file required documents;

(d) Formal complaints that do not require notice and an opportunity to participate to persons other than the parties and the commission can best resolve in a brief adjudication, including but not limited to complaints the commission initiates to determine whether a company is providing service subject to commission regulation without commission authority;

(e) Contested penalty assessments under RCW 80.04.405, 81.04.405, or 19.122.150, or consideration of requests for mitigation of the penalty; and

(f) Applications for authority to provide auto transportation service to which a company properly objects.

(3) **Initiating a brief adjudication.** The director of the administrative law division will determine whether the commission will initiate a brief adjudication and will provide a written explanation of a determination not to initiate a brief adjudication.

(a) The commission may set a matter for brief adjudication on its own initiative.

(b) Except as otherwise provided in this section, any person may file a petition requesting that the commission commence a brief adjudicative proceeding.

(i) The petition must describe the issues the petitioner seeks to have the commission resolve, the petitioner's position on those issues, and the reasons why a brief adjudication would be appropriate to resolve those issues. The petitioner must serve the petition on all other identified or necessary parties and must file a certificate of service with the petition.

(ii) Any identified or necessary party that opposes the petition may file a response within 10 days after service of the petition stating the reasons why a brief adjudication would not be appropriate to resolve the issues identified in the petition.

(iii) If the commission initiates a brief adjudication, it

will issue a notice of the time and place for the proceeding. A decision denying the petition will be in writing, and the petitioner may seek commission review of that decision pursuant to the procedure for requesting review of initial orders in WAC 480-07-825.

(c) Any person requesting a hearing or commission review of orders or letters suspending or canceling a permit for failure to maintain evidence of required insurance coverage or other specified circumstances must submit that request in writing within 14 days after the commission posts the order or letter on its web site. The director of the administrative law division will determine whether the commission will initiate a brief adjudication or if an administrative law judge will enter a decision based on the written request and commission staff's response. The requester may seek commission review of any such decision pursuant to the procedure for requesting review of initial orders in WAC 480-07-825.

(4) **Assignment of presiding officer.** If the commission sets a matter for a brief adjudication, the commission will designate a person to serve as a presiding officer consistent with the requirements of RCW 34.05.485.

(5) **Hearing.**

(a) *Notice and nature of proceeding.* The commission will serve upon the parties a notice of the time and place for the brief adjudicative proceeding at least seven days before the proceeding. That notice or a subsequent procedural order will

specify how the commission will conduct the proceeding. The parties may offer written exhibits for inclusion in the record and may make oral statements in support of their positions. The presiding officer also may permit parties to present one or more witnesses to testify in support of their positions subject to cross-examination by the other party.

(b) *Exhibits.* Each party must file with the commission and serve on the other parties all exhibits the party proposes to introduce into the record. The presiding officer may refuse to admit into the evidentiary record any exhibits not provided in advance of the hearing. The notice of brief adjudicative proceeding or subsequent procedural order will establish the deadlines for filing these exhibits.

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

(A) State "Exh." followed by the initials of the witness who will sponsor the exhibit or the name of the party if no witness will sponsor the exhibit.

(B) Place a hyphen after the witness's initials or party name and insert the number of the exhibit. For example, the first exhibit commission staff designates either would be marked "Exh. Staff-1" or if sponsored by staff witness John Q. Witness, would be marked "Exh. JQW-1"; the second exhibit would be marked either "Exh. Staff-2" or "Exh. JQW-2," etc.

(C) Place the capital letter "C" immediately after the

number of the exhibit if the exhibit includes information designated as confidential under WAC 480-07-160. Place the capital letters "HC" immediately after the number of the exhibit if the exhibit includes information designated as highly confidential under WAC 480-07-160 and a protective order.

(ii) Format. Any exhibit in the form of a spreadsheet that displays results of calculations based on formulas must be filed and served electronically in its native Excel format in compliance with WAC 480-07-140(6)(a)(ii). All other exhibits must be filed and served electronically in searchable .pdf (Adobe Acrobat or comparable software) format.

(iii) Organization. Each exhibit must be a separate document (i.e., multiple exhibits must not be scanned into a single document), and each document must be labeled with the exhibit name. Any paper copies of the exhibits that the presiding officer requires must be organized into sets that are tabbed, labeled, and grouped by witness, if any.

(c) *Exhibit and witness lists.* Each party must file with the commission and serve on all parties a list of all exhibits the party intends to offer for admission into the record. If the presiding officer permits parties to present witness testimony, each party also must provide a list of all witnesses the party intends to present at the hearing and a brief summary of the testimony each witness will give. The notice of brief adjudicative proceeding or a subsequent procedural order will establish the deadline for filing



exhibit and witness lists.

(d) *Testimony.* The presiding officer may refuse to permit a witness to testify if the witness is not on the witness list. The presiding officer also may refuse to hear proposed testimony if it would not be relevant to the issues to be addressed in the proceeding or would be cumulative of the testimony to be offered by another witness. The presiding officer may limit a witness's testimony to the subjects identified in the summary the party provides prior to the hearing.

(6) **Initial order.**

(a) The presiding officer may enter a decision orally and make a brief statement of the reasons for the decision at the conclusion of the hearing. The presiding officer will then enter an initial order more fully explaining that decision in writing within 10 days after the date of the hearing.

(b) The presiding officer may take the matter under advisement at the conclusion of the hearing and enter a written initial order that addresses the issues raised in the proceeding within ten days after the date of the brief adjudication. The presiding officer may extend this deadline for good cause.

(7) **Review of initial orders.**

(a) *Timing.* Any party may petition for review of an initial order within twenty-one days after service of the order. The commission also may review an initial order on its own motion.

(b) *Format for petition for review.* The commission strongly prefers petitions for review to be in writing so parties will have the greatest opportunity to state reasons for their views, but the commission will accept oral petitions for review as authorized in RCW 34.05.488 and this rule. A party's request for review of an initial order must identify the errors the party alleges in the order and must provide an explanation of the reasons why the party contends that the initial order is incorrect. The petitioning party must serve its written petition on all parties when it submits the petition to the commission for filing. A party orally requesting review must make that request in the presence of all parties, the presiding officer, and a court reporter.

(c) *Response.* Any party may file and serve a written response to an oral or written petition for review within seven days after the petitioning party makes its oral request for review or serves the written petition unless the commission establishes a different deadline.

(8) **Final order on review.** The commission may adopt, modify, or reject the initial order or may remand the initial order for further proceedings. The final order on review will be in writing and will include a brief statement of the reasons for the decision. The commission will enter the final order within twenty days after the deadline for requesting review of the initial order. The order will include a notice of any further available administrative review or, if none is

available, a notice that judicial review may be available.

(9) **Finality of initial order.** The initial order becomes the commission's final order by operation of law under either of the following conditions:

(a) No party timely seeks administrative review of the initial order, and the commission does not initiate review on its own motion; or

(b) The commission does not enter a final order in response to a petition for administrative review within twenty days after the deadline for requesting review, unless all parties and the commission agree to waive the date by which the commission must enter a final order.

(10) **Record.** The record in a brief adjudicative proceeding consists of any exhibits the presiding officer admits into the record, the transcript of the hearing, and any other documents regarding the matter that the presiding officer considered for the brief adjudicative proceeding or that the commission considered in any review of an initial order. The commission's record need not constitute the exclusive basis for action, unless otherwise required by law.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-610, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-620 Emergency adjudicative proceedings. (1)**

**When permitted.** The commission may conduct an emergency adjudicative proceeding pursuant to RCW 34.05.479 in any situation involving an immediate danger to the public health, safety, or welfare requiring immediate commission action within the commission's jurisdiction.

(2) **Complaint.** If time permits, the commission or a complainant must prepare a complaint and serve it on the respondent using a method that best provides actual notice of the adjudication.

(3) **Who presides.** The commissioners will sit as presiding officers, hear the matter, and enter an order if a majority of the commissioners are available. Any available commissioner will sit as presiding officer, hear the matter, and enter an initial order if a majority of the commissioners is not available. The director of the commission's administrative law division will assign an administrative law judge either to sit as a presiding officer with the commissioner(s), or if no commissioner is available, to preside alone, hear the matter, and enter an initial order.

(4) **Record and decision.** The official record will include any written submissions of the parties, any testimony or oral comments by the parties the presiding officer allows, and any other documents regarding the matter that the commission considers. The commission's record need not constitute the exclusive basis for action unless otherwise required by law.

(5) **Emergency order.** The commission will take only such action as is necessary to prevent or avoid the immediate danger to the public health, safety, or welfare that justifies use of emergency adjudication. The presiding officer will enter an emergency order as soon as practicable under the circumstances. The order will include a brief statement of findings of fact, conclusions of law, and justification for the determination of an immediate danger to the public health, safety, or welfare. The order is effective when entered.

(6) **Post-order process.** After entering an emergency order under this section, the commission will proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger to the public health, safety, or welfare, and will enter a final order.

(7) **Review or reconsideration of emergency order.** Any party to an emergency adjudicative proceeding may seek immediate review by the full commission in the case of any order entered by a single commissioner or by an administrative law judge. In the case of any order entered by a majority of the commissioners, any party may seek reconsideration. If a party requests review or reconsideration, the commission will establish appropriate process to complete its review or reconsideration within ten business days of the date of any petition for review or reconsideration. A party seeking review or reconsideration is not automatically entitled to a stay of the emergency order.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 06-16-053 (Docket A-050802, General Order R-536), § 480-07-620, filed 7/27/06, effective 8/27/06; 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-620, filed 11/24/03, effective 1/1/04.]

**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 unit of the

office of the Washington state 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 a party requests arbitration.

(b) *Filing.* Parties must file petitions for arbitration under 47 U.S.C. § 252 (b) (2) as provided for other petitions under WAC 480-07-370(3), 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 petitioner files the petition with the commission.

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

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

(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 petitioner 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 on which the petitioner relies to support its positions or that it intends to introduce as exhibits at the hearing.

(6) **Filing and service of a response 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 the respondent wishes within twenty-five days after the petitioner files the petition.

(b) *Filing.* Responses to petitions for arbitration under 47 U.S.C. § 252 (b) (2) must be filed with the commission in the manner provided for responses to other petitions under WAC 480-07-370(3) 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 response and all accompanying documentation on the same day that the respondent files the response with the commission.

(7) **Contents of response and required documentation.** A response 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 incumbent local exchange carrier 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 respondent 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 the petitioner 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 on which the respondent relies to support its positions or that it intends to introduce as exhibits at the hearing.

(8) **Verification.** The petition, response, 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, responses, and any documents a party provides to the commission pursuant to a request under 47 U.S.C. § 252 (b) (4) (B) are subject to Washington's public disclosure laws, including chapter 42.56 RCW and RCW 80.04.095. Confidential information submitted with a petition for arbitration or response 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.

(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 to which a party has not responded 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.* The commission will appoint one or more commissioners, one or more commission employees, or one or more persons under contract with the commission to act as arbitrator(s) to resolve a petition for arbitration. 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 appointment 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 the arbitrator may not consult with a staff member who has acted as a mediator with respect to the same interconnection agreement between the same parties. The arbitrator will issue the arbitrator's report within one hundred ten days after the date on which the petitioner filed the petition for arbitration. 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.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 08-18-012 (Docket A-072162, General Order R-550), § 480-07-630, filed 8/22/08, effective 9/22/08; 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-630, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-640 Telecommunications companies--Review and approval of interconnection agreements under the Telecommunications Act of 1996.** (1) **Scope.** This rule implements the commission review and approval process provisions of 47 U.S.C. § 252.

(2) **Commission review and approval of agreements.**

(a) *Filing and service of agreements.*

(i) *Negotiated agreements.* Parties to a negotiated interconnection agreement must file a complete, signed copy of their agreement to the commission for approval under 47 U.S.C. § 252(e) within thirty days after they sign the agreement. The parties must include any appendices or attachments to the agreement. The request for approval must summarize the agreement's main provisions and must affirm that the agreement does not discriminate against nonparty carriers, is consistent

with state and federal law, and is in the public interest. The commission will reject a request for approval that does not include all of the information required in this section but will allow it to be refiled when complete. The timelines established for commission review of requests for approval under 47 U.S.C. § 252 do not begin until a complete request is properly filed.

(ii) *Arbitrated agreements--Petition for review; response.* Any party may petition for commission review of an arbitrator's report and decision within thirty days after the commission issues the arbitrator's report, or at such other time as is established by notice or order. Other parties to the arbitration proceeding may file a response within ten days after the petitioner serves the petition, or at such other time as the commission establishes by notice or order. Both petition and response must be in the form of a brief of the issues and must address all legal and factual bases in support of the parties' respective arguments that the commission should or should not modify the arbitrator's report and decision.

(iii) *Arbitrated agreements--Request for approval.* The parties must also file, on the date established for responding to any petition for review, their request for approval of an arbitrated interconnection agreement and a complete, signed copy of their interconnection agreement including all negotiated terms, all terms requested under 47 U.S.C. § 252(i), and all terms drafted to implement the arbitrator's report and decision. Arbitrated terms must be in bold font style and identify by

footnote the arbitrated issue that relates to the text. Any appendices or attachments to the agreement must be included. The request for approval must summarize the agreement's main provisions and must affirm that the agreement does not discriminate against nonparty carriers, is consistent with state and federal law, and is in the public interest. The commission will reject a request for approval that does not include all of the information required in this section but will allow the parties to refile the request when it is complete. The timelines established for commission review of requests for approval do not begin until the parties file a complete request.

(iv) *Adopted agreements.* If a company adopts an interconnection agreement in its entirety that the commission has previously approved, the parties to the adopted agreement must notify the commission of the adoption within thirty days after they sign the adopted agreement. The commission will include the adopted agreement on the no-action portion of a regularly scheduled open meeting agenda. In the absence of an objection, the commission will allow the agreement to become effective according to its terms.

(b) *Commission consideration of requests for approval and petitions for review.*

(i) *Negotiated agreements.* The commission delegates authority to the commission secretary to approve or reject a fully negotiated interconnection agreement. The commission will approve or reject a fully negotiated agreement within ninety

days after the date on which the parties file the agreement and request for approval.

(ii) *Arbitrated agreements.* The commission will consider any petition for review of an arbitrator's report and decision using the same procedures in WAC 480-07-825 for review of an initial order. The commission will enter an order approving or rejecting a partially or fully arbitrated agreement within thirty days after the parties file the agreement and request for approval.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-640, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-650 Petitions for enforcement of telecommunications company interconnection agreements.** The purpose of this rule is to provide a speedy and enforceable means to resolve disputes when one party to an interconnection agreement contends that the other party is violating the terms of the agreement.

(1) **Petitions for enforcement.** A telecommunications company that is a party to an interconnection agreement with another telecommunications company may petition under this rule for enforcement of the agreement.

(a) *What the petition must contain.* Each petition for



enforcement must contain the following elements:

(i) A statement, including specific facts, demonstrating that the petitioner engaged in good faith negotiations to resolve the disagreement, and that despite those negotiations the parties failed to resolve the issue.

(ii) A copy of the provision of the interconnection agreement that the petitioner contends the other party is violating.

(iii) A description of facts demonstrating failure to comply with the agreement. One or more affidavits, declarations, or other sworn statements, made by persons having personal knowledge of the relevant facts must support the description.

(b) *How to serve the petition.* The petitioner must serve the petition for enforcement electronically on the responding party on the same day the petitioner files the petition with the commission. For purposes of this section, the petitioner must serve:

(i) The responding party's authorized representative, attorney of record, or designated agent for service of process;

(ii) The responding party's representatives with whom the petitioner conducted the negotiations addressed in part (a) (i) of this subsection; and

(iii) All parties designated in the interconnection agreement to receive notices.

(c) *Prefiling notice of petition.* The petitioner must give

at least ten days' written notice to the respondent that the petitioner intends to file a petition for enforcement. The notice must identify each specific provision of the agreement that the petitioner alleges the other party violated, and the exact behavior or failure to act that petitioner alleges violates the agreement. The petitioner must serve the written notice as provided in part (b) of this subsection. The petitioner must include a copy of this notice with its petition for enforcement. The written notice shall be valid for thirty days from the date of service. If the petitioner wishes to file a petition for enforcement after the thirty-day period, the petitioner must serve another notice to the respondent at least ten days prior to filing the petition.

(2) **Responding to a petition.** The respondent may respond to the petition. The respondent waives the opportunity to present any matter that is not raised in the response except as provided under subsection (3) of this section.

(a) *Contents of the response.* The response to a petition for enforcement must respond to each allegation of failure to comply with the terms of the interconnection agreement, stating relevant facts. The respondent must support any facts on which it relies by affidavits, declarations, or other sworn statements by persons having personal knowledge of the facts.

(b) *Filing and service of the response.* The respondent must file the response with the commission and serve it electronically on the petitioner within five business days after

the petitioner serves the petition for enforcement.

(3) **Amendment of petition and response.** The presiding officer may permit the respondent to amend its response for good cause shown, and to avoid substantial prejudice to the respondent for which the respondent is not responsible. The presiding officer may permit either party to amend its petition or response to conform to the evidence presented during the proceeding. The presiding officer may refer to, but is not bound by, Washington superior court Civil Rule 15(b) when determining whether to permit amendment of the petition or answer to conform to the evidence.

(4) **Prehearing conference.** The commission will conduct a prehearing conference regarding a petition for enforcement of an interconnection agreement.

(a) *Schedule; mandatory attendance.* The presiding officer will issue a notice of a prehearing conference within five business days after the petitioner files the petition. Both the petitioner and the respondent must attend the prehearing conference. The prehearing conference may be conducted by telephone.

(b) *Procedural determination.* The presiding officer will determine at the prehearing conference whether the commission can resolve the disputed issues raised in the petition by relying only on the pleadings, filings, and any oral statements without further proceedings. When determining whether to schedule an oral enforcement hearing session, the presiding

officer will consider the following: (i) the parties' preferences and the reasons they advance; (ii) the need to clarify statements by asking questions; (iii) whether the issues are largely factual, largely legal, or involve questions of fact and law; (iv) the apparent complexity of facts and issues; (v) the need for speedy resolution; and (vi) the completeness of information presented. The presiding officer may require the parties to file written briefs on the issues.

(c) *Means of obtaining additional information.* If the presiding officer determines that further proceedings are necessary, the presiding officer will establish a schedule for receiving additional facts or evidence and may schedule an enforcement hearing session to explore the facts and issues raised in the petition and the response. Either party may request that the commission makes its discovery rules available, stating the matters into which the party seeks to inquire and their relationship to matters directly at issue. The presiding officer may allow limited discovery requiring only the disclosure of facts relating directly to matters at issue, and only if the requesting party shows that discovery is essential. The presiding officer will establish a shortened discovery schedule to comply with the timelines of this rule.

**(5) Powers of the presiding officer; conversion of proceeding; initial or final order.**

(a) *Conduct of proceeding.* The presiding officer has broad discretion to conduct the proceeding in a manner that best suits

the nature of the petition, including, but not limited to, converting the proceeding into a complaint proceeding under RCW 80.04.110. Matters may be appropriate for conversion when (i) their complexity requires that they cannot be completed on the schedule provided in this rule; (ii) the petitioner requires discovery beyond a disclosure of facts directly related to the matters at issue; (iii) extensive policy argument or legal briefing is required; or (iv) participation by parties other than the petitioner and the respondent is necessary. The presiding officer may limit the record to written filings or may schedule an enforcement hearing. The presiding officer may limit the number of exhibits and witnesses and the time for their presentation.

(b) *Initial Order.* The presiding officer, if other than the commissioners, will enter an initial order resolving the petition within seventy-five days of the date the petitioner submitted the petition, or twenty-one days after the last hearing session or filing, whichever is later. If the commissioners preside over the enforcement proceeding, they may enter a final order within the time requirements applicable to initial orders.

(c) *Commission review.* Any party may file a petition for administrative review of the initial order within seven days after the commission enters the order. The opposing party may file a response within five days after the petitioner files a petition for review.

(6) **Commission decision on petition for enforcement.** The commission will enter its final order on the petition for enforcement no later than ninety days after the date the petitioner filed the petition or thirty days after a party files a petition for review of an initial order, whichever is later. The commission may extend this time for good cause.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 06-16-053 (Docket A-050802, General Order R-536), § 480-07-650, filed 7/27/06, effective 8/27/06; 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-650, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-660 Railroad grade crossing closures.** The commission may grant a petition to close a railroad grade crossing without a hearing unless the commission receives an objection to the proposed closure within 20 days after providing notice of the petition as required in RCW 81.53.060.

(1) **Objections.** An objection to a petition to close a railroad grade crossing must be in writing and must:

(a) Identify the person or persons who object by full name, mailing address, telephone number, and email address;

(b) Identify the particular crossing that is the subject of the objection;

(c) State the commission docket number; and

(d) Explain the basis for the objection.

If a communication does not meet these requirements, the commission will not treat the communication as an objection when determining whether a hearing is required under RCW 81.53.060.

(2) **Parties.** Only parties may fully participate in any proceeding the commission conducts to determine whether to grant a contested petition for a railroad grade crossing closure. A person other than the petitioner and commission staff who wishes to participate as a party, including but not limited to a person filing an objection to the closure, must petition to intervene prior to or at the initial prehearing conference or first hearing session, whichever is earlier, as prescribed in WAC 480-07-340.

(3) **Interested persons.** The commission will provide interested persons who are not parties with an opportunity to comment on the issues in the proceeding and offer evidence, as required by RCW 81.53.060. Such interested persons, however, may not call witnesses, cross-examine witnesses, or otherwise participate as a party at the hearing and do not have standing to file petitions for administrative review of initial orders or to file petitions for reconsideration of final orders.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-660, filed 11/24/03, effective 1/1/04.]

## Subpart D: Alternative Dispute Resolution

**WAC 480-07-700 Alternative dispute resolution.** The commission supports parties' informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest. Alternative dispute resolution (ADR) includes any mechanism to resolve disagreements, in whole or in part, without contested hearings.

(1) **No delegation of commission authority.** The commission cannot delegate to parties the power to make final decisions in any adjudicative proceeding. The commission will determine whether to approve and adopt any proposed settlement or other agreement and the extent to which it resolves some or all of the issues presented in the proceeding consistent with the public interest.

(2) **Forms of ADR.** The commission provides the following non-exclusive forms of ADR:

(a) *Voluntary negotiation.* Parties to a dispute that is within the commission's jurisdiction may agree to negotiate with any other parties at any time without commission oversight.

(b) *Commission-directed negotiation.* The commission may direct parties to meet or consult as provided in subsection (3) of this section, or may establish or approve a collaborative process as provided in WAC 480-07-720.



(c) *Mediation.* The commission may assign commission staff trained in ADR principles and techniques to serve as neutral third parties (e.g., mediator or facilitator) to assist the parties in formal or informal mediation.

(d) *Assignment of settlement judge.* The commission may assign a settlement judge to assist the parties to resolve their dispute through negotiation in appropriate circumstances.

(e) *Arbitration.* The commission may provide an arbitrator whose decision is subject to commission review in matters for which arbitration is authorized.

(3) **Settlement conference.** A settlement conference is any discussion or other communication between two or more parties in an adjudicative proceeding intended to resolve one or more disputed issues. Settlement conferences do not include requests for information, for clarification, or in aid of discovery, or communications to identify whether a dispute exists or whether another party is willing to negotiate resolution of a disputed issue. Settlement conferences must be informal and without prejudice to the rights of the parties. The parties may waive the procedural requirements of this section relating to settlement conferences if all parties and the commission agree. Any party and any person who has filed a petition to intervene may participate in an initial or early settlement conference as defined in this section. An intervenor's participation in a settlement conference is limited to the interests supporting its intervention, except by agreement of other participants in the

conference. No party is required to attend a settlement conference, but any party that attends and participates must make a good faith effort to resolve one or more disputed issues in which the party has a substantial interest.

(a) *Initial settlement conference.* The commission will include in the procedural schedule for each adjudicative proceeding the date for at least one settlement conference. Parties may reschedule a settlement conference included in the procedural schedule without seeking to modify the schedule if all parties agree, but the parties must provide notice to the presiding officer of the rescheduled date.

(b) *Early settlement conference.* Any party may initiate a settlement conference with any other party after the commission opens a docket and before the initial prehearing conference, but in general rate proceedings for electric, natural gas, or Class A telecommunications companies, the party initiating the settlement conference must provide ten days prior notice of any such conference to the commission, any statutory party, any person who has submitted a petition to intervene or notice of appearance, and any person who was a party in the most recent proceeding of the same type involving the same filing party and respondent, if any. Such persons may participate in the early settlement conference, as may any other person who submits a petition to intervene prior to the early settlement conference.

(4) **Settlement negotiation guidelines.** In any settlement negotiation, including collaboratives, settlement conferences,

and mediations, the following apply unless all participants agree otherwise:

(a) No statement, admission, or offer of settlement made during negotiations is admissible in evidence in any formal hearing before the commission without the consent of the participants or unless necessary to address the process of the negotiations;

(b) Information exchanged exclusively within the context of settlement negotiations will be treated as confidential and will be privileged against disclosure to the extent permitted by law;

(c) Participants in a commission-sanctioned ADR process must periodically advise any nonparticipating parties and the commission of any substantial progress made toward settlement and must immediately advise the commission if that process is without substantial prospects of resolving the issue or issues under discussion (i.e., if the participants agree that they are at an impasse or any neutral third party who is assisting the participants in the ADR process declares an impasse); and

(d) Any mediator, facilitator, or settlement judge who assists the participants in an ADR process will not participate in any adjudication, arbitration, or approval process for the same proceeding unless all parties consent in writing.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 06-16-053 (Docket A-050802, General Order R-536), § 480-07-700, filed 7/27/06, effective 8/27/06; 03-24-028 (General Order R-510,

Docket No. A-010648), § 480-07-700, filed 11/24/03, effective 1/1/04.]

**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 also implements the mediation provisions of the Telecommunications Act of 1996, 47 U.S.C. §§ 251 and 252.

(2) **Commission participation.** The parties to a negotiation 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 email addresses, and telephone 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 a qualified employee to serve as a mediator. 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 the commission subsequently adopts them;

(g) The mediation process is confidential and the information exchanged is privileged to the extent permitted by law; and

(h) No stenographic or electronic record will be made.

(5) **Fees and costs.** Each party must bear its own costs for the mediation. 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. The commission will review the settlement consistent with the requirements of WAC 480-07-640 or 480-07-740, as applicable.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 06-16-053 (Docket A-050802, General Order R-536), § 480-07-710, filed 7/27/06, effective 8/27/06; 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-710, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-720 Collaboratives.** (1) **Definition.** A collaborative is a commission-sanctioned negotiation in which interested persons work with each other and representatives of commission staff to achieve consensus on one or more issues within the commission's jurisdiction that the commission assigns or the collaborative participants identify.

(2) **Establishment.** The commission may establish a collaborative on its own initiative or in response to a petition. A petition seeking to establish a collaborative must state the issues on which the petitioner seeks consensus, identify potential participants, and explain why a collaborative would be beneficial to resolve the issues. The commission, in its discretion, may approve the petition and establish a collaborative or may deny the petition.

(3) **Participation.** Any person whose interests may be substantially affected by the result of the collaborative may participate in the collaborative. Once the Commission establishes a collaborative, the participants may not change the

participants or redefine the issues they will address without commission approval.

(4) **Communication with commission.** Collaborative participants must agree on the form and substance of any communication they have with the commission concerning the collaborative. The participants may communicate with the commission through commission staff if staff is not a participant and is serving as a neutral third party in the collaborative, and staff should establish if this will be its role at the outset of the collaborative. Otherwise, the participants should address their communications to the commission secretary.

(5) **Conclusion.** The participants must inform the commission when they (a) have reached consensus on the issues to be addressed in the collaborative; (b) have reached partial consensus on those issues and believe further negotiation would not be fruitful; or (c) have reached an impasse and believe that further negotiations would not be fruitful. The participants should propose any commission action they recommend as a result of the collaborative.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-720, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-730 Settlement.** A settlement is an agreement among two or more parties to a commission adjudication that resolves one or more disputed issues in that proceeding. All settlements must be documented in a written settlement agreement that the parties submit to the commission as a proposed resolution of those issues. No settlement is effective unless and until the commission approves it.

(1) **Full settlement.** A full settlement is an agreement of all parties that would resolve all disputed issues in an adjudication.

(2) **Partial settlement.** A partial settlement is an agreement of all parties on some, but not all, of the disputed issues in an adjudication. The parties may litigate the disputed issues the agreement does not resolve.

(3) **Multiparty settlement.** A multiparty settlement is an agreement among some, but not all, parties in an adjudication to resolve one or more disputed issues.

(a) *Full multiparty settlement.* A full multiparty settlement is an agreement among some, but not all, parties to resolve all disputed issues between them. The parties that are not included in the settlement agreement have the rights set forth in WAC 480-07-740(3)(c).

(b) *Partial multiparty settlement.* A partial multiparty settlement is an agreement among some, but not all, parties to resolve some, but not all, disputed issues between them. The parties may litigate the disputed issues the agreement does not



resolve. The parties that are not included in the settlement agreement also have the rights set forth in WAC 480-07-740(3)(c).

(4) **Notice to commission.** When submitting any type of settlement agreement for commission approval, parties must advise the commission if they have reached a full, partial, full multiparty, or partial multiparty settlement.

(5) **Settlement agreement contents.** A settlement agreement must describe the dispute between the parties and set forth the terms and conditions to which the parties have agreed to resolve that dispute.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 06-16-053 (Docket A-050802, General Order R-536), § 480-07-730, filed 7/27/06, effective 8/27/06; 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-730, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-740 Settlement consideration procedure.** The commission will review all settlement agreements to determine whether they comply with applicable legal requirements and whether approval of the agreements is consistent with the public interest.

(1) **General.** The timing and content of any settlement agreement submitted to the commission must afford the commission

a reasonable opportunity to

(a) review the terms of the settlement;

(b) consider evidence and argument from all parties on why the commission should or should not approve and adopt the settlement;

(c) consider any public comments the commission receives;

(d) enter an order prior to the recommended effective date of a settlement agreement and any statutory deadline by which the commission must take action in the proceeding; and

(e) review approve any required compliance filing.

(2) **Specific timing requirements.**

(a) *Complex proceedings.* In general rate proceedings for electric, natural gas, and Class A telecommunications companies or matters of comparable complexity, parties must submit a settlement agreement and supporting documentation to the commission at least sixty days prior to the requested effective date of any tariff changes or other terms and conditions of the settlement.

(b) *Less complex matters.* In matters that are less complex, parties must submit a settlement agreement and supporting documentation to the commission at least thirty days prior to the requested effective date for any tariff changes or other terms and conditions of the settlement.

(c) *Notice to commission.* Parties should inform the presiding administrative law judge as soon as they reach a settlement in principle and request that the commission suspend

the procedural schedule or make other arrangements for filing and review of the parties' settlement agreement after the parties have executed it. In the cover letter accompanying the filing of a settlement agreement with the commission, the parties should highlight any time-sensitive provisions in that agreement.

(d) *Extension of statutory deadline.* When requesting to suspend the procedural schedule for commission consideration of a settlement agreement in general rate proceedings or other proceedings in which a statute requires final commission action within a specified time period, the party that submitted the suspended tariff or other initial filing at issue must inform the commission whether the party would be willing to extend the statutory deadline, if necessary, to add the amount of time the commission requires to consider the settlement and take final action in the proceeding. The commission may decline to consider a settlement agreement if the commission determines that it cannot consider the settlement and take final action in the proceeding by the statutory deadline.

(e) *Hearing.* The commission will conduct a hearing if the commission believes that a hearing will assist the commission to decide whether to approve and adopt the settlement.

(f) *Requested effective date.* The commission will endeavor to render a decision on the settlement prior to the parties' requested effective date if the parties submit the settlement agreement in compliance with this section, but the commission

cannot guarantee that it will be able to do so.

(3) **Settlement presentation.** When submitting a settlement agreement for commission approval, the settling parties must include supporting documentation sufficient to demonstrate that the settlement is consistent with the law and the public interest.

(a) *Supporting documentation.* The supporting documentation must describe the disputed issue(s) and proposed resolution and must include or reference sufficient evidence to support commission approval and adoption of the settlement agreement under applicable law consistent with the public interest. The documentation may be in the form of a brief, supporting prefiled testimony, or other form that serves the same functions. Documentation supporting a settlement agreement in a general rate proceeding or other complex proceeding must include prefiled testimony.

(b) *Testimony.* Each party to a settlement agreement must offer to present one or more witnesses to testify in support of the settlement agreement and to answer questions concerning the agreement's details, costs, and benefits. If the commission conducts a hearing on the settlement, counsel for each party must be prepared to make a brief presentation and address any legal matters associated with the settlement agreement. Each party's witness(es) must be available to respond to questions from the bench and cross-examination by counsel for any party that opposes the settlement.

(c) *Rights of parties opposed to a settlement.* Parties opposed to the commission's approval and adoption of a settlement retain the following rights:

(i) The right to cross-examine witnesses supporting the settlement;

(ii) The right to present evidence in support of their opposition to the settlement;

(iii) The right to present argument in opposition to the settlement; and

(iv) The right to present evidence, or in the commission's discretion an offer of proof, in support of their position on how the commission should resolve the disputed issues in the proceeding.

(d) *Discovery.* The presiding officer may allow discovery on the proposed settlement.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-740, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-750 Commission discretion to consider and approve or reject a settlement . (1) Consideration of a settlement.** The commission will decide whether to consider a settlement. The commission generally will consider a settlement that complies with the requirements in WAC 480-07-740.

(2) **Approval or rejection of a settlement.** If it considers a settlement, the commission may approve the settlement, with or without conditions, or may reject it. The commission will approve a settlement if it is lawful, supported by an appropriate record, and consistent with the public interest in light of all the information available to the commission.

(a) *Approval without conditions.* If the commission approves a settlement without conditions, the commission will adopt the terms set forth in the settlement agreement as the resolution of the disputed issues identified in that agreement.

(b) *Approval with conditions.* If the commission conditions its approval of a settlement on terms that are not included in the settlement agreement, the commission will provide the parties with the opportunity to accept or reject the commission's conditions.

(i) If all parties to the settlement agreement timely notify the commission that they accept the conditions, the terms in the settlement agreement and the commission's conditions will resolve the issues identified in the settlement agreement. The commission's order conditionally approving the settlement agreement will then be the commission's final order with respect to those issues without further action from the commission.

(ii) If a party to the settlement rejects any of the commission's conditions or does not unequivocally and unconditionally accept all of those conditions, the settlement is deemed rejected without further action from the commission,

and subsection (c) of this section applies. A party may seek clarification or reconsideration of a commission order approving a settlement agreement with conditions pursuant to WAC 480-07-835, 480-07-840, or 480-07-850.

(c) *Rejection.* If the commission rejects a settlement, the adjudication returns to its status at the time the commission suspended the procedural schedule to consider the settlement. The commission may conduct a prehearing conference to establish a procedural schedule for the remainder of the adjudication. Subject to compliance with any statutory deadline for commission action or an agreed extension of such a deadline, the commission may extend the time for completion of the proceedings by the elapsed time for commission consideration of the settlement.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 06-16-053 (Docket A-050802, General Order R-536), § 480-07-750, filed 7/27/06, effective 8/27/06; 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-750, filed 11/24/03, effective 1/1/04.]

#### **Subpart E: Orders and Post-order Process**

##### **WAC 480-07-800 Order entry, effectiveness, and service.**

(1) **Entry.** The commission has entered an order when all

WAC (4/11/18 7:24 AM) [ 47 ]

authorized persons have signed it as an official act indicating that the order is to be effective, and those persons or their designee have submitted the order to the commission's records center for service. Each order will state the date on which the commission enters it.

(2) **Effectiveness.** An order is effective when the commission enters it unless the order specifies a different effective date.

(3) **Service.** The commission serves an order as provided in WAC 480-07-360. Each order will state the date on which the commission serves it. The service date of an order governs the determination of time limits for further administrative procedure or for judicial review.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-800, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-810 Interim or interlocutory orders.** (1) **Defined.** Orders the commission enters in an adjudicative proceeding prior to entering an initial or final order are interim or interlocutory orders. Interim or interlocutory orders include, but are not limited to, orders ruling on a party's participation in a proceeding, scheduling issues, discovery disputes, and evidentiary issues.



(2) **When review is available.** The commission has discretion to review interim or interlocutory orders. The commission may accept review of such orders if it finds that:

(a) The order terminates a party's participation in the proceeding, and the party's inability to participate thereafter could cause it substantial and irreparable harm;

(b) Immediate review is necessary to prevent substantial prejudice to a party that would not be remediable in the commission's final order; or

(c) Immediate review could save the commission and the parties substantial effort or expense, or some other factor is present that outweighs the costs in time and delay of exercising review.

(3) **Process for seeking review.** Any party may petition for review of an interim or interlocutory order.

(a) The party must file and serve a petition for interlocutory review within ten days after the commission serves the order the party is petitioning the commission to review. The petition must provide a full explanation of why the petitioner believes the order is erroneous or otherwise should be changed and why immediate review is necessary.

(b) Any other party may file and serve a response to the petition within ten days after the petitioner files the petition unless the commission establishes a different deadline.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028

(General Order R-510, Docket No. A-010648), § 480-07-810, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-820 Initial and final orders. (1) Defined.**

(a) *Initial orders.* Initial orders are orders an administrative law judge enters that resolve the disputed issues in adjudications in which the administrative law judge presides without the commissioners. The commission secretary also may enter initial orders in response to challenges to, or requests for mitigation of, commission penalty assessments.

(b) **Final orders.** Final orders are orders that a majority of the commissioners enter that resolve the substantive disputed issues in an adjudication in which the commissioners preside or that a majority of the commissioners enter on review of an initial order entered by an administrative law judge or the commission secretary.

(2) **Service.** The commission will serve initial and final orders on all party representatives included in the master service list in an adjudication.

(3) **Timing.** Except as otherwise provided in these rules or applicable statute, the presiding administrative law judge will enter an initial order within sixty days after the commission receives transcripts following the close of the record, hears oral argument (if allowed or required), or receives final briefs, whichever occurs last. Except as otherwise provided in

these rules or applicable statute, the commission will enter its final order within ninety days after the commission receives transcripts following the close of the record, hears oral argument (if allowed or required), receives final briefs, or receives a petition for administrative review or a response to a petition for review, whichever occurs last. The commission may alter the time for entering an initial or final order for good cause.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-820, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-825 Initial orders—Finality; Petitions for administrative review; motions for clarification. (1) Initial order finality.**

(a) An initial order will conclude a proceeding and thus be considered final unless within the time for petitioning for administrative review:

- (i) A party timely petitions for administrative review; or
- (ii) The commission notifies the parties that it intends to review the initial order.

(b) Parties that seek finality of an initial order before the end of the petition period may waive the right to seek administrative review. If all parties waive review, the order

will become final on the day the commission issues a notice of finality declining to exercise administrative review or when the time for exercising such review ends.

(c) An initial order that becomes final by operation of law does not reflect a decision by the commissioners and has no precedential value. Such orders, if cited, must be identified as initial orders.

(2) **Petition for administrative review.** A party may challenge any finding of fact, conclusion of law, remedy, or result in an initial order by petitioning for administrative review. A party also may petition for administrative review to challenge the reasons stated in support of any result reached in an initial order. The commission will accept only one petition for administrative review of an initial order from any party.

(a) *Timing of petition.* A party must file and serve any petition for administrative review within twenty days after the commission serves the initial order. The commission may extend or shorten the time on a showing of good cause.

(b) *Contents.* Petitions for administrative review must not exceed thirty pages in length and must conform to the following requirements:

(i) Every petition must identify with specificity the nature of each challenge to the initial order. The petitioner must separately state and number every contention.

(ii) A petition that challenges a finding of fact must cite the page or part of the record that includes the evidence on

which the petitioner relies to support its challenge and should include a recommended finding of fact.

(iii) A petition that challenges a conclusion of law must cite the statute, rule, case law, or other legal authority on which the petitioner relies to support its challenge and should include a recommended conclusion of law.

(iv) A petition that challenges the summary or discussion portion of an initial order must include a statement showing the legal or factual justification for the challenge and a statement of how the asserted defect affects the findings of fact, the conclusions of law, and the ultimate decision.

(c) *Responses.*

(i) Who may respond. Any party to the adjudication may respond to another party's petition for administrative review.

(ii) Filing and service. A response to a petition for administrative review must be filed and served within ten days after the petitioner files and serves its petition unless the commission establishes a different deadline.

(iii) Challenge to order in response. A party that did not petition for administrative review of an initial order may challenge the order or portions of the order in its response to the petition of another party if that challenge is in response, or otherwise reasonably related, to the issues raised in the petition.

(d) *Reply.*

(i) By right. A party has the right to reply to new

challenges to the order that are included in another party's response as authorized in subsection (2)(c)(iii) of this section.

(ii) *By leave of commission.* A party otherwise has no right to reply to a response, but may petition for leave to reply. Any such petition must cite new issues raised in the response, state why the petitioner could not have reasonably anticipated those issues, and explain why a reply is necessary. The petitioner should attach a reply to the petition for leave to accept the reply.

(iii) *Timing.* The petitioner must file its reply or a petition for leave to reply for filing no later than five days after the respondent submits its response. The commission may extend the time on a showing of good cause.

(e) *Oral argument.* A party may request oral argument before the commissioners, but any such request must demonstrate that oral argument is necessary to assist the commission in making its decision on the petition for administrative review and that the written presentations are insufficient.

(3) **Motion for clarification of initial order.** Any party that does not seek to change the substantive outcome or reasoning of an initial order may file a motion for clarification of that order within five days after the commission serves the order.

(a) *Purpose.* The purpose of a motion for clarification of an initial order is to correct obvious or ministerial error

without the need for parties to request administrative review.

(b) *Response.* No party may file a response to a motion for clarification unless requested by the commission.

(c) *Effect.* Filing a motion for clarification does not automatically toll the time for filing a petition for administrative review or for compliance with the initial order. A party may include in its motion for clarification a request that the commission toll or otherwise extend the time for filing a petition for administrative review or for complying with the initial order. The party making the request must demonstrate good cause for the extension.

(d) *Order denying or granting clarification.* The presiding administrative law judge will enter an order either denying the motion or granting the motion and providing clarification within five days after the party files the motion. A party may seek administrative review of an order granting or denying clarification either

(i) in a petition for administrative review of that order filed by the deadline for filing a petition for administrative review of the original initial order; or

(ii) as part of the party's petition for administrative review of the original initial order.

(4) **Commission-initiated review.** The commission may initiate review of an initial order on the commission's own motion by serving a notice that the commissioners intend to review the order. The notice will establish a schedule for

parties to state their positions on the initial order and make supporting arguments. The notice may invite the parties to address specific issues relating to the initial order.

(5) **Administrative law judge.** An administrative law judge other than the administrative law judge who entered the initial order will assist the commissioners to enter a final order on review of the initial order.

(6) **Final order.** The commission may enter a final order that adopts, modifies, or rejects an initial order. Alternatively, the commission may remand the matter for further proceedings with instructions to the presiding officer.

(7) **Judicial review.** The statutory time for filing a petition for judicial review commences when the commission serves its final order or when an initial order becomes final under RCW 80.01.060(3) and subsection (1) of this section; Provided that if a party timely files a petition for reconsideration of the final order and complies with the commission's procedural rules governing reconsideration, the time for filing a petition for judicial review commences on the date on which the commission serves an order granting or denying the petition for reconsideration, or the date on which the petition is deemed denied as a matter of law, as provided in RCW 34.05.470.

[Statutory Authority: 2006 c 246, RCW 80.01.040 and 80.04.160. 06-17-126 (Docket A-060357, General Order No. R-538), § 480-07-



825, filed 8/21/06, effective 9/21/06. Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-825, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-830 Motion to reopen the record prior to entry of a final order.** (1) **Record closure.** The evidentiary record in an adjudication closes at the conclusion of the last day of hearing unless the commission rules otherwise; except that the evidentiary record will also include any exhibit containing public comments and responses to bench requests the commission receives after the hearings conclude.

(2) **Reopening the record.** A party may file a motion to reopen the evidentiary record at any time after the record closes and before the commission enters a final order. A party seeking to present additional evidence after the commission has entered a final order must submit a petition for rehearing pursuant to WAC 480-07-870. The commission may reopen the record in a proceeding on its own motion.

(3) **Required showing.** The commission may reopen the record to allow receipt of evidence that is essential to a decision and that was unavailable and not reasonably discoverable with due diligence at the time of the hearing or for any other good and sufficient cause. A motion to reopen the record must include the evidence the party proposes to add to the record and must

demonstrate that the evidence meets this standard.

(4) **Responses.** The commission will give the other parties an opportunity to respond to a motion to reopen the record, including to the evidence the moving party seeks to add to the record, unless the commission determines that it can rule on the motion without hearing from the other parties consistent with the requirements of due process.

(5) **Ruling.** The commission will rule on a motion to reopen the record in the final order unless the commission determines that a separate order is warranted. If the commission grants the motion in a separate order, the commission may return the matter to the presiding officer for further proceedings, including additional evidentiary hearings or other process when appropriate.

(6) **Compliance with statutory deadline.** The commission may deny a motion to reopen the record in any proceeding in which the commission must enter a final order within a statutory time frame or by a statutory deadline if the commission determines that it reasonably could not consider the additional evidence offered and enter a final order within the statutory time frame or by the statutory deadline.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-830, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-835 Clarification of final order by motion.**

(1) **Motion for clarification.** Any party may request that the commission clarify a final order by filing a motion for clarification within ten days after the commission serves the order. The purpose of such a motion is to ensure that the parties know their rights and responsibilities under the final order. An appropriate motion for clarification requests that the commission modify the final order or take other action to accomplish one or more of the following goals:

(a) Clarify the meaning of, or requirements in, the order so that the parties can accurately prepare compliance filings;

(b) Make technical changes to reconcile the application of principle to data, resolve inconsistencies, or correct patent error without the need for parties to request reconsideration and without delaying post-order compliance; or

(c) Correct typographical or other ministerial errors.

(2) **Motions that do not seek clarification.** A party may not file a motion for clarification that seeks to change an outcome with respect to one or more issues resolved by a final order, or that challenges a finding of fact or conclusion of law stated in the order. A party seeking such commission action must submit a petition for reconsideration pursuant to WAC 480-07-850.

(3) **Response.** No party may file a response to a motion for clarification unless the commission requests a response.

(4) **No tolling.** Filing a motion for clarification does not toll the time for filing a petition for reconsideration of, or compliance with, the final order of which the party seeks clarification. If the commission enters an order that modifies the final order, the subsequent order will clarify the deadlines for compliance and will be a final order for purposes of further commission or judicial review.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-835, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-840 Clarification of a final order by conference.** After the commission enters a final order, the commission may schedule an order clarification conference on its own motion or at a party's request. The commissioners may attend the conference or may designate one or more persons to attend on their behalf. The commission will determine whether it will record or transcribe an order clarification conference.

(1) **Purpose.** The purpose of an order clarification conference is to clarify the final order when parties disagree about its meaning or requirements. An order clarification conference provides the parties and the commission with the opportunity to:

(a) Explore and resolve any disagreements or lack of

understanding about the meaning of, or requirements in, the final order so that parties can accurately prepare any compliance filings; or

(b) Identify and make technical changes to reconcile the application of principle to data, resolve inconsistencies, or correct patent error.

(2) **Limitation.** An order clarification conference is not a forum for discussing or challenging the evidentiary, legal, or policy decisions in the order. Parties may pursue those remedies through a petition for reconsideration or other means.

(3) **Effect.** (a) An order clarification conference does not stay the effectiveness of an order, the deadlines for compliance, or the time frames for petitioning for further commission or judicial review. If as a result of the conference, the commission enters an order that modifies the final order, the subsequent order will clarify the deadlines for compliance and will be a final order for purposes of further commission or judicial review.

(b) An order conference does not constitute a formal interpretation of an order. The final order that is the subject of an order conference will remain the sole expression of the commission's decision unless the commission modifies that order in a subsequent order.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-840, filed

11/24/03, effective 1/1/04.]

**WAC 480-07-850 Reconsideration of a final order. (1)**

**Petition.** Any party may petition for reconsideration of a final order within ten days after the commission serves the order.

(a) *Purpose.* The purpose of a petition for reconsideration is to request that the commission change the outcome with respect to one or more determinations in a final order.

(b) *Contents.* A petition for reconsideration must

(i) identify each portion of the challenged order the petitioner contends is erroneous or incomplete;

(ii) cite those portions of the record and each statute, commission rule, or other law on which the petitioner relies to support its petition; and

(iii) present brief argument in support of the relief the petitioner requests.

(c) **Response.** No party may file a response to a petition for reconsideration unless the commission authorizes a response in a notice establishing the deadline for submitting responses, which may also establish the date by which the commission intends to enter an order resolving the petition. The commission will not grant a petition for reconsideration without providing other parties an opportunity to respond to the petition.

(d) **Oral argument.** The commission will not hear oral argument on a petition for reconsideration unless the commission

determines in its discretion that oral argument will assist the commission in resolving the petition.

(2) **Disposition.** A petition for reconsideration is deemed denied twenty days after the date the petition is filed, unless the commission either:

(a) Enters an order resolving the petition; or

(b) Serves the parties with a written notice specifying the date by which the commission will act on the petition.

(3) **Action.** If the commission grants a petition for reconsideration, the commission may modify its prior order or take other appropriate action. If the commission denies the petition, the commission will take no further action in the matter with respect to the final order. No party may petition for reconsideration of an order on reconsideration.

(4) **Stay.** Filing a petition for reconsideration does not automatically stay the effect of an order or serve as a request for a stay. A party may request that the commission stay the effectiveness of an order pending reconsideration by filing a petition for stay pursuant to WAC 480-07-860.

(5) **Judicial review.** Filing a petition for reconsideration is not a prerequisite for seeking judicial review of a commission final order. If a party timely files a proper petition for reconsideration, the time for filing a petition for judicial review does not commence until the commission serves an order disposing of the petition for reconsideration, or the date on which the petition is deemed denied as a matter of law, as

provided in RCW 34.05.470. An order denying reconsideration, or a notice specifying the date by which the commission will act on a petition for reconsideration pursuant to subsection (2)(b) of this section, is not subject to judicial review.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-850, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-860 Stay.** Any party may petition the commission to stay the effectiveness of a final order within ten days after the commission serves that order, unless the order or applicable statute provides otherwise. The commission may stay the effect of a final order on its own initiative.

(1) **Petition.** A petition for stay must cite those portions of the record and statute, commission rule, or other law on which the petitioner relies to support its petition and must present brief argument in support of the relief the petitioner requests.

(2) **Response.** No party may file a response to a petition for stay unless the commission authorizes a response in a notice establishing the deadline for filing responses, which may also establish the date by which the commission intends to enter an order resolving the petition.

(3) **Disposition.** A petition for stay is deemed denied



twenty days after the date the petitioner submits the petition unless the commission either:

(a) Enters an order resolving the petition; or

(b) Serves the parties with a written notice specifying the date by which the commission will act on the petition.

(4) **Effect.** Filing a petition for stay does not automatically stay the effect of a final order or the deadline for filing a petition for reconsideration. Commission action is required to stay the effect of a final order.

(5) **Reconsideration or Judicial Review.** No party may request reconsideration of a commission determination denying a petition for stay. Such a determination also is not subject to judicial review.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-860, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-870 Rehearing.** Any person affected by a commission final order may petition for rehearing of that order.

(1) **Petition.** A petition for rehearing must set forth sufficient grounds for rehearing the commission order and must include substantial evidence or an offer of proof in support of the requested relief. Sufficient grounds for rehearing consist of the following:

(a) Changed conditions since the commission entered the order;

(b) Harm to the petitioner resulting from the order that the commission did not consider or anticipate when it entered the order;

(c) An effect of the order that the commission or the petitioner did not contemplate or intend; or

(d) Any good and sufficient cause that the commission did not consider or determine in the order.

(2) **Filing and service.** The petitioner must file the petition in the docket in which the commission entered the final order and must serve the petition on all parties and persons included in the master service list for that docket.

(3) **Responses.** Any party in the original proceeding may file a response to the petition within 20 days after the petitioner serves the petition unless the commission establishes a different deadline by notice.

(4) **Process.** Pursuant to RCW 80.04.200 or 81.04.200, if the petitioner is a public service company and files its petition either no earlier than two years after the effective date of the commission's final order or no earlier than six months after the effective date of a final order that a court has not reviewed and with which the company is in compliance, the commission will conduct a prehearing conference to establish a procedural schedule for commission consideration of the petition. In all other circumstances, the commission will determine whether to

accept the petition and, if so, the proceedings the commission will undertake to consider the petition.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-870, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-875 Amendment, rescission, or correction of order.** (1) **Amendment or rescission.** The commission may propose, or may act in response to a petition, to alter, amend, or rescind any order that the commission has entered. Any such petition must comply with the requirements in WAC 480-07-870 for a petition for rehearing. The commission may take the action it has proposed or grant the petition only after providing:

(a) Notice of the petition or proposed commission action to the affected public service company or companies and to all parties in the underlying proceeding; and

(b) An opportunity for parties to respond in writing or at a hearing consistent with due process.

(2) **Correction.** The commission may act on its own initiative or on the motion of any party to correct obvious or ministerial errors in orders. The commission may enter a corrected order or make any corrections to the order by notice or letter without prior notice or opportunity to respond unless due process requires otherwise. The time for any available

review of the corrections begins when the commission serves the corrected order, notice, or letter.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-875, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-880 Compliance filings.** (1) **Definition.** A compliance filing is a party's submission in response to a final order that authorizes or requires that party to implement specific terms of that order. A compliance filing may be a single submission (e.g., a revised tariff) or multiple submissions (e.g., periodic reports). A party must strictly limit the scope of its compliance filing to the requirements of the final order to which it relates. A party's filing in response to general commission direction in an order (e.g., filing a new or revised tariff other than the tariffs that initiated the proceeding) is not a compliance filing but is a subsequent filing governed by WAC 480-07-885.

(2) **Filing and effective dates.** The commission will state in its final order authorizing or requiring a compliance filing the date by which the party must make the compliance filing and the effective date that should appear on any tariff sheets that are required as part of a compliance filing. The commission may

delegate to the secretary, by written authorization in individual proceedings, the authority to take appropriate action with respect to a compliance filing. A compliance filing does not become effective automatically on its stated effective date. The commission must approve or accept any compliance filing before it can be effective. (3) **Where to make filings.** Parties must make compliance filings in the docket of the final order to which they relate unless the commission has required otherwise in that order. Parties must file and serve such filings consistent with the filing and service requirements in that docket. A party making a compliance filing that includes a tariff also must provide work papers to the other parties that demonstrate the derivation of the proposed rates or charges in that tariff. (4) **Responses.** Commission staff must, and any other party in the docket may, file a response to the compliance filing within five business days from the date it is filed or by such other deadline as the commission may establish. Any such response must be limited to the issue of whether the filing complies with the commission order. Except as otherwise provided in this section, commission staff must review the filing to determine its compliance with the order and, at a minimum, file a response in the form of a letter informing the commission of the results of that review.

(5) **No dispute.** If no party disputes the filing's compliance with the final order, the commission may issue a notice or letter that the filing appears to comply with the

order and allows the filing to become effective.

(6) **Dispute.** If a party disputes the filing's compliance with the final order, the commission will provide an opportunity to respond. The commission may then enter an order

(a) approving the filing;

(b) rejecting the filing, in whole or in part, for failure to comply with the final order and requiring a revised compliance filing; or

(c) establishing additional process for commission consideration of the filing.

(7) **Subsequent discovery of noncompliance.** If the commission allows a compliance filing to become effective but later discovers that the filing does not fully comply with the order authorizing or requiring the filing, the commission may take any necessary and lawful steps to secure full compliance with that order. The commission's erroneous acceptance of a compliance filing does not validate the noncompliant elements of the filing or modify the final order requiring that filing.

(8) **Reports.** The commission may enter a final order that requires a party to report periodically to the commission with respect to designated subject matter. The reports must be submitted under the docket number of the proceeding in which the commission entered the final order unless the order specifies otherwise or the commission establishes a different requirement in a subsequent order or notice. Such compliance filings have no stated effective date, do not become effective by operation

of law, and require no commission action in response to the filing.

(9) **Monetary payments.** A final order may require a party to pay monetary penalties, either in a single lump sum or periodically over time. No party should file a response to any timely payment made in compliance with the order, and the commission generally will not issue an acknowledgement or approval in response to the payment.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-880, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-885 Subsequent filings.** When the commission enters a final order that authorizes or requires a party to make a subsequent filing to implement general instructions in that order (e.g., the submission of tariffs other than revisions to the tariffs that initiated the proceeding), the filing initiates a new proceeding to which the commission will assign a new docket number.

(1) **Submission and service requirements.**

(a) In the cover letter accompanying a subsequent filing, the party must request a new docket and identify the order and the docket in which the commission required the subsequent filing.

(b) A subsequent filing that includes tariff sheets must comply with all pertinent requirements for tariff filings of the industry, including the required statutory notice period, unless the commission authorizes the subsequent filing to become effective on less than statutory notice.

(c) A person who makes a subsequent filing must serve a copy of the filing on all parties to the proceeding in which the commission entered the final order authorizing or requiring the filing. Any party that believes the subsequent filing is not in compliance with the commission's final order in that proceeding must file its objection in both the original and new dockets within 10 days of the service date of the subsequent filing unless the commission establishes a different deadline.

(2) **Timing.** A final order that authorizes or requires a subsequent filing may state the date by which the party must make the subsequent filing. If the final order does not specify a date for the subsequent filing, the commission may establish the date by subsequent order, notice, or letter.

(3) **Commission action.** The commission generally will act on a subsequent filing that includes tariff sheets in the same manner that it would act on an original tariff filing of the industry, subject to any additional requirements in the final order that authorized or required that filing. If a party to the original proceeding objects to the subsequent filing as not in compliance with the final order in that proceeding, the commission also may take additional action in that docket.



[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-885, filed 11/24/03, effective 1/1/04.]

#### **PART IV: OTHER COMMISSION PROCEEDINGS**

**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 open meetings per month on alternate Thursdays at 9:30 a.m. in the commission's office in Olympia, Washington. The specific time and place of each open meeting are published, as required, in the *Washington State Register* and on the commission's web site. The commission may cancel an open meeting or change the time or place of an open meeting and will publish a notice of these changes on its web site and in the *Washington State Register* for distribution at least twenty days prior to the rescheduled meeting date.

(2) **Special meetings.** The commission may convene special open meetings under RCW 42.30.080.

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

(4) **Agenda.** The commission will publish an agenda for each

regular open meeting at least two business days prior to the meeting. The commission also may publish an addendum or otherwise amend the agenda after publishing it and may take up matters that do not appear on the published agenda consistent with notice and due process requirements. The commission posts the agenda and any addendum on its web site.

(a) *Discussion agenda.* The discussion portion of the 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 portion of the agenda includes items that appear to be noncontroversial and, by law, may take effect without action by the commission. The commission will move any item on the no-action portion of the agenda to the discussion portion of the agenda at the request of any commissioner or other person and may take such action on the item as the commission deems appropriate.

(c) *Consent agenda.* The consent portion of the agenda includes items that appear to be noncontroversial and, by law, require action by the commission to take effect. The commission will act on the items on the consent portion of the agenda by a single motion and a single vote of the commissioners. The commission will move any item on the consent portion of the agenda to the discussion portion of the agenda at the request of any commissioner or other person and may take such action on the item as the commission deems appropriate.

(5) **Deadlines and schedules.**

(a) The commission generally schedules items for consideration at the last regular open meeting before the item would take effect by operation of law. The commission generally includes items without a stated effective date on the agenda for the regular open meeting scheduled thirty days or more after the commission receives a complete filing.

(b) A company that requests a filing become effective on less than statutory or other required notice must make that request and a complete filing at least seven business days prior to the next regular open meeting to have the commission consider the filing at that meeting. The commission generally will schedule items filed less than seven business days before an open meeting for the second open meeting after the filing.

(c) All written comments in response to an open meeting item should be submitted to the commission at least three business days in advance of the meeting to enable the commissioners to consider those comments during the meeting. Persons are not required to submit written comments about an open meeting item to make oral comments at the meeting.

(6) **Staff contact.** The commission will designate a staff member to analyze and present a recommendation to the commissioners for each item on the discussion agenda. The agenda item description will include the staff person's name and contact information. Persons interested in these items may discuss them with the designated staff person prior to the open

meeting.

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

(8) **Orders.** The commission may direct the executive 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.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 08-18-012 (Docket A-072162, General Order R-550), § 480-07-900, filed 8/22/08, effective 9/22/08; 06-16-053 (Docket A-050802, General Order R-536), § 480-07-900, filed 7/27/06, effective 8/27/06; 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-900, filed 11/24/03, effective 1/1/04.]

**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 unless the commission has delegated signing authority to other commission personnel.

(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.

(e) *Penalty assessment challenges and mitigation.* Unless the commission refers the matter to the administrative law division for hearing, the executive secretary will sign orders or letters (i) denying or sustaining, in whole or in part, challenges to penalties the director of the administrative law division has assessed on delegated authority from the commission pursuant to WAC 480-07-915, or (ii) granting or denying, in whole or in part, mitigation of such penalties.

(3) **Deferral to the commissioners.** The executive secretary may exercise discretion to defer any delegated matter to the commissioners for decision.

[Statutory Authority: 2006 c 246, RCW 80.01.040 and 80.04.160. 06-17-126 (Docket A-060357, General Order No. R-538), § 480-07-903, filed 8/21/06, effective 9/21/06.]

**WAC 480-07-904 Delegation of authority to decide certain matters.** (1) **Delegation by order.** Except as expressly provided in these rules, the commission will establish by order the matters it delegates to the executive secretary or other authorized commission personnel for decision.

(2) **Effect.** A decision made on delegated authority shall take effect immediately on entry of an order or letter or on a later date specified in the order or letter, without prior notice. The executive secretary may set any particular matter for commission decision through the open public meeting process, adjudicative or brief adjudicative proceeding, or other established commission process. Upon request, the commission will review the matter under subsection (4) of this section.

(3) **Notice.** The commission will notify the affected company and post on the commission's web site for at least fourteen days a listing of all matters the executive secretary or other authorized personnel decided on delegated authority, showing the docket number, date of entry of decision, company name, and deadline for filing a request for commission review.

(4) **Commission review.**

(a) *Delegated matters, generally.* Except as provided in WAC 480-07-905, any person directly affected by a delegated determination may request commission review of that determination. The person must file that request no later than the fourteenth day after the date the commission serves the order and posts it on the commission's web site. The commission will consider the request using the same process applicable to commission review of initial orders set forth in WAC 480-07-825.

(b) *Standard of review.* Commission review of decisions it has delegated pursuant to RCW 80.01.030 is *de novo*.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 08-18-012 (Docket A-072162, General Order R-550), § 480-07-904, filed 8/22/08, effective 9/22/08; 06-17-126 (Docket A-060357, General Order No. R-538), § 480-07-904, filed 8/21/06, effective 9/21/06.]

**WAC 480-07-905 Delegation of authority to enter *ex parte* orders.** (1) Except as expressly provided elsewhere in these rules, the commission will authorize by order the executive secretary or other authorized personnel to enter *ex parte* orders or letters in the name of the commission in nonadjudicative matters. The commission will maintain on its web site a list of all nonadjudicative matters the commission has delegated to the executive secretary or other authorized personnel and the



personnel to whom the commission delegated that authority.

(2) The commission will notify the affected company and post on its web site notice of all orders or letters entered on delegated authority. Persons affected by the order or letter who wish to respond must follow the procedure in WAC 480-07-904(2) and (3), except that carriers seeking commission review of orders or letters suspending or canceling a permit (e.g., for failure to maintain evidence of required insurance coverage), must request a hearing or brief adjudicative proceeding pursuant to WAC 480-07-610.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 08-18-012 (Docket A-072162, General Order R-550), § 480-07-905, filed 8/22/08, effective 9/22/08; 06-17-126 (Docket A-060357, General Order No. R-538), § 480-07-905, filed 8/21/06, effective 9/21/06.]

**WAC 480-07-910 Informal complaints.** (1) **How to make an informal complaint.** Any person may make an informal complaint to the commission about any business or entity the commission regulates or about the commission's operations. A person may make an informal complaint by telephone, correspondence, or e-mail or by using the complaint form available on the commission's web site.

(2) **Contents.** An informal complaint must identify the business, entity, or operations to which the complaint pertains. An informal complaint should:

(a) Present all facts that are needed for the commission to understand the nature of, and reason(s) for, the complaint;

(b) Describe the acts or omissions that led to the complaint, with all relevant dates; and

(c) Cite all relevant statutes or rules, if the person who files the complaint knows them.

(3) **Commission response; result.** Commission employees assigned to assist consumers may discuss an informal complaint with the affected persons. The commission will investigate the complaint to determine if there are violations of any applicable rule or law and if so, will work with the parties to ensure compliance. The commission encourages the informal resolution of disputes whenever possible. An informal complaint will not result in a hearing or an order.

(4) **Uniform Mediation Act not applicable.** The Uniform Mediation Act (chapter 172, Laws of 2005, codified as chapter 7.07 RCW) does not apply to the commission's informal complaint resolution process.

(5) **Filing of formal complaint regarding subject of informal complaint.** Making an informal complaint does not prevent any party from filing a formal complaint as provided in WAC 480-07-305. The commission also may initiate a formal complaint proceeding on its own initiative. The commission will

stop processing an informal complaint when a person filing an informal complaint files a formal complaint or the commission initiates a formal complaint proceeding.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 06-16-053 (Docket A-050802, General Order R-536), § 480-07-910, filed 7/27/06, effective 8/27/06; 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-910, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-915 Penalty assessments.** (1) **Delegation.** The commission delegates to the director of the administrative law division, or another administrative law judge the director designates, the authority to assess penalties pursuant to RCW 80.04.405, RCW 81.04.405, RCW 81.04.530, RCW 19.122.150, or any other statutes that authorize the commission to assess penalties outside of an adjudicative proceeding for violations of any commission order or statute, rule, or regulation within the commission's jurisdiction except as provided in WAC 480-07-917.

(2) **Notice.** At the direction of the director of the administrative law division, the commission will serve a notice on the person assessed a penalty describing the violation with reasonable particularity, specifying the amount of the penalty, and advising the person that the penalty is due and payable.

(3) **Response.** Within 15 days of receiving the notice, the

person subject to the penalty assessment must take one of the following actions:

(a) *Pay the assessed penalty.* The penalized person may admit the violation and pay the full amount of the penalty by the due date.

(b) *Contest the violation.* The penalized person may submit written materials to contest the penalty assessment or may request a hearing.

(c) *Request mitigation.* The penalized person may admit the violation but submit written materials in support of a request to reduce the amount of the penalty. The penalized person may request mitigation based solely on the written materials or may request the opportunity to present the facts described in those materials through evidence at a hearing.

(d) *Accept conditions.* If the commission offers to suspend any or all of the penalty based on specified conditions (e.g., to commit no additional violations within a specified period of time), the person may admit the violation, accept the conditions, and pay any unsuspended portion of the penalty by the due date, subject to complying with the conditions by the date specified in the notice of penalty assessment. Failure to comply with those conditions will result in the suspended portion of the original penalty immediately becoming due and payable.

(4) **Written statement.** Any response contesting the violation or requesting mitigation must include a written

statement of the reasons supporting the requested relief. The commission may deny any contest to the violation or any mitigation request that does not include such a statement.

(5) **Staff reply.** Commission staff will file any reply to a response contesting the violation or requesting mitigation within ten business days. If the commission conducts a hearing on the request, commission staff will participate as a party in that proceeding.

(6) **Hearing.** The commission will grant a request for hearing to contest the violation or request mitigation only if material issues of law or fact require consideration of evidence and resolution in a hearing. If the commission denies a request for hearing, the commission will consider the contest of the violations or request for mitigation based on the written statement included in the response. If the commission grants a request for hearing, an administrative law judge other than the director of the administrative law division or the designee who signed the penalty assessment will review the evidence supporting the contest of the violation or application for mitigation in a brief adjudicative proceeding pursuant to WAC 480-07-610. The executive secretary will issue a notice establishing the procedures, date, and time for the hearing.

(7) **Order on mitigation.** The executive secretary will enter an order resolving all contested violations or requests for mitigation considered without a hearing. A person

aggrieved by the order may request administrative review. The commission will consider the request using the same process and requirements applicable to commission review of initial orders set forth in WAC 480-07-825.

(8) **Compliance with conditions.** An order on mitigation may suspend all or part of an assessed penalty based on one or more conditions.

(a) *Compliance.* If the penalized person complies with all conditions in the order, commission staff will file a letter confirming that compliance. If the commission agrees, the executive secretary will issue a letter or notice waiving the suspended portion of the penalty.

(b) *Noncompliance.* If the penalized person does not comply with any such condition, commission staff will file a motion requesting that the commission impose some or all of the suspended portion of the penalty. The penalized person must file any response to the motion within five business days, including any request for a hearing to assess the person's compliance with the condition. The commission will consider and rule on the motion and any request for hearing using the same procedure and requirements in subsections (6) and (7) of this rule.

(9) **Enforcement.** Unless a timely contest of the violation(s) or mitigation request is pending before the commission, failure to pay an assessed penalty by the due date is a violation of law for which the commission may take additional enforcement action, including but not necessarily

limited to one or more of the following:

- (a) Assess additional penalties;
- (b) Suspend or revoke the operating authority of a penalized public service company whose operating authority is subject to commission suspension or revocation until the company pays the penalty in full;
- (c) Refer the debt to a collection agency;
- (d) Initiate an adjudicative or brief adjudicative proceeding; or
- (e) File an enforcement action in superior court.

[Statutory Authority: RCW 80.01.040 and 80.04.160.]

**WAC 480-07-917 Penalties for failure to file annual report and pay regulatory fees.** (1) **Monetary penalties.** Any public service company that fails to file a complete annual report with the commission and pay any required regulatory fees by May 1 of each year, or by a subsequent deadline the commission has previously established in response to a company's timely request to extend the May 1 filing date, must pay the following monetary penalties to the commission:

- (a) 250 dollars if the filing is one to 30 days late;
- (b) 500 dollars if the filing is 31 to 60 days late; or
- (c) 1,000 dollars if the filing is 61 to 90 days late.

(2) **Alternative penalties.** If a public service company has

not filed a complete annual report and paid any required regulatory fees within 90 days after the filing deadline, the commission in its discretion may impose one or both of the following penalties as an alternative to the monetary penalties in subsection (1):

(a) Revocation or cancellation of the company's operating authority (unless otherwise prohibited under applicable law) following notice and opportunity for hearing (if required by applicable law); and

(b) Penalties the commission may assess pursuant to RCW 80.04.380, 80.04.405, 81.04.380, or 81.04.405, as applicable.

(3) **Notice.** The commission will serve a notice on each public service company that has failed to file a complete annual report and pay any required regulatory fees by the deadline, specifying the amount of the monetary penalty due as of the date of the notice. The notice will also advise the company that the specified penalty is due and payable and will increase as provided in subsection (1) of this section, or that the company may be subject to the alternative penalties in subsection (2) of this section, if the company continues to fail to file a complete annual report and pay any required regulatory fees.

(4) **Waiver.** The commission may waive a monetary penalty, in whole or in part, if the public service company demonstrates to the commission's satisfaction that the company failed to file its complete annual report and pay any required regulatory fees by the deadline due to circumstances beyond the company's



control.

(a) *Request.* The commission must receive any request for waiver of the monetary penalty within 15 days of the date of the commission notice informing the company that the penalty is due and payable. The request must include a written statement of the reasons the company failed to file a complete annual report and pay any required regulatory fees by the deadline sufficient to demonstrate that the company's failure was due to circumstances beyond its control. Unless those circumstances continue to persist, the company should file a complete annual report and pay any required regulatory fees prior to, or at the same time as, submitting a request for waiver.

(b) *Circumstances that are beyond a company's control.* For purposes of requesting a waiver of a monetary penalty, circumstances beyond a company's control include, but are not limited to:

(i) death or serious illness of the person responsible for filing the report, or a member of that person's immediate family;

(ii) destruction by fire or other casualty of the company's place of business or business records;

(iii) an act of fraud, embezzlement, theft, or conversion on the part of an employee; or

(iv) the commission did not send notice of the annual report filing requirement to the company as a result of commission error; provided that commission error does not

include either the commission's inability to send notice to the company or the commission sending notice to an incorrect address if the company has failed to provide the commission with the company's current correct email address (or physical address if the company has notified the commission that it does not have, and cannot obtain, an email address).

(c) *Circumstances that are **not** beyond a company's control.*

Circumstances that are not beyond a company's control for purposes of waiving a monetary penalty include, but are not limited to:

(i) financial hardship;

(ii) misunderstanding or lack of knowledge of commission rules;

(iii) failure to receive an annual report form from the commission except if the annual report form was not available on the commission's web site, or the commission did not furnish a copy of the form upon request in reasonable time for the company to file the form and pay any required fees;

(iv) mistakes or misconduct on the part of an employee other than fraud, embezzlement, theft, or conversion;

(v) employee termination or turnover;

(vi) personal events such as weddings or graduation ceremonies; and

(vii) vacations or business trips.

(d) *No tolling.* A request for waiver of a monetary penalty does not toll a company's obligation to file a complete annual

report and pay any required regulatory fees. If the company has not made the required filing, the penalty amount will continue to escalate as provided in subsection (1) of this section unless and until the company makes that filing, regardless of whether the company has requested a waiver of the penalty.

(e) *Commission decision.* Within 10 days of receiving a request for waiver, the commission will issue a notice informing the company of the commission's decision on the request.

(f) *No administrative review.* The decision on any request for waiver of a monetary penalty is final and is not subject to further administrative review.

(5) **Delegation.** The commission delegates to the Director of Regulatory Services or designee the authority to assess and to determine whether to waive, in whole or in part, the monetary penalties in subsection (1) of this section. The commission delegates to the director of the administrative law division, or an administrative law judge the director designates, the authority to impose the alternative penalties in subsection (2) of this section.

[Statutory Authority: RCW 80.01.040, 80.04.080, and 81.04.080.]

**WAC 480-07-920 Interpretive and policy statements. (1)**

**General.** Upon the petition of any person, or upon its own motion, the commission may make and issue interpretive and

policy statements to advise the public of the commission's current opinions, approaches, and likely courses of action. Interpretive and policy statements are advisory only and are not binding on the commission or any person.

(2) **Roster of interested persons.** The commission will maintain a roster of interested persons who have requested in writing to be notified of all interpretive and policy statements the commission issues. The commission will periodically update the roster. The commission will provide an electronic copy to each person on the roster when the commission issues an interpretive and policy statement.

(3) **Submission of statement to code reviser.** Whenever it issues an interpretive and policy statement, the commission will submit to the code reviser for publication in the Washington State Register a statement describing the subject matter of the interpretive and policy statement and describing how interested persons may obtain a copy of that statement.

(4) **Conversion to rules.** The commission may convert any interpretive and policy statement into rules through a formal rule-making. Any interested person may petition the commission to initiate such a rule-making. Upon receipt of such a petition, the commission will

(a) notify the joint administrative rules review committee of the petition; and

(b) within sixty days either deny the petition in writing, stating the reasons for the denial, or initiate rule-making

proceedings.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-920, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-930 Declaratory orders under RCW 34.05.240.**

(1) **Petition.** Any interested person may petition the commission for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the commission, as provided by RCW 34.05.240.

(a) *Format.* Petitions for declaratory orders under RCW 34.05.240 must conform in style and substance to the requirements for other forms of adjudicative pleading as specified in Part III, subpart A of this chapter.

(b) *Relationship with adjudications.* The commission will dismiss a petition for declaratory order when issues in the petition are at issue in a pending adjudication. The commission will reject a single pleading that purports to present the commission with the option to enter either a declaratory order or an adjudicative order. The filing party must specify a single process under which it requests that the commission proceed.

(2) **Notice.** The commission will give notice of any petition for declaratory order within fifteen days after the

commission receives the petition. The notice will be served on all persons who are required by law to be given notice and on any other person to whom the commission deems notice to be desirable.

(3) **Response.** Any person may respond to a petition for declaratory order by filing a response within twenty days after the petition is filed or at such other time as the commission may establish by notice. The commission will not enter a declaratory order under RCW 34.05.240 if any person

(a) asserts in response to a petition for declaratory order filed pursuant to RCW 34.05.240 that their rights might be substantially prejudiced by entry of a declaratory order;

(b) supports such assertion by sworn statement in the form of a declaration or affidavit demonstrating the potential for substantial prejudice; and

(c) does not consent in writing to the determination of the matter by a declaratory order proceeding under RCW 34.05.240.

(4) **Conversion of proceeding.** The commission may convert the form of a declaratory order proceeding as provided under RCW 34.05.070 and conduct the matter as an adjudicative proceeding under Part III, subpart A of this chapter.

(5) **Commission action on petition.** Within thirty days after it receives a petition for declaratory order, the commission will:

(a) Enter a declaratory order;

(b) Notify the petitioner that the commission will not

enter a declaratory order under RCW 34.05.240 and state the reasons for that decision;

(c) Set a specified time, no later than ninety days after the day the petition was filed, by which the commission will enter a declaratory order; or

(d) Set a reasonable time and place for a hearing. The commission will hold any hearing on a petition for declaratory order under RCW 34.05.240 within ninety days after receipt of the petition. The commission will give at least seven days' notice of any hearing to the petitioner, to all persons to whom notice is required by law, and to any other person the commission deems desirable. The notice will include the time and place for the hearing and a statement of the issues the commission will consider.

(6) **Extension of time.** The commission may for good cause extend the times specified in subsection (5)(c) and (d) of this section.

(7) **Commission action after hearing.** The commission will take one of the following actions within a reasonable time after holding any hearing as provided in subsection (5)(d) of this section:

(a) Enter a declaratory order; or

(b) Notify the petitioner that the commission will not enter a declaratory order and state the reasons for that decision.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 06-16-053 (Docket A-050802, General Order R-536), § 480-07-930, filed 7/27/06, effective 8/27/06; 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-930, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-940 Conversion of proceedings.** The commission may convert a proceeding to a different type of proceeding on the commission's own motion or upon application by any party or person directly affected. Any such conversion or commission refusal to convert a proceeding will comply with the requirements in RCW 34.05.070 and be consistent with the public interest.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-940, filed 11/24/03, effective 1/1/04.]

**WAC 480-07-950 Joint hearings with other administrative bodies.** (1) **Federal.** The rules of practice and procedure of the federal agency govern in any proceeding in which the commission participates jointly with a federal agency.

(2) **State.** The rules of the state in which the hearing is held govern in any proceeding in which the commission



participates jointly with the administrative body of another state or states, unless otherwise agreed by the participating agencies.

(3) **Who may appear.** Any person entitled to appear in a representative capacity before any of the agencies involved in a joint hearing may appear in the joint hearing.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-950, filed 11/24/03, effective 1/1/04.]