

**A-130355 Procedural Rules**

**Summary of 5-11-18 Comments on Proposed Revisions to Parts III B through IV**

**July 2, 2018**

<b>480-07</b>	<b>PSE</b>	<b>AWEC</b>	<b>WRRRA</b>	<b>Public Counsel</b>	<b>Staff Response</b>
505(3)(b)			Codify current practice of pass through on disposal fees paid to affiliates if the company shows costs are equal to or lower than any other available option		Staff agrees and has added appropriate proposed language to the draft revised rule.
505(3)(c)			Substitute “related to” for “on” the collection of solid waste with respect to changes to government charges		Staff agrees in part and has added the proposed language to the draft revised rule with the addition of “directly” before “related to.”
510(1)	Include supplemental filings authorized by the Commission as part of a company’s direct case				Staff agrees and has added the proposed language to the draft revised rule.
510(3)	Delete “all detail” from company filing requirements to avoid a company submitting exorbitant amounts of information to satisfy the rule			Make an exception to the paper filing requirement for large database information or models	<p>PSE – Staff disagrees. The proposed language requires only “all detail . . . <i>necessary</i> to support [the company’s] requests and proposals and meet its burden of proof.” (Emphasis added.) The rule thus would not require filing exorbitant amounts of information but only the amount needed to prove the company’s case. The rule simply codifies the company’s current obligation.</p> <p>PC – Staff agrees in concept (but not location) and has revised the draft rule to include this exemption in the initial paragraph of this rule.</p>
510(4)(a)				Allow parties five, rather than three, business days to provide workpapers	Staff agrees and has made that change to the proposed revised rule.

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510(4)(d)				Allow parties to file motions to include another party's workpapers in the evidentiary record	Staff disagrees. A party currently can seek to include another party's workpapers into the record by making them an exhibit. No motion is required, nor should the rule codify the need for a motion.
510(5)(a)				Include the company's most recently calculated actual rate of return in the summary of the filing and require an update to reflect subsequent changes during the proceedings	Staff agrees in part. Staff has included the actual rate of return in the summary filing requirements but does not believe that the rule should require the company to file updates. Any party may request such an update through discovery, and the Commission can request it through a bench request, if necessary.
520(1)			The correct tariff rule cross-reference is WAC 480-70-286, not WAC 480-80-105.		Staff agrees and has made that change to the proposed revised rule.
540	Include supplemental filings authorized by the Commission as part of a company's direct case				Staff agrees and has added the proposed language to the draft revised rule.
610(2)			Include requests for interim rates for solid waste collection companies in list of matters suitable for BAP		Staff agrees and has made that change to the proposed revised rule.
700(4)(b)	To ensure confidentiality of settlement discussions, add "and in the same manner as mediation correspondence under the Uniform Mediation Act, Chapter 7.07 RCW."				Staff disagrees. The UMA may apply to mediations in Commission adjudications, in which case the existing proposed language includes its protections. The Commission, however, cannot expand the scope of that statute or create an exemption to the Public Records Act by rule for all settlement discussions.

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730	Add language requiring parties to timely notify the settling parties of their position on the settlement				Staff disagrees. Settling parties informing the Commission that non-settling parties have not stated a position on the settlement is more appropriate than a rule compelling inter-party notification.
730(4)	Add language to require parties to advise the Commission of any parties who have failed to commit to a position on the settlement				Staff disagrees. The settling parties currently inform the Commission of nonsettling parties' positions (or lack thereof), and codifying a requirement to do so is unnecessary.
740(2)(d)	Delete subsection requiring statement on whether company will waive the statutory deadline as exerting undue pressure to waive it to obtain settlement				Staff disagrees. The Commission should have the time it needs to fully consider a settlement agreement, and if it rejects that agreement, time to resolve the disputed issues. Settlement agreements filed close to the statutory deadline can limit, or in some cases eliminate, that time. Rather than establishing a rigid cut-off date for filing settlement agreements, the proposed rule only asks for the company to state whether it would be willing to waive that deadline, if necessary. The rule thus would enable the Commission to know whether to decline to consider the settlement if there is insufficient time to make a determination prior to the statutory deadline, and waiver of that deadline is not an option.
740(3)(a)				Include a requirement that the settlement supporting documentation include an explanation of how the settlement agreement is lawful and furthers the public interest.	Staff disagrees. The recommended addition is redundant because the draft rule already requires "sufficient evidence to support commission approval and adoption of the settlement agreement under applicable law consistent with the public interest."

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740(3)(b)				Add language requiring a party to provide another witness if the offered witness cannot answer questions about the settlement agreement	Staff disagrees. The settling parties must demonstrate that their agreement is lawful and consistent with the public interest. If they fail to do so – including by presenting witnesses who cannot adequately support the agreement – the Commission will reject it. The Commission also can subpoena witnesses. The proposed additional language thus is unnecessary.
750(2)(b)	Delete “or does not unequivocally and unconditionally accept all of these conditions” and add provision establishing acceptance of Commission conditions as the default in the event of a party’s silence				Staff disagrees. Commission conditions on approving a settlement become part of that settlement, and a settling party’s acceptance of those conditions should be as clear and binding as all other provisions in the settlement agreement. Accordingly, the proposed rule language appropriately requires an affirmative, unequivocal, and unconditional acceptance of the conditions. Staff, however, proposes to have the Commission notify the parties if it deems a settlement to be rejected pursuant to this subsection.
904		Proposed revisions to this rule ignore the practical limits to delegation, and the rule should remain at it is			Staff disagrees. Staff proposes to include the delegated matters in one or more Commission orders, rather than in rule. This change is procedural, not substantive, and will not adversely affect stakeholders.
General					Staff has made some minor, non-substantive edits for clarification.
Commenter Acronyms	PSE – Puget Sound Energy	AWEC – Alliance for Western Energy Consumers	WRRRA – Washington Refuse and Recycling Association		