

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

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

(b) Protection of the public interest does not require the commission to give notice and an opportunity to participate to persons other than the parties~~((, and when))~~;

(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 ~~((is))~~ 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) ~~((Review of denials or partial denials of))~~ 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 ~~((in which))~~ that do not require notice and an opportunity to participate ~~((in the proceeding need not be given))~~ 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) ~~((Petitions for mitigation of))~~ Contested penalty assessments under RCW 80.04.405 ~~((and))~~, 81.04.405, ((including any challenge to the validity of a penalty assessment or the existence of an underlying violation-)) or 19.122.150, or consideration of requests for mitigation of the penalty;

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

(g) Requests by solid waste collection companies pursuant to WAC 480-07-520(6) for interim rates subject to refund.

(3) ~~((How to request))~~ **Initiating a brief adjudication.** The director of the administrative law division will determine whether the commission will initiate a brief adjudicative proceeding.

(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 ~~((apply for))~~ file a petition requesting that the commission commence a brief adjudicative proceeding ~~((by filing with the secretary of the commission a letter stating))~~.

(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 should be used and a certificate of service upon)) adjudicative proceeding would be appropriate to resolve those issues. The petitioner must serve the petition on all other identified or necessary parties((. The commission may set a matter for brief adjudication on its own motion when doing so will not prejudice the rights of any person. Each applicant for a brief adjudicative proceeding must submit a written explanation of its view of the issues along with its application. Parties may file written submissions as provided in the commission's notice that it will conduct the brief adjudicative proceeding)) 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 ten days after service of the petition stating the reasons why a brief adjudicative proceeding 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 fourteen 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 in response to the request or if an administrative law judge will enter a decision based on the information provided in the request and commission staff's response. The requestor 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 ((grants the request)) sets a matter for a brief adjudication, ((it)) the commission will designate a person to serve as a presiding officer consistent with the requirements of RCW 34.05.485.

(5) ~~((Requesting and presenting oral comments.~~

(a) ~~**Request.**~~ A party to a brief adjudicative proceeding may request to make an oral statement in the application or in a response to the application. The presiding officer may grant a request to make an oral statement or may ask the parties to make oral statements if the presiding officer believes an oral statement will help in reaching a decision.

(b)) ~~**Hearing.**~~

(a) Notice and nature of proceeding. The commission will serve ((upon)) on the parties a notice of the time and place for the brief adjudicative proceeding ((and the name and telephone number of the designated presiding officer)) 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 ((an oral)) a brief statement of the reasons for the decision ((during the brief adjudication if the party affected is present at the proceeding)) at the conclusion of the hearing. The presiding officer will

then enter an initial order more fully explaining that decision in writing within ten 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 ((by the application)) in the proceeding within ten days after the date of the brief adjudication. The ((initial order will be served on the parties pursuant to WAC 480-07-150 (3) and (7))) presiding officer may extend this deadline for good cause.

(7) Review of initial orders.

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

(b) *Format for petition for review.* The commission ((encourages written)) 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 ((written)) party's request for review of an initial order must ((contain)) identify the errors the party alleges in the order and must provide an explanation of the ((party's view of the matter, with a statement of)) reasons why the party contends that the initial order is incorrect((, and a certificate of service. Oral petitions for review are permitted under RCW 34.05.488)). 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.* ((The commission encourages written responses.)) Any party may file and serve a written response to ((a)) an oral or written petition for review ((must be filed with the commission and served to the other parties)) within seven days after ((service of the petition for review, or on a schedule set by the presiding officer. The commission may hear orally any response to an oral petition for review)) 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 ((consistent with the terms of its final order)). The final order on review will be in writing((,)) and will include a brief statement of the reasons for the decision((, and will be entered)). The commission will enter the final order within twenty days after the deadline for requesting review ((or of the request for review, whichever is later)) of the initial order. The order ((must)) will include a notice of any further available administrative review or, if none is available, a notice that judicial review may be available.

(9) **((Final)) Finality of initial order ((without review.** If no party seeks review of the initial order, the commission may enter an order adopting)). The initial order ((as its)) 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 ((were)) the presiding officer considered ((or prepared by the presiding officer)) for the brief adjudicative proceeding or ((by the reviewing officer for)) that the commission considered in any review of an initial order. The ~~((agency's))~~ commission's record need not constitute the exclusive basis for action, unless otherwise required by law.

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

WAC 480-07-620 Emergency adjudicative proceedings. (1) **When permitted.** The commission may conduct an emergency adjudicative proceeding pursuant to RCW 34.05.479 ~~((to suspend or cancel authority, to require that a dangerous condition be terminated or corrected, or to require immediate action))~~ in any situation involving an immediate danger to the public health, safety, or welfare requiring immediate commission action ~~((by the commission. Such situations include, but are not limited to:~~

(a) ~~Inadequate service by a public service company when the inadequacy involves an immediate danger to the public health, safety, or welfare; and~~

(b) ~~Violations of law, rule, or order related to public safety, when the violation involves an immediate danger to the public health, safety, or welfare)) 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. ~~((If a majority of the commissioners are not available to authorize a complaint, one commissioner or, if no commissioner is available, the secretary or executive director of the commission or an administrative law judge may authorize a complaint.))~~

(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 ~~((supervisor))~~ director of the commission's administrative law ~~((judge function))~~ 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~~((, if no commissioner is available)).~~

(4) **Record and decision.** The official record will include any written submissions of the parties~~((,))~~, any testimony or oral comments by the parties~~((, if))~~ the presiding officer ~~((has allowed oral comments;))~~ allows, and any other documents regarding the matter that ~~((were considered or prepared by))~~ the commission considers. The

((agency's)) commission's record need not constitute the exclusive basis for action((7)) 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. ~~((The commission will serve the order pursuant to WAC 480-07-150 (3) and (7).))~~

(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 ~~((immediate))~~ reconsideration. If ~~((either))~~ a party requests review or reconsideration ~~((is requested))~~, 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 ~~((immediate))~~ review or reconsideration is not automatically entitled to a stay of the emergency order.

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

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. ~~((§§))~~ Secs. 251 and 252.

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

(3) **Intervention; public counsel.** Arbitrations typically involve only the parties to the negotiation. Others may ask to participate but will be allowed to do so only upon a showing of compelling public interest. The public counsel ~~((section))~~ 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. ((§)) Sec. 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 ((is requested)).

(b) *Filing.* Parties must file petitions for arbitration under ((section)) 47 U.S.C. Sec. 252 (b)(2) as provided for other petitions under WAC ((480-07-145)) 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 ((is filed)) with the commission.

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

(a) State the date on which the local exchange carrier received the original request for negotiation ((was received)), and the dates one hundred thirty-five days and one hundred sixty days after ((the request was received)) 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 ((petitioning party)) petitioner requests be imposed;

(e) Recommend any information that the arbitrator should request from the parties pursuant to 47 U.S.C. ((§)) Sec. 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. ((§§)) Secs. 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 ((on)) to support its positions or that it intends to introduce as exhibits at the hearing.

(6) **Filing and service of ((an answer)) 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 ((it)) the respondent wishes within twenty-five days after the petitioner files the petition ((is filed)).

(b) *Filing.* ((Answers)) Responses to petitions for arbitration under ((section)) 47 U.S.C. Sec. 252 (b)(2) must be filed with the commission in the manner provided for ((answers)) responses to other petitions under WAC ((480-07-145,)) 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 ((~~answer~~)) response and all accompanying documentation on the same day that the respondent files the response ((~~is filed~~)) with the commission.

(7) **Contents of ((~~answer~~)) response and required documentation.** ((~~An answer~~)) 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 ((~~respondent~~)) 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 ((~~responding party~~)) respondent requests be imposed;

(e) Recommend any information that the arbitrator should request from the parties pursuant to 47 U.S.C. ((~~§~~)) Sec. 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. ((~~§§~~)) Secs. 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 ((~~on~~)) to support its positions or that it intends to introduce as exhibits at the hearing.

(8) **Verification.** The petition, ((~~answer~~)) 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, ((~~answers~~)) responses, and any documents a party provides to the commission pursuant to a request under ((~~section~~)) 47 U.S.C. Sec. 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 ((~~answer~~)) 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 re-

scheduling 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. ((§)) Sec. 252 (b)(4)(B). Parties may submit to the arbitrator any discovery requests to which a party has not responded ((to)) by the time of the conference and request that the arbitrator order the discovery. The arbitrator or the commission may request information from the parties pursuant to 47 U.S.C. ((§)) Sec. 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 ((appointed by the commission)), or one or more persons under contract with the commission ((may be designated)) to act as arbitrator(s) ((when)) to resolve a petition for arbitration ((is filed)). The commission will not appoint an arbitrator who previously mediated a dispute between the same parties concerning the same interconnection agreement((,)) unless the parties consent in writing or no other arbitrator is available to the commission. The commission will advise the parties of the appointment by entry of an order on arbitration procedure. The commission, in its discretion, may permit parties to comment on the ((selection)) 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 ((may not be consulted)). 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 ((was filed)). The arbitrator's report satisfies the commission's responsibility to resolve the disputed issues under 47 U.S.C. ((§)) Sec. 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.

AMENDATORY SECTION (Amending WSR 03-24-028, 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 ((section 252 of the Telecommunications Act of 1996,)) 47 U.S.C. ((§)) Sec. 252.

(2) **Commission review and approval of agreements** ((by the commission)).

(a) Filing and service of agreements ((for approval)).

(i) Negotiated agreements. Parties to a negotiated interconnection agreement must ((submit)) file a complete, signed copy of their agreement to the commission for approval under 47 U.S.C. ((§)) Sec. 252(e) within thirty days after they sign the agreement ((is signed)).

The parties must include any appendices or attachments to the agreement (~~((must be included))~~). The request for approval must summarize the agreement's main provisions(~~((The request for approval))~~) 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. (~~((§))~~) Sec. 252 do not begin until a complete request is properly filed.

(ii) Arbitrated agreements—Petition for review; ((answer)) 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 (~~((is issued))~~), or at such other time as is established by notice or order. Other parties to the arbitration proceeding (~~((must file an answer))~~) may file a response within ten days after the petitioner serves the petition (~~((is served))~~), or at such other time as (~~((is established))~~) the commission establishes by notice or order. Both petition and (~~((answer))~~) response must be in the form of a brief of the issues(~~((τ))~~) 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 (~~((should, or should not, be modified))~~).

(iii) Arbitrated agreements—Request for approval. The parties must also file, on the date established for (~~((answering))~~) 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 (~~((section))~~) 47 U.S.C. Sec. 252(i) (~~((of the Telecommunications Act of 1996))~~), 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(~~((The request for approval))~~) 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))~~) 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 (~~((is properly filed))~~).

(iv) (~~((Filing and service. Parties must file requests for approval with the commission secretary, as provided in WAC 480-07-145. Parties must serve the request for approval on all other parties not filing jointly, as provided in WAC 480-07-150.))~~) 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 (~~((will consider a request for approval of))~~) delegates authority to the commission secretary to approve or reject a fully negotiated interconnection agreement (~~((at a regularly or specially scheduled open public meeting))~~). 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 (~~((at hearing, which may, in the commission's discretion, be scheduled coincident with a regularly or specially scheduled open public meeting. The commission may hear oral argument by the parties, oral comment from members of the public, or both. The commission will enter an order approving or rejecting a fully negotiated agreement within ninety days after the date on which the request for approval and interconnection agreement are filed))~~) using the same procedures in WAC 480-07-825 for review of an initial order. The commission will enter an order (~~((re-solving))~~) approving or rejecting a partially or fully arbitrated agreement within thirty days after the parties file the agreement and request for approval (~~((and interconnection agreement are filed))~~).

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

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 (~~((is not being complied with))~~) 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 (~~((is filed))~~) with the commission. (~~((If the petitioner chooses to serve the respondent by mail or parcel delivery service, it must deliver a copy of the petition and all supporting documents by hand delivery, fax, or email (to the email address specified by the recipient for the purpose of receiving a copy of the petition) on the same day as filed with the commission.))~~) For

purposes of this section, ~~((service must be effected on))~~ 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 (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 ~~((was))~~ 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 ~~((must be served))~~ as provided in (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) **~~((Answering))~~ Responding to a petition.** The respondent may ~~((answer))~~ respond to the petition. The respondent waives the opportunity to present any matter that is not raised in the ~~((answer,))~~ response except ~~((that the answer may be amended))~~ as provided under subsection (3) of this section.

(a) *Contents of the* ~~((answer. The answer))~~ 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 ~~((relied upon must be supported))~~ 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* ~~((answer))~~ response. The respondent must file the ~~((answer))~~ response with the commission and serve it electronically on the petitioner within five business days after ~~((service of))~~ the petitioner serves the petition for enforcement. ~~((Service must be accomplished so that a copy of the response to the petition for enforcement and all supporting documents reach the petitioner's attorney, or the person who signed the petition if petitioner has no attorney, on the same day the answer is filed with the commission. If the respondent chooses to serve the petitioner by mail, a copy of the petition for enforcement and all supporting documents must be delivered to the person identified above on the same day as filed with the commission.))~~

(3) **Amendment of petition and** ~~((answer))~~ response. The presiding officer may permit the ~~((responding party))~~ respondent to amend its ~~((answer))~~ response for good cause shown, and to avoid substantial prejudice to the ~~((responding party that is not caused by the fault of the responding party))~~ respondent for which the respondent is not responsible. The presiding officer may permit either party to amend its petition or ~~((answer))~~ response to conform to the evidence presented during the proceeding. The presiding officer may refer to, but is not bound by, ~~((CR 15(b) of the Washington superior court civil rules,))~~ 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 ~~((each))~~ 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 ~~((is filed))~~. 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 ~~((can be determined))~~ by relying only on the pleadings, ~~((submissions))~~ 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~~((τ))~~; (ii) the need to clarify statements by asking questions~~((τ))~~; (iii) whether the issues are largely factual, largely legal, or involve questions of fact and law~~((τ))~~; (iv) the apparent complexity of facts and issues~~((τ))~~; (v) the need for speedy resolution~~((τ))~~; and (vi) the completeness of information presented. The presiding officer may require the parties to ~~((submit))~~ 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 ~~((answer. The party filing the petition or answer may file with the petition or answer a request for discovery))~~ response. Either party may request that the commission make its discovery rules available, stating the matters ~~((to be inquired into))~~ 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 ~~((shown to be essential to the requesting party))~~ essential. The presiding officer will establish a shortened discovery schedule to comply with the timelines of this rule.

~~((d) **Consideration as a complaint.** If the matter at issue involves policy, technical or accounting issues that require extensive analysis or discovery, the commission may convert the proceeding to a complaint proceeding under RCW 80.04.110 to allow adequate time and process for the demands of the proceeding.))~~

(5) **Powers of the presiding officer; conversion of proceeding; ~~((recommended))~~ initial or final ~~((decision))~~ 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~~((τ))~~ 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; ~~((when))~~ (ii) the petitioner requires discovery beyond a disclosure of facts directly related to the matters at issue; ~~((when))~~ (iii) extensive policy argument or legal briefing is required; or ~~((when))~~ (iv) participation by parties other than the petitioner and the respondent is necessary. The presiding officer may limit the record to written ~~((submissions))~~ filings or may schedule an enforcement hearing

((session)). The presiding officer may limit the number of exhibits and witnesses and the time for their presentation.

(b) ~~((**Recommended decision.**)~~) Initial order. The presiding officer, if other than the commissioners, will ~~((serve a recommended decision on the parties))~~ enter an initial order resolving the petition within seventy-five days of the date the petitioner submitted the petition ~~((for enforcement was filed))~~, or twenty-one days after the last hearing session or ~~((submission))~~ filing, whichever is later. ~~((The recommended decision is subject to approval by the commission.))~~ If the commissioners preside over the enforcement proceeding, they may enter a final ~~((decision))~~ order within the time requirements applicable to ~~((recommended decisions))~~ initial orders.

(c) Commission review ~~((of the recommended decision))~~. Any party may file a petition for administrative review of ~~((a recommended decision))~~ the initial order within seven days after the commission enters the order ~~((is entered. A party opposing review))~~. The opposing party may file ~~((an answer))~~ a response within five days after the petitioner files a petition for review ~~((is filed. The commission may hear the parties' arguments regarding any recommended decision on the written pleadings or during oral argument, which may, in the commission's discretion, be scheduled coincident with a regular or special open public meeting. The commission may request commission staff to make a presentation at the argument. The commission will conduct this session within ten days after the date of the recommended decision, or as soon thereafter as the commissioners' schedules permit. If no party files a petition for administrative review, the commission may adopt the recommended decision without material change. If the commission considers making a material change in a recommended order to which no petition for review has been filed, the commission must first seek the views of the parties on the issue))~~.

(6) **Commission decision on petition for enforcement.** ~~((a) **Extent of commission discretion.**~~ The commission will serve a final decision on the parties in the form of a commission order resolving the issues. The commission may adopt, modify, or reject all or part of any recommended decision.

~~((b) **Time of service.**)~~) The commission will enter its final order on the petition for enforcement no later than ninety days after the date the ~~((petition is filed or fifteen))~~ petitioner filed the petition or thirty days after ~~((the meeting at which it reviews the recommended decision))~~ a party files a petition for review of an initial order, whichever is later. The commission may extend this time for ~~((lack of resources or for other))~~ good cause.

~~((c) **Petition for reconsideration.**~~ The parties may petition for reconsideration within ten days after the commission serves its order on the petition for enforcement. If a party petitions for reconsideration, the commission may request that an answer be filed. The commission may request additional comments, briefing, evidence, or argument from the parties. Filing a petition for reconsideration of the order does not stay the effect of the order. A petition for reconsideration is deemed denied unless the commission grants or denies it by written order within ten days after the date on which petition for reconsideration is filed or the date established for filing an answer or additional comments, briefing, evidence, or argument, whichever is later. The commission may alter the time for entering its order on a petition for reconsideration by notice or letter.

(d) **Failure to comply with the order.** Any party who fails to comply with the terms of the commission's final order on a petition for

enforcement is subject to penalties under RCW 80.04.380 and any other penalties or sanctions as provided by law. A company against whom a penalty is assessed may challenge the penalty or the facts on which it is based, or seek mitigation of the penalty, pursuant to pertinent law and commission rules.)

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

WAC 480-07-660 Railroad grade-crossing closures(~~(—Objections)~~).

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 twenty days after providing notice of the petition as required in RCW 81.53.060.

(1) (~~(**Filing.** Anyone who objects to a highway-railroad)~~) **Objections.** An objection to a petition to close a railroad grade crossing (closure under RCW 81.53.060 must file an objection in writing within twenty days after publication of notice of the proposed closure. The objection) must be in writing and must:

(a) Identify the person or persons who object by full name (~~and~~), 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(~~(, if known)~~); 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) (~~(**Party status; appearances; service of final order.** Filing an objection does not make a person a party to a proceeding under RCW 81.53.060.)~~) **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 (must enter an appearance) 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 ((by)) in WAC 480-07-340. ((A person who fails to establish party status by appearance may file a "late-filed petition to intervene" as provided in WAC 480-07-355. A person must establish party status to be entitled to service of any initial order or the commission's final order in the matter. Persons who are not parties may receive a courtesy copy of any initial or final order on request.))

(3) (~~(**Other**)~~) **Interested persons.** The commission will provide interested persons who are not parties ((will be provided)) with an opportunity to ((be heard)) comment on the issues in the proceeding and offer evidence, as required by RCW 81.53.060. Such interested persons ((who are not parties)), however, may not call witnesses, cross-examine witnesses, or otherwise participate as a party((Interested persons who are not parties)) 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.

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(~~(, and subject to approval by commission order)~~). 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 (~~retains and will exercise its authority in every adjudicative proceeding to consider~~) will determine whether to approve and adopt any proposed settlement or other agreement (~~for approval~~) 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 nonexclusive 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 (~~(means)~~) is any discussion or other communication(~~(, in person or otherwise, intended to resolve one or more disputed issues (whether actual or anticipated)~~) 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 (~~(or)~~), 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(~~(, or in aid of discovery)~~). 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 (~~(may be waived)~~) 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 (~~initial~~) 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 ~~((set))~~ include in the procedural schedule for each adjudicative proceeding the date for ~~((an initial))~~ at least one settlement conference. Parties ~~((wishing to))~~ may reschedule ~~((the initial))~~ a settlement conference ~~((must seek modification of))~~ included in the procedural schedule without seeking to modify the schedule ~~((by the presiding officer upon notice to all other))~~ if all parties agree, but the parties must provide notice to the presiding officer of the rescheduled date.

(b) Early ~~((initial))~~ settlement conference. Any party ~~((that wishes to))~~ may initiate a settlement conference with any other party ~~((between the filing of the docket and))~~ after the commission opens a docket and before the initial prehearing conference ~~((must have included in its notice to customers, if otherwise required, a statement indicating that an early initial settlement conference might be scheduled. In addition, the party proposing an early initial)),~~ 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, ((public counsel,)) any statutory party, any person ((that has filed)) who has submitted a petition to intervene or notice of appearance, and any person ((that)) 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 ((an early initial)) the early settlement conference ((in the docket if they file)), as may any other person who submits a petition to intervene prior to the early ((initial)) settlement conference.

(4) **((ADR)) Settlement negotiation guidelines.** In any settlement negotiation, including collaboratives, settlement conferences, and mediations, the following apply unless all participants agree otherwise:

(a) ~~((The parties, as their first joint act, will consider the commission's guidelines for negotiations, set out in a policy statement adopted pursuant to RCW 34.05.230, and determine the ground rules governing the negotiation;~~

~~(b))~~ 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;

~~((c) Parties may agree that))~~ (b) Information exchanged exclusively within the context of settlement negotiations will be treated as confidential((, subject to the requirements of RCW 5.60.070; and

~~(d))~~ 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((. Participants)) and must immediately advise the commission if ((a commission-sanctioned ADR)) 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 ~~((has been reached or an impasse is declared by))~~ or any neutral third party who is assisting the participants in the ADR process((.))

~~(e))~~ declares an impasse); and

(d) Any mediator, facilitator, or settlement judge who assists the participants in an ADR process will not participate in any adjudi-

cation, arbitration, or approval process for the same proceeding((,)) unless all parties consent in writing.

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

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

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

(3) **Mediators.** The commission may assign ~~((one or more))~~ a qualified employee~~((s))~~ to serve as ~~((mediator(s)))~~ 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 ~~((later adopted by the commission))~~ the commission subsequently adopts them;

(g) The mediation process is confidential and the information exchanged is privileged to the extent permitted by law~~((, subject to the requirement for a written agreement or other record indicating an expectation that mediation communications will be privileged against disclosure as required under RCW 7.07.020));~~ and

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

(5) **Fees and costs.** Each party must bear its own ~~((fees and))~~ 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 ~~((and may suggest~~

~~preferred procedural alternatives for review of the settlement, subject to the requirements of WAC 480-07-640 (commission approval of interconnection agreements) or WAC 480-07-740, as appropriate)). The commission will ((determine the appropriate procedure in each proceeding)) review the settlement consistent with the requirements of WAC 480-07-640 or 480-07-740, as applicable.~~

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

WAC 480-07-720 Collaboratives. (1) ~~((Defined; membership.))~~

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~~((7))~~ within the commission's jurisdiction~~((, assigned to or identified by))~~ 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 ~~((must be given an opportunity to))~~ may participate in the collaborative. Once the commission establishes a collaborative, the participants ((must inform the commission and seek approval if a collaborative seeks to change its membership)) may not change the participants or redefine the issues ((it)) they will address without commission approval.

~~((2))~~ **Procedure.** Participants must develop procedural guidelines for their negotiations when beginning a collaborative and should refer to any commission policy statement(s) that relate to ADR for guidance.

~~(3))~~ **(4) Communication with commission.** Collaborative participants must agree on the form and substance of any communication ((between)) they have with the commission ((and collaborative)) concerning the collaborative. The participants may ((be)) communicate with the commission through commission staff ((assigned to serve)) if staff is not a participant and is serving as a neutral third party in the collaborative, ((or through)) 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((, subject to agreement among the participants to the form and substance of any such communication)).

(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.

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~~((, filed))~~. All settlements must be documented in a written settlement agreement that the parties file with the commission as a proposed resolution of ~~((one or more))~~ those issues. ~~((Parties must submit an electronic copy of the settlement agreement in the format identified in WAC 480-07-140(6).))~~ 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 ~~((a proceeding may be presented as a full settlement for commission review. Parties who file a full settlement should file supporting evidence at the same time as the settlement agreement, or within a reasonable time following filing of the settlement agreement))~~ an adjudication.

(2) **Partial settlement.** A partial settlement is an agreement of all parties on some, but not all, of the disputed issues ~~((may be presented as a partial settlement for commission review, and remaining matters may be litigated. Parties who file a partial settlement should file supporting evidence at the same time as the settlement agreement, or within a reasonable time following filing of the settlement agreement))~~ in an adjudication. The parties may litigate the disputed issues the agreement does not resolve.

(3) **Multiparty settlement.** A multiparty settlement is an agreement ~~((of))~~ among some, but not all, parties ~~((on))~~ in an adjudication to resolve one or more disputed issues ~~((may be offered as their position in the proceeding along with the evidence that they believe supports it. Nonsettling parties may offer evidence and argument in opposition)).~~

(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 ~~((reach))~~ have reached a full, partial, ~~((or))~~ full multiparty, or partial multiparty settlement ~~((and may suggest preferred procedural alternatives for review of the settlement, subject to the requirements of WAC 480-07-740. The commission will determine the appropriate procedure in each proceeding consistent with the requirements of WAC 480-07-740)).~~

(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.

WAC 480-07-740 Settlement consideration procedure. The commission ~~((must))~~ will review all settlement agreements to determine whether ((a proposed settlement meets all pertinent legal and policy standards. The commission must have a reasonable opportunity to hear parties' views on why the settlement should be approved and adopted, to ask questions of the parties, and to conduct its processes in an orderly fashion. Parties must, therefore, consider the timing and the content of the settlement presentation to the commission)) they comply with applicable legal requirements and whether approval of the agreements is consistent with the public interest.

(1) ~~((**Settlement presentation timing.** Parties must file a proposed settlement with a recommended effective date that allows the commission sufficient time to schedule a formal settlement hearing and provide an opportunity for public comment when the commission, after consulting the parties, determines that such comment is needed. The commission must have sufficient time to deliberate and to prepare an order responding to the proposal. The parties must allow sufficient time for the filing, review, and approval of))~~ **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 and approve any required compliance filing.

(2) **Specific timing requirements.**

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

(c) *Notice to commission*~~((*inquiries regarding arrangements for review*))~~. Parties should inform the ~~((commission at the earliest opportunity when it appears that they may))~~ presiding administrative law judge as soon as they reach a settlement in principle and ((ask)) request that the commission ((to make tentative)) suspend the procedural schedule or make other arrangements for filing and review(((Parties may direct informal inquiries to the supervisor of the commission's administrative law function or the supervisor's designee)) 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) *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 ~~((schedule))~~ conduct a hearing ~~((to consider a proposed settlement))~~ if the commission believes that a hearing will assist ~~((it))~~ the commission to decide whether to approve and adopt the ~~((proposal))~~ settlement.

~~((e) *Timing;*)~~ (f) *Requested effective date.* The commission will endeavor to ~~((meet))~~ 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.

~~((2))~~ (3) **Settlement presentation ((contents)).** When ~~((filing a proposed))~~ submitting a settlement agreement~~((,))~~ for commission approval, the settling parties must ~~((also file))~~ include supporting documentation sufficient to demonstrate ~~((to the commission))~~ that the ~~((proposal))~~ settlement is consistent with the law and the public interest ~~((and that it is appropriate for adoption)).~~

~~((a) *Narrative.*)~~ (a) *Supporting documentation.* The supporting documentation ~~((should include a narrative outlining the scope of the underlying dispute; the scope of the settlement and its principal aspects; a statement of parties' views about why the proposal satisfies both their interests and))~~ 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~~((; and a summary of legal points that bear on the proposed settlement)).~~ The documentation may be in the form of a ~~((memorandum))~~ brief, supporting prefiled testimony, ~~((brief,))~~ 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 ~~((proposal and))~~ settlement agreement and to answer questions concerning the ~~((settlement))~~ agreement's details, ~~((and its))~~ costs, and benefits. ~~((Proponents of a proposed settlement must present sufficient evidence to support its adoption under the standards that apply to its acceptance.))~~ If the commission conducts a hearing on the settlement, counsel for each party must be prepared to make a brief presentation ~~((of the settlement,))~~ and address any legal matters associated with ~~((it. Counsel))~~ the settlement agreement. Each party's witness(es) must be available to respond to questions from the bench ~~((regarding those subjects))~~ and cross-examination by counsel for any party that opposes the settlement.

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

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

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

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

(iv) The right to present evidence, or ~~((τ))~~ in the commission's discretion ~~((τ))~~ an offer of proof, in support of ~~((the opposing party's preferred result))~~ 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 ~~((in the presiding officer's discretion)).~~

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

WAC 480-07-750 Commission discretion to ~~((accept))~~ consider and approve or reject a settlement~~((, impose conditions, or reject a proposed settlement))~~. (1) **Consideration of a settlement.** The commission ~~((may))~~ will decide whether ~~((or not))~~ to consider a ~~((proposed))~~ settlement. The commission ~~((will approve settlements when doing so is lawful, when the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to 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 ~~((the commission))~~ it considers a ~~((proposed))~~ settlement, ~~((it may accept the proposed))~~ the commission may approve the settlement, with or without conditions, or may reject it~~((.~~

~~((a) If the commission rejects a proposed settlement, the litigation returns to its status at the time the settlement was offered and the time for completion of the hearing will be extended by the elapsed time for consideration of the settlement and may take into account the need to address other pending business before the commission)).~~ 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 ~~((accepts a proposed))~~ conditions its approval of a settlement ~~((upon conditions not proposed))~~ on terms that are not included in the settlement~~((, the parties may seek reconsideration of the decision and the settling parties must within the time for reconsideration state their rejection of the conditions))~~ 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 settle-

ment 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 become final by operation of law with respect to those issues without further action from the commission.

(ii) If a party (~~rejects a proposed~~) to the settlement rejects any of the commission's conditions or does not unequivocally and unconditionally accept all of those conditions, the commission will notify the parties that it deems the settlement (~~is deemed~~) to be rejected, and (~~(+)~~) (c) of this subsection 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.

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

WAC 480-07-800 (~~(General; definitions.)~~) Order entry, effectiveness, and service. (1) (~~("Entry" of)~~) **Entry.** The commission has entered an order (~~means the signing of the order by all persons who are to sign the order,~~) when all 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 (~~it is entered~~) the commission enters it.

(2) **Effectiveness.** An order is effective when (~~entered,~~) the commission enters it unless (~~an~~) the order specifies a different effective date (~~other than the date the order is entered is specified in the order~~).

(3) (~~("Service" of)~~) **Service.** The commission serves an order (~~means placing copies of the order in the U.S. mail, postage prepaid, addressed to all parties and any other persons required by law to be served~~) as provided in WAC 480-07-360. Each order will state the date on which (~~it is served~~) the commission serves it. The service date of an order governs the determination of time limits for further administrative procedure or for judicial review.

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

WAC 480-07-810 Interim or interlocutory orders. (1) **Defined.** Orders (~~entered during the course of~~) the commission enters in an

adjudicative proceeding ~~((are—))~~ prior to entering an initial or final order are interim or interlocutory orders~~((,"—as distinguished from initial orders that may be entered by an administrative law judge at the conclusion of a proceeding and final orders entered by the commission at the conclusion of a proceeding. Examples of))~~. Interim or interlocutory orders ~~((are orders concerning))~~ include, but are not limited to, orders ruling on a party's participation in a proceeding, ~~((orders concerning))~~ scheduling issues, discovery disputes, and ~~((orders that relate to proposed evidence))~~ evidentiary issues.

(2) **When review is available.** The commission has discretion to review interim or interlocutory ~~((review is discretionary with the commission))~~ orders. The commission may accept review of ~~((interim or interlocutory))~~ such orders ~~((in adjudicative proceedings))~~ if it finds that:

(a) The ~~((ruling))~~ 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) ~~((A))~~ Immediate review is necessary to prevent substantial prejudice to a party that would not be remediable ~~((by post-hearing review))~~ in the commission's final order; or

(c) ~~((A))~~ 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~~((s))~~ for interlocutory review ~~((must be filed and served on other parties))~~ within ten days after ~~((service of))~~ the commission serves the order ~~((or issuance of the ruling for which))~~ the party is petitioning the commission to review ~~((is requested)).~~ The petition must ~~((state))~~ provide a full explanation of why the ~~((ruling is in error or))~~ petitioner believes the order is erroneous or otherwise should be changed and why ~~((interlocutory))~~ immediate review is necessary~~((, and must cite reasons that support the petition. Answers must be filed)).~~

(b) Any other party may file and serve a response to the petition within ten days after the petitioner files the petition ~~((is filed. The commission may alter these filing deadlines when doing so is consistent with the public interest))~~ unless the commission establishes a different deadline.

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

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

(a) Initial orders. ~~((=))~~ Initial orders~~((= dispose of the merits in a proceeding that is conducted before an))~~ are orders an administrative law judge enters that resolve the disputed issues in adjudications in which the administrative law judge ~~((and are entered over the signature of the administrative law judge. Initial orders include those that grant dispositive motions (e.g., motions to dismiss and motions for summary determination) and orders that resolve contested issues on the basis of the official record in a proceeding. All initial orders are subject to further action by the commission as provided in WAC 480-07-825))~~ 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((=dispose of the merits of a proceeding following consideration by the commissioners and are entered over the signatures of a majority of the commissioners. Final orders include those that grant dispositive motions (e.g., motions to dismiss and motions for summary determination) and orders that resolve contested issues on the basis of the official record in a proceeding. Final orders may be entered whenever:~~

~~(i) The commissioners personally preside over a proceeding;~~

~~(ii) The commissioners enter an order following administrative review of an initial order in response to a timely petition for administrative review;~~

~~(iii) The commissioners enter an order after the period available for petitions for administrative review and no such petition has been filed;~~

~~(iv) All of the parties to a proceeding waive their right to an initial order; or~~

~~(v) The commissioners enter an order following the timely filing of a petition for reconsideration of a final order or a petition for rehearing of a final order)) 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 ((a copy of any)) initial ((order and the commission's)) and final orders ((to each party of record and to the party's attorney or other authorized representative pursuant to RCW 34.05.461(9) and WAC 480-07-150(3))) 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 ((officer)) 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), ((initial briefs are filed, or reply)) or receives final briefs ((are filed)), 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), ((initial briefs are filed, or reply briefs are filed, or the commission)) receives final briefs, or receives a petition for administrative review or ((an answer)) a response to a petition for review, whichever occurs last. The ((presiding officer or the)) commission may alter the time for ((entry of)) entering an initial or final order ((by notice to the parties)) for good cause.~~

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

WAC 480-07-825 Initial orders—Finality; petitions for administrative review; motions for clarification. (1) ~~((When a))~~ 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 ((is appropriate)).** A party ((who wishes to)) may challenge any finding of fact, conclusion of law, remedy, or result ((proposed by)) in an initial order ((may file a petition)) by petitioning for administrative review. A party also may ((file a)) 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.

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

((3)) (b) Contents((length)). Petitions for administrative review must ((clearly)) 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 evidence, law, rule or other authority that the petitioner relies upon to support the challenge, and state the remedy that the petitioner seeks. Petitions for review of initial orders must be specific)). The petitioner must separately state and number every contention.

(ii) A petition that challenges a finding of fact must cite the ((pertinent)) page or part of the record ((or must otherwise state the evidence it)) that includes the evidence on which the petitioner relies ((on)) to support its ((petition,)) challenge and should include a recommended finding of fact.

(iii) A petition that challenges a conclusion of law must cite the ((appropriate)) statute, rule, ((or case involved)) 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. ((Petitions for administrative review must not exceed sixty pages, without prior permission from the commission.

(4) **Answers.**

(a)) (c) Responses.

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

~~((b))~~ (ii) Filing and service. ~~((An answer))~~ A response to a petition for administrative review must be filed and served within ten days after the petitioner files and serves its petition ~~((is filed. The commission may designate a different time for filing answers to petitions.~~

~~(e))~~ unless the commission establishes a different deadline.

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

~~((5))~~ (d) Reply.

~~((a))~~ (i) By right. A party has the right to reply to new challenges to the order that are ~~((raised under subsection (c) of this section))~~ included in another party's response as authorized in (c)(iii) of this subsection.

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

~~((e))~~ (iii) Timing. ~~((A))~~ The petitioner must file its reply ((under (a) of this subsection,)) or a petition for leave to reply ((under (b) of this subsection, must be filed)) no later than five days after ((service of the answer)) the respondent submits its response. The commission may extend the time ~~((upon))~~ on a showing of good cause.

~~((6))~~ (e) Oral argument. ~~((The commission may hear oral argument on a petition for administrative review at a time and place the commission designates by notice to all parties to the proceeding.))~~ A party ~~((who desires to present oral argument))~~ may request oral argument((, stating why)) before the commissioners, but any such request must demonstrate that oral argument is necessary to assist the commission in making its decision ((and why)) on the petition for administrative review and that the written presentations ((will be)) are insufficient.

~~((7))~~ **Initial order finality.**

~~(a)~~ The initial order of an administrative law judge will become a final order of the commission unless, within the time for filing petitions for administrative review:

~~(i)~~ A party petitions for administrative review, or receives an extension of time to file a petition for administrative review and files within the extended period; or

~~(ii)~~ The commission serves a notice to the parties of its intention to review the initial order.

~~(b)~~ Parties who 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 declines to exercise administrative review or when the time for exercising review ends. If the commission exercises administrative review, all parties may state objections and responses as permitted in subsection (8) of this section.

~~(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 ALJ orders.~~

~~(8) Designation for))~~ **(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 request in its motion for clarification 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 ~~((designate))~~ initiate review of an initial order ~~((for administrative review))~~ on the commission's own motion by serving ~~((on the parties))~~ a notice ~~((of its intention))~~ that the commissioners intend to review the order. The notice will ~~((identify the docket number and the title of the proceeding, a time period within which the parties may state objections to the initial order, and a time to respond to others))~~ 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.

~~((9))~~ **(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 ~~((by))~~ enter a final order that adopts, ~~((modify))~~ modifies, or rejects an initial order ~~((after considering the pleadings and the record))~~. Alternatively, the commission may remand the matter for further proceedings with instructions to the presiding officer.

~~((10))~~ **(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 ~~((7))~~ (1) of this section~~((, or when a petition for reconsideration is deemed denied as a matter of law, as provided in RCW 34.05.470. However,))~~; 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 ~~((does not))~~

commences ~~((until))~~ on the date on which the ~~((agency))~~ commission serves an order ~~((disposing of))~~ 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.

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

WAC 480-07-830 Motion to reopen the record prior to entry of a final order. ~~((Any))~~ (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 ~~((of the record))~~ and before ~~((entry of))~~ 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. ~~((In uncontested proceedings, the commission may exercise its discretion to reopen the record to allow receipt of written evidence when otherwise lawful. In contested proceedings,))~~

(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 ~~((all))~~ the other parties an opportunity to respond to ~~((any))~~ a motion to reopen the record, including to the evidence ((received after the record is closed)) 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 ~~((may enter a))~~ will rule on a motion to reopen the record in the final order ((or)) 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 ~~((consideration))~~ proceedings, including ((further)) 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.

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

WAC 480-07-835 Clarification of final order by motion. (1) Motion~~((-- when appropriate))~~ for clarification. Any party ~~((who does not seek to change the outcome with respect to an issue may file))~~ may request that the commission clarify a final order by filing a motion for clarification ~~((of a final order))~~ within ten days after the commission serves the order ~~((is served))~~. The purpose of such a motion ~~((for clarification))~~ is to ~~((ask))~~ ensure that the parties know their rights and responsibilities under the final order. An appropriate motion for clarification ~~((of))~~ 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 ~~((an))~~, or requirements in, the order ~~((so that compliance may be enhanced,))~~ so that ~~((any))~~ the parties can accurately prepare compliance filings ~~((may be accurately prepared and presented, to suggest));~~

(b) Make technical changes ~~((that may be required))~~ to ~~((cor- rect))~~ reconcile the application of principle to data, resolve incon- sistencies, or ~~((to))~~ correct patent error without the need for parties to request reconsideration and without delaying post-order compliance ~~((. A motion for clarification may also request that obvious));~~ or

(c) Correct typographical or other ministerial errors ~~((in orders be corrected by letter from the secretary or by subsequent order, con- sistent with WAC 480-07-875)).~~

(2) **Motions**~~((-- when not appropriate))~~ that do not seek clarifi- cation. ~~((If))~~ 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 ~~((, it may not do so by motion for clarifi- cation, but must file)).~~ 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 clarifi- cation unless ~~((requested by))~~ the commission requests a response.

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

AMENDATORY SECTION (Amending WSR 03-24-028, 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 ~~((personally))~~ attend the conference or may designate one or more persons to attend on their behalf. The com-

mission will determine whether it will record or transcribe an order clarification conference ~~((will be recorded))~~.

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

(a) Explore and resolve any ~~((barriers to compliance;~~

~~(b) Ensure that any compliance filing can be accurately prepared and presented;~~

~~(c) Propose))~~ 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~~ ~~((that may be required to correct))~~ to reconcile the application of principle to data ~~((; or (d)))~~, resolve inconsistencies, or correct patent error.

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

~~((2))~~ (3) **Effect.**

(a) An order clarification conference ~~((will))~~ does not stay the ~~((effect))~~ effectiveness of an order, the ~~((time))~~ deadlines for compliance, or the time ~~((for securing post order review, or the time for petitioning for))~~ frames for petitioning for further commission or judicial review ~~((, unless)).~~ If as a result of the conference ~~((results in a supplemental commission order, which then becomes)),~~ 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 ~~((subject to))~~ for purposes of further commission or judicial review.

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

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

WAC 480-07-850 Reconsideration of a final order ((by petition)).

(1) **Petition** ~~((— timing))~~. Any party may petition for reconsideration of a final order within ten days after the commission serves the order ~~((is served)).~~

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

~~((2) Petition —))~~ (b) **Contents.** ~~((The petitioner))~~ A petition for reconsideration must ~~((clearly))~~:

(i) Identify each portion of the challenged order ~~((that it))~~ the petitioner contends is erroneous or incomplete ~~((, must));~~

(ii) Site those portions of the record and each ((law or)) statute, commission rule ((that)), or other law on which the petitioner relies ((on)) to support its petition((7)); and ((must))

(iii) Present brief argument in support of ((its petition)) the relief the petitioner requests.

~~((3) Answer.)~~ (c) Response. No party may file ~~((an answer))~~ a response to a petition for reconsideration unless ~~((requested by))~~ the commission~~((. If the commission requests answers to a petition for reconsideration, it will issue a notice stating the date by which answers must be filed and))~~ 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.

~~((4))~~ (d) Oral argument. The commission will not hear oral argument on a petition for reconsideration unless the commission determines ~~((on its own motion))~~ in its discretion that oral argument ~~((is required))~~ will assist the commission in resolving the petition.

~~((5))~~ (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 ~~((it))~~ the commission will act on the petition.

~~((6))~~ (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 ~~((will be taken))~~ in the matter with respect to the final order. No party may petition for reconsideration of an order on reconsideration.

~~((7))~~ (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.

~~((8))~~ (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 ~~((is timely filed))~~, the time for filing a petition for judicial review does not commence until the ~~((agency))~~ 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 ~~((of the time for disposition under))~~ specifying the date by which the commission will act on a petition for reconsideration pursuant to subsection ~~((5))~~ (2)(b) of this section, is not subject to judicial review.

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

WAC 480-07-860 Stay. Any party may petition the commission to stay ~~((of))~~ the effectiveness of a final order within ten days after ~~((its service))~~ the commission serves that order, unless the order or

applicable statute provides otherwise ((provided by statute or stated in the final order)) . The commission may stay the effect of a final order on its own initiative. ((The effect of a final order is not automatically stayed when a party files a motion for clarification, a petition for reconsideration, or a))

(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 ((rehearing)) 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.

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

WAC 480-07-870 Rehearing. Any person affected by a commission final order may ((file a)) petition for rehearing((. Public service companies may seek rehearing under RCW 80.04.200 or 81.04.200)) 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 twenty 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.

AMENDATORY SECTION (Amending WSR 03-24-028, 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 ~~((it))~~ the commission has entered~~((r))~~. 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 ~~((affected))~~ and to all parties in the underlying proceeding~~((, and after allowing))~~; and

(b) An opportunity for parties to respond in writing or at a hearing ~~((as in the case of complaints. Any order altering, amending, or rescinding a prior order will have the same effect as any other final order when served upon the public service company or companies affected))~~ 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 ~~((effect))~~ make any corrections to the order by notice or letter~~((The commission may direct the secretary to effect any corrections by notice or letter))~~ without prior notice or opportunity to respond unless due process requires otherwise. The time for any available ~~((post-hearing))~~ review of the corrections begins ~~((with the service of the correction, as to the matter corrected))~~ when the commission serves the corrected order, notice, or letter.

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

WAC 480-07-880 Compliance filings~~((; subsequent filing; reporting requirement))~~. (1) ~~((Compliance filing; compliance order.~~ When the commission enters a final order that authorizes or requires a party to make a filing to implement specific terms of the order with respect to the issues resolved in an adjudicative proceeding by implementing a precisely defined result, the filing is a "compliance filing." For example, a commission final order in a general rate proceeding may authorize or require a party to file original or substitute

tariff sheets to implement the terms of the final order. A compliance filing is made under the docket number of the final order to which it relates. A compliance order is an order approving or rejecting a compliance filing.

(2) **Subsequent filing.** When the commission enters a final order that authorizes or requires a party to make a filing to implement general instructions (e.g., the formulation of policy, or filing of tariffs other than to implement a precisely defined result), the filing initiates a new proceeding that will be assigned a new docket number, and the filing is deemed a "subsequent filing." For example, a commission final order in a complaint proceeding may authorize or require a party to make a tariff filing by a date certain.

(3) **Reporting requirement.** 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 filed under the docket number of the proceeding in which the final order is entered, unless otherwise specified in the order establishing the requirement or by later letter from the secretary of the commission.)

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 that 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 an 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 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.** An 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 acknowledgment or approval in response to the payment.

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

WAC 480-07-885 **Subsequent filings**(~~—Filing requirements; timing; commission action~~)). 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) **Filing and service requirements.**

(a) (~~A person who makes~~) In the cover letter accompanying a subsequent filing, the party must (~~provide a cover letter that identifies~~) request a new docket and identify the order and the docket in which the commission required the subsequent filing. (~~The commission will assign a new docket number to a subsequent filing.~~)

(b) A (~~person who makes 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 (~~((was authorized or required))~~). 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 ten 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 (~~((must be made))~~). If (~~((no))~~) the final order does not specify a date for the subsequent filing (~~((is specified in the final order))~~), the commission may establish the date by subsequent order, notice, or ((by)) letter (~~((from the commission secretary))~~).

(3) **Commission action ((on subsequent filing)).** 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.

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

WAC 480-07-900 Open public meetings. (1) **Regular meetings.** The commission will hold regular meetings to conduct business under chapter 42.30 RCW, the Open Public Meetings Act. The commission generally schedules two (~~((business))~~) open meetings per month (~~((, usually on Thursday))~~) on alternate Thursdays at 9:30 a.m. in the commission's office in Olympia, Washington. The specific time and place of each (~~((business))~~) open meeting are published, as required, in the *Washington State Register* and on the commission's (~~((internet))~~) web site. The commission may cancel (~~((a))~~) an open meeting or change the time or place of (~~((a))~~) 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 (~~((distribute))~~) publish an agenda for each regular ((business)) open meeting at least two business days prior to the meeting. The commission (~~((will make its best effort to compile and publish a complete agenda. It may amend its))~~) also may publish an addendum or otherwise amend the agenda after ((it is published)) publishing it and may take up matters that do not appear on (~~((its))~~) the published agenda consistent with notice and due process requirements. The commission posts the agenda and any addendum ((are posted to the commission's internet)) on its web site. (~~((The commission will provide a copy of the agenda via U.S. mail on request.))~~)

(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 ((will-be-moved)) to the discussion portion of the agenda at the request of any commissioner((.The-commission)) or other person and may take such action on the item as ((it)) 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 ((will-be-moved)) to the discussion portion of the agenda at the request of any commissioner. ((The commission will act on the items on the consent agenda by a single motion and a single vote of the commission)) 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 ~~((business))~~ open meeting before the item would take effect by operation of law. The commission generally ~~((schedules))~~ includes items without a stated effective date ~~((, such as petitions, for consideration))~~ on the agenda for the regular open meeting scheduled thirty days or more after the commission receives a complete filing.

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

(c) All written comments in response to an open meeting item ~~((must be filed with))~~ 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 ~~((file))~~ submit written comments about an open meeting item to make oral comments at the meeting.

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

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

(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 portion of the agenda((, the commission designates a staff member who is assigned to analyze and present a recommendation to the commission at the open meeting. The staff person and a contact number are identified in the agenda)). The agenda item description will include the staff person's name and contact information. Persons interested in ~~((open meeting agenda))~~ these items may

discuss them with the designated staff(~~(, subject to time availability)~~) person prior to the open meeting.

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

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

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 (~~(the)~~)executive secretary.(~~(the)~~)

(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 (~~(the)~~)ap-pointing authority(~~(the)~~) 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 indi-

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

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

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

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

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

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

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

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

WAC 480-07-904 Delegation of authority ((to the executive secretary)) 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 ((the following matters)) to the executive secretary or other authorized commission personnel for decision.

~~((The executive secretary's))~~ (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 ((by the commission)) through ((either)) the open public meeting process ((or an administrative process the commission otherwise employs)), adjudicative or brief adjudicative proceeding, or other established commission process. Upon request, the com-

mission will review the matter under subsection ~~((3))~~ (4) of this section ~~((at a commission open meeting.~~

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

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

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

~~(d) Applications for approval of:~~

~~(i) Fully negotiated telecommunications interconnection agreements; and~~

~~(ii) Adoptions of existing interconnection agreements.~~

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

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

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

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

~~(i) Requests for approval of service area agreements.~~

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

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

~~(l) Requests by telecommunications companies for authorization of transfers of property under WAC 480-143-120 (Transfers of property) or determination under WAC 480-143-180 (Disposal and determination of necessary and useful property) that property is not necessary or useful to perform public duties and may be disposed, limited to property that has a market value that does not exceed either one percent of the company's rate base, last established by commission order, or two hundred thousand dollars, whichever is greater).~~

~~((2))~~ (3) Notice. The commission will notify the affected company and post on ((its internet)) the commission's web site for at least fourteen days a listing of all matters ((decided pursuant to subsection (1) of this section)) the executive secretary or other authorized personnel decided on delegated authority, showing the docket number, date of entry of decision, company name, and ((last date)) deadline for filing a request for commission review ((to be filed. The commission will regularly publish electronic notice of listings to persons requesting such notice. Any person may request notice by alternative means)).

~~((3) Opportunity for))~~ (4) Commission review. ~~((a) Delegated matters, generally. Any affected person may ask the commission to review any matter delegated under subsection (1) of this section. A person seeking review must file his or her request for commission consideration))~~ 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 ~~((of the posting. The commission will grant a late filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request. The commission will provide a form for this purpose on the commission's web site. The commission will schedule a request for review promptly for consideration and will notify the affected company, and any person requesting review, of the time and place of the open meeting at which review will be taken.~~

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

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

WAC 480-07-905 Delegation of authority ~~((to executive secretary)) to enter ex parte orders.~~ (1) Except as expressly provided elsewhere in these rules, the commission will authorize((s)) by order the executive secretary or other authorized personnel to enter ((the following)) 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 ((the order will be published, and responses)) all orders or letters entered on delegated authority. Persons affected by the order or letter who wish to respond must follow the procedure ((outlined,)) 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((, or other circumstance specified in subsections below))), must request ((an adjudicative)) a hearing or brief adjudicative proceeding ((under)) pursuant to WAC 480-07-610.

~~((1) Household goods carriers, chapter 480-15 WAC.~~

~~(a) Orders granting authority and permits for permanent, provisional or temporary intrastate transportation of household goods.~~

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

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

~~(d) Orders reinstating voluntarily suspended permit authority if the carrier satisfies the requirements of chapter 480-15 WAC.~~

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

~~(f) Orders suspending a permit if the carrier fails to maintain evidence of required cargo and/or liability insurance coverage. Such orders will inform the carrier that a permit may be reinstated if the~~

carrier corrects conditions leading to suspension and that the carrier may contest the suspension by requesting an adjudicative or brief adjudicative proceeding.

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

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

~~(i) Orders reinstating previously canceled permit authority if the carrier satisfies the requirements of chapter 480-15 WAC.~~

~~(j) Orders rejecting or denying applications for temporary authority if WAC 480-15-285 applies.~~

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

~~(2) **Solid waste collection companies—Specialized, chapters 81.77 RCW and 480-70 WAC.**~~

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

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

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

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

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

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

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

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

~~(3) **Solid waste collection companies—Traditional, chapters 81.77 RCW and 480-70 WAC.**~~

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

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

~~(c) Orders suspending a permit if the carrier fails to maintain evidence of the required level of insurance in effect for its opera-~~

tions. The order will inform the carrier that the permit may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest the suspension by requesting a hearing or brief adjudicative proceeding.

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

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

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

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

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

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

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

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

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

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

(f) Orders reinstating a permit canceled for cause if the conditions for reinstatement in chapter 480-31 WAC and in the order of cancellation are met.

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

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

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

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

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

(d) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension and fails to

~~request a hearing or brief adjudicative proceeding during the suspension period.~~

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

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

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

~~(6) **Auto transportation companies, chapter 81.68 RCW.**~~

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

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

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

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

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

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

~~(g) Orders reinstating a permit canceled for cause if the conditions for reinstatement in chapter 81.68 RCW and in the order of cancellation are met.~~

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

~~(7) **Commercial ferries, chapter 480-51 WAC.**~~

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

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

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

~~(8) **Temporary transportation authority.** The commission delegates to the executive secretary decisions in applications for temporary motor carrier or solid waste authority. The decision takes effect immediately on entry of an order without prior notice of delegation. An applicant whose application is denied, in whole or in part, may obtain review by requesting an adjudication within twenty days following entry of the order. Commission review of delegated decisions under this provision will be *de novo*.~~

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

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

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 ~~((that))~~ or entity the commission regulates or about the commission's operations. A person may make an informal complaint by telephone, correspondence, ~~((fax transmission,))~~ or email((,)) or by using the complaint form available on the commission's web site.

(2) **Contents.** An informal complaint must identify the business ~~((or person to whom)),~~ 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 ~~((, by correspondence or otherwise)).~~ 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 ~~((in))~~ an order ~~((that compels a person to do something or forbids a person from doing something)).~~

(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.

NEW SECTION

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, 81.04.405, 81.04.530, 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 any 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 fifteen 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 and may request that the commission make a determination based on those materials or may request the opportunity to present facts described in those materials through evidence at 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.** The executive secretary will enter an order resolving contested violations or requests for mitigation the commission considers 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 letter or 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 letter or 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 make a determination on the letter or 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.

NEW SECTION

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 1st 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 1st filing date, must pay the following monetary penalties to the commission:

(a) Two hundred fifty dollars if the filing is one to thirty days late;

(b) Five hundred dollars if the filing is thirty-one to sixty days late; or

(c) One thousand dollars if the filing is sixty-one to ninety days late.

(2) **Alternative penalties.** If a public service company has not filed a complete annual report and paid any required regulatory fees within ninety 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) of this section:

(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 fifteen 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 beyond a company's control.* Circumstances beyond a company's control that may support a request to waive some or all of the monetary penalty 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. Commission error for these purposes 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 not beyond a company's control.* Circumstances that are not beyond a company's control and that will not support a request to waive some or all of the 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 unless 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 ten 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.* Except for penalties the commission assesses pursuant to subsection (2)(b) of this section, 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 the director's 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.

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

WAC 480-07-920 Interpretive and policy statements. (1) **General.** Upon the petition of any person, or upon its own ~~((motion))~~ initiative, the commission may make and issue interpretive and policy statements to advise the public of ~~((its))~~ 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 ~~((, consisting of persons))~~ who have requested in writing to be notified of all interpretive and policy statements ~~((issued by))~~ the commission issues. The commission will periodically update the roster. ~~((When))~~ The commission will provide

an electronic copy to each person on the roster when the commission issues an interpretive (~~(or)~~) and policy statement(~~(, it will send a copy of the statement to each person on the roster)~~).

(3) (~~(Index of current statements. The commission maintains a file and an index of all currently effective interpretive and policy statements. The statements are available for inspection and copying at the records center in the commission's Olympia headquarters office and are posted on the commission's internet web site.)~~) **Submission of statement to the office of the code reviser.** Whenever it issues an interpretive and policy statement, the commission will submit to the office of 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.

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

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 (~~(seeks)~~) purports to present the commission with the option to enter either a declaratory order or(~~(, in the alternative,~~) an adjudicative order. The filing party must (~~(choose which)~~) specify a single process (~~(it deems appropriate)~~) 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 commission will serve 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 (~~(an answer)~~) 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((~~τ~~));

(b) Supports such assertion by sworn statement in the form of a declaration or affidavit demonstrating the potential for substantial prejudice((~~τ~~)); 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((~~τ~~)) and state the reasons for ((~~its action~~)) 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. ((~~If a~~)) The commission will hold any hearing ((is held)) on a petition for declaratory order under RCW 34.05.240((~~τ~~), it must be held no more than) within ninety days after receipt of the petition. ((~~If a hearing is held~~)) 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 ((it)) the commission deems desirable. The notice will include the time((~~τ~~)) and place((~~τ~~)) for the hearing and a statement of the issues ((involved)) 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 for good cause.

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

(a) Enter a declaratory order; or

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

(8) **Service.** ~~The commission will serve its order or notice upon all persons who are required to receive notice under subsection (2) of this section)) that decision.~~

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

WAC 480-07-940 Conversion of proceedings. The commission ((~~will consider whether to~~)) may convert a proceeding ((pursuant to RCW 34.05.070)) to a different type of proceeding on the commission's own initiative or upon application by any party or person ((or upon its own motion)) directly affected. Any such conversion or commission re-

fusal to convert a proceeding will comply with the requirements in RCW 34.05.070 and be consistent with the public interest.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 480-07-883 Compliance filing—Filing requirements;
 timing; commission action.