

**Summary of Written Comments by Stakeholders
Proposed Rules on Delegation and Initial Orders
Docket A-060357**

Proposed Rule Language	Stakeholder Comments
<p>WAC 480-07-307 Probable cause determinations. An administrative law judge will review the information or evidence supporting a proposed complaint or penalty assessment and determine whether probable cause exists to issue the complaint or assess penalties. If the judge determines that the information would support the proposed penalties or sustain the complaint, if proved at hearing and if not rebutted or explained, the judge will sign the complaint or penalty assessment on behalf of the commission. The existence of a finding of probable cause may not in any later stage of the proceeding be considered as support for the proposed penalties or the complaint.</p>	<p>Verizon – The proposed rule states an objective standard that is generally appropriate, but which leaves no room for the exercise of prosecutorial discretion. Recommend adding a provision that the ALJ can deny a request “if the information provided includes internal conflicts or is incredible on its face.”</p>
<p>WAC 480-07-825 Initial orders--Petitions for administrative review.</p> <p>[... subsections that were not amended are omitted here ...]</p> <p>(7) <u>Initial order finality.</u></p> <p>(a) <u>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:</u></p> <p>(i) <u>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</u></p> <p>(ii) <u>The commission serves a notice to the parties of its intention to review the initial order.</u></p> <p>(b) <u>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</u></p>	<p>Verizon – Re. subsection (7)(c) “no precedential value,” there should be some mechanism by which a party could seek ratification by the Commission of an initial order such that it becomes binding precedent.</p>

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<p>permitted in subsection (8) of this section.</p> <p><u>(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 may be cited as ALJ orders, but their persuasiveness depends on the quality of the decision rather than the mere fact they are technically final.</u></p> <p><u>(8) Designation for review. The commission may designate an initial order for administrative review by serving on the parties a notice of its intention 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. The notice may invite the parties to address specific issues relating to the initial order.</u></p> <p><u>(9) Final order. The commission may by final order adopt, modify, or reject an initial order after ((reviewing)) <u>considering</u> the ((initial order and any petitions for review, answers, replies, briefs, and oral arguments,)) <u>pleadings</u> and the record. Alternatively, the commission may remand the matter for further proceedings with instructions to the presiding officer.</u></p> <p><u>(10) Judicial review. The statutory time for filing a petition for judicial review commences when the commission serves its final order, when an initial order becomes final under RCW 80.01.060(3) and subsection (7) 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, 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 commence until the date on which the agency 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.</u></p>	
<p>WAC 480-07-903 Delegation of authority to the executive secretary. (1) General provisions.</p> <p>(a) The working title of the secretary position authorized in RCW 80.01.030 is "executive secretary."</p>	<p>Verizon – When read with other provisions in the rule, subsection 903(c) gives the impression that the Commission may delegate to the executive secretary by order</p>

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<p>(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.</p> <p>(c) The commission may also delegate functions to the executive secretary by order.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(b) Appointing authority. The executive secretary is the "appointing authority" for the commission and has authority over appointment, separation, and discipline of commission employees. This authority includes, but is not limited to, appointments, terminations, reductions in force, dismissals, suspensions, and demotions pursuant to WAC 356-30-007 and 356-34-011</p> <p>(c) Grievance procedure. The commission authorizes the executive secretary to hear bargaining unit employee grievances and enter a final agency decision. The commission reserves the right to hear individual grievances or to select another designee to hear grievances on a case-by-case basis.</p> <p>(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.</p> <p>(3) Authority to resolve delegated matters. Matters delegated to the</p>	<p>virtually any function. If the Commission wants to delegate substantive functions other than those identified in subsections - 904 and -905 it should do so in a rulemaking. Unless Proposed Rule WAC 480-07-903(c) can be modified or limited in some way to clarify its intent, it should be deleted.</p>

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<p>executive secretary by rule are specified in this section and in WAC 480-07-904 and 480-07-905. The executive secretary may exercise discretion to defer any delegated matter to the commissioners for decision.</p> <p>(4) Authority to sign discretionary orders implementing commission decisions.</p> <p>(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.</p> <p>(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:</p> <p>(i) A majority of the commissioners has previously reached a decision on the merits of the particular matter; and</p> <p>(ii) In the executive secretary's judgment, in consultation with any available commissioner, entry of the order cannot be deferred pending commissioner availability.</p> <p>(5) Commission review. Commission review of decisions delegated under RCW 80.01.030 is <i>de novo</i>.</p>	
<p>WAC 480-07-904 Delegation of authority to the executive secretary to decide certain matters. (1) The commission delegates the following matters to the executive secretary for decision. The executive secretary's decision shall take effect immediately on entry of an order or on a later date specified in the order, without prior notice. Upon request, the commission will review the matter under subsection (3) of this section at a commission open meeting.</p> <p>(a) Applications for funding highway-railroad grade crossing improvements under the grade crossing protection fund for applications under WAC 480-62-405 (1)(a).</p> <p>(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.</p>	

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<p>(c) Applications by water companies for removal from regulation or for the commission to exercise regulation under RCW 80.04.010.</p> <p>(d) Applications for approval of:</p> <p>(i) Fully negotiated telecommunications interconnection agreements; and</p> <p>(ii) Adoptions of existing interconnection agreements.</p> <p>(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.</p> <p>(f) Requests for a commission order establishing that a securities filing complies with RCW 80.08.040.</p> <p>(g) Requests for assignment of telephone number resources.</p> <p>(h) Petitions for mitigation of penalties when the petitioner does not request a hearing, or when commission staff supports the request for mitigation.</p> <p>(i) Requests for approval of service area agreements.</p> <p>(j) Requests for extensions of time to make filings under deadlines set by rule or order, not including deadlines established in an adjudication.</p>	
<p>(2) Notice. The commission will post on its internet web site for at least fourteen days a listing of all matters decided pursuant to subsection (1)(a) of this section, showing the docket number, date of entry of decision, and company name. The commission will regularly publish electronic notice of listings to persons requesting such notice.</p>	<p>Verizon – Apparent drafting error: The reference to “subsection (1)(a)” should be “subsection (1).”</p>
<p>(3) Opportunity for review. Any affected person may ask the commission to review any matter delegated under subsection (1) of this section. A person seeking review must file his or her request for commission consideration no later than the fourteenth day after the date of the posting. The commission will 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.</p>	<p>Public Counsel –</p> <p>(a) Recommend that the proposed rule be amended by adding a “good cause” provision for late-filed requests for review similar to what is currently in our rules for late-filed petitions to intervene.</p> <p>(b) Recommend that the list of delegated matters include the date by which a request</p>

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	<p>for review must be made. (c) Recommend that the Web site devoted to delegation include a step-by-step explanation of how to track delegated decisions.</p>
<p>WAC 480-07-905 Delegation of authority to executive secretary to enter <i>ex parte</i> orders.</p> <p>[rule language omitted since there are no written comments]</p>	<p><None></p>