

DATE: August 29, 2018

TIME: 9:35 AM

WSR 18-18-041

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of  
Amending/Adopting/Repealing

WAC 480-07

Relating to  
The Commission's procedural rules,  
governing the conduct of business before  
the Commission, including rules  
governing formal proceedings.

DOCKET A-130355

GENERAL ORDER R-592

ORDER AMENDING, REPEALING,  
AND ADOPTING RULES  
PERMANENTLY

- 1 **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and Transportation Commission (Commission) takes this action under Notice WSR #18-14 084, filed with the Code Reviser on July 2, 2018. The Commission brings this proceeding pursuant to RCW 80.01.040 and RCW 80.04.160.
- 2 **STATEMENT OF COMPLIANCE:** This proceeding complies with the Administrative Procedure Act (RCW 34.05), the State Register Act (RCW 34.08), the State Environmental Policy Act of 1971 (RCW 43.21C), and the Regulatory Fairness Act (RCW 19.85).
- 3 **DATE OF ADOPTION:** The Commission adopts these rules on the date this Order is entered.
- 4 **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW 34.05.325(6) requires the Commission to prepare and publish a concise explanatory statement about an adopted rule. The statement must identify the Commission's reasons for adopting the rule, describe the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the Commission's responses to the comments reflecting the Commission's consideration of them.

5 To avoid unnecessary duplication in the record of this docket, the Commission designates the discussion in this Order, including appendices, as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda preceding the filing of the CR-102 proposal and the adoption hearing. Together, these documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

6 **REFERENCE TO AFFECTED RULES:** This Order amends the following sections of the Washington Administrative Code:

- Amend WAC 480-07-500 General rate proceedings—Statement of policy.**
- Amend WAC 480-07-505 General rate proceedings—Definition—Tariff suspension.**
- Amend WAC 480-07-510 General rate proceeding filings—Electric, natural gas, pipeline, and Class A telecommunications companies.**
- Amend WAC 480-07-520 General rate proceeding filings—Solid waste collection companies and commercial ferries.**
- Amend WAC 480-07-530 General rate proceeding filings—Water companies and Class B telecommunications companies.**
- Amend WAC 480-07-540 General rate proceedings—Burden of proof.**
- Repeal WAC 480-07-550 General rate proceedings—Compliance filings and other resulting filings.**
- Amend WAC 480-07-610 Brief adjudicative proceedings.**
- Amend WAC 480-07-620 Emergency adjudicative proceedings.**
- Amend WAC 480-07-630 Telecommunications companies—Arbitration under the Telecommunications Act of 1996.**
- Amend WAC 480-07-640 Telecommunications companies—Review and approval of interconnection agreements under the Telecommunications Act of 1996.**
- Amend WAC 480-07-650 Petitions for enforcement of telecommunications company interconnection agreements.**
- Amend WAC 480-07-660 Railroad grade-crossing closures.**
- Amend WAC 480-07-700 Alternative dispute resolution.**
- Amend WAC 480-07-710 Mediation.**
- Amend WAC 480-07-720 Collaboratives.**
- Amend WAC 480-07-730 Settlement.**
- Amend WAC 480-07-740 Settlement consideration procedure.**
- Amend WAC 480-07-750 Commission discretion to consider and approve or reject a settlement.**

|        |                |  |
|--------|----------------|--|
| Amend  | WAC 480-07-800 | Order entry, effectiveness, and service.   |
| Amend  | WAC 480-07-810 | Interim or interlocutory orders.   |
| Amend  | WAC 480-07-820 | Initial and final orders.  |
| Amend  | WAC 480-07-825 | Initial orders—Finality; petitions for administrative review; motions for clarification. |
| Amend  | WAC 480-07-830 | Motion to reopen the record prior to entry of a final order.                             |
| Amend  | WAC 480-07-835 | Clarification of final order by motion.  |
| Amend  | WAC 480-07-840 | Clarification of a final order by conference.  |
| Amend  | WAC 480-07-850 | Reconsideration of a final order.  |
| Amend  | WAC 480-07-860 | Stay.  |
| Amend  | WAC 480-07-870 | Rehearing.   |
| Amend  | WAC 480-07-875 | Amendment, rescission, or correction of order.   |
| Amend  | WAC 480-07-880 | Compliance filings.  |
| Repeal | WAC 480-07-883 | Compliance filing—Filing requirements; timing; commission action.                        |
| Amend  | WAC 480-07-885 | Subsequent filings.  |
| Amend  | WAC 480-07-900 | Open public meetings.  |
| Amend  | WAC 480-07-903 | Delegation of authority to the executive secretary.                                      |
| Amend  | WAC 480-07-904 | Delegation of authority to decide certain matters.                                       |
| Amend  | WAC 480-07-905 | Delegation of authority to enter <i>ex parte</i> orders.                                 |
| Amend  | WAC 480-07-910 | Informal complaints.   |
| Adopt  | WAC 480-07-915 | Penalty assessments.   |
| Adopt  | WAC 480-07-917 | Penalties for failure to file annual report and pay regulatory fees.                     |
| Amend  | WAC 480-07-920 | Interpretive and policy statements.  |
| Amend  | WAC 480-07-930 | Declaratory orders under RCW 34.05.240.  |
| Amend  | WAC 480-07-940 | Conversion of proceedings.   |

7 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:**  
The Commission filed a Preproposal Statement of Inquiry (CR-101) on March 20, 2013, at WSR # 13-07-071.

8 The statement advised interested persons that the Commission was considering undertaking a rulemaking to consider possible corrections and changes to certain sections in WAC 480-07, the Commission's procedural rules governing the conduct of business before the Commission, including in formal proceedings. The Commission also informed persons of this inquiry by providing notice of the subject and the CR-101 to everyone on

the Commission's list of persons requesting such information pursuant to RCW 34.05.320(3), to all interested persons in the previous procedural rules rulemaking docket A-050802, and to all persons on the Commission's list of utility attorneys, transportation attorneys, and telecommunications attorneys. Pursuant to the notice, but rescheduled at later dates, the Commission received comments on May 17, 2013, and held a stakeholder workshop on August 21, 2013.

- 9 **SUBSEQUENT COMMENTS AND WORKSHOPS:** The Commission received additional comments on the rules that are the subject of this order on or about May 15, 2017, September 29, 2017, December 1, 2017, January 31, 2018, and May 11, 2018. The Commission also held additional workshops on these rules on June 12, 2017, February 5, 2018, and March 26, 2018.
- 10 **SMALL BUSINESS ECONOMIC IMPACT ANALYSIS:** On March 21 and April 11, 2018, the Commission issued Small Business Economic Impact Questionnaires to all interested persons. The Commission received no responses to these questionnaires. The proposed rules primarily reflect current Commission practice, and the Commission has no basis to find that any costs businesses will incur to comply with the rules will be more than minor. Pursuant to RCW 19.85.030(1)(a), therefore, no small business economic impact statement is required.
- 11 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a notice of Proposed Rulemaking (CR-102) on July 2, 2018, at WSR #18-14-084. The Commission scheduled this matter for oral comment and adoption under Notice WSR #18-14-084 at 9:30 a.m., Monday, August 20, 2018, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission.
- 12 **WRITTEN COMMENTS:** The Commission received comments on the proposed rules on or about August 1, 2018. Summaries of those written comments and Commission Staff's responses and recommendations are contained in Appendix A, attached to, and made part of, this Order.
- 13 **RULEMAKING HEARING:** The Commission considered the proposed rules for adoption at a rulemaking hearing on August 20, 2018, before Chairman David W. Danner, Commissioner Ann E. Rendahl, and Commissioner Jay M. Balasbas. The Commission heard a presentation and comments from Gregory J. Kopta, Administrative Law Judge, representing Commission Staff (Staff), and oral comments from representatives of Pacific Power & Light Company (Pacific), Puget Sound Energy (PSE),

The Energy Project, the Public Counsel Unit of the Office of the Washington Attorney General (Public Counsel), CenturyLink, and the Alliance for Western Energy Consumers (AWEC).

14 **SUGGESTIONS FOR CHANGE THAT THE COMMISSION**

**REJECTS/ACCEPTS:** Written and oral comments suggested changes to the proposed rules. The Commission adopts Staff's recommendations and reasons to accept or reject those suggestions contained in the summary matrix in Appendix A, except as modified or further discussed below.

*WAC 480-07-505(1)(b)*

- 15 The Energy Project, Public Counsel, AWEC, and PSE all oppose the proposal to delete existing subsection 505(1)(b), which defines as a general rate proceeding any filing that would raise the rates of any customer class by three percent or more. The consumer advocates maintain that this has been a longstanding requirement that provides important ratepayer protections, and they fail to see any benefit from its deletion. To the contrary, they fear that a utility could evade general rate proceeding requirements for a rate increase that disproportionately impacts one group of customers but would fall short of the overall three percent increase threshold that remains in the rule. While the Commission could nevertheless exercise its discretion to treat such a filing as a general rate proceeding, the consumer advocates argue that the additional process to obtain such a Commission determination would be expensive, result in unnecessary delay, and improperly shift the burden of making an appropriate filing from the utility to intervenors. PSE, for its part, believes that the existing rule provides greater clarity to utilities on the requirements they must satisfy when making their tariff filings.

- 16 The Commission proposed the rule revision to reduce regulatory burdens. The rule applies to all utilities, not just the energy companies that are the focus of the commenters' concerns. For example, a small water company or other utility that seeks to rebalance its rates on a revenue neutral basis to remove implicit subsidies should not necessarily be required to do so in a general rate proceeding. We acknowledge that the Commission could waive the rule in such circumstances, but it may not do so until after the company makes its initial filing, resulting in unnecessary effort and expense. The Commission has discretion to treat any filing as a general rate proceeding, which provides protection in the unlikely event that a company makes a filing that is not a general rate proceeding under the rule but one which the Commission should so designate.

- 17 All of these arguments have merit. On balance, however, we find that retaining the existing rule language is the best option. As the commenters observe, this provision has

been part of the Commission's procedural rules for many years and is well understood by stakeholders and the Commission alike. We continuously look for ways to streamline our processes and regulate only to the extent necessary. Here, however, we are convinced that the risk of uncertainty and unintended consequences outweighs the benefit of making this proposed change. Accordingly, we do not adopt the proposal to delete subsection 505(1)(b).

*WAC 480-07-510(4)(a)*

- 18 PSE objects to the proposed change to subsection 510(4)(a) allowing parties up to five business days to provide the workpapers that support their testimony and exhibits. PSE contends that the additional two days will give the utility less time to evaluate other parties' filings before being required to file responsive testimony and exhibits. We find that this extra time accommodates the needs of parties with limited resources and adopt it. The parties and presiding administrative law judge in a general rate proceeding can consider the need for more or less time for filing workpapers or to make other accommodations when negotiating and establishing a procedural schedule. In addition, the proposed rules require a party's complete case be included in its testimony and exhibits, which should reduce all parties' reliance on workpapers.

*WAC 480-07-740(2)(a) and (b)*

- 19 Pacific expressed concern at the rulemaking hearing that requiring settlements to be filed 60 days (subsection 740(2)(a)) or 30 days (subsection 740(2)(b)) prior to a stated effective date could conflict with tariff suspension deadlines, leading to unintended results. To clarify the rule's intent, the Commission agrees to revise the language in these subsections to state that settlements must be filed 60 or 30 days, as applicable, prior to any statutory deadline or stated effective date.

*WAC 480-07-740(2)(d)*

- 20 Pacific and PSE raised the issue that requiring a utility in all instances to state whether it would be willing to waive any statutory deadline when filing a settlement agreement is overbroad, would facilitate gamesmanship by other parties during the negotiation process, and would be a disincentive to settlement. The Commission agrees that is not the proposed rule's intent. Accordingly, we revise subsection 740(2)(d) to provide that upon the filing of a settlement agreement, the Commission may require a utility to state whether it would be willing to waive any statutory deadline if necessary to give the Commission sufficient time to consider the settlement. This change provides notice that the Commission may seek a waiver of a statutory deadline in appropriate circumstances,

such as when a settlement is filed close to the statutory deadline for a Commission final order.

*WAC 480-07-750(2)(b)*

- 21 CenturyLink takes issue with the provision in the proposed rule that requires all parties to a settlement agreement to unequivocally accept any conditions the Commission requires for its approval of the agreement or the settlement is deemed rejected. CenturyLink claims that this is a change that would require parties to forgo their right to judicial review of unlawful Commission conditions. CenturyLink is particularly troubled that such conditions may be proposed by other parties, rather than developed by the Commission. CenturyLink also contends that this take-it-or-leave-it approach would enable other parties to hold hostage companies seeking to timely complete mergers, acquisitions, or other multi-state transactions.
- 22 We decline to modify the proposed rule. The Commission has always required parties to a settlement to accept any Commission conditions on approval of the agreement before adopting the settlement as the Commission's resolution of the disputed issues. The rule merely clarifies this requirement to preclude a party from accepting the Commission's conditions, rather than requesting clarification or reconsideration of them, and then seeking judicial review of the order. Such action is inconsistent with the spirit and intent of the Commission's procedural rules. Nor does the rule require a party to give up any rights it may have to judicial review. If a party opposes a Commission condition on a settlement agreement, it may withdraw from the settlement, litigate the disputed issues in the Commission adjudication, and seek judicial review of the Commission's final order. Or the party may seek clarification or reconsideration of the order prior to determining whether to withdraw from the settlement. As discussed during the rulemaking hearing, the Commission also retains the flexibility to modify its procedures in a particular case to offer additional process to ensure fairness to all parties.
- 23 We understand that a party may face a difficult choice either to accept conditions it does not like in order to timely close a transaction, or reject those conditions and take the additional time to litigate the issues. That is the nature of the regulatory adjudicative process. The Commission has an independent obligation to ensure that the resolution of the issues before it is consistent with the public interest, and we cannot and do not delegate that responsibility to the parties. When necessary to fulfill that obligation, we adopt conditions on parties' settlement agreements. Whether those conditions were proposed by a nonsettling party or developed independently by the Commission, those conditions are the Commission's when adopted in the final order. Thus, we find that the rule as proposed provides sufficient procedural safeguards to ensure that no party is

deprived of due process or a full and fair opportunity to present its issues for Commission determination, or from seeking judicial review.

*Limited Rate Proceedings*

- 24 PSE also requested in its comments and at the rulemaking hearing that the Commission adopt a draft rule proposed during the CR-101 phase of the rulemaking that would establish limited rate proceedings. PSE asserts that such a rule would promote certainty and efficiency in the Commission's ratemaking process. The draft rule provided that electric and natural gas companies could seek to adjust their rates based on updated data for rate base, revenues, and expenses since the company's latest general rate proceeding through a limited rate proceeding that would be concluded within six months. During the rulemaking process, and in draft rules circulated for discussion and comment prior to the filing proposed rules with the Code Reviser, Staff recommended that it was premature for the Commission to proceed with the draft rule, given comments by stakeholders during a workshop and general rate cases pending before the Commission. The Commission found that recommendation appropriate and chose not to proceed with the draft rule. However, we agree that there is a need to address the efficiency of the Commission's process and intend to open a docket to discuss the purposes and approaches for limited or expedited rate proceedings before the Commission.
- 25 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission finds and concludes that it should amend, repeal, or adopt the rules as proposed in the CR-102 at WSR #18-14-084 with the following changes discussed in Appendix A and paragraphs 14-17 and 19-20 above:
- WAC 480-07-505(1) Do not delete existing subsection (b), and restore original subsection designations; Do not delete "on common equity" in subsection (c).
- WAC 480-07-510(3)(a) In the first sentence, replace "all" with "sufficient" and delete "support its requests and proposals and"; In the second sentence, replace "all" with "sufficient" and replace "proposals" with "filed case."
- WAC 480-07-510(5)(a) Delete "Most recently calculated" at the beginning of subsection (viii) and add "for the test period" at the end.
- WAC 480-07-740(2)(a) Delete "the" and insert "any statutory deadline for commission action or" prior to "requested effective date."



WAC 480-07-740(2)(b) Delete “the” and insert “any statutory deadline for commission action or” prior to “requested effective date.”

WAC 480-07-740(2)(d) In the first sentence, replace “When requesting” with “Upon receiving a request” at the beginning; insert “the commission may require the” prior to “party that submitted”; and replace “must” with “to.”

26 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the Commission determines that the sections in WAC Chapter 480-07 listed in paragraph 6 above should be amended, repealed, or adopted as applicable to read as set forth in Appendix B, as rules of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the Code Reviser.

### ORDER

27 **THE COMMISSION ORDERS:**

28 The Commission amends WAC 480-07 to read as set forth in Appendix B, as rules of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of filing with the Code Reviser pursuant to RCW 34.05.380(2).

29 This Order and the rule set out below, after being recorded in the register of the Washington Utilities and Transportation Commission, shall be forwarded to the Code Reviser for filing pursuant to RCW 80.01 and RCW 34.05 and WAC 1-21.

DATED at Olympia, Washington, August 29, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



DAVID W. DANNER, Chairman



ANN E. RENDAHL, Commissioner



JAY M. BALASBAS, Commissioner

*Note: The following is added at Code Reviser request for statistical purposes:*

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, amended 39, repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, amended 39, repealed 2.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

**Appendix A**  
**A-130355 Procedural Rules**  
**Summary of 8-01-18 Comments on Proposed Revisions**  
**to Parts III B through IV**

| 480-07    | PPL & PSE   | AWEC & TEP   | CenturyLink | Public Counsel       | Staff Response   |
|-----------|---|--|-------------|----------------------|--|
| 505(1)    |   | Retain current subsection (b), which provides that a filing that increases rates to any customer class by 3% or more will be treated as a rate case, as an important consumer protection |             | Same as AWEC and TEP | Staff disagrees. A rate increase for one customer class, without more, should not necessarily trigger a rate case. A rate rebalancing, for example, could result in a rate increase for one customer class but leave overall revenues unchanged. The Commission expressly retains the flexibility in subsection 505(4) to treat any filing as a rate case (without any requirement for a requesting party to engage in discovery or other adjudicative process to support its request), which provides sufficient protection against an attempt to evade the rule by targeting one customer class. |
| 505(1)(b) | PSE: Change “rate of return” to “return on common equity” so that a change to the cost of debt does not trigger a general rate case |  |             |                      | Staff agrees based on the recent Commission orders PSE cites in support of its comment and recommends that the final rule incorporate this revision (i.e., not make the proposed change to this language).   |

## Appendix A

| 480-07    | PPL & PSE  | AWEC & TEP | CenturyLink  | Public Counsel | Staff Response   |
|-----------|--|------------|--|----------------|--|
| 510(3)(a) | PSE: Clarify language to provide that the company must provide sufficient information to satisfy its burden of proof     |            |  |                | Staff agrees that PSE's proposed revisions provide useful clarification of the rule's intent and recommends that the final rule incorporate these changes.   |
| 510(4)(a) | PSE: Do not extend time for filing work papers to 5 days, which would cause hardship to the company                      |            |  |                | Staff disagrees. The current requirement results in hardship to parties with more limited resources than the utility. Parties can always seek a procedural schedule that modifies or accommodates the additional two business days the proposed revision provides. |
| 510(5)(a) | PPL: Clarify "most recently calculated" rate of return in subsection (vii) to specify rate of return for the test period |            |  |                | Staff agrees and recommends that the final rule incorporate this clarification.  |
| 740(2)(a) |  |            | Clarify the meaning of "matters of comparable complexity" and retain the existing 30 day notice period |                | Staff disagrees. The term is in the existing rule and is not readily susceptible to any greater precision than the current analogy to a rate case. 30 days is also insufficient time for the Commission to act on a settlement in a complex proceeding.            |

## Appendix A

| 480-07    | PPL & PSE  | AWEC & TEP | CenturyLink   | Public Counsel | Staff Response   |
|-----------|--|------------|---|----------------|--|
| 740(2)(b) |  |            | Distinguish complex from less complex matters and retain the existing 21 days for less complex matters                                      |                | Staff disagrees. The rule currently uses these terms, and Staff is unaware of any confusion about their meaning. 30 days, moreover, is the same advance notice period as utility tariff filings, most of which are less complex matters.   |
| 740(2)(d) | PPL: Clarify that statement about willingness to waive statutory deadline applies only if the settlement is filed with a shorter timeframe than specified in subsection (a) or (b) |            |   |                | Staff disagrees. These subsections serve different purposes. No settlement, including a proposed tariff filing, is effective without Commission approval, and the timeframes in subsections (a) and (b) are intended to provide sufficient time for the Commission to act in advance of a requested effective date. The Commission must take action by a statutory deadline, however, and subsection (d) provides the Commission with useful information to consider when determining whether to suspend a procedural schedule designed to allow the Commission enough time to meet that deadline. |
| 750(2)(b) |  |            | Do not require each party to unequivocally accept Commission conditions but make the default acceptance in the absence of express rejection |                | Staff disagrees. The lack of unequivocal acceptance in the past has resulted in a settling party seeking judicial review of a Commission order approving a settlement with conditions. The rule revision ensures that if any party does not accept a Commission condition, the Commission can adjudicate the case in the first instance.   |

Appendix A

| 480-07             | PPL & PSE   | AWEC & TEP  | CenturyLink | Public Counsel | Staff Response   |
|--------------------|---|---|-------------|----------------|--|
| General            | <p>PSE:<br/>                     Recommends that the Commission adopt the rule Staff initially proposed to establish limited rate proceedings to promote certainty and efficiency in the ratemaking process</p> |   |             |                | <p>Staff disagrees and adheres to its previously stated position that such a rule would be premature at this time. In addition, the Commission could not adopt this rule at this point in the rulemaking process consistent with APA requirements.</p> |
| Commenter Acronyms | <p>PPL – Pacific Power &amp; Light Company<br/>                     PSE – Puget Sound Energy</p>  | <p>AWEC – Alliance for Western Energy Consumers<br/>                     TEP – The Energy Project</p> |             |                |  |

## **Appendix B**

### **Revised Rules**