

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of	)	
Amending and Adopting	)	DOCKET A-060357
	)	
WAC 480-07-307, 480-07-825, 480-07-903, 480-07-904, and 480-07-905,	)	GENERAL ORDER NO. R-538
	)	
Relating to Chapter 480-07 WAC,	)	ORDER AMENDING AND
Relating to Delegation of Certain	)	ADOPTING RULES
Commission Decisions and the Finality	)	PERMANENTLY
of Initial Orders	)	
	)	
.....	)	

1     **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and Transportation Commission (Commission) takes this action under Notice WSR # 06-13-093, filed with the Code Reviser on June 20, 2006. The Commission brings this proceeding pursuant to SHB 2426, Chapter 246, Laws of 2006, 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 this rule 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 provide to commenters a concise explanatory statement about an adopted rule. The statement must identify the Commission’s reasons for adopting the rule, a description of the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), a summary of the comments received regarding the proposed rule changes, and the Commission’s responses to the comments reflecting the Commission’s consideration of them.

5 In this docket, to avoid unnecessary duplication, 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, the 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 and adopts the following sections of the Washington Administrative Code:

Adopt	WAC 480-07-307	Probable cause determinations.
Amend	WAC 480-07-825	Initial orders -- Petitions for administrative review.
Adopt	WAC 480-07-903	Delegation of authority to the executive secretary.
Adopt	WAC 480-07-904	Delegation of authority to the executive secretary to decide certain matters.
Adopt	WAC 480-07-905	Delegation of authority to executive secretary to enter ex parte orders.

7 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS**

**THEREUNDER:** The Commission filed a Preproposal Statement of Inquiry (CR-101) on March 15, 2006, at WSR # 06-07-099.

8 The statement advised interested persons that the Commission was considering entering a rulemaking to delegate certain functions by rule or order and identify a notice process to enable persons affected by a proposal to ensure that commissioners personally considered the matter. The Commission also informed persons of the inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the Commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by a notice to all local exchange companies, electric companies, gas companies, boat carriers, solid waste carriers, and bus carriers, to the Commission's list of persons interested in telecommunications, transportation, electric, gas, boat, solid waste, bus, and other agency rulemakings, and to the Commission's lists of regulatory attorneys. The Commission posted the relevant rulemaking information on its Internet web site at <http://www.wutc.wa.gov/060357>.

- 9     **MEETINGS OR WORKSHOPS; ORAL COMMENTS:** The Public Counsel Section of the Attorney General’s Office (Public Counsel), PacifiCorp, and Avista submitted written comments during the inquiry phase.
- 10    The Commission held a rulemaking workshop on May 11, 2006. Participants in the workshop included Avista, Washington Independent Telephone Association (WITA), PacifiCorp, Qwest, Washington Refuse & Recycling Association (WRRRA), PSE, Verizon, Public Counsel, CenturyTel, and Sprint.
- 11    **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a Notice of Proposed Rulemaking (CR-102) on June 20, 2006, at WSR #06-13-093. The Commission scheduled this matter for oral comment and adoption under the notice at WSR #06-13-093 at 10:30 a.m., Friday, July 28, 2006, in the Commission's Hearing Room, Second Floor, Chandler Plaza 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 written comments from Public Counsel and Verizon Northwest Inc. Summaries of written comments and Commission responses are presented below.
- 13    **RULEMAKING HEARING:** The Commission considered the proposed rules for adoption at a rulemaking hearing on July 28, 2006, before Chairman Mark H. Sidran, Commissioner Patrick J. Oshie, and Commissioner Philip B. Jones. The Commission heard oral comments from Judith Krebs, Assistant Attorney General, Public Counsel.
- 14    **SUGGESTIONS FOR CHANGE THAT ARE REJECTED/ACCEPTED:** Stakeholders submitting written and oral comments suggested changes to the proposed rules. The suggested changes and the Commission’s reason for rejecting or accepting the suggested changes are as follows: Verizon suggested that there be some mechanism to seek ratification of an ALJ order. This provision is unnecessary. The rule does not preclude a party from requesting review for that purpose.
- 15    Verizon suggested deletion of proposed 903(c), providing for delegation by Commission order. This suggestion is not accepted. The statute permits the agency to

delegate by rule or order. There are many advantages to making the delegation by rule, but there may be circumstances in which it will be more appropriate to do so by order. Because the provision is statutory, inclusion in the rule has no operative effect but clarifies process and identifies the statutory option. It is better to include the provision for better understanding.

16 Public Counsel suggested language to allow late-filed requests for review under proposed 904(3) for "good cause." This suggestion is adopted. The commission may waive non-statutory deadlines under its general authority, consistent with RCW 34.05.080 and pursuant to WAC 480-07-130(2) and 480-07-110(1) without a specific provision in this rule. However, for clarity, we accept the suggestion.

17 Public Counsel suggested that the rule provide for notice of delegated decisions by mail. This suggestion is not adopted. However, the commission acknowledges the possibility that some stakeholders may be unable to use the Web site and will add a statement in 904(2) to acknowledge that the information can be provided in other formats upon request.

18 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission finds and concludes that it should amend and adopt the rules as proposed in the CR-102 at WSR # 06-13-093 with the changes described below.

19 **CHANGES FROM PROPOSAL:** The Commission adopts the proposal with the following changes from the text noticed at WSR # 06-13-093:

Draft WAC 480-07-825(7) proposed a statement noting that the precedential value of an initial order that becomes final depends on the quality of the order (as it does not express a Commission analysis or opinion). The statement appears to be obvious, consistent with legal analysis relating to trial court and decisions of administrative law judges for other administrative agencies, and is removed as unnecessary.

Draft WAC 480-07-904(2) proposed contents of the web-based listing of delegated matters. We add to that list, for clarity, the last date for timely requesting Commission consideration. In addition, as noted above, we make clear the option of requesting the opportunity to make a late-filed request for Commission consideration.

20 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the Commission determines that WAC 480-07-825 should be amended and WAC 480-07-307, WAC 480-07-903, WAC 480-07-904, and WAC 480-07-905 should be adopted 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**

**THE COMMISSION ORDERS:**

21 The Commission amends and adopts WAC 480-07-307, WAC 480-07-825, WAC 480-07-903, 480-07-904, and 480-07-905, 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 filing with the Code Reviser pursuant to RCW 34.05.380(2).

22 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 chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, August 16, 2006.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, 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 4, amended 1, 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 0, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

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

## **Docket A-060357 Delegation Rules Comment Matrix**

Because the Commission received few comments, a matrix of comments is not included. A summary of written and oral comments may be found on pages 3 and 4 of the Order.

# APPENDIX B