

**CHAPTER 480-10 WAC**

**[ PROPOSED ]**

Proposed by  
Qwest Corporation  
July 25, 2001

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1 **PART I: GENERAL PROVISIONS**

2 **WAC 480-10-100** Scope of Part I.<sup>1</sup> WAC 480-10-110 through  
3 480-10-180 contain rules of general applicability and apply in  
4 all rulemaking, adjudicative and other proceedings described  
5 in this chapter.

6 **WAC 480-10-110** Scope of chapter. (1) General  
7 application. This chapter governs the procedure in  
8 rulemaking, adjudicative and other proceedings before the  
9 Washington utilities and transportation commission (called  
10 "the commission" in this chapter). This chapter explains how  
11 to present written communications to the ~~Washington utilities~~  
12 ~~and transportation~~ commission (~~called "the commission" in this~~  
13 ~~chapter~~) and how various proceedings are conducted at the  
14 commission. Topics covered include how these rules operate;  
15 where and how to send letters to assure that they reach a  
16 person who can deal with them; requirements for submitting  
17 formal written documents such as pleadings; and rules that  
18 guide various proceedings.<sup>2</sup>

14 **(2) Special rules.** When rules in other chapters apply to  
15 certain classes of public service companies or to particular  
16 proceedings, those special rules govern if they conflict with  
17 these general rules.<sup>3</sup>

16 **(3) Modifications and exceptions.** The commission may  
17 make exceptions to these rules in individual cases when doing  
18 so is just and reasonable.<sup>4</sup>

19 **WAC 480-10-120** Office hours.<sup>5</sup> Commission offices are  
20 open between the hours of 8:00 a.m. and 5:00 p.m. Monday  
21 through Friday, except on ~~state-legal~~ holidays, as defined by  
RCW 1.16.050 (called "legal holidays" in this chapter).

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24 <sup>1</sup> New section.

25 <sup>2</sup> Source: WAC 480-09-005.

25 <sup>3</sup> Source: WAC 480-09-010(2).

25 <sup>4</sup> Source: WAC 480-09-010(3).

26 <sup>5</sup> Source: WAC 480-09-110.

1           **WAC 480-10-130 Time. (1) Computation of time.**<sup>6</sup> The  
2 period of time for doing an act governed by this chapter shall  
3 be computed by excluding the first day and including the last,  
4 unless the last day is a legal holiday, Saturday, or Sunday,  
5 ~~and then the last day is excluded from the computation in which~~  
6 ~~event the period runs until the end of the next day which is~~  
7 ~~not a legal holiday, Saturday or Sunday.~~ When the period of  
8 time prescribed or allowed is less than seven days,  
9 intermediate legal holidays, Saturdays and Sundays shall be  
10 excluded from the computation.

11           **(2) Variation from time limits.**<sup>7</sup> ~~(1) Time set by chapter~~  
12 ~~34.05 RCW.~~ WAC 480-10-320 governs when the commission may  
13 grant continuances or extensions of time in adjudicative  
14 proceedings. In all other proceedings, the commission in  
15 individual instances may lengthen or shorten the time stated  
16 in chapter 34.05 RCW or in a commission rule for action in its  
17 discretion, ~~under RCW 34.05.080.~~

18           ~~(2) Time set by the commission rule. The commission may~~  
19 ~~lengthen or shorten the time stated in these rules for action~~  
20 ~~in its discretion.~~

21           **WAC 480-10-140. Sending communications to and filing**  
22 **documents with the commission. (1) Scope of rule.**<sup>8</sup> This  
23 section governs communications to the commission (including  
24 sending letters and electronic mail messages and the filing of  
25 pleadings and other documents) except requests for public  
26 records, which are governed by chapter 42.17 RCW and chapter  
480-04 WAC.

**(2) Limitation of content of letters and electronic mail**  
**messages to the commission.**<sup>9</sup> Letters and electronic mail  
messages to the ~~Washington utilities and transportation~~  
commission ~~("commission")~~ must include only one subject, to  
assure that the message is properly handled.

**(3) Required identification of sender, proceeding, and**  
**document.**<sup>10</sup>

**(a) Identification of sender.**<sup>11</sup> All communications must  
identify the name and title or position of the sender, the

<sup>6</sup> Source: WAC 480-09-130.

<sup>7</sup> Source: WAC 480-09-135.

<sup>8</sup> Source: WAC 480-09-100.

<sup>9</sup> Source: WAC 480-09-100(1).

<sup>10</sup> Source: WAC 480-09-100(2).

<sup>11</sup> Source: WAC 480-09-100(2)(a).

1 name of the entity on whose behalf the communication is sent,  
2 and a return address. Any ~~letter or other~~ communication that  
3 the holder of any commission-issued permit, license, or  
4 certificate sends to the commission must also identify the  
5 exact name and the number (if any) under which the authority  
6 is held.

7 (b) Identification of proceeding.<sup>12</sup> Any ~~letter, pleading,~~  
8 ~~or other~~ communication to the commission that relates to a  
9 formal commission proceeding must identify the proceeding to  
10 the best of the writer's ability, at the top of the first  
11 page. The identification must include the docket number and  
12 name of the proceeding, (if known to the writer), and the name  
13 and position of the party for whom it is submitted. For  
14 purposes of this chapter, the term "formal commission  
15 proceeding" refers to an adjudicative proceeding or a  
16 rulemaking proceeding that has been commenced with or by the  
17 commission and that to which the commission has assigned a  
18 docket number.

19 (c) Identification of communication.<sup>13</sup> Any communication  
20 that relates to a formal commission proceeding must identify  
21 the name of the communication (e.g., comment; motion; answer)  
22 at the top of the first page.

23 (4) **How to address communications.**<sup>14</sup> All communications  
24 relating to formal commission proceedings must be addressed to  
25 the commission secretary. ~~Formal communications and~~ should not  
26 be addressed to individual members of the commission staff  
because such documents may escape the filing and recordkeeping  
necessary to document control.

(5) **Methods of communicating with commission.** As  
specified in this subsection or otherwise in this chapter, a  
person may communicate with the commission verbally, by  
regular mail or delivery, by electronic mail message or by  
telefacsimile machine.<sup>15</sup>

(a) By mail or delivery.

(i) When permitted.<sup>16</sup> Unless otherwise prohibited (e.g.,  
ex parte communications with the presiding officer after  
commencement of a commission adjudicative proceeding), a  
person may always communicate with the commission by mail or  
by delivery service.

<sup>12</sup> Source: WAC 480-09-100(2)(b).

<sup>13</sup> Source: WAC 480-09-100(2)(c).

<sup>14</sup> Source: WAC 480-09-100(3).

<sup>15</sup> New section.

<sup>16</sup> New section.

1 (ii) *Where to mail/deliver.* All written communications  
2 mailed or delivered to the commission must be addressed to:  
3 The Secretary, Washington Utilities & Transportation  
4 Commission, 1300 S. Evergreen Park Dr SW, PO Box 47250,  
5 Olympia, WA 98504-7250. The commission records center will  
6 see that the correspondence promptly reaches a person who is  
7 able to deal with it.

8 (iii) *When deemed received/filed.* ~~Filing of any~~ Subject to  
9 subsection (9), a document is only deemed received or filed  
10 ~~complete~~ only when the document and the required number of  
11 copies are physically received by the commission records  
12 center, ~~printed (if printing is necessary to produce a paper~~  
13 ~~copy)~~ and stamped with the date and time.<sup>17</sup> Documents ~~and~~  
14 ~~communications~~ that are received in the commission records  
15 center after 5:00 p.m. of one business day and before the  
16 start of the next business day are not considered officially  
17 received or filed until the next business day when they are  
18 stamped with the date and time.<sup>18</sup> When authorized by the  
19 presiding officer of a proceeding before the commission,  
20 filing of a document for purposes of the proceeding is  
21 complete when the presiding officer receives the document.<sup>19</sup>

22 (b) By electronic mail message.

23 (i) *When permitted.* Electronic mail ~~and telefacsimile~~  
24 messages may be used to submit ~~correspondence or documents for~~  
25 ~~filing as specified in WAC 480-09-120, for informal~~  
26 communication with commission staff members not regarding  
formal commission proceedings, and for providing to provide  
courtesy copies to staff, in conjunction with the filing of  
hard copies as described below in this subsection and to file  
written comments solicited by the commission in connection  
with rulemaking proceedings. With the exception of submitting  
comments in rulemaking proceedings, E ~~electronic transmission~~  
mail message delivery alone is not acceptable for the filing  
of formal ~~correspondence or documents to be filed in~~  
conjunction with formal commission proceedings. The  
commission may make exceptions to this requirement in  
individual cases and may impose conditions on the use of  
electronic mail message transmission.<sup>20</sup> The commission  
encourages parties submitting prefiled testimony and exhibits,  
motions, briefs, and pleadings to submit the document in

17 Source: WAC 480-09-120(1).

18 Source: WAC 480-09-101(1).

19 Source: WAC 480-09-120(1).

20 Source: WAC 480-09-100(3)(b)(1).

1 electronic form, with the ~~agreed-required~~ number of hard  
2 copies. In some instances electronic submissions are  
3 required, and in some instances electronic submissions will  
4 substitute for hard copies. Unless the commission directs  
5 otherwise, electronic submissions are to be provided on a 3  
6 1/2 inch IBM formatted high-density disk, in MS Word format or  
7 WordPerfect version 5.1, 6.0, or 6.1 format, labeled with the  
8 docket number of the proceeding, the name of the company  
9 and/or individual submitting the document, and type and  
10 version of software used.<sup>21</sup>

11 (ii) *When deemed received.* Documents that are submitted  
12 by ~~telefacsimile or~~ electronic mail are ~~officially deemed~~  
13 ~~received- when the electronically-mailed document successfully~~  
14 ~~reaches the commission's electronic mailbox only when a paper~~  
15 ~~copy is stamped with the date and time. The date-stamped time~~  
16 ~~will determine whether a document meets any deadline that~~  
17 ~~applies and will determine the timing of any later deadlines~~  
18 ~~based on filing.~~<sup>22</sup>

19 (iii) *Where to send electronic mail message.*<sup>23</sup> All  
20 electronic mail should be addressed to **records@wutc.wa.gov**.  
21 Courtesy or informational copies may be sent to ~~other~~  
22 ~~commission telefax machines or~~ other electronic mail addresses  
23 for individual commission staff members.

24 (c) By telefacsimile machine.

25 (i) *When permitted.*<sup>24</sup> ~~Electronic mail and t~~Telefacsimile  
26 ~~messages machines~~ may be used to submit communications or  
documents ~~for filing as specified in WAC 480-09-120, for~~  
~~informal communications with commission staff members, to~~  
~~commission staff members not regarding formal commission~~  
~~proceedings and for providing to provide~~ courtesy copies to  
staff. ~~Electronic~~ In the following circumstances only,  
telefacsimile transmission is not acceptable for formal  
may be used for the filing of correspondence or documents ~~to~~  
~~be filed~~ if the filing party also mails to the commission a  
hard copy postmarked on the day of filing ~~if the hard copy is~~  
~~thereafter received in the normal course of business:~~ [A]  
tariff filings, when a hard copy is filed the next business  
day, as provided in WAC 480-80-070; [B] Form E proof of  
insurance, when a hard copy is filed within ten days; [C]  
tariff filings by solid waste companies, auto transportation

<sup>21</sup> Source: WAC 480-09-120(1)(b)(ii).

<sup>22</sup> Source: WAC 480-09-101(1).

<sup>23</sup> Source: WAC 480-09-100(3)(b)(ii).

<sup>24</sup> Source: WAC 480-09-100(3)(b)(1); 120(a).



1 companies, steamboat companies and motor carriers; [D]  
2 proposals to amend commission tariffs, as provided in WAC 480-  
3 12-295; and [E] other documents, when the commission  
4 specifically allows or requires filing by telefacsimile in  
5 individual instances, when required for timely consideration  
6 or for the commission's convenience. The commission may  
7 charge for making copies for internal distribution under WAC  
8 480-09-125 subsection 7(b)(2) of this section. The commission  
9 may make exceptions to this requirement in individual cases  
10 and may impose conditions on the use of electronic mail  
11 message transmission.

12 (ii) *When deemed received.* Subject to subsection (9),  
13 dDocuments that are submitted by telefacsimile ~~or electronic~~  
14 ~~mail~~ are officially deemed received only when a paper copy is  
15 stamped with the date and time in the commission records  
16 center. The date-stamped time will determine whether a  
17 document meets any deadline that applies and will determine  
18 the timing of any later deadlines based on filing.<sup>25</sup>

19 (iii) *Where to send communications submitted by*  
20 *telefacsimile machine.*<sup>26</sup> All telefacsimile transmissions  
21 should be sent to (360) 586-1150 or another number designated  
22 by the commission secretary. Courtesy or informational copies  
23 may be sent to other commission telefax-telefacsimile machines  
24 ~~or other electronic mail addresses~~ for individual commission  
25 staff members.

26 (6) **Updated addresses.**<sup>27</sup> The postal and electronic  
addresses and the telefacsimile and telephone numbers listed  
in this chapter are current at the time of rule adoption. The  
commission will provide current information at any time on  
request.

(7) **Number of copies; failure to file sufficient number  
of copies.** (a) Number of copies.<sup>28</sup> Unless the commission  
specifies a different number of copies, every original  
pleading, motion and brief submitted to the commission shall  
be filed with nineteen copies. ~~—; provided that P~~ parties who  
file an electronic copy of a pleading documents pursuant to  
subsection (5)(b)(i) may need only file an original plus six  
paper copies. ~~The electronic copy must comply with (b)(ii) of~~  
~~this subsection.~~ When a person files a document by  
telefacsimile, the document should not be sent more than once

<sup>25</sup> Source: WAC 480-09-101(1).

<sup>26</sup> Source: WAC 480-09-100(3)(b)(ii).

<sup>27</sup> Source: WAC 480-09-100(4).

<sup>28</sup> Source: WAC 480-09-120(1)(b), (b)(i), 420(4).

1 except to cure transmission or receiving errors; the  
2 commission will make the required number of copies unless  
3 other arrangements are made, and will charge the costs of the  
4 copies to the party. Documents may be submitted single sided  
5 or double sided. The number of required copies is established  
6 to meet average commission need. Parties to an ongoing  
7 proceeding should ask the commission records center or the  
8 presiding officer whether fewer copies may be required in a  
9 given case. If the required number of copies would be a  
10 hardship, a party may describe the hardship and request  
11 exemption from the stated number of copies.

(b) Failure to file sufficient number of copies.<sup>29</sup>

8 (i) If a person files fewer than the required number of  
9 copies of a document, the commission may reject the filing.  
10 If needed for administrative convenience, the commission will  
11 make the additional copies for distribution and processing  
12 within the commission. "Administrative convenience" means  
13 that not having access to the documents would hamper the  
14 commission in fulfilling its duties.

12 (ii) If the commission makes copies to meet the total  
13 number required, the commission will bill the filing person at  
14 a rate of thirty cents per page, plus current sales tax. This  
15 rate compensates for the loss of the worker's attention to  
16 assigned duties, the unscheduled use of equipment, and the  
17 fully allocated cost of materials.

15 (iii) The commission may assess a penalty against any  
16 person who, within twelve months, again fails to file the  
17 required number of copies of any document.

17 **(8) Filing vs. service.**<sup>30</sup> Filing and service are  
18 different. Filing a document with the commission does not  
19 constitute service upon the office of the attorney general or  
20 any other party. Likewise, service on the office of the  
21 attorney general does not constitute a filing with the  
22 commission.

20 **(9) Service and certificate of service required.**<sup>31</sup> Filing  
21 a pleading, motion or brief with the commission is not  
22 complete unless service has been made upon all parties to a  
23 proceeding, evidenced by a valid certificate of service or its  
24 equivalent as provided in subsection (2)(f) of this rule WAC  
25 480-10-150(6).

25 <sup>29</sup> Source: WAC 480-09-125.

26 <sup>30</sup> Source: WAC 480-09-120(1)(c).

<sup>31</sup> Source: WAC 480-09-120(1)(d).

1           **(10) Courtesy copies.**<sup>32</sup> The commission encourages each  
2 party to provide courtesy copies of documents that it files in  
3 rulemakings and adjudications to presiding officers and other  
4 staff persons by electronic mail. Providing such copies does  
5 not relieve a party of the obligation to otherwise file or  
6 serve documents.

7           **(11) Additional rules regarding adjudicative**  
8 **proceedings.**<sup>33</sup> Parties in adjudicative proceedings should  
9 examine WAC 480-10-310 through 480-10-315 for additional  
10 related rules concerning the filing of documents in connection  
11 with commission adjudicative proceedings.

12           **WAC 480-10-150 Service.**<sup>34</sup> **(1) Service upon a party's**  
13 **representative.** Except as otherwise provided, when any party  
14 has appeared by an attorney or other authorized representative  
15 in a proceeding before the commission, service of documents  
16 required to be served must be made upon the representative.  
17 Service upon the representative is valid service upon the  
18 party.

19           **(2) Service by parties.** Parties other than the  
20 commission must serve documents by delivering one copy to each  
21 other party by one of the following methods:

22           (a) In person;

23           (b) by mailing, properly addressed with first class  
24 postage prepaid;

25           (c) by commercial parcel delivery company properly  
26 tendered with fees prepaid, ~~;~~ or

(d) by telefacsimile transmission, when originals are  
          simultaneously mailed ~~simultaneously or sent by commercial~~  
          parcel delivery company. ~~Service by mail is complete when a~~  
          copy of the document is properly addressed and stamped and  
          deposited in the United States mail. ~~Service by commercial~~  
          parcel delivery company is complete when accepted for delivery  
          by the company.

**(3) Service by commission.** All notices, complaints,  
petitions, findings of fact, opinions, and orders required to  
be served by the commission may be served by one of the  
following methods:

(a) in person;

<sup>32</sup> Source: WAC 480-09-120(1)(e).

<sup>33</sup> New section.

<sup>34</sup> Source: WAC 480-09-120(2).

1           **(b)** by mail;  
2           **(c)** by commercial parcel delivery company, properly  
3           tendered with fees prepaid; or  
4           **(d)** by telefacsimile transmission, when originals are  
5           ~~mailed simultaneously~~ mailed or sent by commercial parcel  
6           delivery company. Service is complete when a copy of the  
7           document, properly addressed and stamped, is deposited in the  
8           United States mail with first class postage affixed, or  
9           accepted for delivery by the parcel delivery company.

10           **(4) When service deemed complete.** -Service by mail is  
11           complete when a copy of the document is properly addressed and  
12           stamped and deposited in the United States mail. Service by  
13           commercial parcel delivery company is complete when accepted  
14           for delivery by the company. Service by telefacsimile  
15           transmission is complete when the required hard copy is  
16           properly addressed and stamped and deposited in the United  
17           States mail or accepted for delivery by the parcel delivery  
18           company.

19           **(45) Electronic mail.** A party may consent to receive  
20           service by electronic mail. The consent, which waives the  
21           party's right to other forms of service, must be in writing  
22           and filed with the commission in the docket for which consent  
23           is given.

24           ~~(5)~~ The risk of failure of service by electronic means  
25           falls upon the person choosing that form of serviceserving  
26           party.

**(6) Certificate of service.** Each person filing a  
pleading with the commission must include on the original of  
the pleading ~~under this subsection (2) of this section~~ either  
an acknowledgment of service or the following certificate:

"I hereby certify that I have this day served this  
document upon all parties of record in this proceeding, by  
(state the authorized method of service selected under  
WAC 480-09-120(2)(a))10-150"  
Dated at ..... this .... day of .....

(signature)

**WAC 480-10-160 Signature on communications from the**  
**commission.**<sup>35</sup> Official communications from the commission must

<sup>35</sup> Source: WAC 480-09-101(2).

1 be signed by the commissioners, the secretary of the  
2 commission, or the secretary's designee. Communications  
3 relating to an adjudication may be signed by the presiding  
4 administrative law judge or the administrative law judge's  
5 designee.

6 **WAC 480-10-170 "Confidential" information.<sup>36</sup> (1)**

7 **General.** The commission will provide special handling and  
8 limited access to confidential information properly submitted  
9 pursuant to this section. Nothing in this rule shall  
10 foreclose the entry and enforcement of protective orders  
11 pursuant to WAC 480-10-350(8) in specific cases.

12 **(2) Designated official.** The secretary of the commission  
13 is responsible for the implementation of this rule.

14 **(3) Definitions.** (a) "Confidential information." As used  
15 in this rule section, confidential information consists of and  
16 is limited to information filed with or provided to the  
17 commission or its staff which is protected from inspection or  
18 copying under chapter 42.17 RCW or RCW 80.04.095. In the  
19 absence of a challenge, information designated as confidential  
20 under this rule will be presumed to meet this definition. In  
21 the event of a challenge, the burden of proving that the  
22 statutory definition applies is on the party asserting  
23 confidentiality.

24 (b) "Provider." Any person who submits information to  
25 the commission or commission staff under a claim of  
26 confidentiality pursuant to this rule.

(c) "Requester." Any person who submits a data request  
in an adjudicative proceeding or a request for public  
documents under the State Public Disclosure Law.

**(4) How to seek protection of "confidential" information  
under this rule section.** A provider may claim the protection  
of this rule only by strict compliance with the following  
requirements:

(a) The claim of confidentiality must be submitted in  
writing on a form provided by the secretary or in a letter  
providing equivalent supporting information. The provider  
must identify any person (other than the provider itself)  
which might be directly affected by disclosure of the  
confidential information.

(b) The confidential information must be clearly marked

<sup>36</sup> Source: WAC 480-09-015.

1 "confidential." ~~Marking must include on~~ the first page of a  
2 multi-page document and each specific page which contains  
allegedly confidential information.

3 (c) The confidential information must be sealed in an  
4 envelope or similar wrapping which is clearly marked  
"confidential."

5 (d) If the confidential information is submitted under  
6 the provisions of a protective order, said order must be cited  
7 in the form or letter claiming confidentiality. The  
"confidential" mark should indicate "Confidential per  
Protective Order in WUTC Docket No. . . . ."

8 **(5) Requests for "confidential" information.** Subject to  
9 subsections (6) and (7), ~~information~~ designated confidential  
will be released upon a request properly filed under the  
following requirements.

10 (a) The requester shall submit a written request to the  
11 secretary on a form provided by the commission or in a letter  
12 containing equivalent supporting information. The request  
13 must, at a minimum, identify the requester by name, address,  
any organization represented, the full purpose for which the  
requester requests the information and whether the information  
sought is to be used for a commercial purpose.

14 (b) The request must be sufficiently specific to allow  
15 the secretary to readily identify the documents or other  
16 material which contains the information requested. Upon  
17 receipt of a request for confidential information, the  
18 secretary will notify the requester of any deficiency which  
has been identified in the request. It will be the  
responsibility of the requester to correct the request and  
resubmit same pursuant to this rule. No action will be taken  
pending resubmission.

19 (c) The requester shall commit to prepayment of copying  
fees designated by the secretary.

20 **(6) Informal resolution.** When the secretary finds that  
21 the request may be satisfied without disclosing confidential  
information, the secretary will attempt to facilitate an  
informal resolution.

22 **(7) Release of information.** Any information alleged to  
23 be exempt from inspection and copying pursuant to RCW  
24 80.04.095, shall be released only upon notice to the provider  
25 and any person identified by the provider as one who might be  
26 directly affected by release of the information so as to allow  
invocation of the statutory procedures for securing a court  
order protecting the records as confidential. Such notice  
shall be given not more than two days following location of

1 the materials requested, and determination that they contain  
2 information claimed to be confidential. Notice will be given  
3 in writing, either by first class mail or by transmission of a  
4 copy of the request by electronic-telefacsimile, as long as a  
5 hard copy is simultaneously mailed. Notice ~~by mail~~ shall be  
6 deemed complete in accordance with WAC 480-09-120(2)10-150(4),  
7 ~~and facsimile shall be deemed complete when transmission is~~  
8 ~~complete~~. A copy of the notice will be forwarded concurrently  
9 to the requester.

10 If the provider consents to the release of the  
11 information, in writing ~~or facsimile~~, or does not restrain  
12 disclosure by way of court order within ten days following  
13 notice, the information shall thereupon be deemed public,  
14 shall be so designated in the files of the commission, and  
15 shall promptly be released to the requester. The foregoing  
16 shall not apply if the request is withdrawn or modified so as  
17 to exclude confidential material, or if the requester agrees  
18 in writing to the satisfaction of the provider to be bound by  
19 a pre-existing and effective protective order.

20 **(8) Judicial intervention.** The commission need not  
21 assist any person in seeking or resisting judicial  
22 intervention, but reserves the right to participate in any  
23 such proceeding as its interest may appear.

24 **WAC 480-10-180 Public inspection of Incorporated and**  
25 **referenced materials.**<sup>37</sup> Any document that is incorporated by  
26 reference in a commission rule or order is available for  
public inspection at the Washington utilities and  
transportation commission branch of the Washington state  
library. The branch library is located in commission's  
headquarters office. The commission secretary will provide a  
copy of a referenced document upon request, allowing  
reasonable time for any necessary copying, subject to any  
pertinent charge and subject to copyright restrictions. The  
commission incorporates or references the version of the  
incorporated or referenced material that is current on the day  
the commission adopts a rule or enters an order that makes the  
incorporation or reference, unless the commission specifies  
another version or unless another version is apparent from the  
reference.

<sup>37</sup> Source: WAC 480-09-012.

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2       **WAC 480-10-185 Conversion of proceedings.**<sup>38</sup> (1) Upon  
3 application by any person or upon its own motion, the  
4 commission shall consider whether to convert a proceeding  
pursuant to RCW 34.05.070.

5       (2) The start of the new proceeding is the time the  
6 original proceeding began, provided that all statutory and  
7 regulatory requirements for the new proceeding are met.

8       **WAC 480-10-190 Consolidation of proceedings.**<sup>39</sup> The  
9 commission may in its discretion, consolidate two or more  
10 proceedings in which the facts or principles of law are  
11 related.

12       (1) Parties must address a motion for consolidation or  
13 for the severance of consolidated matters to the commission.  
14 The commission may rule on the motion or may refer the motion  
15 to an administrative law judge for resolution.

16       (2) The commission may on its own motion consolidate  
17 matters for hearing, or sever consolidated matters, when it  
18 believes that the action is appropriate.

19       **WAC 480-10-195 Joint hearings.**<sup>40</sup> (1) **Federal.** In any  
20 proceeding in which the commission participates jointly with a  
21 federal agency, the rules of practice and procedure of the  
22 federal agency shall govern.

23       (2) **State.** In any proceeding in which the commission  
24 participates jointly with the administrative body of another  
25 state or states, the rules of the state in which the hearing  
26 is held shall govern the proceeding, unless otherwise agreed  
upon by the participating agencies.

27       (3) **Who may appear.** Any person entitled to appear in a  
28 representative capacity before any of the agencies involved in  
29 a joint hearing may appear in the joint hearing. See WAC 480-  
30 10-345 for those who may appear in a representative capacity  
31 before the commission.

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38       Source: WAC 480-09-600.

39       Source: WAC 480-09-610.

40       Source: WAC 480-09-620.



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**PART II: RULEMAKING PROCEEDINGS**

**WAC 480-10-200 Scope of Part II.**<sup>41</sup> WAC 480-10-210 through 480-10-240 apply to all rulemaking proceedings before the commission.

**WAC 480-10-210 Rule-making procedures--General.**<sup>42</sup> The commission will conduct rule-making proceedings in compliance with the requirements of RCW 34.05.310 through 34.05.395.

**WAC 480-10-220 Rule-making procedures--List of interested persons.**<sup>43</sup> The commission maintains a list of persons interested in potential rule-making proceedings. The list is subdivided by regulated industries and other areas of potential interest. The commission sends notice of rule-making proceedings to persons on the list. Any person may be listed by asking in writing that the commission put the person on the relevant list or lists for the person's area of interest. The commission may by order establish a fee for this service.

**WAC 480-10-230 Rule-making procedures--Inquiries regarding rule-making proceedings.**<sup>44</sup> Inquiries regarding rules being proposed or being prepared within the commission for proposal may be made to Office of the Secretary, Rules Coordinator at the address listed in WAC 480-~~09-100~~10-140(5).

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<sup>41</sup> New section.  
<sup>42</sup> Source: WAC 480-09-210(1).  
<sup>43</sup> Source: WAC 480-09-210(2).  
<sup>44</sup> Source: WAC 480-09-210(3).

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**WAC 480-10-240 Petitions for rule-making, amendment, or repeal.**<sup>45</sup> (1) Any interested person may petition the commission requesting the promulgation, amendment, or repeal of any rule.

(2) Petitions for new rules or for the amendment or repeal of existing rules are governed by RCW 34.05.330 and chapter 82-05 WAC.

(3) The commission will provide on request a copy of chapter 82-05 WAC and the form for petitioning for adoption, amendment, or repeal of a state administrative rule.

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<sup>45</sup> Source: WAC 490-09-220.

1                                   **PART III: ADJUDICATIVE PROCEEDINGS**

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3                   **SUBPART A: General**

4           **WAC 480-10-300. Scope of Part III-Examples of**  
5 **adjudicative proceedings.**<sup>46</sup> (1) **Scope.** WAC 480-10-005 through  
6 WAC 480-10-625 apply to all adjudicative proceedings before  
7 the commission. For purposes of this chapter, an  
8 "adjudicative proceeding" is defined and described in Chapter  
9 34.05 RCW, including RCW 34.05.010(1) and .413.

10           **(2) Examples of adjudicative proceedings before the**  
11 **commission.** The following are examples of proceedings  
12 considered adjudicative proceedings for purposes of this  
13 chapter:

14           (a) Formal complaint proceedings commenced pursuant to  
15 RCW 80.04-110.

16           (b) General rate cases (see Subpart III(B)).

17           (c) Compliance filings (see WAC 480-10-620).

18           (d) Petitions for authority.

19           (e) Petitions for enforcement of interconnection  
20 agreements (see WAC 480-10-615).

21           (f) Objections to closures of highway-railroad grade  
22 crossings (see WAC 480-10-625).

23           (g) Declaratory order proceedings if set for hearing  
24 (see WAC 480-10-715(4)).

25           **WAC 480-10-305. Ex parte communications.**<sup>47</sup> (1) **General.**  
26 After an adjudicative proceeding begins and before a final  
determination, no party to the proceeding, or counsel for a  
party or other person on behalf of a party, shall discuss the  
merits of the proceeding with the commissioners, the presiding  
officer or the commissioners' staff assistants assigned to  
advise the commissioners in the decisional process in that  
proceeding, unless reasonable notice is given to all parties  
to the proceeding, so that they may attend the conference.  
When a party initiates correspondence with a presiding or  
reviewing officer regarding any pending proceeding, the party  
shall serve a copy of the correspondence upon all parties of  
record and furnish proof of that service to the commission.

**(2) Communications not considered ex parte for purposes**

<sup>46</sup> New section.

<sup>47</sup> Source: WAC 480-09-140.

1 **of this section.** Communications necessary to procedural  
2 aspects of maintaining an orderly process, such as scheduling,  
3 are not ex parte communications prohibited by RCW 34.05.455 or  
4 by this rule section.

5 (3) **Sanctions.** The commission may prescribe appropriate  
6 sanctions, including default, for any violation of RCW  
7 34.05.455 or this section.

8 **WAC 480-10-310 Pleadings, motions and briefs—Types**  
9 **permitted. (1) Pleadings.** (a) Types of pleadings permitted.<sup>48</sup>  
10 Pleadings include formal complaints, petitions, answers,  
11 replies, replies to counterclaim, answer to cross claim, third  
12 party complaint, answer to third party complaint, applications  
13 for authority, ~~and protests, and written motions.~~ No other  
14 pleadings are allowed except as permitted by the commission  
15 upon written motion or on the commission's own motion.

16 (b) Formal Complaints.<sup>49</sup> (i) *Defined.* "Formal  
17 complaints" are complaints ~~that are~~ filed in accordance with  
18 RCW 80.04.110 and 81.04.110, complaints filed under RCW  
19 80.54.030, ~~or~~ and complaints in proceedings designated by the  
20 commission as formal commission proceedings.

21 (ii) *Contents.* Formal complaints must be in writing  
22 setting forth clearly and concisely the ground for the formal  
23 complaint and the relief requested. The formal complaint must  
24 state facts constituting the basis of the formal complaint,  
including relevant dates, together with citations to relevant  
statutes or commission rules. The name and address of the  
person complained against must be stated in full. The name  
and address of the complainant and the name and address of  
complainant's attorney, if any, must appear upon the formal  
complaint.

25 (iii) Proceedings under RCW 80.04.110 or 81.04.110. In  
26 proceedings under RCW 80.04.110 or 81.04.110, the provisions  
of those respective statutes also apply.

(c) Protests.<sup>50</sup> A person whose interests would be  
adversely affected by the granting of an application may file  
a protest. Protests to applications must conform to the  
requirements of any special rules that apply to the type of  
the application being protested. A protestant must serve a

<sup>48</sup> Source: WAC 480-09-420.

<sup>49</sup> Source: WAC 480-09-420(5).

<sup>50</sup> Source: WAC 480-09-420(6).

1 copy of the protest upon the applicant.

2 (d) Petitions.<sup>51</sup> (i) *Defined*. All pleadings seeking  
3 relief ~~(other than formal complaints, third party complaints~~  
4 or answers) are "petitions."

5 (ii) *Contents*. A petition must set forth all facts upon  
6 which the request for relief is based, with the dates of all  
7 relevant occurrences and a citation of the statutes and  
8 regulations upon which the petition is based.

9 (e) Answer. (i) *Defined*.<sup>52</sup> ~~—Except as otherwise provided~~  
10 in ~~WAC 480-09-425 this section and 480-09-810(4), any party a~~  
11 ~~respondent (see WAC 480-10-335(6)) who desires to respond to a~~  
12 ~~formal complaint seeking relief against it or a party who~~  
13 ~~desires to respond to a petition, motion, or petition shall~~  
14 file with the commission and serve upon all other parties an  
15 answer.— Answers must fully and completely disclose the  
16 nature of the respondent's defenses and must admit or deny  
17 specifically, and in detail, all material allegations of the  
18 formal complaint or petition. A respondent must separately  
19 state and number affirmative defenses.

20 (ii) *Timing of answer*.<sup>53</sup> An answer is not mandatory. A  
21 ~~party-respondent~~ answering a ~~pleading-formal complaint~~ must  
22 file the answer within twenty days after the service of the  
23 ~~pleading to which it is directed formal complaint on the~~  
24 ~~respondent. During a hearing, the time for answers to~~  
25 ~~interlocutory pleadings is governed by WAC 480-09-736 and the~~  
26 ~~discretion of the presiding officer.~~ The commission may alter  
the time allowed for any answer ~~or reply~~ if it believes that  
the public interest so requires.

(f) Reply. (i) *Defined*.<sup>54</sup> The pleading responding  
~~to response to~~ an answer is a reply. Unless otherwise  
specified, replies may not be filed without authorization by  
the commission upon a showing of cause.

(ii) *Request for permission to reply*.<sup>55</sup> A ~~party-complaint~~  
may request permission to reply to an answer. The request  
must be filed within ten days after service of the answer ~~to~~  
~~which it is directed on the complainant~~. During a hearing, the  
presiding officer may shorten the time for requesting leave to  
reply or may rule from the bench on such requests. A party  
requesting leave to reply may attach a proposed reply to the

51 Source: WAC 480-09-420(7).

52 Source: WAC 480-09-420(9)(a).

53 Source: WAC 480-09-425(3)(a), (c).

54 Source: WAC 480-09-420(9)(b).

55 Source: WAC 480-09-425(3)(b), (c).

1 request. Requests should address whether the answer raises  
2 new material requiring response, or other reason why a reply  
3 is necessary. A request to file a reply is deemed denied  
4 unless specifically granted by the commission. If the  
5 commission allows a reply, the commission will set the time  
6 for filing the reply. The commission may alter the time  
7 allowed for any ~~answer or~~ reply if it believes that the public  
8 interest so requires.

9 **(2) Motions.** (a) Motions filed separately.<sup>56</sup> Motions must  
10 be filed separately from any ~~other pleading or other~~  
11 ~~communication with the commission.~~ The commission will not  
12 consider motions that are merely stated within the text of  
13 correspondence or in the body of ~~another a~~ pleading. The  
14 commission may refer to the rules in the superior court of  
15 Washington as guidelines for handling motions.

16 (b) Time for motions opposing pleadings.<sup>57</sup> Unless good  
17 cause is shown for a delay, a party opposing a pleading must  
18 file any motion directed to the pleading no later than the  
19 time the responsive pleading is due. If no responsive  
20 pleading is provided for, the motion must be filed within ten  
21 days after service of the pleading on the party filing the  
22 motion. Filing a motion to dismiss a pleading, or seeking a  
23 similar remedy, does not extend the time for answering the  
24 pleading. ~~Other motions must be filed within the times~~  
~~specified in WAC 480-09-420 or 480-09-736.~~

25 **(3) Briefs.**<sup>58</sup> The commission may require the parties to  
26 an adjudication to present their arguments and authority  
orally at the close of the hearing, by written brief, or both.  
The argument should set out the leading facts and conclusions  
that the evidence tends to prove, point out the particular  
evidence relied upon to support the conclusions urged, and  
cite legal authority. ~~Briefs may be printed, or typewritten~~  
~~(size 8 1/2 inches by 11 inches on three hole punched paper).~~  
~~All copies must be clearly legible. Briefs must not exceed~~  
~~sixty pages without permission from the presiding officer for~~  
~~good cause shown. The presiding officer will consider the~~  
~~number and complexity of the issues in varying the allowed~~  
~~length of briefs. Briefs must be presented in 12 point Times~~  
~~New Roman or Arial typeface or equivalent, with margins at~~  
~~least one inch from each edge of the page. Footnotes must be~~  
~~presented in the same font, no smaller than 10 point type.~~

<sup>56</sup> Source: WAC 480-09-420(8).

<sup>57</sup> Source: WAC 480-09-425(2).

<sup>58</sup> Source: WAC 480-09-770.

1 ~~Unless the commission specifies a different number of copies,~~  
2 ~~parties offering briefs must file an original and nineteen~~  
3 ~~copies with the secretary of the commission and must serve one~~  
4 ~~copy on each party not later than the date set for filing.~~  
5 ~~Parties must furnish proof of service to the commission as~~  
6 ~~provided in WAC 480-09-120(2).~~

7 **WAC 480-10-315 Pleadings, motions and briefs—General**  
8 **requirements. (1) Format.** (a) Paper size; legibility; font  
9 size; margins.<sup>59</sup> All pleadings, motions and briefs must be  
10 legible and, unless the commission authorizes a different  
11 size, must be submitted on three-hole punched 8-1/2" x 11"  
12 inch paper. Pleadings, motions and briefs may be single- or  
13 double-sided. ~~Parties may not submit pleadings or briefs that~~  
14 ~~exceed sixty pages without prior permission from the~~  
15 ~~commission. Each party must serve a copy of each of its~~  
16 ~~pleadings upon each party to the proceeding.~~ Pleadings,  
17 motions and Briefs must be presented in 12 point Times New  
18 Roman or Arial typeface or equivalent, with margins at least  
19 one inch from each edge of the page. Footnotes must be  
20 presented in the same font, no smaller than 10 point type.

21 (b) Length.<sup>60</sup> Pleadings, motions and briefs must not  
22 exceed sixty pages (exclusive of exhibits, appended  
23 authorities, supporting affidavits and other documents)  
24 without permission from the presiding officer for good cause  
25 shown. The presiding officer will consider the number and  
26 complexity of the issues in varying the allowed length of  
27 briefs. ~~Briefs must be presented in 12 point Times New Roman~~  
28 ~~or Arial typeface or equivalent, with margins at least one~~  
29 ~~inch from each edge of the page. Footnotes must be presented~~  
30 ~~in the same font, no smaller than 10 point type. Unless the~~  
31 ~~commission specifies a different number of copies, parties~~  
32 ~~offering briefs must file an original and nineteen copies with~~  
33 ~~the secretary of the commission and must serve one copy on~~  
34 ~~each party not later than the date set for filing. Parties~~  
35 ~~must furnish proof of service to the commission as provided in~~  
36 ~~WAC 480-09-120(2).~~

(c) Form. Every pleading, motion and brief must conform  
with the following form. (i) Caption.<sup>61</sup> At the top of the

<sup>59</sup> Source: WAC 480-09-420(1), 770.

<sup>60</sup> Source: WAC 480-09-770.

<sup>61</sup> Source: WAC 480-09-420(3).



1 first page must appear the phrase, "Before the Washington  
2 Utilities and Transportation Commission." On the left side of  
3 the page, next below, the caption of the proceeding must be  
4 set out or, if no caption exists, the following: "In the  
5 Matter of the (Complaint, Petition, Motion, etc.) of (name of  
6 the pleading party) for (identify relief sought)." On the  
7 right side of the page, opposite the caption must appear the  
8 words (Petition, Motion, Reply, etc., of (role of party:  
9 e.g., petitioner, respondent, protestant, etc., and name of  
10 the party if more than one party has the same role in the  
11 proceeding)).

12 (ii) *Body of pleading.*<sup>62</sup> The body of the pleading must be  
13 set out in numbered paragraphs. The first paragraph must  
14 state the name and address of the pleading party. The second  
15 paragraph must state all rules or statutes that may be brought  
16 into issue by the pleading. Succeeding paragraphs must set  
17 out the statement of facts relied upon in form similar to  
18 complaints in civil actions before the superior courts of this  
19 state. The concluding paragraphs must contain the prayer of  
20 the pleading party.

21 (iii) *Body of motion.*<sup>63</sup> A motion shall conform to the  
22 following format: [A] Relief Requested. The specific relief  
23 the commission is requested to grant or deny.

24 [B] Statement of Facts. A succinct statement of the  
25 facts contended to be material.

26 [C] Statement of Issues. A concise statement of the  
issue or issues of law upon which the commission is requested  
to rule.

[D] Evidence Relied Upon. The evidence on which the  
motion or opposition is based must be specified with  
particularity. The depositions and portions relied upon must  
be specified. Such specification of deposition testimony  
shall constitute a motion to publish the deposition, which  
motion will be deemed granted unless good cause is shown by an  
opposing party. Deposition testimony, discovery pleadings,  
and documentary evidence relied upon must be quoted verbatim  
or a photocopy of relevant pages of said deposition must be  
attached to an affidavit identifying the documents. Parties  
should highlight those parts upon which they place substantial  
reliance.

[E] Authority. Any legal authority relied upon must be  
cited. Copies of all cited non-Washington authorities upon

<sup>62</sup> Source: WAC 480-09-420(3).

<sup>63</sup> New section (based on King County Superior Court Local Rule 7).

1 which parties place substantial reliance shall be appended to  
2 the motion.

3 (2) **Verification.**<sup>64</sup> All pleadings, except ~~motions and~~  
4 complaints brought ~~upon by~~ the commission's ~~own motion~~, must  
5 be dated and signed by at least one attorney or representative  
6 of record in his or her individual name, stating his or her  
7 address; ~~or~~, or by the party, if the party is not represented.  
8 Pleadings of a party who is not represented by an attorney  
9 must contain a statement that the pleading is true and correct  
10 to the best of the signer's belief.

11 (3) **Errors in pleadings.**<sup>65</sup> The commission may return a  
12 pleading to the party filing it for correction when the  
13 commission finds the pleading to be defective or insufficient.  
14 The commission may correct typographical errors, errors in  
15 captions, or errors in spelling of names of parties.

16 (4) **Liberal construction of pleadings.**<sup>66</sup> The commission  
17 will construe pleadings liberally with a view to effect  
18 justice among the parties. The commission will, at every  
19 stage of any proceeding, disregard errors or defects in the  
20 pleadings or proceeding that do not affect the substantial  
21 rights of the parties.

22 (5) **Amendments.**<sup>67</sup> The commission may allow amendments to  
23 the pleadings or other relevant documents at any time upon  
24 such terms as may be lawful and just.

25 **WAC 480-10-320 Continuances--Extensions of time.**<sup>68</sup> (1)  
26 **General.** In this section, continuances include postponements  
and extensions of time. With notice to all other parties, any  
party may request a continuance. The commission may grant a  
continuance if the requesting party demonstrates good cause  
for the continuance. The commission or the presiding officer  
may direct a continuance without the request of any party when  
doing so is in the public interest or furthers administrative  
needs of the commission. In this section, "deadline" means  
any date that is sought to be continued.

(2) **Procedure.** Subject to subsection (3) of this  
section, requests for continuances may be made orally on the

<sup>64</sup> Source: WAC 480-09-425(1).

<sup>65</sup> Source: WAC 480-09-420(2).

<sup>66</sup> Source: WAC 480-09-425(4).

<sup>67</sup> Source: WAC 480-09-425(5).

<sup>68</sup> Source: WAC 480-09-440.

1 record during a hearing. Whenever possible, requests should  
2 be made by letter. The presiding officer or the commission  
3 may rule upon requests orally at a prehearing conference or  
4 hearing session, or by letter or order. Requests may be  
5 granted; granted, with modification or upon condition; or  
6 denied.

7 **(3) Timing.** Oral requests must be made at least five  
8 days before the deadline sought to be continued. Written  
9 requests must be filed with the commission, and served upon  
10 other parties so as to be received, no less than five days  
11 prior to the deadline which is sought to be continued.  
12 Responses must be filed no less than four days after service  
13 of the request, or two days prior to the deadline which is  
14 sought to be continued; whichever is earlier. Response must  
15 be made orally when a related hearing is held prior to the  
16 stated response deadline. The commission may consider  
17 requests for continuance that are made after the deadline  
18 stated in this rule if the requester demonstrates good cause  
19 that prevented a timely request.

20 **(4) Content.** A request for continuance must contain the  
21 following information:

22 (a) The name of the requesting party and its role in the  
23 proceeding (e.g., applicant, respondent, intervenor, etc.);

24 (b) Whether the requestor or any other party has  
25 previously requested a continuance in the proceeding and  
26 whether any continuance has been granted;

(c) Whether the requestor has discussed the request with  
other parties and whether, upon discussion, all other parties  
agree;

(d) The proposed new deadline, and whether the new  
deadline poses scheduling problems for any party;

(e) The reason for the request and for requesting the  
proposed new deadline;

(f) What efforts have been made to avoid a continuance  
and to minimize the length of the delay sought;

(g) If the continuance is to allow time to acquire a  
transcript, the date the transcript was ordered, when delivery  
is expected, and the length of the transcript or the length of  
the hearing;

(h) If the request relates to an application for  
transportation operating authority, whether the applicant is  
presently providing all or part of the requested service, and  
whether an application for temporary authority has been filed  
and the status of the application; and

(i) Any other factor which may bear upon whether the

1 continuance is consistent with the public interest.

2 **(5) Date certain--Dismissal.** The commission will grant  
3 continuances to a specified date. A party seeking an  
4 indefinite continuance must demonstrate why a specific date is  
5 not feasible. Each ninety days after the initial request for  
6 an indefinite continuance is granted, the party making the  
7 request must (a) file a statement with the commission  
8 describing the status of the proceeding and why it is still  
9 infeasible to establish a specific date, or must (b) request a  
10 specific date. Failure to file the statement required in this  
11 subsection is grounds for dismissal without further notice.  
12 The commission may at any time rescind an indefinite  
13 continuance and set the proceeding for hearing.

14 **(6) Agreed requests.** An "agreed request" is a request  
15 for a continuance that all parties agree to. Agreed requests  
16 for continuances other than hearings may be made orally before  
17 the deadline, if a confirming letter is served and sent for  
18 filing on the same day. A first agreed request, timely made,  
19 will be granted unless it is inconsistent with the public  
20 interest or commission administrative needs.

21 **WAC 480-10-325 Access to limited english speakers and**  
22 **hearing-impaired persons. (1) Interpreters.**<sup>69</sup> It is  
23 commission policy that limited-English-speaking and hearing-  
24 impaired persons have equal access to the administrative  
25 process and that they have the opportunity for full and equal  
26 participation in adjudicative proceedings. In keeping with  
this policy, the commission incorporates by reference in its  
rules WAC 10-08-150 of the office of administrative hearings  
model rules of procedure governing interpreters.

27 **(2) Notice to limited-English-speaking parties.**<sup>70</sup> When  
28 the commission has knowledge that a limited-English-speaking  
29 person is a party in an adjudicative proceeding, all notices  
30 concerning the hearing, including notices of hearing,  
31 continuances, and dismissals, must either be in the primary  
32 language of the party or must include a notice in the primary  
33 language of the party that describes the significance of the  
34 notice and how the party may receive assistance in  
35 understanding and responding to the notice. See also WAC 480-  
36 10-385(1)(b).

<sup>69</sup> Source: WAC 480-09-450.

<sup>70</sup> Source: WAC 480-09-705.

1  
2  
3 **WAC 480-10-330. Commencement of adjudicative proceeding.**

4 **(1) Commencement.**<sup>71</sup> For an adjudicative proceeding to  
5 commence, a person, including the commission, must file an  
6 application with the commission. For purposes of the  
7 restrictions on ex parte communications provided in WAC 480-  
8 10-305, an adjudicative proceeding does not actually commence  
9 until the commission or presiding officer notifies a party  
10 that a prehearing conference, hearing, or other stage of an  
11 adjudicative proceeding will be conducted.

12 **(2) Who may file an application for an adjudicative**  
13 **proceeding.**<sup>72</sup> ~~A P~~persons involved in an actual case or  
14 controversy within subject to the jurisdiction of the  
15 commission ~~to resolve~~ may apply to the commission for an  
16 adjudicative proceeding to secure an order resolving disputed  
17 matters. ~~Each application should specify every issue to be~~  
18 ~~adjudicated in the proceeding.~~

19 **(3) Types of applications.**<sup>73</sup> The following, ~~when properly~~  
20 ~~and timely filed, are applications for adjudicative~~  
21 ~~proceedings except:~~

22 ~~— (a) When specified to the contrary in statute or rule;~~

23 ~~— (b) When the document is presented during an existing~~  
24 ~~adjudication; or~~

25 ~~— (c) When the subject is not required to be resolved in an~~  
26 ~~adjudication as defined in chapter 34.05 RCW~~when properly and  
27 timely filed, constitute applications for adjudicative  
28 proceedings except when specified to the contrary in statute  
29 or rule, when the document is presented during an existing  
30 adjudication, or when the subject is not required to be  
31 resolved in an adjudication as defined in chapter 34.05 RCW:

32 (a) Petitions, when the action sought requires  
33 adjudication;

34 (b) ~~f~~ Formal complaints, ~~i~~

35 (c) ~~p~~ Protests, ~~i~~ and

36 (d) ~~r~~ Requests for review of the denial of unprotested  
37 authority, ~~when properly and timely filed, constitute~~  
38 applications for adjudicative proceedings except when  
39 specified to the contrary in statute or rule, when the  
40 document is presented during an existing adjudication, or when

71 New section (based on RCW 34.05.413(5)).

72 Source: WAC 480-09-400(1).

73 Source: WAC 480-09-400(2), (3).

1 ~~the subject is not required to be resolved in an adjudication~~  
2 ~~as defined in chapter 34.05 RCW.; and~~

3 ~~(3)(e) The commission may, in its~~ the ~~discretion of the~~  
4 ~~commission, treat unprotested applications for authority as~~  
5 ~~applications for adjudicative proceedings and set them for~~  
6 ~~hearing.~~

7 **(4) Commission notification.**<sup>74</sup> Within thirty days after  
8 receiving an application for an adjudicative proceeding, the  
9 commission will notify the applicant of any obvious errors or  
10 omissions, request any additional information it requires and  
11 is permitted by law to require regarding the application for  
12 adjudicative proceeding, and notify the applicant of the name,  
13 mailing address, and telephone number of a person on the  
14 commission staff that may be contacted regarding the  
15 application.

16 **(5) Commission determination regarding conducting**  
17 **adjudicative proceeding.**<sup>75</sup> Within ninety days after receipt of  
18 the application or receipt of the response to a timely request  
19 made under subsection ~~(23)~~ (d) of this section, the commission  
20 shall:

21 (a) Approve or deny the ~~petition or protest~~ application on  
22 the basis of brief or emergency adjudicative proceedings;

23 (b) Commence an adjudicative proceeding by serving the  
24 parties with a notice of hearing pursuant to RCW 34.05.434 and  
25 WAC 480-~~09-700~~ 10-385; or

26 (c) Decide not to conduct an adjudicative proceeding and  
furnish the applicant with a copy of its decision in writing,  
with a brief statement of its reasons for doing so and of any  
administrative review available.

18  
19 **WAC 480-10-335 Parties. (1) General.** ~~"Person" when used~~  
20 ~~in this chapter means an individual; corporation; partnership;~~  
21 ~~association, or body politic; agency; or municipal~~  
22 ~~corporation.~~ A "party" is a person (meaning an individual,  
23 partnership, corporation, association, governmental  
24 subdivision or unit thereof, or public or private organization  
25 or entity of any character, including an agency) that has  
26 complied with all requirements for establishing and  
maintaining party status in any proceeding before the

<sup>74</sup> Source: WAC 480-09-400(4).

<sup>75</sup> Source: WAC 480-09-400(5).

1 commission.<sup>76</sup> The commission will not grant party status to a  
2 person who fails to appear at the earliest prehearing  
3 conference, if one is held, or hearing session, if there is no  
prehearing conference, without a showing of good cause for  
failing to timely appear.<sup>77</sup>

4 **(2) Classification of parties.** Parties to proceedings  
5 before the commission will be called applicants, complainants,  
6 petitioners, respondents, intervenors, or protestants,  
7 according to the nature of the proceeding and the relationship  
8 of the parties. The commission staff and the public counsel  
division of the attorney general's office become parties to an  
adjudicative proceeding for all purposes upon entering an  
appearance.

9 **(3) Applicants.** ~~(a)~~ Persons applying for any right or  
10 authority that the commission has jurisdiction to grant are  
"applicants."

11 ~~(b)~~ Applicants for adjudicative proceedings under chapter  
12 34.05 RCW will be described according to their roles as  
13 defined in this section.

14 **(4) Complainants.** Persons who file a formal complaint  
15 with the commission are "complainants." When the commission  
16 brings an adjudication on its own motion, the commission is  
17 the "complainant."

18 **(5) Petitioners.** Persons petitioning for relief are  
19 "petitioners." Persons filing a motion for relief are  
20 "movants" or "moving parties."

21 **(6) Respondents.** Persons against whom any formal  
22 complaint, petition, or motion is filed are "respondents."

23 **(7) Intervenors.** Persons permitted to intervene are  
24 "intervenors."

25 **(8) Protestants.** Persons opposing applications who have  
26 complied with the requirements for the filing of protests are  
"protestants."

**WAC 480-10-340 Intervention.<sup>78</sup> (1) General intervention.**

(a) Who may petition; when petitions must be filed. Any  
person, other than the ~~original~~ parties to any proceeding  
before the commission, who desires to appear and participate,  
and who does not desire to broaden the issues of the

<sup>76</sup> Source: WAC 480-09-410; RCW 34.05.010(14).

<sup>77</sup> Source: WAC 480-09-720.

<sup>78</sup> Source: WAC 480-09-430.

1 proceeding, may (i) petition in writing for leave to generally  
2 intervene at least five days prior to the time ~~it the~~  
3 adjudicative proceeding is initially called for hearing or  
4 prehearing conference, whichever occurs first; or (2)  
5 petition orally for leave to generally intervene at the time  
6 of the initial hearing or prehearing conference, whichever  
7 occurs first. ~~No Except for good cause shown, no~~ such  
8 petition shall be granted if filed or made after the  
9 ~~proceeding is underway~~ first of the initial hearing or  
10 prehearing conference, except for good cause shown. In this  
11 context, "good cause" must include a satisfactory explanation  
12 as to why the person did not timely file or make the petition.

13 (b) Contents of petition. The petition to intervene for  
14 general interevention must disclose: (i) the name  
15 and address of the petitioner; (ii) the name and address of  
16 petitioner's attorney, if any; (iii) the petitioner's interest  
17 in the proceeding; and (iv) the petitioner's position in  
18 regard to the matters in controversy. The petitioner must  
19 attach to the petition an affidavit or declaration setting  
20 forth clearly and concisely the facts supporting the  
21 petitioner's interest in the proceeding and position in regard  
22 to the matters in controversy. Petitions for general  
23 intervention (and the supporting affidavit or declaration)  
24 must be filed with the commission and served on the  
25 original all parties to the proceeding. In general rate  
26 utility rate cases described in WAC 480-10-500 through 480-10-  
525, unless additional persons have successfully intervened,  
the original parties are the company seeking a rate change,  
commission staff, and public counsel.

\_\_\_\_\_ A form petition for general intervention is available  
on request from the secretary of the commission. The  
commission encourages use of the form to ensure that the  
petitioner provides adequate information.

**(2) Special intervention--broadening the issues.** (a) Who  
may petition; when petitions must be filed. Any person other  
than the original parties to any proceeding before the  
commission, who desires to appear and participate in the  
proceeding and who desires to broaden the issues in the  
proceeding, may petition for special intervention in the  
proceeding. The petition must be in writing, filed with the  
commission, and served upon the all parties of record to the  
proceeding, at least ten days prior to the date of the  
prehearing conference or initial hearing session, whichever  
occurs first. The commission may, for good cause, shorten the  
ten-day filing period. When there is no prejudice to other



1 parties, the commission may consider an oral petition that is  
2 filed less than ten days in advance.

3 (b) Contents of petition. The petition must disclose:  
4 (i) the name and address of the petitioner; (ii) the name and  
5 address of the petitioner's attorney, if any; (iii) the  
6 petitioner's interest in the proceeding; and (iv) the  
7 petitioner's position in regard to the matters in controversy.  
8 The petitioner must attach to the petition an affidavit or  
9 declaration setting forth clearly and concisely the facts  
10 supporting the ~~relief sought~~ petitioner's interest in the  
11 proceeding and position in regard to the matters in  
12 controversy.

13 (3) Disposition of petitions to intervene. The  
14 commission may consider petitions to intervene at hearings or  
15 prehearing conferences, or, if persons entitled to respond to  
16 the petition have done so, before or after a hearing or  
17 prehearing conference. The commission will allow parties the  
18 opportunity to be heard upon the petition. If the petition  
19 discloses a substantial interest in the subject matter of the  
20 hearing, ~~or and~~ if the participation of the petitioner is in  
21 the public interest, the commission may grant the petition  
22 orally, at the hearing or prehearing conference, or in  
23 writing. Limitations may be imposed upon interventions in  
24 accordance with RCW 34.05.443(2). If the commission grants  
25 intervention, the petitioner becomes a party to the proceeding  
26 as an "intervenor."

16 (4) Dismissal of intervenor. If the commission  
17 determines, during a proceeding, that an intervenor has no  
18 substantial interest in the proceeding, or that the public  
19 interest will not be served by the intervention, the  
20 commission may dismiss the intervenor from the proceeding.  
21 The commission may dismiss an intervenor from a proceeding  
22 only after notice and a reasonable opportunity to be heard.

20 (5) Administrative review. The commission may review the  
21 decision by an administrative law judge regarding a petition  
22 to intervene or dismissal of an intervenor ~~pursuant to WAC~~  
23 480-09-760 as it would with any interlocutory order pursuant to  
24 WAC 480-10-415.

24 **WAC 480-10-345 Appearance and practice before**  
25 **commission.**<sup>79</sup> (1) **Minimum qualifications.** No person may

26 <sup>79</sup> Source: WAC 480-09-710.

1 appear before the commission as a representative of a party to  
2 an adjudicative proceeding without meeting one of the  
3 following qualifications:

4 (a) Membership in good standing in the Washington State  
5 Bar Association;

6 (b) Admission to practice, in good standing before the  
7 highest court of any other state;

8 (c) Upon permission of the presiding officer, an officer  
9 or employee of a party or person seeking party status;

10 (d) Legal interns admitted to limited practice under Rule  
11 9 of the Washington state Supreme Court's Admission to  
12 Practice Rules. No legal intern may appear without the  
13 presence of a supervising lawyer unless the presiding officer  
14 approves the intern's appearance in advance.

15 The presiding officer may expel a person who does not  
16 have the requisite degree of legal training, experience, or  
17 skill to appear in a representative capacity.

18 **(2) Notices of appearance and withdrawal.** Attorneys or  
19 other authorized representatives appearing on behalf of a  
20 party or withdrawing from a proceeding must immediately notify  
21 the commission and all parties to the proceeding.

22 **(3) Unethical conduct.** Persons appearing in proceedings  
23 before the commission in a representative capacity must  
24 conform to the standards of ethical conduct required of  
25 attorneys before the courts of Washington. If any  
26 representative fails to conform to those standards, the  
commission may expel the person from the proceeding and  
decline to permit the person to appear before it in a  
representative capacity in any future proceeding.

**(4) Former employees.** Former employees of the commission  
are subject to the provisions of chapter 42.18 RCW.

**WAC 480-10-350 Discovery-General. (1) General. (a) No**  
**limitation on commission authority to audit and inspect.**<sup>80</sup>

Nothing in this section shall be construed as imposing any  
limitation whatsoever on the commission's ability to audit  
and/or obtain the books and records of public service  
companies, and the public service companies' obligation to  
provide information to the commission, whether or not in the  
context of an adjudicative proceeding.

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<sup>80</sup> Source: WAC 480-09-480(1).

1 (b) Informal discovery procedures.<sup>81</sup> Parties in an  
2 adjudicative proceeding may agree on informal discovery  
3 procedures in addition to or in place of the procedures  
4 contained in this section.

5 (c) Definitions.<sup>82</sup> For purposes of the WAC 480-10-350  
6 through 480-10-357, the following terms shall have the  
7 following meanings. (i) *Party*. Any party as defined by WAC  
8 480-~~09-410~~10-335, plus any: ~~Provided, That a~~ person who has  
9 filed a petition to intervene ~~shall be deemed to be a party~~  
10 ~~for purposes of this section pending a ruling on the~~  
11 ~~petition pursuant to WAC 480-10-340.~~

12 (ii) *Data*. As used in this section, data means  
13 information of any type in any form.

14 (iii) *Data request*. A request for data issued by a party  
15 in an adjudicative proceeding. The request may be in writing  
16 or may be made by oral motion at a conference or hearing.  
17 Generally, data requests seek extant documents, an analysis,  
18 compilation or summary of extant documents into a requested  
19 format, or a narrative explaining a policy, position or  
20 document. If a party relies on a cost study, it is expected  
21 that the party will, upon request, rerun the study based on  
22 different assumptions, subject to the standards in subsection  
23 ~~(6)(a)(vi)~~(5) of this section. Parties will not be ordered to  
24 respond to a data request which seeks production of a new cost  
25 study unless the commission so orders, based upon a compelling  
26 need for such production.

(iv) *Record requisition*. A request for data made on the  
record during a hearing session or during a deposition.

(v) *Bench request*. A request for data made by or on  
behalf of the presiding officer.

(vi) *Depositions*. Depositions are described in  
subsection (6)(b) of this section.

**(2) When discovery available.** (a) Subpoenas always  
available. The only discovery procedure available in all  
adjudicative proceedings before the commission is the  
subpoena. ~~"Subpoena" as used in this section includes including~~  
a subpoena duces tecum.<sup>83</sup> A commissioner, an administrative  
law judge, or the attorney of any party to the proceeding may  
issue a subpoena. Witnesses are required to comply with  
subpoenas in the manner prescribed in Title 80 or 81 RCW and  
chapter 34.05 RCW. Witnesses shall be paid as provided in RCW

<sup>81</sup> Source: WAC 480-09-480(1).

<sup>82</sup> Source: WAC 480-09-480(3)(a)-(f).

<sup>83</sup> Source: WAC 480-09-480(2).

1 34.05.446(7). Each subpoena must bear the name of the party  
2 requesting or issuing the subpoena and the party responsible  
for paying witness fees.<sup>84</sup>

3 (b) When other discovery methods available.<sup>85</sup> The other  
4 methods of discovery described in subsection (3) of this  
5 section and in WAC 480-10-355 and 480-10-357 ~~discovery~~ will be  
6 available when the commission, on its own motion or on motion  
7 of a party declares that the adjudicative proceeding meets one  
8 of the following criteria as provided by this section  
9 according to and establishes a discovery schedule established  
10 by prehearing order pursuant to subsection (6) of this  
11 section:

12 (i) Any proceeding involving a change in the rate levels  
13 of a utility company, a solid waste company, a low-level  
14 radioactive waste disposal site, or a segment of the  
15 transportation industry;

16 (ii) Any proceeding that the commission declares to be of  
17 a precedential nature; or

18 (iii) Any complaint proceeding involving claims of  
19 discriminatory and/or anticompetitive conduct.

20 **(3) Types of "other discovery methods" available.**<sup>86</sup>

21 Unless otherwise specified in the prehearing order, the  
22 following procedures ~~will apply~~ are available if the commission  
23 finds that one or more of the criteria set out in subsection  
24 (2)(b) are satisfied: (a) data requests (see WAC 480-10-355);  
25 (b) records requisitions (see WAC 480-10-355); (c) bench  
26 requests (see WAC 480-10-355); and (d) depositions (see WAC  
480-10-357).

27 **(4) Signature on discovery requests.**<sup>87</sup> Each request or  
28 group of requests shall be signed by counsel for the  
29 requesting party. The signature constitutes a certification  
30 that the request complies with the standards of CR 26(g) and  
31 that no request made therein substantially duplicates a  
32 request previously made by the requesting party to the same  
33 party in the same proceeding, unless the duplication is  
34 reasonably necessary and the reason for duplication is clearly  
35 stated.

36 **(5) Frequency, extent and scope of discovery.**<sup>88</sup> The scope  
of any request for data shall be for data relevant to the  
issues identified in the notices of hearing or orders in the

<sup>84</sup> Source: WAC 480-09-475.

<sup>85</sup> Source: WAC 480-09-(2), (4).

<sup>86</sup> Source: WAC 480-09-480(6).

<sup>87</sup> Source: WAC 480-09-480(6)(a)(ii).

<sup>88</sup> Source: WAC 480-09-480(6)(a)(vi).

1 adjudicative proceeding. It is not grounds for objection that  
2 the information sought will be inadmissible at the hearing, if  
3 the information sought appears reasonably calculated to lead  
4 to discovery of admissible evidence. The frequency, extent,  
5 or scope of discovery shall be limited by the commission if it  
6 determines that the discovery sought is unreasonably  
7 cumulative or duplicative, or is obtainable from some other  
8 source that is more convenient, less burdensome, or less  
9 expensive; the party seeking discovery has had ample  
10 opportunity to obtain the information sought; or, the  
11 discovery is unduly burdensome or expensive, taking into  
12 account the needs of the adjudicative proceeding, limitations  
13 on the parties' resources, scope of the responding party's  
14 interest in the proceeding, and the importance of the issues  
15 at stake in the adjudicative proceeding.

16 **(6) Procedure.**<sup>89</sup> At a prehearing conference, a data  
17 request and deposition schedule shall be established, and set  
18 forth in a prehearing order. The schedule must provide for  
19 deadlines sufficient to allow a timely opportunity for  
20 disputes to be resolved. In a proceeding initiated by  
21 petition or commission complaint, the commission staff shall  
22 not be required to respond to data requests prior to the  
23 filing of the commission staff direct evidence. Disputes  
24 arising from use of the procedures in this section will be  
25 heard at the earliest reasonable time. Telephone hearings or  
26 conferences are encouraged for the argument of discovery  
disputes. Discovery rulings may be made on the record or by  
written order. Discovery rulings are subject to review under  
WAC 480-~~09-76010-415~~415.

18 **(7) Procedure for resolving disputes.**<sup>90</sup> Procedure for  
19 resolving disputes. Disputes arising from use of the  
20 procedures in this section may be raised at a prehearing  
21 conference. At the option of the aggrieved party, disputes  
22 may be brought on by motion and will be heard at the earliest  
23 reasonable time. Telephone hearings or conferences are  
24 encouraged for the argument of discovery disputes. Discovery  
25 rulings may be made on the records or by written order.  
26 Discovery rulings are subject to review under WAC 480-~~09-~~  
~~76010-415~~.

Motions shall be timely filed. Responses to a motion  
shall be filed within five working days of the receipt of the  
motion, and shall be served on all parties. Time limits may

<sup>89</sup> Source: WAC 480-09-480(5).

<sup>90</sup> Source: WAC 480-09-480(7).

1 be imposed or modified by the commission or the presiding  
2 officer to the extent necessary to conform to the commission's  
hearing schedule.

3 Alternate dispute resolution for discovery disputes. At  
4 the request or with the consent of the disputants, the  
5 commission may assign a commissioner, a member of the  
6 commission advisory staff or another person to assist the  
7 parties in resolving the issue. If the designated person  
8 finds that the parties fail to agree, the commission will  
allow each party no less than one nor more than five days to  
present brief simultaneous written statements of position and  
will resolve the dispute upon the written statements by letter  
of the secretary.

9 If a party fails or refuses to comply with a commission  
10 order or an administrative law judge's order that is not  
11 reviewed resolving a dispute under this section, or a letter  
12 from the secretary resolving such a dispute, the commission  
may impose sanctions including but not limited to dismissal,  
striking of testimony, evidence, or cross-examination, or  
monetary penalties as provided by law.

13 **(8) Protective orders.**<sup>91</sup> Upon motion by a party or by the  
14 person from whom discovery is sought, and for good cause  
15 shown, the commission or the presiding officer may make any  
16 order which justice requires to protect a party or person from  
17 annoyance, embarrassment, oppression, or undue burden or  
18 expense, including one or more of the following: (a) that the  
19 discovery not be had; (b) that the discovery may be had only  
20 on specified terms and conditions, including a designation of  
21 the time or place; (c) that the discovery may be had only by a  
22 method of discovery other than that selected by the party  
23 seeking discovery; (d) that certain matters not be inquired  
24 into, or that the scope of the discovery be limited to certain  
25 matters; (e) that discovery be conducted with no one present  
except persons designated by the commission or the presiding  
officer; (f) that the contents of a deposition not be  
disclosed or be disclosed only in a designated way; (g) that a  
trade secret or other confidential research, development, or  
commercial information not be disclosed or be disclosed only  
in a designated way; (h) that the parties simultaneously file  
specified documents or information enclosed in sealed  
envelopes to be opened as directed by the commission or the  
presiding officer. If the motion for a protective order is  
denied in whole or in part, the commission or presiding

26 <sup>91</sup> New section (based on CR 26(c) of the Superior Court Civil Rules).

1 officer may, on such terms and conditions as are just, order  
2 that any party or person provide or permit discovery.

3  
4 **WAC 480-10-355 Data requests, records requisitions and**  
5 **bench requests. (1) Grouping and numbering. (a) Grouping.<sup>92</sup>**

6 In the absence of a different determination at a prehearing  
7 conference or agreement by the affected parties, requesting  
8 parties shall group data requests by subject or witness; and  
9 shall group requests into packages of reasonable numbers;  
10 shall present groups of more than five pages of requests or  
11 answers in an electronic format agreed by the parties when the  
12 presenting party has the capability of doing so or shall make  
13 no more than one request per page. Voluntary coordination of  
14 requests among parties of similar interests is encouraged.

15 (b) Numbering.<sup>93</sup> Each party shall number its data  
16 requests sequentially as submitted. Record requisitions and  
17 bench requests shall each be described on the record and  
18 consecutively numbered.

19 **(2) Delivery of data requests and records requisitions.**<sup>94</sup>

20 Written data requests shall be sent to the party of whom the  
21 request is made, with copies to all other parties. The  
22 commission staff copy shall be sent to the assistant attorney  
23 general representing the commission staff. The commission  
24 encourages parties to agree to exchange data in electronic  
25 format on diskette or via modem, e-mail, internet, bulletin  
26 board, or other electronic means that is mutually acceptable.  
Such electronic exchange may enhance efforts to coordinate  
discovery and to prevent duplications. Neither the  
commissioners nor the secretary of the commission should  
receive copies of such requests, except upon the filing of a  
motion to compel or an objection to the request, at which time  
the specific request or requests shall be attached to the  
motion or objection.

(3) **Limitation on numbers of data requests.**<sup>95</sup> For good  
cause, limitation may be established at a prehearing  
conference as to the number of data requests that may be  
submitted without a certification that the submitting party  
has coordinated with other parties of similar interest and no

92 Source: WAC 480-09-480(6)(a)(i), (ii).

93 Source: WAC 480-09-480(6)(a)(iv).

94 Source: WAC 480-09-480(6)(a)(iii).

95 Source: WAC 480-09-480(6)(a)(ii).

1 substantial duplication exists with other parties'  
2 submissions.

3 **(4) Responding party to seek clarification.**<sup>96</sup> A person  
4 believing the meaning or scope of a request to be unclear  
5 shall initiate a clarification call to the requesting party.

6 **(5) Responses.**<sup>97</sup> Responses to data requests and record  
7 requisitions shall be sent to the requesting party and to any  
8 other party who shall have requested a copy, so long as  
9 responses are consistent with the terms of any protective  
10 order which may be entered in the proceeding. The commission  
11 staff copy shall be sent to the assistant attorney general  
12 representing the commission staff unless the attorney requests  
13 an alternative method. Written responses to bench requests  
14 shall be served on all parties and filed with the commission  
15 in the same manner and quantity as pre-distributed exhibits.  
16 Objections to data requests shall be presented to the  
17 requesting party no later than the time responses are due.

18 The party responding to the data request shall provide  
19 the response to the data requested to the requesting party  
20 within ten business days of receipt of the request. In the  
21 event the data cannot be supplied within ten business days,  
22 the responding party shall notify the requesting party, in  
23 writing and within five business days of receipt of the  
24 request, of the reasons why the ten-day limit cannot be met.  
25 In this event, the responding party shall also provide a  
26 schedule for producing the requested data or shall explain why  
portions of the data will not be supplied. ~~Weekends and  
holidays will be excluded in calculating these time limits.~~  
Time limits may be modified by prehearing order to the extent  
necessary to conform to the commission's hearing schedule.  
Responses to record requisitions and bench requests shall be  
submitted within ten business days, ~~excluding weekends and  
holidays,~~ after the transcript is delivered to the commission  
unless the presiding officer specifies another schedule.  
Parties who anticipate problems in making a timely response  
shall notify other parties of the expected difficulties  
immediately.

27 **(6) Use of response to data request, record requisition  
28 or bench request.**<sup>98</sup> No response to a data request, ~~bench  
29 request, or,~~ record requisition or bench request shall be  
30 considered or treated as evidence until it is entered into the

31 <sup>96</sup> Source: WAC 480-09-480(6)(a)(i).

32 <sup>97</sup> Source: WAC 480-09-480(6)(a)(v).

33 <sup>98</sup> Source: WAC 480-09-480(6)(a)(v).



1 record.

2  
3 **WAC 480-10-357 Depositions. (1) When available;**  
4 **required notice.**<sup>99</sup> Depositions may be available during one or  
5 more conferences scheduled in the prehearing order. A party  
6 who intends to depose a witness will give at least five  
7 business days' notice to the commission and all parties prior  
8 to the scheduled conference.

9 **(2) Where conducted.**<sup>100</sup> The conference will be convened  
10 at Olympia unless the parties and the commission agree to  
11 another venue.

12 **(3) Participation by administrative law judge.**<sup>101</sup> Should  
13 all parties request or consent to participation by an  
14 administrative law judge in the deposition, or should no party  
15 object prior to such participation, the parties will be deemed  
16 to have waived the right to argue that the deposition  
17 constitutes a "hearing" within the meaning of RCW 34.12.060.

18 **(4) Who may be deposed.**<sup>102</sup> Only witnesses who have been  
19 identified by a party as a prospective witness will be subject  
20 to deposition: Provided, That an individual compelled to  
21 appear as an adverse witness will not be deemed to be a  
22 "prospective witness" for purposes of this subsection.

23 **(5) How depositions conducted.**<sup>103</sup> Depositions will be  
24 conducted by the parties, using Rule 30 of the Civil Rules of  
25 Procedure as a guide. At the request of a party, the  
26 deposition may be interrupted for purposes of presenting to an  
administrative law judge or the commission a dispute regarding  
the deposition process. However, to avoid interruption, such  
disputes should, if possible, be reserved to the conclusion of  
the deposition. The scope of questioning will be the same  
standard set forth ~~in subsection (6)(a)(vi) of this section~~  
in WAC 480-10-350(5). The deposition will be recorded by a court  
reporter provided by the commission or by the party requesting  
the deposition. Each party will be responsible for arranging  
for the attendance of those of its prospective witnesses who  
have been asked to be deposed.

**(6) Use of depositions.**<sup>104</sup> Except as provided in this

<sup>99</sup> Source: WAC 480-09-480(6)(b).

<sup>100</sup> Source: WAC 480-09-480(6)(b).

<sup>101</sup> Source: WAC 480-09-480(6)(b).

<sup>102</sup> Source: WAC 480-09-480(6)(b).

<sup>103</sup> Source: WAC 480-09-480(6)(b)(i).

<sup>104</sup> Source: WAC 480-09-480(6)(b)(ii).

1 subsection, depositions may be used for any purposes. If a  
2 witness is available, and a party seeks to offer that witness'  
3 deposition into evidence for other than impeachment purposes,  
4 that party must do the following:

(a) Offer only those portions of the deposition upon  
5 which it intends to rely; and

(b) Provide five working days' written notice (prior to  
6 the hearing at which the witness will appear) to other parties  
7 of its intent to offer the specified portions of the  
8 deposition into evidence. The portions proposed to be offered  
9 shall be distributed as other predistributed exhibits.  
10 Exhibits associated with the deposition shall be separately  
11 marked and numbered.

12 At hearing, if portions of a deposition are admitted into  
13 evidence, other parties shall have the right at the time the  
14 deposition is admitted to offer other portions of the  
15 deposition for the purpose of offering a complete picture of  
16 the witness' testimony. Offers for other purposes, as for  
17 impeachment or to eliminate the need to repeat questions and  
18 answers, may be made at any time. Time limits may be modified  
19 by prehearing order to the extent necessary to conform to the  
20 commission's hearing schedule. The portions of the deposition  
21 moved into evidence shall be admitted as testimony if the  
22 testimony is otherwise admissible, and if admitting the  
23 testimony would substantially reduce repetitive questioning.

**(7) Correcting/supplementing deposition testimony.**<sup>105</sup>

24 Corrections in the deposition transcript may be made only by  
25 motion filed within ten days after delivery of the transcript.  
26 Corrections will be allowed only to correct transcription  
errors and not to modify testimony, provided that a witness  
has the duty to supplement her or his response immediately,  
upon learning that the prior response was incorrect when made  
or upon learning that a response, correct when made, is no  
longer correct.

**WAC 480-10-360 Prehearing and other conferences.**<sup>106</sup> (1)  
**General.** In any proceeding the commission may, by written  
notice or by oral notice on the record of the hearing, request  
or direct all parties and persons ~~requesting party~~  
statusseeking intervention to attend a prehearing or other

<sup>105</sup> Source: WAC 480-09-480(6)(b)(ii)(C).

<sup>106</sup> Source: WAC 480-09-460.

1 conference for the purpose of determining the feasibility of  
2 settlement, or of formulating the issues in the proceeding and  
3 determining other matters to aid in its disposition. The  
4 notice of the conference must provide reasonable notice of the  
5 time and place established for the conference and the matters  
6 to be addressed. The notice may provide that failure to  
7 attend may result in the dismissal of a party, the finding of  
8 a party in default, or the refusal to consider a later  
9 petition for intervention except upon a showing of good cause  
10 for the failure to attend. In the absence of a showing of  
11 good cause, a party's failure to attend the conference will  
12 constitute the party's waiver of all objections to any order  
13 or ruling arising out of the conference or any agreement  
14 reached at conference. A commissioner or an administrative  
15 law judge shall preside at each conference, to consider:

(a) Simplification of the issues;

10 (b) The necessity or desirability of amendments to the  
11 pleadings;

(c) The possibility of obtaining admissions of fact and  
12 of documents which will avoid unnecessary proof;

(d) Limitations on the number and consolidation of the  
13 examination of witnesses;

(e) The procedure at the hearing;

14 (f) The need for and timing of distribution of written  
15 testimony and exhibits to the parties prior to the hearing;  
16 and

(g) Any other matters that may aid in the disposition of  
17 the proceeding, whether by commission decision or by  
18 settlement.

The disposition of petitions for leave to intervene in  
18 the proceeding ~~filed pursuant to WAC 480-09-430~~ may be ruled  
19 upon at a prehearing conference.

19 **(2) Statement.** A statement describing the action taken  
20 at the conference and the agreements made by the parties  
21 concerning all of the matters considered may be made orally on  
22 the record or by a conference order served upon the parties  
23 for approval. If no objection to the oral statement is made  
24 on the record, or no objection to the written statement is  
25 filed within ten days after the date the statement is served,  
26 it shall be deemed to be approved, subject to commission  
review. The result of the prehearing conference will control  
the subsequent course of the proceeding unless rejected by the  
commission or modified to prevent manifest injustice.

**(3) Recessing hearing for conference.** In any proceeding  
the presiding officer may call the parties together for a

1 conference prior to the taking of testimony, or may recess the  
2 hearing for a conference, ~~to carry out the purpose of this~~  
3 ~~section~~. The presiding officer shall state on the record the  
4 results of a conference.

5 **(4) Discovery conference.** In addition to the mechanisms  
6 set out in WAC 480-~~09-480~~10-350 through 480-10-357 for  
7 obtaining information, the commission may request or direct  
8 the parties to an adjudication in which the discovery rule has  
9 been invoked to attend a conference along with designated  
10 witnesses for the purpose of discussing with each other  
11 questions about the party's position or evidence and the  
12 availability of supporting information. Subject to making  
13 satisfactory arrangements for dealing with documents,  
14 attendance by telephone shall be permitted in the absence of a  
15 demonstration that telephonic attendance will substantially  
16 reduce the effectiveness of the conference. The purposes of a  
17 discovery conference are to allow witnesses and advisers to  
18 talk directly and informally, to reduce or avoid the need for  
19 written data requests and time for their preparation, to allow  
20 discussions of potential stipulations regarding individual  
21 facts and settlement of individual issues to occur in an  
22 informal setting, to discuss the availability of supporting  
23 information, and to enhance the parties' ability to acquire or  
24 expand their knowledge about the case of one or more  
25 designated other parties. The conference will not be  
26 reported. Statements made by participants at a discovery  
conference are not admissible for evidentiary purposes.  
Parties shall determine a process to confirm among themselves  
the results of the discussions. The commission may designate  
an administrative law judge to preside at a discovery  
conference. On its own motion or on the request of a party,  
the commission may designate a person, who is not associated  
with any party, with commission advisory staff as to that  
proceeding, or with commission advocacy staff, to facilitate a  
discovery conference.

23 **WAC 480-10-365 Alternate dispute resolution.**<sup>107</sup> The  
24 commission supports parties' efforts to resolve disputes  
25 without the need for litigation when doing so is lawful and  
consistent with the public interest. Alternate dispute  
resolution (ADR) includes any mechanism to resolve

26 <sup>107</sup> Source: WAC 480-09-465.

1 disagreement without hearings or litigation.

2 (1) The commission will not delegate to parties the power  
3 to make final decisions, but will retain the authority to  
4 approve any proposed settlement or agreement.

5 (2) Parties to a dispute or disagreement on a matter that  
6 is under the commission's jurisdiction may agree to negotiate  
7 with any other parties at any time without commission  
8 oversight. The commission may direct parties to meet or  
9 consult under WAC 480-~~09-46610-370~~(1) and may establish a  
10 collaborative process under WAC 480-~~09-46710-375~~. The  
11 commission encourages parties to use and experiment with other  
12 forms of ADR subject to the commission's approval.

13 (3) The commission may direct parties to a proceeding to  
14 enter negotiations aimed at resolving issues in the  
15 proceeding.

16 (4) In any negotiation, the following apply unless all  
17 participants agree otherwise:

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

22 (b) No statement, admission, or offer of settlement shall  
23 be admissible in evidence in any formal hearing before the  
24 commission without the consent of the participants or unless  
25 necessary to address the process of the negotiations;

26 (c) Parties may agree that information be treated as  
confidential to the extent provided in a commission protective  
order; and

(d) Participants should advise each other, any mediator  
or facilitator, and the commission, if the negotiation is  
sanctioned by the commission, if the negotiation is without  
substantial prospects of resolving the issue or issues under  
negotiation.

21 **WAC 480-10-370 Settlement conference, ~~---~~ settlements.**<sup>108</sup>

22 The commission favors the voluntary settlement of disputes  
23 within its jurisdiction. It will approve settlements when  
24 doing so is lawful and when the result is appropriate and  
25 consistent with the public interest in light of all the  
26 information available to the commission.

(1) Settlement conferences. In support of a voluntary

<sup>108</sup> Source: WAC 480-09-466.

1 settlement of any dispute within the commission's  
2 jurisdiction, the commission may invite or direct the parties  
3 to confer among themselves or with a designated person.  
4 Settlement conferences shall be informal and without prejudice  
5 to the rights of the parties. Any resulting settlement or  
6 stipulation shall be stated on the record of the conference or  
7 submitted to the commission in writing and is subject to  
8 approval by the commission.

9 **(2) Settlements.** A settlement is an agreement among two  
10 or more parties to a proceeding to resolve one or more issues.

11 (a) Commission discretion to accept/reject settlement.  
12 The commission may exercise discretion whether to accept a  
13 proposed settlement for its review. If the commission accepts  
14 a settlement for review in an adjudication, the commission  
15 will schedule a time at a hearing session for parties to  
16 present the settlement and for the commissioners to inquire  
17 about it, unless the commission believes such a session to be  
18 unnecessary for it to exercise informed judgment upon the  
19 proposal.

20 (b) Partial settlement. An agreement of all parties on  
21 some issues may be presented as a partial settlement for  
22 commission review, and remaining matters may be litigated.

23 (c) Multiparty settlement. An agreement of some, but not  
24 all, parties on one or more issues may be offered as their  
25 position in the proceeding, with the evidentiary proof that  
26 they believe appropriate to support it, for commission review.  
Nonsettling parties may offer evidence and argument in  
opposition.

(d) Notification of commission. Parties shall advise the  
commission when they have reached a partial or multiparty  
settlement and may suggest preferred procedural alternatives  
for review of the settlement. The commission will determine  
the appropriate procedure.

21 **WAC 480-10-375 Collaboratives.**<sup>109</sup> (1) A "collaborative"  
22 is a negotiation sanctioned by the commission in which  
23 interested persons work with each other and representatives of  
24 commission staff to achieve consensus on one or more issues  
25 assigned to or identified by the collaborative participants.  
26 Membership in the collaborative must reflect the interests  
reasonably expected to be substantially affected by the result

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<sup>109</sup> Source: WAC 480-09-467.

1 of the collaborative.

2 (2) When beginning a collaborative, participants must  
3 address procedural guidelines for negotiations that the  
4 commission has set out in a policy statement. Communication  
5 between the commission and the collaborative participants may  
6 be made through the commission secretary. Changes in the  
7 orientation or membership of the collaborative, the issues it  
8 will address, or similar matters, may be made with commission  
9 knowledge and consent by letter from the secretary or by other  
10 means with the agreement of collaborative participants and the  
11 commission.

9 **WAC 480-10-380 Motion for summary disposition.**<sup>110</sup> (1)  
10 **Motion to dismiss.** (a) General. A party may move to dismiss  
11 ~~an opposing party's pleading, including the documents~~  
12 ~~initiating the case, another party's claim or case~~ if the  
13 ~~opposing party's~~ pleading fails to state a claim on which the  
14 commission may grant relief. In ruling upon a motion made  
15 under this subsection, the commission will consider the  
16 standards applicable to a motion made under CR 12 (b)(6),  
17 12(c), or 50, as applicable, of the civil rules for superior  
18 court.<sup>111</sup> If, on a motion to dismiss permitted under this  
19 subsection, matters outside the pleading subject to the motion  
20 are presented and not excluded by the commission, the motion  
21 shall be treated as one for summary judgment and disposed of  
22 pursuant to subsections (2) and (3) of this section, and all  
23 parties shall be given a reasonable opportunity to present all  
24 materials made pertinent to such a motion by subsections (2)  
25 and (3) of this section.<sup>112</sup>

19 (b) ~~Timing of motion to dismiss-Response-Hearing.~~<sup>113</sup>  
20 ~~Parties must file petitions or m~~Motions seeking the dismissal  
21 of any party or any portion of a proceeding, ~~or any other~~  
22 ~~pleading that in the moving party's judgment requires the~~  
23 ~~submission of a written motion, petition, brief or statement~~  
24 ~~of authorities, and must be filed and served them on all other~~  
25 parties no later than one week prior to the first scheduled  
26 hearing session after grounds for the petition or motion  
become apparent; the commission may approve later filing upon  
a showing of good cause. A party answering such a pleading

<sup>110</sup> Source: WAC 480-09-426.

<sup>111</sup> Source: WAC 480-09-426(1).

<sup>112</sup> New language (based on CR 12(b) and 12(c)).

<sup>113</sup> Source: WAC 480-09-736(14).

1 shall file the answer and serve it on other parties at least  
2 three days prior to the hearing. The commission may allow  
3 oral argument in the commission's discretion. Parties must  
4 serve pleadings so as to effect actual receipt within the  
5 required time.

6 **(2) Motion for summary determination.**<sup>114</sup> (a) General. A  
7 party may move for summary determination if the pleadings  
8 filed in the proceeding, together with any properly admissible  
9 evidentiary support, show that there is no genuine issue as to  
10 any material fact and the moving party is entitled to summary  
11 determination in its favor. In considering a motion made  
12 under this subsection, the commission will consider the  
13 standards applicable to a motion made under CR 56 of the  
14 superior court civil rules ~~for superior court~~.

15 (b) Timing of motion for summary determination-Response-  
16 Hearing.<sup>115</sup> Presentation of a motion for summary disposition  
17 will not automatically stay any scheduled procedures. Except  
18 with permission from the commission, motions for summary  
19 disposition must be presented more than thirty days prior to  
20 the next applicable hearing session. Responses must comply  
21 with the provision of WAC 480-10-310(1)(e) ~~WAC 480-09-425 and~~  
22 ~~480-09-736~~. The commission may order a continuance of any  
23 procedure and may order oral or written response on a schedule  
24 consistent with any established hearing schedule in the  
25 proceeding.

26 **WAC 480-10-385 Notice of hearing. (1) Initial hearing  
notice.** (a) Timing.<sup>116</sup> The time and place of the first  
hearing session or prehearing conference in any adjudication  
will be set by the commission in a notice served upon all  
parties at least twenty days in advance of the hearing or  
conference. The commission may establish a shorter notice if  
it believes that good cause exists. An effort will be made to  
set all hearings sufficiently in advance so that all parties  
will have a reasonable time to prepare their cases, and so  
that need for continuances will be minimized.

(b) Provisions for appointment of interpreter.<sup>117</sup> The  
initial notice of hearing shall state that, if a limited  
English-speaking or hearing-impaired party needs an

<sup>114</sup> Source: WAC 480-09-426.

<sup>115</sup> Source: WAC 480-09-426.

<sup>116</sup> Source: WAC 480-09-700(1)(a).

<sup>117</sup> Source: WAC 480-09-700(2).



1 interpreter, a qualified interpreter will be appointed at no  
2 cost to the party or witness. The notice shall include a form  
3 for a party to indicate whether he or she needs an interpreter  
and to identify the primary language or hearing impaired  
status of the party.

4 **(2) Notice of continued hearing sessions.**<sup>118</sup> (a)

Permitted forms of notice. When a hearing is not concluded in  
5 one day, the time and place of continued hearing sessions may  
be set:

6 (i) Upon the record without further written notice to the  
7 parties;

8 (ii) By letter or formal notice of hearing from the  
secretary of the commission; or

9 (iii) By letter from the presiding officer.

10 (b) Timing. The commission need not give twenty days'  
prior notice of continued hearing sessions.

11  
12 **WAC 480-10-387 Failure to appear at hearing. (1)**

13 **Dismissal or default.** (a) Dismissal or default.<sup>119</sup> At the  
14 time and place set for hearing, if a party fails to appear,  
15 the commission may dismiss the party or find the party in  
16 default. The presiding officer may recess the hearing for a  
17 brief period to enable the party to attend the hearing. If  
18 the party is not present or represented when the hearing  
19 resumes, the commission may dismiss the party or find the  
party in default. When the commission finds a party in  
20 default, it will implement the default by a default order or  
by a default provision in the order disposing of the issues in  
21 the proceeding, pursuant to RCW 34.05.440. Default may be  
22 appropriate in instances where the party is the initiator of  
23 the proceeding, such as an applicant, a petitioner, or a  
24 complainant.

(b) Review of order of dismissal or default.<sup>120</sup> When the  
25 commission dismisses a party from a proceeding it will do so  
26 by an order of dismissal or by a dismissal provision in the  
order disposing of the issues in the proceeding. A person who  
is dismissed may contest a dismissal order by seeking  
interlocutory review. If interlocutory review is denied, or  
if the dismissal is a provision of an initial or final order,

<sup>118</sup> Source: WAC 480-09-700(1)(b).

<sup>119</sup> Source: WAC 480-09-700(3)(a)-(b).

<sup>120</sup> Source: WAC 480-09-700(3)(c).

1 the person who is dismissed may petition for reopening until  
2 the close of the time for filing a petition for administrative  
3 review of an initial order or, if no initial order is entered,  
4 until the close of the period for filing a petition for  
5 reconsideration.

6 **(2) Sanctions for failure to appear.**<sup>121</sup> Except when a  
7 hearing is otherwise required by law, an applicant for  
8 operating authority or for transfer or acquisition of control  
9 of operating authority, or a protestant to such an application  
10 must appear at any scheduled adjudicative hearing session  
11 unless:

12 (a) The application or protest is withdrawn at least five  
13 days prior to the date set; or

14 (b) Appearance is otherwise excused by the commission or  
15 presiding officer in writing.

16 Failure to comply with this subsection may result in  
17 assessment of civil penalties.

18 **WAC 480-10-390 Predistribution of exhibits and prefiled  
19 testimony. (1) Predistribution of evidence.**<sup>122</sup> The commission  
20 may require that parties distribute their proposed evidence to  
21 other parties before the start of the hearing.

22 (a) Number of copies. When predistribution of evidence  
23 is required, each party shall file twenty copies of its  
24 evidence with the commission unless the commission specifies a  
25 different number. Because a smaller number may satisfy  
26 commission needs in some proceedings, and because electronic  
copies may substitute for paper copies, parties should inquire  
at a prehearing conference or directly of the presiding  
officer about the number of required copies. Because the  
required number of filed copies includes copies for the  
commission staff, the accounting adviser, and the  
administrative law judge, parties need not provide additional  
copies for those persons.

(b) Changes or corrections. Each party must advise other  
parties of substantive corrections to evidence that has been  
prefiled as soon as the need for change is discovered.  
Parties should prepare an errata sheet or a revised exhibit  
for submission at the hearing to reflect changes from prefiled  
testimony. Counsel should not ask a witness on the stand to

<sup>121</sup> Source: WAC 480-09-700(4).

<sup>122</sup> Source: WAC 480-09-736(6).

1 correct obvious typographical errors in the prefiled testimony  
2 or to make more than three substantive changes--if more than  
3 three corrections are required, the party must submit an  
4 errata sheet or revised documents.

5 (c) Distribution at hearing. When a party offers new  
6 exhibits, revised exhibits, or errata sheets at a hearing, the  
7 party must provide sufficient copies for all parties and for  
8 the commission's distribution requirements. Corrections and  
9 revisions should be made upon or attached to all documents  
10 distributed at the hearing before the copies are distributed.  
11 Subsection ~~(10)~~(2)(d) of this section governs other aspects of  
12 revising and offering predistributed testimony and exhibits.  
13 Each party should bring two complete sets of current exhibits  
14 to the hearing, one for the court reporter and one for the  
15 official record.

16 **(2) Prefiled testimony.**<sup>123</sup> (a) Exhibits to prefiled  
17 testimony. Prefiled testimony may be accompanied by exhibits.  
18 Parties should not preassign numbers to their own prefiled  
19 testimony and exhibits. Instead the following system should  
20 be used, including the witness's initials, and marked  
21 serially. For John Q. Witness's prefiled testimony and  
22 accompanying exhibits:

23 Ex. . . . (JQW-T) Ex. . . . (JQW-2)  
24 Ex. . . . (JQW-1) Ex. . . . (JQW-3)

25 Counsel unfamiliar with this method of identification should  
26 ask the presiding officer for further guidance. The presiding  
officer will assign exhibit numbers for the case at the  
hearing session.

(b) Summary of testimony. Each witness should present a  
short summary of his or her remarks on the opening page or two  
of prepared testimony. Counsel will be expected to ask as a  
foundation question the subjects that will be covered by the  
witness. This foundation question should request, and the  
witness' response should include only a statement of the  
subjects to be covered by the witness, e.g., rate of return,  
and not a summary of the witness's positions on those  
subjects.

(c) All ~~prepared-prefiled~~ testimony, exhibits, and  
pleadings must ~~be 8-1/2 by 11 inches in size, reduced to that  
size, or folded to that size if reduction would be illegible,  
and punched for insertion into three-ring binders conform to~~  
the format requirements set forth in WAC 480-10-315(1). In

<sup>123</sup> Source: WAC 480-09-736(7)-(10)

1 addition, ~~line~~ numbers must be set out on all prepared  
2 testimony to facilitate transcript or exhibit references.  
3 Large documents may be used at the hearing for illustrative  
4 purposes so long as a reduction is provided for inclusion in  
5 the record.

6 (d) Revisions to exhibits. Parties submitting revisions  
7 to predistributed or previously admitted testimony or exhibits  
8 must prominently label them "REVISED", stating the date of the  
9 revision. The revised portions must be highlighted, in  
10 legislative style or other manner clearly indicating the  
11 change for comparison with the original submissions. This  
12 practice should be followed even with minor changes that  
13 involve only one page of an exhibit. Counsel should identify  
14 partial revisions by page and date, or identify the revision  
15 of the exhibit, at the time an exhibit is presented for  
16 identification, sponsored, or offered into evidence, as  
17 appropriate. Subsection ~~(6)~~(1) of this section governs other  
18 aspects of revising and presenting predistributed exhibits.

19 **WAC 480-10-395 Hearing guidelines.** These guidelines are  
20 of a general nature and are provided to assist the presiding  
21 officer in regulating the course of the proceeding. The  
22 presiding officer may when appropriate suspend or modify the  
23 guidelines or use measures not specified in this rule.<sup>124</sup>

24 (1) **No smoking.**<sup>125</sup> Smoking is prohibited at hearings of  
25 the commission.

26 (2) **Starting times.**<sup>126</sup> Starting times will be strictly  
observed. The proceeding may go forward in the absence of  
counsel, parties, or witnesses who are late.

(3) **Appearances.**<sup>127</sup> All persons who will be representing  
a party in a formal proceeding must give their names and  
addresses in writing to the court reporter immediately before  
the first hearing session in which they appear. The presiding  
officer conducting the hearing or prehearing conference will  
require appearances to be stated orally at the initial hearing  
session, and may also ask for oral appearances at subsequent  
sessions in the same proceeding, so that all persons attending  
the hearing will know the identity and interest of all parties

<sup>124</sup> Source: WAC 480-09-736.

<sup>125</sup> Source: WAC 480-09-730.

<sup>126</sup> Source: WAC 480-09-736(1).

<sup>127</sup> Source: WAC 480-09-720.

1 present.

2 **(4) Summary by public counsel.**<sup>128</sup> At the beginning of a  
3 hearing session for the purpose of taking testimony from  
4 members of the public, public counsel may inform the public of  
5 the major contested issues.

6 **(5) Order of presentation.**<sup>129</sup> (a) General. Evidence will  
7 ordinarily be received in the following order:

- 8 (i) The party having the burden of proof;
- 9 (ii) Commission staff, if it supports the party having  
10 the burden of proof;
- 11 (iii) Parties supporting the party having the burden of  
12 proof;
- 13 (iv) Commission staff, if it opposes the party having the  
14 burden of proof;
- 15 (v) Other parties opposing the party having the burden of  
16 proof;
- 17 (vi) The commission staff, if it does not oppose the  
18 party having the burden of proof;
- 19 (vii) Rebuttal by the party having the burden of proof;
- 20 (viii) Response by other parties to any new material  
21 received on rebuttal;
- 22 (ix) Response by the party having burden of proof to any  
23 new material received from others.

24 (b) Modification of procedure presentation. The presiding  
25 officer may direct a modified order of proceeding presentation.  
26 When hearing several proceedings on a consolidated record, or  
when parties do not oppose or support all of another party's  
positions, the presiding officer will designate the order of  
presentations, considering the parties' preferences.

**(6) Evidence; exhibits; stipulations as to facts.**<sup>130</sup> The  
presiding officer may receive evidence as provided by RCW  
34.05.452. WAC 480-09-745 and 480-09-750 480-10-400, 480-10-  
405 and 480-10-410 provide guidelines for receipt and handling  
of evidence in commission proceedings party stipulations as to  
facts, exhibits, documentary evidence, the rules of evidence,  
official notice and resolutions.

**(7) Matters to be handled at beginning of session.**<sup>131</sup>  
Motions related to evidence or to the procedural course of the  
hearing, but not involving dismissal of a party or a part of  
the proceeding, will be stated and argued at the start of the

<sup>128</sup> Source: WAC 480-09-736(12).

<sup>129</sup> Source: WAC 480-09-735.

<sup>130</sup> Source: WAC 480-09-740.

<sup>131</sup> Source: WAC 480-09-736(2).

1 day, unless they arise from matters emerging during the  
2 hearing that are not reasonably foreseeable. The presiding  
3 officer must be notified no later than the start of the  
4 hearing session of any motion that counsel anticipates may be  
5 presented during the hearing, such as one that may require  
6 foundation regarding the admissibility of evidence. The  
7 presiding officer shall set a time prior to the start of the  
8 presentation of evidence for marking, distribution, and  
9 argument regarding exhibits to be offered during the day and  
10 for arguing other matters.

11 **(8) Testimony under oath.**<sup>132</sup> The presiding officer shall  
12 administer an oath or affirmation to each witness who is heard  
13 in an adjudicative proceeding before the witness takes the  
14 stand. The oath or affirmation shall be administered as  
15 follows: ~~The~~the prospective witness shall stand and raise  
16 his or her hand, while the presiding officer asks the  
17 following, or its equivalent: "Do you solemnly swear or  
18 affirm that the evidence you shall give in the matter now  
19 pending before the commission shall be the truth, the whole  
20 truth and nothing but the truth, so help you God?" When  
21 members of the public testify about their sentiments on a  
22 proposal that is the subject of an agency adjudication, the  
23 commission may provide a form of oath for witnesses on sign-up  
24 sheets in lieu of an oral oath.

25 **(9) Addressing the presiding officer or witnesses.**<sup>133</sup> All  
26 counsel are expected to address comments, objections, and  
statements to the presiding officer rather than to other  
counsel. Questions will be addressed to the witnesses rather  
than to counsel.

**(10) Resolving matters off the record.**<sup>134</sup> Counsel who  
request off-the-record discussions must ask leave to go off  
the record and state the purpose for the request. Extended  
colloquies regarding procedural issues should be conducted off  
the record. Each attorney will have the opportunity to state  
for the record a summary of his or her view on behalf of his  
or her client when the record resumes.

**(11) Witness panels.**<sup>135</sup> The commission may direct or  
allow two or more witnesses to take the stand simultaneously  
when doing so allows a benefit such as the integrated response  
to a line of questions, minimizing referral of questions from

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<sup>132</sup> Source: WAC 480-09-730(2), (3).

<sup>133</sup> Source: WAC 480-09-736(3).

<sup>134</sup> Source: WAC 480-09-736(4), (5).

<sup>135</sup> Source: WAC 480-09-751.

1 one witness to another, or comparing witnesses' positions.  
2 The presiding officer shall also allow cross-examination of  
3 each witness upon matters within the witness's direct  
4 evidence.

5 **(12) Cross-examination.**<sup>136</sup> For planning purposes, counsel  
6 should be prepared to provide time estimates for cross-  
7 examination of witnesses. The presiding officer will limit  
8 cross-examination to two rounds unless counsel demonstrates  
9 that good cause exists for asking additional questions.  
10 Counsel should not ask witnesses to perform calculations or  
11 extract detailed data while the witness is on the stand.  
12 Counsel should provide such questions to the witness in  
13 advance, should ask the witness to provide the answer to the  
14 record later in the hearing session, or should provide an  
15 answer and ask the witness to accept it "subject to check."  
16 When a witness accepts information "subject to check," the  
17 witness must perform the "check" as soon as possible. A  
18 response given "subject to check" will be considered accurate  
19 unless the witness disputes it in writing, stating reasons.  
20 Counsel for the party sponsoring the witness must provide the  
21 witness' statement and serve a copy on each party prior to the  
22 closing of the record or within ten days after distribution of  
23 the transcript whichever occurs first.

24 **(13) Request for commission action before next session.**<sup>137</sup>  
25 When a party requests that the commission take some action  
26 prior to the next hearing session, the petitioner or movant  
shall serve all other parties. Responses are due no later  
than the close of the fifth business day following service,  
except as provided in WAC 480-~~09-425(3)~~10-320.

**(14) Post-hearing planning.**<sup>138</sup> The presiding officer  
shall confer with the parties at the conclusion of the hearing  
about post-hearing process. The presiding officer shall  
determine whether oral argument, briefs, or both will be  
required, taking into consideration the parties' preferences.  
If briefs are required, the presiding officer shall determine  
a format to be used by all parties. Briefs must comply with  
WAC 480-~~09-77010-315~~(1).

**(15) Transcript.**<sup>139</sup> Each party will bear its own costs  
for transcripts or tape recordings, including charges for  
expedited service when a party requests it.

<sup>136</sup> Source: WAC 480-09-736(11), (18).

<sup>137</sup> Source: WAC 480-09-736(15).

<sup>138</sup> Source: WAC 480-09-736(16).

<sup>139</sup> Source: WAC 480-09-736(17).

1  
2  
3       **WAC 480-10-400 Stipulation as to facts.**<sup>140</sup> A stipulation  
4 is an agreement among parties as to one or more operative  
5 facts in a proceeding. The commission encourages parties to  
6 enter stipulations of fact. The parties to any proceeding or  
7 investigation before the commission may agree upon the facts  
8 or any portion of the facts involved in the controversy. The  
9 parties to a stipulation may file it in writing or enter it  
10 orally into the record. This stipulation, if accepted by the  
11 commission, shall be binding upon the parties. The parties  
12 may present the stipulation as evidence at the hearing. The  
13 commission may reject the stipulation or require proof of the  
14 stipulated facts, despite the parties' agreement to the  
15 stipulation.

16       **WAC 480-10-405 Exhibits and documentary evidence. (1)**  
17 **Designation of part of document as evidence.**<sup>141</sup> A party who  
18 offers evidence that consists of a portion of a document, must  
19 designate the portion that is offered. If irrelevant matter  
20 would unnecessarily encumber the record, the document will not  
21 be received in evidence, but the relevant or material matter  
22 may be read into the record, or the presiding officer may  
23 receive a copy of the excerpt as an exhibit. If only a  
24 portion is offered or received, other parties shall be  
25 afforded an opportunity to examine the document, and to offer  
26 other portions in evidence.

**(2) Official records.**<sup>142</sup> An official document, prepared  
and issued by any governmental authority may be evidenced by a  
certified copy. When official records, otherwise admissible,  
are contained in official publications or publications by  
nationally recognized reporting services which are in general  
circulation and readily accessible to all parties, they may be  
introduced by reference, provided, that the party offering the  
document clearly identifies the record. The party offering  
the evidence may be required to provide a copy to the record  
and to all parties.

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<sup>140</sup> Source: WAC 480-09-470.

<sup>141</sup> Source: WAC 480-09-745(1).

<sup>142</sup> Source: WAC 480-09-745(2).



1           **(3) Commission's files.**<sup>143</sup> (a) The presiding officer may  
2 receive documents on file with the commission by reference to  
3 number, date, or by any other method of identification  
4 satisfactory to the presiding officer. If only a portion of a  
5 document is offered in evidence, the part offered must be  
6 clearly designated. The presiding officer may require the  
7 party offering the evidence to provide a copy to the record  
8 and to each party.

9           (b) Intra-office commission memoranda and reports, to the  
10 extent permitted by RCW 42.17.310, are not public records  
11 subject to inspection and the commission may not receive them  
12 into evidence without a waiver of the protections of the law.

13           **(4) Records in other proceedings.**<sup>144</sup> A portion of the  
14 record of any other commission proceeding, in the discretion  
15 of the presiding officer, may be received as an exhibit in the  
16 form of a copy; by citation to the transcript or exhibit  
17 number; or by incorporation into the transcript of the current  
18 proceeding.

19           **(5) Documents from the public.**<sup>145</sup> When a witness  
20 presenting testimony as a member of the public presents a  
21 document in conjunction with his testimony, the commission may  
22 receive the document as an illustrative exhibit. The  
23 commission may receive as illustrative of the opinions of  
24 correspondents any letters that have been received by the  
25 secretary of the commission and by public counsel from members  
26 of the public regarding a proceeding. Documents presented by  
a public witness that are exceptional in their detail or their  
probative nature may be received into evidence separately,  
provided that a sponsoring witness is available for cross-  
examination. Only exhibits and testimony received in evidence  
are part of the record and subject to consideration by the  
commission in its decision.

**(6) Objections.**<sup>146</sup> Any evidence offered shall be subject  
to appropriate and timely objection. The presiding officer  
need not specifically ask each representative whether that  
party objects to an offer of evidence or other motion or  
proposed action. Instead, the presiding officer may ask  
generally whether there are objections, and persons having  
objections shall state them. Failure to respond or object  
means that the party does not object, and shall constitute a

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<sup>143</sup> Source: WAC 480-09-745(3).

<sup>144</sup> Source: WAC 480-09-745(4).

<sup>145</sup> Source: WAC 480-09-736(19).

<sup>146</sup> Source: WAC 480-09-736(20), 745(5).

1 waiver of the right to object.

2 (7) **Copies of exhibits.**<sup>147</sup> A party offering documentary  
3 exhibits must furnish copies to opposing counsel, the  
4 presiding officers and the reporter, unless the presiding  
5 officer otherwise directs. The presiding officer may require  
6 the distribution of exhibits, including exhibits that may be  
7 introduced on cross-examination, before the hearing. The  
8 parties should exchange copies of exhibits before the hearing  
9 starts.

10 **WAC 480-10-410 Rules of evidence; official notice;**  
11 **resolutions.**<sup>148</sup> (1) **General.** Subject to the other provisions  
12 of this section, all relevant evidence is admissible that, in  
13 the opinion of the presiding officer, is the best evidence  
14 reasonably obtainable, having due regard to its necessity,  
15 availability, and trustworthiness. In ruling upon the  
16 admissibility of evidence, the presiding officer shall give  
17 consideration to, but shall not be bound to follow, the rules  
18 of evidence governing general civil proceedings, in matters  
19 not involving trial by jury, in the courts of the state of  
20 Washington.

21 Irrelevant, duplicative, and inadmissible evidence  
22 burdens the commission and all parties. To minimize that  
23 burden, the presiding officer shall to the extent possible  
24 exclude evidence that is irrelevant, repetitive, or  
25 inadmissible, whether or not a party objects to the evidence.  
26 Parties objecting to the introduction of evidence must state  
the grounds for the objection at the time the evidence is  
offered. The presiding officer may permit the party offering  
rejected evidence to describe briefly for the record its  
nature and purpose as an offer of proof.

(2) **Official notice.** (a) The commission may take  
official notice of:

(i) Any judicially cognizable fact. Examples of such  
facts include, but are not limited to:

(A) Rules, regulations, administrative rulings and  
orders, exclusive of findings of fact, of the commission and  
other governmental agencies;

(B) Contents of certificates, permits, and licenses  
issued by the commission; and

<sup>147</sup> Source: WAC 480-09-745(6).

<sup>148</sup> Source: WAC 480-09-750.

1 (C) Tariffs, classifications, and schedules regularly  
2 established by or filed with the commission as required or  
authorized by law.

3 (ii) Technical or scientific facts within the  
commission's specialized knowledge; and

4 (iii) Codes or standards that have been adopted by an  
5 agency of the United States, or this state or of another  
6 state, or by a nationally recognized organization or  
association.

7 (b) In addition, the commission may, in its discretion  
8 upon notice to all parties, inspect physical conditions that  
are at issue and take official notice of the results of its  
inspection.

9 (c) Parties shall be notified before or during the  
10 hearing, or by reference in preliminary reports or otherwise,  
of material officially noticed and its sources, and the  
11 presiding officer must afford parties an opportunity to  
contest facts and material so noticed. The presiding officer  
12 may require the party proposing official notice to provide  
copies of officially noted matter to the record and to all  
other parties.

13 (3) Resolutions. The presiding officer may receive in  
14 evidence authenticated resolutions of the governing bodies of  
municipal corporations and of chambers of commerce, boards of  
15 trade, commercial, mercantile, agricultural, or manufacturing  
societies and other civic organizations. Any recital of  
16 facts contained in a resolution may not be considered as proof  
of those facts.

17  
18  
19 **WAC 480-10-415 Interlocutory orders.**<sup>149</sup> (1) When review  
is available. ~~The~~In its discretion, the commission ~~has~~  
20 ~~discretion to may~~ accept ~~or decline~~ review of interim or  
interlocutory orders in an adjudication ~~if-~~

21 ~~(1) The commission may review such orders when~~ it finds  
that:

22 (a) A party's participation is terminated by the ruling  
and the party's inability to participate thereafter could  
23 cause it substantial and irreparable harm;

24 (b) A review is necessary to prevent substantial  
prejudice to a party that would not be remediable by post-  
25 hearing reviewing; or

26 <sup>149</sup> Source: WAC 480-09-760.

1 (c) A review could save the commission and the parties  
2 substantial effort or expense, or some other factor is present  
3 that outweighs the costs in time and delay of exercising  
4 review.

5 **(2) Process for seeking review.** Any aggrieved party may  
6 petition for review of an interlocutory order. Petitions for  
7 interlocutory review must be filed with the commission and  
8 served on other parties within ten days after entry of the  
9 order or issuance of the ruling for which review is requested,  
10 stating clearly why the ruling is in error and citing reasons  
11 in support of the petition. Answers must be filed within ten  
12 days after the petition is filed. The commission may alter  
13 these filing deadlines when doing so is consistent with the  
14 public interest.

15 **WAC 480-10-420 Entry of initial and final orders--**  
16 **Administrative review.**<sup>150</sup> **(1) General.** Whenever the presiding  
17 officer enters an order under RCW 34.05.461, he or she must  
18 serve a copy of the order upon each party of record and upon  
19 the party's attorney, or other authorized representative  
20 pursuant to WAC 480-09-120(2)10-150(3).

21 **(2) Petitions for administrative review.** (a) Timing of  
22 petition. Any party to an adjudicative proceeding may file a  
23 petition for administrative review within twenty days after  
24 entry of the initial order.

25 ~~(b) Unless the commission authorizes a different number a  
26 petitioner for administrative review must file an original and  
nineteen copies of the petition with the secretary of the  
commission and must serve one copy upon each other party to  
the adjudication. The petitioner must provide proof of  
service in accordance with WAC 480-09-120(2).~~

(e) Contents; length. Petitions must clearly identify  
the nature of each challenge to the initial order, the  
evidence, law, rule or other authority that the petitioner  
relied upon to support the challenge, and the remedy that the  
petitioner seeks. Petitions for review of initial orders must  
be specific. The petitioner must separately state and number  
every contention. A petition that challenges a finding of  
fact must provide citations to the pertinent page or part of  
the record or must otherwise state the evidence relied upon to  
support the petition, and should include a recommended finding

<sup>150</sup> Source: WAC 480-09-780.

1 of fact. A petition that challenges conclusions of law must  
2 cite the appropriate statute, rule, or case involved and  
3 should include a recommended conclusion of law. A petition  
4 that challenges the summary or discussion portion of an  
5 initial order must include a statement showing the legal or  
6 factual justification for the challenge, together with a  
7 statement of how the asserted defect affects the findings of  
8 fact, the conclusions of law, and the ultimate decision.  
9 Petitions for administrative review shall not exceed sixty  
10 pages, without prior permission from the commission.

11 **(3) Answers.** (a) Who may answer. Any party to the  
12 adjudication may answer a petition for administrative review.

13 (b) Filing and service. ~~Unless the commission authorizes~~  
14 ~~filing a different number an answering party must file with~~  
15 ~~the secretary of the commission, the original plus nineteen~~  
16 ~~copies and must serve a copy on each other party to the~~  
17 ~~proceeding~~An answer to a petition for administrative review  
18 must be filed and served within ten days after the service of  
19 the petition. The commission may designate a different time  
20 for filing answers to petitions.

21 (c) Challenge of order in answer. A party who did not  
22 file a petition for administrative review of an initial order  
23 may challenge the order or portions thereof in its answer to  
24 the petition of another party.

25 **(4) Oral argument.** The commission may, in its  
26 discretion, hear oral argument upon a petition for review at a  
time and place to be designated by it upon notice to all  
parties to the proceeding. A party who desires to present  
oral argument may move for argument, stating why the oral  
argument will assist the commission in making its decision and  
why written presentations will be insufficient.

**(5) Final order.** After reviewing the initial order and  
any petitions for review, answers, replies, briefs, and oral  
arguments, and the record or such portions thereof as may be  
cited by the parties, the commission may by final order adopt,  
modify, or reject an initial order. The statutory time for  
judicial review proceedings shall not commence until the date  
of the commission's final order or, if a petition for  
reconsideration has been filed, the date the petition is  
considered denied or is otherwise disposed of.

1           **WAC 480-10-425 Order conferences.**<sup>151</sup> On the commission's  
2 own motion or at the request of a party, the commission may  
3 schedule an order conference at which parties may ask  
4 clarification of the meaning of a final order entered or to be  
5 entered by the commission or discuss disagreements about the  
6 commission order. The commissioners may attend the conference  
7 personally or may designate one or more staff persons to  
8 attend on their behalf. The purposes of the conference are to  
9 allow parties to ask clarification of the meaning of an order  
10 so that compliance may be enhanced, so any compliance filing  
11 may be accurately prepared and presented, and to discover  
12 technical changes that may be required to correct the  
13 application of principle to data or to correct patent error  
14 without the need for parties to request reconsideration and  
15 without delaying post-order compliance. An order conference  
16 will not stay the effect of the order, the time for  
17 compliance, the time for securing post-order review, or the  
18 time for petitioning for judicial review, unless the  
19 conference results in a supplemental commission order which  
20 then becomes a final order subject to review. An order  
21 conference does not constitute a formal interpretation of the  
22 order. The order itself will remain the sole expression of  
23 the commission's opinion unless supplemented through an  
24 additional order. The presiding officer will determine  
25 whether an order conference will be reported. The conference  
26 is not a forum for discussing or challenging the evidentiary  
or policy decisions expressed in the order. Those remedies  
may be pursued through a petition for reconsideration or other  
means under pertinent rule or statute.

19           **WAC 480-10-430 Stay.**<sup>152</sup> Any party to an adjudication may  
20 petition for stay of the effectiveness of a final order within  
21 ten days after its service unless otherwise provided by  
22 statute or stated in the final order. The commission may stay  
23 the effect of a final order on its own motion.

24           **WAC 480-10-435 Reconsideration.**<sup>153</sup> (1) **General.** Any

25 <sup>151</sup> Source: WAC 480-09-460(5).

26 <sup>152</sup> Source: WAC 480-09-800.

<sup>153</sup> Source: WAC 480-09-810.

1 party to an adjudicative proceeding may petition for  
2 reconsideration of the final order within ten days after the  
order is served.

3 ~~(2) Number of copies -- filing -- service. Unless the~~  
4 ~~commission has authorized filing a different number of copies,~~  
5 ~~the person filing a petition for reconsideration must file an~~  
6 ~~original and nineteen copies with the commission and must~~  
7 ~~serve a copy of the petition upon each party of record.~~

8 **(32) Contents.** The petition must clearly identify each  
9 portion of the challenged order that the petitioner contends  
10 is erroneous or incomplete, must cite those portions of the  
11 record and each law or rule of the commission that the  
12 petitioner relies upon to support the petition, and must  
13 present brief argument in support of the petition.

14 **(43) Answers.** No party may file an answer unless  
15 requested by the commission. If the commission after  
16 examining the petition believes that reconsideration involving  
17 a possible change in a significant term of the order may be  
18 appropriate, it shall request answers from the other affected  
19 parties. The commission may grant without seeking answers a  
20 petition for reconsideration that asks the correction of  
21 obvious or ministerial errors.

22 **(54) Oral argument.** Oral argument will not be heard on  
23 petitions for reconsideration except on request of the  
24 commission.

25 **(65) Disposition.** The petition is deemed denied if,  
26 within twenty days from the date the petition is filed, the  
commission does not either:

(a) Enter an order resolving the petition; or

(b) Serve the parties with a written notice specifying  
the date by which it will act on the petition.

**(76) Action.** If the commission grants the petition, the  
commission may modify its prior order or take such other  
action as it believes to be proper.

**(87) Stay.** Filing a petition for reconsideration does  
not stay the effectiveness of an order or toll the time period  
for seeking judicial review.

**(98) Reconsideration of reconsideration.** No party may  
petition for reconsideration of an order on reconsideration.

(9) Judicial review.<sup>154</sup> Filing a petition for review is  
not a prerequisite for seeking judicial review of a commission  
final order. An order denying reconsideration, or a notice  
provided for in subsection (5)(b) of this section is not

<sup>154</sup> New section (based on RCW 34.05.470(5)).

1 subject to judicial review.

2  
3 **WAC 480-10-440 Amendment, rescission or correction of**  
4 **order.**<sup>155</sup> (1) **Amendment or rescission.** The commission may on  
5 its own motion amend or rescind any order which it has entered  
6 under RCW 80.04.210 or 81.04.210, after notice to the public  
7 service company or companies affected, and after allowing an  
8 opportunity for hearing as in the case of complaints.

9 (2) **Correction.** The commission on its own motion or on  
10 the request of any party may correct obvious or ministerial  
11 errors by letter from the secretary or by subsequent order.  
12 The time for any available posthearing review shall begin with  
13 the service of the correction, as to the matter corrected.

14 **WAC 480-10-445 Rehearing or reopening.**<sup>156</sup> (1) **Rehearing.**  
15 Any person affected by a final order of the commission may  
16 file a petition for rehearing under RCW 80.04.200 or  
17 81.04.200.

18 (2) **Reopening.** Any party to an adjudication may file a  
19 petition for reopening with the commission at any time after  
20 the close of the record and before entry of the final order.

(a) In uncontested proceedings, the commission may grant  
reopening to correct failure to allow receipt of written  
evidence when otherwise permissible.

(b) In contested proceedings, the commission may grant a  
petition to permit receipt of evidence which is essential to a  
decision and which was unavailable and not reasonably  
discoverable with due diligence at the time of the hearing or  
for any other good and sufficient cause.

21  
22 **SUBPART B: General Rate Cases**

23 **WAC 480-10-500 General rate cases--Statement of**  
24

25  
26 <sup>155</sup> Source: WAC 480-09-815.

<sup>156</sup> Source: WAC 480-09-820.



1 **policy.**<sup>157</sup> ~~Statement of policy.~~ The commission establishes  
2 the requirements of WAC 480-~~09-300~~10-500 through 480-~~09-335~~10-  
3 525 for filings relating to general rate increases by  
4 electric, natural gas, telecommunications, low-level  
5 radioactive waste sites, and solid waste collection companies  
6 subject to its jurisdiction. Requirements as to the form and  
7 content of filings will standardize presentations, clarify  
8 issues, and speed and simplify the processing of rate filings.

9 **WAC 480-10-505 General rate cases--Definition.**<sup>158</sup> (1)

10 For the purposes of WAC 480-~~09-300~~10-500 through 480-~~09-335~~10-  
11 525 only, a general rate increase filing is the request by any  
12 company regulated by the commission under Title 80 and  
13 chapters 81.77 and 81.108 RCW for an increase in rates which  
14 meets one or more of the following criteria:

15 (a) The amount requested would increase gross annual  
16 revenue of the company from activities regulated by the  
17 commission by three percent or more.

18 (b) Tariffs are restructured such that the gross revenue  
19 provided by any customer class would increase by three percent  
20 or more.

21 (c) The company requests a change in its authorized rate  
22 of return on common equity or capital structure.

23 (d) The company is regulated under chapter 81.77 RCW,  
24 except those companies that provide specific kinds of  
25 industrial waste collection services, including but not  
26 limited to hazardous and chemical waste, sludge wastes, and  
other industrial waste.

(2) The following proceedings shall not be considered  
general rate increases for companies regulated under Title 80  
RCW even though the revenue requested may exceed three percent  
of the company's gross annual revenue from Washington  
regulated operations: Periodic rate adjustments for electric  
utilities as may be authorized by the commission; natural gas  
tracking increases; emergency or other short-notice increases  
caused by disaster or weather-related conditions unexpectedly  
increasing a public service expense; rate increases designed  
to recover governmentally-imposed increases in costs of doing  
business such as changes in tax laws or ordinances; or other  
increases designed to recover increased expenses arising on

<sup>157</sup> Source: WAC 480-09-300.

<sup>158</sup> Source: WAC 480-09-310.

1 short notice and beyond the public service company's control.

2 (3) The following proceedings shall not be considered  
3 general rate increases for companies regulated under chapter  
4 81.77 RCW even though the request may increase the company's  
5 gross annual revenue from Washington regulated operations:  
6 Tariff item 230 - disposal fee pass through for drop-box  
7 service only provided there are no affiliated interest  
8 relationships; filings for collection of per-customer pass-  
9 through surcharges and taxes imposed by the jurisdictional  
10 local government based on current year customer count either  
11 as a specified dollar amount or percentage fee amount; and,  
12 for the implementation of new collection programs.

13  
14 **WAC 480-10-510 General rate cases--Master service.**<sup>159</sup>

15 The commission will maintain a master service list for each  
16 adjudication on which a hearing is held. The list will  
17 contain the name and address of each party to the proceeding.

18  
19 **WAC 480-10-515 General rate cases--filing**  
20 **requirements.**<sup>160</sup> General rate increase filings for utility  
21 companies shall include, at a minimum, the following  
22 information:

23 (1) Twenty copies of all testimony and exhibits which the  
24 company intends to present as its direct case if the filing is  
25 suspended and a hearing held.

(a) The filing shall also include three copies of  
26 supporting work papers. If the testimony, exhibits or work  
papers refer to a document, including but not limited to a  
report, study analysis, survey, article or decision, that  
document shall be provided as a work paper unless it is a  
reported court or agency decision, in which case the reporter  
citation shall be provided in the testimony. If the document  
is voluminous it need not be provided with the filing but  
shall be made available upon request.

(b) The filing shall also include one copy of the  
testimony, exhibits, and work papers, in an electronic format  
or formats authorized by the secretary of the commission for  
the filing, for use in IBM-compatible computers. Material

<sup>159</sup> Source: WAC 480-09-320.

<sup>160</sup> Source: WAC 480-09-330.

1 that has not been produced under the company's direction and  
2 control and is not available to it in electronic format, such  
3 as generally available copyrighted published material, need  
4 not be provided in electronic format.

5 (c) The filing shall also include three copies of the  
6 tariff sheets in legislative format, striking through any  
7 material that is to be deleted or replaced and underlining any  
8 material to be inserted.

9 (2) To the extent it is not included in the testimony or  
10 exhibits, the following information shall be included in the  
11 work papers:

12 (a) A detailed portrayal of the development of the  
13 company's requested rate of return.

14 (b) A detailed portrayal of restating actual and pro  
15 forma adjustments which the company proposes, specifying all  
16 relevant assumptions, and including specific references to  
17 charts of accounts, financial reports, etc. If the company  
18 proposes to calculate an adjustment in a manner differing from  
19 the method that the commission most recently accepted or  
20 authorized for the company, it shall also present a work paper  
21 demonstrating how the adjustment would be calculated under the  
22 methodology previously accepted by the commission, and a brief  
23 narrative describing the change. Acceptance of a settlement  
24 does not constitute acceptance of underlying methodology  
25 unless the order accepting the settlement does so  
26 specifically.

(i) Restating actual adjustments are defined as those  
adjustments which adjust the booked operating results for any  
defects or infirmities which may exist in actual recorded  
results which can distort test period earnings. Restating  
actual adjustments are also used to adjust from an as-recorded  
basis to a basis which is acceptable for rate making.  
Examples of restating actual adjustments are adjustments to  
remove prior period amounts, to eliminate below-the-line items  
which were recorded as operating expenses in error, to adjust  
from book estimates to actual amounts, and to eliminate or to  
normalize extraordinary items which have been recorded during  
the test period.

(ii) Pro forma adjustments are defined as those  
adjustments which give effect for the test period to all known  
and measurable changes which are not offset by other factors.  
The filing shall identify dollar values and underlying reasons  
for each of the proposed adjustments.

(c) A detailed portrayal of revenue sources during the  
test year and a parallel portrayal, by source, of the changes

1 in revenue produced by the filing, including an explanation of  
2 the derivation of the changes.

3 (d) If the public service company has not achieved its  
4 authorized rate of return, an explanation as a policy  
5 statement of why it has not and what the company is doing to  
6 improve its earnings in addition to its request for increased  
7 rates.

8 (e) A representation of the actual rate base and results  
9 of operation of the company during the test period, calculated  
10 in the manner used by the commission to calculate the  
11 company's revenue requirement in the commission's most recent  
12 order granting the company a general rate increase.

13 (3) The filing shall also include a summary document  
14 which briefly states the following information, annualized, as  
15 applicable. In presenting the following information, the  
16 company shall itemize revenues from any temporary, interim,  
17 periodic, or other noncontinuing tariffs. It shall include in  
18 its rate change percentage and revenue change calculations any  
19 revenues from proposed general rate change tariffs that would  
20 supersede revenue from noncontinuing tariffs.

21 (a) The date and amount of the latest prior general rate  
22 increase authorized by the commission, and the revenue  
23 realized from that authorized increase in the test period,  
24 based on the company's test period units of revenue.

25 (b) Total revenues at present rates and at requested  
26 rates.

(c) Requested revenue change in percentage, in total and  
by major customer class.

(d) Requested revenue change in dollars, in total and by  
major customer class.

(e) Requested rate change in dollars, per average  
customer by customer class, or other representation, if  
necessary to depict representative effect. Filings shall also  
state the effect of the proposed rate increase in dollars per  
month on typical residential customers by usage categories.

(f) Most current customer count, by major customer class.

(g) Current authorized overall rate of return and  
authorized rate of return on common equity.

(h) Requested overall rate of return and requested rate  
of return on common equity, and the method or methods used to  
calculate rate of return on common equity.

(i) Requested capital structure.

(j) Requested net operating income.

(k) Requested rate base and method of calculation, or  
equivalent, which it contains.

1 (1) Requested revenue effect of attrition allowance, if  
2 any is requested.

3 (4) Contemporaneous with its filing, the company shall mail  
4 the summary document required in subsection (3) of this  
5 section to public counsel and to all intervenors on the  
6 commission's master service list for the company's most recent  
7 general rate case and all intervenors on the master service  
8 list for any other rate proceeding involving the company  
9 during the five years prior to the filing if the rates  
10 established or considered in that proceeding may be affected  
11 in the company's proposed general rate filing. The utility  
12 shall enclose a cover letter stating that the prefiled  
13 testimony and exhibits and the accompanying work papers,  
14 diskettes, and publications specified in this rule are  
15 available from the company upon request or stating that they  
16 have been provided. This provision does not create a right to  
17 notice in persons named to receive the summary. Prior to  
18 entry of a protective order, the disclosing party may withhold  
19 any confidential material in its evidence or supporting  
20 material unless the requesting party provides a guarantee of  
21 confidentiality that is satisfactory to the disclosing party.

22 This provision is not intended to discourage the sharing  
23 of information at any earlier stage, and any material  
24 specified herein that has previously been provided to a person  
25 identified in this subsection need not be duplicated.

26 (5) The most recent annual report to shareholders, if  
any, and any subsequent quarterly reports to shareholders; the  
most recent FERC Form 1, if applicable; and for the most  
recent two years prior to the filing date, supply the  
company's Form 10Ks, Form 100s, any prospectuses for any  
issuances of securities, and quarterly reports to  
stockholders, if any.

(6) Any cost studies relied upon by the company in  
support of its filing. In addition, the company shall  
identify all cost studies conducted in the last five years for  
any of the company's services, together with a description of  
the methodology used in such studies.

**WAC 480-10-520 General rate cases--solid waste**

1 **collection companies.**<sup>161</sup> General rate increase filings by  
2 class A and B haulers as defined in WAC 480-70-350 shall  
3 include at the time of the filing, at least the following  
information:

4 (1) Two copies of the proposed tariff, a copy of every  
5 local government ordinance related to the request, and a copy  
6 of the customer notices issued in compliance with the  
provisions of WAC 480-149-120 and a transmittal letter  
prepared in compliance with the provisions of WAC 480-149-120  
and 480-70-240.

7 (2) All supporting work papers for the test period, which  
8 is the most recent, or most appropriate, consecutive twelve-  
9 month period, for which financial data is available. Work  
papers are to include:

10 (a) A detailed pro forma income statement separated  
11 between solid waste, single family residential recycling,  
12 multifamily recycling, and yard waste with restating actual  
and pro forma adjustments, as defined in WAC 480-09-330(2),  
including all supporting calculations and documentation for  
all adjustments.

13 (b) A calculation of the revenue impact of proposed  
tariff revisions.

14 (c) An income statement listing all revenue and expense  
accounts by month.

15 (d) If nonregulated revenue represents more than ten  
16 percent of total company test period revenue, a detailed  
separation of all revenue and expenses between regulated and  
nonregulated operations.

17 (e) A detailed list of all nonregulated operations,  
18 including the rates charged for the services rendered. Copies  
of all contracts shall be provided upon request.

19 (f) Detailed price-out information which reconciles  
20 within five percent, without adjustment, to the test period  
booked revenue including the test period customer count by  
tariff item.

21 (g) A consolidated balance sheet, including the  
22 percentage of equity and the percentage of debt and the cost  
of that debt by component.

23 (h) A detailed depreciation schedule listing all used and  
24 useful assets held by the company during the test period,  
including the date of purchase, the cost at purchase, the  
25 depreciable life, the salvage value, depreciation expense, and  
accumulated depreciation expense at the end of the test

26 <sup>161</sup> Source: WAC 480-09-335.

1 period.

2 (i) Computed average investment. Average investment is  
3 the net book value of allowable assets at the beginning of the  
4 test period plus the net book value of allowable assets at the  
5 end of the test period, divided by two. Investor supplied  
6 working capital may be included, provided a work sheet is  
7 submitted detailing the calculations.

8 (j) Information about every affiliated interest  
9 transaction directly or indirectly affecting the proposed  
10 rates. This shall include: A full description of the  
11 relationship; terms and amount of the transaction; the length  
12 of time the relationship has been ongoing; and, an income  
13 statement and balance sheet for every affiliated entity.

14 (3) The most recent consolidated annual report to  
15 shareholders, if any.

16 (4) All class A haulers shall submit a completed cost of  
17 service study, using a format prescribed by commission staff,  
18 with the first general rate increase request following the  
19 effective date of this rule. If additional rate increase  
20 requests are filed in the two years following a filing in  
21 which a cost of service study was provided, then a new study  
22 will not be required. When the general rate increase filing  
23 is for a curbside yard waste or recycling program, a cost of  
24 service study will not be required.

25 **WAC 480-10-525 General rate cases--water companies.**<sup>162</sup> A  
26 rate increase filing for a water company must include at least  
the following information:

(1) Cover letter - each filing must include a cover  
letter. The letter must:

(a) Provide a description of the filing, and the  
requested action, in understandable terms;

(i) Technical terms are acceptable, but descriptions must  
use common terms so the public can easily understand the  
impact of the filing;

(ii) Acronyms, if used, must be defined before they are  
used in the text of the letter;

(b) State why the filing is being made, e.g.; increased  
costs for water testing;

(i) Compliance filings required by prior commission  
action must include the docket number of the commission action

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<sup>162</sup> Source: WAC 480-09-337.

1 and the name of that proceeding;

2 (ii) Rate change filings must describe each service that  
3 is impacted and the dollar and percentage change for each  
4 service as well as the net impact of all changes on the  
5 company's total regulated revenue;

6 (iii) Filings that only address changes to the text of  
7 the tariff must describe the general effect, and reasons for  
8 the changes;

9 (c) Requests for permission to change tariffs on less  
10 than statutory notice will be granted by the commission only  
11 when it deems the circumstances or conditions justify the lack  
12 of notice. The request must include a complete explanation of  
13 the reasons that support less than statutory notice treatment;

14 (d) Failure to include required information in the cover  
15 letter could result in the filing being rejected.

16 (2) The proposed tariff with explanatory markings.

17 (3) Supporting work papers for the test period. The  
18 supporting work papers must include:

19 (a) A calculation of the revenue impact of proposed rates  
20 by each class affected;

21 (b) Balance sheet and statement of revenues and expenses;

22 (c) Depreciation schedule;

23 (d) If adjustments are proposed, the company must file:

24 (i) Schedule showing adjustments to the statement of  
25 revenues and expenses, including any restating adjustments  
26 and/or proforma adjustments including effect of proposed  
rates;

(ii) Work papers explaining both restating and proforma  
adjustments;

(e) Usage statistics verifying test year revenues and  
proposed revenues;

(f) Public water system identification number assigned by  
Washington department of health for each system that the new  
rates will affect; and

(g) Schedule showing separation of revenues and expenses  
between regulated and nonregulated operations.

(4) A copy of the notice mailed to customers.

## 23 **SUBPART C: Other Adjudicative Proceedings**

24 **WAC 480-10-600 Brief adjudicative proceedings. (1) When**



1 **permitted.**<sup>163</sup> The commission may use brief adjudicative  
2 proceedings under RCW 34.05.482 when doing so does not violate  
3 the law, when protection of the public interest does not  
4 require the commission to give notice and an opportunity to  
5 participate to persons other than the parties and when the  
6 commission believes that the brief adjudication is consistent  
7 with the public interest. Those circumstances include, but  
8 are not limited to:

9 (a) Review of denials or partial denials of applications  
10 that are not protested;

11 (b) Contested applications for temporary authority;

12 (c) Proceedings that could lead to suspension,  
13 cancellation, or revision of authority for failure to maintain  
14 tariffs, pay fees, or file required documents;

15 (d) Formal complaints in which notice and an opportunity  
16 to participate in the proceeding need not be given to persons  
17 other than the parties; and

18 (e) Petitions for mitigation of penalty assessments,  
19 including any challenge to the validity of a penalty  
20 assessment or the existence of an underlying violation.

21 In exercising its discretion to conduct a brief  
22 adjudication, the commission will consider the benefits for  
23 the parties and the commission to be gained from a brief  
24 adjudication, the nature of issues involved and whether the  
25 commission may desire to consider further or in depth an issue  
26 that is raised, the likelihood that review in a brief  
adjudication will provide a more sound decision than  
considering the issues without the brief adjudication, and  
whether alternative means of resolving the issues are  
sufficient and appropriate to satisfy the parties' and the  
commission's interests.

**(2) How to request brief adjudication.**<sup>164</sup> Any person may  
apply for a brief adjudicative proceeding by filing a letter  
of request stating reasons why a brief adjudication should be  
used and a certificate of service upon all other identified or  
necessary parties with the secretary of the commission. ~~If  
the commission grants the request, it will designate an  
administrative law judge or the director or deputy director of  
regulatory services as a presiding officer.~~ The commission  
may set a matter for brief adjudication on its own motion when  
doing so will not prejudice the rights of any party. Each  
applicant for a brief adjudicative proceeding shall submit a

<sup>163</sup> Source: WAC 480-09-500(1).

<sup>164</sup> Source: WAC 480-09-500(2).

1 written explanation of its view of the matter along with its  
2 application. Parties may file written submissions as provided  
3 in the commission's notice that it will conduct the brief  
4 adjudicative proceeding. ~~The commission or the presiding  
officer may decide whether to consider oral comments from the  
parties.~~

5 **(3) Assignment of presiding officer.**<sup>165</sup> If the commission  
6 grants the request for a brief adjudication, it will designate  
7 an administrative law judge or the director or deputy director  
8 of regulatory services as a presiding officer.

9 **(4) Requesting and presenting oral comments.**<sup>166</sup> (a)  
10 Request. A party to a brief adjudicative proceeding who  
11 desires an opportunity to make an oral statement may request  
12 oral statements in the application or in the response to the  
13 application if the commission has not provided for oral  
14 statements. If the presiding officer believes an oral  
15 statement would be beneficial in reaching a decision, the  
16 presiding officer may grant a request to make an oral  
17 statement or may ask the parties to make oral statements.

18 (b) Notice. The commission shall serve upon the parties  
19 a notice of the time and place for the brief adjudicative  
20 proceeding and the name and telephone number of the scheduled  
21 presiding officer at least seven days before the proceeding.

22 **(5) Initial order.**<sup>167</sup> If the party is present at the time  
23 any unfavorable action is taken, the presiding officer shall  
24 make a brief statement of the reasons for the decision. The  
25 action on the application must be expressed in a brief written  
26 statement, which shall be served upon all parties within ten  
days after the date of the brief adjudication. The brief  
written statement is an initial order. If no party seeks  
review of the initial order, it will become the final order  
only if it is adopted by the commission by means of a  
commission order. Service of the initial order must be made  
pursuant to WAC 480-09-12010-150(3).

27 **(6) Review of initial orders.**<sup>168</sup> (a) Timing. If a party  
28 requests review of the initial order, in writing or orally,  
29 within twenty-one days after service of the initial order, the  
30 commission will review it. If no request is timely filed, the  
31 commission may adopt, modify, or reject the initial order.

32 (b) Format for request for review; response. The

33 <sup>165</sup> Source: WAC 480-09-500(2).

34 <sup>166</sup> Source: WAC 480-09-500(2)(a), (b).

35 <sup>167</sup> Source: WAC 480-09-500(3)-(5).

36 <sup>168</sup> Source: WAC 480-09-500(6)-(7).

1 commission encourages written requests for review so parties  
2 have the greatest opportunity to state reasons for their  
3 views. A written request for review of an initial order  
4 should contain an explanation of the party's view of the  
5 matter, with a statement of reasons why the initial order is  
6 incorrect, and a certificate of service. Responses to a  
7 request for review of an initial order must be filed with the  
8 commission and served upon the other parties within ten days  
9 after service of the request for review.

6 **(7) Order on review.**<sup>169</sup> The order on review must be in  
7 writing, must include a brief statement of the reasons for the  
8 decision, and must be entered within twenty days after the  
9 deadline for requesting review or of the request for review,  
10 whichever is later. The order must include a description of  
11 any further available administrative review or, if none is  
12 available, a notice that judicial review may be available.

10 **(8) Record.**<sup>170</sup> The record in a brief adjudicative  
11 proceeding shall consist of any documents regarding the matter  
12 that were considered or prepared by the presiding officer for  
13 the brief adjudicative proceeding or by the reviewing officer  
14 for any review.

14 **WAC 480-10-605 Emergency adjudicative proceedings.**<sup>171</sup>

15 **(1) When permitted.** The commission may use emergency  
16 adjudicative proceedings pursuant to RCW 34.05.479 to suspend  
17 or cancel authority, to require that a dangerous condition be  
18 terminated or corrected, or to require immediate action in any  
19 situation involving an immediate danger to the public health,  
20 safety, or welfare requiring immediate action by the  
21 commission. Such situations include, but are not limited to:

19 (a) Failure to possess insurance;

20 (b) Inadequate service by a gas, water, or electric  
21 company when the inadequacy involves an immediate danger to  
22 the public health, safety, or welfare; and

22 (c) Violations of law, rule, or order related to public  
23 safety, when the violation involves an immediate danger to the  
24 public health, safety, or welfare.

23 **(2) Who presides.** The commission shall hear the matter  
24 and enter an order. If a majority of the commissioners is not

25 <sup>169</sup> Source: WAC 480-09-500(8).

26 <sup>170</sup> Source: WAC 480-09-500(9).

<sup>171</sup> Source: WAC 480-09-510.

1 available, a commissioner shall hear the matter. If no  
2 commissioner is available, a commission administrative law  
judge shall hear the matter.

3 **(3) Decision.** The commission's decision shall be based  
4 upon the written submissions of the parties and upon oral  
5 comments by the parties if the presiding officer has allowed  
6 oral comments. The order must include a brief statement of  
findings of fact, conclusions of law, and justification for  
7 the determination of an immediate danger to the public health,  
safety, or welfare. The order is effective when entered.  
The commission must serve the order pursuant to WAC 480-~~09-~~  
12010-150(3).

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9  
10 **WAC 480-10-610 Formal investigation and fact-finding.**<sup>172</sup>

11 (1) Pursuant to RCW 80.36.145, the commission finds that it is  
12 in the public interest to employ an abbreviated proceeding for  
certain petitions for competitive classification under RCW  
80.36.320 and 80.36.330.

13 (2) The commission will institute an abbreviated  
14 proceeding on its own motion or at the request of petitioner  
15 filing for competitive classification under RCW 80.36.320 or  
16 80.36.330 where it is apparent on the face of the petition  
17 that no substantial issues of controversy are presented. The  
18 commission will invoke this rule by means of a notice of  
19 formal investigation and fact-finding. The notice will call  
20 for written requests to intervene, and advise all interested  
21 persons that no hearing is contemplated other than possible  
22 hearings for public testimony.

23 (3) Upon the filing of a request to intervene, the  
24 commission will take objections, if any, and determine whether  
25 the proceeding qualifies for an abbreviated proceeding. A  
proceeding in which an intervenor proposes to participate  
through written submissions and data exchanges will be  
presumed to fall outside the scope of this rule. At any time,  
by written notice, the commission may convert an abbreviated  
proceeding into a formal adjudicative proceeding.

26 (4) The procedures set forth in WAC 480-~~09-48010-350~~  
through 480-10-357 will not apply in proceedings brought under  
this section. Informal exchange of data is the form of  
discovery that will apply to proceedings authorized by this  
rule. If such discovery is not sufficient to meet the needs

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<sup>172</sup> Source: WAC 480-09-520.

1 of the parties, the proceeding will be converted to a formal  
2 adjudicative proceeding. The "protective order" process  
3 referenced in WAC 480-09-01510-170 will not be available in an  
4 abbreviated proceeding. If a claim of "confidentiality" is  
5 made, the proceeding will be converted to a formal  
6 adjudicative proceeding.

7 (5) The formal record will be limited to written  
8 submissions by the parties. Confidential material will not be  
9 accepted. The commission will designate in the notice of  
10 investigation the number and method of rounds of written  
11 submissions necessary to develop the facts relevant to the  
12 proceeding. At a minimum, petitioners and respondents wishing  
13 to obtain classification will file one original and nineteen  
14 legible, double-sided copies of the completed petition form  
15 provided by the commission upon request, together with  
16 prefiled testimony and exhibits supporting the petition. The  
17 party with the burden of proof will always have the  
18 opportunity to file a written reply. Upon conclusion of the  
19 investigation the commission will enter an order, containing  
20 findings of fact and conclusions of law, disposing of the  
21 petition.

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**WAC 480-10-615 Petitions for enforcement of  
interconnection agreements.<sup>173</sup> (1) Petitions for enforcement.**

A telecommunications company that is 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.

(iii) A description of facts demonstrating failure to  
comply with the agreement. The description must be supported  
by one or more affidavits, declarations or other sworn  
statements, made by persons having personal knowledge of the

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<sup>173</sup> Source: WAC 480-09-530.

1 relevant facts.

2 (b) How to serve the petition. The petitioner must serve  
3 the petition for enforcement on the responding party on the  
4 same day the petition is filed with the commission. For  
5 purposes of this section, service must be effected on:

6 (i) The responding party's authorized representative,  
7 attorney of record or designated agent for service of process;

8 (ii) The responding party's representatives with whom the  
9 petitioner conducted the negotiations addressed in (a)(i) of  
10 this subsection; and

11 (iii) All parties designated in the interconnection  
12 agreement to receive notices.

13 If the petitioner chooses to serve the respondent by mail  
14 or parcel delivery service, it must deliver, a copy of the  
15 petition for enforcement and all supporting documents by hand  
16 delivery, telefacsimile, or electronic mail (to the e-mail  
17 address specified by the recipient for the purpose of  
18 receiving a copy of the petition) to the responding party's  
19 attorney of record, or if the party has no attorney, to the  
20 responding party, on the same day as filed with the  
21 commission.

22 (c) Pre-filing notice of petition. At least ten days  
23 prior to filing a petition for enforcement at the commission,  
24 the petitioner must give written notice to the respondent that  
25 the petitioner intends to file a petition for enforcement.  
26 The notice must identify the contract provision the petitioner  
alleges was violated, and the exact behavior or failure to act  
that petitioner alleges violates the agreement. Service of  
the written notice must be accomplished in the same manner as  
set forth in (b) of this subsection. The petitioner must  
include a copy of this notice with its petition for  
enforcement.

(2) **Answering a petition.** The respondent may answer the  
petition. The respondent waives the opportunity to present  
any matter that is not raised in the answer, except that the  
answer may be amended under subsection (3) of this section.

(a) Contents of the answer. The answer to a petition for  
enforcement must respond to each allegation of failure to  
comply with the terms of the interconnection agreement,  
stating relevant facts. Any facts relied upon must be  
supported by affidavits, declarations or other sworn  
statements by persons having personal knowledge of the facts.

(b) Filing and service of the answer. The respondent must  
file the answer with the commission and serve it on the  
petitioner within five business days after service of the

1 petition for enforcement. Service must be accomplished so  
2 that a copy of the response to the petition for enforcement  
3 and all supporting documents must reach the petitioner's  
4 attorney, or the person who signed the petition, if petitioner  
5 has no attorney, on the same day the answer is filed with the  
6 commission. If the respondent chooses to serve the petitioner  
7 by mail, a copy of the petition for enforcement and all  
8 supporting documents must be delivered to the person  
9 identified above on the same day as filed with the commission.

6 **(3) Amendment of petition and answer.** In the discretion  
7 of the presiding officer, for good cause shown, and to avoid  
8 substantial prejudice to the responding party that is not  
9 caused by the fault of the responding party, the responding  
10 party may amend its answer to the petition. In the discretion  
11 of the presiding officer, either party may amend its petition  
12 or answer to conform to the evidence presented during the  
13 proceeding. In determining whether to permit amendment of the  
14 petition or answer to conform to the evidence, the presiding  
15 officer may refer to, but is not bound by, civil rule 15(b).

12 **(4) Prehearing conference.** The commission will conduct a  
13 prehearing conference regarding each petition that is filed  
14 for enforcement of an interconnection agreement.

14 (a) Schedule; mandatory attendance. The presiding officer  
15 will within ten days after the petition is filed schedule a  
16 prehearing conference. Both the petitioner and the respondent  
17 must attend the prehearing conference. At the discretion of  
18 the presiding officer, the prehearing conference may be  
19 conducted by telephone.

17 (b) Procedural determination. At the prehearing  
18 conference, the presiding officer will determine, based on the  
19 petition and the answer, together with all supporting  
20 documents filed by the parties and the parties' oral  
21 statements, whether the issues raised in the petition can be  
22 determined on the pleadings and submissions, without further  
23 proceedings. In determining whether to schedule an oral  
24 enforcement hearing session, the presiding officer will  
25 consider, but is not limited to considering, the preferences  
26 of the parties and the reasons they advance, the need to  
clarify statements by means of asking questions, whether the  
issues are largely factual, largely legal, or involve  
questions of fact and law, the apparent complexity of facts  
and issues, the need for speedy resolution, and the  
completeness of information presented. The presiding officer  
may ask the parties to submit written briefs on the issues of  
the petition.

1           (c) Means of obtaining additional information. If the  
2 presiding officer determines that further proceedings are  
3 necessary, the presiding officer will establish a schedule for  
4 receiving additional facts or evidence and may, in the  
5 discretion of the presiding officer, schedule an enforcement  
6 hearing session to explore the facts and issues raised in the  
7 petition and the answer. If shown to be essential to the  
8 requesting party, the presiding officer may, in his or her  
9 discretion, allow discovery of facts relating to matters  
10 directly at issue pursuant to WAC 480-09-480. The party  
11 filing the complaint or answer may file with the complaint or  
12 answer a request for discovery, stating the matters to be  
13 inquired into and their relationship to matters directly at  
14 issue. To comply with the time lines of this rule, the  
15 presiding officer may alter the discovery time lines in WAC  
16 480-09-480.

17           **(5) Appointment and powers of the presiding officer;  
18 recommended or final decision.** The commission will appoint an  
19 administrative law judge to preside over the proceeding. The  
20 commissioners may, in their discretion, preside over the  
21 enforcement proceeding.

22           (a) Conduct of proceeding. In any proceeding to enforce  
23 the provisions of an interconnection agreement, the presiding  
24 officer has broad discretion to conduct the proceeding in a  
25 manner that best suits the nature of the petition, including,  
26 but not limited to, converting the proceeding into a complaint  
proceeding under RCW 80.04.110. The presiding officer may  
limit the record in the enforcement proceeding to written  
submissions 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. The enforcement proceeding  
concludes when the presiding officer has sufficient  
information to resolve the issues. The presiding officer  
shall serve a recommended decision on the parties within  
seventy-five days of the date the petition for enforcement was  
filed, or twenty-one days after the last hearing session or  
submission, whichever is later. The recommended decision is  
subject to the approval of the commission. If the commission  
presides over the enforcement proceeding, it may serve a final  
decision within the time requirements applicable to  
recommended decisions.

**(6) Review of the recommended decision.** After the  
presiding officer serves the recommended decision, the  
commission will hear the arguments or comments of the parties



1 regarding the recommended decision at a regular or special  
2 open public meeting. The parties may submit written comments  
3 to the commission prior to the meeting on a schedule  
4 established in the recommended decision. The commission may,  
5 in its discretion, request a presentation at the meeting from  
6 commission staff. The commission will conduct this session  
7 within ten days after the date of the recommended decision, or  
8 as soon thereafter as the commissioners' schedules permit.

9 **(7) Commission decision on petition for enforcement.**

10 (a) Extent of commission discretion. The commission will  
11 serve a final decision on the parties, in the form of a  
12 commission order, resolving the issues. The commission may  
13 adopt, modify or reject all or part of the recommended  
14 decision.

15 (b) Time of service of order. The commission will serve  
16 its order on the petition for enforcement no later than ninety  
17 days of the date the petition is filed or fifteen days after  
18 the meeting at which it reviews the recommended decision,  
19 whichever is later. The commission may extend this time for  
20 lack of resources or for other good cause.

21 (c) Petition for reconsideration. Within ten days after  
22 the commission serves its order on the petition for  
23 enforcement, the parties may petition for reconsideration. A  
24 petition for reconsideration is denied unless the commission  
25 by separate decision grants it within ten days after the  
26 petition for reconsideration is filed, or such longer time  
established by the commission secretary. If a party files a  
petition for reconsideration, the commission may, in its  
discretion, request that an answer be filed or call for  
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.

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

**WAC 480-10-620 Compliance filings.<sup>174</sup> (1) Definition. A**

<sup>174</sup> Source: WAC 480-09-340.

1 compliance filing is a tariff filing that is made to comply  
2 with an order authorizing or requiring a specific subsequent  
3 **later** filing. A compliance order is an order approving,  
suspending, or rejecting a compliance filing.

4 **(2) Filing requirements.** (a) The person making a  
5 compliance filing must also file accompanying work papers and  
6 must serve a copy of the filing and the work papers on the  
7 attorney of each party to the proceeding in which the  
8 compliance filing was authorized or required. Service must be  
made in a manner to be received by the parties no later than  
the date filed with the commission unless such service on a  
party is infeasible because of its size or the timing of the  
filing, in which case delivery on the day following filing is  
permissible.

9 (b) A compliance filing must be strictly limited in scope  
10 to the subjects and the tariffs that are necessary to comply  
with, or that are authorized by, the order leading to the  
11 filing.

12 (c) A cover letter accompanying each compliance filing  
must identify the order with which the filing is intended to  
13 comply.

14 **(3) Timing of filing.** (a) If the order authorizing or  
15 requiring a filing does not state the number of business days  
16 required for commission examination of the proposed compliance  
17 tariff between its filing and its stated effective date, the  
18 filing is subject to all pertinent requirements for tariff  
filings of the industry and must be made with the required  
statutory notice period unless the order provides otherwise.  
The commission will docket such a filing under its own docket  
number and will not consider it a continuation of the prior  
proceeding.

19 (b) A compliance filing made on less than statutory  
20 notice, whether or not a shortened period is authorized or  
21 directed in the order leading to the filing, does not become  
22 effective automatically on its stated effective date, but  
23 requires a commission order of approval. In the absence of an  
24 order of approval, the tariff filing does not become effective  
25 on the stated effective date, but remains pending until the  
commission has completed its review. On completing that  
review, the commission must immediately enter an order under  
subsection (4) of this section. A compliance filing made on  
statutory notice is subject to all statutory and regulatory  
provisions regarding suspension.

26 **(3) Noncompliance with order authorizing or requiring  
compliance filing.** If the commission believes that a

1 compliance filing varies from the requirements or conditions  
2 of the order authorizing or requiring it, either by falling  
3 short of or by exceeding the authorization, conditions, or  
4 requirements of the order, the commission will not approve the  
5 tariff unless it has preapproved the variance.

6 (a) The commission may enter an order in the proceeding  
7 in which the filing was authorized or required, to (i) suspend  
8 a noncomplying filing or any portion that apparently fails to  
9 comply, and assign a docket number for processing, or (ii)  
10 reject the noncomplying filing, or any portion that apparently  
11 fails to comply, without prejudice to the company's refileing a  
12 new or original tariff provision under otherwise pertinent law  
13 and regulation. The commission may attach such conditions on  
14 compliance refileing as it believes appropriate.

15 (b) The commission may suspend any filing under its own  
16 docket number by otherwise pertinent process.

17 (c) The commission may delegate to the secretary the  
18 authority to enter a compliance order in specific proceedings  
19 by written authorization; by oral authority later reduced to  
20 writing; or by action in an open public meeting.

21 (d) Failure to identify noncompliance with the relevant  
22 commission order before approval does not preclude the  
23 commission from taking later steps as authorized by law to  
24 secure compliance.

25  
26 **WAC 480-10-625 Objections to closures of highway-  
railroad grade crossings.**<sup>175</sup> (1) **Filing.** Objections to  
closures of highway-railroad grade crossings under RCW  
81.53.060 must be filed in writing within twenty days of  
publication of notice of the proposed closure, setting forth  
the full names and mailing addresses of persons objecting to  
the closure, the particular crossing which is the subject of  
the objection, the commission cause number, if known, and a  
statement of the objection. Communications which do not meet  
these requirements, other than the requirement of stating the  
commission cause number, will not be treated as objections for  
the purpose of requiring a hearing upon the proposed closure  
to be held as provided by RCW 81.53.060.

(2) **Party status; appearances; service of final order.**  
A person who fails to enter an appearance as prescribed by WAC  
480-09-720, will not be entitled to party status to a  
proceeding under RCW 81.53.060 after the close of the period

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<sup>175</sup> Source: WAC 480-09-390.

1 for the taking of appearances if a hearing is held, even  
2 though the person may have filed an objection to a proposed  
3 crossing closure under the provisions of subsection (1) of  
4 this section, the person will not be entitled to service of  
5 the final order of the commission in the matter unless party  
6 status is reestablished through intervention under the  
7 provisions of WAC 480-09-430, although the commission may send  
8 the person a courtesy copy of the initial or final order.

9 **(3) Other interested persons.** Interested persons who  
10 lack party status, will be provided an opportunity to be heard  
11 and offer evidence as required by RCW 81.53.060. They may not  
12 call witnesses, cross-examine witnesses or otherwise  
13 participate as a party. Interested persons who lack party  
14 status lack standing to file petitions for administrative  
15 review of initial orders or to file petitions for  
16 reconsideration of final orders.

1                                   **PART IV: OTHER COMMISSION PROCEEDINGS**

2                   **WAC 480-10-700 Open public meetings.**<sup>176</sup>   **(1) Meetings.**

3 The commission will hold regular meetings for the conduct of  
4 business under chapter 42.30 RCW, the Open Public Meetings  
5 Act. The meetings will begin at 9:30 a.m., on the second,  
6 fourth and fifth Wednesday of each month in the commission's  
7 administrative offices, 1300 S. Evergreen Park Drive SW,  
8 Olympia, Washington. If the regular meeting day is a **state**  
9 **legal** holiday, the regular meeting will be held on the next  
10 business day or on an alternate schedule published in the  
11 *Washington State Register*. Regular meetings may be canceled,  
and special meetings may be convened, under RCW 42.30.080.  
The commission may change the time and place of regular  
meetings from the information set out in this section. The  
current time and place are published, as required, in the  
*Washington State Register*; on the commission's Internet web  
site, and are available through telephone inquiry.

12           **(2) Written agenda.** The commission secretary will direct  
13 the preparation and distribution of an agenda for each  
14 meeting. When feasible, the secretary will identify each item  
15 scheduled for discussion and action, as relating principally  
16 to utility regulation under Title 80 RCW; as relating  
17 principally to transportation regulation under Title 81 RCW;  
18 or "other." The secretary shall group similarly identified  
19 items together on the agenda.

20           **(3) "No action" agenda.** Any request, proposal, or other  
21 filing which will take effect without commission action, may  
22 be placed on a "no action required" portion of the agenda.  
23 Any item on this portion of the agenda will be discussed upon  
24 the request of any commissioner, and the commission may take  
25 such action on the item as the commission desires.

26           **(4) "Consent" agenda.** The secretary may place any item  
which the secretary believes to be noncontroversial on a  
"consent agenda" portion of the open meeting agenda. The  
commission will ask at the meeting if any person wants to  
address any consent agenda item and an item will be removed  
from the consent agenda for individual discussion and action  
at the request of any commissioner. Items on the consent  
agenda may be collectively moved for approval by a single  
motion and may be collectively approved by a single vote of  
the commission.

**(5) Orders.** The secretary may enter any order or sign

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<sup>176</sup> Source: WAC 480-09-115.

1 any document necessary to implement an open meeting decision  
2 of the commissioners, when the commission so directs.

3 **(6) Modifications.** The commission may modify the  
4 procedures set forth in this section when it deems the  
5 modification appropriate.

6 **WAC 480-10-705 Informal complaints.**<sup>177</sup> **(1) How to make**  
7 **an informal complaint.** Persons may make informal complaints  
8 to the commission about any business that the commission  
9 regulates by telephone or by letter, sent by mail, telefax, or  
10 electronic mail, ~~or by telephone~~. See WAC ~~480-09-100 and 480-~~  
11 ~~09-101~~10-140 for general information about addressing  
12 correspondence. ~~Persons may also register an informal~~  
13 ~~complaint by telephone with a commission service examiner.~~

14 **(2) Contents.** An informal complaint should present all  
15 facts needed to resolve the complaint, including a  
16 description, with all relevant dates, of the acts or omissions  
17 that led to the complaint. The complaint should cite to all  
18 relevant statutes or rules if the writer knows them.

19 **(3) Commission response; result.** Commission staff may  
20 discuss the subjects of informal complaints with the affected  
21 persons, by correspondence or otherwise, to assist the parties  
22 to resolve the complaint by agreement without formal hearing  
23 or order. The commission encourages the informal settlement  
24 of disputes whenever possible. (See WAC 480-09-465.) An  
25 informal complaint may not result in an order that compels a  
26 person to do something or forbids a person from doing  
something.

~~(2) Contents. An informal complaint should present all~~  
~~facts needed to resolve the complaint, including a~~  
~~description, with all relevant dates, of the acts or omissions~~  
~~that led to the complaint. The complaint should cite to all~~  
~~relevant statutes or rules if the writer knows them.~~

21 **(4) Not exclusive remedy.** Making an informal complaint  
22 does not prevent any party, or the commission, from filing a  
23 formal complaint with the commission. See WAC ~~480-09-420 and~~  
24 ~~480-09-425~~480-10-310 and 480-10-315.

26 <sup>177</sup> Source: WAC 480-09-150.

1           **WAC 480-10-710 Interpretive and policy statements.**<sup>178</sup>

2   **(1) General.** Upon the petition of any interested person, or  
3 upon its own motion, the commission may make and issue  
4 interpretive and policy statements when necessary to end a  
controversy or to remove a substantial uncertainty about the  
application of statutes or rules of the commission.

5   **(2) Roster of interested persons.** The commission will  
6 maintain a roster of interested persons, consisting of persons  
7 who have requested in writing to be notified of all  
8 interpretive and policy statements issued by the commission.  
The commission will update the roster periodically. When the  
commission issues an interpretive or policy statement, it will  
send a copy of the statement to each person on the roster.

9   **(3) Index of current statements.** The commission will  
10 maintain a file and an index of all currently effective  
11 interpretive and policy statements. The statements are  
available for inspection and copying at the records center in  
the commission's Olympia headquarters office.

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13           **WAC 480-10-715 Declaratory orders.**<sup>179</sup> As prescribed by  
14 RCW 34.05.240, any interested person may petition the  
15 commission for a declaratory order. The commission will  
16 consider the petition. Within fifteen days after receiving  
17 the petition, the commission will give notice of the petition  
to all persons required by law and to any other person the  
commission deems desirable. Within thirty days of receipt of  
a petition for declaratory order, the commission will:

18           (1) Enter a declaratory order; or

19           (2) Notify the petitioner that no declaratory order is to  
be entered and state reasons for the action; or

20           (3) 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

21           (4) Set a reasonable time and place for a hearing, in  
22 which case the proceeding becomes an adjudicative proceeding  
23 under this chapter. If a hearing is held, it must be held no  
24 more than ninety days after receipt of the petition. If a  
hearing is held, the commission will give at least seven days'  
notification to the petitioner, all persons to whom notice is  
required by law and any other person it deems desirable. The

25  
26 <sup>178</sup> Source: WAC 480-09-200.

<sup>179</sup> Source: WAC 480-09-230.

1 notice must include the time, place, and the issues involved.

2 (5) The commission may upon a finding of good cause  
3 extend the times specified in subsections (3) and (4) of this  
4 section.

5 (6) If a hearing is held or statements of fact are  
6 submitted, as provided in subsection (4) of this section, the  
7 commission shall within a reasonable time:

8 (a) Enter a declaratory order; or

9 (b) Notify the petitioner that no declaratory order is to  
10 be entered and state the reasons for the action.

11 The commission will serve its order upon all persons who  
12 are required to receive notice under subsection (4) of this  
13 section.  
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