

**Summary of Written Comments on Draft Rules – CR-101 Stage
Procedural Rules Rulemaking – A-072162
August 13, 2008**

ISSUE	INTERESTED PERSON	COMMENTS	RESPONSE
General Comments			
None	Qwest	12-18-07: Interested in participating in the rulemaking 4-21-08: No additional comments	
“	Avista	12-18-07: Interested in participating in the rulemaking 4-15-08: No additional comments	
“	Verizon	1-3-08: Interested in participating in the rulemaking 4-15-08: No additional comments	
“	Embarq	1-3-08: Interested in participating in the rulemaking	
“	ICNU	1-3-08: Interested in participating in the rulemaking	
“	Public Counsel	1-8-08: Interested in participating in the rulemaking	
“	Pacific Power	2-19-08: No comments	
“	Northwest Natural	2-13-08: No comments	

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<p>Public Records Act</p>	<p>WITA</p>	<p>References to the Public Records Act throughout the chapter are incorrect. The correct reference to the Act is Chapter 42.56 RCW.</p>	<p>References to the Public Records Act have been corrected in several proposed rules: WAC 480-07-140, WAC 480-07-160, WAC 480-07-180, and WAC 480-07-630.</p>
<p>WAC 480-07-110 – Exemptions from Commission Rules</p>			
<p>Standard for exemptions</p>	<p>Public Counsel</p>	<p>On 1-8-08, Public Counsel filed initial comments suggesting additional language for subsection (2)(c), proposing a heightened standard for approving exemptions from rules.</p> <p>In its Second set of comments (2-22-08), Public Counsel responds to oral comments at the Bench Bar Conference opposing its suggested language and states its proposal is intended to balance the standard by establishing specific criteria to preserve the original intent of the rule.</p>	<p>The current rule states only that the Commission “may” evaluate certain considerations; The list is not exhaustive. WAC 480-07-110(1) identifies the “public interest” standard, which encompasses all relevant factors. For example, if a waiver would result in “undue discrimination,” that would likely violate RCW 80.28.100. It is not necessary to place such a consideration in the rule, as Public Counsel suggests.</p> <p>Moreover, Public Counsel is not correct that the list of considerations in subsection (2)(c) focuses solely on the person seeking the waiver, because the phrase “contrary to the underlying purposes of the rules” encompasses the impact of the rule on others. Public Counsel cites no example where the Commission has granted a waiver and used the rule as a basis for refusing to consider the factors Public Counsel urges the Commission to include. Consequently, the concerns Public Counsel addresses regarding subsection (2)(c) are not well taken.</p> <p>Nonetheless, the Commission will re-emphasize that the public interest standard applies, and that the listed considerations are not exclusive, by changing the first part of subsection (2)(c) to read:</p> <p>“Standard for consideration. The standard for consideration is the public interest standard. Factors</p>

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			<p>the commission may consider include The commission may consider whether the whether the application of the rule would”.</p>
	Qwest	<p>Qwest opposes Public Counsel’s proposal as existing language provides appropriate consideration for rule exemptions and defining specific considerations could result in limiting the Commission’s broad discretion or prohibiting the requested exemption.</p>	<p>See above response.</p>
	Verizon	<p>Verizon opposes Public Counsel’s proposal, asserting that the proposed heightened standards are already within the Commission’s discretion under the public interest standard. Including Public Counsel’s proposal would mandate an incomplete list of standards.</p>	<p>See above response.</p>
	Avista	<p>Avista opposes Public Counsel’s proposal; The Commission’s broad discretion to consider whether exemption requests are in the public interest should not be modified.</p>	<p>See above response.</p>
	WITA	<p>WITA opposes Public Counsel’s proposed language, asserting that the suggested conditions or criteria are already a part of the Commission’s public interest analysis.</p>	<p>See above response.</p>
<p>Service of petitions on Public Counsel</p>	<p>Public Counsel</p>	<p>In its 1-8-08 Initial Comments, Public Counsel requested that subsection (2)(a) be amended to require persons requesting an exemption serve a copy of the petition on Public Counsel.</p> <p>In its Second set of comments (2-22-08), Public Counsel modifies its proposal to request service</p>	<p>Public Counsel’s modified recommendation is acceptable and no stakeholder objects to the proposal. The proposed rule includes Public Counsel’s modified request.</p>

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		<p>on Public Counsel for requests for exemptions in telecommunications, electric and gas industry matters.</p> <p>In its Third set of Comments (4-21-08), Public Counsel appreciates inclusion of its suggested language in the draft rules.</p>	
	Avista	Avista does not object to Public Counsel's request.	See above response.
	WITA	WITA does not object to Public Counsel's request, but suggests that Public Counsel identify or work with specific affected industries to determine a standard for implementing the notice requirement.	See above response.
WAC 480-07-140 – Communicating with the Commission			
Allow parties to submit documents electronically as default	Public Counsel	<p>In its 1-8-08 Initial Comments, Public Counsel requested the Commission modify this rule and WAC 480-07-145 to allow parties to submit documents in adjudications with the Commission by default rather than an ALJ approving electronic submissions.</p> <p>In its Second set of comments (2-22-08), Public Counsel recommends the Commission allow hard copy filing by first class mail rather than next-day receipt to reduce the costs of overnight mail or messenger delivery.</p> <p>In its Third set of Comments (4-21-08), Public Counsel appreciates inclusion of its suggested language in the draft rules.</p>	To address concerns about efficiency of submitting documents electronically to the Commission in adjudicative proceedings, the Commission proposes to modify WAC 480-07-145(6)(a) to allow electronic submission in each proceeding without requiring approval of the presiding officer. This proposal does not require amendment to WAC 480-07-140(1)(b).

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	Qwest	Qwest supports modifying the rule to routinely allow electronic submission of documents with hard copies provided the next day.	See above response.
	Verizon	Verizon supports modifying the default to submitting documents electronically with paper copies filed the following day.	See above response.
	WITA	WITA supports Public Counsel's proposal.	See above response.
Allow electronic filing, instead of paper	Public Counsel	In its 1-8-08 Initial Comments, Public Counsel requested the Commission modify this rule to allow parties to file documents electronically with the Commission instead of filing paper documents as the official record.	The question of "filing" documents with the Commission electronically is an issue that will require changes in statutes, rules, and Commission process, and should be considered in a future rulemaking. Requirements in RCW 34.05.010 and RCW 80.04.075 require filing or service by U.S. mail or personal delivery. There are detailed requirements in RCW 19.34 and WAC 434-180 for using electronic signatures when using electronic documents that the Commission would have to consider in allowing electronic filing.
WAC 480-07-145 – Filing Documents in Adjudicative proceedings.			
Allow parties to submit documents electronically as default	Public Counsel	<p>In its 1-8-08 Initial Comments, Public Counsel requested the Commission modify WAC 480-07-145 to allow parties to submit documents in adjudications with the Commission by default rather than an ALJ approving electronic submissions.</p> <p>In its Second set of comments (2-22-08), Public Counsel recommends the Commission allow hard copy filing by first class mail rather than next day receipt to reduce the costs of overnight mail or messenger delivery.</p>	The suggestion to allow electronic submission in all proceedings without first seeking approval from the presiding officer is included in the proposed rules. To address concerns about efficiency of submitting documents electronically to the Commission in adjudicative proceedings, WAC 480-07-145(6)(a) is modified to allow electronic submission in each proceeding without requiring approval of the presiding officer. The suggestion to amend the rule to allow submission of paper copies by First Class U.S mail instead of delivery the following business day is not included in the proposal. Staff requires the paper

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		In its Third set of Comments (4-21-08), Public Counsel appreciates inclusion of its suggested language in the draft rules.	copies be filed as soon as possible in many cases to allow them to efficiently review and act on the information in the filing. Delaying filing of paper copies would increase copying costs for the agency.
	Qwest	Qwest supports modifying the rule to routinely allow electronic submission of documents with hard copies provided the next day.	See above response.
	Verizon	Verizon supports modifying the default to submitting documents electronically with paper copies filed the following day.	See above response.
	WITA	WITA supports Public Counsel's proposal.	See above response.
WAC 480-07-160 - Confidentiality			
Sanctions for improper designation	Public Counsel	<p>In its 1-8-08 Initial Comments, Public Counsel requested the Commission modify this rule to allow sanctions for improper designation of documents as confidential.</p> <p>In its Second set of comments (2-22-08), Public Counsel addresses oral comments at the Bench Bar Conference about the Commission's authority to impose sanctions, asserting the Commission has authority under RCW 80.04.380 to enforce violations of its own orders, including protective orders, by assessing sanctions and has specific authority to impose sanctions for abusive discovery practice.</p> <p>In its Third set of Comments (4-21-08), Public Counsel remains concerned with over-</p>	<p>The controversy over WAC 480-07-160(4) concerns challenges to claims of confidentiality of a document. Public Counsel's recommendation is not well taken.</p> <p>First, the proposal is redundant to the extent of monetary penalties, because a person who designates all or part of a document as confidential that is not confidential likely violates the protective order, and subjects that person to whatever sanctions are available to the Commission for violations of orders. <i>E.g.</i>, RCW 80.04.385, .387 and .390.</p> <p>Second, the Commission likely can impose other sanctions in these situations, such as removing a person from party status, dismissing the case, referring the matter to the Bar Association or similar professional group, or other similar remedies. However, the</p>

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		<p>designation of confidential documents and will respond to problems of excessive or improper designations on a case-by-case basis.</p>	<p>Commission likely does not have authority to issue monetary penalties beyond what is provided in statute. In any event, Public Counsel’s proposed language that would focus more on monetary penalties is not balanced.</p> <p>Finally, while Public Counsel asserts there is an “over-designation” problem, the Commission does not recall this being raised as a substantial issue in any proceeding. Consequently, this does not appear to be a substantial problem that needs to be “fixed.” The Commission will consider the issue at the next opportunity for amending these procedural rules.</p>
	Qwest	<p>Qwest opposes Public Counsel’s proposal to allow sanctions for improper designation of confidentiality, as there is no evidence of such designations, or bad faith in doing so. Protective orders clearly provide how parties may designate information as confidential and how to contest such a designation.</p>	<p>See above response.</p>
	Verizon	<p>Verizon opposes Public Counsel’s proposal, asserting that there is currently no problem to be addressed. Verizon asserts that current statutes and rules are available to address any problem with over-designation that may occur.</p>	<p>See above response.</p>
	Avista	<p>Avista opposes Public Counsel’s proposal, asserting that there is no evidence that a problem exists and that existing procedures, such as protective orders, provide sufficient avenues to address issues as they arise.</p>	<p>See above response.</p>

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	WITA	WITA opposes Public Counsel’s suggestion, asserting there is not a current practice of abusing confidential designation. WITA also asserts the Commission lacks authority to impose monetary sanctions for violation.	See above response.
WAC 480-07-395 – Format Requirements			
Page Limits	Public Counsel	In its 1-8-08 Initial Comments, Public Counsel requested the Commission modify this rule to address the flexibility parties have to meet page limits.	While the issue Public Counsel raises appeared in one recent proceeding, it has not been a substantial issue in any other proceeding. There does not appear to be a demonstrated or pressing need to modify the rule. The Commission will consider the issue at the next opportunity for amending its procedural rules.
	Qwest	Qwest opposes Public Counsel’s proposal to revised rules governing page limits, as the rules allows for extensions for the 60-page limit. \	See above response.
	WITA	WITA cannot comment on Public Counsel’s proposal as Public Counsel provides no support for the proposal.	See above response.
WAC 480-07-405 – Data Requests			
Use of Excessive data requests	PSE	PSE suggests the Commission modify the rule to address the excessive use of data requests, including limiting the number of data requests, grouping data requests or requiring parties to coordinate data requests.	Although PSE identifies the issue as arising in a recent general rate case before the Commission, no party has brought the issue to the Commission’s attention in the context of an adjudicated case, nor has any party sought recourse under subsection (4) of the current rule by requesting a presiding officer limit the number of data requests. The Commission did not include this rule in the scope of its original Notice of Preproposal Statement of Inquiry (CR-101), declined to include the rule in the supplemental CR-101, and thus will not include it in the proposed rules.

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WAC 480-07-510 – Rate case filings and work papers			
Organization of rule	Public Counsel	In its Third set of Comments (4-21-08), Public Counsel agrees that subsection (3) should be reorganized to more clearly define the requirements for work papers, but notes that the organization in the Second discussion draft of rules is not clear whether the requirements in the new subsections apply to all work papers or only those supporting restating and pro forma adjustments. Public Counsel recommends that the new subsections clearly apply to all work papers.	In addition to changing rule language relating to electronic documents in the second discussion draft, the Commission recommended the subsection be broken down into specific subsections. Public Counsel’s comments on the discussion draft are well taken. The language in subsection (3) of the rule has been reorganized in the proposed rules to reflect that the organization and electronic form of work papers applies to all work papers, not just those reflecting restating and proforma adjustments.
Password Protected work papers	Public Counsel	<p>In its 1-8-08 Initial Comments, Public Counsel requested the Commission modify this rule to prohibit the use of locked, password protected, or hidden cells in work papers.</p> <p>In its Second set of Comments (2-22-08), Public Counsel indicates there is general support for its proposal and that the Commission included its proposal in the first set of draft rules.</p> <p>In its Third set of Comments (4-21-08), Public Counsel supports the changes to the rules that appeared in the Commission’s first discussion draft, but opposes the last clause in the draft language in the second discussion draft, which states that a password must be provided for password protected or locked cells in a spreadsheet, “unless the locked or password protected cells secure the integrity of a proprietary model or proprietary calculations.”</p>	<p>The controversy surrounds the use of computer data files that have “locked, password protected, or hidden cells.” When documents have these features, the document is of limited use to the Commission and the parties because they cannot determine the underlying logic and/or formulae, and may be prevented from changing assumptions and testing the results.</p> <p>Public Counsel’s suggested amendment to prohibit the use of locked, password protected, or hidden cells was included in the initial discussion draft sent to interested persons on January 25, 2008.</p> <p>After receiving comments on the suggested amendment, the Commission modified the language in a second discussion draft circulated on March 21, 2008. In that draft, the Commission noted that the general rule should be that all documents not contain cells with such restrictions. On the other hand, there may be proprietary reasons for having restricted cells. These</p>

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		<p>Public Counsel raises concerns about the openness and public nature of the Commission’s proceedings and the need for transparency under the language in the draft rule. Public Counsel asserts that no company should seek a rate increase or other significant relief on non-transparent grounds. Public Counsel asserts that the last phrase is inconsistent with earlier portions of the rule requiring passwords subject to a protective order.</p>	<p>issues should be worked out between the parties, or by the Commission at a prehearing conference or other hearing held as soon as possible after the issue arises, which will usually be the initial filing. The protective order can protect proprietary items while permitting the parties to use the material.</p> <p>For these reasons, the Commission included PSE’s proposed amendment, with some modifications, allowing parties to file documents with locked, hidden or password protected cells, but that the party must provide a password to another party pursuant to the terms of a protective order. The draft language also provided that a password must be provided for password protected or locked cells in a spreadsheet, “unless the locked or password protected cells secure the integrity of a proprietary model or proprietary calculations.”</p> <p>Based on Public Counsel’s most recent comments, the Commission suggests further revising the language in the proposed rules as follows, where text in red and bold indicates changes since the second discussion draft:</p> <p><i>(c) Electronic documents.</i> Parties must file <u>provide</u> all electronic files supporting their witnesses' work papers. The electronic files must be fully functional and include all formulas and linked spreadsheet files. Electronic files that support the exhibits and work papers must be submitted <u>provided</u> using logical file paths, as necessary, by witness, and using identifying file</p>

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			<p>names. <u>Any party may file filing a document with locked, hidden or password protected cells may do so only if necessary to protect the confidentiality of the document. In such circumstances, that party shall provide a version to the commission that does not have locked or hidden cells, and if a cell is password protected, that party shall supply the parties the password.</u> The party shall designate <u>that portion of the document as confidential under RCW 80.04.095, WAC 480-07-160 and/or a protective order, and .-If the document is designated confidential pursuant to a protective order,</u> the party shall provide it to any person requesting the password who has signed an appropriate confidentiality agreement. <u>If cells are locked or password protected, a password must be provided, unless the locked or password protected cells secure the integrity of a proprietary model or proprietary calculations.</u></p> <p>This proposed language will ensure that the Commission standard is that companies provide information for decision that is transparent, but allow companies to protect confidential or proprietary information, subject to a protective order, as necessary.</p>
	Qwest	Qwest does not object to Public Counsel’s proposal regarding password protected cells in work papers.	See above response.

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	PSE	PSE disagrees with Public Counsel's proposed language and suggests alternative language allowing for password protected cells if the password protects the integrity of a proprietary model or calculations. PSE suggests a password be provided.	See above response.
	WITA	WITA does not object to Public Counsel's suggestion, as long as the use of confidential designations is not severely limited.	See above response.
Summary Document	Public Counsel	In its Second set of Comments (2-22-08), Public Counsel requests that subsection (4) be amended to provide that the summary document be served on Public Counsel on the same day as other rate case documents. This would make the rule consistent with current practice.	Public Counsel's suggestion is included in the proposed rules.
WAC 480-07-710 - Mediation			
One party requesting a mediator	Public Counsel	<p>In its Second set of Comments (2-22-08), Public Counsel suggests the Commission could amend the rule to allow one party to request appointment of a mediator and allow others to comment on the request for a mediator.</p> <p>In its Third set of Comments (4-21-08), Public Counsel will ask the Commission to revisit this issue if requests for mediators and settlement judges become more common and problems arise.</p>	The language in the current rule does not preclude one party from requesting appointment of a mediator or settlement judge. There does not appear to be a demonstrated or pressing need to amend the rule as Public Counsel suggests. This suggestion is not included in the proposed rules.
WAC 480-07-900 – Open Public Meetings			

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Written comments	Public Counsel	<p>In its Second set of Comments (2-22-08), Public Counsel suggests that the rule draft be clarified to provide that a person is not required to submit written comments in order to present oral comments at open meetings. Public Counsel also request that the rule provide for a “listserv” so interested persons could automatically receive copies of open meeting agendas.</p> <p>In its Third set of Comments (4-21-08), Public Counsel appreciates inclusion of its suggested language in the draft rules.</p>	Public Counsel’s suggestion is appropriate and the proposed rule is modified to reflect Public Counsel’s suggestion.
WAC 480-07-904 - Delegation			
Delegation of telecom company transfers of property	Public Counsel	<p>In its Second set of Comments (2-22-08), Public Counsel objects to proposed amendments to subsection (1)(1) to allow delegation of the decision to authorize transfers of property for telecommunications companies by the Executive Secretary.. Public Counsel suggests limiting application of this rule to <i>de minimis</i> transfers of property (less than \$250,000).</p> <p>In its Third set of Comments (4-21-08), Public Counsel reiterates its concern about delegating all requests for approval of transfers of telecommunications company property. Public Counsel repeats its recommendation that the provision be limited to <i>de minimis</i> transfers of property.</p>	<p>The suggested amendment to subsection (1) in the second discussion draft of the rule is intended to allow flexibility and discretion in determining whether a request for transfer of property should be included as an open meeting agenda item or considered as a delegated item. The specific facts of a filing requesting approval for a transfer of property, including the monetary value of the property being transferred, are likely to determine treatment of the request. If a specific request is handled as a delegated item, any interested person may request the Commission review the delegated decision under the process identified in subsection (3) of this rule.</p> <p>However, after reviewing Public Counsel’s recent comments, it is appropriate to limit the delegation of requests for authority to transfer telecommunication company property to those that are likely to be less significant. Specifically, it is appropriate to limit those requests subject to delegation consistent with the</p>

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			<p>treatment of requests for authorization of transfers of property under the Commission's approval of Qwest's Alternative Form of Regulation, or AFOR, agreement. Consistent with those terms, the Commission should limit delegation of requests for approval of telecommunications company transfers of property to property with a market value that is less than 1 percent of the company's rate base, or \$200,000, whichever is greater.</p>