

WAC 480-07-610 Brief adjudicative proceedings. (1) **When permitted.** The commission may use brief adjudicative proceedings under RCW 34.05.482 when:

(a) Such proceedings are consistent with other provisions of law;
(b) Protection of the public interest does not require the commission to give notice and an opportunity to participate to persons other than the parties;

(c) Discovery and prefiled written testimony are not necessary to provide the commission with sufficient evidence to render a determination; and

(d) The commission believes that the issues presented can best be resolved through a brief adjudication consistent with the public interest. In exercising its discretion to conduct a brief adjudication, the commission will consider the preferences of the parties, the possible benefits to be gained from a brief adjudication, and the nature of issues involved.

(2) **Matters suitable for brief adjudication.** Categories of proceedings suitable for brief adjudication include, but are not necessarily limited to:

(a) Challenges to commission notices of intent to deny, in whole or in part, applications for authority that are not protested;

(b) Contested applications for temporary authority;

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

(d) Formal complaints that do not require notice and an opportunity to participate to persons other than the parties and the commission can best resolve in a brief adjudication including, but not limited to, complaints the commission initiates to determine whether a company is providing service subject to commission regulation without commission authority;

(e) Contested penalty assessments under RCW 80.04.405, 81.04.405, or 19.122.150, or consideration of requests for mitigation of the penalty;

(f) Applications for authority to provide auto transportation service to which a company properly objects; and

(g) Requests by solid waste collection companies pursuant to WAC 480-07-520(6) for interim rates subject to refund.

(3) **Initiating a brief adjudication.** The director of the administrative law division will determine whether the commission will initiate a brief adjudicative proceeding.

(a) The commission may set a matter for brief adjudication on its own initiative.

(b) Except as otherwise provided in this section, any person may file a petition requesting that the commission commence a brief adjudicative proceeding.

(i) The petition must describe the issues the petitioner seeks to have the commission resolve, the petitioner's position on those issues, and the reasons why a brief adjudicative proceeding would be appropriate to resolve those issues. The petitioner must serve the petition on all other identified or necessary parties and must file a certificate of service with the petition.

(ii) Any identified or necessary party that opposes the petition may file a response within ten days after service of the petition stating the reasons why a brief adjudicative proceeding would not be appropriate to resolve the issues identified in the petition.

(iii) If the commission initiates a brief adjudication, it will issue a notice of the time and place for the proceeding. A decision denying the petition will be in writing, and the petitioner may seek commission review of that decision pursuant to the procedure for requesting review of initial orders in WAC 480-07-825.

(c) Any person requesting a hearing or commission review of orders or letters suspending or canceling a permit for failure to maintain evidence of required insurance coverage or other specified circumstances must submit that request in writing within fourteen days after the commission posts the order or letter on its website. The director of the administrative law division will determine whether the commission will initiate a brief adjudication in response to the request or if an administrative law judge will enter a decision based on the information provided in the request and commission staff's response. The requestor may seek commission review of any such decision pursuant to the procedure for requesting review of initial orders in WAC 480-07-825.

(4) **Assignment of presiding officer.** If the commission sets a matter for a brief adjudication, the commission will designate a person to serve as a presiding officer consistent with the requirements of RCW 34.05.485.

(5) **Hearing.**

(a) *Notice and nature of proceeding.* The commission will serve on the parties a notice of the time and place for the brief adjudicative proceeding at least seven days before the proceeding. That notice or a subsequent procedural order will specify how the commission will conduct the proceeding. The parties may offer written exhibits for inclusion in the record and may make oral statements in support of their positions. The presiding officer also may permit parties to present one or more witnesses to testify in support of their positions subject to cross-examination by the other party.

(b) *Exhibits.* Each party must file with the commission and serve on the other parties all exhibits the party proposes to introduce into the record. The presiding officer may refuse to admit into the evidentiary record any exhibits not provided in advance of the hearing. The notice of brief adjudicative proceeding or subsequent procedural order will establish the deadlines for filing these exhibits.

(i) Exhibit numbers. Parties must mark all exhibits in the upper right-hand corner of the first page prior to submission as follows:

(A) State "Exh." followed by the initials of the witness who will sponsor the exhibit or the name of the party if no witness will sponsor the exhibit.

(B) Place a hyphen after the witness's initials or party name and insert the number of the exhibit. For example, the first exhibit commission staff designates either would be marked "Exh. Staff-1" or if sponsored by staff witness John Q. Witness, would be marked "Exh. JQW-1"; the second exhibit would be marked either "Exh. Staff-2" or "Exh. JQW-2," etc.

(C) Place the capital letter "C" immediately after the number of the exhibit if the exhibit includes information designated as confidential under WAC 480-07-160. Place the capital letters "HC" immediately after the number of the exhibit if the exhibit includes information designated as highly confidential under WAC 480-07-160 and a protective order.

(ii) Format. Any exhibit in the form of a spreadsheet that displays results of calculations based on formulas must be filed and served electronically in its native Excel format in compliance with

WAC 480-07-140 (6) (a) (ii). All other exhibits must be filed and served electronically in searchable .pdf (Adobe Acrobat or comparable software) format.

(iii) *Organization*. Each exhibit must be a separate document (i.e., multiple exhibits must not be scanned into a single document), and each document must be labeled with the exhibit name. Any paper copies of the exhibits that the presiding officer requires must be organized into sets that are tabbed, labeled, and grouped by witness, if any.

(c) *Exhibit and witness lists*. Each party must file with the commission and serve on all parties a list of all exhibits the party intends to offer for admission into the record. If the presiding officer permits parties to present witness testimony, each party also must provide a list of all witnesses the party intends to present at the hearing and a brief summary of the testimony each witness will give. The notice of brief adjudicative proceeding or a subsequent procedural order will establish the deadline for filing exhibit and witness lists.

(d) *Testimony*. The presiding officer may refuse to permit a witness to testify if the witness is not on the witness list. The presiding officer also may refuse to hear proposed testimony if it would not be relevant to the issues to be addressed in the proceeding or would be cumulative of the testimony to be offered by another witness. The presiding officer may limit a witness's testimony to the subjects identified in the summary the party provides prior to the hearing.

(6) Initial order.

(a) The presiding officer may enter a decision orally and make a brief statement of the reasons for the decision at the conclusion of the hearing. The presiding officer will then enter an initial order more fully explaining that decision in writing within ten days after the date of the hearing.

(b) The presiding officer may take the matter under advisement at the conclusion of the hearing and enter a written initial order that addresses the issues raised in the proceeding within ten days after the date of the brief adjudication. The presiding officer may extend this deadline for good cause.

(7) Review of initial orders.

(a) *Timing*. Any party may petition for review of an initial order within twenty-one days after service of the order. The commission also may review an initial order on its own motion.

(b) *Format for petition for review*. The commission strongly prefers petitions for review to be in writing so parties will have the greatest opportunity to state reasons for their views, but the commission will accept oral petitions for review as authorized in RCW 34.05.488 and this rule. A party's request for review of an initial order must identify the errors the party alleges in the order and must provide an explanation of the reasons why the party contends that the initial order is incorrect. The petitioning party must serve its written petition on all parties when it submits the petition to the commission for filing. A party orally requesting review must make that request in the presence of all parties, the presiding officer, and a court reporter.

(c) *Response*. Any party may file and serve a written response to an oral or written petition for review within seven days after the petitioning party makes its oral request for review or serves the written petition unless the commission establishes a different deadline.

(8) **Final order on review.** The commission may adopt, modify, or reject the initial order or may remand the initial order for further proceedings. The final order on review will be in writing and will include a brief statement of the reasons for the decision. The commission will enter the final order within twenty days after the deadline for requesting review of the initial order. The order will include a notice of any further available administrative review or, if none is available, a notice that judicial review may be available.

(9) **Finality of initial order.** The initial order becomes the commission's final order by operation of law under either of the following conditions:

(a) No party timely seeks administrative review of the initial order, and the commission does not initiate review on its own motion; or

(b) The commission does not enter a final order in response to a petition for administrative review within twenty days after the deadline for requesting review, unless all parties and the commission agree to waive the date by which the commission must enter a final order.

(10) **Record.** The record in a brief adjudicative proceeding consists of any exhibits the presiding officer admits into the record, the transcript of the hearing, and any other documents regarding the matter that the presiding officer considered for the brief adjudicative proceeding or that the commission considered in any review of an initial order. The commission's record need not constitute the exclusive basis for action, unless otherwise required by law.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 18-18-041 (Docket A-130355, General Order R-592), § 480-07-610, filed 8/29/18, effective 9/29/18; WSR 03-24-028 (General Order R-510, Docket No. A-010648), § 480-07-610, filed 11/24/03, effective 1/1/04.]