

**WAC 480-09-736 Hearing guidelines.** These guidelines are of a general nature and are provided to assist the presiding officer in regulating the course of the proceeding. The presiding officer may when appropriate suspend or modify the guidelines or use measures not specified in this rule.

(1) Starting times will be strictly observed. The proceeding may go forward in the absence of counsel, parties, or witnesses who are late.

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

(3) All 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.

(4) Counsel who request off-the-record discussions must ask leave to go off the record and state the purpose for the request.

(5) 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.

(6) Predistribution of evidence. The commission may require that parties distribute their proposed evidence to other parties before the start of the hearing.

(a) Number of copies. When predistribution of evidence is required, each party shall file twenty copies of its evidence with the commission unless the commission specifies a different number. Because a smaller number may satisfy 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 correct obvious typographical errors in the prefiled testimony or to make more than three substantive changes -- if more than three corrections are required, the party must submit an errata sheet or revised documents.

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

(7) Prefiled testimony may be accompanied by exhibits. Parties should not preassign numbers to their own prefiled testimony and exhibits. Instead the following system should be used, including the witness's initials, and marked serially. For John Q. Witness's prefiled testimony and accompanying exhibits:

Ex. . . . (JQW-T)

Ex. . . . (JQW-2)

Ex. . . . (JQW-1)

Ex. . . . (JQW-3)

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

(8) 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.

(9) All prepared 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. Line numbers must be set out on all prepared testimony to facilitate transcript or exhibit references. Large documents may be used at the hearing for illustrative purposes so long as a reduction is provided for inclusion in the record.

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

(11) The presiding officer will limit cross-examination to two rounds unless counsel demonstrates that good cause exists for asking additional questions. Counsel should not ask witnesses to perform calculations or extract detailed data while the witness is on the stand. Counsel should provide such questions to the witness in advance, should ask the witness to provide the answer to the record later in the hearing session, or should provide an answer and ask the witness to accept it "subject to check." When a witness accepts information "subject to check," the witness must perform the "check" as soon as possible. A response given "subject to check" will be considered accurate unless the witness disputes it in writing, stating reasons. Counsel for the party sponsoring the witness must provide the witness' statement and serve a copy on each party prior to the closing of the record or within ten days after distribution of the transcript whichever occurs first.

(12) At the beginning of a hearing session for the purpose of taking testimony from members of the public, public counsel may inform the public of the major contested issues.

(13) Parties must address all case-related correspondence to the secretary of the commission, under commission rules. The parties are cautioned that correspondence that is addressed directly to an individual may not be logged in, may not be inserted in the case file, and may not constitute a part of the official record for appeal or for other purposes.

(14) Parties must file petitions or motions seeking the dismissal of any party or any portion of a proceeding, or any other pleading that in the moving party's judgment requires the submission of a written motion, petition, brief or statement of authorities, and serve them on other parties no later than one week prior to the first scheduled 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 shall file the answer and serve it on other parties at least three days prior to the hearing. The commission may allow oral argument in the commission's discretion. Parties must serve pleadings so as to effect actual receipt within the required time.

(15) When a party requests that the commission take some action 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).

(16) 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 480-09-770.

(17) Each party will bear its own costs for transcripts or tape recordings, including charges for expedited service when a party requests it.

(18) For planning purposes, counsel should be prepared to provide time estimates for cross-examination of witnesses.

(19) When a witness presenting testimony as a member of the public presents a document in conjunction with his testimony, the commission may receive the document as an illustrative exhibit. The commission may receive as illustrative of the opinions of correspondents any letters that have been received by the secretary of the commission and by public counsel from members 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.

(20) 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 waiver of the right to object.

[Statutory Authority: RCW 34.05.220 and 80.01.040. 99-05-031 (Order R-455, Docket No. A-970591), § 480-09-736, filed 2/10/99, effective 3/13/99. Statutory Authority: RCW 80.01.040. 93-24-103 (Order R-400, Docket No. A-930517), § 480-09-736, filed 12/1/93, effective 1/1/94. Statutory Authority: RCW 80.01.040 and chapter 80.36 RCW. 92-01-135 (Order R-362, Docket No. A-911231), § 480-09-736, filed 12/19/91, effective 1/19/92. Statutory Authority: RCW 80.01.040 and 34.05.220. 91-06-010 (Order R-336, Docket No. A-900700), § 480-09-736, filed 2/22/91, effective 3/25/91. Statutory Authority: RCW 80.01.040. 89-21-036 (Order R-310, Docket No. U-89-2966-R), § 480-09-736, filed 10/12/89, effective 11/12/89.]