

TITLE 80 RCW

PUBLIC UTILITIES

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CHAPTER 80.01 RCW

UTILITIES AND TRANSPORTATION COMMISSION

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RCW 80.01.010 Commission created--Appointment of members--Terms--Vacancies--Removal--Salary. There is hereby created and established a state commission to be known and designated as the Washington utilities and transportation commission, and in this chapter referred to as the commission.

The commission shall be composed of three members appointed by the governor, with the consent of the senate. Not more than two members of said commission shall belong to the same political party.

The members of the first commission to be appointed after taking effect of this section shall be appointed for terms beginning April 1, 1951, and expiring as follows: One

commissioner for the term expiring January 1, 1953; one commissioner for the term expiring January 1, 1955; one commissioner for the term expiring January 1, 1957. Each of the commissioners shall hold office until his successor is appointed and qualified. Upon the expiration of the terms of the three commissioners first to be appointed as herein provided, each succeeding commissioner shall be appointed and hold office for the term of six years. One of such commissioners to be designated by the governor, shall, during the term of the appointing governor, be the chairman of the commission.

Each commissioner shall receive a salary as may be fixed by the governor in accordance with the provisions of RCW 43.03.040.

Any member of the commission may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who shall transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice shall thereupon designate a special tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time, place and procedure for the hearing, and the hearing shall be public. The decision of such tribunal shall be final and not subject to review.

If the tribunal specified herein finds the charges of the governor to be true, the governor shall have the right to immediately remove the commissioner from office, to declare the position of the commissioner vacant, and appoint another commissioner to the position in accordance with the provisions of the law.

Any vacancy arising in the office of commissioner shall be filled by appointment by the governor, and an appointee selected to fill such vacancy shall hold office for the balance of the full term for which his predecessor on the commission was appointed.

If a vacancy occurs while the senate is not in session, the governor shall make a temporary appointment until the next meeting of the senate, when he shall present to the senate his nomination or nominations for the office to be filled. [1961 c 307 § 4; 1961 c 14 § 80.01.010. Prior: 1955 c 340 § 7; 1951 c 260 § 1; 1949 c 117 § 1; Rem. Supp. 1949 § 10964-115-1. Formerly RCW 43.53.010.]

RCW 80.01.020 Commissioners--Oath, bond, and qualifications--Persons excluded from office and employment.

Each commissioner shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office, and furnish bond to the state in the sum of twenty thousand dollars conditioned for the faithful discharge of the duties of his office and for the proper accounting for all funds that may come into his possession by virtue of his office. Each commissioner shall be a qualified elector of this state and no person in the employ of or holding any official relation to any

corporation or person, which corporation or person is subject in whole or in part to regulation by the commission, and no person owning stocks or bonds of any such corporation or who is in any manner pecuniarily interested therein shall be appointed or hold the office of commissioner or be appointed or employed by the commission: PROVIDED, That if any such person shall become the owner of such stocks or bonds or become pecuniarily interested in such corporation otherwise than voluntarily, he shall within a reasonable time divest himself of such ownership or interest, and failing to do so his office or employment shall become vacant. [1961 c 14 § 80.01.020. Prior: 1949 c 117 § 2; Rem. Supp. 1949 § 10964-115-2. Formerly RCW 43.53.020 and 43.53.030.]

RCW 80.01.030 Commission to employ secretary and other assistants--Secretary's duties--Deputies. The commission shall appoint and employ a secretary and such accounting, engineering, expert and clerical assistants, and such other qualified assistants as may be necessary to carry on the administrative work of the commission.

The secretary shall be the custodian of the commission's official seal, and shall keep full and accurate minutes of all transactions, proceedings and determinations of the commission and perform such other duties as may be required by the commission.

The commission may deputize one or more of its assistants to perform, in the name of the commission, such duties of the commission as it deems expedient. [1961 c 14 § 80.01.030. Prior: 1949 c 117 § 4; 1934 c 267 §§ 2, 3, 5 and 6; Rem. Supp. 1949 § 10964-115-4 and Rem. Supp. 1945 §§ 10459-2, 10459-3, 10459-5, 10459-6; prior: compare prior laws as follows: 1955 c 340 § 7; 1951 c 260 § 1; 1949 c 117 §§ 1, 3, 8; 1945 c 267; 1935 c 8 § 1; 1921 c 7 §§ 25, 26; 1911 c 117. Formerly RCW 43.53.040.]

RCW 80.01.040 General powers and duties of commission. The utilities and transportation commission shall:

(1) Exercise all the powers and perform all the duties prescribed therefor by this title and by Title 81 RCW, or by any other law.

(2) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging in the transportation by whatever means of persons or property within this state for compensation, and related activities; including, but not limited to, air transportation companies, auto transportation companies, express companies, freight and freight line companies, motor freight companies, motor transportation agents, private car companies, railway companies, sleeping car companies, steamboat

companies, street railway companies, toll bridge companies, storage warehousemen, and wharfingers and warehousemen.

(3) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activities; including, but not limited to, electrical companies, gas companies, irrigation companies, telecommunications companies, and water companies.

(4) Make such rules and regulations as may be necessary to carry out its other powers and duties. [1985 c 450 § 10; 1961 c 14 § 80.01.040. Prior: (i) 1949 c 117 § 3; Rem. Supp. 1949 § 10964-115-3. (ii) 1945 c 267 § 5; Rem. Supp. 1945 § 10459-5. (iii) 1945 c 267 § 6; Rem. Supp. 1945 § 10459-6. Formerly RCW 43.53.050.]

NOTES:

Severability--Legislative review--1985 c 450: See RCW 80.36.900 and 80.36.901.

Flaggers--Safety standards: RCW 49.17.350.

RCW 80.01.050 Quorum--Hearings--Actions deemed those of the commission. A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the commission, and may hold hearings at any time or place within or without the state. Any investigation, inquiry, or hearing which the commission has power to undertake or to hold may be undertaken or held by or before any commissioner or any employee designated and authorized by the commission as provided in RCW 80.01.060. All investigations, inquiries, and hearings of the commission, and all findings, orders, or decisions, made by a commissioner, when approved and confirmed by the commission and filed in its office, shall be and be deemed to be the orders or decisions of the commission. [1995 c 331 § 2; 1961 c 14 § 80.01.050. Prior: 1949 c 117 § 6; Rem. Supp. 1949 § 10964-115-6. Formerly RCW 43.53.060.]

RCW 80.01.060 Administrative law judges--Powers--Designated persons for emergency adjudications. (1) The commission may designate employees of the commission as hearing examiners, administrative law judges, and review judges when it deems such action necessary for its general administration. The designated employees have power to administer oaths, to issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and testimony, to examine witnesses, and to receive testimony in any inquiry,

investigation, hearing, or proceeding in any part of the state, under such rules as the commission may adopt.

(2) In general rate increase filings by a natural gas, electric, or telecommunications company, the designated employee may preside, but may not enter an initial order unless expressly agreed to in writing by the company making the filing. In all other cases, the designated employee may enter an initial order including findings of fact and conclusions of law in accordance with RCW 34.05.461(1)(a) and (c) and (3) through (9) or 34.05.485. RCW 34.05.461 (1)(b) and (2) do not apply to entry of orders under this section. The designated employee may not enter final orders, except that the commission may designate persons by rule to preside and enter final orders in emergency adjudications under RCW 34.05.479.

(3) If the designated employee does not enter an initial order as provided in subsection (2) of this section, then a majority of the members of the commission who are to enter the final order must hear or review substantially all of the record submitted by any party. [1995 c 331 § 3; 1991 c 48 § 1; 1981 c 67 § 35; 1961 c 14 § 80.01.060. Prior: 1925 ex.s. c 164 § 1; RRS § 10779-1. Formerly RCW 43.53.070.]

NOTES:

Effective dates--Severability--1981 c 67: See notes following RCW 34.12.010.

RCW 80.01.070 Joint investigations, hearings, orders. The commission shall have full power to make joint or concurrent investigations, hold joint or concurrent hearings, and issue joint or concurrent orders in conjunction or concurrence with any official, board, or commission of any state or of the United States, whether in the holding of such investigations or hearings or in the making of such orders the commission functions under agreements or compacts between states or under the concurrent power of states to regulate interstate commerce or as an agency of the federal government or otherwise. When necessary the commission may hold such joint hearing or investigation outside the state. [1961 c 14 § 80.01.070. Prior: 1949 c 117 § 7; Rem. Supp. 1949 § 10964-115-7. Formerly RCW 43.53.080.]

RCW 80.01.075 Authority to initiate, participate in federal administrative agency proceedings. The commission shall have the authority as petitioner, intervenor or otherwise to initiate and/or participate in proceedings before federal administrative agencies in which there is at issue the authority, rates or practices for transportation or utility services affecting the interests of the state of Washington, its businesses and general public, and to do all things necessary in its opinion to present to such federal administrative agencies

all facts bearing upon such issues, and to similarly initiate and/or participate in any judicial proceedings relating thereto. [1967 ex.s. c 49 § 1.]

RCW 80.01.080 Public service revolving fund. There is created in the state treasury a public service revolving fund. Regulatory fees payable by all types of public service companies shall be deposited to the credit of the public service revolving fund. Except for expenses payable out of the pipeline safety account, all expense of operation of the Washington utilities and transportation commission shall be payable out of the public service revolving fund.

During the 2003-2005 fiscal biennium, the legislature may transfer from the public service revolving fund to the state general fund such amounts as reflect the excess fund balance of the fund. [2003 1st sp.s. c 25 § 940; 2002 c 371 § 924; 2001 c 238 § 8; 1961 c 14 § 80.01.080. Prior: 1949 c 117 § 11; Rem. Supp. 1949 § 10964-115-11. Formerly RCW 43.53.090.]

NOTES:

Severability--Effective date--2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability--Effective date--2002 c 371: See notes following RCW 9.46.100.

Intent--Finding--Effective date--2001 c 238: See notes following RCW 80.24.060.

RCW 80.01.090 Proceedings public records--Seal. All proceedings of the commission and all documents and records in its possession shall be public records, and it shall adopt and use an official seal. [1998 c 245 § 163; 1987 c 505 § 77; 1977 c 75 § 91; 1961 c 14 § 80.01.090. Prior: 1949 c 117 § 5; Rem. Supp. 1949 § 10964-115-5. Formerly RCW 43.53.100.]

RCW 80.01.100 Duties of attorney general. It shall be the duty of the attorney general to represent and appear for the people of the state of Washington and the commission in all actions and proceedings involving any question under this title or Title 81 RCW, or under or in reference to any act or order of the commission; and it shall be the duty of the attorney general generally to see that all laws affecting any of the persons or corporations herein enumerated are complied with, and that all laws, the enforcement of which devolves upon the commission, are enforced, and to that end he is authorized to institute, prosecute and defend all necessary actions and proceedings. [1961 c 14 § 80.01.100. Prior: 1911 c 117 § 5; RRS § 10341.]

RCW 80.01.110 Wholesale telecommunications services-- Commission authorized to review rates, terms, conditions. The commission is authorized to perform the duties required by RCW 53.08.380 and 54.16.340. [2000 c 81 § 10.]

NOTES:

Findings--2000 c 81: See note following RCW 53.08.005.

RCW 80.01.300 Certain provisions not to detract from commission powers, duties, and functions. Nothing contained in the provisions of RCW 36.58A.010 through 36.58A.040 and 70.95.090 and this section shall detract from the powers, duties, and functions given to the utilities and transportation commission in chapter 81.77 RCW. [1971 ex.s. c 293 § 7.]

CHAPTER 80.04 RCW

REGULATIONS--GENERAL

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RCW 80.04.010 Definitions. As used in this title, unless specifically defined otherwise or unless the context indicates otherwise:

"Automatic location identification" means a system by which information about a caller's location, including the seven-digit number or ten-digit number used to place a 911 call or a different seven-digit number or ten-digit number to which a return call can be made from the public switched network, is forwarded to a public safety answering point for display.

"Automatic number identification" means a system that allows for the automatic display of the seven-digit or ten-digit number used to place a 911 call.

"Commission" means the utilities and transportation commission.

"Commissioner" means one of the members of such commission.

"Competitive telecommunications company" means a telecommunications company which has been classified as such by the commission pursuant to RCW 80.36.320.

"Competitive telecommunications service" means a service which has been classified as such by the commission pursuant to RCW 80.36.330.

"Corporation" includes a corporation, company, association or joint stock association.

"Person" includes an individual, a firm or partnership.

"Gas plant" includes all real estate, fixtures and personal property, owned, leased, controlled, used or to be used for or in connection with the transmission, distribution, sale or furnishing of natural gas, or the manufacture, transmission, distribution, sale or furnishing of other type gas, for light, heat or power.

"Gas company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receiver appointed by any court whatsoever, and every city or town, owning, controlling, operating or managing any gas plant within this state.

"Electric plant" includes all real estate, fixtures and personal property operated, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat, or power for hire; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.

"Electrical company" includes any corporation, company, association, joint stock association, partnership and person,

their lessees, trustees or receivers appointed by any court whatsoever (other than a railroad or street railroad company generating electricity solely for railroad or street railroad purposes or for the use of its tenants and not for sale to others), and every city or town owning, operating or managing any electric plant for hire within this state. "Electrical company" does not include a company or person employing a cogeneration facility solely for the generation of electricity for its own use or the use of its tenants or for sale to an electrical company, state or local public agency, municipal corporation, or quasi municipal corporation engaged in the sale or distribution of electrical energy, but not for sale to others, unless such company or person is otherwise an electrical company.

"LATA" means a local access transport area as defined by the commission in conformance with applicable federal law.

"Private telecommunications system" means a telecommunications system controlled by a person or entity for the sole and exclusive use of such person, entity, or affiliate thereof, including the provision of private shared telecommunications services by such person or entity. "Private telecommunications system" does not include a system offered for hire, sale, or resale to the general public.

"Private shared telecommunications services" includes the provision of telecommunications and information management services and equipment within a user group located in discrete private premises in building complexes, campuses, or high-rise buildings, by a commercial shared services provider or by a user association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to the facilities of a local exchange and to interexchange telecommunications companies.

"Private switch automatic location identification service" means a service that enables automatic location identification to be provided to a public safety answering point for 911 calls originating from station lines served by a private switch system.

"Radio communications service company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court, and every city or town making available facilities to provide radio communications service, radio paging, or cellular communications service for hire, sale, or resale.

"Telecommunications company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, operating or managing any facilities used to provide telecommunications for hire, sale, or resale to the general public within this state.

"Noncompetitive telecommunications service" means any service which has not been classified as competitive by the commission.

"Facilities" means lines, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated, owned or controlled by any telecommunications company to facilitate the provision of telecommunications service.

"Telecommunications" is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

"Water system" includes all real estate, easements, fixtures, personal property, dams, dikes, head gates, weirs, canals, reservoirs, flumes or other structures or appliances operated, owned, used or to be used for or in connection with or to facilitate the supply, storage, distribution, sale, furnishing, diversion, carriage, apportionment or measurement of water for power, irrigation, reclamation, manufacturing, municipal, domestic or other beneficial uses for hire.

"Water company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, controlling, operating, or managing any water system for hire within this state: PROVIDED, That for purposes of commission jurisdiction it shall not include any water system serving less than one hundred customers where the average annual gross revenue per customer does not exceed three hundred dollars per year, which revenue figure may be increased annually by the commission by rule adopted pursuant to chapter 34.05 RCW to reflect the rate of inflation as determined by the implicit price deflator of the United States department of commerce: AND PROVIDED FURTHER, That such measurement of customers or revenues shall include all portions of water companies having common ownership or control, regardless of location or corporate designation. "Control" as used herein shall be defined by the commission by rule and shall not include management by a satellite agency as defined in chapter 70.116 RCW if the satellite agency is not an owner of the water company. "Water company" also includes, for auditing purposes only, nonmunicipal water systems which are referred to the commission pursuant to an administrative order from the department, or the city or county as provided in RCW 80.04.110. However, water companies exempt from commission regulation shall be subject to the provisions of chapter 19.86 RCW. A water company cannot be removed from regulation except with the approval of the commission. Water companies subject to regulation may petition the commission for removal from regulation if the number of customers falls below one hundred or the average annual revenue per customer falls below three

hundred dollars. The commission is authorized to maintain continued regulation if it finds that the public interest so requires.

"Cogeneration facility" means any machinery, equipment, structure, process, or property, or any part thereof, installed or acquired for the primary purpose of the sequential generation of electrical or mechanical power and useful heat from the same primary energy source or fuel.

"Public service company" includes every gas company, electrical company, telecommunications company, and water company. Ownership or operation of a cogeneration facility does not, by itself, make a company or person a public service company.

"Local exchange company" means a telecommunications company providing local exchange telecommunications service.

"Department" means the department of health.

The term "service" is used in this title in its broadest and most inclusive sense. [1995 c 243 § 2; 1991 c 100 § 1; 1989 c 101 § 2; 1987 c 229 § 1. Prior: 1985 c 450 § 2; 1985 c 167 § 1; 1985 c 161 § 1; 1979 ex.s. c 191 § 10; 1977 ex.s. c 47 § 1; 1963 c 59 § 1; 1961 c 14 § 80.04.010; prior: 1955 c 316 § 2; prior: 1929 c 223 § 1, part; 1923 c 116 § 1, part; 1911 c 117 § 8, part; RRS § 10344, part.]

NOTES:

Findings--Severability--1995 c 243: See notes following RCW 80.36.555.

Severability--Legislative review--1985 c 450: See RCW 80.36.900 and 80.36.901.

Severability--1979 ex.s. c 191: See RCW 82.35.900.

RCW 80.04.015 Conduct of business subject to regulation--Determination by commission. Whether or not any person or corporation is conducting business subject to regulation under this title, or has performed or is performing any act requiring registration or approval of the commission without securing such registration or approval, shall be a question of fact to be determined by the commission. Whenever the commission believes that any person or corporation is engaged in any activity without first complying with the requirements of this title, it may institute a special proceeding requiring such person or corporation to appear before the commission at a location convenient for witnesses and the production of evidence and produce information, books, records, accounts, and other memoranda, and give testimony under oath as to the activities being conducted. The commission may consider any and all facts that may indicate the true nature and extent of the operations

or acts and may subpoena such witnesses and documents as it deems necessary.

After investigation, the commission is authorized and directed to issue the necessary order or orders declaring the activities to be subject to, or not subject to, the provisions of this title. In the event the activities are found to be subject to the provisions of this title, the commission shall issue such orders as may be necessary to require all parties involved in the activities to comply with this title, and with respect to services found to be reasonably available from alternative sources, to issue orders to cease and desist from providing jurisdictional services pending full compliance.

In proceedings under this section, no person or corporation may be excused from testifying or from producing any information, book, document, paper, or account before the commission when ordered to do so, on the ground that the testimony or evidence, information, book, document, or account required may tend to incriminate him or her or subject him or her to penalty or forfeiture specified in this title; but no person or corporation may be prosecuted, punished, or subjected to any penalty or forfeiture specified in this title for or on account of any account, transaction, matter, or thing concerning which he or she shall under oath have testified or produced documentary evidence in proceedings under this section: PROVIDED, That no person so testifying may be exempt from prosecution or punishment for any perjury committed by him or her in such testimony: PROVIDED FURTHER, That the exemption from prosecution in this section extends only to violations of this title.

Until July 1, 1994, in any proceeding instituted under this section to determine whether a person or corporation owning, controlling, operating, or managing a water system is subject to commission regulation, and where the person or corporation has failed or refused to provide sufficient information or documentation to enable the commission to make such a determination, the burden shall be on such person or corporation to prove that the person's or corporation's operations or acts are not subject to commission regulation. [1991 c 101 § 1; 1986 c 11 § 1.]

RCW 80.04.020 Procedure before commission and courts.

Each commissioner shall have power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the state.

The superior court of the county in which any such inquiry, investigation, hearing or proceeding may be had, shall have power to compel the attendance of witnesses and the production of papers, books, accounts, documents and testimony as required by such subpoena. The commission or the commissioner before

which the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by the subpoena, shall report to the superior court in and for the county in which the proceeding is pending by petition, setting forth that due notice has been given of the time and place of attendance of said witnesses, or the production of said papers, and that the witness has been summoned in the manner prescribed in this chapter, and that the fees and mileage of the witness have been paid or tendered to the witness for his attendance and testimony, and that the witness has failed and refused to attend or produce the papers required by the subpoena, before the commission, in the cause or proceedings named in the notice and subpoena, or has refused to answer questions propounded to him in the course of such proceeding, and ask an order of said court, compelling the witness to attend and testify before the commission. The court, upon the petition of the commission, shall enter an order directing the witness to appear before said court at a time and place to be fixed by the court in such order, and then and there show cause why he has not responded to said subpoena. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commission, the court shall thereupon enter an order that said witness appear before the commission at said time and place as fixed in said order, and testify or produce the required papers, and upon failing to obey said order, said witness shall be dealt with as for contempt of court. [1961 c 14 § 80.04.020. Prior: 1911 c 117 § 75, part; RRS § 10413, part.]

RCW 80.04.030 Number of witnesses may be limited. In all proceedings before the commission the commission shall have the right, in their discretion, to limit the number of witnesses testifying upon any subject or proceeding to be inquired of before the commission. [1961 c 14 § 80.04.030. Prior: 1911 c 117 § 75, part; RRS § 10413, part.]

RCW 80.04.040 Witness fees and mileage. Each witness who shall appear under subpoena shall receive for his attendance four dollars per day and ten cents per mile traveled by the nearest practicable route in going to and returning from the place of hearing. No witness shall be entitled to fees or mileage from the state when summoned at the instance of the public service companies affected. [1961 c 14 § 80.04.040. Prior: 1955 c 79 § 1; 1911 c 117 § 76, part; RRS 10414, part.]

RCW 80.04.050 Protection against self-incrimination. The claim by any witness that any testimony sought to be elicited may tend to incriminate him shall not excuse such witness from testifying, but such evidence or testimony shall not be used

against such person on the trial of any criminal proceeding, excepting in a prosecution for perjury. The commissioner shall have power to compel the attendance of witnesses at any place within the state. [1961 c 14 § 80.04.050. Prior: 1911 c 117 § 76, part; RRS 10414, part.]

NOTES:

Powers of each commissioner to compel attendance of witnesses:
RCW 80.04.020.

RCW 80.04.060 Depositions--Service of process. The commission shall have the right to take the testimony of any witness by deposition, and for that purpose the attendance of witnesses and the production of books, documents, papers and accounts may be enforced in the same manner as in the case of hearings before the commission, or any member thereof. Process issued under the provisions of this chapter shall be served as in civil cases. [1961 c 14 § 80.04.060. Prior: 1911 c 117 § 76, part; RRS § 10414, part.]

RCW 80.04.070 Inspection of books, papers, and documents. The commission and each commissioner, or any person employed by the commission, shall have the right, at any and all times, to inspect the accounts, books, papers and documents of any public service company, and the commission, or any commissioner, may examine under oath any officer, agent or employee of such public service company in relation thereto, and with reference to the affairs of such company: PROVIDED, That any person other than a commissioner who shall make any such demand shall produce his authority from the commission to make such inspection. [1961 c 14 § 80.04.070. Prior: 1911 c 117 § 77; RRS § 10415.]

RCW 80.04.075 Manner of serving papers. All notices, applications, complaints, findings of fact, opinions and orders required by this title to be served may be served by mail and service thereof shall be deemed complete when a true copy of such paper or document is deposited in the post office properly addressed and stamped. [1961 c 14 § 80.04.075. Prior: 1933 c 165 § 7; RRS § 10458-1. Formerly RCW 80.04.370.]

RCW 80.04.080 Annual reports. Every public service company shall annually furnish to the commission a report in such form as the commission may require, and shall specifically answer all questions propounded to it by the commission, upon or concerning which the commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor and the manner of payment for

same, the dividends paid, the surplus fund, if any, and the number of stockholders, the funded and floating debts and the interest paid thereon, the cost and value of the company's property, franchises and equipment, the number of employees and the salaries paid each class, the accidents to employees and other persons and the cost thereof, the amounts expended for improvements each year, how expended and the character of such improvements, the earnings or receipts from each franchise or business and from all sources, the proportion thereof earned from business moving wholly within the state and the proportion earned from interstate business, the operating and other expenses and the proportion of such expense incurred in transacting business wholly within the state, and proportion incurred in transacting interstate business, such division to be shown according to such rules of division as the commission may prescribe, the balances of profit and loss, and a complete exhibit of the financial operations of the company each year, including an annual balance sheet. Such report shall also contain such information in relation to rates, charges or regulations concerning charges, or agreements, arrangements or contracts affecting the same, as the commission may require; and the commission may, in its discretion, for the purpose of enabling it the better to carry out the provisions of this title, prescribe the period of time within which all public service companies subject to the provisions of this title shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept. Such detailed report shall contain all the required statistics for the period of twelve months ending on the last day of any particular month prescribed by the commission for any public service company. Such reports shall be made out under oath and filed with the commission at its office in Olympia on such date as the commission specifies by rule, unless additional time be granted in any case by the commission. The commission shall have authority to require any public service company to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matter about which the commission is authorized or required by this or any other law, to inquire into or keep itself informed about, or which it is required to enforce, such periodical or special reports to be under oath whenever the commission so requires. [1989 c 107 § 1; 1961 c 14 § 80.04.080. Prior: 1911 c 117 § 78, part; RRS § 10416, part.]

RCW 80.04.090 Forms of records to be prescribed. The commission may, in its discretion, prescribe the forms of any and all accounts, records and memoranda to be kept by public service companies, including the accounts, records and memoranda of the movement of traffic, sales of its product, the receipts and expenditures of money. The commission shall at all times have access to all accounts, records and memoranda kept by

public service companies, and may employ special agents or examiners, who shall have power to administer oaths and authority, under the order of the commission, to examine witnesses and to inspect and examine any and all accounts, records and memoranda kept by such companies. The commission may, in its discretion, prescribe the forms of any and all reports, accounts, records and memoranda to be furnished and kept by any public service company whose line or lines extend beyond the limits of this state, which are operated partly within and partly without the state, so that the same shall show any information required by the commission concerning the traffic movement, receipts and expenditures appertaining to those parts of the line within the state. [1961 c 14 § 80.04.090. Prior: 1911 c 117 § 78, part; RRS § 10416, part.]

RCW 80.04.095 Protection of records containing commercial information. Records, subject to chapter 42.17 RCW, filed with the commission or the attorney general from any person which contain valuable commercial information, including trade secrets or confidential marketing, cost, or financial information, or customer-specific usage and network configuration and design information, shall not be subject to inspection or copying under chapter 42.17 RCW: (1) Until notice to the person or persons directly affected has been given; and (2) if, within ten days of the notice, the person has obtained a superior court order protecting the records as confidential. The court shall determine that the records are confidential and not subject to inspection and copying if disclosure would result in private loss, including an unfair competitive disadvantage. When providing information to the commission or the attorney general, a person shall designate which records or portions of records contain valuable commercial information. Nothing in this section shall prevent the use of protective orders by the commission governing disclosure of proprietary or confidential information in contested proceedings. [1987 c 107 § 1.]

RCW 80.04.100 Production of out-of-state books and records. The commission may by order with or without hearing require the production within this state, at such time and place as it may designate, of any books, accounts, papers or records kept by any public service company in any office or place without this state, or at the option of the company verified copies thereof, so that an examination thereof may be made by the commission or under its direction. [1961 c 14 § 80.04.100. Prior: 1933 c 165 § 2; 1911 c 117 § 79; RRS § 10421.]

RCW 80.04.110 Complaints--Hearings--Water systems not meeting board of health standards--Drinking water standards--Nonmunicipal water systems audits. (1) Complaint may be made by

the commission of its own motion or by any person or corporation, chamber of commerce, board of trade, or any commercial, mercantile, agricultural or manufacturing society, or any body politic or municipal corporation, or by the public counsel section of the office of the attorney general, or its successor, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission: PROVIDED, That no complaint shall be entertained by the commission except upon its own motion, as to the reasonableness of the schedule of the rates or charges of any gas company, electrical company, water company, or telecommunications company, unless the same be signed by the mayor, council or commission of the city or town in which the company complained of is engaged in business, or not less than twenty-five consumers or purchasers of such gas, electricity, water or telecommunications service, or at least twenty-five percent of the consumers or purchasers of the company's service: PROVIDED, FURTHER, That when two or more public service corporations, (meaning to exclude municipal and other public corporations) are engaged in competition in any locality or localities in the state, either may make complaint against the other or others that the rates, charges, rules, regulations or practices of such other or others with or in respect to which the complainant is in competition, are unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly, and upon such complaint or upon complaint of the commission upon its own motion, the commission shall have power, after notice and hearing as in other cases, to, by its order, subject to appeal as in other cases, correct the abuse complained of by establishing such uniform rates, charges, rules, regulations or practices in lieu of those complained of, to be observed by all of such competing public service corporations in the locality or localities specified as shall be found reasonable, remunerative, nondiscriminatory, legal, and fair or tending to prevent oppression or monopoly or to encourage competition, and upon any such hearing it shall be proper for the commission to take into consideration the rates, charges, rules, regulations and practices of the public service corporation or corporations complained of in any other locality or localities in the state.

(2) All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of complaints or grievances or misjoinder of parties; and in any review of the courts of orders of the commission the same rule shall apply and pertain with regard to the joinder of complaints and parties as herein provided: PROVIDED, All grievances to be inquired into shall be plainly set forth in the complaint. No complaint shall be

dismissed because of the absence of direct damage to the complainant.

(3) Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the person or corporation complained of, which shall be accompanied by a notice fixing the time when and place where a hearing will be had upon such complaint. The time fixed for such hearing shall not be less than ten days after the date of the service of such notice and complaint, excepting as herein provided. The commission shall enter its final order with respect to a complaint filed by any entity or person other than the commission within ten months from the date of filing of the complaint, unless the date is extended for cause. Rules of practice and procedure not otherwise provided for in this title may be prescribed by the commission. Such rules may include the requirement that a complainant use informal processes before filing a formal complaint.

(4) The commission shall, as appropriate, audit a nonmunicipal water system upon receipt of an administrative order from the department, or the city or county in which the water system is located, finding that the water delivered by a system does not meet state board of health standards adopted under RCW 43.20.050(2)(a) or standards adopted under chapters 70.116 and 70.119A RCW, and the results of the audit shall be provided to the requesting department, city, or county. However, the number of nonmunicipal water systems referred to the commission in any one calendar year shall not exceed twenty percent of the water companies subject to commission regulation as defined in RCW 80.04.010.

Every nonmunicipal water system referred to the commission for audit under this section shall pay to the commission an audit fee in an amount, based on the system's twelve-month audited period, equal to the fee required to be paid by regulated companies under RCW 80.24.010.

(5) Any customer or purchaser of service from a water system or company that is subject to commission regulation may file a complaint with the commission if he or she has reason to believe that the water delivered by the system to the customer does not meet state drinking water standards under chapter 43.20 or 70.116 RCW. The commission shall investigate such a complaint, and shall request that the state department of health or local health department of the county in which the system is located test the water for compliance with state drinking water standards, and provide the results of such testing to the commission. The commission may decide not to investigate the complaint if it determines that the complaint has been filed in bad faith, or for the purpose of harassment of the water system or company, or for other reasons has no substantial merit. The water system or company shall bear the expense for the testing. After the commission has received the complaint from the customer and during the pendency of the commission investigation, the water system or company shall not take any

steps to terminate service to the customer or to collect any amounts alleged to be owed to the company by the customer. The commission may issue an order or take any other action to ensure that no such steps are taken by the system or company. The customer may, at the customer's option and expense, obtain a water quality test by a licensed or otherwise qualified water testing laboratory, of the water delivered to the customer by the water system or company, and provide the results of such a test to the commission. If the commission determines that the water does not meet state drinking water standards, it shall exercise its authority over the system or company as provided in this title, and may, where appropriate, order a refund to the customer on a pro rata basis for the substandard water delivered to the customer, and shall order reimbursement to the customer for the cost incurred by the customer, if any, in obtaining a water quality test. [1995 c 376 § 12. Prior: 1991 c 134 § 1; 1991 c 100 § 2; prior: 1989 c 207 § 2; 1989 c 101 § 17; 1985 c 450 § 11; 1961 c 14 § 80.04.110; prior: 1913 c 145 § 1; 1911 c 117 § 80; RRS § 10422.]

NOTES:

Findings--1995 c 376: See note following RCW 70.116.060.

Severability--Legislative review--1985 c 450: See RCW 80.36.900 and 80.36.901.

Drinking water standards: Chapters 43.21A, 70.119A, and 80.28 RCW.

RCW 80.04.120 Hearing--Order--Record. At the time fixed for the hearing mentioned in RCW 80.04.110, the complainant and the person or corporation complained of shall be entitled to be heard and introduce such evidence as he or it may desire. The commission shall issue process to enforce the attendance of all necessary witnesses. At the conclusion of such hearing the commission shall make and render findings concerning the subject matter and facts inquired into and enter its order based thereon. A copy of such order, certified under the seal of the commission, shall be served upon the person or corporation complained of, or his or its attorney, which order shall, of its own force, take effect and become operative twenty days after the service thereof, except as otherwise provided. Where an order cannot, in the judgment of the commission, be complied with within twenty days, the commission may prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order. A full and complete record of all proceedings had before the commission, or any member thereof, on any formal hearing had, and all testimony shall be taken down by a stenographer

appointed by the commission, and the parties shall be entitled to be heard in person or by attorney. In case of an action to review any order of the commission, a transcript of such testimony, together with all exhibits introduced, and of the record and proceedings in the cause, shall constitute the record of the commission. [1961 c 14 § 80.04.120. Prior: 1911 c 117 § 81; RRS § 10423.]

RCW 80.04.130 Suspension of tariff change--Mandatory measured telecommunications service--Washington telephone assistance program service--Effect of abandonment of electrical generation facility on which tax exemption for pollution control equipment is claimed. (1) Except as provided in subsection (2) of this section, whenever any public service company shall file with the commission any schedule, classification, rule, or regulation, the effect of which is to change any rate, charge, rental, or toll theretofore charged, the commission shall have power, either upon its own motion or upon complaint, upon notice, to enter upon a hearing concerning such proposed change and the reasonableness and justness thereof. Pending such hearing and the decision thereon, the commission may suspend the operation of such rate, charge, rental, or toll for a period not exceeding ten months from the time the same would otherwise go into effect. After a full hearing, the commission may make such order in reference thereto as would be provided in a hearing initiated after the same had become effective.

(2)(a) The commission shall not suspend a tariff that makes a decrease in a rate, charge, rental, or toll filed by a telecommunications company pending investigation of the fairness, justness, and reasonableness of the decrease when the filing does not contain any offsetting increase to another rate, charge, rental, or toll and the filing company agrees to not file for an increase to any rate, charge, rental, or toll to recover the revenue deficit that results from the decrease for a period of one year.

(i) The filing company shall file with any decrease sufficient information as the commission by rule may require to demonstrate the decreased rate, charge, rental, or toll is above the long run incremental cost of the service. A tariff decrease that results in a rate that is below long run incremental cost, or is contrary to commission rule or order, or the requirements of this chapter, shall be rejected for filing and returned to the company.

(ii) The commission may prescribe a different rate to be effective on the prospective date stated in its final order after its investigation, if it concludes based on the record that the originally filed and effective rate is unjust, unfair, or unreasonable.

(b) The commission shall not suspend a promotional tariff. For the purposes of this section, "promotional tariff" means a tariff that, for a period of up to ninety days, waives or

reduces charges or conditions of service for existing or new subscribers for the purpose of retaining or increasing the number of customers who subscribe to or use a service.

(3) The commission may suspend the initial tariff filing of any water company removed from and later subject to commission jurisdiction because of the number of customers or the average annual gross revenue per customer provisions of RCW 80.04.010. The commission may allow temporary rates during the suspension period. These rates shall not exceed the rates charged when the company was last regulated. Upon a showing of good cause by the company, the commission may establish a different level of temporary rates.

(4) At any hearing involving any change in any schedule, classification, rule, or regulation the effect of which is to increase any rate, charge, rental, or toll theretofore charged, the burden of proof to show that such increase is just and reasonable shall be upon the public service company.

(5) The implementation of mandatory local measured telecommunications service is a major policy change in available telecommunications service. The commission shall not accept for filing a price list, nor shall it accept for filing or approve, prior to June 1, 2004, a tariff filed by a telecommunications company which imposes mandatory local measured service on any customer or class of customers, except that, upon finding that it is in the public interest, the commission may accept for filing a price list or it may accept for filing and approve a tariff that imposes mandatory measured service for a telecommunications company's extended area service or foreign exchange service. This subsection does not apply to land, air, or marine mobile service, or to pay telephone service, or to any service which has been traditionally offered on a measured service basis.

(6) The implementation of Washington telephone assistance program service is a major policy change in available telecommunications service. The implementation of Washington telephone assistance program service will aid in achieving the stated goal of universal telephone service.

(7) If a utility claims a sales or use tax exemption on the pollution control equipment for an electrical generation facility and abandons the generation facility before the pollution control equipment is fully depreciated, any tariff filing for a rate increase to recover abandonment costs for the pollution control equipment shall be considered unjust and unreasonable for the purposes of this section. [2003 c 189 § 1; 2001 c 267 § 1; 1998 c 110 § 1; 1997 c 368 § 14; 1993 c 311 § 1; 1992 c 68 § 1; 1990 c 170 § 1; 1989 c 101 § 13. Prior: 1987 c 333 § 1; 1987 c 229 § 2; prior: 1985 c 450 § 12; 1985 c 206 § 1; 1985 c 161 § 2; 1984 c 3 § 2; 1961 c 14 § 80.04.130; prior: 1941 c 162 § 1; 1937 c 169 § 2; 1933 c 165 § 3; 1915 c 133 § 1; 1911 c 117 § 82; Rem. Supp. 1941 § 10424.]

NOTES:

Effective date--2001 c 267: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2001]." [2001 c 267 § 2.]

Findings--Intent--Rules adoption--Severability--Effective date--1997 c 368: See notes following RCW 82.08.810.

Effective date--1993 c 311: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 12, 1993]." [1993 c 311 § 2.]

Effective date--1987 c 333: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 1, 1987." [1987 c 333 § 2.]

Severability--Legislative review--1985 c 450: See RCW 80.36.900 and 80.36.901.

RCW 80.04.140 Order requiring joint action. Whenever any order of the commission shall require joint action by two or more public service companies, such order shall specify that the same shall be made at their joint cost, and the companies affected shall have thirty days, or such further time, as the commission may prescribe, within which to agree upon the part or division of cost which each shall bear, and costs of operation and maintenance in the future, or the proportion of charges or revenue each shall receive from such joint service and the rules to govern future operations. If at the expiration of such time such companies shall fail to file with the commission a statement that an agreement has been made for the division or apportionment of such cost, the division of costs of operation and maintenance to be incurred in the future and the proportion of charges or revenue each shall receive from such joint service and the rules to govern future operations, the commission shall have authority, after further hearing, to enter a supplemental order fixing the proportion of such cost or expense to be borne by each company, and the manner in which the same shall be paid and secured. [1961 c 14 § 80.04.140. Prior: 1911 c 117 § 83; RRS § 10425.]

RCW 80.04.150 Remunerative rates cannot be changed without approval. Whenever the commission shall find, after hearing had upon its own motion or upon complaint as herein provided, that

any rate, toll, rental or charge which has been the subject of complaint and inquiry is sufficiently remunerative to the public service company affected thereby, it may order that such rate, toll, rental or charge shall not be changed, altered, abrogated or discontinued, nor shall there be any change in the classification which will change or alter such rate, toll, rental or charge without first obtaining the consent of the commission authorizing such change to be made. [1961 c 14 § 80.04.150. Prior: 1911 c 117 § 84; RRS § 10426.]

RCW 80.04.160 Rules and regulations. The commission is hereby authorized and empowered to adopt, promulgate and issue rules and regulations covering the transmission and delivery of messages and conversations, and the furnishing and supply of gas, electricity and water, and any and all services concerning the same, or connected therewith; and generally such rules as pertain to the comfort and convenience of the public concerning the subjects treated of in this title. Such rules and regulations shall be promulgated and issued by the commission on its own motion, and shall be served on the public service company affected thereby as other orders of the commission are served. Any public service company affected thereby, and deeming such rules and regulations, or any of them, improper, unjust, unreasonable, or contrary to law, may within twenty days from the date of service of such order upon it file objections thereto with the commission, specifying the particular grounds of such objections. The commission shall, upon receipt of such objections, fix a time and place for hearing the same, and after a full hearing may make such changes or modifications thereto, if any, as the evidence may justify. The commission shall have, and it is hereby given, power to adopt rules to govern its proceedings, and to regulate the mode and manner of all investigations and hearings: PROVIDED, No person desiring to be present at such hearing shall be denied permission. Actions may be instituted to review rules and regulations promulgated under this section as in the case of orders of the commission. [1961 c 14 § 80.04.160. Prior: 1911 c 117 § 85; RRS § 10427.]

RCW 80.04.170 Review of orders. Any complainant or any public service company affected by any findings or order of the commission, and deeming such findings or order to be contrary to law, may, within thirty days after the service of the findings or order upon him or it, apply to the superior court of Thurston county for a writ of review, for the purpose of having the reasonableness and lawfulness of such findings or order inquired into and determined. Such writ shall be made returnable not later than thirty days from and after the date of the issuance thereof, unless upon notice to all parties affected further time be allowed by the court, and shall direct the commission to certify its record in the case to the court. Such cause shall

be heard by the court without the intervention of a jury on the evidence and exhibits introduced before the commission and certified to by it. Upon such hearing the superior court shall enter judgment either affirming or setting aside or remanding for further action the findings or order of the commission under review. The reasonable cost of preparing the transcript of testimony taken before the commission shall be assessable as part of the statutory court costs, and the amount thereof, if collected by the commission, shall be deposited in the public service revolving fund. In case such findings or order be set aside, or reversed and remanded, the court shall make specific findings based upon evidence in the record indicating clearly all respects in which the commission's findings or order are erroneous. [1961 c 14 § 80.04.170. Prior: 1937 c 169 § 3; 1911 c 117 § 86; RRS § 10428.]

RCW 80.04.180 Supersedeas--Water companies seeking supersedeas. (1) The pendency of any writ of review shall not of itself stay or suspend the operation of the order of the commission, but the superior court in its discretion may restrain or suspend, in whole or in part, the operation of the commission's order pending the final hearing and determination of the suit.

(2) No order so restraining or suspending an order of the commission relating to rates, charges, tolls or rentals, or rules or regulations, practices, classifications or contracts affecting the same, shall be made by the superior court otherwise than upon three days' notice and after hearing. If a supersedeas is granted the order granting the same shall contain a specific finding, based upon evidence submitted to the court making the order, and identified by reference thereto, that great or irreparable damage would otherwise result to the petitioner, and specifying the nature of the damage. A water company seeking a supersedeas must demonstrate to the court that it is in compliance with the state board of health standards adopted pursuant to RCW 43.20.050 and chapter 70.116 RCW relating to the purity, volume, and pressure of water.

(3) In case the order of the commission under review is superseded by the court, it shall require a bond, with good and sufficient surety, conditioned that such company petitioning for such review shall answer for all damages caused by the delay in the enforcement of the order of the commission, and all compensation for whatever sums for transmission or service any person or corporation shall be compelled to pay pending the review proceedings in excess of the sum such person or corporations would have been compelled to pay if the order of the commission had not been suspended.

(4) The court may, in addition to or in lieu of the bond herein provided for, require such other or further security for the payment of such excess charges or damages as it may deem

proper. [1989 c 207 § 3; 1961 c 14 § 80.04.180. Prior: 1933 c 165 § 6; prior: 1931 c 119 § 2; 1911 c 117 § 87; RRS § 10429.]

RCW 80.04.190 Appellate review. The commission, any public service company or any complainant may, after the entry of judgment in the superior court in any action of review, seek appellate review as in other cases. [1988 c 202 § 60; 1971 ex.s. c 107 § 4; 1961 c 14 § 80.04.190. Prior: 1911 c 117 § 88; RRS § 10430.]

NOTES:

Rules of court: Cf. RAP 2.2.

Severability--1988 c 202: See note following RCW 2.24.050.

RCW 80.04.200 Rehearing before commission. Any public service company affected by any order of the commission, and deeming itself aggrieved, may, after the expiration of two years from the date of such order taking effect, petition the commission for a rehearing upon the matters involved in such order, setting forth in such petition the grounds and reasons for such rehearing, which grounds and reasons may comprise and consist of changed conditions since the issuance of such order, or by showing a result injuriously affecting the petitioner which was not considered or anticipated at the former hearing, or that the effect of such order has been such as was not contemplated by the commission or the petitioner, or for any good and sufficient cause which for any reason was not considered and determined in such former hearing. Upon the filing of such petition, such proceedings shall be had thereon as are provided for hearings upon complaint, and such orders may be reviewed as are other orders of the commission: PROVIDED, That no order superseding the order of the commission denying such rehearing shall be granted by the court pending the review. In case any order of the commission shall not be reviewed, but shall be complied with by the public service company, such petition for rehearing may be filed within six months from and after the date of the taking effect of such order, and the proceedings thereon shall be as in this section provided. The commission, may, in its discretion, permit the filing of a petition for rehearing at any time. No order of the commission upon a rehearing shall affect any right of action or penalty accruing under the original order unless so ordered by the commission. [1961 c 14 § 80.04.200. Prior: 1911 c 117 § 89; RRS § 10431.]

RCW 80.04.210 Commission may change orders. The commission may at any time, upon notice to the public service

company affected, and after opportunity to be heard as provided in the case of complaints rescind, alter or amend any order or rule made, issued or promulgated by it, and any order or rule rescinding, altering or amending any prior order or rule shall, when served upon the public service company affected, have the same effect as herein provided for original orders and rules. [1961 c 14 § 80.04.210. Prior: 1911 c 117 § 90; RRS § 10432.]

RCW 80.04.220 Reparations. When complaint has been made to the commission concerning the reasonableness of any rate, toll, rental or charge for any service performed by any public service company, and the same has been investigated by the commission, and the commission has determined that the public service company has charged an excessive or exorbitant amount for such service, and the commission has determined that any party complainant is entitled to an award of damages, the commission shall order that the public service company pay to the complainant the excess amount found to have been charged, whether such excess amount was charged and collected before or after the filing of said complaint, with interest from the date of the collection of said excess amount. [1961 c 14 § 80.04.220. Prior: 1943 c 258 § 1; 1937 c 29 § 1; Rem. Supp. 1943 § 10433.]

RCW 80.04.230 Overcharges--Refund. When complaint has been made to the commission that any public service company has charged an amount for any service rendered in excess of the lawful rate in force at the time such charge was made, and the same has been investigated and the commission has determined that the overcharge allegation is true, the commission may order that the public service company pay to the complainant the amount of the overcharge so found, whether such overcharge was made before or after the filing of said complaint, with interest from the date of collection of such overcharge. [1961 c 14 § 80.04.230. Prior: 1937 c 29 § 2; RRS § 10433-1.]

RCW 80.04.240 Action in court on reparations and overcharges. If the public service company does not comply with the order of the commission for the payment of the overcharge within the time limited in such order, suit may be instituted in any superior court where service may be had upon the said company to recover the amount of the overcharge with interest. It shall be the duty of the commission to certify its record in the case, including all exhibits, to the court. Such record shall be filed with the clerk of said court within thirty days after such suit shall have been started and said suit shall be heard on the evidence and exhibits introduced before the commission and certified to by it. If the complainant shall prevail in such action, the superior court shall enter judgment

for the amount of the overcharge with interest and shall allow complainant a reasonable attorney's fee, and the cost of preparing and certifying said record for the benefit of and to be paid to the commission by complainant, and deposited by the commission in the public service revolving fund, said sums to be fixed and collected as a part of the costs of the suit. If the order of the commission shall be found to be contrary to law or erroneous by reason of the rejection of testimony properly offered, the court shall remand the cause to the commission with instructions to receive the testimony so proffered and rejected and enter a new order based upon the evidence theretofore taken and such as it is directed to receive. The court may in its discretion remand any cause which is reversed by it to the commission for further action. Appeals to the supreme court shall lie as in other civil cases. All complaints concerning overcharges resulting from collecting unreasonable rates and charges or from collecting amounts in excess of lawful rates shall be filed with the commission within six months in cases involving the collection of unreasonable rates and two years in cases involving the collection of more than lawful rates from the time the cause of action accrues, and the suit to recover the overcharge shall be filed in the superior court within one year from the date of the order of the commission.

The procedure provided in this section is exclusive, and neither the supreme court nor any superior court shall have jurisdiction save in the manner hereinbefore provided. [1961 c 14 § 80.04.240. Prior: 1943 c 258 § 2; 1937 c 29 § 3; Rem. Supp. 1943 § 10433-2.]

RCW 80.04.250 Valuation of public service property. The commission shall have power upon complaint or upon its own motion to ascertain and determine the fair value for rate making purposes of the property of any public service company used and useful for service in this state and shall exercise such power whenever it shall deem such valuation or determination necessary or proper under any of the provisions of this title. In determining what property is used and useful for providing electric, gas, or water service, the commission may include the reasonable costs of construction work in progress to the extent that the commission finds that inclusion is in the public interest.

The commission shall have the power to make revaluations of the property of any public service company from time to time.

The commission shall, before any hearing is had, notify the complainants and the public service company concerned of the time and place of such hearing by giving at least thirty days' written notice thereof, specifying that at the time and place designated a hearing will be held for the purpose of ascertaining the value of the company's property, used and useful as aforesaid, which notice shall be sufficient to authorize the commission to inquire into and pass upon the

matters designated in this section. [1991 c 122 § 2; 1961 c 14 § 80.04.250. Prior: 1933 c 165 § 4; 1913 c 182 § 1; 1911 c 117 § 92; RRS § 10441.]

NOTES:

Findings--1991 c 122: "The legislature finds that the state is facing an energy shortage as growth occurs and that inadequate supplies of energy will cause harmful impacts on the entire range of state citizens. The legislature further finds that energy efficiency improvement is the single most effective near term measure to lessen the risk of energy shortage. In the area of electricity, the legislature additionally finds that the Northwest power planning council has made several recommendations, including an update of the commercial building energy code and granting flexible ratemaking alternatives for utility commissions to encourage prudent acquisition of new electric resources." [1991 c 122 § 1.]

Severability--1991 c 122: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 122 § 4.]

RCW 80.04.260 Summary proceedings. Whenever the commission shall be of opinion that any public service company is failing or omitting, or about to fail or omit, to do anything required of it by law, or by order, direction or requirement of the commission, or is doing anything, or about to do anything, or permitting anything, or about to permit anything to be done contrary to or in violation of law or of any order, direction or requirement of the commission authorized by this title, it shall direct the attorney general to commence an action or proceeding in the superior court of the state of Washington for Thurston county, or in the superior court of any county in which such company may do business, in the name of the state of Washington on the relation of the commission, for the purpose of having such violations or threatened violations stopped and prevented, either by mandamus or injunction. The attorney general shall thereupon begin such action or proceeding by petition to such superior court, alleging the violation complained of, and praying for the appropriate relief by way of mandamus or injunction. It shall thereupon be the duty of the court to specify a time, not exceeding twenty days after the service of the copy of the petition, within which the public service company complained of must answer the petition. In case of default in answer or after answer, the court shall immediately inquire into the facts and circumstances in such manner as the court shall direct, without other or formal pleadings, and without respect to any technical requirement. Such persons or

corporations as the court may deem necessary or proper to be joined as parties, in order to make its judgment, order or writ effective, may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that the writ of mandamus or injunction, or both, issue as prayed for in the petition, or in such other modified form as the court may determine will afford appropriate relief. Appellate review of the final judgment may be sought in the same manner and with the same effect as review of judgments of the superior court in actions to review orders of the commission. All provisions of this chapter relating to the time of review, the manner of perfecting the same, the filing of briefs, hearings and supersedeas, shall apply to appeals to the supreme court or the court of appeals under the provisions of this section. [1988 c 202 § 61; 1971 c 81 § 140; 1961 c 14 § 80.04.260. Prior: 1911 c 117 § 93; RRS § 10442.]

NOTES:

Severability--1988 c 202: See note following RCW 2.24.050.

RCW 80.04.270 Merchandise accounts to be kept separate. Any public service company engaging in the sale of merchandise or appliances or equipment shall keep separate accounts, as prescribed by the commission, of its capital employed in such business and of its revenues therefrom and operating expenses thereof. The capital employed in such business shall not constitute a part of the fair value of said company's property for rate making purposes, nor shall the revenues from or operating expenses of such business constitute a part of the operating revenues and expenses of said company as a public service company. For purposes of this section, the providing of competitive telephone service, as defined in RCW 82.04.065, shall not constitute the sale of merchandise, appliances, or equipment, unless the commission determines that it would be in the public interest to hold otherwise. [1983 2nd ex.s. c 3 § 40; 1981 c 144 § 5; 1961 c 14 § 80.04.270. Prior: 1933 c 165 § 8; RRS § 10458-2.]

NOTES:

Construction--Severability--Effective dates--1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Intent--Severability--Effective date--1981 c 144: See notes following RCW 82.16.010.

RCW 80.04.280 Purchase and sale of stock by employees. No public service company shall permit any employee to sell, offer for sale, or solicit the purchase of any security of any other

person or corporation during such hours as such employee is engaged to perform any duty of such public service company; nor shall any public service company by any means or device require any employee to purchase or contract to purchase any of its securities or those of any other person or corporation; nor shall any public service company require any employee to permit the deduction from his wages or salary of any sum as a payment or to be applied as a payment of any purchase or contract to purchase any security of such public service company or of any other person or corporation. [1961 c 14 § 80.04.280. Prior: 1933 c 165 § 9; RRS § 10458-3.]

RCW 80.04.290 Sales of stock to employees and customers.

A corporate public service company, either heretofore or hereafter organized under the laws of this state, may sell to its employees and customers any increase of its capital stock, or part thereof, without first offering it to existing stockholders: PROVIDED, That such sale is approved by the holders of a majority of the capital stock, at a regular or special meeting held after notice given as to the time, place, and object thereof as provided by law and the bylaws of the company. Such sales shall be at prices and in amounts for each purchaser and upon terms and conditions as set forth in the resolution passed at the stockholders' meeting, or in a resolution passed at a subsequent meeting of the board of trustees if the resolution passed at the stockholders' meeting shall authorize the board to determine prices, amounts, terms, and conditions, except that in either event, a minimum price for the stock must be fixed in the resolution passed at the stockholders' meeting. [1961 c 14 § 80.04.290. Prior: 1955 c 79 § 2; 1923 c 110 § 1; RRS § 10344-1.]

RCW 80.04.300 Budgets to be filed by companies--

Supplementary budgets. The commission may regulate, restrict, and control the budgets of expenditures of public service companies. Each company shall prepare a budget showing the amount of money which, in its judgment, will be needed during the ensuing year for maintenance, operation, and construction, classified by accounts as prescribed by the commission, and shall within ten days of the date it is approved by the company file it with the commission for its investigation and approval or rejection. When a budget has been filed the commission shall examine into and investigate it to determine whether the expenditures therein proposed are fair and reasonable and not contrary to public interest.

Adjustments or additions to budget expenditures may be made from time to time during the year by filing a supplementary budget with the commission for its investigation and approval or rejection. [1961 c 14 § 80.04.300. Prior: 1959 c 248 § 11; prior: 1933 c 165 § 10, part; RRS § 10458-4, part.]

RCW 80.04.310 Commission's control over expenditures. The commission may, both as to original and supplementary budgets, prior to the making or contracting for the expenditure of any item therein, and after notice to the company and a hearing thereon, reject any item of the budget. The commission may require any company to furnish further information, data, or detail as to any proposed item of expenditure.

Failure of the commission to object to any item of expenditure within ninety days of the filing of any original budget or within thirty days of the filing of any supplementary budget shall constitute authority to the company to proceed with the making of or contracting for such expenditure, but such authority may be terminated any time by objection made thereto by the commission prior to the making of or contracting for such expenditure.

Examination, investigation, and determination of the budget by the commission shall not bar or estop it from later determining whether any of the expenditures made thereunder are fair, reasonable, and commensurate with the service, material, supplies, or equipment received. [1987 c 38 § 1; 1961 c 14 § 80.04.310. Prior: 1959 c 248 § 12; prior: 1933 c 165 § 10, part; RRS § 10458-4, part.]

RCW 80.04.320 Budget rules. The commission may prescribe the necessary rules to place RCW 80.04.300 through 80.04.330 in operation. It may, by rule, establish criteria to exempt companies in whole or in part from the operation thereof. The commission may upon request of any company withhold from publication during such time as the commission may deem advisable any portion of any original or supplementary budget relating to proposed capital expenditures. [1989 c 107 § 3; 1961 c 14 § 80.04.320. Prior: 1959 c 248 § 13; prior: 1933 c 165 § 10, part; RRS § 10458-4, part.]

**RCW 80.04.330 Effect of unauthorized expenditure--
Emergencies.** Any public service company may make or contract for any rejected item of expenditure, but in such case the same shall not be allowed as an operating expense, or as to items of construction, as a part of the fair value of the company's property used and useful in serving the public: PROVIDED, That such items of construction may at any time thereafter be so allowed in whole or in part upon proof that they are used and useful. Any company may upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot, or insurrection, or for the immediate preservation or restoration to condition of usefulness of any of its property, the usefulness of which has been destroyed by accident, make the

necessary expenditure therefor free from the operation of RCW 80.04.300 through 80.04.330.

Any finding and order entered by the commission shall be in effect until vacated and set aside in proper proceedings for review thereof. [1961 c 14 § 80.04.330. Prior: 1959 c 248 § 14; prior: 1933 c 165 § 10, part; RRS § 10458-4, part.]

RCW 80.04.350 Depreciation and retirement accounts. The commission shall have power after hearing to require any or all public service companies to carry proper and adequate depreciation or retirement accounts in accordance with such rules, regulations and forms of accounts as the commission may prescribe. The commission may from time to time ascertain and by order fix the proper and adequate rates of depreciation or retirement of the several classes of property of each public service company. Each public service company shall conform its depreciation or retirement accounts to the rates so prescribed. In fixing the rate of the annual depreciation or retirement charge, the commission may consider the rate and amount theretofore charged by the company for depreciation or retirement.

The commission shall have and exercise like power and authority over all other reserve accounts of public service companies. [1961 c 14 § 80.04.350. Prior: 1937 c 169 § 4; 1933 c 165 § 13; RRS § 10458-7.]

RCW 80.04.360 Earnings in excess of reasonable rate-- Consideration in fixing rates. If any public service company earns in the period of five consecutive years immediately preceding the commission order fixing rates for such company a net utility operating income in excess of a reasonable rate of return upon the fair value of its property used and useful in the public service, the commission shall take official notice of such fact and of whether any such excess earnings shall have been invested in such company's plant or otherwise used for purposes beneficial to the consumers of such company and may consider such facts in fixing rates for such company. [1961 c 14 § 80.04.360. Prior: 1959 c 285 § 2; 1933 c 165 § 14; RRS § 10458-8.]

RCW 80.04.380 Penalties--Violations by public service companies. Every public service company, and all officers, agents and employees of any public service company, shall obey, observe and comply with every order, rule, direction or requirement made by the commission under authority of this title, so long as the same shall be and remain in force. Any public service company which shall violate or fail to comply with any provision of this title, or which fails, omits or neglects to obey, observe or comply with any order, rule, or any

direction, demand or requirement of the commission, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense. Every violation of any such order, direction or requirement of this title shall be a separate and distinct offense, and in case of a continuing violation every day's continuance thereof shall be and be deemed to be a separate and distinct offense. [1961 c 14 § 80.04.380. Prior: 1911 c 117 § 94; RRS § 10443. Formerly RCW 80.04.380, part. FORMER PART OF SECTION: 1911 c 117 § 96 now in RCW 80.04.387.]

RCW 80.04.385 Penalties--Violations by officers, agents, and employees of public service companies. Every officer, agent or employee of any public service company, who shall violate or fail to comply with, or who procures, aids or abets any violation by any public service company of any provision of this title, or who shall fail to obey, observe or comply with any order of the commission, or any provision of any order of the commission, or who procures, aids or abets any such public service company in its failure to obey, observe and comply with any such order or provision, shall be guilty of a gross misdemeanor. [1961 c 14 § 80.04.385. Prior: 1911 c 117 § 95; RRS § 10444. Formerly RCW 80.04.390, part.]

RCW 80.04.387 Penalties--Violations by other corporations. Every corporation, other than a public service company, which shall violate any provision of this title, or which shall fail to obey, observe or comply with any order of the commission under authority of this title, so long as the same shall be and remain in force, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense. Every such violation shall be a separate and distinct offense, and the penalty shall be recovered in an action as provided in RCW 80.04.400. [1961 c 14 § 80.04.387. Prior: 1911 c 117 § 96; RRS § 10445. Formerly RCW 80.04.380, part.]

RCW 80.04.390 Penalties--Violations by persons. Every person who, either individually, or acting as an officer or agent of a corporation other than a public service company, shall violate any provision of this title, or fail to obey, obey or comply with any order made by the commission under this title, so long as the same shall be or remain in force, or who shall procure, aid or abet any such corporation in its violation of this title, or in its failure to obey, observe or comply with any such order, shall be guilty of a gross misdemeanor. [1961 c 14 § 80.04.390. Prior: 1911 c 117 § 97; RRS § 10446. FORMER PART OF SECTION: 1911 c 117 § 95 now in RCW 80.04.385.]

RCW 80.04.400 Actions to recover penalties--Disposition of fines, penalties, and forfeitures. Actions to recover penalties under this title shall be brought in the name of the state of Washington in the superior court of Thurston county, or in the superior court of any county in or through which such public service company may do business. In all such actions the procedure and rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the state under this title shall be paid into the treasury of the state and credited to the state general fund or such other fund as provided by law: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 238; 1969 ex.s. c 199 § 35; 1961 c 14 § 80.04.400. Prior: 1911 c 117 § 98; RRS § 10447.]

NOTES:

Intent--1987 c 202: See note following RCW 2.04.190.

RCW 80.04.405 Additional penalties--Violations by public service companies and officers, agents, and employees thereof. In addition to all other penalties provided by law every public service company subject to the provisions of this title and every officer, agent or employee of any such public service company who violates or who procures, aids or abets in the violation of any provision of this title or any order, rule, regulation or decision of the commission shall incur a penalty of one hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense and in case of a continuing violation every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for.

The penalty herein provided for shall become due and payable when the person incurring the same receives a notice in writing from the commission describing such violation with reasonable particularity and advising such person that the penalty is due. The commission may, upon written application therefor, received within fifteen days, remit or mitigate any penalty provided for in this section or discontinue any prosecution to recover the same upon such terms as it in its discretion shall deem proper and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as it may deem proper. If the amount of such penalty is not paid to the commission within fifteen days after receipt of notice imposing the same or application

for remission or mitigation has not been made within fifteen days after violator has received notice of the disposition of such application the attorney general shall bring an action in the name of the state of Washington in the superior court of Thurston county or of some other county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise herein provided. All penalties recovered under this title shall be paid into the state treasury and credited to the public service revolving fund. [1963 c 59 § 2.]

RCW 80.04.410 Orders and rules conclusive. In all actions between private parties and public service companies involving any rule or order of the commission, and in all actions for the recovery of penalties provided for in this title, or for the enforcement of the orders or rules issued and promulgated by the commission, the said orders and rules shall be conclusive unless set aside or annulled in a review as in this title provided. [1961 c 14 § 80.04.410. Prior: 1911 c 117 § 99; RRS § 10448.]

RCW 80.04.420 Intervention by commission where order or rule is involved. In all court actions involving any rule or order of the commission, where the commission has not been made a party, the commission shall be served with a copy of all pleadings, and shall be entitled to intervene. Where the fact that the action involves a rule or order of the commission does not appear until the time of trial, the court shall immediately direct the clerk to notify the commission of the pendency of such action, and shall permit the commission to intervene in such action.

The failure to comply with the provisions of this section shall render void and of no effect any judgment in such action, where the effect of such judgment is to modify or nullify any rule or order of the commission. [1961 c 14 § 80.04.420. Prior: 1943 c 67 § 1; Rem. Supp. 1943 § 10448-1.]

RCW 80.04.430 Findings of commission prima facie correct. Whenever the commission has issued or promulgated any order or rule, in any writ of review brought by a public service company to determine the reasonableness of such order or rule, the findings of fact made by the commission shall be prima facie correct, and the burden shall be upon said public service company to establish the order or rule to be unreasonable or unlawful. [1961 c 14 § 80.04.430. Prior: 1911 c 117 § 100; RRS § 10449.]

RCW 80.04.440 Companies liable for damages. In case any public service company shall do, cause to be done or permit to be done any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or thing required to be done, either by any law of this state, by this title or by any order or rule of the commission, such public service company shall be liable to the persons or corporations affected thereby for all loss, damage or injury caused thereby or resulting therefrom, and in case of recovery if the court shall find that such act or omission was wilful, it may, in its discretion, fix a reasonable counsel or attorney's fee, which shall be taxed and collected as part of the costs in the case. An action to recover for such loss, damage or injury may be brought in any court of competent jurisdiction by any person or corporation. [1961 c 14 § 80.04.440. Prior: 1911 c 117 § 102; RRS § 10451.]

RCW 80.04.450 Certified copies of orders, rules, etc.-- Evidentiary effect. Upon application of any person the commission shall furnish certified copies of any classification, rate, rule, regulation or order established by such commission, and the printed copies published by authority of the commission, or any certified copy of any such classification, rate, rule, regulation or order, with seal affixed, shall be admissible in evidence in any action or proceeding, and shall be sufficient to establish the fact that the charge, rate, rule, order or classification therein contained is the official act of the commission. When copies of any classification, rate, rule, regulation or order not contained in the printed reports, or copies of papers, accounts or records of public service companies filed with the commission shall be demanded from the commission for proper use, the commission shall charge a reasonable compensation therefor. [1961 c 14 § 80.04.450. Prior: 1911 c 117 § 103; RRS § 10452.]

RCW 80.04.460 Investigation of accidents. Every public service company shall give immediate notice to the commission of every accident resulting in death or injury to any person occurring in its plant or system, in such manner as the commission may prescribe. Such notice shall not be admitted as evidence or used for any purpose against the company giving it in any action for damages growing out of any matter mentioned in the notice.

The commission may investigate any accident resulting in death or injury to any person occurring in connection with the plant or system of any public service company. Notice of the investigation shall be given in all cases for a sufficient length of time to enable the company affected to participate in the hearing and may be given orally or in writing, in such manner as the commission may prescribe.

Such witnesses may be examined as the commission deems necessary and proper to thoroughly ascertain the cause of the accident and fix the responsibility therefor. The examination and investigation may be conducted by an inspector or deputy inspector, and they may administer oaths, issue subpoenas, and compel the attendance of witnesses, and when the examination is conducted by an inspector or deputy inspector, he shall make a full and complete report thereof to the commission. [1961 c 14 § 80.04.460. Prior: 1953 c 104 § 2; prior: 1911 c 117 § 63, part; RRS § 10399, part.]

RCW 80.04.470 Commission to enforce public service laws--Employees as peace officers. It shall be the duty of the commission to enforce the provisions of this title and all other acts of this state affecting public service companies, the enforcement of which is not specifically vested in some other officer or tribunal. Any employee of the commission may, without a warrant, arrest any person found violating in his presence any provision of this title, or any rule or regulation adopted by the commission: PROVIDED, That each such employee shall be first specifically designated in writing by the commission or a member thereof as having been found to be a fit and proper person to exercise such authority. Upon being so designated such person shall be a peace officer and a police officer for the purposes herein mentioned. [1961 c 173 § 1; 1961 c 14 § 80.04.470. Prior: 1911 c 117 § 101; RRS § 10450.]

RCW 80.04.480 Rights of action not released--Penalties cumulative. This title shall not have the effect to release or waive any right of action by the state or any person for any right, penalty or forfeiture which may have arisen or may hereafter arise under any law of this state; and all penalties accruing under this title shall be cumulative of each other, and a suit for the recovery of one penalty shall not be a bar to the recovery of any other. [1961 c 14 § 80.04.480. Prior: 1911 c 117 § 104; RRS § 10453. Formerly RCW 80.04.480 and 80.04.490.]

RCW 80.04.500 Application to municipal utilities. Nothing in this title shall authorize the commission to make or enforce any order affecting rates, tolls, rentals, contracts or charges or service rendered, or the adequacy or sufficiency of the facilities, equipment, instrumentalities or buildings, or the reasonableness of rules or regulations made, furnished, used, supplied or in force affecting any telecommunications line, gas plant, electrical plant or water system owned and operated by any city or town, or to make or enforce any order relating to the safety of any telecommunications line, electrical plant or water system owned and operated by any city or town, but all other provisions enumerated herein shall apply to public

utilities owned by any city or town. [1985 c 450 § 13; 1969 ex.s. c 210 § 1; 1961 c 14 § 80.04.500. Prior: 1911 c 117 § 105; RRS § 10454.]

NOTES:

Severability--Legislative review--1985 c 450: See RCW 80.36.900 and 80.36.901.

RCW 80.04.510 Duties of attorney general. It shall be the duty of the attorney general to represent and appear for the people of the state of Washington and the commission in all actions and proceedings involving any question under this title, or under or in reference to any act or order of the commission; and it shall be the duty of the attorney general generally to see that all laws affecting any of the persons or corporations herein enumerated are complied with, and that all laws, the enforcement of which devolves upon the commission, are enforced, and to that end he is authorized to institute, prosecute and defend all necessary actions and proceedings. [1961 c 14 § 80.04.510. Prior: 1911 c 117 § 5; RRS § 10341.]

RCW 80.04.520 Approval of lease of utility facilities. In addition to any other powers and duties under this chapter, the commission shall have the authority to authorize and approve the terms of any lease of utility facilities by a public service company, as lessee, if the public service company makes proper application to the commission certifying that such authorization or approval is necessary or appropriate to exempt any owner of the facilities from being a public utility company under the federal Public Utility Holding Company Act of 1935. [1979 ex.s. c 125 § 1.]

RCW 80.04.530 Local exchange company that serves less than two percent of state's access lines--Regulatory exemptions--Reporting requirements. (1)(a) Except as provided in (b) of this subsection, the following do not apply to a local exchange company that serves less than two percent of the access lines in the state of Washington: RCW 80.04.080, 80.04.300 through 80.04.330, and, except for RCW 80.08.140, chapters 80.08, 80.12, and 80.16 RCW.

(b) Nothing in this subsection (1) shall affect the commission's authority over the rates, service, accounts, valuations, estimates, or determinations of costs, as well as the authority to determine whether any expenditure is fair, reasonable, and commensurate with the service, material, supplies, or equipment received.

(c) For purposes of this subsection, the number of access lines served by a local exchange company includes the number of

access lines served in this state by any affiliate of that local exchange company.

(2) Any local exchange company for which an exemption is provided under this section shall not be required to file reports or data with the commission, except each such company shall file with the commission an annual report that consists of its annual balance sheet and results of operations, both presented on a Washington state jurisdictional basis. This requirement may be satisfied by the filing of information or reports and underlying studies filed with exchange carrier entities or regulatory agencies if the jurisdictionally separated results of operations for Washington state can be obtained from the information or reports. This subsection shall not be applied to exempt a local exchange company from an obligation to respond to data requests in an adjudicative proceeding in which it is a party.

(3) The commission may, in response to customer complaints or on its own motion and after notice and hearing, establish additional reporting requirements for a specific local exchange company. [1995 c 110 § 1.]

RCW 80.04.550 Thermal energy--Restrictions on authority of commission. (1) Nothing in this title shall authorize the commission to make or enforce any order affecting rates, tolls, rentals, contracts or charges for service rendered, or the adequacy or sufficiency of the facilities, equipment, instrumentalities, or buildings, or the reasonableness of rules or regulations made, furnished, used, supplied, or in force affecting any district thermal energy system owned and operated by any thermal energy company.

(2) For the purposes of this section:

(a) "Thermal energy company" means any private person, company, association, partnership, joint venture, or corporation engaged in or proposing to engage in developing, producing, transmitting, distributing, delivering, furnishing, or selling to or for the public thermal energy services for any beneficial use other than electricity generation;

(b) "District thermal energy system" means any system that provides thermal energy for space heating, space cooling, or process uses from a central plant, and that distributes the thermal energy to two or more buildings through a network of pipes;

(c) "Thermal energy" means heat or cold in the form of steam, heated or chilled water, or any other heated or chilled fluid or gaseous medium; and

(d) "Thermal energy services" means the provision of thermal energy from a district thermal energy system and includes such ancillary services as energy audits, metering, billing, maintenance, and repairs related to thermal energy. [1996 c 33 § 2.]

NOTES:

Findings--1996 c 33: "(1) The legislature finds:

(a) The Washington utilities and transportation commission has the authority to regulate district heating suppliers on the basis of financial solvency, system design integrity, and reasonableness of contract rates and rate formulas under *chapter 80.62 RCW;

(b) Consumers have competitive alternatives to thermal energy companies for space heating and cooling and ancillary services;

(c) Consumers have recourse against thermal energy companies for unfair business practices under the consumer protection act; and

(d) Technology and marketing opportunities have advanced since the enactment of *chapter 80.62 RCW to make the provision of cooling services, as well as heating services, an economical option for consumers.

(2) The legislature declares that the public health, safety, and welfare does not require the regulation of thermal energy companies by the Washington utilities and transportation commission." [1996 c 33 § 1.]

***Reviser's note:** Chapter 80.62 RCW was repealed by 1996 c 33 § 3.

CHAPTER 80.08 RCW

SECURITIES

Sections

80.08.010	Definition.
80.08.020	Control vested in state.
80.08.030	Authority to issue.
80.08.040	Prior to issuance--Filing required--Contents--Request for order establishing compliance.
80.08.043	Issuance of notes--Compliance with RCW 80.08.040--Exceptions.
80.08.047	Commission may exempt certain issuances--Order or rule--Public interest.
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80.08.100	Issuance made contrary to this chapter--Penalties.
80.08.110	Penalty against companies.
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80.08.130	Assumption of obligation or liability--Compliance with filing requirements.
80.08.140	State not obligated.

- 80.08.150 Authority of commission--Not affected by requirements of this chapter.
- 80.08.160 Small local exchange company--Chapter does not apply.

RCW 80.08.010 Definition. The term "public service company", as used in this chapter, shall mean every company now or hereafter engaged in business in this state as a public utility and subject to regulation as to rates and service by the utilities and transportation commission under the provisions of this title. [1961 c 14 § 80.08.010. Prior: 1959 c 248 § 2; 1953 c 95 § 4; 1933 c 151 § 1, part; RRS § 10439-1, part.]

RCW 80.08.020 Control vested in state. The power of public service companies to issue stocks and stock certificates or other evidence of interest or ownership, and bonds, notes and other evidences of indebtedness and to create liens on their property situated within this state is a special privilege, the right of supervision, regulation, restriction, and control of which is and shall continue to be vested in the state, and such power shall be exercised as provided by law and under such rules and regulations as the commission may prescribe. [1961 c 14 § 80.08.020. Prior: 1933 c 151 § 2; RRS § 10439-2.]

RCW 80.08.030 Authority to issue. A public service company may issue stock and stock certificates or other evidence of interest or ownership, or bonds, notes or other evidence of indebtedness payable on demand or at periods of more than twelve months after the date thereof, for the following purposes only: The acquisition of property, or the construction, completion, extension, or improvement of its facilities, or the improvement or maintenance of its service, or the issuance of stock dividends, or the discharge or refunding of its obligations, or the reimbursement of moneys actually expended from income or from any other moneys in the treasury of the company not secured by or obtained from the issue of stock or stock certificates or other evidence of interest or ownership, or bonds, notes or other evidence of indebtedness of the company for any of the aforesaid purposes except maintenance of service, in cases where the applicant keeps its accounts and vouchers for such expenditures in such manner as to enable the commission to ascertain the amount of money so expended and the purpose for which the expenditure was made. [1961 c 14 § 80.08.030. Prior: 1953 c 95 § 5; 1937 c 30 § 1; 1933 c 151 § 3; RRS § 10439-3.]

RCW 80.08.040 Prior to issuance--Filing required--Contents--Request for order establishing compliance. Any public service company that undertakes to issue stocks, stock

certificates, other evidence of interest or ownership, bonds, notes, or other evidences of indebtedness shall file with the commission before such issuance:

(1) A description of the purposes for which the issuance is made, including a certification by an officer authorized to do so that the proceeds from any such financing is for one or more of the purposes allowed by this chapter;

(2) A description of the proposed issuance including the terms of financing; and

(3) A statement as to why the transaction is in the public interest.

(4) Any public service company undertaking an issuance and making a filing in conformance with this section may at any time of such filing request the commission to enter a written order that such company has complied with the requirements of this section. The commission shall enter such written order after such company has provided all information and statements required by subsections (1), (2), and (3) of this section.

[1994 c 251 § 1; 1987 c 106 § 1; 1961 c 14 § 80.08.040. Prior: 1933 c 151 § 4; RRS § 10439-4.]

RCW 80.08.043 Issuance of notes--Compliance with RCW 80.08.040--Exceptions. A public service company may issue notes, except demand notes, for proper purposes and not in violation of any provision of this chapter, or any other law, payable at periods of not more than twelve months after the date of issuance, without complying with the requirements of RCW 80.08.040, but no such note may be refunded, in whole or in part, by any issue of stock or stock certificates or other evidence of interest or ownership, or bonds, notes, or other evidence of indebtedness, without compliance with RCW 80.08.040. However, compliance with RCW 80.08.040 is required for the issuance of any note or notes issued as part of a single borrowing transaction of one million dollars or more payable at periods of less than twelve months after the date of issuance by any public service company that is subject to the federal power act unless such note or notes aggregates together with all other then outstanding notes and drafts of a maturity of twelve months or less on which such public service company is primarily or secondarily liable not more than five percent of the par value of other securities of such company then outstanding, computed, in the case of securities having no par value, on the basis of the fair market value as of the date of issuance. [1997 c 162 § 1.]

RCW 80.08.047 Commission may exempt certain issuances--Order or rule--Public interest. The commission may from time to time by order or rule, and subject to such terms and conditions as may be prescribed in the order or rule, exempt any security or any class of securities for which a filing is required under this chapter or any electrical or natural gas company or class

of electrical or natural gas company from the provisions of this chapter if it finds that the application of this chapter to such security, class of securities, electrical or natural gas company, or class of electrical or natural gas company is not required by the public interest. [1997 c 15 § 1.]

RCW 80.08.080 Capitalization of franchises or merger contracts prohibited. The commission shall have no power to authorize the capitalization of the right to be a corporation, or to authorize the capitalization of any franchise or permit whatsoever or the right to own, operate or enjoy any such franchise or permit, in excess of the amount (exclusive of any tax or annual charge) actually paid to the state or to a political subdivision thereof as the consideration for the grant of such franchise, permit or right; nor shall any contract for consolidation or lease be capitalized, nor shall any public service company hereafter issue any bonds, notes or other evidences of indebtedness against or as a lien upon any contract for consolidation or merger. [1961 c 14 § 80.08.080. Prior: 1933 c 151 § 7; RRS § 10439-7.]

RCW 80.08.090 Accounting for disposition of proceeds. The commission shall have the power to require public service companies to account for the disposition of the proceeds of all sales of stocks and stock certificates or other evidence of interest or ownership, and bonds, notes and other evidences of indebtedness, in such form and detail as it may deem advisable, and to establish such rules and regulations as it may deem reasonable and necessary to insure the disposition of such proceeds for the purpose or purposes specified in its order. [1961 c 14 § 80.08.090. Prior: 1933 c 151 § 8; RRS § 10439-8.]

RCW 80.08.100 Issuance made contrary to this chapter-- Penalties. If a public service company issues any stock, or other evidence of interest or ownership, bond, note, or other evidence of indebtedness contrary to the provisions of this chapter, the company may be subject to penalty under RCW 80.08.110 and 80.08.120. [1994 c 251 § 2; 1961 c 14 § 80.08.100. Prior: 1933 c 151 § 9; RRS § 10439-9.]

RCW 80.08.110 Penalty against companies. Every public service company which, directly or indirectly, issues or causes to be issued, any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, in nonconformity with the provisions of this chapter, or which applies the proceeds from the sale thereof, or any part thereof, to any purpose other than the purpose or purposes allowed by this chapter, shall be subject to a penalty

of not more than one thousand dollars for each offense. Every violation shall be a separate and distinct offense and in case of a continuing violation every day's continuance thereof shall be deemed to be a separate and distinct offense.

The act, omission or failure of any officer, agent or employee of any public service company acting within the scope of his official duties or employment, shall in every case be deemed to be the act, omission or failure of such public service company. [1994 c 251 § 3; 1961 c 14 § 80.08.110. Prior: 1933 c 151 § 11; RRS § 10439-11.]

RCW 80.08.120 Penalty against individuals. Every officer, agent, or employee of a public service company, and every other person who knowingly authorizes, directs, aids in, issues or executes, or causes to be issued or executed, any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness contrary to the provisions of this chapter, or who knowingly makes any false statement or representation or with knowledge of its falsity files or causes to be filed with the commission any false statement or representation, or causes or assists to be applied the proceeds or any part thereof, from the sale of any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, to any purpose not allowed by this chapter, or who, with knowledge that any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, has been issued or executed in violation of any of the provisions of this chapter, negotiates, or causes the same to be negotiated, shall be guilty of a gross misdemeanor. [1994 c 251 § 4; 1961 c 14 § 80.08.120. Prior: 1933 c 151 § 12; RRS § 10439-12.]

RCW 80.08.130 Assumption of obligation or liability-- Compliance with filing requirements. Any public service company that assumes any obligation or liability as guarantor, indorser, surety or otherwise in respect to the securities of any other person, firm or corporation, when such securities are payable at periods of more than twelve months after the date thereof, shall comply with the filing requirements of RCW 80.08.040. [1994 c 251 § 5; 1961 c 14 § 80.08.130. Prior: 1933 c 151 § 13; RRS § 10439-13.]

RCW 80.08.140 State not obligated. No provision of this chapter, and no deed or act done or performed under or in connection therewith, shall be held or construed to obligate the state of Washington to pay or guarantee, in any manner whatsoever, any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, authorized, issued or executed under the

provisions of this chapter. [1961 c 14 § 80.08.140. Prior: 1933 c 151 § 14; RRS § 10439-14.]

RCW 80.08.150 Authority of commission--Not affected by requirements of this chapter. No action by a public service company in compliance with nor by the commission in conformance with the requirements of this chapter may in any way affect the authority of the commission over rates, service, accounts, valuations, estimates, or determinations of costs, or any matters whatsoever that may come before it. [1994 c 251 § 6.]

RCW 80.08.160 Small local exchange company--Chapter does not apply. Subject to RCW 80.04.530(1), this chapter does not apply to a local exchange company that serves less than two percent of the access lines in the state of Washington. [1995 c 110 § 2.]

CHAPTER 80.12 RCW

TRANSFERS OF PROPERTY

Sections

80.12.010	Definition.
80.12.020	Order required to sell, merge, etc.
80.12.030	Disposal without authorization void.
80.12.040	Authority required to acquire property or securities of utility.
80.12.045	Small local exchange company--Chapter does not apply.
80.12.050	Rules and regulations.
80.12.060	Penalty.

RCW 80.12.010 Definition. The term "public service company," as used in this chapter, shall mean every company now or hereafter engaged in business in this state as a public utility and subject to regulation as to rates and service by the utilities and transportation commission under the provisions of this title. [1961 c 14 § 80.12.010. Prior: 1953 c 95 § 6; 1941 c 159 § 1, part; Rem. Supp. 1941 § 10440a.]

RCW 80.12.020 Order required to sell, merge, etc. No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, and no public service company shall, by any means whatsoever, directly or indirectly,

merge or consolidate any of its franchises, properties or facilities with any other public service company, without having secured from the commission an order authorizing it so to do: PROVIDED, That this section shall not apply to any sale, lease, assignment or other disposal of such franchises, properties or facilities to a special purpose district as defined in RCW 36.96.010, city, county, or town. [1981 c 117 § 1; 1961 c 14 § 80.12.020. Prior: 1945 c 75 § 1; 1941 c 159 § 2; Rem. Supp. 1945 § 10440b.]

RCW 80.12.030 Disposal without authorization void. Any such sale, lease, assignment, or other disposition, merger or consolidation made without authority of the commission shall be void. [1961 c 14 § 80.12.030. Prior: 1941 c 159 § 3; Rem. Supp. 1941 § 10440c.]

RCW 80.12.040 Authority required to acquire property or securities of utility. No public service company shall, directly or indirectly, purchase, acquire, or become the owner of any of the franchises, properties, facilities, capital stocks or bonds of any other public service company unless authorized so to do by the commission. Nothing contained in this chapter shall prevent the holding of stocks or other securities heretofore lawfully acquired or prohibit, upon the surrender or exchange of said stocks or other securities pursuant to a reorganization plan, the purchase, acquisition, taking or holding by the owner of a proportionate amount of the stocks or other securities of any new corporation organized to take over at foreclosure or other sale, the property of the corporation the stocks or securities of which have been thus surrendered or exchanged. Any contract by any public service company for the purchase, acquisition, assignment or transfer to it of any of the stocks or other securities of any other public service company, directly or indirectly, without the approval of the commission shall be void and of no effect. [1961 c 14 § 80.12.040. Prior: 1941 c 159 § 4; Rem. Supp. 1941 § 10440d.]

RCW 80.12.045 Small local exchange company--Chapter does not apply. Subject to RCW 80.04.530(1), this chapter does not apply to a local exchange company that serves less than two percent of the access lines in the state of Washington. [1995 c 110 § 3.]

RCW 80.12.050 Rules and regulations. The commission shall have power to promulgate rules and regulations to make effective the provisions of this chapter. [1961 c 14 § 80.12.050. Prior: 1941 c 159 § 5; Rem. Supp. 1941 § 10440e.]

RCW 80.12.060 Penalty. The provisions of RCW 80.04.380 and 80.04.385 as to penalties shall be applicable to public service companies, their officers, agents and employees failing to comply with the provisions of this chapter. [1961 c 14 § 80.12.060. Prior: 1941 c 159 § 6; Rem. Supp. 1941 § 10440f.]

CHAPTER 80.16 RCW

AFFILIATED INTERESTS

Sections

80.16.010	Definitions.
80.16.020	Dealings with affiliated interests--Prior filing with commission required--Commission may disapprove.
80.16.030	Payments to affiliated interest disallowed if not reasonable.
80.16.040	Satisfactory proof, what constitutes.
80.16.050	Commission's control is continuing.
80.16.055	Small local exchange company--Chapter does not apply.
80.16.060	Summary order on nonapproved payments.
80.16.070	Summary order on payments after disallowance.
80.16.080	Court action to enforce orders.
80.16.090	Review of orders.

RCW 80.16.010 Definitions. As used in this chapter the term "public service company" shall include every corporation engaged in business as a public utility and subject to regulation as to rates and service by the utilities and transportation commission under the provisions of this title.

As used in this chapter, the term "affiliated interest" means:

Every corporation and person owning or holding directly or indirectly five percent or more of the voting securities of any public service company engaged in any intrastate business in this state;

Every corporation and person, other than those above specified, in any chain of successive ownership of five percent or more of voting securities, the chain beginning with the holder of the voting securities of such public service company;

Every corporation five percent or more of whose voting securities are owned by any person or corporation owning five percent or more of the voting securities of such public service company or by any person or corporation in any such chain of successive ownership of five percent or more of voting securities;

Every corporation or person with which the public service company has a management or service contract; and

Every person who is an officer or director of such public service company or of any corporation in any chain of successive ownership of five percent or more of voting securities. [1961 c 14 § 80.16.010. Prior: 1953 c 95 § 7; 1933 c 152 § 1, part; RRS § 10440-1, part.]

RCW 80.16.020 Dealings with affiliated interests--Prior filing with commission required--Commission may disapprove.

Every public service company shall file with the commission a verified copy, or a verified summary if unwritten, of a contract or arrangement providing for the furnishing of management, supervisory[,] construction, engineering, accounting, legal, financial, or similar services, or any contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing, or for the furnishing of any service, property, right, or thing, other than those enumerated in this section, hereafter made or entered into between a public service company and any affiliated interest as defined in this chapter, including open account advances from or to the affiliated interests. The filing must be made prior to the effective date of the contract or arrangement. Modifications or amendments to the contracts or arrangements with affiliated interests must be filed with the commission prior to the effective date of the modification or amendment. Any time after receipt of the contract or arrangement, the commission may institute an investigation and disapprove the contract, arrangement, modification, or amendment thereto if the commission finds the public service company has failed to prove that it is reasonable and consistent with the public interest. The commission may disapprove any such contract or arrangement if satisfactory proof is not submitted to the commission of the cost to the affiliated interest of rendering the services or of furnishing the property or service described in this section. [1998 c 47 § 1; 1961 c 14 § 80.16.020. Prior: 1941 c 160 § 1; 1933 c 152 § 2; Rem. Supp. 1941 § 10440-2.]

RCW 80.16.030 Payments to affiliated interest disallowed if not reasonable. In any proceeding, whether upon the commission's own motion or upon complaint, involving the rates or practices of any public service company, the commission may exclude from the accounts of the public service company any payment or compensation to an affiliated interest for any services rendered or property or service furnished, as described in this section, under existing contracts or arrangements with the affiliated interest unless the public service company establishes the reasonableness of the payment or compensation. In the proceeding the commission shall disallow the payment or compensation, in whole or in part, in the absence of satisfactory proof that it is reasonable in amount. In such a proceeding, any payment or compensation may be disapproved or

disallowed by the commission, in whole or in part, if satisfactory proof is not submitted to the commission of the cost to the affiliated interest of rendering the service or furnishing the property or service described in this section. [1998 c 47 § 2; 1961 c 14 § 80.16.030. Prior: 1933 c 152 § 3; RRS § 10440-3.]

RCW 80.16.040 Satisfactory proof, what constitutes. No proof shall be satisfactory, within the meaning of RCW 80.16.010 through 80.16.030, unless it includes the original (or verified copies) of the relevant cost records and other relevant accounts of the affiliated interest, or such abstract thereof or summary taken therefrom, as the commission may deem adequate, properly identified and duly authenticated: PROVIDED, HOWEVER, That the commission may, where reasonable, approve or disapprove such contracts or arrangements without the submission of such cost records or accounts. [1961 c 14 § 80.16.040. Prior: 1933 c 152 § 4; RRS § 10440-4.]

RCW 80.16.050 Commission's control is continuing. The commission shall have continuing supervisory control over the terms and conditions of such contracts and arrangements as are herein described so far as necessary to protect and promote the public interest. The commission shall have the same jurisdiction over the modifications or amendment of contracts or arrangements as are herein described as it has over such original contracts or arrangements. The fact that a contract or arrangement has been filed with, or the commission has approved entry into such contracts or arrangements as described herein shall not preclude disallowance or disapproval of payments made pursuant thereto, if upon actual experience under such contract or arrangement, it appears that the payments provided for or made were or are unreasonable. Every order of the commission approving any such contract or arrangement shall be expressly conditioned upon the reserved power of the commission to revise and amend the terms and conditions thereof, if, when, and as necessary to protect and promote the public interest. [1998 c 47 § 3; 1961 c 14 § 80.16.050. Prior: 1933 c 152 § 5; RRS § 10440-5.]

RCW 80.16.055 Small local exchange company--Chapter does not apply. Subject to RCW 80.04.530(1), this chapter does not apply to a local exchange company that serves less than two percent of the access lines in the state of Washington. [1995 c 110 § 4.]

RCW 80.16.060 Summary order on nonapproved payments. Whenever the commission shall find upon investigation that any

public service company is giving effect to any such contract or arrangement without such contract or arrangement having been filed or approved, the commission may issue a summary order prohibiting the public service company from treating any payments made under the terms of such contract or arrangement as operating expenses or as capital expenditures for rate or valuation purposes, unless and until such contract or arrangement has been filed with the commission or until payments have received the approval of the commission. [1998 c 47 § 4; 1961 c 14 § 80.16.060. Prior: 1933 c 152 § 6; RRS § 10440-6.]

RCW 80.16.070 Summary order on payments after disallowance. Whenever the commission finds upon investigation that any public service company is making payments to an affiliated interest, although the payments have been disallowed or disapproved by the commission in a proceeding involving the public service company's rates or practices, the commission shall issue a summary order directing the public service company to not treat the payments as operating expenses or capital expenditures for rate or valuation purposes, unless and until the payments have received the approval of the commission. [1998 c 47 § 5; 1961 c 14 § 80.16.070. Prior: 1933 c 152 § 7; RRS § 10440-7.]

RCW 80.16.080 Court action to enforce orders. The superior court of Thurston county is authorized to enforce such orders to cease and desist by appropriate process, including the issuance of a preliminary injunction, upon the suit of the commission. [1961 c 14 § 80.16.080. Prior: 1933 c 152 § 8; RRS § 10440-8.]

RCW 80.16.090 Review of orders. Any public service company or affiliated interest deeming any decision or order of the commission to be in any respect or manner improper, unjust or unreasonable may have the same reviewed in the courts in the same manner and by the same procedure as is now provided by law for review of any other order or decision of the commission. [1961 c 14 § 80.16.090. Prior: 1933 c 152 § 9; RRS § 10440-9.]

CHAPTER 80.20 RCW

INVESTIGATION OF PUBLIC SERVICE COMPANIES

Sections

- 80.20.010 Definition.
- 80.20.020 Cost of investigation may be assessed against company.

- 80.20.030 Interest on unpaid assessment--Action to collect.
- 80.20.040 Commission's determination of necessity as evidence.
- 80.20.050 Order of commission not subject to review.
- 80.20.060 Limitation on frequency of investigation.

RCW 80.20.010 Definition. As used in this chapter, the term "public service company" means any person, firm, association, or corporation, whether public or private, operating a utility or public service enterprise subject in any respect to regulation by the commission under the provisions of this title. [1961 c 14 § 80.20.010. Prior: 1953 c 95 § 8; 1939 c 203 § 1; RRS § 10458-6.]

RCW 80.20.020 Cost of investigation may be assessed against company. Whenever the commission in any proceeding upon its own motion or upon complaint shall deem it necessary in order to carry out the duties imposed upon it by law to investigate the books, accounts, practices and activities of, or make any valuation or appraisal of the property of any public service company, or to investigate or appraise any phase of its operations, or to render any engineering or accounting service to or in connection with any public service company, and the cost thereof to the commission exceeds in amount the ordinary regulatory fees paid by such public service company during the preceding calendar year or estimated to be paid during the current year, whichever is more, such public service company shall pay the expenses reasonably attributable and allocable to such investigation, valuation, appraisal or services. The commission shall ascertain such expenses, and, after giving notice and an opportunity to be heard, shall render a bill therefor by registered mail to the public service company, either at the conclusion of the investigation, valuation, appraisal or services, or from time to time during its progress. Within thirty days after a bill has been mailed such public service company shall pay to the commission the amount of the bill, and the commission shall transmit such payment to the state treasurer who shall credit it to the public service revolving fund. The total amount which any public service company shall be required to pay under the provisions of this section in any calendar year shall not exceed one percent of the gross operating revenues derived by such public service company from its intrastate operations during the last preceding calendar year. If such company did not operate during all of the preceding year the calculations shall be based upon estimated gross revenues for the current year. [1961 c 14 § 80.20.020. Prior: 1939 c 203 § 2(a); RRS § 10458-6a(a).]

RCW 80.20.030 Interest on unpaid assessment--Action to collect. Amounts so assessed against any public service company not paid within thirty days after mailing of the bill therefor, shall draw interest at the rate of six percent per annum from the date of mailing of the bill. Upon failure of the public service company to pay the bill, the attorney general shall proceed in the name of the state by civil action in the superior court for Thurston county against such public service company to collect the amount due, together with interest and costs of suit. [1961 c 14 § 80.20.030. Prior: 1939 c 203 § 2(b); RRS § 10458-6a(b).]

RCW 80.20.040 Commission's determination of necessity as evidence. In such action the commission's determination of the necessity of the investigation, valuation, appraisal or services shall be conclusive evidence of such necessity, and its findings and determination of facts expressed in bills rendered pursuant to RCW 80.20.020 through 80.20.060 or in any proceedings determinative of such bills shall be prima facie evidence of such facts. [1961 c 14 § 80.20.040. Prior: 1939 c 203 § 2(c); RRS § 10458-6a(c).]

RCW 80.20.050 Order of commission not subject to review. In view of the civil action provided for in RCW 80.20.020 through 80.20.060 any order made by the commission in determining the amount of such bill shall not be reviewable in court, but the mere absence of such right of review shall not prejudice the rights of defendants in the civil action. [1961 c 14 § 80.20.050. Prior: 1939 c 203 § 2(d); RRS § 10458-6a(d).]

RCW 80.20.060 Limitation on frequency of investigation. Expenses of a complete valuation, rate and service investigation shall not be assessed against a public service company under this chapter if such company shall have been subjected to and paid the expenses of a complete valuation, rate and service investigation during the preceding five years, unless the properties or operations of the company have materially changed or there has been a substantial change in its value for rate making purposes or in any other circumstances and conditions affecting rates and services: PROVIDED, That the provisions of this section shall not be a limitation on the frequency of assessment of costs of investigation where such investigation results from a tariff filing or tariff filings by a public service company to increase rates. [1971 ex.s. c 143 § 8; 1961 c 14 § 80.20.060. Prior: 1939 c 203 § 2(e); RRS § 10458-6a(e).]

REGULATORY FEES

Sections

- 80.24.010 Companies to file reports of gross revenue and pay fees--Delinquent fee payments.
- 80.24.020 Fees to approximate reasonable cost of regulation.
- 80.24.030 Intent of legislature--Regulatory cost records to be kept by commission.
- 80.24.040 Disposition of fees.
- 80.24.050 Penalty for failure to pay fees--Disposition of fines and penalties.
- 80.24.060 Pipeline safety fee--Reports--Procedure to contest fees--Regulatory incentive program.

NOTES:

Assessment of public utilities for property tax purposes:
Chapter 84.12 RCW.

Corporations, annual license fees for public service companies:
RCW 23B.01.530, 23B.01.590.

Easements of public service companies taxable as personalty:
RCW 84.20.010.

Public utility tax: Chapter 82.16 RCW.

RCW 80.24.010 Companies to file reports of gross revenue and pay fees--Delinquent fee payments. Every public service company subject to regulation by the commission shall, on or before the date specified by the commission for filing annual reports under RCW 80.04.080, file with the commission a statement on oath showing its gross operating revenue from intrastate operations for the preceding calendar year or portion thereof and pay to the commission a fee equal to one-tenth of one percent of the first fifty thousand dollars of gross operating revenue, plus two-tenths of one percent of any gross operating revenue in excess of fifty thousand dollars: PROVIDED, That the commission may, by rule, set minimum fees that do not exceed the cost of collecting the fees. The commission may by rule waive any or all of the minimum fee established pursuant to this section.

The percentage rates of gross operating revenue to be paid in any year may be decreased by the commission for any class of companies subject to the payment of such fees, by general order entered before March 1st of such year, and for such purpose such companies shall be classified as follows:

Electrical, gas, water, telecommunications, and irrigation companies shall constitute class one. Every other company subject to regulation by the commission, for which regulatory fees are not otherwise fixed by law shall pay fees as herein provided and shall constitute additional classes according to kinds of businesses engaged in.

Any payment of the fee imposed by this section made after its due date shall include a late fee of two percent of the amount due. Delinquent fees shall accrue interest at the rate of one percent per month. [2003 c 296 § 1; 1994 c 83 § 1; 1990 c 48 § 1; 1985 c 450 § 14; 1961 c 14 § 80.24.010. Prior: 1955 c 125 § 2; prior: 1939 c 123 § 1, part; 1937 c 158 § 1, part; 1929 c 107 § 1, part; 1923 c 107 § 1, part; 1921 c 113 § 1, part; RRS § 10417, part.]

NOTES:

Severability--Legislative review--1985 c 450: See RCW 80.36.900 and 80.36.901.

RCW 80.24.020 Fees to approximate reasonable cost of regulation. In fixing the percentage rates of gross operating revenue to be paid in any year, the commission shall consider all moneys then in the public service revolving fund and the fees currently to be paid into such fund, to the end that the fees collected from the several classes of companies shall be approximately the same as the reasonable cost of supervising and regulating such classes of companies. [1961 c 14 § 80.24.020. Prior: 1955 c 125 § 3; prior: 1939 c 123 § 1, part; 1937 c 158 § 1, part; RRS § 10417, part.]

RCW 80.24.030 Intent of legislature--Regulatory cost records to be kept by commission. It is the intent and purpose of the legislature that the several groups of public service companies shall each contribute sufficient in fees to the commission to pay the reasonable cost of regulating the several groups respectively. The commission shall keep accurate records of the costs incurred in regulating and supervising the several groups of companies subject to regulation or supervision and such records shall be open to inspection by all interested parties. The records and data upon which the commission's determination is made shall be considered prima facie correct in any proceeding instituted to challenge the reasonableness or correctness of any order of the commission fixing fees and distributing regulatory expenses. [1961 c 14 § 80.24.030. Prior: 1937 c 158 § 7; RRS § 10417-5.]

RCW 80.24.040 Disposition of fees. All moneys collected under the provisions of this chapter shall within thirty days be

paid to the state treasurer and by the state treasurer deposited to the public service revolving fund: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 239; 1969 ex.s. c 199 § 36; 1961 c 14 § 80.24.040. Prior: 1937 c 158 § 6; RRS § 10417-4.]

NOTES:

Intent--1987 c 202: See note following RCW 2.04.190.

RCW 80.24.050 Penalty for failure to pay fees--Disposition of fines and penalties. Every person, firm, company or corporation, or the officers, agents or employees thereof, failing or neglecting to pay the fees herein required shall be guilty of a misdemeanor. All fines and penalties collected under the provisions of this chapter shall be deposited into the public service revolving fund of the state treasury: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 240; 1979 ex.s. c 198 § 1; 1969 ex.s. c 199 § 37; 1961 c 14 § 80.24.050. Prior: 1923 c 107 § 2; 1921 c 113 § 3; RRS § 10419.]

NOTES:

Intent--1987 c 202: See note following RCW 2.04.190.

RCW 80.24.060 Pipeline safety fee--Reports--Procedure to contest fees--Regulatory incentive program. (1)(a) Every gas company and every interstate gas pipeline company subject to inspection or enforcement by the commission shall pay an annual pipeline safety fee to the commission. The pipeline safety fees received by the commission shall be deposited in the pipeline safety account created in RCW 81.88.050.

(b) The aggregate amount of fees set shall be sufficient to recover the reasonable costs of administering the pipeline safety program, taking into account federal funds used to offset the costs. The fees established under this section shall be designed to generate revenue not exceeding appropriated levels of funding for the current fiscal year. At a minimum, the fees established under this section shall be sufficient to adequately fund pipeline inspection personnel, the timely review of pipeline safety and integrity plans, the timely development of spill response plans, the timely development of accurate maps of pipeline locations, participation in federal pipeline safety efforts to the extent allowed by law, and the staffing of the citizens committee on pipeline safety.

(c) Increases in the aggregate amount of fees over the immediately preceding fiscal year are subject to the requirements of RCW 43.135.055.

(2) The commission shall by rule establish the methodology it will use to set the appropriate fee for each entity subject to this section. The methodology shall provide for an equitable distribution of program costs among all entities subject to the fee. The fee methodology shall provide for:

(a) Direct assignment of average costs associated with annual standard inspections, including the average number of inspection days per year. In establishing these directly assignable costs, the commission shall consider the requirements and guidelines of the federal government, state safety standards, and good engineering practice[s]; and

(b) A uniform and equitable means of estimating and allocating costs of other duties relating to inspecting pipelines for safety that are not directly assignable, including but not limited to design review and construction inspections, specialized inspections, incident investigations, geographic mapping system design and maintenance, and administrative support.

(3) The commission shall require reports from those entities subject to this section in the form and at such time as necessary to set the fees. After considering the reports supplied by the entities, the commission shall set the amount of the fee payable by each entity by general order entered before July 1st of each year.

(4) For companies subject to RCW 80.24.010, the commission shall collect the pipeline safety fee as part of the fee specified in RCW 80.24.010. The commission shall allocate the moneys collected under RCW 80.24.010 between the pipeline safety program and for other regulatory purposes. The commission shall adopt rules that assure that fee moneys related to the pipeline safety program are maintained separately from other moneys collected by the commission under this chapter.

(5) Any payment of the fee imposed by this section made after its due date must include a late fee of two percent of the amount due. Delinquent fees accrue interest at the rate of one percent per month.

(6) The commission shall keep accurate records of the costs incurred in administering its gas pipeline safety program, and the records are open to inspection by interested parties. The records and data upon which the commission's determination is made shall be prima facie correct in any proceeding to challenge the reasonableness or correctness of any order of the commission fixing fees and distributing regulatory expenses.

(7) If any entity seeks to contest the imposition of a fee imposed under this section, that entity shall pay the fee and request a refund within six months of the due date for the payment by filing a petition for a refund with the commission. The commission shall establish by rule procedures for handling

refund petitions and may delegate the decisions on refund petitions to the secretary of the commission.

(8) After establishing the fee methodology by rule as required in subsection (2) of this section, the commission shall create a regulatory incentive program for pipeline safety programs in collaboration with the citizens committee on pipeline safety. The regulatory incentive program created by the commission shall not shift costs among companies paying pipeline safety fees and shall not decrease revenue to pipeline safety programs. The regulatory incentive program shall not be implemented until after the review conducted according to RCW 81.88.150. [2001 c 238 § 2.]

NOTES:

Intent--Finding--2001 c 238: "The intent of this act is to ensure a sustainable, comprehensive, pipeline safety program, to protect the health and safety of the citizens of the state of Washington, and [to] maintain the quality of the state's environment. The legislature finds that public safety and the environment are best protected by securing permanent funding for this program through establishment of a regulatory fee imposed on hazardous liquids and gas pipelines." [2001 c 238 § 1.]

Effective date--2001 c 238: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 238 § 13.]

CHAPTER 80.28 RCW

GAS, ELECTRICAL, AND WATER COMPANIES

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NOTES:

Construction projects in state waters: Chapter 77.55 RCW.

Franchises on state highways: Chapter 47.44 RCW.

Reduced utility rates for low-income senior citizens and other low-income citizens: RCW 74.38.070.

RCW 80.28.005 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Bondable conservation investment" means all expenditures made by electrical, gas, or water companies with respect to energy or water conservation measures and services intended to improve the efficiency of electricity, gas, or water end use, including related carrying costs if:

(a) The conservation measures and services do not produce assets that would be bondable utility property under the general utility mortgage of the electrical, gas, or water company;

(b) The commission has determined that the expenditures were incurred in conformance with the terms and conditions of a conservation service tariff in effect with the commission at the time the costs were incurred, and at the time of such determination the commission finds that the company has proven that the costs were prudent, that the terms and conditions of the financing are reasonable, and that financing under this chapter is more favorable to the customer than other reasonably available alternatives;

(c) The commission has approved inclusion of the expenditures in rate base and has not ordered that they be currently expensed; and

(d) The commission has not required that the measures demonstrate that energy savings have persisted at a certain level for a certain period before approving the cost of these investments as bondable conservation investment.

(2) "Conservation bonds" means bonds, notes, certificates of beneficial interests in trusts, or other evidences of indebtedness or ownership that:

(a) The commission determines at or before the time of issuance are issued to finance or refinance bondable conservation investment by an electrical, gas or water company; and

(b) Rely partly or wholly for repayment on conservation investment assets and revenues arising with respect thereto.

(3) "Conservation investment assets" means the statutory right of an electrical, gas, or water company:

(a) To have included in rate base all of its bondable conservation investment and related carrying costs; and

(b) To receive through rates revenues sufficient to recover the bondable conservation investment and the costs of equity and debt capital associated with it, including, without limitation, the payment of principal, premium, if any, and interest on conservation bonds.

(4) "Finance subsidiary" means any corporation, company, association, joint stock association, or trust that is beneficially owned, directly or indirectly, by an electrical, gas, or water company, or in the case of a trust issuing conservation bonds consisting of beneficial interests, for which an electrical, gas, or water company or a subsidiary thereof is the grantor, or an unaffiliated entity formed for the purpose of financing or refinancing approved conservation investment, and that acquires conservation investment assets directly or indirectly from such company in a transaction approved by the commission. [1994 c 268 § 1.]

RCW 80.28.010 Duties as to rates, services, and facilities--Limitations on termination of utility service for residential heating. (1) All charges made, demanded or received by any gas company, electrical company or water company for gas, electricity or water, or for any service rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient.

(2) Every gas company, electrical company and water company shall furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable.

(3) All rules and regulations issued by any gas company, electrical company or water company, affecting or pertaining to

the sale or distribution of its product, shall be just and reasonable.

(4) Utility service for residential space heating shall not be terminated between November 15 through March 15 if the customer:

(a) Notifies the utility of the inability to pay the bill, including a security deposit. This notice should be provided within five business days of receiving a payment overdue notice unless there are extenuating circumstances. If the customer fails to notify the utility within five business days and service is terminated, the customer can, by paying reconnection charges, if any, and fulfilling the requirements of this section, receive the protections of this chapter;

(b) Provides self-certification of household income for the prior twelve months to a grantee of the department of community, trade, and economic development which administers federally funded energy assistance programs. The grantee shall determine that the household income does not exceed the maximum allowed for eligibility under the state's plan for low-income energy assistance under 42 U.S.C. 8624 and shall provide a dollar figure that is seven percent of household income. The grantee may verify information provided in the self-certification;

(c) Has applied for home heating assistance from applicable government and private sector organizations and certifies that any assistance received will be applied to the current bill and future utility bills;

(d) Has applied for low-income weatherization assistance to the utility or other appropriate agency if such assistance is available for the dwelling;

(e) Agrees to a payment plan and agrees to maintain the payment plan. The plan will be designed both to pay the past due bill by the following October 15 and to pay for continued utility service. If the past due bill is not paid by the following October 15, the customer shall not be eligible for protections under this chapter until the past due bill is paid. The plan shall not require monthly payments in excess of seven percent of the customer's monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter during November 15 through March 15. A customer may agree to pay a higher percentage during this period, but shall not be in default unless payment during this period is less than seven percent of monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter. If assistance payments are received by the customer subsequent to implementation of the plan, the customer shall contact the utility to reformulate the plan; and

(f) Agrees to pay the moneys owed even if he or she moves.

(5) The utility shall:

(a) Include in any notice that an account is delinquent and that service may be subject to termination, a description of the customer's duties in this section;

(b) Assist the customer in fulfilling the requirements under this section;

(c) Be authorized to transfer an account to a new residence when a customer who has established a plan under this section moves from one residence to another within the same utility service area;

(d) Be permitted to disconnect service if the customer fails to honor the payment program. Utilities may continue to disconnect service for those practices authorized by law other than for nonpayment as provided for in this subsection. Customers who qualify for payment plans under this section who default on their payment plans and are disconnected can be reconnected and maintain the protections afforded under this chapter by paying reconnection charges, if any, and by paying all amounts that would have been due and owing under the terms of the applicable payment plan, absent default, on the date on which service is reconnected; and

(e) Advise the customer in writing at the time it disconnects service that it will restore service if the customer contacts the utility and fulfills the other requirements of this section.

(6) A payment plan implemented under this section is consistent with RCW 80.28.080.

(7) Every gas company and electrical company shall offer residential customers the option of a budget billing or equal payment plan. The budget billing or equal payment plan shall be offered low-income customers eligible under the state's plan for low-income energy assistance prepared in accordance with 42 U.S.C. 8624(C)(1) without limiting availability to certain months of the year, without regard to the length of time the customer has occupied the premises, and without regard to whether the customer is the tenant or owner of the premises occupied.

(8) Every gas company, electrical company and water company shall construct and maintain such facilities in connection with the manufacture and distribution of its product as will be efficient and safe to its employees and the public.

(9) An agreement between the customer and the utility, whether oral or written, shall not waive the protections afforded under this chapter.

(10) In establishing rates or charges for water service, water companies as defined in RCW 80.04.010 may consider the achievement of water conservation goals and the discouragement of wasteful water use practices. [1995 c 399 § 211. Prior: 1991 c 347 § 22; 1991 c 165 § 4; 1990 1st ex.s. c 1 § 5; 1986 c 245 § 5; 1985 c 6 § 25; 1984 c 251 § 4; 1961 c 14 § 80.28.010; prior: 1911 c 117 § 26; RRS § 10362.]

NOTES:

Purposes--1991 c 347: See note following RCW 90.42.005.

Severability--1991 c 347: See RCW 90.42.900.

Findings--1991 c 165: See note following RCW 35.21.300.

RCW 80.28.020 Commission to fix just, reasonable, and compensatory rates. Whenever the commission shall find, after a hearing had upon its own motion, or upon complaint, that the rates or charges demanded, exacted, charged or collected by any gas company, electrical company or water company, for gas, electricity or water, or in connection therewith, or that the rules, regulations, practices or contracts affecting such rates or charges are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law, or that such rates or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall determine the just, reasonable, or sufficient rates, charges, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order. [1961 c 14 § 80.28.020. Prior: 1911 c 117 § 54, part; RRS § 10390, part.]

RCW 80.28.022 Water company rates--Reserve account. In determining the rates to be charged by each water company subject to its jurisdiction, the commission may provide for the funding of a reserve account exclusively for the purpose of making capital improvements approved by the department of health as a part of a long-range plan, or required by the department to assure compliance with federal or state drinking water regulations, or to perform construction or maintenance required by the department of ecology to secure safety to life and property under RCW 43.21A.064(2). Expenditures from the fund shall be subject to prior approval by the commission, and shall be treated for rate-making purposes as customer contributions. [1991 c 150 § 1; 1990 c 132 § 6.]

NOTES:

Legislative findings--Severability--1990 c 132: See note following RCW 43.20.240.

RCW 80.28.024 Legislative finding. The legislature finds and declares that the potential for meeting future energy needs through conservation measures, including energy conservation loans, energy audits, the use of appropriate tree plantings for energy conservation, and the use of renewable resources, such as solar energy, wind energy, wood, wood waste, municipal waste, agricultural products and wastes, hydroelectric energy, geothermal energy, and end-use waste heat, may not be realized without incentives to public and private energy utilities. The

legislature therefore finds and declares that actions and incentives by state government to promote conservation and the use of renewable resources would be of great benefit to the citizens of this state by encouraging efficient energy use and a reliable supply of energy based upon renewable energy resources. [1993 c 204 § 8; 1980 c 149 § 1.]

NOTES:

Findings--1993 c 204: See note following RCW 35.92.390.

RCW 80.28.025 Encouragement of energy cogeneration, conservation, and production from renewable resources-- Consideration of water conservation goals. (1) In establishing rates for each gas and electric company regulated by this chapter, the commission shall adopt policies to encourage meeting or reducing energy demand through cogeneration as defined in RCW 82.35.020, measures which improve the efficiency of energy end use, and new projects which produce or generate energy from renewable resources, such as solar energy, wind energy, hydroelectric energy, geothermal energy, wood, wood waste, municipal wastes, agricultural products and wastes, and end-use waste heat. These policies shall include but are not limited to allowing a return on investment in measures to improve the efficiency of energy end use, cogeneration, or projects which produce or generate energy from renewable resources which return is established by adding an increment of two percent to the rate of return on common equity permitted on the company's other investment. Measures or projects encouraged under this section are those for which construction or installation is begun after June 12, 1980, and before January 1, 1990, and which, at the time they are placed in the rate base, are reasonably expected to save, produce, or generate energy at a total incremental system cost per unit of energy delivered to end use which is less than or equal to the incremental system cost per unit of energy delivered to end use from similarly available conventional energy resources which utilize nuclear energy or fossil fuels and which the gas or electric company could acquire to meet energy demand in the same time period. The rate of return increment shall be allowed for a period not to exceed thirty years after the measure or project is first placed in the rate base.

(2) In establishing rates for water companies regulated by this chapter, the commission may consider the achievement of water conservation goals and the discouragement of wasteful water use practices. [1991 c 347 § 23; 1980 c 149 § 2.]

NOTES:

Purposes--1991 c 347: See note following RCW 90.42.005.

Severability--1991 c 347: See RCW 90.42.900.

Public utility tax exemptions relating to energy conservation and production from renewable resources: RCW 82.16.055.

RCW 80.28.030 Commission may order improved quality of commodity--Water companies, board of health standards. Whenever the commission shall find, after such hearing, that the illuminating or heating power, purity or pressure of gas, the efficiency of electric lamp supply, the voltage of the current supplied for light, heat or power, or the purity, quality, volume, and pressure of water, supplied by any gas company, electrical company or water company, as the case may be, is insufficient, impure, inadequate or inefficient, it shall order such improvement in the manufacture, distribution or supply of gas, in the manufacture, transmission or supply of electricity, or in the storage, distribution or supply of water, or in the methods employed by such gas company, electrical company or water company, as will in its judgment be efficient, adequate, just and reasonable. Failure of a water company to comply with state board of health standards adopted under RCW 43.20.050(2)(a) or department standards adopted under chapter 70.116 RCW for purity, volume, and pressure shall be prima facie evidence that the water supplied is insufficient, impure, inadequate, or inefficient.

In ordering improvements in the storage, distribution, or supply of water, the commission shall consult and coordinate with the department. In the event that a water company fails to comply with an order of the commission in a timely fashion, the commission may request that the department petition the court to place the company in receivership. [1989 c 207 § 4; 1961 c 14 § 80.28.030. Prior: 1911 c 117 § 54, part; RRS § 10390, part.]

RCW 80.28.040 Commission may order improved service--Water companies, noncompliance, receivership. Whenever the commission shall find, after hearing, that any rules, regulations, measurements or the standard thereof, practices, acts or services of any such gas company, electrical company or water company are unjust, unreasonable, improper, insufficient, inefficient or inadequate, or that any service which may be reasonably demanded is not furnished, the commission shall fix the reasonable rules, regulations, measurements or the standard thereof, practices, acts or service to be thereafter furnished, imposed, observed and followed, and shall fix the same by order or rule.

In ordering improvements to the service of any water company, the commission shall consult and coordinate with the department. In the event that a water company fails to comply with an order of the commission within the deadline specified in the order, the commission may request that the department

petition the court to place the company in receivership. [1989 c 207 § 5; 1961 c 14 § 80.28.040. Prior: 1911 c 117 § 54, part; RRS § 10390, part.]

RCW 80.28.050 Tariff schedules to be filed with commission--Public schedules. Every gas company, electrical company and water company shall file with the commission and shall print and keep open to public inspection schedules in such form as the commission may prescribe, showing all rates and charges made, established or enforced, or to be charged or enforced, all forms of contract or agreement, all rules and regulations relating to rates, charges or service, used or to be used, and all general privileges and facilities granted or allowed by such gas company, electrical company or water company. [1961 c 14 § 80.28.050. Prior: 1911 c 117 § 27; RRS § 10363.]

NOTES:

Duty of company to fix rate for wholesale power on request of public utility district: RCW 54.04.100.

RCW 80.28.060 Tariff changes--Statutory notice--Exception. Unless the commission otherwise orders, no change shall be made in any rate or charge or in any form of contract or agreement or in any rule or regulation relating to any rate, charge or service, or in any general privilege or facility which shall have been filed and published by a gas company, electrical company or water company in compliance with the requirements of RCW 80.28.050 except after thirty days' notice to the commission and publication for thirty days, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the change will go into effect and all proposed changes shall be shown by printing, filing and publishing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. Proposed changes may be suspended by the commission within thirty days or before the stated effective date of the proposed change, whichever is later. The commission, for good cause shown, may allow changes without requiring the thirty days' notice by duly filing, in such manner as it may direct, an order specifying the changes so to be made and the time when it shall take effect. All such changes shall be immediately indicated upon its schedules by the company affected. When any change is made in any rate or charge, form of contract or agreement, or any rule or regulation relating to any rate or charge or service, or in any general privilege or facility, the effect of which is to increase any rate or charge, then in existence, attention shall be directed on the copy filed with the commission to such increase by some character immediately

preceding or following the item in such schedule, such character to be in form as designated by the commission. [1989 c 152 § 1; 1961 c 14 § 80.28.060. Prior: 1911 c 117 § 28; RRS § 10364.]

RCW 80.28.065 Tariff schedule--Energy conservation--Payment by successive property owners--Notice--Rules. (1) Upon request by an electrical or gas company, the commission may approve a tariff schedule that contains rates or charges for energy conservation measures, services, or payments provided to individual property owners or customers. The tariff schedule shall require the electrical or gas company to enter into an agreement with the property owner or customer receiving services at the time the conservation measures, services, or payments are initially provided. The tariff schedule may allow for the payment of the rates or charges over a period of time and for the application of the payment obligation to successive property owners or customers at the premises where the conservation measures or services were installed or performed or with respect to which the conservation payments were made.

(2) The electrical or gas company shall record a notice of a payment obligation, containing a legal description, resulting from an agreement under this section with the county auditor or recording officer as provided in RCW 65.04.030.

(3) The commission may prescribe by rule other methods by which an electrical or gas company shall notify property owners or customers of any such payment obligation. [1993 c 245 § 2.]

NOTES:

Legislative findings--Intent--1993 c 245: "(1) The legislature finds that:

(a) The ability of utilities to acquire cost-effective conservation measures is instrumental in assuring that Washington citizens have reasonable energy rates and that utilities have adequate energy resources to meet future energy demands;

(b) Customers may be more willing to accept investments in energy efficiency and conservation if real and perceived impediments to property transactions are avoided;

(c) Potential purchasers of real property should be notified of any utility conservation charges at the earliest point possible in the sale.

(2) It is the intent of the legislature to encourage utilities to develop innovative approaches designed to promote energy efficiency and conservation that have limited rate impacts on utility customers. It is not the intent of the legislature to restrict the authority of the utilities and transportation commission to approve tariff schedules.

(3) It is also the intent of the legislature that utilities which establish conservation tariffs should undertake measures to assure that potential purchasers of property are aware of the

existence of any conservation tariffs. Measures that may be considered include, but are not limited to:

(a) Recording a notice of a conservation tariff payment obligation, containing a legal description, with the county property records;

(b) Annually notifying customers who have entered agreements of the conservation tariff obligation;

(c) Working with the real estate industry to provide for disclosure of conservation tariff obligations in standardized listing agreements and earnest money agreements; and

(d) Working with title insurers to provide recorded conservation tariff obligations as an informational note to the preliminary commitment for policy of title insurance." [1993 c 245 § 1.]

RCW 80.28.068 Rates--Low-income customers. Upon request by an electrical or gas company, the commission may approve rates, charges, services, and/or physical facilities at a discount for low-income senior customers and low-income customers. Expenses and lost revenues as a result of these discounts shall be included in the company's cost of service and recovered in rates to other customers. [1999 c 62 § 1.]

RCW 80.28.070 Sliding scale of charges permitted. Nothing in this chapter shall be taken to prohibit a gas company, electrical company or water company from establishing a sliding scale of charges, whereby a greater charge is made per unit for a lesser than a greater quantity for gas, electricity or water, or any service rendered or to be rendered. [1961 c 14 § 80.28.070. Prior: 1911 c 117 § 32; RRS § 10368.]

RCW 80.28.074 Legislative declaration. The legislature declares it is the policy of the state to:

(1) Preserve affordable natural gas and electric services to the residents of the state;

(2) Maintain and advance the efficiency and availability of natural gas and electric services to the residents of the state of Washington;

(3) Ensure that customers pay only reasonable charges for natural gas and electric service;

(4) Permit flexible pricing of natural gas and electric services. [1988 c 166 § 1.]

RCW 80.28.075 Banded rates--Natural gas and electric services. Upon request by a natural gas company or an electrical company, the commission may approve a tariff that includes banded rates for any nonresidential natural gas or electric service that is subject to effective competition from energy suppliers not regulated by the utilities and

transportation commission. "Banded rate" means a rate that has a minimum and maximum rate. Rates may be changed within the rate band upon such notice as the commission may order. [1988 c 166 § 2.]

RCW 80.28.080 Published rates to be charged--Exceptions.

No gas company, electrical company or water company shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such service as specified in its schedule filed and in effect at the time, nor shall any such company directly or indirectly refund or remit in any manner or by any device any portion of the rates or charges so specified, or furnish its product at free or reduced rates except to its employees and their families, and its officers, attorneys, and agents; to hospitals, charitable and eleemosynary institutions and persons engaged in charitable and eleemosynary work; to indigent and destitute persons; to national homes or state homes for disabled volunteer soldiers and soldiers' and sailors' homes: PROVIDED, That the term "employees" as used in this paragraph shall include furloughed, pensioned and superannuated employees, persons who have become disabled or infirm in the service of any such company; and the term "families," as used in this paragraph, shall include the families of those persons named in this proviso, the families of persons killed or dying in the service, also the families of persons killed, and the surviving spouse prior to remarriage, and the minor children during minority of persons who died while in the service of any of the companies named in this paragraph: PROVIDED FURTHER, That water companies may furnish free or at reduced rates water for the use of the state, or for any project in which the state is interested: AND PROVIDED FURTHER, That gas companies, electrical companies, and water companies may charge the defendant for treble damages awarded in lawsuits successfully litigated under RCW 80.28.240.

No gas company, electrical company or water company shall extend to any person or corporation any form of contract or agreement or any rule or regulation or any privilege or facility except such as are regularly and uniformly extended to all persons and corporations under like circumstances. [1985 c 427 § 2; 1973 1st ex.s. c 154 § 116; 1961 c 14 § 80.28.080. Prior: 1911 c 117 § 29; RRS § 10365.]

NOTES:

Severability--1973 1st ex.s. c 154: See note following RCW 2.12.030.

RCW 80.28.090 Unreasonable preference prohibited. No gas company, electrical company or water company shall make or grant

any undue or unreasonable preference or advantage to any person, corporation, or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. [1961 c 14 § 80.28.090. Prior: 1911 c 117 § 30; RRS § 10366.]

RCW 80.28.100 Rate discrimination prohibited--Exception.

No gas company, electrical company or water company shall, directly or indirectly, or by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas, electricity or water, or for any service rendered or to be rendered, or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like or contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions. [1961 c 14 § 80.28.100. Prior: 1911 c 117 § 31; RRS § 10367.]

NOTES:

Reduced utility rates for low-income senior citizens and other low-income citizens: RCW 74.38.070.

RCW 80.28.110 Service to be furnished on reasonable notice. Every gas company, electrical company or water company, engaged in the sale and distribution of gas, electricity or water, shall, upon reasonable notice, furnish to all persons and corporations who may apply therefor and be reasonably entitled thereto, suitable facilities for furnishing and furnish all available gas, electricity and water as demanded, except that a water company shall not furnish water contrary to the provisions of water system plans approved under chapter 43.20 or 70.116 RCW. [1990 c 132 § 5; 1961 c 14 § 80.28.110. Prior: 1911 c 117 § 33; RRS § 10369.]

NOTES:

Legislative findings--Severability--1990 c 132: See note following RCW 43.20.240.

Duty of company to fix rate for wholesale power on request of public utility district: RCW 54.04.100.

RCW 80.28.120 Effect on existing contracts. Every gas, water or electrical company owning, operating or managing a plant or system for the distribution and sale of gas, water or

electricity to the public for hire shall be and be held to be a public service company as to such plant or system and as to all gas, water or electricity distributed or furnished therefrom, whether such gas, water or electricity be sold wholesale or retail or be distributed wholly to the general public or in part as surplus gas, water or electricity to manufacturing or industrial concerns or to other public service companies or municipalities for redistribution. Nothing in this title shall be construed to prevent any gas company, electrical company or water company from continuing to furnish its product or the use of its lines, equipment or service under any contract or contracts in force on June 7, 1911, at the rates fixed in such contract or contracts: PROVIDED, That the commission shall have power, in its discretion, to direct by order that such contract or contracts shall be terminated by the company party thereto and thereupon such contract or contracts shall be terminated by such company as and when directed by such order. [1961 c 14 § 80.28.120. Prior: 1933 c 165 § 1; 1911 c 117 § 34; RRS § 10370.]

RCW 80.28.130 Repairs, improvements, changes, additions, or extensions may be directed. Whenever the commission shall find, after hearing had upon its own motion or upon complaint, that repairs or improvements, to, or changes in, any gas plant, electrical plant or water system ought to be made, or that any additions or extensions should reasonably be made thereto, in order to promote the security or convenience of the public or employees, or in order to secure adequate service or facilities for manufacturing, distributing or supplying gas, electricity or water, the commission may enter an order directing that such reasonable repairs, improvements, changes, additions or extensions of such gas plant, electrical plant or water system be made. [1961 c 14 § 80.28.130. Prior: 1911 c 117 § 70; RRS § 10406.]

RCW 80.28.140 Inspection of gas and water meters. The commission may appoint inspectors of gas and water meters whose duty it shall be when required by the commission to inspect, examine, prove and ascertain the accuracy of any and all gas and water meters used or intended to be used for measuring or ascertaining the quantity of gas for light, heat or power, or the quantity of water furnished for any purpose by any public service company to or for the use of any person or corporation, and when found to be or made to be correct such inspectors shall seal all such meters and each of them with some suitable device to be prescribed by the commission.

No public service company shall thereafter furnish, set or put in use any gas or water meter which shall not have been inspected, proved and sealed by an inspector of the commission under such rules and regulations as the commission may

prescribe. [1961 c 14 § 80.28.140. Prior: 1911 c 117 § 74, part; RRS § 10410, part.]

RCW 80.28.150 Inspection of electric meters. The commission may appoint inspectors of electric meters whose duty it shall be when required by the commission to inspect, examine, prove and ascertain the accuracy of any and all electric meters used or intended to be used for measuring and ascertaining the quantity of electric current furnished for light, heat or power by any public service company to or for the use of any person or corporation, and to inspect, examine and ascertain the accuracy of all apparatus for testing and proving the accuracy of electric meters, and when found to be or made to be correct the inspector shall stamp or mark all such meters and apparatus with some suitable device to be prescribed by the commission. No public service company shall furnish, set or put in use any electric meters the type of which shall not have been approved by the commission. [1961 c 14 § 80.28.150. Prior: 1911 c 117 § 74, part; RRS § 10410, part.]

RCW 80.28.160 Testing apparatus to be furnished. Every gas company, electrical company and water company shall prepare and maintain such suitable premises, apparatus and facilities as may be required and approved by the commission for testing and proving the accuracy of gas, electric or water meters furnished for use by it by which apparatus every meter may be tested. [1961 c 14 § 80.28.160. Prior: 1911 c 117 § 74, part; RRS § 10410, part.]

RCW 80.28.170 Testing at consumer's request. If any consumer to whom a meter has been furnished shall request the commission in writing to inspect such meter, the commission shall have the same inspected and tested, and if the same, on being so tested, shall be found to be more than four percent if an electric meter, or more than two percent if a gas meter, or more than two percent if a water meter, defective or incorrect to the prejudice of the consumer, the expense of such inspection and test shall be borne by the gas company, electrical company or water company, and if the same, on being so tested shall be found to be correct within the limits of error prescribed by the provisions of this section, the expense of such inspection and test shall be borne by the consumer. [1961 c 14 § 80.28.170. Prior: 1911 c 117 § 74, part; RRS § 10410, part.]

RCW 80.28.180 Rules and regulations. The commission shall prescribe such rules and regulations to carry into effect the provisions of RCW 80.28.140 through 80.28.170 as it may deem necessary, and shall fix the uniform and reasonable charges for

the inspection and testing of meters upon complaint. [1961 c 14 § 80.28.180. Prior: 1911 c 117 § 74, part; RRS § 10410, part.]

RCW 80.28.185 Water companies within counties--Commission may regulate. The commission may develop and enter into an agreement with a county to carry out the regulatory functions of this chapter with regard to water companies located within the boundary of that county. The duration of the agreement, the duties to be performed, and the remuneration to be paid by the commission are subject to agreement by the commission and the county. [1989 c 207 § 6.]

RCW 80.28.190 Gas companies--Certificate--Violations--Commission powers--Penalty--Fees. (Effective until July 1, 2004.) No gas company shall, after January 1, 1956, operate in this state any gas plant for hire without first having obtained from the commission under the provisions of this chapter a certificate declaring that public convenience and necessity requires or will require such operation and setting forth the area or areas within which service is to be rendered; but a certificate shall be granted where it appears to the satisfaction of the commission that such gas company was actually operating in good faith, within the confines of the area for which such certificate shall be sought, on June 8, 1955. Any right, privilege, certificate held, owned or obtained by a gas company may be sold, assigned, leased, transferred or inherited as other property, only upon authorization by the commission. The commission shall have power, after hearing, when the applicant requests a certificate to render service in an area already served by a certificate holder under this chapter only when the existing gas company or companies serving such area will not provide the same to the satisfaction of the commission and in all other cases, with or without hearing, to issue said certificate as prayed for; or for good cause shown to refuse to issue same, or to issue it for the partial exercise only of said privilege sought, and may attach to the exercise of the rights granted by said certificate such terms and conditions as, in its judgment, the public convenience and necessity may require.

The commission may, at any time, by its order duly entered after a hearing had upon notice to the holder of any certificate hereunder, and an opportunity to such holder to be heard, at which it shall be proven that such holder wilfully violates or refuses to observe any of its proper orders, rules or regulations, suspend, revoke, alter or amend any certificate issued under the provisions of this section, but the holder of such certificate shall have all the rights of rehearing, review and appeal as to such order of the commission as is provided herein.

In all respects in which the commission has power and authority under this chapter applications and complaints may be made and filed with it, process issued, hearings held, opinions, orders and decisions made and filed, petitions for rehearing filed and acted upon, and petitions for writs of review to the superior court filed therewith, appeals or mandate filed with the supreme court or the court of appeals of this state considered and disposed of by said courts in the manner, under the conditions, and subject to the limitations and with the effect specified in the Washington utilities and transportation commission laws of this state.

Every officer, agent, or employee of any corporation, and every other person who violates or fails to comply with, or who procures, aids or abets in the violation of any of the provisions of this section or who fails to obey, observe or comply with any order, decision, rule or regulation, directive, demand or requirements, or any provision of this section, is guilty of a gross misdemeanor and punishable as such.

Neither this section, RCW 80.28.200, 80.28.210, nor any provisions thereof shall apply or be construed to apply to commerce with foreign nations or commerce among the several states of this union except insofar as the same may be permitted under the provisions of the Constitution of the United States and acts of congress.

The commission shall collect the following miscellaneous fees from gas companies: Application for a certificate of public convenience and necessity or to amend a certificate, twenty-five dollars; application to sell, lease, mortgage or transfer a certificate of public convenience and necessity or any interest therein, ten dollars. [1971 c 81 § 141; 1961 c 14 § 80.28.190. Prior: 1955 c 316 § 4.]

RCW 80.28.190 Gas companies--Certificate--Violations--Commission powers--Penalty--Fees. (Effective July 1, 2004.)

(1) No gas company shall, after January 1, 1956, operate in this state any gas plant for hire without first having obtained from the commission under the provisions of this chapter a certificate declaring that public convenience and necessity requires or will require such operation and setting forth the area or areas within which service is to be rendered; but a certificate shall be granted where it appears to the satisfaction of the commission that such gas company was actually operating in good faith, within the confines of the area for which such certificate shall be sought, on June 8, 1955. Any right, privilege, certificate held, owned or obtained by a gas company may be sold, assigned, leased, transferred or inherited as other property, only upon authorization by the commission. The commission shall have power, after hearing, when the applicant requests a certificate to render service in an area already served by a certificate holder under this chapter only when the existing gas company or companies serving

such area will not provide the same to the satisfaction of the commission and in all other cases, with or without hearing, to issue the certificate as prayed for; or for good cause shown to refuse to issue same, or to issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate such terms and conditions as, in its judgment, the public convenience and necessity may require.

(2) The commission may, at any time, by its order duly entered after a hearing had upon notice to the holder of any certificate hereunder, and an opportunity to such holder to be heard, at which it shall be proven that such holder willfully violates or refuses to observe any of its proper orders, rules or regulations, suspend, revoke, alter or amend any certificate issued under the provisions of this section, but the holder of such certificate shall have all the rights of rehearing, review and appeal as to such order of the commission as is provided herein.

(3) In all respects in which the commission has power and authority under this chapter applications and complaints may be made and filed with it, process issued, hearings held, opinions, orders and decisions made and filed, petitions for rehearing filed and acted upon, and petitions for writs of review to the superior court filed therewith, appeals or mandate filed with the supreme court or the court of appeals of this state considered and disposed of by such courts in the manner, under the conditions, and subject to the limitations and with the effect specified in the Washington utilities and transportation commission laws of this state.

(4) Every officer, agent, or employee of any corporation, and every other person who violates or fails to comply with, or who procures, aids or abets in the violation of any of the provisions of this section or who fails to obey, observe or comply with any order, decision, rule or regulation, directive, demand or requirements, or any provision of this section, is guilty of a gross misdemeanor.

(5) Neither this section, RCW 80.28.200, 80.28.210, nor any provisions thereof shall apply or be construed to apply to commerce with foreign nations or commerce among the several states of this union except insofar as the same may be permitted under the provisions of the Constitution of the United States and acts of congress.

(6) The commission shall collect the following miscellaneous fees from gas companies: Application for a certificate of public convenience and necessity or to amend a certificate, twenty-five dollars; application to sell, lease, mortgage or transfer a certificate of public convenience and necessity or any interest therein, ten dollars. [2003 c 53 § 383; 1971 c 81 § 141; 1961 c 14 § 80.28.190. Prior: 1955 c 316 § 4.]

NOTES:

Intent--Effective date--2003 c 53: See notes following RCW 2.48.180.

RCW 80.28.200 Gas companies--Refunds of charges. Whenever any gas company whose rates are subject to the jurisdiction of the commission shall receive any refund of amounts charged and collected from it on account of natural gas purchased by it, by reason of any reduction of rates or disallowance of an increase in rates of the seller of such natural gas pursuant to an order of the federal power commission, whether such refund shall be directed by the federal power commission or by any court upon review of such an order or shall otherwise accrue to such company, the commission shall have power after a hearing, upon its own motion, upon complaint, or upon the application of such company, to determine whether or not such refund should be passed on, in whole or in part, to the consumers of such company and to order such company to pass such refund on to its consumers, in the manner and to the extent determined just and reasonable by the commission. [1961 c 14 § 80.28.200. Prior: 1955 c 316 § 5.]

RCW 80.28.205 Enforcement of federal laws covering gas pipeline safety--Request for federal delegation of authority.

(1) The commission shall seek and accept federal delegation for the commission's inspectors as federal agents for the purposes of enforcement of federal laws covering gas pipeline safety and the associated federal rules, as they exist on March 28, 2000. The commission shall establish and submit to the United States secretary of transportation an inspection program that complies with requirements for delegated interstate agent inspection authority. If the secretary of transportation delegates inspection authority to the state as provided in this subsection, the commission, at a minimum, shall do the following:

- (a) Inspect gas pipelines periodically as specified in the inspection program;
- (b) Collect fees;
- (c) Order and oversee the testing of gas pipelines as authorized by federal law and regulation; and
- (d) File reports with the United States secretary of transportation as required to maintain the delegated authority.

(2) The commission shall also seek federal authority to adopt safety standards related to the monitoring and testing of interstate gas pipelines.

(3) Upon designation under subsection (1) of this section or under a grant of authority under subsection (2) of this section, to the extent authorized by federal law, the commission shall adopt rules for interstate gas pipelines that are no less

stringent than the state's laws and rules for intrastate gas pipelines. [2000 c 191 § 10.]

NOTES:

Intent--Findings--Conflict with federal requirements--Short title--Effective date--2000 c 191: See RCW 81.88.005 and 81.88.900 through 81.88.902.

RCW 80.28.207 Commission inspection of records, maps, or written procedures. The commission may inspect any record, map, or written procedure required by federal law to be kept by a gas pipeline company concerning the reporting of gas releases, and the design, construction, testing, or operation and maintenance of gas pipelines. [2000 c 191 § 12.]

NOTES:

Intent--Findings--Conflict with federal requirements--Short title--Effective date--2000 c 191: See RCW 81.88.005 and 81.88.900 through 81.88.902.

RCW 80.28.210 Safety rules--Pipeline transporters--Penalty. (Effective until July 1, 2004.) Every person or corporation transporting natural gas by pipeline, or having for one or more of its principal purposes the construction, maintenance or operation of pipelines for transporting natural gas, in this state, even though such person or corporation not be a public service company under chapter 80.28 RCW, and even though such person or corporation does not deliver, sell or furnish any such gas to any person or corporation within this state, shall be subject to regulation by the utilities and transportation commission insofar as the construction and operation of such facilities shall affect matters of public safety, and every such company shall construct and maintain such facilities as will be safe and efficient. The commission shall have the authority to prescribe rules and regulations to effectuate the purpose of this enactment. Every such person and every such officer, agent and employee of a corporation who, as an individual or as an officer or agent of such corporation, violates or fails to comply with, or who procures, aids, or abets another, or his company, in the violation of, or noncompliance with, any provision of this section or any order, rule or requirement of the commission hereunder, shall be guilty of a gross misdemeanor. [1969 ex.s. c 210 § 2; 1961 c 14 § 80.28.210. Prior: 1955 c 316 § 6.]

RCW 80.28.210 Safety rules--Pipeline transporters--Penalty. (Effective July 1, 2004.) (1) Every person or

corporation transporting natural gas by pipeline, or having for one or more of its principal purposes the construction, maintenance or operation of pipelines for transporting natural gas, in this state, even though such person or corporation not be a public service company under chapter 80.28 RCW, and even though such person or corporation does not deliver, sell or furnish any such gas to any person or corporation within this state, shall be subject to regulation by the utilities and transportation commission insofar as the construction and operation of such facilities shall affect matters of public safety, and every such company shall construct and maintain such facilities as will be safe and efficient. The commission shall have the authority to prescribe rules and regulations to effectuate the purpose of this enactment.

(2) Every such person and every such officer, agent and employee of a corporation who, as an individual or as an officer or agent of such corporation, violates or fails to comply with, or who procures, aids, or abets another, or his or her company, in the violation of, or noncompliance with, any provision of this section or any order, rule or requirement of the commission hereunder, is guilty of a gross misdemeanor. [2003 c 53 § 384; 1969 ex.s. c 210 § 2; 1961 c 14 § 80.28.210. Prior: 1955 c 316 § 6.]

NOTES:

Intent--Effective date--2003 c 53: See notes following RCW 2.48.180.

RCW 80.28.212 Safety rules--Civil penalty for violation of RCW 80.28.210 or regulations issued thereunder--Level of penalty--Compromise--Disposition of penalty. Any gas company which violates any provision of RCW 80.28.210 as now exists or is later amended or of any regulation issued thereunder, shall be subject to a civil penalty to be directly assessed by the commission. The level of such penalty shall be set by rule by the commission and shall not exceed the penalties specified in federal pipeline safety laws (49 U.S.C. 60101 et seq.) in effect on July 23, 1995. Any civil penalty may be compromised by the commission. In determining the amount of the penalty, or the amount agreed upon and compromised, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the gas company charged in attempting to achieve compliance after notification of the violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon and compromised, may be recovered in a civil action in the superior court of Thurston county or of some other county in which such violator may do business. In all such actions for recovery the procedure and rules of evidence shall be the same as in ordinary civil actions. All penalties recovered under this title shall

be paid into the state treasury and credited to the public service revolving fund. [1995 c 247 § 1; 1969 ex.s. c 210 § 3.]

RCW 80.28.215 Gas pipeline company duties after notice of excavation. A gas pipeline company that has been notified by an excavator that excavation work will occur near a gas transmission pipeline shall ensure that the pipeline company's representative consults with the excavator on-site prior to the excavation. The gas pipeline company has the discretion to require that the pipeline section in the vicinity of the excavation is fully uncovered and examined for damage prior to being reburied. [2000 c 191 § 22.]

NOTES:

Intent--Findings--Conflict with federal requirements--Short title--Effective date--2000 c 191: See RCW 81.88.005 and 81.88.900 through 81.88.902.

RCW 80.28.220 Gas companies--Right of eminent domain--Purposes. Every corporation having for one of its principal purposes the transmission, distribution, sale, or furnishing of natural gas or other type gas for light, heat, or power and holding and owning a certificate of public convenience and necessity from the utilities and transportation commission authorizing the operation of a gas plant, may appropriate, by condemnation, lands and property and interests therein, for the transmission, distribution, sale, or furnishing of such natural gas or other type gas through gas mains or pipelines under the provisions of chapter 8.20 RCW. [1961 c 14 § 80.28.220. Prior: 1957 c 191 § 1.]

RCW 80.28.230 Gas companies--Use for purpose acquired exclusive--Disposition of property. Any property or interest acquired as provided in RCW 80.28.220 shall be used exclusively for the purposes for which it was acquired: PROVIDED, HOWEVER, That if any such property be sold or otherwise disposed of by said corporations, such sale or disposition shall be by public sale or disposition and advertised in the manner of public sales in the county where such property is located. [1961 c 14 § 80.28.230. Prior: 1957 c 191 § 2.]

RCW 80.28.240 Recovery of damages by utility company for tampering, unauthorized connections, diversion of services. (1) A utility may bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts to:

(a) Divert, or cause to be diverted, utility services by any means whatsoever;

(b) Make, or cause to be made, any connection or reconnection with property owned or used by the utility to provide utility service without the authorization or consent of the utility;

(c) Prevent any utility meter or other device used in determining the charge for utility services from accurately performing its measuring function by tampering or by any other means;

(d) Tamper with any property owned or used by the utility to provide utility services; or

(e) Use or receive the direct benefit of all or a portion of the utility service with knowledge of, or reason to believe that, the diversion, tampering, or unauthorized connection existed at the time of the use or that the use or receipt was without the authorization or consent of the utility.

(2) In any civil action brought under this section, the utility may recover from the defendant as damages three times the amount of actual damages, if any, plus the cost of the suit and reasonable attorney's fees, plus the costs incurred on account of the bypassing, tampering, or unauthorized reconnection, including but not limited to costs and expenses for investigation, disconnection, reconnection, service calls, and expert witnesses.

(3) Any damages recovered under this section in excess of the actual damages sustained by the utility may be taken into account by the utilities and transportation commission or other applicable rate-making agency in establishing utility rates.

(4) As used in this section:

(a) "Customer" means the person in whose name a utility service is provided;

(b) "Divert" means to change the intended course or path of electricity, gas, or water without the authorization or consent of the utility;

(c) "Person" means any individual, partnership, firm, association, or corporation or government agency;

(d) "Reconnection" means the commencement of utility service to a customer or other person after service has been lawfully disconnected by the utility;

(e) "Tamper" means to rearrange, injure, alter, interfere with, or otherwise prevent from performing the normal or customary function;

(f) "Utility" means any electrical company, gas company, or water company as those terms are defined in RCW 80.04.010, and includes any electrical, gas, or water system operated by any public agency; and

(g) "Utility service" means the provision of electricity, gas, water, or any other service or commodity furnished by the utility for compensation. [1989 c 11 § 30; 1985 c 427 § 1.]

NOTES:

Severability--1989 c 11: See note following RCW 9A.56.220.

RCW 80.28.250 Water companies--Fire hydrants. A city, town or county may, by ordinance or resolution, require a water company to maintain fire hydrants in the area served by the water company. The utilities and transportation commission has no authority to waive this obligation. [1986 c 119 § 1.]

RCW 80.28.260 Adoption of policies to provide financial incentives for energy efficiency programs. (1) The commission shall adopt a policy allowing an incentive rate of return on investment (a) for payments made under RCW 19.27A.035 and (b) for programs that improve the efficiency of energy end use if priority is given to senior citizens and low-income citizens in the course of carrying out such programs. The incentive rate of return on investments set forth in this subsection is established by adding an increment of two percent to the rate of return on common equity permitted on the company's other investments.

(2) The commission shall consider and may adopt a policy allowing an incentive rate of return on investment in additional programs to improve the efficiency of energy end use or other incentive policies to encourage utility investment in such programs.

(3) The commission shall consider and may adopt other policies to protect a company from a reduction of short-term earnings that may be a direct result of utility programs to increase the efficiency of energy use. These policies may include allowing a periodic rate adjustment for investments in end use efficiency or allowing changes in price structure designed to produce additional new revenue. [1996 c 186 § 520; 1990 c 2 § 9.]

NOTES:

Findings--Intent--Part headings not law--Effective date--1996 c 186: See notes following RCW 43.330.904.

Effective dates--1990 c 2: See note following RCW 19.27.040.

Findings--Severability--1990 c 2: See notes following RCW 19.27A.015.

RCW 80.28.270 Water companies--Extension, installation, or connection charges. The commission's jurisdiction over the rates, charges, practices, acts or services of any water company shall include any aspect of line extension, service

installation, or service connection. If the charges for such services are not set forth by specific amount in the company's tariff filed with the commission pursuant to RCW 80.28.050, the commission shall determine the fair, just, reasonable, and sufficient charge for such extension, installation, or connection. In any such proceeding in which there is no specified tariffed rate, the burden shall be on the company to prove that its proposed charges are fair, just, reasonable, and sufficient. [1991 c 101 § 2.]

RCW 80.28.275 Water companies--Assumption of substandard water system--Limited immunity from liability. A water company assuming responsibility for a water system that is not in compliance with state or federal requirements for public drinking water systems, and its agents and employees, are immune from lawsuits or causes of action, based on noncompliance with state or federal requirements for public drinking water systems, which predate the date of assuming responsibility and continue after the date of assuming responsibility, provided that the water company has submitted and is complying with a plan and schedule of improvements approved by the department of health. This immunity shall expire on the earlier of the date the plan of improvements is completed or four years from the date of assuming responsibility. This immunity does not apply to intentional injuries, fraud, or bad faith. [1994 c 292 § 9.]

NOTES:

Findings--Intent--1994 c 292: See note following RCW 57.04.050.

RCW 80.28.280 Compressed natural gas--Motor vehicle refueling stations--Public interest. The legislature finds that compressed natural gas offers significant potential to reduce vehicle emissions and to significantly decrease dependence on petroleum-based fuels. The legislature also finds that well-developed and convenient refueling systems are imperative if compressed natural gas is to be widely used by the public. The legislature declares that the development of compressed natural gas refueling stations are in the public interest. Nothing in this section and RCW 80.28.290 is intended to alter the regulatory practices of the commission or allow the subsidization of one ratepayer class by another. [1991 c 199 § 216.]

NOTES:

Finding--1991 c 199: See note following RCW 70.94.011.

Effective dates--Severability--Captions not law--1991 c 199: See RCW 70.94.904 through 70.94.906.

Clean fuel: RCW 70.120.210.

RCW 80.28.290 Compressed natural gas--Refueling stations--Identify barriers. The commission shall identify barriers to the development of refueling stations for vehicles operating on compressed natural gas, and shall develop policies to remove such barriers. In developing such policies, the commission shall consider providing rate incentives to encourage natural gas companies to invest in the infrastructure required by such refueling stations. [1991 c 199 § 217.]

NOTES:

Finding--1991 c 199: See note following RCW 70.94.011.

Effective dates--Severability--Captions not law--1991 c 199: See RCW 70.94.904 through 70.94.906.

RCW 80.28.300 Gas, electrical companies authorized to provide customers with landscaping information and to request voluntary donations for urban forestry. (1) Gas companies and electrical companies under this chapter may provide information to their customers regarding landscaping that includes tree planting for energy conservation.

(2) Gas companies and electrical companies under this chapter may request voluntary donations from their customers for the purposes of urban forestry. The request may be in the form of a check-off on the billing statement or other form of a request for a voluntary donation. [1993 c 204 § 4.]

NOTES:

Findings--1993 c 204: See note following RCW 35.92.390.

RCW 80.28.303 Conservation service tariff--Contents of filing--Rate base--Duties of commission. (1) An electrical, gas, or water company may file a conservation service tariff with the commission. The tariff shall provide:

(a) The terms and conditions upon which the company will offer the conservation measures and services specified in the tariff;

(b) The period of time during which the conservation measures and services will be offered; and

(c) The maximum amount of expenditures to be made during a specified time period by the company on conservation measures and services specified in the tariff.

(2) The commission has the same authority with respect to a proposed conservation service tariff as it has with regard to any other schedule or classification the effect of which is to change any rate or charge, including, without limitation, the power granted by RCW 80.04.130 to conduct a hearing concerning a proposed conservation service tariff and the reasonableness and justness thereof, and pending such hearing and the decision thereon the commission may suspend the operation of the tariff for a period not exceeding ten months from the time the tariff would otherwise go into effect.

(3) An electrical, gas, or water company may from time to time apply to the commission for a determination that specific expenditures may under its tariff constitute bondable conservation investment. A company may request this determination by the commission in separate proceedings for this purpose or in connection with a general rate case. The commission may designate the expenditures as bondable conservation investment as defined in RCW 80.28.005(1) if it finds that such designation is in the public interest.

(4) The commission shall include in rate base all bondable conservation investment. The commission shall approve rates for service by electrical, gas, and water companies at levels sufficient to recover all of the expenditures of the bondable conservation investment included in rate base and the costs of equity and debt capital associated therewith, including, without limitation, the payment of principal, premium, if any, and interest on conservation bonds. The rates so determined may be included in general rate schedules or may be expressed in one or more separate rate schedules. The commission shall not revalue bondable conservation investment for rate-making purposes, to determine that revenues required to recover bondable conservation investment and associated equity and debt capital costs are unjust, unreasonable, or in any way impair or reduce the value of conservation investment assets or that would impair the timing or the amount of revenues arising with respect to conservation investment assets that have been pledged to secure conservation bonds.

(5) Nothing in this chapter precludes the commission from adopting or continuing other conservation policies and programs intended to provide incentives for and to encourage utility investment in improving the efficiency of energy or water end use. However, the policies or programs shall not impair conservation investment assets. This chapter is not intended to be an exclusive or mandatory approach to conservation programs for electrical, gas, and water companies, and no such company is obligated to file conservation service tariffs under this chapter, to apply to the commission for a determination that conservation costs constitute bondable conservation investment within the meaning of this chapter, or to issue conservation bonds.

(6)(a) If a customer of an electrical, gas, or water company for whose benefit the company made expenditures for

conservation measures or services ceases to be a customer of such company for one or more of the following reasons, the commission may require that the portion of such conservation expenditures that had been included in rate base but not theretofore recovered in the rates of such company be removed from the rate base of the company:

(i) The customer ceases to be a customer of the supplier of energy or water, and the customer repays to the company the portion of the conservation expenditures made for the benefit of such customer that has not theretofore been recovered in rates of the company; or

(ii) The company sells its property used to serve such customer and the customer ceases to be a customer of the company as a result of such action.

(b) An electrical, gas, or water company may include in a contract for a conservation measure or service, and the commission may by rule or order require to be included in such contracts, a provision requiring that, if the customer ceases to be a customer of that supplier of energy or water, the customer shall repay to the company the portion of the conservation expenditures made for the benefit of such customer that has not theretofore been recovered in rates of the company. [1994 c 268 § 2.]

RCW 80.28.306 Conservation bonds--Conservation investment assets as collateral--Priority of security interests--Transfers.

(1) Electrical, gas, and water companies, or finance subsidiaries, may issue conservation bonds upon approval by the commission.

(2) Electrical, gas, and water companies, or finance subsidiaries may pledge conservation investment assets as collateral for conservation bonds by obtaining an order of the commission approving an issue of conservation bonds and providing for a security interest in conservation investment assets. A security interest in conservation investment assets is created and perfected only upon entry of an order by the commission approving a contract governing the granting of the security interest and the filing with the department of licensing of a UCC-1 financing statement, showing such pledgor as "debtor" and identifying such conservation investment assets and the bondable conservation investment associated therewith. The security interest is enforceable against the debtor and all third parties, subject to the rights of any third parties holding security interests in the conservation investment assets perfected in the manner described in this section, if value has been given by the purchasers of conservation bonds. An approved security interest in conservation investment assets is a continuously perfected security interest in all revenues and proceeds arising with respect to the associated bondable conservation investment, whether or not such revenues have accrued. Upon such approval, the priority of such security

interest shall be as set forth in the contract governing the conservation bonds. Conservation investment assets constitute property for the purposes of contracts securing conservation bonds whether or not the related revenues have accrued.

(3) The relative priority of a security interest created under this section is not defeated or adversely affected by the commingling of revenues arising with respect to conservation investment assets with other funds of the debtor. The holders of conservation bonds shall have a perfected security interest in all cash and deposit accounts of the debtor in which revenues arising with respect to conservation investment assets pledged to such holders have been commingled with other funds, but such perfected security interest is limited to an amount not greater than the amount of such revenues received by the debtor within twelve months before (a) any default under the conservation bonds held by the holders or (b) the institution of insolvency proceedings by or against the debtor, less payments from such revenues to the holders during such twelve-month period. If an event of default occurs under an approved contract governing conservation bonds, the holders of conservation bonds or their authorized representatives, as secured parties, may foreclose or otherwise enforce the security interest in the conservation investment assets securing the conservation bonds, subject to the rights of any third parties holding prior security interests in the conservation investment assets perfected in the manner provided in this section. Upon application by the holders of [or] their representatives, without limiting their other remedies, the commission shall order the sequestration and payment to the holders or their representatives of revenues arising with respect to the conservation investment assets pledged to such holders. Any such order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor. Any surplus in excess of amounts necessary to pay principal, premium, if any, interest, and expenses arising under the contract governing the conservation bonds shall be remitted to the debtor electrical, gas, or water company or the debtor finance subsidiary.

(4) The granting, perfection, and enforcement of security interests in conservation investment assets to secure conservation bonds is governed by this chapter rather than by *chapter 62A.9 RCW.

(5) A transfer of conservation investment assets by an electrical, gas, or water company to a finance subsidiary, which such parties have in the governing documentation expressly stated to be a sale or other absolute transfer, in a transaction approved in an order issued by the commission and in connection with the issuance by such finance subsidiary of conservation bonds, shall be treated as a true sale, and not as a pledge or other financing, of such conservation investment assets. According the holders of conservation bonds a preferred right to revenues of the electrical, gas, or water company, or the

provision by such company of other credit enhancement with respect to conservation bonds, does not impair or negate the characterization of any such transfer as a true sale.

(6) Any successor to an electrical, gas, or water company pursuant to any bankruptcy, reorganization, or other insolvency proceeding shall perform and satisfy all obligations of the company under an approved contract governing conservation bonds, in the same manner and to the same extent as such company before any such proceeding, including, without limitation, collecting and paying to the bondholders or their representatives revenues arising with respect to the conservation investment assets pledged to secure the conservation bonds. [1994 c 268 § 3.]

NOTES:

***Reviser's note:** Chapter 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see chapter 62A.9A RCW.

RCW 80.28.309 Costs as bondable conservation investment.

(1) Costs incurred before June 9, 1994, by electrical, gas, or water companies with respect to energy or water conservation measures and services intended to improve the efficiency of energy or water end use shall constitute bondable conservation investment for purposes of RCW 80.28.005, 80.28.303, 80.28.306, and this section, if:

(a) The commission has previously issued a rate order authorizing the inclusion of such costs in rate base; and

(b) The commission authorizes the issuance of conservation bonds secured by conservation investment assets associated with such costs.

(2) If costs incurred before June 9, 1994, by electrical, gas, or water companies with respect to energy or water conservation measures intended to improve the efficiency of energy or water end use have not previously been considered by the commission for inclusion in rate base, an electrical, gas, or water company may apply to the commission for approval of such costs. If the commission finds that the expenditures are a bondable conservation investment, the commission shall by order designate such expenditures as bondable conservation investment, which shall be subject to RCW 80.28.005, 80.28.303, 80.28.306, and this section. [1994 c 268 § 4.]

**RCW 80.28.310 Tariff for irrigation pumping service--
Authority for electrical companies to buy back electricity.**

Upon request by an electrical company, the commission may approve a tariff for irrigation pumping service that allows the company to buy back electricity from customers to reduce electricity usage by those customers during the electrical company's particular irrigation season. [2001 c 122 § 1.]

NOTES:

Effective date--2001 c 122: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 27, 2001]." [2001 c 122 § 7.]

CHAPTER 80.32 RCW

ELECTRIC FRANCHISES AND RIGHTS OF WAY

Sections

80.32.010	Cities and counties may grant franchises-- Procedure--Liability to restore road for travel.
80.32.040	Grant of franchise subject to referendum.
80.32.050	Sale or lease of plant and franchises.
80.32.060	Eminent domain.
80.32.070	Right of entry.
80.32.080	Duties of electrical companies exercising power of eminent domain.
80.32.090	Limitation on use of electricity.
80.32.100	Remedy for violations.

NOTES:

Franchises on state highways: Chapter 47.44 RCW.

**RCW 80.32.010 Cities and counties may grant franchises--
Procedure--Liability to restore road for travel.** The legislative authority of the city or town having control of any public street or road, or, where the street or road is not within the limits of any incorporated city or town, then the county legislative authority of the county wherein the road or street is situated, may grant authority for the construction, maintenance and operation of transmission lines for transmitting electric power, together with poles, wires and other appurtenances, upon, over, along and across any such public street or road, and in granting this authority the legislative authority of the city or town, or the county legislative authority, as the case may be, may prescribe the terms and conditions on which the transmission line and its appurtenances, shall be constructed, maintained and operated upon, over, along and across the road or street, and the grade or elevation at which the same shall be constructed, maintained and operated: PROVIDED, That on application being made to the county legislative authority for such authority, the county legislative authority shall fix a time and place for hearing the same, and

shall cause the county auditor to give public notice thereof at the expense of the applicant, by posting written or printed notices in three public places in the county seat of the county, and in at least one conspicuous place on the road or street or part thereof, for which application is made, at least fifteen days before the day fixed for such hearing, and by publishing a like notice once a week for two consecutive weeks in the official county newspaper, the last publication to be at least five days before the day fixed for the hearing, which notice shall state the name or names of the applicant or applicants, a description of the roads or streets or parts thereof for which the application is made, and the time and place fixed for the hearing. The hearing may be adjourned from time to time by order of the county legislative authority. If after such hearing the county legislative authority shall deem it to be for the public interest to grant the authority in whole or in part, it may make and enter the proper order granting the authority applied for or such part thereof as it deems to be for the public interest, and shall require the transmission line and its appurtenances to be placed in such location on or along the road or street as it finds will cause the least interference with other uses of the road or street. In case any such transmission line is or shall be located in part on private right of way, the owner thereof shall have the right to construct and operate the same across any county road or county street which intersects the private right of way, if the crossing is so constructed and maintained as to do no unnecessary damage: PROVIDED, That any person or corporation constructing the crossing or operating the transmission line on or along the county road or county street shall be liable to the county for all necessary expense incurred in restoring the county road or county street to a suitable condition for travel. [1985 c 469 § 62; 1961 c 14 § 80.32.010. Prior: 1903 c 173 § 1; RRS § 5430. Formerly RCW 80.32.010, 80.32.020, and 80.32.030.]

RCW 80.32.040 Grant of franchise subject to referendum.

All grants of franchises or rights for the conduct or distribution of electric energy, electric power, or electric light within any city or town of the state of Washington by the city council or other legislative body or legislative authority thereof, whether granted by ordinance, resolution, or other form of grant, contract, permission or license, shall be subject to popular referendum under the general laws of this state heretofore or hereafter enacted, or as may be provided by the charter provisions, heretofore or hereafter adopted, of any such city or town: PROVIDED, That no petition for referendum may be filed after six months from the date of ordinance, resolution, or other form of grant, contract, permission, or license granting such franchise. [1961 c 14 § 80.32.040. Prior: (i) 1941 c 114 § 1; Rem. Supp. 1941 § 5430-1. (ii) 1941 c 114 § 2; Rem. Supp. 1941 § 5430-2.]

RCW 80.32.050 Sale or lease of plant and franchises. Any corporation incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States, for the purpose of manufacturing, transmitting or selling electric power, may lease or purchase and operate (except in cases where such lease or purchase is prohibited by the Constitution of this state) the whole or any part of the plant for manufacturing or distributing electric power or energy of any other corporation, heretofore or hereafter constructed, together with the franchises, powers, immunities and all other property or appurtenances appertaining thereto: PROVIDED, That such lease or purchase has been or shall be consented to by stockholders of record holding at least two-thirds in amount of the capital stock or the lessor or grantor corporation; and all such leases and purchases made or entered into prior to the effective date of chapter 173, Laws of 1903, by consent of stockholders as aforesaid are for all intents and purposes hereby ratified and confirmed, saving, however, any vested rights of private parties. [1961 c 14 § 80.32.050. Prior: 1903 c 173 § 3; RRS § 5431.]

RCW 80.32.060 Eminent domain. Every corporation, incorporated or that may hereafter be incorporated under the laws of this state, or of any other state or territory of the United States, and doing business in this state, for the purpose of manufacturing or transmitting electric power, shall have the right to appropriate real estate and other property for right-of-way or for any corporate purpose, in the same manner and under the same procedure as now is or may hereafter be provided by law in the case of ordinary railroad corporations authorized by the laws of this state to exercise the right of eminent domain: PROVIDED, That such right of eminent domain shall not be exercised with respect to any public road or street until the location of the transmission line thereon has been authorized in accordance with RCW 80.32.010. [1961 c 14 § 80.32.060. Prior: 1903 c 173 § 2; No RRS.]

NOTES:

Eminent domain by corporations generally: Chapter 8.20 RCW.

RCW 80.32.070 Right of entry. Every such corporation shall have the right to enter upon any land between the termini of the proposed lines for the purpose of examining, locating and surveying such lines, doing no unnecessary damage thereby. [1961 c 14 § 80.32.070. Prior: 1899 c 94 § 2; RRS § 11085.]

RCW 80.32.080 Duties of electrical companies exercising power of eminent domain. Any corporation authorized to do business in this state, which, under the present laws of the state, is authorized to condemn property for the purpose of generating and transmitting electrical power for the operation of railroads or railways, or for municipal lighting, and which by its charter or articles of incorporation, assumes the additional right to sell electric power and electric light to private consumers outside the limits of a municipality and to sell electric power to private consumers within the limits of a municipality, which shall provide in its articles that in respect of the purposes mentioned in this section it will assume and undertake to the state and to the inhabitants thereof the duties and obligations of a public service corporation, shall be deemed to be in respect of such purposes a public service corporation, and shall be held to all the duties, obligations and control, which by law are or may be imposed upon public service corporations. Any such corporation shall have the right to sell electric light outside the limits of a municipality and electric power both inside and outside such limits to private consumers from the electricity generated and transmitted by it for public purposes and not needed by it therefor: PROVIDED, That such corporation shall furnish such excess power at equal rates, quantity and conditions considered, to all consumers alike, and shall supply it to the first applicants therefor until the amount available shall be exhausted: PROVIDED FURTHER, That no such corporation shall be obliged to furnish such excess power to any one consumer to an amount exceeding twenty-five percent of the total amount of such excess power generated or transmitted by it. In exercising the power of eminent domain for public purposes it shall not be an objection thereto that a portion of the electric current generated will be applied to private purposes, provided the principal uses intended are public: PROVIDED, That all public service or quasi public service corporations shall at no time sell, deliver and dispose of electrical power in bulk to manufacturing concerns at the expense of its public service functions, and any person, firm or corporation that is a patron of such corporation as to such public function, shall have the right to apply to any court of competent jurisdiction to correct any violation of the provisions of RCW 80.32.080 through 80.32.100. [1961 c 14 § 80.32.080. Prior: 1907 c 159 § 1; RRS § 5432.]

RCW 80.32.090 Limitation on use of electricity. Whenever any corporation has acquired any property by decree of appropriation based on proceedings in court under the provisions of RCW 80.32.080 through 80.32.100, no portion of the electricity generated or transmitted by it by means of the property appropriated under the provisions of RCW 80.32.080 through 80.32.100 shall be used or applied by such corporation for or to a business or trade not under the present laws deemed

public or quasi public conducted by itself. [1961 c 14 § 80.32.090. Prior: 1907 c 159 § 2; RRS § 5433.]

RCW 80.32.100 Remedy for violations. In the event of the violation of any of the requirements of RCW 80.32.080 and 80.32.090 by any corporation availing itself of its provisions, an appropriate suit may be maintained in the name of the state upon the relation of the attorney general, or, if he shall refuse or neglect to act, upon the relation of any individual aggrieved by the violation, or violations, complained of, to compel such corporation to comply with the requirements of RCW 80.32.080 and 80.32.090. A violation of RCW 80.32.080 and 80.32.090 shall cause the forfeiture of the corporate franchise if the corporation refuses or neglects to comply with the orders with respect thereto made in the suit herein provided for. [1961 c 14 § 80.32.100. Prior: 1907 c 159 § 3; RRS § 5434.]

CHAPTER 80.36 RCW

TELECOMMUNICATIONS

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RCW 80.36.005 Definitions. The definitions in this section apply throughout RCW 80.36.410 through 80.36.475, unless the context clearly requires otherwise.

(1) "Community agency" means local community agencies that administer community service voice mail programs.

(2) "Community service voice mail" means a computerized voice mail system that provides low-income recipients with: (a) An individually assigned telephone number; (b) the ability to record a personal greeting; and (c) a private security code to retrieve messages.

(3) "Department" means the department of social and health services.

(4) "Service year" means the period between July 1st and June 30th.

(5) "Community action agency" means local community action agencies or local community service agencies designated by the department of community, trade, and economic development under chapter 43.63A RCW. [2003 c 134 § 1; 2002 c 104 § 1; 1993 c 249 § 1.]

NOTES:

Effective date--2003 c 134: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 134 § 12.]

Effective date--1993 c 249: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 7, 1993]." [1993 c 249 § 4.]

RCW 80.36.010 Eminent domain. The right of eminent domain is hereby extended to all telecommunications companies organized or doing business in this state. [1985 c 450 § 15; 1961 c 14 § 80.36.010. Prior: 1890 p 292 § 1; RRS § 11338.]

RCW 80.36.020 Right of entry. Every corporation incorporated under the laws of this state or any state or territory of the United States for the purpose of constructing, operating or maintaining any telecommunications line in this state shall have the right to enter upon any land between the termini of its proposed telecommunications lines for the purpose of examining, locating and surveying the telecommunications line, doing no unnecessary damage thereby. [1985 c 450 § 16; 1961 c 14 § 80.36.020. Prior: 1888 p 65 § 1; RRS § 11339.]

RCW 80.36.030 Extent of appropriation. Such telecommunications company may appropriate so much land as may be actually necessary for its telecommunications line, with the right to enter upon lands immediately adjacent thereto, for the purpose of constructing, maintaining and operating its line and making all necessary repair. Such telecommunications company may also, for the purpose aforesaid, enter upon and appropriate such portion of the right-of-way of any railroad company as may be necessary for the construction, maintenance and operation of its telecommunications line: PROVIDED, That such appropriation shall not obstruct such railroad of the travel thereupon, nor interfere with the operation of such railroad. [1985 c 450 § 17; 1961 c 14 § 80.36.030. Prior: 1888 p 66 § 2; RRS § 11342.]

RCW 80.36.040 Use of road, street, and railroad right-of-way--When consent of city necessary. Any telecommunications company, or the lessees thereof, doing business in this state, shall have the right to construct and maintain all necessary telecommunications lines for public traffic along and upon any public road, street or highway, along or across the right-of-way of any railroad corporation, and may erect poles, posts, piers or abutments for supporting the insulators, wires and any other necessary fixture of their lines, in such manner and at such points as not to incommode the public use of the railroad or highway, or interrupt the navigation of the waters: PROVIDED, That when the right-of-way of such corporation has not been acquired by or through any grant or donation from the United States, or this state, or any county, city or town therein, then the right to construct and maintain such lines shall be secured only by the exercise of right of eminent domain, as provided by law: PROVIDED FURTHER, That where the right-of-way as herein contemplated is within the corporate limits of any incorporated city, the consent of the city council thereof shall be first obtained before such telecommunications lines can be erected thereon. [1985 c 450 § 18; 1961 c 14 § 80.36.040. Prior: 1890 p 292 § 5; RRS § 11352.]

RCW 80.36.050 Use of railroad right-of-way--Penalty for refusal by railroad. Every railroad operated in this state, and carrying freight and passengers for hire, or doing business in this state, is and shall be designated a "post road," and the corporation or company owning the same shall allow telecommunications companies to construct and maintain telecommunications lines on and along the right-of-way of such railroad.

In case of the refusal or neglect of any railroad company or corporation to comply with the provisions of this section, said company or corporation shall be liable for damages in the sum of not less than one thousand dollars nor more than five thousand dollars for each offense, and one hundred dollars per

day during the continuance thereof. [1985 c 450 § 19; 1961 c 14 § 80.36.050. Prior: (i) 1890 p 292 § 3; RRS § 11340. (ii) 1890 p 293 § 9; RRS § 11356.]

RCW 80.36.060 Liability for wilful injury to telecommunications property. Any person who wilfully and maliciously does any injury to any telecommunications property mentioned in RCW 80.36.070, is liable to the company for five times the amount of actual damages sustained thereby, to be recovered in any court of competent jurisdiction. [1985 c 450 § 20; 1961 c 14 § 80.36.060. Prior: 1890 p 293 § 7; RRS § 11354.]

RCW 80.36.070 Liability for negligent injury to property-- Notice of underwater cable. Any person who injures or destroys, through want of proper care, any necessary or useful fixtures of any telecommunications company, is liable to the company for all damages sustained thereby. Any vessel which, by dragging its anchor or otherwise, breaks, injures or destroys the subaqueous cable of a telecommunications company, subjects its owners to the damages hereinbefore specified.

No telecommunications company can recover damages for the breaking or injury of any subaqueous telecommunications cable, unless such company has previously erected on either bank of the waters under which the cable is placed, a monument indicating the place where the cable lies, and publishes for one month, in some newspaper most likely to give notice to navigators, a notice giving a description and the purpose of the monuments, and the general course, landings and termini of the cable. [1985 c 450 § 21; 1961 c 14 § 80.36.070. Prior: (i) 1890 p 293 § 6; RRS § 11353. (ii) 1890 p 293 § 10; RRS § 11357.]

RCW 80.36.080 Rates, services, and facilities. All rates, tolls, contracts and charges, rules and regulations of telecommunications companies, for messages, conversations, services rendered and equipment and facilities supplied, whether such message, conversation or service to be performed be over one company or line or over or by two or more companies or lines, shall be fair, just, reasonable and sufficient, and the service so to be rendered any person, firm or corporation by any telecommunications company shall be rendered and performed in a prompt, expeditious and efficient manner and the facilities, instrumentalities and equipment furnished by it shall be safe, kept in good condition and repair, and its appliances, instrumentalities and service shall be modern, adequate, sufficient and efficient. [1985 c 450 § 22; 1961 c 14 § 80.36.080. Prior: 1911 c 117 § 35, part; RRS § 10371, part.]

RCW 80.36.090 Service to be furnished on demand. Every telecommunications company operating in this state shall provide and maintain suitable and adequate buildings and facilities therein, or connected therewith, for the accommodation, comfort and convenience of its patrons and employees.

Every telecommunications company shall, upon reasonable notice, furnish to all persons and corporations who may apply therefor and be reasonably entitled thereto suitable and proper facilities and connections for telephonic communication and furnish telephone service as demanded. [1985 c 450 § 23; 1961 c 14 § 80.36.090. Prior: 1911 c 117 § 35, part; RRS § 10371, part.]

RCW 80.36.100 Tariff schedules to be filed and open to public. Every telecommunications company shall file with the commission and shall print and keep open to public inspection at such points as the commission may designate, schedules showing the rates, tolls, rentals, and charges of such companies for messages, conversations and services rendered and equipment and facilities supplied for messages and services to be performed within the state between each point upon its line and all other points thereon, and between each point upon its line and all points upon every other similar line operated or controlled by it, and between each point on its line or upon any line leased, operated or controlled by it and all points upon the line of any other similar company, whenever a through service and joint rate shall have been established or ordered between any two such points. If no joint rate covering a through service has been established, the several companies in such through service shall file, print and keep open to public inspection as aforesaid the separately established rates, tolls, rentals, and charges applicable for such through service. The schedules printed as aforesaid shall plainly state the places between which telecommunications service, or both, will be rendered, and shall also state separately all charges and all privileges or facilities granted or allowed, and any rules or regulations which may in anywise change, affect or determine any of the aggregate of the rates, tolls, rentals or charges for the service rendered. A schedule shall be plainly printed in large type, and a copy thereof shall be kept by every telecommunications company readily accessible to and for convenient inspection by the public at such places as may be designated by the commission, which schedule shall state the rates charged from such station to every other station on such company's line, or on any line controlled and used by it within the state. All or any of such schedules kept as aforesaid shall be immediately produced by such telecommunications company upon the demand of any person. A notice printed in bold type, and stating that such schedules are on file and open to inspection by any person, the places where the same are kept, and that the agent will assist such person to determine from such schedules

any rate, toll, rental, rule or regulation which is in force shall be kept posted by every telecommunications company in a conspicuous place in every station or office of such company. [1989 c 101 § 9; 1985 c 450 § 24; 1961 c 14 § 80.36.100. Prior: 1911 c 117 § 36; RRS § 10372.]

RCW 80.36.110 Tariff changes--Statutory notice--Exception.

(1) Except as provided in subsection (2) of this section, unless the commission otherwise orders, no change shall be made in any rate, toll, rental, or charge, that was filed and published by any telecommunications company in compliance with the requirements of RCW 80.36.100, except after notice as required in this subsection.

(a) For changes to any rate, toll, rental, or charge filed and published in a tariff, the company shall provide thirty days' notice to the commission and publication for thirty days as required in the case of original schedules in RCW 80.36.100. The notice shall plainly state the changes proposed to be made in the schedule then in force, and the time when the changed rate, toll, or charge will go into effect, and all proposed changes shall be shown by printing, filing and publishing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. Proposed changes may be suspended by the commission within thirty days or before the stated effective date of the proposed change, whichever is later.

(b) For changes to any rate, toll, rental, or charge filed and published in a price list, the company shall provide ten days' notice to the commission and customers. The commission shall prescribe the form of notice.

(c) The commission for good cause shown may allow changes in rates, charges, tolls, or rentals without requiring the notice and publication provided for in (a) or (b) of this subsection, by an order or rule specifying the change to be made and the time when it takes effect, and the manner in which the change will be filed and published.

(d) When any change is made in any rate, toll, rental, or charge, the effect of which is to increase any rate, toll, rental, or charge then existing, attention shall be directed on the copy filed with the commission to the increase by some character immediately preceding or following the item in the schedule, which character shall be in such a form as the commission may designate.

(2)(a) A telecommunications company may file a tariff that decreases any rate, charge, rental, or toll with ten days' notice to the commission and publication without receiving a special order from the commission when the filing does not contain an offsetting increase to another rate, charge, rental, or toll, and the filing company agrees not to file for an increase to any rate, charge, rental, or toll to recover the

revenue deficit that results from the decrease for a period of one year.

(b) A telecommunications company may file a promotional offering to be effective, without receiving a special order from the commission, upon filing with the commission and publication. For the purposes of this section, "promotional offering" means a tariff or price list that, for a period of up to ninety days, waives or reduces charges or conditions of service for existing or new subscribers for the purpose of retaining or increasing the number of customers who subscribe to or use a service. [2003 c 189 § 2; 1997 c 166 § 1. Prior: 1989 c 152 § 2; 1989 c 101 § 10; 1985 c 450 § 25; 1961 c 14 § 80.36.110; prior: 1911 c 117 § 37; RRS § 10373.]

RCW 80.36.120 Joint rates, contracts, etc. The names of the several companies which are parties to any joint rates, tolls, contracts or charges of telecommunications companies for messages, conversations and service to be rendered shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the commission; and where such evidence of concurrence or acceptance is filed, it shall not be necessary for the companies filing the same to also file copies of the tariff in which they are named as parties. [1985 c 450 § 26; 1961 c 14 § 80.36.120. Prior: 1911 c 117 § 38; RRS § 10374.]

RCW 80.36.130 Published rates to be charged--Exceptions.
(1) Except as provided in RCW 80.04.130 and 80.36.150, no telecommunications company shall charge, demand, collect or receive different compensation for any service rendered or to be rendered than the charge applicable to such service as specified in its schedule on file and in effect at that time, nor shall any telecommunications company refund or remit, directly or indirectly, any portion of the rate or charge so specified, nor extend to any person or corporation any form of contract or agreement or any rule or regulation or any privilege or facility except such as are specified in its schedule filed and in effect at the time, and regularly and uniformly extended to all persons and corporations under like circumstances for like or substantially similar service.

(2) No telecommunications company subject to the provisions of this title shall, directly or indirectly, give any free or reduced service or any free pass or frank for the transmission of messages by telecommunications between points within this state, except to its officers, employees, agents, pensioners, surgeons, physicians, attorneys at law, and their families, and persons and corporations exclusively engaged in charitable and eleemosynary work, and ministers of religion, Young Men's Christian Associations, Young Women's Christian Associations; to

indigent and destitute persons, and to officers and employees of other telecommunications companies, railroad companies, and street railroad companies.

(3) The commission may accept a tariff that gives free or reduced rate services for a temporary period of time in order to promote the use of the services. [1992 c 68 § 2; 1989 c 101 § 11; 1985 c 450 § 27; 1961 c 14 § 80.36.130. Prior: 1911 c 117 § 40; RRS § 10376. FORMER PART OF SECTION: 1929 c 96 § 1, part now codified in RCW 81.28.080.]

RCW 80.36.135 Alternative regulation of telecommunications companies. (1) The legislature declares that:

(a) Changes in technology and the structure of the telecommunications industry may produce conditions under which traditional rate of return, rate base regulation of telecommunications companies may not in all cases provide the most efficient and effective means of achieving the public policy goals of this state as declared in RCW 80.36.300, this section, and RCW 80.36.145. The commission should be authorized to employ an alternative form of regulation if that alternative is better suited to achieving those policy goals.

(b) Because of the great diversity in the scope and type of services provided by telecommunications companies, alternative regulatory arrangements that meet the varying circumstances of different companies and their ratepayers may be desirable.

(2) Subject to the conditions set forth in this chapter and RCW 80.04.130, the commission may regulate telecommunications companies subject to traditional rate of return, rate base regulation by authorizing an alternative form of regulation. The commission may determine the manner and extent of any alternative forms of regulation as may in the public interest be appropriate. In addition to the public policy goals declared in RCW 80.36.300, the commission shall consider, in determining the appropriateness of any proposed alternative form of regulation, whether it will:

(a) Facilitate the broad deployment of technological improvements and advanced telecommunications services to underserved areas or underserved customer classes;

(b) Improve the efficiency of the regulatory process;

(c) Preserve or enhance the development of effective competition and protect against the exercise of market power during its development;

(d) Preserve or enhance service quality and protect against the degradation of the quality or availability of efficient telecommunications services;

(e) Provide for rates and charges that are fair, just, reasonable, sufficient, and not unduly discriminatory or preferential; and

(f) Not unduly or unreasonably prejudice or disadvantage any particular customer class.

(3) A telecommunications company or companies subject to traditional rate of return, rate base regulation may petition the commission to establish an alternative form of regulation. The company or companies shall submit with the petition a plan for an alternative form of regulation. The plan shall contain a proposal for transition to the alternative form of regulation and the proposed duration of the plan. The plan must also contain a proposal for ensuring adequate carrier-to-carrier service quality, including service quality standards or performance measures for interconnection, and appropriate enforcement or remedial provisions in the event the company fails to meet service quality standards or performance measures. The commission also may initiate consideration of alternative forms of regulation for a company or companies on its own motion. The commission, after notice and hearing, shall issue an order accepting, modifying, or rejecting the plan within nine months after the petition or motion is filed, unless extended by the commission for good cause. The commission shall order implementation of the alternative plan of regulation unless it finds that, on balance, an alternative plan as proposed or modified fails to meet the considerations stated in subsection (2) of this section.

(4) Not later than sixty days from the entry of the commission's order, the company or companies affected by the order may file with the commission an election not to proceed with the alternative form of regulation as authorized by the commission.

(5) The commission may waive such regulatory requirements under Title 80 RCW for a telecommunications company subject to an alternative form of regulation as may be appropriate to facilitate the implementation of this section. However, the commission may not waive any grant of legal rights to any person contained in this chapter and chapter 80.04 RCW. The commission may waive different regulatory requirements for different companies or services if such different treatment is in the public interest.

(6) Upon petition by the company, and after notice and hearing, the commission may rescind or modify an alternative form of regulation in the manner requested by the company.

(7) The commission or any person may file a complaint under RCW 80.04.110 alleging that a telecommunications company under an alternative form of regulation has not complied with the terms and conditions set forth in the alternative form of regulation. The complainant shall bear the burden of proving the allegations in the complaint. [2000 c 82 § 1; 1995 c 110 § 5; 1989 c 101 § 1.]

RCW 80.36.140 Rates and services fixed by commission, when. Whenever the commission shall find, after a hearing had upon its own motion or upon complaint, that the rates, charges, tolls or rentals demanded, exacted, charged or collected by any

telecommunications company for the transmission of messages by telecommunications, or for the rental or use of any telecommunications line, instrument, wire, appliance, apparatus or device or any telecommunications receiver, transmitter, instrument, wire, cable, apparatus, conduit, machine, appliance or device, or any telecommunications extension or extension system, or that the rules, regulations or practices of any telecommunications company affecting such rates, charges, tolls, rentals or service are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in anywise in violation of law, or that such rates, charges, tolls or rentals are insufficient to yield reasonable compensation for the service rendered, the commission shall determine the just and reasonable rates, charges, tolls or rentals to be thereafter observed and in force, and fix the same by order as provided in this title.

Whenever the commission shall find, after such hearing that the rules, regulations or practices of any telecommunications company are unjust or unreasonable, or that the equipment, facilities or service of any telecommunications company is inadequate, inefficient, improper or insufficient, the commission shall determine the just, reasonable, proper, adequate and efficient rules, regulations, practices, equipment, facilities and service to be thereafter installed, observed and used, and fix the same by order or rule as provided in this title. [1985 c 450 § 28; 1961 c 14 § 80.36.140. Prior: 1911 c 117 § 55; RRS § 10391.]

**RCW 80.36.145 Formal investigation and fact-finding--
Alternative to full adjudicative proceeding.** (1) The legislature declares that the availability of an alternative abbreviated formal procedure for use by the commission instead of a full adjudicative proceeding may in appropriate circumstances advance the public interest by reducing the time required by the commission for decision and the costs incurred by interested parties and ratepayers. Therefore, the commission is authorized to use formal investigation and fact-finding instead of an adjudicative proceeding under chapter 34.05 RCW when it determines that its use is in the public interest and that a full adjudicative hearing is not necessary to fully develop the facts relevant to the proceeding and the positions of the parties, including intervenors.

(2) The commission may use formal investigation and fact-finding instead of the hearing provided in the following circumstances:

(a) A complaint proceeding under RCW 80.04.110 with concurrence of the respondent when the commission is the complainant or with concurrence of the complainant and respondent when not the commission;

(b) A tariff suspension under RCW 80.04.130; or

(c) A competitive classification proceeding under RCW 80.36.320 and 80.36.330.

(3) In formal investigation and fact-finding the commission may limit the record to written submissions by the parties, including intervenors. The commission shall review the written submissions and, based thereon, shall enter appropriate findings of fact and conclusions of law and its order. When there is a reasonable expression of public interest in the issues under consideration, the commission shall hold at least one public hearing for the receipt of information from members of the public that are not formal intervenors in the proceeding and may elect to convert the proceeding to an adjudicative proceeding at any stage. The assignment of an agency employee or administrative law judge to preside at such public hearing shall not require the entry of an initial order.

(4) The commission shall adopt rules of practice and procedure including rules for discovery of information necessary for the use of formal investigation and fact-finding and for the filing of written submissions. The commission may provide by rule for a number of rounds of written comments: PROVIDED, That the party with the burden of proof shall always have the opportunity to file reply comments. [1989 c 101 § 3.]

RCW 80.36.150 Contracts filed with commission. (1) Every telecommunications company shall file with the commission, as and when required by it, a copy of any contract, agreement or arrangement in writing with any other telecommunications company, or with any other corporation, association or person relating in any way to the construction, maintenance or use of a telecommunications line or service by, or rates and charges over and upon, any such telecommunications line. The commission shall adopt rules that provide for the filing by telecommunications companies on the public record of the essential terms and conditions of every contract for service. The commission shall not require that customer proprietary information contained in contracts be disclosed on the public record.

(2) The commission shall not treat contracts as tariffs or price lists. The commission may require noncompetitive service to be tariffed unless the company demonstrates that the use of a contract is in the public interest based upon a customer requirement or a competitive necessity for deviation from tariffed rates, terms and conditions, or that the contract is for a new service with limited demand.

(3) Contracts shall be for a stated time period and shall cover the costs for the service contracted for, as determined by commission rule or order. Contracts shall be enforceable by the contracting parties according to their terms, unless the contract has been rejected by the commission before its stated effective date as improper under the commission's rules and orders, or the requirements of this chapter. If the commission

finds a contract to be below cost after it has gone into effect, based on commission rules or orders or the requirements of this chapter in effect at the time of the execution of the contract, it may make the appropriate adjustment to the contracting company's revenue requirement in a subsequent proceeding.

(4) Contracts executed and filed prior to July 23, 1989, are deemed lawful and enforceable by the contracting parties according to the contract terms. If the commission finds that any existing contract provides for rates that are below cost, based on commission rules or orders or the requirements of this chapter in effect at the time of the execution of the contract, it may make the appropriate adjustment to the contracting company's revenue requirement in a subsequent proceeding.

(5) If a contract covers competitive and noncompetitive services, the noncompetitive services shall be unbundled and priced separately from all other services and facilities in the contract. Such noncompetitive services shall be made available to all purchasers under the same or substantially the same circumstances at the same rate, terms, and conditions. [1989 c 101 § 8; 1985 c 450 § 29; 1961 c 14 § 80.36.150. Prior: 1911 c 117 § 39; RRS § 10375.]

RCW 80.36.160 Physical connections may be ordered, routing prescribed, and joint rates established. In order to provide toll telephone service where no such service is available, or to promote the most expeditious handling or most direct routing of toll messages and conversations, or to prevent arbitrary or unreasonable practices which may result in the failure to utilize the toll facilities of all telecommunications companies equitably and effectively, the commission may, on its own motion, or upon complaint, notwithstanding any contract or arrangement between telecommunications companies, investigate, ascertain and, after hearing, by order (1) require the construction and maintenance of suitable connections between telephone lines for the transfer of messages and conversations at a common point or points and, if the companies affected fail to agree on the proportion of the cost thereof to be borne by each such company, prescribe said proportion of cost to be borne by each; and/or (2) prescribe the routing of toll messages and conversations over such connections and the practices and regulations to be followed with respect to such routing; and/or (3) establish reasonable joint rates or charges by or over said lines and connections and just, reasonable and equitable divisions thereof as between the telecommunications companies participating therein.

This section shall not be construed as conferring on the commission jurisdiction, supervision or control of the rates, service or facilities of any mutual, cooperative or farmer line company or association, except for the purpose of carrying out the provisions of this section. [1985 c 450 § 30; 1961 c 14 §

80.36.160. Prior: 1943 c 68 § 1; 1923 c 118 § 1; 1911 c 117 § 73; Rem. Supp. 1943 § 10409.]

RCW 80.36.170 Unreasonable preference prohibited. No telecommunications company shall make or give any undue or unreasonable preference or advantage to any person, corporation or locality, or subject any particular person, corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. The commission shall have primary jurisdiction to determine whether any rate, regulation, or practice of a telecommunications company violates this section. This section shall not apply to contracts offered by a telecommunications company classified as competitive or to contracts for services classified as competitive under RCW 80.36.320 and 80.36.330. [1989 c 101 § 4; 1985 c 450 § 31; 1961 c 14 § 80.36.170. Prior: 1911 c 117 § 42; RRS § 10378.]

RCW 80.36.180 Rate discrimination prohibited. No telecommunications company shall, directly or indirectly, or by any special rate, rebate, drawback or other device or method, unduly or unreasonably charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered with respect to communication by telecommunications or in connection therewith, except as authorized in this title or Title 81 RCW than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect to communication by telecommunications under the same or substantially the same circumstances and conditions. The commission shall have primary jurisdiction to determine whether any rate, regulation, or practice of a telecommunications company violates this section. This section shall not apply to contracts offered by a telecommunications company classified as competitive or to contracts for services classified as competitive under RCW 80.36.320 or 80.36.330. [1989 c 101 § 5; 1985 c 450 § 32; 1961 c 14 § 80.36.180. Prior: 1911 c 117 § 41; RRS § 10377.]

RCW 80.36.183 Discounted message toll rates prohibited-- Availability of statewide, averaged toll rates. Notwithstanding any other provision of this chapter, no telecommunications company shall offer a discounted message toll service based on volume that prohibits aggregation of volumes across all territory with respect to which that company functions as an interexchange carrier. The commission shall continue to have the authority to require statewide, averaged toll rates to be made available by any telecommunications company subject to its jurisdiction. [1989 c 101 § 6.]

RCW 80.36.186 Pricing of or access to noncompetitive services--Unreasonable preference or advantage prohibited. Notwithstanding any other provision of this chapter, no telecommunications company providing noncompetitive services shall, as to the pricing of or access to noncompetitive services, make or grant any undue or unreasonable preference or advantage to itself or to any other person providing telecommunications service, nor subject any telecommunications company to any undue or unreasonable prejudice or competitive disadvantage. The commission shall have primary jurisdiction to determine whether any rate, regulation, or practice of a telecommunications company violates this section. [1989 c 101 § 7.]

RCW 80.36.190 Long and short distance provision. No telecommunications company subject to the provisions of this title shall charge or receive any greater compensation in the aggregate for the transmission of any long distance conversation or message of like kind for a shorter than for a longer distance over the same line, in the same direction, within this state, the shorter being included within the longer distance, or charge any greater compensation for a through service than the aggregate of the intermediate rates subject to the provision of this title, but this shall not be construed as authorizing any such telecommunications company to charge and receive as great a compensation for a shorter as for a longer distance. Upon application of any telecommunications company the commission may, by order, authorize it to charge less for longer than for a shorter distance service for the transmission of conversation or messages in special cases after investigation, but the order must specify and prescribe the extent to which the telecommunications company making such application is relieved from the operation of this section, and only to the extent so specified and prescribed shall any telecommunications company be relieved from the requirements of this section. [1985 c 450 § 33; 1961 c 14 § 80.36.190. Prior: 1911 c 117 § 44; RRS § 10380.]

RCW 80.36.195 Telecommunications relay system--Long distance discount rates. Each telecommunications company providing intrastate interexchange voice transmission service shall offer discounts from otherwise applicable long distance rates for service used in conjunction with the statewide relay service authorized under RCW 43.20A.725. Such long distance discounts shall be determined in relation to the additional time required to translate calls through relay operators. In the case of intrastate long distance services provided pursuant to tariff, the commission shall require the incorporation of such discounts. [1992 c 144 § 5.]

NOTES:

Legislative findings--Severability--1992 c 144: See notes following RCW 43.20A.720.

RCW 80.36.200 Transmission of messages of other lines.

Every telecommunications company operating in this state shall receive, transmit and deliver, without discrimination or delay, the messages of any other telecommunications company. [1985 c 450 § 34; 1961 c 14 § 80.36.200. Prior: 1911 c 117 § 45; RRS § 10381.]

RCW 80.36.210 Order of sending messages. It shall be the duty of any telegraph company, doing business in this state, to transmit all dispatches in the order in which they are received, under the penalty of one hundred dollars, to be recovered with costs of suit, by the person or persons whose dispatch is postponed out of its order: PROVIDED, That communications to and from public officers on official business, may have precedence over all other communications: AND, PROVIDED FURTHER, That intelligence of general and public interest may be transmitted for publication out of its order. [1961 c 14 § 80.36.210. Prior: Code 1881 § 2361; RRS § 11344; prior: 1866 p 77 § 20.]

RCW 80.36.220 Duty to transmit messages--Penalty for refusal or neglect. Telecommunications companies shall receive, exchange and transmit each other's messages without delay or discrimination, and all telecommunications companies shall receive and transmit messages for any person.

In case of the refusal or neglect of any telecommunications company to comply with the provisions of this section, the penalty for the same shall be a fine of not more than five hundred nor less than one hundred dollars for each offense. [1985 c 450 § 35; 1961 c 14 § 80.36.220. Prior: (i) 1890 p 292 § 2; RRS § 11343. (ii) 1890 p 293 § 8; RRS § 11355.]

RCW 80.36.225 Pay telephones--Calls to operator without charge or coin insertion to be provided. All telecommunications companies and customer-owned, pay telephone providers doing business in this state and utilizing pay telephones shall provide a system whereby calls may be made to the operator without charge and without requiring the use of credit cards or other payment devices, or insertion of any coins into such pay telephone. [1985 c 450 § 36; 1975 c 21 § 1.]

NOTES:

Emergency calls, yielding line: Chapter 70.85 RCW.

RCW 80.36.230 Exchange areas for telecommunications companies. The commission is hereby granted the power to prescribe exchange area boundaries and/or territorial boundaries for telecommunications companies. [1985 c 450 § 37; 1961 c 14 § 80.36.230. Prior: 1941 c 137 § 1; Rem. Supp. 1941 § 11358-1.]

RCW 80.36.240 Exchange areas for telephone companies-- Procedure to establish. The commission in conducting hearings, promulgating rules, and otherwise proceeding to make effective the provisions of RCW 80.36.230 and 80.36.240, shall be governed by, and shall have the powers provided in this title, as amended; all provisions as to review of the commission's orders and appeals to the supreme court or the court of appeals contained in said title, as amended, shall be available to all companies and parties affected by the commission's orders issued under authority of RCW 80.36.230 and 80.36.240. [1971 c 81 § 142; 1961 c 14 § 80.36.240. Prior: 1941 c 137 § 2; Rem. Supp. 1941 § 11358-2.]

RCW 80.36.250 Commission may complain of interstate rates. The commission may investigate all interstate rates and charges, classifications, or rules or practices relating thereto, for or in relation to the transmission of messages or conversations. Where any acts in relation thereto take place within this state which, in the opinion of the commission, are excessive or discriminatory, or are levied or laid in violation of the federal communications act of June 19, 1934, and acts amendatory thereof or supplementary thereto, or are in conflict with the rulings, orders, or regulations of the Federal Communications Commission, the commission shall apply by petition to the Federal Communications Commission for relief, and may present to such federal commission all facts coming to its knowledge respecting violations of such act or the rulings, orders, or regulations of the federal commission. [1961 c 14 § 80.36.250. Prior: 1911 c 117 § 58; RRS § 10394.]

RCW 80.36.260 Betterments may be ordered. Whenever the commission shall find, after a hearing had on its own motion or upon complaint, that repairs or improvements to, or changes in, any telecommunications line ought reasonably be made, or that any additions or extensions should reasonably be made thereto in order to promote the security or convenience of the public or employees, or in order to secure adequate service or facilities for telecommunications communications, the commission shall make and serve an order directing that such repairs, improvements, changes, additions or extensions be made in the manner to be

specified therein. [1985 c 450 § 38; 1961 c 14 § 80.36.260.
Prior: 1911 c 117 § 71; RRS § 10407.]

RCW 80.36.270 Effect on existing contracts. Nothing in this title shall be construed to prevent any telecommunications company from continuing to furnish the use of its line, equipment or service under any contract or contracts in force on June 7, 1911 or upon the taking effect of any schedule or schedules of rates subsequently filed with the commission, as herein provided, at the rates fixed in such contract or contracts. [1989 c 101 § 12; 1985 c 450 § 39; 1961 c 14 § 80.36.270. Prior: 1911 c 117 § 43; RRS § 10379.]

RCW 80.36.300 Policy declaration. The legislature declares it is the policy of the state to:

- (1) Preserve affordable universal telecommunications service;
- (2) Maintain and advance the efficiency and availability of telecommunications service;
- (3) Ensure that customers pay only reasonable charges for telecommunications service;
- (4) Ensure that rates for noncompetitive telecommunications services do not subsidize the competitive ventures of regulated telecommunications companies;
- (5) Promote diversity in the supply of telecommunications services and products in telecommunications markets throughout the state; and
- (6) Permit flexible regulation of competitive telecommunications companies and services. [1985 c 450 § 1.]

RCW 80.36.310 Classification as competitive telecommunications companies, services--Initiation of proceedings--Notice and publication--Effective date--Date for final order. (1) Telecommunications companies may petition to be classified as competitive telecommunications companies under RCW 80.36.320 or to have services classified as competitive telecommunications services under RCW 80.36.330. The commission may initiate classification proceedings on its own motion. The commission may require all regulated telecommunications companies potentially affected by a classification proceeding to appear as parties for a determination of their classification.

(2) Any company petition or commission motion for competitive classification shall state an effective date not sooner than thirty days from the filing date. The company must provide notice and publication of the proposed competitive classification in the same manner as provided in RCW 80.36.110 for tariff changes. The proposed classification shall take effect on the stated effective date unless suspended by the commission and set for hearing under chapter 34.05 RCW or set

for a formal investigation and fact-finding under RCW 80.36.145. The commission shall enter its final order with respect to any suspended classification within six months from the date of filing of a company's petition or the commission's motion. [1998 c 337 § 4; 1989 c 101 § 14; 1985 c 450 § 3.]

NOTES:

Severability--1998 c 337: See note following RCW 80.36.600.

RCW 80.36.320 Classification as competitive telecommunications companies, services--Factors considered--Minimal regulation--Equal access--Reclassification. (1) The commission shall classify a telecommunications company as a competitive telecommunications company if the services it offers are subject to effective competition. Effective competition means that the company's customers have reasonably available alternatives and that the company does not have a significant captive customer base. In determining whether a company is competitive, factors the commission shall consider include but are not limited to:

(a) The number and sizes of alternative providers of service;

(b) The extent to which services are available from alternative providers in the relevant market;

(c) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and

(d) Other indicators of market power which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

The commission shall conduct the initial classification and any subsequent review of the classification in accordance with such procedures as the commission may establish by rule.

(2) Competitive telecommunications companies shall be subject to minimal regulation. Minimal regulation means that competitive telecommunications companies may file, instead of tariffs, price lists. The commission may also waive other regulatory requirements under this title for competitive telecommunications companies when it determines that competition will serve the same purposes as public interest regulation. The commission may waive different regulatory requirements for different companies if such different treatment is in the public interest. A competitive telecommunications company shall at a minimum:

(a) Keep its accounts according to regulations as determined by the commission;

(b) File financial reports with the commission as required by the commission and in a form and at times prescribed by the commission;

(c) Keep on file at the commission such current price lists and service standards as the commission may require; and

(d) Cooperate with commission investigations of customer complaints.

(3) When a telecommunications company has demonstrated that the equal access requirements ordered by the federal district court in the case of U.S. v. AT&T, 552 F. Supp. 131 (1982), or in supplemental orders, have been met, the commission shall review the classification of telecommunications companies providing inter-LATA interexchange services. At that time, the commission shall classify all such companies as competitive telecommunications companies unless it finds that effective competition, as defined in subsection (1) of this section, does not then exist.

(4) The commission may revoke any waivers it grants and may reclassify any competitive telecommunications company if the revocation or reclassification would protect the public interest.

(5) The commission may waive the requirements of RCW 80.36.170 and 80.36.180 in whole or in part for a competitive telecommunications company if it finds that competition will serve the same purpose and protect the public interest. [2003 c 189 § 3; 1998 c 337 § 5; 1989 c 101 § 15; 1985 c 450 § 4.]

NOTES:

Severability--1998 c 337: See note following RCW 80.36.600.

RCW 80.36.330 Classification as competitive telecommunications companies, services--Effective competition defined--Prices and rates--Reclassification. (1) The commission may classify a telecommunications service provided by a telecommunications company as a competitive telecommunications service if the service is subject to effective competition. Effective competition means that customers of the service have reasonably available alternatives and that the service is not provided to a significant captive customer base. In determining whether a service is competitive, factors the commission shall consider include but are not limited to:

(a) The number and size of alternative providers of services;

(b) The extent to which services are available from alternative providers in the relevant market;

(c) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and

(d) Other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

(2) When the commission finds that a telecommunications company has demonstrated that a telecommunications service is competitive, the commission may permit the service to be provided under a price list. The commission may adopt procedural rules necessary to implement this section.

(3) Prices or rates charged for competitive telecommunications services shall cover their cost. The commission shall determine proper cost standards to implement this section, provided that in making any assignment of costs or allocating any revenue requirement, the commission shall act to preserve affordable universal telecommunications service.

(4) The commission may investigate prices for competitive telecommunications services upon complaint. In any complaint proceeding initiated by the commission, the telecommunications company providing the service shall bear the burden of proving that the prices charged cover cost, and are fair, just, and reasonable.

(5) Telecommunications companies shall provide the commission with all data it deems necessary to implement this section.

(6) No losses incurred by a telecommunications company in the provision of competitive services may be recovered through rates for noncompetitive services. The commission may order refunds or credits to any class of subscribers to a noncompetitive telecommunications service which has paid excessive rates because of below cost pricing of competitive telecommunications services.

(7) The commission may reclassify any competitive telecommunications service if reclassification would protect the public interest.

(8) The commission may waive the requirements of RCW 80.36.170 and 80.36.180 in whole or in part for a service classified as competitive if it finds that competition will serve the same purpose and protect the public interest. [2003 c 189 § 4; 1998 c 337 § 6; 1989 c 101 § 16; 1985 c 450 § 5.]

NOTES:

Severability--1998 c 337: See note following RCW 80.36.600.

RCW 80.36.340 Banded rates. The commission may approve a tariff which includes banded rates for any telecommunications service if such tariff is in the public interest. "Banded rate" means a rate which has a minimum and a maximum rate. The minimum rate in the rate band shall cover the cost of the service. Rates may be changed within the rate band upon such notice as the commission may order. [1985 c 450 § 6.]

RCW 80.36.350 Registration of new companies. Each telecommunications company not operating under tariff in Washington on January 1, 1985, shall register with the commission before beginning operations in this state. The registration shall be on a form prescribed by the commission and shall contain such information as the commission may by rule require, but shall include as a minimum the name and address of the company; the name and address of its registered agent, if any; the name, address, and title of each officer or director; its most current balance sheet; its latest annual report, if any; and a description of the telecommunications services it offers or intends to offer.

The commission may require as a precondition to registration the procurement of a performance bond sufficient to cover any advances or deposits the telecommunications company may collect from its customers, or order that such advances or deposits be held in escrow or trust.

The commission may deny registration to any telecommunications company which:

(1) Does not provide the information required by this section;

(2) Fails to provide a performance bond, if required;

(3) Does not possess adequate financial resources to provide the proposed service; or

(4) Does not possess adequate technical competency to provide the proposed service.

The commission shall take action to approve or issue a notice of hearing concerning any application for registration within thirty days after receiving the application. The commission may approve an application with or without a hearing. The commission may deny an application after a hearing.

A telecommunications company may also submit a petition for competitive classification under RCW 80.36.310 at the time it applies for registration. The commission may act on the registration application and the competitive classification petition at the same time. [1990 c 10 § 1; 1985 c 450 § 7.]

RCW 80.36.360 Exempted actions or transactions. For the purposes of RCW 19.86.170, actions or transactions of competitive telecommunications companies, or associated with competitive telecommunications services, shall not be deemed otherwise permitted, prohibited, or regulated by the commission. [1985 c 450 § 8.]

RCW 80.36.370 Certain services not regulated. The commission shall not regulate the following:

(1) One way broadcast or cable television transmission of television or radio signals;

(2) Private telecommunications systems;

(3) Telegraph services;

(4) Any sale, lease, or use of customer premises equipment except such equipment as is regulated on July 28, 1985;

(5) Private shared telecommunications services, unless the commission finds, upon notice and investigation, that customers of such services have no alternative access to local exchange telecommunications companies. If the commission makes such a finding, it may require the private shared telecommunications services provider to make alternative facilities or conduit space available on reasonable terms and conditions at reasonable prices;

(6) Radio communications services provided by a regulated telecommunications company, except that when those services are the only voice grade, local exchange telecommunications service available to a customer of the company the commission may regulate the radio communication service of that company. [1990 c 118 § 1; 1985 c 450 § 9.]

RCW 80.36.375 Personal wireless services--Siting microcells and/or minor facilities--Definitions. (1) If a personal wireless service provider applies to site several microcells and/or minor facilities in a single geographical area:

(a) If one or more of the microcells and/or minor facilities are not exempt from the requirements of RCW 43.21C.030(2)(c), local governmental entities are encouraged: (i) To allow the applicant, at the applicant's discretion, to file a single set of documents required by chapter 43.21C RCW that will apply to all the microcells and/or minor facilities to be sited; and (ii) to render decisions under chapter 43.21C RCW regarding all the microcells and/or minor facilities in a single administrative proceeding; and

(b) Local governmental entities are encouraged: (i) To allow the applicant, at the applicant's discretion, to file a single set of documents for land use permits that will apply to all the microcells and/or minor facilities to be sited; and (ii) to render decisions regarding land use permits for all the microcells and/or minor facilities in a single administrative proceeding.

(2) For the purposes of this section:

(a) "Personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

(b) "Microcell" means a wireless communication facility consisting of an antenna that is either: (i) Four feet in height and with an area of not more than five hundred eighty square inches; or (ii) if a tubular antenna, no more than four inches in diameter and no more than six feet in length.

(c) "Minor facility" means a wireless communication facility consisting of up to three antennas, each of which is either: (i) Four feet in height and with an area of not more

than five hundred eighty square inches; or (ii) if a tubular antenna, no more than four inches in diameter and no more than six feet in length; and the associated equipment cabinet that is six feet or less in height and no more than forty-eight square feet in floor area. [1997 c 219 § 2; 1996 c 323 § 3.]

NOTES:

Findings--1996 c 323: See note following RCW 43.70.600.

RCW 80.36.390 Telephone solicitation. (1) As used in this section, "telephone solicitation" means the unsolicited initiation of a telephone call by a commercial or nonprofit company or organization to a residential telephone customer and conversation for the purpose of encouraging a person to purchase property, goods, or services or soliciting donations of money, property, goods, or services. "Telephone solicitation" does not include:

(a) Calls made in response to a request or inquiry by the called party. This includes calls regarding an item that has been purchased by the called party from the company or organization during a period not longer than twelve months prior to the telephone contact;

(b) Calls made by a not-for-profit organization to its own list of bona fide or active members of the organization;

(c) Calls limited to polling or soliciting the expression of ideas, opinions, or votes; or

(d) Business-to-business contacts.

For purposes of this section, each individual real estate agent or insurance agent who maintains a separate list from other individual real estate or insurance agents shall be treated as a company or organization. For purposes of this section, an organization as defined in *RCW 29.01.090 or 29.01.100 and organized pursuant to *RCW 29.42.010 shall not be considered a commercial or nonprofit company or organization.

(2) A person making a telephone solicitation must identify him or herself and the company or organization on whose behalf the solicitation is being made and the purpose of the call within the first thirty seconds of the telephone call.

(3) If, at any time during the telephone contact, the called party states or indicates that he or she does not wish to be called again by the company or organization or wants to have his or her name and individual telephone number removed from the telephone lists used by the company or organization making the telephone solicitation, then:

(a) The company or organization shall not make any additional telephone solicitation of the called party at that telephone number within a period of at least one year; and

(b) The company or organization shall not sell or give the called party's name and telephone number to another company or organization: PROVIDED, That the company or organization may

return the list, including the called party's name and telephone number, to the company or organization from which it received the list.

(4) A violation of subsection (2) or (3) of this section is punishable by a fine of up to one thousand dollars for each violation.

(5) The attorney general may bring actions to enforce compliance with this section. For the first violation by any company or organization of this section, the attorney general shall notify the company with a letter of warning that the section has been violated.

(6) A person aggrieved by repeated violations of this section may bring a civil action in superior court to enjoin future violations, to recover damages, or both. The court shall award damages of at least one hundred dollars for each individual violation of this section. If the aggrieved person prevails in a civil action under this subsection, the court shall award the aggrieved person reasonable attorneys' fees and cost of the suit.

(7) The utilities and transportation commission shall by rule ensure that telecommunications companies inform their residential customers of the provisions of this section. The notification may be made by (a) annual inserts in the billing statements mailed to residential customers, or (b) conspicuous publication of the notice in the consumer information pages of local telephone directories. [1987 c 229 § 13; 1986 c 277 § 2.]

NOTES:

***Reviser's note:** RCW 29.01.090, 29.01.100, and 29.42.010 were recodified as RCW 29A.04.085, 29A.04.097, and 29A.80.010, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Legislative finding--1986 c 277: "The legislature finds that certain kinds of telephone solicitation are increasing and that these solicitations interfere with the legitimate privacy rights of the citizens of the state. A study conducted by the utilities and transportation commission, as directed by the forty-ninth legislature, has found that the level of telephone solicitation in this state is significant to warrant regulatory action to protect the privacy rights of the citizens of the state. It is the intent of the legislature to clarify and establish the rights of individuals to reject unwanted telephone solicitations." [1986 c 277 § 1.]

Charitable solicitations: Chapter 19.09 RCW.

Commercial telephone solicitation: Chapter 19.158 RCW.

**RCW 80.36.400 Automatic dialing and announcing device--
Commercial solicitation by.** (1) As used in this section:

(a) An automatic dialing and announcing device is a device which automatically dials telephone numbers and plays a recorded message once a connection is made.

(b) Commercial solicitation means the unsolicited initiation of a telephone conversation for the purpose of encouraging a person to purchase property, goods, or services.

(2) No person may use an automatic dialing and announcing device for purposes of commercial solicitation. This section applies to all commercial solicitation intended to be received by telephone customers within the state.

(3) A violation of this section is a violation of chapter 19.86 RCW. It shall be presumed that damages to the recipient of commercial solicitations made using an automatic dialing and announcing device are five hundred dollars.

(4) Nothing in this section shall be construed to prevent the Washington utilities and transportation commission from adopting additional rules regulating automatic dialing and announcing devices. [1986 c 281 § 2.]

NOTES:

Legislative finding--1986 c 281: "The legislature finds that the use of automatic dialing and announcing devices for purposes of commercial solicitation: (1) Deprives consumers of the opportunity to immediately question a seller about the veracity of their claims; (2) subjects consumers to unwarranted invasions of their privacy; and (3) encourages inefficient and potentially harmful use of the telephone network. The legislature further finds that it is in the public interest to prohibit the use of automatic dialing and announcing devices for purposes of commercial solicitation." [1986 c 281 § 1.]

**RCW 80.36.410 Washington telephone assistance program--
Findings.** (1) The legislature finds that universal telephone service is an important policy goal of the state. The legislature further finds that: (a) Recent changes in the telecommunications industry, such as federal access charges, raise concerns about the ability of low-income persons to continue to afford access to local exchange telephone service; and (b) many low-income persons making the transition to independence from receiving supportive services through community agencies do not qualify for economic assistance from the department.

(2) Therefore, the legislature finds that: (a) It is in the public interest to take steps to mitigate the effects of these changes on low-income persons; and (b) advances in telecommunications technologies, such as community service voice mail provide new and economically efficient ways to secure many of the benefits of universal service to low-income persons who

are not customers of local exchange telephone service. [2003 c 134 § 2; 2002 c 104 § 2; 1987 c 229 § 3.]

NOTES:

Effective date--2003 c 134: See note following RCW 80.36.005.

RCW 80.36.420 Washington telephone assistance program--Availability, components. The Washington telephone assistance program shall be available to participants of programs set forth in RCW 80.36.470. Assistance shall consist of the following components:

(1) A discount on service connection fees of fifty percent or more as set forth in RCW 80.36.460.

(2) A waiver of deposit requirements on local exchange service, as set forth in RCW 80.36.460.

(3) A discounted flat rate service for local exchange service, which shall be subject to the following conditions:

(a) The commission shall establish a single telephone assistance rate for all local exchange companies operating in the state of Washington. The telephone assistance rate shall include any federal end user charges and any other charges necessary to obtain local exchange service.

(b) The commission shall, in establishing the telephone assistance rate, consider all charges for local exchange service, including federal end user charges, mileage charges, extended area service, and any other charges necessary to obtain local exchange service.

(c) The telephone assistance rate shall only be available to eligible customers subscribing to the lowest priced local exchange flat rate service, where the lowest priced local exchange flat rate service, including any federal end user charges and any other charges necessary to obtain local exchange service, is greater than the telephone assistance rate.

(d) The cost of providing the service shall be paid, to the maximum extent possible, by a waiver of all or part of federal end user charges and, to the extent necessary, from the telephone assistance fund created by RCW 80.36.430.

(4) A discount on a community service voice mailbox that provides recipients with (a) an individually assigned telephone number; (b) the ability to record a personal greeting; and (c) a secure private security code to retrieve messages. [2003 c 134 § 3; 1990 c 170 § 2; 1987 c 229 § 4.]

NOTES:

Effective date--2003 c 134: See note following RCW 80.36.005.

RCW 80.36.430 Washington telephone assistance program--Excise tax--Expenses of community service voice mail. (1) The Washington telephone assistance program shall be funded by a telephone assistance excise tax on all switched access lines and by funds from any federal government or other programs for this purpose. Switched access lines are defined in RCW 82.14B.020. The telephone assistance excise tax shall be applied equally to all residential and business access lines not to exceed fourteen cents per month. The telephone assistance excise tax shall be separately identified on each ratepayer's bill as the "Washington telephone assistance program." All money collected from the telephone assistance excise tax shall be transferred to a telephone assistance fund administered by the department.

(2) Local exchange companies shall bill the fund for their expenses incurred in offering the telephone assistance program, including administrative and program expenses. The department shall disburse the money to the local exchange companies. The department is exempted from having to conclude a contract with local exchange companies in order to effect this reimbursement. The department shall recover its administrative costs from the fund. The department may specify by rule the range and extent of administrative and program expenses that will be reimbursed to local exchange companies.

(3) The department shall enter into an agreement with the department of community, trade, and economic development for an amount not to exceed eight percent of the prior fiscal year's total revenue for the administrative and program expenses of providing community service voice mail services. The community service voice mail service may include toll-free lines in community action agencies through which recipients can access their community service voice mailboxes at no charge. [2003 c 134 § 4; 1990 c 170 § 3; 1987 c 229 § 5.]

NOTES:

Effective date--2003 c 134: See note following RCW 80.36.005.

RCW 80.36.440 Washington telephone assistance program--Rules. (1) The commission and the department may adopt any rules necessary to implement RCW 80.36.410 through 80.36.470.

(2) Rules necessary for the implementation of community service voice mail services shall be made by the commission and the department in consultation with the department of community, trade, and economic development. [2003 c 134 § 5; 1990 c 170 § 4; 1987 c 229 § 6.]

NOTES:

Effective date--2003 c 134: See note following RCW 80.36.005.

**RCW 80.36.450 Washington telephone assistance program--
Limitation.** The Washington telephone assistance program shall limit reimbursement to one residential switched access line per eligible household, or one discounted community service voice mailbox per eligible person. [2003 c 134 § 6; 1993 c 249 § 2; 1987 c 229 § 7.]

NOTES:

Effective date--2003 c 134: See note following RCW 80.36.005.

Effective date--1993 c 249: See note following RCW 80.36.005.

**RCW 80.36.460 Washington telephone assistance program--
Deposit waivers, connection fee discounts.** Local exchange companies shall waive deposits on local exchange service for eligible subscribers and provide a fifty percent discount on the company's customary charge for commencing telecommunications service for eligible subscribers. Part or all of the remaining fifty percent of service connection fees may be paid by funds from federal government or other programs for this purpose. The commission or other appropriate agency shall make timely application for any available federal funds. The remaining portion of the connection fee to be paid by the subscriber shall be expressly payable by installment fees spread over a period of months. A subscriber may, however, choose to pay the connection fee in a lump sum. Costs associated with the waiver and discount shall be accounted for separately and recovered from the telephone assistance fund. [2003 c 134 § 7; 1990 c 170 § 5; 1987 c 229 § 8.]

NOTES:

Effective date--2003 c 134: See note following RCW 80.36.005.

**RCW 80.36.470 Washington telephone assistance program--
Eligibility.** (1) Adult recipients of department-administered programs for the financially needy which provide continuing financial or medical assistance, food stamps, or supportive services to persons in their own homes are eligible for participation in the telephone assistance program. The department shall notify the participants of their eligibility. (2) Participants in community service voice mail programs are eligible for participation in services available under RCW 80.36.420 (1), (2), and (3) after completing use of community

service voice mail services. Eligibility shall be for a period including the remainder of the current service year and the following service year. Community agencies shall notify the department of participants eligible under this subsection. [2003 c 134 § 8; 2002 c 104 § 3; 1990 c 170 § 6; 1987 c 229 § 9.]

NOTES:

Effective date--2003 c 134: See note following RCW 80.36.005.

RCW 80.36.475 Washington telephone assistance program-- Report to legislature. The department shall report to the appropriate committees of the house of representatives and the senate by December 1 of each year on the status of the Washington telephone assistance program. The report shall include the number of participants by qualifying social service programs receiving benefits from the telephone assistance program and the type of benefits participants receive. The report shall also include a description of the geographical distribution of participants, the program's annual revenue and expenditures, and any recommendations for legislative action. [2003 c 134 § 9; 1990 c 170 § 7.]

NOTES:

Effective date--2003 c 134: See note following RCW 80.36.005.

RCW 80.36.500 Information delivery services through exclusive number prefix or service access code. (1) As used in this section:

(a) "Information delivery services" means telephone recorded messages, interactive programs, or other information services that are provided for a charge to a caller through an exclusive telephone number prefix or service access code.

(b) "Information providers" means the persons or corporations that provide the information, prerecorded message, or interactive program for the information delivery service. The information provider generally receives a portion of the revenue from the calls.

(c) "Interactive program" means a program that allows an information delivery service caller, once connected to the information provider's announcement machine, to use the caller's telephone device to access more specific information.

(2) The utilities and transportation commission shall by rule require any local exchange company that offers information delivery services to a local telephone exchange to provide each residential telephone subscriber the opportunity to block access

to all information delivery services offered through the local exchange company. The rule shall take effect by October 1, 1988.

(3) All costs of complying with this section shall be borne by the information providers.

(4) The local exchange company shall inform subscribers of the availability of the blocking service through a bill insert and by publication in a local telephone directory. [1991 c 191 § 8; 1988 c 123 § 2.]

NOTES:

Legislative finding, intent--1988 c 123: "(1) The legislature finds that throughout the state there is widespread use of information delivery services, which are also known as information-access telephone services and commonly provided on a designated telephone number prefix. These services operate on a charge-per-call basis, providing revenue for both the information provider and the local exchange company. The marketing practices for these telephone services have at times been misleading to consumers and at other times specifically directed toward minors. The result has been placement of calls by individuals, particularly by children, who are uninformed about the charges that might apply. In addition, children may have secured access to obscene, indecent, and salacious material through these services. The legislature finds that these services can be blocked by certain local exchange companies at switching locations, and that devices exist which allow for blocking within a residence. Therefore, the legislature finds that residential telephone users in the state are entitled to the option of having their phones blocked from access to information delivery services.

(2) It is the intent of the legislature that the utilities and transportation commission and local exchange companies, to the extent feasible, distinguish between information delivery services that are misleading to consumers, directed at minors, or otherwise objectionable and adopt policies and rules that accomplish the purposes of RCW 80.36.500 with the least adverse effect on information delivery services that are not misleading to consumers, directed at minors, or otherwise objectionable." [1988 c 123 § 1.]

Investigation and report by commission: "By October 1, 1988, the commission shall investigate and report to the committees on energy and utilities in the house of representatives and the senate on methods to protect minors from obscene, indecent, and salacious materials available through the use of information delivery services. The investigation shall include a study of personal identification numbers, credit cards, scramblers, and beep-tone devices as methods of limiting access." [1988 c 123 § 3.]

Severability--1988 c 123: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 123 § 4.]

Information delivery services: Chapter 19.162 RCW.

RCW 80.36.510 Legislative finding. The legislature finds that a growing number of companies provide, in a nonresidential setting, telecommunications services necessary to long distance service without disclosing the services provided or the rate, charge or fee. The legislature finds that provision of these services without disclosure to consumers is a deceptive trade practice. [1988 c 91 § 1.]

RCW 80.36.520 Disclosure of alternate operator services. The utilities and transportation commission shall by rule require, at a minimum, that any telecommunications company, operating as or contracting with an alternate operator services company, assure appropriate disclosure to consumers of the provision and the rate, charge or fee of services provided by an alternate operator services company.

For the purposes of this chapter, "alternate operator services company" means a person providing a connection to intrastate or interstate long-distance services from places including, but not limited to, hotels, motels, hospitals, and customer-owned pay telephones. [1988 c 91 § 2.]

RCW 80.36.522 Alternate operator service companies--Registration--Penalties. All alternate operator service companies providing services within the state shall register with the commission as a telecommunications company before providing alternate operator services. The commission may deny an application for registration of an alternate operator services company if, after a hearing, it finds that the services and charges to be offered by the company are not for the public convenience and advantage. The commission may suspend the registration of an alternate operator services company if, after a hearing, it finds that the company does not meet the service or disclosure requirements of the commission. Any alternate operator services company that provides service without being properly registered with the commission shall be subject to a penalty of not less than five hundred dollars and not more than one thousand dollars for each and every offense. In case of a continuing offense, every day's continuance shall be a separate offense. The penalty shall be recovered in an action as provided in RCW 80.04.400. [1990 c 247 § 2.]

RCW 80.36.524 Alternate operator service companies--Rules.

The commission may adopt rules that provide for minimum service levels for telecommunications companies providing alternate operator services. The rules may provide a means for suspending the registration of a company providing alternate operator services if the company fails to meet minimum service levels or if the company fails to provide appropriate disclosure to consumers of the protection afforded under this chapter. [1990 c 247 § 3.]

RCW 80.36.530 Violation of consumer protection act--

Damages. In addition to the penalties provided in this title, a violation of RCW 80.36.510, 80.36.520, or 80.36.524 constitutes an unfair or deceptive act in trade or commerce in violation of chapter 19.86 RCW, the consumer protection act. Acts in violation of RCW 80.36.510, 80.36.520, or 80.36.524 are not reasonable in relation to the development and preservation of business, and constitute matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. It shall be presumed that damages to the consumer are equal to the cost of the service provided plus two hundred dollars. Additional damages must be proved. [1990 c 247 § 4; 1988 c 91 § 3.]

RCW 80.36.540 Telefacsimile messages--Unsolicited

transmission--Penalties. (1) As used in this section, "telefacsimile message" means the transmittal of electronic signals over telephone lines for conversion into written text.

(2) No person, corporation, partnership, or association shall initiate the unsolicited transmission of telefacsimile messages promoting goods or services for purchase by the recipient.

(3)(a) Except as provided in (b) of this subsection, this section shall not apply to telefacsimile messages sent to a recipient with whom the initiator has had a prior contractual or business relationship.

(b) A person shall not initiate an unsolicited telefacsimile message under the provisions of (a) of this subsection if the person knew or reasonably should have known that the recipient is a governmental entity.

(4) Notwithstanding subsection (3) of this section, it is unlawful to initiate any telefacsimile message to a recipient who has previously sent a written or telefacsimile message to the initiator clearly indicating that the recipient does not want to receive telefacsimile messages from the initiator.

(5) The unsolicited transmission of telefacsimile messages promoting goods or services for purchase by the recipient is a matter affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. The

transmission of unsolicited telefacsimile messages is not reasonable in relation to the development and preservation of business. A violation of this section is an unfair or deceptive act in trade or commerce for the purpose of applying the consumer protection act, chapter 19.86 RCW. Damages to the recipient of telefacsimile messages in violation of this section are five hundred dollars or actual damages, whichever is greater.

(6) Nothing in this section shall be construed to prevent the Washington utilities and transportation commission from adopting additional rules regulating transmissions of telefacsimile messages. [1990 c 221 § 1.]

RCW 80.36.555 Enhanced 911 service--Residential service required. By January 1, 1997, or one year after enhanced 911 service becomes available or a private switch automatic location identification service approved by the Washington utilities and transportation commission is available from the serving local exchange telecommunications company, whichever is later, any private shared telecommunications services provider that provides service to residential customers shall assure that the telecommunications system is connected to the public switched network such that calls to 911 result in automatic location identification for each residential unit in a format that is compatible with the existing or planned county enhanced 911 system. [1995 c 243 § 3.]

NOTES:

Findings--1995 c 243: "The legislature finds that citizens of the state increasingly rely on the dependability of enhanced 911, a system that allows the person answering an emergency call to immediately determine the location of the emergency without the need of the caller to speak. The legislature further finds that in some cases, calls made from telephones connected to private telephone systems may not be precisely located by the answerer, eliminating some of the benefit of enhanced 911, and that this condition could additionally imperil citizens calling from these locations in an emergency. The legislature also finds that until national standards have been developed to address this condition, information-forwarding requirements should be mandated for only those settings with the most risk, including schools, residences, and some business settings." [1995 c 243 § 1.]

Severability--1995 c 243: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 243 § 12.]

RCW 80.36.560 Enhanced 911 service--Business service required. By January 1, 1997, or one year after enhanced 911 service becomes available or a private switch automatic location identification service approved by the Washington utilities and transportation commission is available from the serving local exchange telecommunications company, whichever is later, any commercial shared services provider of private shared telecommunications services for hire or resale to the general public to multiple unaffiliated business users from a single system shall assure that such a system is connected to the public switched network such that calls to 911 result in automatic location identification for each telephone in a format that is compatible with the existing or planned county enhanced 911 system. This section shall apply only to providers of service to businesses containing a physical area exceeding twenty-five thousand square feet, or businesses on more than one floor of a building, or businesses in multiple buildings. [1995 c 243 § 5.]

NOTES:

Findings--Severability--1995 c 243: See notes following RCW 80.36.555.

RCW 80.36.600 Universal service program--Planning and preparation--Commission's duties--Approval of legislature required--Definitions. (1) The commission shall plan and prepare to implement a program for the preservation and advancement of universal telecommunications service which shall not take effect until the legislature approves the program. The purpose of the universal service program is to benefit telecommunications ratepayers in the state by minimizing implicit sources of support and maximizing explicit sources of support that are specific, sufficient, competitively neutral, and technologically neutral to support basic telecommunications services for customers of telecommunications companies in high-cost locations.

(2) In preparing a universal service program for approval by the legislature, the commission shall:

(a) Estimate the cost of supporting all lines located in high-cost locations and the cost of supporting one primary telecommunications line for each residential or business customer located in high-cost locations;

(b) Determine the assessments that must be made on all telecommunications carriers, and the manner of collection, to provide support for:

(i) All residential and business lines located in high-cost locations;

(ii) Only one primary line for each residential or business customer located in high-cost locations;

(c) Designate those telecommunications carriers serving high-cost locations that are eligible to receive support for the benefit of their customers in those locations;

(d) Adopt or prepare to adopt all necessary rules for administration of the program; and

(e) Provide a schedule of all fees and payments proposed or expected to be proposed by the commission under subsection (3)(d) of this section.

(3) Once a program is approved by the legislature and subsequently established, the following provisions apply unless otherwise directed by the legislature:

(a) All transfers of money necessary to provide the support shall be outside the state treasury and not be subject to appropriation;

(b) The commission may delegate to the commission secretary or other staff the authority to resolve disputes or make other decisions necessary to the administration of the program;

(c) The commission may contract with an independent program administrator subject to the direction and control of the commission and may authorize the establishment of an account or accounts in independent financial institutions should that be necessary for administration of the program;

(d) The expenses of an independent program administrator shall be authorized by the commission and shall be paid out of contributions by the telecommunications carriers participating in the program;

(e) The commission may require the carriers participating in the program, as part of their contribution, to pay into the public service revolving fund the costs of the commission attributable to supervision and administration of the program that are not otherwise recovered through fees paid to the commission.

(4) The commission shall establish standards for review or testing of all telecommunications carriers' compliance with the program for the purpose of ensuring the support received by a telecommunications carrier is used only for the purposes of the program and that each telecommunications carrier is making its proper contribution to the program. The commission may conduct the review or test, or contract with an independent administrator or other person to conduct the review or test.

(5) The commission shall coordinate administration of the program with any federal universal service program and may administer the federal fund in conjunction with the state program if so authorized by federal law.

(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Telecommunications carrier" has the same meaning as defined in 47 U.S.C. Sec. 153(44).

(b) "Basic telecommunications services" means the following services:

(i) Single-party service;

(ii) Voice grade access to the public switched network;

- (iii) Support for local usage;
- (iv) Dual tone multifrequency signaling (touch-tone);
- (v) Access to emergency services (911);
- (vi) Access to operator services;
- (vii) Access to interexchange services;
- (viii) Access to directory assistance; and
- (ix) Toll limitation services.

(c) "High-cost location" means a location where the cost of providing telecommunications services is greater than a benchmark established by the commission by rule.

(7) Each telecommunications carrier that provides intrastate telecommunications services shall provide whatever information the commission may reasonably require in order to fulfill the commission's responsibilities under subsection (2) of this section. [1999 c 372 § 16; 1998 c 337 § 1.]

NOTES:

Severability--1998 c 337: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 337 § 8.]

RCW 80.36.610 Universal service program--Authority of commission--Rules--Fees--Legislative intent. (1) The commission is authorized to take actions, conduct proceedings, and enter orders as permitted or contemplated for a state commission under the federal telecommunications act of 1996, P.L. 104-104 (110 Stat. 56), but the commission's authority to either establish a new state program or to adopt new rules to preserve and advance universal service under section 254(f) of the federal act is limited to the actions expressly authorized by RCW 80.36.600. The commission may establish by rule fees to be paid by persons seeking commission action under the federal act, and by parties to proceedings under that act, to offset in whole or part the commission's expenses that are not otherwise recovered through fees in implementing the act, but new fees or assessments charged telecommunications carriers to either establish a state program or to adopt rules to preserve and advance universal service under section 254(f) of the federal act do not take effect until the legislature has approved a state universal service program.

(2) The legislature intends that under the future universal service program established in this state:

(a) Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the preservation and advancement of universal service in the state;

(b) The contributions shall be competitively and technologically neutral; and

(c) The universal service program to be established in accordance with RCW 80.36.600 shall not be inconsistent with the requirements of 47 U.S.C. Sec. 254. [1998 c 337 § 2.]

NOTES:

Severability--1998 c 337: See note following RCW 80.36.600.

RCW 80.36.620 Universal service program--Rules. Any rules regarding universal service adopted by the utilities and transportation commission shall comply with the purpose, as stated in RCW 80.36.600, for establishing a program for the preservation and advancement of universal telecommunications service. Services to be supported are only those basic services defined in *RCW 80.36.600(7). [1998 c 337 § 3.]

NOTES:

***Reviser's note:** RCW 80.36.600 was amended by 1999 c 372 § 16, changing subsection (7) to subsection (6).

Severability--1998 c 337: See note following RCW 80.36.600.

RCW 80.36.850 Extended area service defined. As used in RCW 80.36.855, "extended area service" means the ability to call from one exchange to another exchange without incurring a toll charge. [1989 c 282 § 2.]

NOTES:

Policy--Program limitations--Report to legislative committees--Program expiration--1989 c 282: See notes following RCW 80.36.855.

RCW 80.36.855 Extended area service program. Any business, resident, or community may petition for and shall receive extended area service within the service territory of the local exchange company that provides service to the petitioner under the following conditions:

(1) Any customer, business or residential, interested in obtaining extended area service in their community must collect and submit to the commission the signatures of a representative majority of affected customers in the community. A "representative majority" for purposes of this section consists of fifteen percent of the access lines in that community;

(2) After receipt of the signatures, the commission shall authorize a study to be conducted by the affected local exchange

company in order to determine whether a community of interest exists for the implementation of extended area service. For purposes of this section a community of interest shall be found if the average number of calls per customer per month from the area petitioning for extended area service to the area to which extended area service will be implemented is at least five;

(3) If a community of interest exists, the commission shall then calculate any increased rate that would be applied to the area which would have extended area service granted to it. This rate shall be based on the charges to a rate group having the same or similar calling capability as set forth in the tariffs of the local exchange telecommunications company involved;

(4) The affected telecommunications company shall be given the opportunity to propose an alternative plan that might be priced differently and that plan shall be included in the poll of subscribers as an alternative under subsection (5) of this section;

(5) After determining the amount of any additional rate, the commission shall notify the subscribers who will be affected by the increased rate and conduct a poll of those subscribers. If a simple majority votes its approval the commission shall order extended area service; and

(6) Any extended area service program adopted pursuant to this section shall be considered experimental and not binding on the commission in subsequent extended area service proceedings. If an extended area service program adopted pursuant to this section results in a revenue deficiency for a local exchange company, the commission shall allocate the resulting revenue requirement in a manner which produces fair, just and reasonable rates for all classes of customers. [1989 c 282 § 3.]

NOTES:

Policy--1989 c 282: "Universal telephone service for the people of the state of Washington is a policy goal of the legislature and has been enacted previously into Washington law. Access to universal and affordable telephone service enhances the economic and social well-being of Washington citizens." [1989 c 282 § 1.]

Program limitations--Report to legislative committees--1989 c 282: "The pilot program specified in sections 2 and 3 of this act applies only to extended area service petitions which meet the conditions under section 3 of this act, and have been filed with the commission by January 1, 1989. Any petitions for extended area service filed after January 1, 1989, shall be addressed under terms and conditions determined by the commission. By December 1, 1990, the commission shall submit to the energy and utilities committees of the house of representatives and the senate a report on extended area service. The report shall include:

(1) The status of any experimental, pilot program which provides extended area service developed under this section, and whether such an experimental, pilot program approach should continue to be made available;

(2) The status of all extended area service petitions pending at the commission;

(3) Commission action on the recommendations of the local extended calling advisory committee; and

(4) Commission recommendations for any other legislation addressing the issue of extended area service." [1989 c 282 § 4.] Section 2 of this act is the enactment of RCW 80.36.850. Section 3 of this act is the enactment of RCW 80.36.855.

Program expiration--1989 c 282: "The extended area service program under sections 2 through 5 of this act shall expire on December 1, 1990, except for any extended area service obtained by any business residence or community and put in place under section 3 of this act." [1989 c 282 § 5.]

RCW 80.36.900 Severability--1985 c 450. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 450 § 42.]

RCW 80.36.901 Legislative review of 1985 c 450--1989 c 101. The legislature shall conduct an intensive review of chapter 450, Laws of 1985 during the 1991-1993 biennium to determine whether the purposes of chapter 450, Laws of 1985 have been achieved and if further relaxation of regulatory requirements is in the public interest. [1989 c 101 § 18; 1985 c 450 § 44.]

CHAPTER 80.40 RCW

UNDERGROUND NATURAL GAS STORAGE ACT

Sections

80.40.010	Definitions.
80.40.020	Declaration concerning the public interest.
80.40.030	Eminent domain.
80.40.040	Eminent domain--Application to oil and gas conservation committee prerequisite to eminent domain--Procedure.
80.40.050	Rights of company using storage--Rights of owners of condemned land and interests therein.
80.40.060	Leases by commissioner of public lands.
80.40.070	Leases by county commissioners.

80.40.900 Short title.
80.40.910 Chapter to be liberally construed.
80.40.920 Severability--1963 c 201.

RCW 80.40.010 Definitions. As used in this chapter, unless specifically defined otherwise or unless the context indicates otherwise:

"Commission" shall mean the Washington utilities and transportation commission;

"Committee" shall mean the oil and gas conservation committee established by *RCW 78.52.020;

"Natural gas" shall mean gas either in the earth in its original state or after the same has been produced by removal therefrom of component parts not essential to its use for light and fuel;

"Natural gas company" shall mean every corporation, company, association, joint stock association, partnership or person authorized to do business in this state and engaged in the transportation, distribution, or underground storage of natural gas;

"Underground reservoir" shall mean any subsurface sand, strata, formation, aquifer, cavern or void whether natural or artificially created, suitable for the injection and storage of natural gas therein and the withdrawal of natural gas therefrom;

"Underground storage" shall mean the process of injecting and storing natural gas within and withdrawing natural gas from an underground reservoir: PROVIDED, The withdrawal of gas from an underground reservoir shall not be deemed a taking or producing within the terms of RCW 82.04.100. [1963 c 201 § 2.]

NOTES:

***Reviser's note:** RCW 78.52.020 was repealed by 1994 sp.s. c 9 § 869, effective July 1, 1994.

RCW 80.40.020 Declaration concerning the public interest. The underground storage of natural gas will promote the economic development of the state and provide for more economic distribution of natural gas to the domestic, commercial and industrial consumers of this state, thereby serving the public interest. [1963 c 201 § 3.]

RCW 80.40.030 Eminent domain. Any natural gas company having received an order under RCW 80.40.040 shall have the right of eminent domain to be exercised in the manner provided in and subject to the provisions of chapter 8.20 RCW to acquire for its use for the underground storage of natural gas any underground reservoir, as well as such other property or interests in property as may be required to adequately maintain

and utilize the underground reservoir for the underground storage of natural gas, including easements and rights of way for access to and egress from the underground storage reservoir. The right of eminent domain granted hereby shall apply to property or property interests held in private ownership, provided condemnor has exercised good faith in negotiations for private sale or lease. No property shall be taken or damaged until the compensation to be made therefor shall have been ascertained and paid. Any property or interest therein so acquired by any natural gas company shall be used exclusively for the purposes for which it was acquired. Any decree of appropriation hereunder shall define and limit the rights condemned and shall provide for the reversion of such rights to the defendant or defendants or their successors in interest upon abandonment of the underground storage project. Good faith exploration work or development work relative to the storage reservoir is conclusive evidence that its use has not been abandoned. The court may include in such decree such other relevant conditions, covenants and restrictions as it may deem fair and equitable. [1963 c 201 § 4.]

RCW 80.40.040 Eminent domain--Application to *oil and gas conservation committee prerequisite to eminent domain--Procedure. Any natural gas company desiring to exercise the right of eminent domain to condemn any property or interest in property for the underground storage of natural gas shall first make application to the *oil and gas conservation committee for an order approving the proposed project. Notice of such application shall be given by the committee to the utilities and transportation commission, to the director of ecology, to the commissioner of public lands, and to all other persons known to have an interest in the property to be condemned. Said notice shall be given in the manner provided by RCW 8.20.020 as amended. The committee shall publish notice of said application at least once each week for three successive weeks in some newspaper of general circulation in the county or counties where the proposed underground storage project is located. If no written requests for hearing on the application are received by the committee within forty-five days from the date of service of notice of the application and publication thereof, the committee may proceed without hearing and issue its order. If a hearing is requested, a public hearing on the application will be held within the county or one of the counties where the proposed underground storage project is located. Any order approving the proposed underground storage project shall contain findings that (1) the underground storage of natural gas in the lands or property sought to be condemned is in the public interest and welfare; (2) the underground reservoir is reasonably practicable, and the applicant has complied with all applicable oil and gas conservation laws of the state of Washington; (3) the underground reservoir sought to be condemned is

nonproductive of economically recoverable valuable minerals or materials, or of oil or gas in commercial quantities under either primary or secondary recovery methods, and nonproductive of fresh water in commercial quantities with feasible and reasonable pumping lift; (4) the natural gas company has acquired the right by grant, lease or other agreement to store natural gas under at least sixty-five percent of the area of the surface of the land under which such proposed underground storage reservoir extends; (5) the natural gas company carries public liability insurance or has deposited collateral in amounts satisfactory to the committee or has furnished a financial statement showing assets in a satisfactory amount, to secure payment of any liability resulting from any occurrence arising out of or caused by the operation or use of any underground reservoir or facilities incidental thereto; (6) the underground storage project will not injure, pollute, or contaminate any usable fresh water resources; (7) the underground storage project will not injure, interfere with, or endanger any mineral resources or the development or extraction thereof. The order of the committee may be reviewed in the manner provided by chapter 34.05 RCW: PROVIDED, That if an appeal is not commenced within thirty days of the date of the order of the committee, the same shall be final and conclusive. [1988 c 127 § 35; 1963 c 201 § 5.]

NOTES:

***Reviser's note:** The duties of the oil and gas conservation committee were transferred to the department of natural resources by 1994 sp.s. c 9, effective July 1, 1994.

RCW 80.40.050 Rights of company using storage--Rights of owners of condemned land and interests therein. All natural gas in an underground reservoir utilized for underground storage, whether acquired by eminent domain or otherwise, shall at all times be the property of the natural gas company utilizing said underground storage, its heirs, successors, or assigns; and in no event shall such gas be subject to any right of the owner of the surface of the land under which said underground reservoir lies or of the owner of any mineral interest therein or of any person other than the said natural gas company, its heirs, successors and assigns to release, produce, take, reduce to possession, or otherwise interfere with or exercise any control thereof: PROVIDED, That the right of condemnation hereby granted shall be without prejudice to the rights of the owner of the condemned lands or of the rights and interest therein to drill or bore through the underground reservoir in such a manner as shall protect the underground reservoir against pollution and against the escape of natural gas in a manner which complies with the orders, rules and regulations of the *oil and gas conservation committee issued for the purpose of protecting

underground storage and shall be without prejudice to the rights of the owners of said lands or other rights or interests therein as to all other uses thereof. The additional cost of complying with regulations or orders to protect the underground storage shall be paid by the condemnor. [1963 c 201 § 6.]

NOTES:

***Reviser's note:** The duties of the oil and gas conservation committee were transferred to the department of natural resources by 1994 sp.s. c 9, effective July 1, 1994.

RCW 80.40.060 Leases by commissioner of public lands. The commissioner of public lands is authorized to lease public lands, property, or any interest therein for the purpose of underground storage of natural gas. Any such lease shall be upon such terms and conditions as the said commissioner may deem for the best interests of the state and as are customary and proper for the protection of the rights of the state and of the lessee and of the owners of the surface of the leased lands, and may be for such primary term as said commissioner may determine and as long thereafter as the lessee continues to use such lands, property, or interest therein for underground storage of gas. [1963 c 201 § 7.]

RCW 80.40.070 Leases by county commissioners. Whenever it shall appear to the board of county commissioners of any county that it is for the best interests of said county, the taxing districts and the people thereof, that any county-owned or tax-acquired property owned by the county, either absolutely or as trustee, should be leased for the purpose of underground storage of natural gas therein, said board of county commissioners is hereby authorized to enter into written leases under the terms of which any county-owned lands, property, or interest therein are leased for the aforementioned purposes, with or without an option to purchase the land surface. Any such lease shall be upon such terms and conditions as said county commissioners may deem for the best interests of said county and the taxing districts, and may be for such primary term as said board may determine and as long thereafter as the lessee continues to use the said lands, property, or interest therein for underground storage of natural gas. [1963 c 201 § 8.]

RCW 80.40.900 Short title. This act shall be known as the "Underground Natural Gas Storage Act." [1963 c 201 § 9.]

RCW 80.40.910 Chapter to be liberally construed. It is intended that the provisions of this chapter shall be liberally

construed to accomplish the purposes authorized and provided for. [1963 c 201 § 10.]

RCW 80.40.920 Severability--1963 c 201. If any part or parts of this chapter or the application thereof to any person or circumstances is held to be unconstitutional such invalidity shall not affect the validity of the remaining portions of this chapter, or the application thereof to other persons or circumstances. [1963 c 201 § 11.]

CHAPTER 80.50 RCW

ENERGY FACILITIES--SITE LOCATIONS

Sections

- 80.50.010 Legislative finding--Policy--Intent.
- 80.50.020 Definitions.
- 80.50.030 Energy facility site evaluation council--
Created--Membership--Support.
- 80.50.040 Energy facility site evaluation council--Powers
enumerated.
- 80.50.060 Energy facilities to which chapter applies--
Applications for certification--Forms--
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- 80.50.071 Council to receive applications--Fees or
charges for application processing or
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- 80.50.075 Expedited processing of applications.
- 80.50.080 Counsel for the environment.
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recommendations.
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- 80.50.100 Recommendations to governor--Approval or
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- 80.50.105 Transmission facilities for petroleum products--
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- 80.50.110 Chapter governs and supersedes other law or
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- 80.50.120 Effect of certification.
- 80.50.130 Revocation or suspension of certification--
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- 80.50.180 Proposals and actions by other state agencies
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- energy facilities exempt from "detailed statement" required by RCW 43.21C.030.
- 80.50.190 Disposition of receipts from applicants.
- 80.50.300 Unfinished nuclear power projects--Transfer of all or a portion of a site to a political subdivision or subdivisions of the state--Water rights.
- 80.50.310 Council actions--Exemption from chapter 43.21C RCW.
- 80.50.320 Governor to evaluate council efficiency, make recommendations.
- 80.50.900 Severability--1970 ex.s. c 45.
- 80.50.901 Severability--1974 ex.s. c 110.
- 80.50.902 Severability--1977 ex.s. c 371.
- 80.50.903 Severability--1996 c 4.
- 80.50.904 Effective date--1996 c 4.

NOTES:

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

Energy supply emergencies: Chapter 43.21G RCW.

Regulation of dangerous wastes associated with energy facilities: RCW 70.105.110.

State energy office: Chapter 43.21F RCW.

Water pollution control, energy facilities, permits, etc., duties of energy facility site evaluation council: RCW 90.48.262.

RCW 80.50.010 Legislative finding--Policy--Intent. The legislature finds that the present and predicted growth in energy demands in the state of Washington requires the development of a procedure for the selection and utilization of sites for energy facilities and the identification of a state position with respect to each proposed site. The legislature recognizes that the selection of sites will have a significant impact upon the welfare of the population, the location and growth of industry and the use of the natural resources of the state.

It is the policy of the state of Washington to recognize the pressing need for increased energy facilities, and to ensure through available and reasonable methods, that the location and operation of such facilities will produce minimal adverse effects on the environment, ecology of the land and its

wildlife, and the ecology of state waters and their aquatic life.

It is the intent to seek courses of action that will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public. Such action will be based on these premises:

(1) To assure Washington state citizens that, where applicable, operational safeguards are at least as stringent as the criteria established by the federal government and are technically sufficient for their welfare and protection.

(2) To preserve and protect the quality of the environment; to enhance the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; to promote air cleanliness; and to pursue beneficial changes in the environment.

(3) To provide abundant energy at reasonable cost.

(4) To avoid costs of complete site restoration and demolition of improvements and infrastructure at unfinished nuclear energy sites, and to use unfinished nuclear energy facilities for public uses, including economic development, under the regulatory and management control of local governments and port districts.

(5) To avoid costly duplication in the siting process and ensure that decisions are made timely and without unnecessary delay. [2001 c 214 § 1; 1996 c 4 § 1; 1975-'76 2nd ex.s. c 108 § 29; 1970 ex.s. c 45 § 1.]

NOTES:

Severability--2001 c 214: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 214 § 33.]

Effective date--2001 c 214: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 8, 2001]." [2001 c 214 § 34.]

Findings--2001 c 214: See note following RCW 39.35.010.

Severability--Effective date--1975-'76 2nd ex.s. c 108:
See notes following RCW 43.21F.010.

Nuclear power facilities, joint operation: Chapter 54.44 RCW.

State energy office: Chapter 43.21F RCW.

RCW 80.50.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Applicant" means any person who makes application for a site certification pursuant to the provisions of this chapter.

(2) "Application" means any request for approval of a particular site or sites filed in accordance with the procedures established pursuant to this chapter, unless the context otherwise requires.

(3) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

(4) "Site" means any proposed or approved location of an energy facility.

(5) "Certification" means a binding agreement between an applicant and the state which shall embody compliance to the siting guidelines, in effect as of the date of certification, which have been adopted pursuant to RCW 80.50.040 as now or hereafter amended as conditions to be met prior to or concurrent with the construction or operation of any energy facility.

(6) "Associated facilities" means storage, transmission, handling, or other related and supporting facilities connecting an energy plant with the existing energy supply, processing, or distribution system, including, but not limited to, communications, controls, mobilizing or maintenance equipment, instrumentation, and other types of ancillary transmission equipment, off-line storage or venting required for efficient operation or safety of the transmission system and overhead, and surface or subsurface lines of physical access for the inspection, maintenance, and safe operations of the transmission facility and new transmission lines constructed to operate at nominal voltages in excess of 200,000 volts to connect a thermal power plant to the northwest power grid: PROVIDED, That common carrier railroads or motor vehicles shall not be included.

(7) "Transmission facility" means any of the following together with their associated facilities:

(a) Crude or refined petroleum or liquid petroleum product transmission pipeline of the following dimensions: A pipeline larger than six inches minimum inside diameter between valves for the transmission of these products with a total length of at least fifteen miles;

(b) Natural gas, synthetic fuel gas, or liquified petroleum gas transmission pipeline of the following dimensions: A pipeline larger than fourteen inches minimum inside diameter between valves, for the transmission of these products, with a total length of at least fifteen miles for the purpose of delivering gas to a distribution facility, except an interstate natural gas pipeline regulated by the United States federal power commission.

(8) "Independent consultants" means those persons who have no financial interest in the applicant's proposals and who are retained by the council to evaluate the applicant's proposals, supporting studies, or to conduct additional studies.

(9) "Thermal power plant" means, for the purpose of certification, any electrical generating facility using any fuel, including nuclear materials, for distribution of electricity by electric utilities.

(10) "Energy facility" means an energy plant or transmission facilities: PROVIDED, That the following are excluded from the provisions of this chapter:

(a) Facilities for the extraction, conversion, transmission or storage of water, other than water specifically consumed or discharged by energy production or conversion for energy purposes; and

(b) Facilities operated by and for the armed services for military purposes or by other federal authority for the national defense.

(11) "Council" means the energy facility site evaluation council created by RCW 80.50.030.

(12) "Counsel for the environment" means an assistant attorney general or a special assistant attorney general who shall represent the public in accordance with RCW 80.50.080.

(13) "Construction" means on-site improvements, excluding exploratory work, which cost in excess of two hundred fifty thousand dollars.

(14) "Energy plant" means the following facilities together with their associated facilities:

(a) Any stationary thermal power plant with generating capacity of three hundred fifty thousand kilowatts or more, measured using maximum continuous electric generating capacity, less minimum auxiliary load, at average ambient temperature and pressure, and floating thermal power plants of one hundred thousand kilowatts or more, including associated facilities. For the purposes of this subsection, "floating thermal power plants" means a thermal power plant that is suspended on the surface of water by means of a barge, vessel, or other floating platform;

(b) Facilities which will have the capacity to receive liquified natural gas in the equivalent of more than one hundred million standard cubic feet of natural gas per day, which has been transported over marine waters;

(c) Facilities which will have the capacity to receive more than an average of fifty thousand barrels per day of crude or refined petroleum or liquified petroleum gas which has been or will be transported over marine waters, except that the provisions of this chapter shall not apply to storage facilities unless occasioned by such new facility construction;

(d) Any underground reservoir for receipt and storage of natural gas as defined in RCW 80.40.010 capable of delivering an average of more than one hundred million standard cubic feet of natural gas per day; and

(e) Facilities capable of processing more than twenty-five thousand barrels per day of petroleum into refined products.

(15) "Land use plan" means a comprehensive plan or land use element thereof adopted by a unit of local government pursuant to chapters 35.63, 35A.63, or 36.70 RCW.

(16) "Zoning ordinance" means an ordinance of a unit of local government regulating the use of land and adopted pursuant to chapters 35.63, 35A.63, or 36.70 RCW or Article XI of the state Constitution.

(17) "Alternative energy resource" means: (a) Wind; (b) solar energy; (c) geothermal energy; (d) landfill gas; (e) wave or tidal action; or (f) biomass energy based on solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic. [2001 c 214 § 3; 1995 c 69 § 1; 1977 ex.s. c 371 § 2; 1975-'76 2nd ex.s. c 108 § 30; 1970 ex.s. c 45 § 2.]

NOTES:

Severability--Effective date--2001 c 214: See notes following RCW 80.50.010.

Findings--2001 c 214: See note following RCW 39.35.010.

Severability--Effective date--1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

RCW 80.50.030 Energy facility site evaluation council--Created--Membership--Support. (1) There is created and established the energy facility site evaluation council.

(2)(a) The chair of the council shall be appointed by the governor with the advice and consent of the senate, shall have a vote on matters before the council, shall serve for a term coextensive with the term of the governor, and is removable for cause. The chair may designate a member of the council to serve as acting chair in the event of the chair's absence. The salary of the chair shall be determined under RCW 43.03.040. The chair is a "state employee" for the purposes of chapter 42.52 RCW. As applicable, when attending meetings of the council, members may receive reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060, and are eligible for compensation under RCW 43.03.250.

(b) The chair or a designee shall execute all official documents, contracts, and other materials on behalf of the council. The Washington state department of community, trade, and economic development shall provide all administrative and staff support for the council. The director of the department of community, trade, and economic development has supervisory authority over the staff of the council and shall employ such

personnel as are necessary to implement this chapter. Not more than three such employees may be exempt from chapter 41.06 RCW.

(3)(a) The council shall consist of the directors, administrators, or their designees, of the following departments, agencies, commissions, and committees or their statutory successors:

- (i) Department of ecology;
- (ii) Department of fish and wildlife;
- (iii) Department of community, trade, and economic development;
- (iv) Utilities and transportation commission; and
- (v) Department of natural resources.

(b) The directors, administrators, or their designees, of the following departments, agencies, and commissions, or their statutory successors, may participate as councilmembers at their own discretion provided they elect to participate no later than sixty days after an application is filed:

- (i) Department of agriculture;
- (ii) Department of health;
- (iii) Military department; and
- (iv) Department of transportation.

(c) Council membership is discretionary for agencies that choose to participate under (b) of this subsection only for applications that are filed with the council on or after May 8, 2001. For applications filed before May 8, 2001, council membership is mandatory for those agencies listed in (b) of this subsection.

(4) The appropriate county legislative authority of every county wherein an application for a proposed site is filed shall appoint a member or designee as a voting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the county which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site.

(5) The city legislative authority of every city within whose corporate limits an energy plant is proposed to be located shall appoint a member or designee as a voting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the city which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site.

(6) For any port district wherein an application for a proposed port facility is filed subject to this chapter, the port district shall appoint a member or designee as a nonvoting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the port district which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site. The provisions of this subsection shall not apply if the

port district is the applicant, either singly or in partnership or association with any other person. [2001 c 214 § 4; 1996 c 186 § 108. Prior: 1994 c 264 § 75; 1994 c 154 § 315; 1990 c 12 § 3; 1988 c 36 § 60; 1986 c 266 § 51; prior: 1985 c 466 § 71; 1985 c 67 § 1; 1985 c 7 § 151; prior: 1984 c 125 § 18; 1984 c 7 § 372; 1977 ex.s. c 371 § 3; 1975-'76 2nd ex.s. c 108 § 31; 1974 ex.s. c 171 § 46; 1970 ex.s. c 45 § 3.]

NOTES:

Severability--Effective date--2001 c 214: See notes following RCW 80.50.010.

Findings--2001 c 214: See note following RCW 39.35.010.

Findings--Intent--Part headings not law--Effective date--1996 c 186: See notes following RCW 43.330.904.

Parts and captions not law--Effective date--Severability--1994 c 154: See RCW 42.52.902, 42.52.904, and 42.52.905.

Effective date--1990 c 12: "This act shall take effect July 1, 1990." [1990 c 12 § 12.]

Severability--1986 c 266: See note following RCW 38.52.005.

Effective date--Severability--1985 c 466: See notes following RCW 43.31.125.

Severability--Headings--Effective date--1984 c 125: See RCW 43.63A.901 through 43.63A.903.

Severability--1984 c 7: See note following RCW 47.01.141.

Severability--Effective date--1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

RCW 80.50.040 Energy facility site evaluation council--Powers enumerated. The council shall have the following powers:

(1) To adopt, promulgate, amend, or rescind suitable rules and regulations, pursuant to chapter 34.05 RCW, to carry out the provisions of this chapter, and the policies and practices of the council in connection therewith;

(2) To develop and apply environmental and ecological guidelines in relation to the type, design, location, construction, and operational conditions of certification of energy facilities subject to this chapter;

(3) To establish rules of practice for the conduct of public hearings pursuant to the provisions of the Administrative Procedure Act, as found in chapter 34.05 RCW;

(4) To prescribe the form, content, and necessary supporting documentation for site certification;

(5) To receive applications for energy facility locations and to investigate the sufficiency thereof;

(6) To make and contract, when applicable, for independent studies of sites proposed by the applicant;

(7) To conduct hearings on the proposed location of the energy facilities;

(8) To prepare written reports to the governor which shall include: (a) A statement indicating whether the application is in compliance with the council's guidelines, (b) criteria specific to the site and transmission line routing, (c) a council recommendation as to the disposition of the application, and (d) a draft certification agreement when the council recommends approval of the application;

(9) To prescribe the means for monitoring of the effects arising from the construction and the operation of energy facilities to assure continued compliance with terms of certification and/or permits issued by the council pursuant to chapter 90.48 RCW or subsection (12) of this section: PROVIDED, That any on-site inspection required by the council shall be performed by other state agencies pursuant to interagency agreement: PROVIDED FURTHER, That the council may retain authority for determining compliance relative to monitoring;

(10) To integrate its site evaluation activity with activities of federal agencies having jurisdiction in such matters to avoid unnecessary duplication;

(11) To present state concerns and interests to other states, regional organizations, and the federal government on the location, construction, and operation of any energy facility which may affect the environment, health, or safety of the citizens of the state of Washington;

(12) To issue permits in compliance with applicable provisions of the federally approved state implementation plan adopted in accordance with the Federal Clean Air Act, as now existing or hereafter amended, for the new construction, reconstruction, or enlargement or operation of energy facilities: PROVIDED, That such permits shall become effective only if the governor approves an application for certification and executes a certification agreement pursuant to this chapter: AND PROVIDED FURTHER, That all such permits be conditioned upon compliance with all provisions of the federally approved state implementation plan which apply to energy facilities covered within the provisions of this chapter; and

(13) To serve as an interagency coordinating body for energy-related issues. [2001 c 214 § 6; 1990 c 12 § 4; 1985 c 67 § 2; 1979 ex.s. c 254 § 1; 1977 ex.s. c 371 § 4; 1975-'76 2nd ex.s. c 108 § 32; 1970 ex.s. c 45 § 4.]

NOTES:

Severability--Effective date--2001 c 214: See notes following RCW 80.50.010.

Findings--2001 c 214: See note following RCW 39.35.010.

Effective date--1990 c 12: See note following RCW 80.50.030.

Severability--Effective date--1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

RCW 80.50.060 Energy facilities to which chapter applies--Applications for certification--Forms--Information. (1) The provisions of this chapter shall apply to the construction of energy facilities which includes the new construction of energy facilities and the reconstruction or enlargement of existing energy facilities where the net increase in physical capacity or dimensions resulting from such reconstruction or enlargement meets or exceeds those capacities or dimensions set forth in RCW 80.50.020 (7) and (14). No construction of such energy facilities may be undertaken, except as otherwise provided in this chapter, after July 15, 1977, without first obtaining certification in the manner provided in this chapter.

(2) The provisions of this chapter apply to the construction, reconstruction, or enlargement of a new or existing energy facility that exclusively uses alternative energy resources and chooses to receive certification under this chapter, regardless of the generating capacity of the project.

(3) The provisions of this chapter shall not apply to normal maintenance and repairs which do not increase the capacity or dimensions beyond those set forth in RCW 80.50.020 (7) and (14).

(4) Applications for certification of energy facilities made prior to July 15, 1977 shall continue to be governed by the applicable provisions of law in effect on the day immediately preceding July 15, 1977 with the exceptions of RCW 80.50.190 and 80.50.071 which shall apply to such prior applications and to site certifications prospectively from July 15, 1977.

(5) Applications for certification shall be upon forms prescribed by the council and shall be supported by such information and technical studies as the council may require. [2001 c 214 § 2; 1977 ex.s. c 371 § 5; 1975-'76 2nd ex.s. c 108 § 34; 1970 ex.s. c 45 § 6.]

NOTES:

Severability--Effective date--2001 c 214: See notes following RCW 80.50.010.

Findings--2001 c 214: See note following RCW 39.35.010.

Severability--Effective date--1975-'76 2nd ex.s. c 108:

See notes following RCW 43.21F.010.

RCW 80.50.071 Council to receive applications--Fees or charges for application processing or certification monitoring.

(1) The council shall receive all applications for energy facility site certification. The following fees or charges for application processing or certification monitoring shall be paid by the applicant or certificate holder:

(a) A fee of twenty-five thousand dollars for each proposed site, to be applied toward the cost of the independent consultant study authorized in this subsection, shall accompany the application and shall be a condition precedent to any further consideration or action on the application by the council. The council shall commission its own independent consultant study to measure the consequences of the proposed energy facility on the environment for each site application. The council shall direct the consultant to study any matter which it deems essential to an adequate appraisal of the site. The full cost of the study shall be paid by the applicant: PROVIDED, That said costs exceeding a total of the twenty-five thousand dollars paid pursuant to subsection (1)(a) of this section shall be payable subject to the applicant giving prior approval to such excess amount.

(b) Each applicant shall, in addition to the costs of the independent consultant provided by subsection (1)(a) of this section, pay such reasonable costs as are actually and necessarily incurred by the council in processing the application. Such costs shall include, but are not limited to, costs of a hearing examiner, a court reporter, additional staff salaries, wages and employee benefits, goods and services, travel expenses within the state and miscellaneous expenses, as arise directly from processing such application.

Each applicant shall, at the time of application submission, deposit twenty thousand dollars, or such lesser amount as may be specified by council rule, to cover costs provided for by subsection (1)(b) of this section. Reasonable and necessary costs of the council directly attributable to application processing shall be charged against such deposit.

The council shall submit to each applicant a statement of such expenditures actually made during the preceding calendar quarter which shall be in sufficient detail to explain such expenditures. The applicant shall pay the state treasurer the amount of such statement to restore the total amount on deposit to the originally established level: PROVIDED, That such applicant may, at the request of the council, increase the amount of funds on deposit to cover anticipated expenses during peak periods of application processing. Any funds remaining unexpended at the conclusion of application processing shall be refunded to the applicant, or at the applicant's option, credited against required deposits of certificate holders.

(c) Each certificate holder shall pay such reasonable costs as are actually and necessarily incurred by the council for inspection and determination of compliance by the certificate holder with the terms of the certification relative to monitoring the effects of construction and operation of the facility.

Each certificate holder, within thirty days of execution of the site certification agreement, shall deposit twenty thousand dollars, or such other amount as may be specified by council rule, to cover costs provided for by subsection (1)(c) of this section. Reasonable and necessary costs of the council directly attributable to inspection and determination of compliance by the certificate holder with the terms of the certification relative to monitoring the effects of construction and operation of the facility shall be charged against such deposit.

The council shall submit to each certificate holder a statement of such expenditures actually made during the preceding calendar quarter which shall be in sufficient detail to explain such expenditures. The certificate holder shall pay the state treasurer the amount of such statement to restore the total amount on deposit to the originally established level: PROVIDED, That if the actual, reasonable, and necessary expenditures for inspection and determination of compliance in the preceding calendar quarter have exceeded the amount of funds on deposit, such excess costs shall be paid by the certificate holder.

(2) If an applicant or certificate holder fails to provide the initial deposit, or if subsequently required payments are not received within thirty days following receipt of the statement from the council, the council may (a) in the case of the applicant, suspend processing of the application until payment is received; or (b) in the case of a certificate holder, suspend the certification.

(3) All payments required of the applicant or certificate holder under this section are to be made to the state treasurer who shall make payments as instructed by the council from the funds submitted. All such funds shall be subject to state auditing procedures. Any unexpended portions thereof shall be returned to the applicant or certificate holder. [1977 ex.s. c 371 § 16.]

RCW 80.50.075 Expedited processing of applications. (1) Any person required to file an application for certification of an energy facility pursuant to this chapter may apply to the council for an expedited processing of such an application. The application for expedited processing shall be submitted to the council in such form and manner and accompanied by such information as may be prescribed by council rule. The council may grant an applicant expedited processing of an application for certification upon finding that:

(a) The environmental impact of the proposed energy facility;
(b) The area potentially affected;
(c) The cost and magnitude of the proposed energy facility;
and

(d) The degree to which the proposed energy facility represents a change in use of the proposed site are not significant enough to warrant a full review of the application for certification under the provisions of this chapter.

(2) Upon granting an applicant expedited processing of an application for certification, the council shall not be required to:

(a) Commission an independent study, notwithstanding the provisions of RCW 80.50.071; nor

(b) Hold an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act, on the application.

(3) The council shall adopt rules governing the expedited processing of an application for certification pursuant to this section. [1989 c 175 § 172; 1977 ex.s. c 371 § 17.]

NOTES:

Effective date--1989 c 175: See note following RCW 34.05.010.

RCW 80.50.080 Counsel for the environment. After the council has received a site application, the attorney general shall appoint an assistant attorney general as a counsel for the environment. The counsel for the environment shall represent the public and its interest in protecting the quality of the environment. Costs incurred by the counsel for the environment in the performance of these duties shall be charged to the office of the attorney general, and shall not be a charge against the appropriation to the energy facility site evaluation council. He shall be accorded all the rights, privileges and responsibilities of an attorney representing a party in a formal action. This section shall not be construed to prevent any person from being heard or represented by counsel in accordance with the other provisions of this chapter. [1977 ex.s. c 371 § 6; 1970 ex.s. c 45 § 8.]

RCW 80.50.085 Council staff to assist applicants, make recommendations. (1) After the council has received a site application, council staff shall assist applicants in identifying issues presented by the application.

(2) Council staff shall review all information submitted and recommend resolutions to issues in dispute that would allow site approval.

(3) Council staff may make recommendations to the council on conditions that would allow site approval. [2001 c 214 § 5.]

NOTES:

Severability--Effective date--2001 c 214: See notes following RCW 80.50.010.

Findings--2001 c 214: See note following RCW 39.35.010.

RCW 80.50.090 Public hearings. (1) The council shall conduct an informational public hearing in the county of the proposed site as soon as practicable but not later than sixty days after receipt of an application for site certification: PROVIDED, That the place of such public hearing shall be as close as practical to the proposed site.

(2) Subsequent to the informational public hearing, the council shall conduct a public hearing to determine whether or not the proposed site is consistent and in compliance with county or regional land use plans or zoning ordinances. If it is determined that the proposed site does conform with existing land use plans or zoning ordinances in effect as of the date of the application, the county or regional planning authority shall not thereafter change such land use plans or zoning ordinances so as to affect the proposed site.

(3) Prior to the issuance of a council recommendation to the governor under RCW 80.50.100 a public hearing, conducted as an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act, shall be held. At such public hearing any person shall be entitled to be heard in support of or in opposition to the application for certification.

(4) Additional public hearings shall be held as deemed appropriate by the council in the exercise of its functions under this chapter. [2001 c 214 § 7; 1989 c 175 § 173; 1970 ex.s. c 45 § 9.]

NOTES:

Severability--Effective date--2001 c 214: See notes following RCW 80.50.010.

Findings--2001 c 214: See note following RCW 39.35.010.

Effective date--1989 c 175: See note following RCW 34.05.010.

RCW 80.50.100 Recommendations to governor--Approval or rejection of certification--Reconsideration. (1) The council shall report to the governor its recommendations as to the approval or rejection of an application for certification within

twelve months of receipt by the council of such an application, or such later time as is mutually agreed by the council and the applicant. If the council recommends approval of an application for certification, it shall also submit a draft certification agreement with the report. The council shall include conditions in the draft certification agreement to implement the provisions of this chapter, including, but not limited to, conditions to protect state or local governmental or community interests affected by the construction or operation of the energy facility, and conditions designed to recognize the purpose of laws or ordinances, or rules or regulations promulgated thereunder, that are preempted or superseded pursuant to RCW 80.50.110 as now or hereafter amended.

(2) Within sixty days of receipt of the council's report the governor shall take one of the following actions:

(a) Approve the application and execute the draft certification agreement; or

(b) Reject the application; or

(c) Direct the council to reconsider certain aspects of the draft certification agreement.

The council shall reconsider such aspects of the draft certification agreement by reviewing the existing record of the application or, as necessary, by reopening the adjudicative proceeding for the purposes of receiving additional evidence. Such reconsideration shall be conducted expeditiously. The council shall resubmit the draft certification to the governor incorporating any amendments deemed necessary upon reconsideration. Within sixty days of receipt of such draft certification agreement, the governor shall either approve the application and execute the certification agreement or reject the application. The certification agreement shall be binding upon execution by the governor and the applicant.

(3) The rejection of an application for certification by the governor shall be final as to that application but shall not preclude submission of a subsequent application for the same site on the basis of changed conditions or new information. [1989 c 175 § 174; 1977 ex.s. c 371 § 8; 1975-'76 2nd ex.s. c 108 § 36; 1970 ex.s. c 45 § 10.]

NOTES:

Effective date--1989 c 175: See note following RCW 34.05.010.

Severability--Effective date--1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

RCW 80.50.105 Transmission facilities for petroleum products--Recommendations to governor. In making its recommendations to the governor under this chapter regarding an application that includes transmission facilities for petroleum

products, the council shall give appropriate weight to city or county facility siting standards adopted for the protection of sole source aquifers. [1991 c 200 § 1112.]

NOTES:

Effective dates--Severability--1991 c 200: See RCW 90.56.901 and 90.56.904.

RCW 80.50.110 Chapter governs and supersedes other law or regulations--Preemption of regulation and certification by state. (1) If any provision of this chapter is in conflict with any other provision, limitation, or restriction which is now in effect under any other law of this state, or any rule or regulation promulgated thereunder, this chapter shall govern and control and such other law or rule or regulation promulgated thereunder shall be deemed superseded for the purposes of this chapter.

(2) The state hereby preempts the regulation and certification of the location, construction, and operational conditions of certification of the energy facilities included under RCW 80.50.060 as now or hereafter amended. [1975-'76 2nd ex.s. c 108 § 37; 1970 ex.s. c 45 § 11.]

NOTES:

Severability--Effective date--1975-'76 2nd ex.s. c 108:
See notes following RCW 43.21F.010.

RCW 80.50.120 Effect of certification. (1) Subject to the conditions set forth therein any certification shall bind the state and each of its departments, agencies, divisions, bureaus, commissions, boards, and political subdivisions, whether a member of the council or not, as to the approval of the site and the construction and operation of the proposed energy facility.

(2) The certification shall authorize the person named therein to construct and operate the proposed energy facility subject only to the conditions set forth in such certification.

(3) The issuance of a certification shall be in lieu of any permit, certificate or similar document required by any department, agency, division, bureau, commission, board, or political subdivision of this state, whether a member of the council or not. [1977 ex.s. c 371 § 10; 1975-'76 2nd ex.s. c 108 § 38; 1970 ex.s. c 45 § 12.]

NOTES:

Severability--Effective date--1975-'76 2nd ex.s. c 108:
See notes following RCW 43.21F.010.

**RCW 80.50.130 Revocation or suspension of certification--
Grounds.** Any certification may be revoked or suspended:

(1) For any material false statement in the application or in the supplemental or additional statements of fact or studies required of the applicant when a true answer would have warranted the council's refusal to recommend certification in the first instance; or

(2) For failure to comply with the terms or conditions of the original certification; or

(3) For violation of the provisions of this chapter, regulations issued thereunder or order of the council. [1970 ex.s. c 45 § 13.]

RCW 80.50.140 Review. (1) A final decision pursuant to RCW 80.50.100 on an application for certification shall be subject to judicial review pursuant to provisions of chapter 34.05 RCW and this section. Petitions for review of such a decision shall be filed in the Thurston county superior court. All petitions for review of a decision under RCW 80.50.100 shall be consolidated into a single proceeding before the Thurston county superior court. The Thurston county superior court shall certify the petition for review to the supreme court upon the following conditions:

(a) Review can be made on the administrative record;

(b) Fundamental and urgent interests affecting the public interest and development of energy facilities are involved which require a prompt determination;

(c) Review by the supreme court would likely be sought regardless of the determination of the Thurston county superior court; and

(d) The record is complete for review.

The Thurston county superior court shall assign a petition for review of a decision under RCW 80.50.100 for hearing at the earliest possible date and shall expedite such petition in every way possible. If the court finds that review cannot be limited to the administrative record as set forth in subparagraph (a) of this subsection because there are alleged irregularities in the procedure before the council not found in the record, but finds that the standards set forth in subparagraphs (b), (c), and (d) of this subsection are met, the court shall proceed to take testimony and determine such factual issues raised by the alleged irregularities and certify the petition and its determination of such factual issues to the supreme court. Upon certification, the supreme court shall assign the petition for hearing at the earliest possible date, and it shall expedite its review and decision in every way possible.

(2) Objections raised by any party in interest concerning procedural error by the council shall be filed with the council within sixty days of the commission of such error, or within thirty days of the first public hearing or meeting of the

council at which the general subject matter to which the error is related is discussed, whichever comes later, or such objection shall be deemed waived for purposes of judicial review as provided in this section.

(3) The rules and regulations adopted by the council shall be subject to judicial review pursuant to the provisions of chapter 34.05 RCW. [1988 c 202 § 62; 1981 c 64 § 3; 1977 ex.s. c 371 § 11; 1970 ex.s. c 45 § 14.]

NOTES:

Severability--1988 c 202: See note following RCW 2.24.050.

RCW 80.50.150 Enforcement of compliance--Penalties. (1) The courts are authorized to grant such restraining orders, and such temporary and permanent injunctive relief as is necessary to secure compliance with this chapter and/or with a site certification agreement issued pursuant to this chapter or a National Pollutant Discharge Elimination System (hereafter in this section, NPDES) permit issued by the council pursuant to chapter 90.48 RCW or any permit issued pursuant to RCW 80.50.040(14). The court may assess civil penalties in an amount not less than one thousand dollars per day nor more than twenty-five thousand dollars per day for each day of construction or operation in material violation of this chapter, or in material violation of any site certification agreement issued pursuant to this chapter, or in violation of any NPDES permit issued by the council pursuant to chapter 90.48 RCW, or in violation of any permit issued pursuant to RCW 80.50.040(14). The court may charge the expenses of an enforcement action relating to a site certification agreement under this section, including, but not limited to, expenses incurred for legal services and expert testimony, against any person found to be in material violation of the provisions of such certification: PROVIDED, That the expenses of a person found not to be in material violation of the provisions of such certification, including, but not limited to, expenses incurred for legal services and expert testimony, may be charged against the person or persons bringing an enforcement action or other action under this section.

(2) Wilful violation of any provision of this chapter shall be a gross misdemeanor.

(3) Wilful or criminally negligent, as defined in RCW 9A.08.010[(1)](d), violation of any provision of an NPDES permit issued by the council pursuant to chapter 90.48 RCW or any permit issued by the council pursuant to RCW 80.50.040(14) or any emission standards promulgated by the council in order to implement the Federal Clean Air Act and the state implementation plan with respect to energy facilities under the jurisdiction provisions of this chapter shall be deemed a crime, and upon conviction thereof shall be punished by a fine of up to twenty-

five thousand dollars per day and costs of prosecution. Any violation of this subsection shall be a gross misdemeanor.

(4) Any person knowingly making any false statement, representation, or certification in any document in any NPDES form, notice, or report required by an NPDES permit or in any form, notice, or report required for or by any permit issued pursuant to *RCW 80.50.090(14) shall be deemed guilty of a crime, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars and costs of prosecution.

(5) Every person who violates the provisions of certificates and permits issued or administered by the council shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to five thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids, or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty provided in this section. The penalty provided in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the council describing such violation with reasonable particularity. The council may, upon written application therefor received within fifteen days after notice imposing any penalty is received by the person incurring the penalty, and when deemed in the best interest to carry out the purposes of this chapter, remit or mitigate any penalty provided in this section upon such terms as the council shall deem proper, and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as it may deem proper. Any person incurring any penalty under this section may appeal the same to the council. Such appeals shall be filed within thirty days of receipt of notice imposing any penalty unless an application for remission or mitigation is made to the council. When an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the council setting forth the disposition of the application. Any penalty imposed under this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or an appeal is filed. When an application for remission or mitigation is made, any penalty incurred hereunder shall become due and payable thirty days after receipt of notice setting forth the disposition of the application unless an appeal is filed from such disposition. Whenever an appeal of any penalty incurred hereunder is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. If the amount of any penalty is not paid to the council within thirty days after

it becomes due and payable, the attorney general, upon the request of the council, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise provided in this chapter. All penalties recovered under this section shall be paid into the state treasury and credited to the general fund.

(6) Civil proceedings to enforce this chapter may be brought by the attorney general or the prosecuting attorney of any county affected by the violation on his own motion or at the request of the council. Criminal proceedings to enforce this chapter may be brought by the prosecuting attorney of any county affected by the violation on his own motion or at the request of the council.

(7) The remedies and penalties in this section, both civil and criminal, shall be cumulative and shall be in addition to any other penalties and remedies available at law, or in equity, to any person. [1979 ex.s. c 254 § 2; 1979 c 41 § 1; 1977 ex.s. c 371 § 12; 1970 ex.s. c 45 § 15.]

NOTES:

Reviser's note: (1) This section was amended by 1979 c 41 § 1 and by 1979 ex.s. c 254 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

*(2) The reference to RCW 80.50.090(14) appears to be in error; that section has only four subsections and concerns public hearings, not issuance of permits. RCW 80.50.040(12) relates to issuance of permits.

RCW 80.50.160 Availability of information. The council shall make available for public inspection and copying during regular office hours at the expense of any person requesting copies, any information filed or submitted pursuant to this chapter. [1970 ex.s. c 45 § 16.]

RCW 80.50.175 Study of potential sites--Fee--Disposition of payments. (1) In addition to all other powers conferred on the council under this chapter, the council shall have the powers set forth in this section.

(2) The council, upon request of any potential applicant, is authorized, as provided in this section, to conduct a preliminary study of any potential site prior to receipt of an application for site certification. A fee of ten thousand dollars for each potential site, to be applied toward the cost of any study agreed upon pursuant to subsection (3) of this

section, shall accompany the request and shall be a condition precedent to any action on the request by the council.

(3) After receiving a request to study a potential site, the council shall commission its own independent consultant to study matters relative to the potential site. The study shall include, but need not be limited to, the preparation and analysis of environmental impact information for the proposed potential site and any other matter the council and the potential applicant deem essential to an adequate appraisal of the potential site. In conducting the study, the council is authorized to cooperate and work jointly with the county or counties in which the potential site is located, any federal, state, or local governmental agency that might be requested to comment upon the potential site, and any municipal or public corporation having an interest in the matter. The full cost of the study shall be paid by the potential applicant: PROVIDED, That such costs exceeding a total of ten thousand dollars shall be payable subject to the potential applicant giving prior approval to such excess amount.

(4) Any study prepared by the council pursuant to subsection (3) of this section may be used in place of the "detailed statement" required by RCW 43.21C.030(2)(c) by any branch of government except the council created pursuant to chapter 80.50 RCW.

(5) All payments required of the potential applicant under this section are to be made to the state treasurer, who in turn shall pay the consultant as instructed by the council. All such funds shall be subject to state auditing procedures. Any unexpended portions thereof shall be returned to the potential applicant.

(6) Nothing in this section shall change the requirements for an application for site certification or the requirement of payment of a fee as provided in RCW 80.50.071, or change the time for disposition of an application for certification as provided in RCW 80.50.100.

(7) Nothing in this section shall be construed as preventing a city or county from requiring any information it deems appropriate to make a decision approving a particular location. [1983 c 3 § 205; 1977 ex.s. c 371 § 13; 1975-'76 2nd ex.s. c 108 § 40; 1974 ex.s. c 110 § 2.]

NOTES:

Severability--Effective date--1975-'76 2nd ex.s. c 108:
See notes following RCW 43.21F.010.

RCW 80.50.180 Proposals and actions by other state agencies and local political subdivisions pertaining to energy facilities exempt from "detailed statement" required by RCW 43.21C.030. Except for actions of the council under chapter 80.50 RCW, all proposals for legislation and other actions of

any branch of government of this state, including state agencies, municipal and public corporations, and counties, to the extent the legislation or other action involved approves, authorizes, permits, or establishes procedures solely for approving, authorizing or permitting, the location, financing or construction of any energy facility subject to certification under chapter 80.50 RCW, shall be exempt from the "detailed statement" required by RCW 43.21C.030. Nothing in this section shall be construed as exempting any action of the council from any provision of chapter 43.21C RCW. [1977 ex.s. c 371 § 14.]

RCW 80.50.190 Disposition of receipts from applicants.

The state general fund shall be credited with all receipts from applicants paid to the state pursuant to chapter 80.50 RCW. Such funds shall be used only by the council for the purposes set forth in chapter 80.50 RCW. All expenditures shall be authorized by law. [1977 ex.s. c 371 § 15.]

RCW 80.50.300 Unfinished nuclear power projects--Transfer of all or a portion of a site to a political subdivision or subdivisions of the state--Water rights.

(1) This section applies only to unfinished nuclear power projects. If a certificate holder stops construction of a nuclear energy facility before completion, terminates the project or otherwise resolves not to complete construction, never introduces or stores fuel for the energy facility on the site, and never operates the energy facility as designed to produce energy, the certificate holder may contract, establish interlocal agreements, or use other formal means to effect the transfer of site restoration responsibilities, which may include economic development activities, to any political subdivision or subdivisions of the state composed of elected officials. The contracts, interlocal agreements, or other formal means of cooperation may include, but are not limited to provisions effecting the transfer or conveyance of interests in the site and energy facilities from the certificate holder to other political subdivisions of the state, including costs of maintenance and security, capital improvements, and demolition and salvage of the unused energy facilities and infrastructure.

(2) If a certificate holder transfers all or a portion of the site to a political subdivision or subdivisions of the state composed of elected officials and located in the same county as the site, the council shall amend the site certification agreement to release those portions of the site that it finds are no longer intended for the development of an energy facility.

Immediately upon release of all or a portion of the site pursuant to this section, all responsibilities for maintaining the public welfare for portions of the site transferred, including but not limited to health and safety, are transferred

to the political subdivision or subdivisions of the state. For sites located on federal land, all responsibilities for maintaining the public welfare for all of the site, including but not limited to health and safety, must be transferred to the political subdivision or subdivisions of the state irrespective of whether all or a portion of the site is released.

(3) The legislature finds that for all or a portion of sites that have been transferred to a political subdivision or subdivisions of the state prior to September 1, 1999, ensuring water for site restoration including economic development, completed pursuant to this section can best be accomplished by a transfer of existing surface water rights, and that such a transfer is best accomplished administratively through procedures set forth in existing statutes and rules. However, if a transfer of water rights is not possible, the department of ecology shall, within six months of the transfer of the site or portion thereof pursuant to subsection (1) of this section, create a trust water right under chapter 90.42 RCW containing between ten and twenty cubic feet per second for the benefit of the appropriate political subdivision or subdivisions of the state. The trust water right shall be used in fulfilling site restoration responsibilities, including economic development. The trust water right shall be from existing valid water rights within the basin where the site is located.

(4) For purposes of this section, "political subdivision or subdivisions of the state" means a city, town, county, public utility district, port district, or joint operating agency. [2000 c 243 § 1; 1996 c 4 § 2.]

RCW 80.50.310 Council actions--Exemption from chapter 43.21C RCW. Council actions pursuant to the transfer of the site or portions of the site under RCW 80.50.300 are exempt from the provisions of chapter 43.21C RCW. [1996 c 4 § 3.]

RCW 80.50.320 Governor to evaluate council efficiency, make recommendations. The governor shall undertake an evaluation of the operations of the council to assess means to enhance its efficiency. The assessment must include whether the efficiency of the siting process would be improved by conducting the process under the state environmental policy act in a particular sequence relative to the adjudicative proceeding. The results of this assessment may include recommendations for administrative changes, statutory changes, or expanded staffing levels. [2001 c 214 § 8.]

NOTES:

Severability--Effective date--2001 c 214: See notes following RCW 80.50.010.

Findings--2001 c 214: See note following RCW 39.35.010.

RCW 80.50.900 Severability--1970 ex.s. c 45. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, is not affected. [1970 ex.s. c 45 § 17.]

RCW 80.50.901 Severability--1974 ex.s. c 110. If any provision of this 1974 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, is not affected. [1974 ex.s. c 110 § 3.]

RCW 80.50.902 Severability--1977 ex.s. c 371. If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 371 § 20.]

RCW 80.50.903 Severability--1996 c 4. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1996 c 4 § 5.]

RCW 80.50.904 Effective date--1996 c 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 6, 1996]. [1996 c 4 § 6.]

CHAPTER 80.52 RCW

ENERGY FINANCING VOTER APPROVAL ACT

Sections

80.52.010	Short title.
80.52.020	Purpose.
80.52.030	Definitions.
80.52.040	Election approval required before issuance of bonds.
80.52.050	Conduct of election.
80.52.060	Form of ballot propositions.
80.52.070	Approval of request for financing authority.

80.52.080 Priorities.
80.52.900 Severability--1981 2nd ex.s. c 6.
80.52.910 Effective dates--1981 2nd ex.s. c 6.

RCW 80.52.010 Short title. This chapter may be cited as the Washington state energy financing voter approval act. [1981 2nd ex.s. c 6 § 1 (Initiative Measure No. 394, approved November 3, 1981).]

RCW 80.52.020 Purpose. The purpose of this chapter is to provide a mechanism for citizen review and approval of proposed financing for major public energy projects. The development of dependable and economic energy sources is of paramount importance to the citizens of the state, who have an interest in insuring that major public energy projects make the best use of limited financial resources. Because the construction of major public energy projects will significantly increase utility rates for all citizens, the people of the state hereby establish a process of voter approval for such projects. [1981 2nd ex.s. c 6 § 2 (Initiative Measure No. 394, approved November 3, 1981).]

RCW 80.52.030 Definitions. The definitions set forth in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Public agency" means a public utility district, joint operating agency, city, county, or any other state governmental agency, entity, or political subdivision.

(2) "Major public energy project" means a plant or installation capable, or intended to be capable, of generating electricity in an amount greater than three hundred fifty megawatts, measured using maximum continuous electric generating capacity, less minimum auxiliary load, at average ambient temperature and pressure. Where two or more such plants are located within the same geographic site, each plant shall be considered a major public energy project. An addition to an existing facility is not deemed to be a major energy project unless the addition itself is capable, or intended to be capable, of generating electricity in an amount greater than three hundred fifty megawatts. A project which is under construction on July 1, 1982, shall not be considered a major public energy project unless the official agency budget or estimate for total construction costs for the project as of July 1, 1982, is more than two hundred percent of the first official estimate of total construction costs as specified in the senate energy and utilities committee WPPSS inquiry report, volume one, January 12, 1981, and unless, as of July 1, 1982, the projected remaining cost of construction for that project exceeds two hundred million dollars.

(3) "Cost of construction" means the total cost of planning and building a major public energy project and placing it into operation, including, but not limited to, planning cost, direct construction cost, licensing cost, cost of fuel inventory for the first year's operation, interest, and all other costs incurred prior to the first day of full operation, whether or not incurred prior to July 1, 1982.

(4) "Cost of acquisition" means the total cost of acquiring a major public energy project from another party, including, but not limited to, principal and interest costs.

(5) "Bond" means a revenue bond, a general obligation bond, or any other indebtedness issued by a public agency or its assignee.

(6) "Applicant" means a public agency, or the assignee of a public agency, requesting the secretary of state to conduct an election pursuant to this chapter.

(7) "Cost-effective" means that a project or resource is forecast:

(a) To be reliable and available within the time it is needed; and

(b) To meet or reduce the electric power demand of the intended consumers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative project or resource, or any combination thereof.

(8) "System cost" means an estimate of all direct costs of a project or resource over its effective life, including, if applicable, the costs of distribution to the consumer, and, among other factors, waste disposal costs, end-of-cycle costs, and fuel costs (including projected increases), and such quantifiable environmental costs and benefits as are directly attributable to the project or resource. [2002 c 190 § 1; 1995 c 69 § 2; 1981 2nd ex.s. c 6 § 3 (Initiative Measure No. 394, approved November 3, 1981).]

RCW 80.52.040 Election approval required before issuance of bonds. No public agency or assignee of a public agency may issue or sell bonds to finance the cost of construction or the cost of acquisition of a major public energy project, or any portion thereof, unless it has first obtained authority for the expenditure of the funds to be raised by the sale of such bonds for that project at an election conducted in the manner provided in this chapter. [1981 2nd ex.s. c 6 § 4 (Initiative Measure No. 394, approved November 3, 1981).]

RCW 80.52.050 Conduct of election. The election required under RCW 80.52.040 shall be conducted in the manner provided in this section.

(1)(a) If the applicant is a public utility district, joint operating agency, city, or county, the election shall be among

the voters of the public utility district, city, or county, or among the voters of the local governmental entities comprising the membership of the joint operating agency.

(b) If the applicant is any public agency other than those described in subsection (1)(a) of this section, or is an assignee of a joint operating agency and not itself a joint operating agency, the election shall be conducted statewide in the manner provided in *Title 29 RCW for statewide elections.

(2) The election shall be held at the next statewide general election occurring more than ninety days after submission of a request by an applicant to the secretary of state unless a special election is requested by the applicant as provided in this section.

(3) If no statewide election can be held under subsection (2) of this section within one hundred twenty days of the submission to the secretary of state of a request by an applicant for financing authority under this chapter, the applicant may request that a special election be held if such election is necessary to avoid significant delay in construction or acquisition of the energy project. Within ten days of receipt of such a request for a special election, the secretary of state shall designate a date for the election pursuant to **RCW 29.13.010 and certify the date to the county auditor of each county in which an election is to be held under this section.

(4) Prior to an election under this section, the applicant shall submit to the secretary of state a cost-effectiveness study, prepared by an independent consultant approved by the state finance committee, pertaining to the major public energy project under consideration. The study shall be available for public review and comment for thirty days. At the end of the thirty-day period, the applicant shall prepare a final draft of the study which includes the public comment, if any.

(5) The secretary of state shall certify the ballot issue for the election to be held under this section to the county auditor of each county in which an election is to be held. The certification shall include the statement of the proposition as provided in RCW 80.52.060. The costs of the election shall be relieved by the applicant in the manner provided by **RCW 29.13.045. In addition, the applicant shall reimburse the secretary of state for the applicant's share of the costs related to the preparation and distribution of the voters' pamphlet required by subsection (6) of this section and such other costs as are attributable to any election held pursuant to this section.

(6) Prior to an election under this section, the secretary of state shall provide an opportunity for supporters and opponents of the requested financing authority to present their respective views in a voters' pamphlet which shall be distributed to the voters of the local governmental entities participating in the election. Upon submission of an applicant's request for an election pursuant to this section,

the applicant shall provide the secretary of state with the following information regarding each major public energy project for which the applicant seeks financing authority at such election, which information shall be included in the voters' pamphlet:

(a) The name, location, and type of major public energy project, expressed in common terms;

(b) The dollar amount and type of bonds being requested;

(c) If the bond issuance is intended to finance the acquisition of all or a portion of the project, the anticipated total cost of the acquisition of the project;

(d) If the bond issuance is intended to finance the planning or construction of all or a portion of the project, the anticipated total cost of construction of the project;

(e) The projected average rate increase for consumers of the electricity to be generated by the project. The rate increase shall be that which will be necessary to repay the total indebtedness incurred for the project, including estimated interest;

(f) A summary of the final cost-effectiveness study conducted under subsection (4) of this section;

(g) The anticipated functional life of the project;

(h) The anticipated decommissioning costs of the project;
and

(i) If a special election is requested by the applicant, the reasons for requesting a special election. [1982 c 88 § 1; 1981 2nd ex.s. c 6 § 5 (Initiative Measure No. 394, approved November 3, 1981).]

NOTES:

Reviser's note: *(1) Title 29 RCW was repealed and/or recodified pursuant to 2003 c 111, effective July 1, 2004. See Title 29A RCW.

** (2) RCW 29.13.010 and 29.13.045 were recodified as RCW 29A.04.320 and 29A.04.410, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Effective date--1982 c 88: "This act shall take effect on July 1, 1982." [1982 c 88 § 2.]

RCW 80.52.060 Form of ballot propositions. The proposition for each major public energy project listed upon a ballot pursuant to this chapter shall be in the form provided in this section.

(1) If the funds are intended to finance the planning or construction of all or a portion of the project, the proposition shall read substantially as follows:

"Shall (name of applicant) be authorized to spend (dollar amount of financing authority requested) to construct the (name of the

project) (type of project) located at (location), the anticipated total construction cost of which is (anticipated cost of construction)?"

(2) If the financing authority is intended to finance the acquisition of all or a portion of the project from another party, the proposition shall read substantially as follows:

"Shall (name of applicant) be authorized to spend (dollar amount of financing authority requested) to acquire the (name of project) (type of project) located at (location), the anticipated total acquisition cost of which is (anticipated cost of acquisition)?"

[1981 2nd ex.s. c 6 § 6 (Initiative Measure No. 394, approved November 3, 1981).]

RCW 80.52.070 Approval of request for financing authority.

A request for financing authority pursuant to this chapter shall be considered approved if it receives the approval of a majority of those voting on the request. [1981 2nd ex.s. c 6 § 7 (Initiative Measure No. 394, approved November 3, 1981).]

RCW 80.52.080 Priorities. In planning for future energy expenditures, public agencies shall give priority to projects and resources which are cost-effective. Priority for future bond sales to finance energy expenditures by public agencies shall be given: First, to conservation; second, to renewable resources; third, to generating resources utilizing waste heat or generating resources of high fuel-conversion efficiency; and fourth, to all other resources. This section does not apply to projects which are under construction on December 3, 1981. [1981 2nd ex.s. c 6 § 8 (Initiative Measure No. 394, approved November 3, 1981).]

RCW 80.52.900 Severability--1981 2nd ex.s. c 6. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 2nd ex.s. c 6 § 10 (Initiative Measure No. 394, approved November 3, 1981).]

RCW 80.52.910 Effective dates--1981 2nd ex.s. c 6. Section 8 of this act shall take effect immediately. The remainder of this act shall take effect on July 1, 1982. Public agencies intending to submit a request for financing authority under this act are authorized to institute the procedures specified in section 5(4) of this act prior to the effective

date of this act. [1981 2nd ex.s. c 6 § 11 (Initiative Measure No. 394, approved November 3, 1981).]

CHAPTER 80.54 RCW

ATTACHMENTS TO TRANSMISSION FACILITIES

Sections

80.54.010	Definitions.
80.54.020	Regulation of rates, terms, and conditions-- Criteria.
80.54.030	Commission order fixing rates, terms, or conditions.
80.54.040	Criteria for just and reasonable rate.
80.54.050	Exemptions from chapter.
80.54.060	Adoption of rules.
80.54.070	Uniform attachment rates within utility service area.

RCW 80.54.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Attachment" means any wire or cable for the transmission of intelligence by telecommunications or television, including cable television, light waves, or other phenomena, or for the transmission of electricity for light, heat, or power, and any related device, apparatus, or auxiliary equipment, installed upon any pole or in any telecommunications, electrical, cable television, or communications right of way, duct, conduit, manhole or handhole, or other similar facilities owned or controlled, in whole or in part, by one or more utilities, where the installation has been made with the consent of the one or more utilities.

(2) "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association, or cooperatively organized association, other than a utility, which is authorized to construct attachments upon, along, under, or across the public ways.

(3) "Utility" means any electrical company or telecommunications company as defined in RCW 80.04.010, and does not include any entity cooperatively organized, or owned by federal, state, or local government, or a subdivision of state or local government. [1985 c 450 § 40; 1979 c 33 § 1.]

NOTES:

Severability--Legislative review--1985 c 450: See RCW 80.36.900 and 80.36.901.

RCW 80.54.020 Regulation of rates, terms, and conditions--
Criteria. The commission shall have the authority to regulate in the public interest the rates, terms, and conditions for attachments by licensees or utilities. All rates, terms, and conditions made, demanded, or received by any utility for any attachment by a licensee or by a utility must be just, fair, reasonable, and sufficient. [1979 c 33 § 2.]

RCW 80.54.030 Commission order fixing rates, terms, or conditions. Whenever the commission shall find, after hearing had upon complaint by a licensee or by a utility, that the rates, terms, or conditions demanded, exacted, charged, or collected by any utility in connection with attachments are unjust, unreasonable, or that the rates or charges are insufficient to yield a reasonable compensation for the attachment, the commission shall determine the just, reasonable, or sufficient rates, terms, and conditions thereafter to be observed and in force and shall fix the same by order. In determining and fixing the rates, terms, and conditions, the commission shall consider the interest of the customers of the attaching utility or licensee, as well as the interest of the customers of the utility upon which the attachment is made. [1979 c 33 § 3.]

RCW 80.54.040 Criteria for just and reasonable rate. A just and reasonable rate shall assure the utility the recovery of not less than all the additional costs of procuring and maintaining pole attachments, nor more than the actual capital and operating expenses, including just compensation, of the utility attributable to that portion of the pole, duct, or conduit used for the pole attachment, including a share of the required support and clearance space, in proportion to the space used for the pole attachment, as compared to all other uses made of the subject facilities, and uses which remain available to the owner or owners of the subject facilities. [1979 c 33 § 4.]

RCW 80.54.050 Exemptions from chapter. Nothing in this chapter shall be deemed to apply to any attachment by one or more electrical companies on the facilities of one or more other electrical companies. [1979 c 33 § 5.]

RCW 80.54.060 Adoption of rules. The commission shall adopt rules, regulations and procedures relative to the implementation of this chapter. [1979 c 33 § 6.]

RCW 80.54.070 Uniform attachment rates within utility service area. Notwithstanding any other provision of law, a utility as defined in RCW 80.54.010(3) and any utility not regulated by the utilities and transportation commission shall levy attachment rates which are uniform for all licensees within the utility service area. [1979 c 33 § 7.]

CHAPTER 80.58 RCW

NONPOLLUTING POWER GENERATION EXEMPTION

Sections

80.58.010 Nonpolluting power generation by individual--
Exemption from regulation--Authorization to
contract with utility.

**RCW 80.58.010 Nonpolluting power generation by individual--
-Exemption from regulation--Authorization to contract with
utility.** The generation of power by a nonpolluting, renewable energy source by an individual natural person not otherwise engaged in the business of power generation is declared to be exempt from all statutes and rules otherwise regulating the generation of power: PROVIDED, That such an individual is hereby authorized to provide such power to the utility servicing the property on which the power is generated and the servicing utility is hereby authorized to accept such power under such terms and conditions as may be agreed to between the parties. [1979 ex.s. c 191 § 11.]

NOTES:

Severability--1979 ex.s. c 191: See RCW 82.35.900.

CHAPTER 80.60 RCW

NET METERING OF ELECTRICITY

Sections

80.60.005 Findings.
80.60.010 Definitions.
80.60.020 Available on first-come, first-served basis--
Interconnected metering systems allowed--Charges
to customer-generator.
80.60.030 Net energy measurement--Required calculation--
Unused credit.
80.60.040 Safety, power quality, and interconnection
requirements--Customer-generator's expense--
Commission may adopt additional requirements.

RCW 80.60.005 Findings. The legislature finds that it is in the public interest to:

- (1) Encourage private investment in renewable energy resources;
- (2) Stimulate the economic growth of this state; and
- (3) Enhance the continued diversification of the energy resources used in this state. [1998 c 318 § 1.]

RCW 80.60.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

- (1) "Commission" means the utilities and transportation commission.
- (2) "Customer-generator" means a user of a net metering system.
- (3) "Electrical company" means a company owned by investors that meets the definition of RCW 80.04.010.
- (4) "Electric cooperative" means a cooperative or association organized under chapter 23.86 or 24.06 RCW.
- (5) "Electric utility" means any electrical company, public utility district, irrigation district, port district, electric cooperative, or municipal electric utility that is engaged in the business of distributing electricity to retail electric customers in the state.
- (6) "Irrigation district" means an irrigation district under chapter 87.03 RCW.
- (7) "Municipal electric utility" means a city or town that owns or operates an electric utility authorized by chapter 35.92 RCW.
- (8) "Net metering" means measuring the difference between the electricity supplied by an electric utility and the electricity generated by a customer-generator that is fed back to the electric utility over the applicable billing period.
- (9) "Net metering system" means a fuel cell or a facility for the production of electrical energy that:
 - (a) Uses as its fuel either solar, wind, or hydropower;
 - (b) Has a generating capacity of not more than twenty-five kilowatts;
 - (c) Is located on the customer-generator's premises;
 - (d) Operates in parallel with the electric utility's transmission and distribution facilities; and
 - (e) Is intended primarily to offset part or all of the customer-generator's requirements for electricity.
- (10) "Port district" means a port district within which an industrial development district has been established as authorized by Title 53 RCW.
- (11) "Public utility district" means a district authorized by chapter 54.04 RCW. [2000 c 158 § 1; 1998 c 318 § 2.]

RCW 80.60.020 Available on first-come, first-served basis--Interconnected metering systems allowed--Charges to customer-generator. An electric utility:

(1) Shall offer to make net metering available to eligible customers-generators on a first-come, first-served basis until the cumulative generating capacity of net metering systems equals 0.1 percent of the utility's peak demand during 1996, of which not less than 0.05 percent shall be attributable to net metering systems that use as its fuel either solar, wind, or hydropower;

(2) Shall allow net metering systems to be interconnected using a standard kilowatt-hour meter capable of registering the flow of electricity in two directions, unless the commission, in the case of an electrical company, or the appropriate governing body, in the case of other electric utilities, determines, after appropriate notice and opportunity for comment:

(a) That the use of additional metering equipment to monitor the flow of electricity in each direction is necessary and appropriate for the interconnection of net metering systems, after taking into account the benefits and costs of purchasing and installing additional metering equipment; and

(b) How the cost of purchasing and installing an additional meter is to be allocated between the customer-generator and the utility;

(3) Shall charge the customer-generator a minimum monthly fee that is the same as other customers of the electric utility in the same rate class, but shall not charge the customer-generator any additional standby, capacity, interconnection, or other fee or charge unless the commission, in the case of an electrical company, or the appropriate governing body, in the case of other electric utilities, determines, after appropriate notice and opportunity for comment that:

(a) The electric utility will incur direct costs associated with interconnecting or administering net metering systems that exceed any offsetting benefits associated with these systems; and

(b) Public policy is best served by imposing these costs on the customer-generator rather than allocating these costs among the utility's entire customer base. [2000 c 158 § 2; 1998 c 318 § 3.]

RCW 80.60.030 Net energy measurement--Required calculation--Unused credit. Consistent with the other provisions of this chapter, the net energy measurement must be calculated in the following manner:

(1) The electric utility shall measure the net electricity produced or consumed during the billing period, in accordance with normal metering practices.

(2) If the electricity supplied by the electric utility exceeds the electricity generated by the customer-generator and

fed back to the electric utility during the billing period, the customer-generator shall be billed for the net electricity supplied by the electric utility, in accordance with normal metering practices.

(3) If electricity generated by the customer-generator exceeds the electricity supplied by the electric utility, the customer-generator:

(a) Shall be billed for the appropriate customer charges for that billing period, in accordance with RCW 80.60.020; and

(b) Shall be credited for the excess kilowatt-hours generated during the billing period, with this kilowatt-hour credit appearing on the bill for the following billing period.

At the beginning of each calendar year, any remaining unused kilowatt-hour credit accumulated during the previous year shall be granted to the electric utility, without any compensation to the customer-generator. [1998 c 318 § 4.]

RCW 80.60.040 Safety, power quality, and interconnection requirements--Customer-generator's expense--Commission may adopt additional requirements. (1) A net metering system used by a customer-generator shall include, at the customer-generator's own expense, all equipment necessary to meet applicable safety, power quality, and interconnection requirements established by the national electrical code, national electrical safety code, the institute of electrical and electronics engineers, and underwriters laboratories.

(2) The commission, in the case of an electrical company, or the appropriate governing body, in the case of other electric utilities, after appropriate notice and opportunity for comment, may adopt by regulation additional safety, power quality, and interconnection requirements for customer-generators that the commission or governing body determines are necessary to protect public safety and system reliability.

(3) An electric utility may not require a customer-generator whose net metering system meets the standards in subsections (1) and (2) of this section to comply with additional safety or performance standards, perform or pay for additional tests, or purchase additional liability insurance. However, an electric utility shall not be liable directly or indirectly for permitting or continuing to allow an attachment of a net metering system, or for the acts or omissions of the customer-generator that cause loss or injury, including death, to any third party. [2000 c 158 § 3; 1998 c 318 § 5.]

CHAPTER 80.66 RCW

RADIO COMMUNICATIONS SERVICE COMPANIES

Sections

80.66.010 Scope of regulation--Filing of certain agreements.

RCW 80.66.010 Scope of regulation--Filing of certain agreements. The commission shall not regulate radio communications service companies, except that:

(1) The commission may regulate the rates, services, facilities, and practices of radio communications service companies, within a geographic service area or a portion of a geographic service area in which it is authorized to operate by the federal communications commission if it is the only provider of basic telecommunications service within such geographic service area or such portion of a geographic service area. For purposes of this section, "basic telecommunications service" means voice grade, local exchange telecommunications service.

(2) Actions or transactions of radio communications service companies that are not regulated pursuant to subsection (1) of this section shall not be deemed actions or transactions otherwise permitted, prohibited, or regulated by the commission for purposes of RCW 19.86.170.

(3) Radio communications service companies shall file with the commission copies of all agreements with any of their affiliated interests as defined in RCW 80.16.010, showing the rates, tolls, rentals, contracts, and charges of such affiliated interest for services rendered and equipment and facilities supplied to the radio communications service company, except that such agreements need not be filed where the services rendered and equipment and facilities supplied are provided by the affiliated interest under a tariff or price list filed with the commission. [1985 c 167 § 2.]

CHAPTER 80.98 RCW

CONSTRUCTION

Sections

80.98.010	Continuation of existing law.
80.98.020	Title, chapter, section headings not part of law.
80.98.030	Invalidity of part of title not to affect remainder.
80.98.040	Repeals and saving.
80.98.050	Emergency--1961 c 14.

RCW 80.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as

restatements and continuations, and not as new enactments.
[1961 c 14 § 80.98.010.]

RCW 80.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1961 c 14 § 80.98.020.]

RCW 80.98.030 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1961 c 14 § 80.98.030.]

RCW 80.98.040 Repeals and saving. See 1961 c 14 § 80.98.040.

RCW 80.98.050 Emergency--1961 c 14. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1961 c 14 § 80.98.050.]