

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of

PACIFICORP d/b/a PACIFIC POWER  
& LIGHT COMPANY

Petitioner,

Petition for Declaratory Order Regarding  
Interpretation of WAC 480-100-128( 6) and  
WAC 480-100-178

DOCKET UE-132119

COMMISSION STAFF'S  
STATEMENT OF FACT AND LAW

**I. INTRODUCTION**

1           On November 15, 2013, PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp or Company) filed a Petition for a Declaratory Order (Petition) to clarify the interpretation of WAC 480-100-128(6) and WAC 480-100-178.<sup>1</sup> PacifiCorp asks the Commission to consider whether these rules allow the Company to issue notices of disconnection combined with regular billing statements. By notice dated November 20, 2013, the Washington Utilities and Transportation Commission (Commission) invited interested persons to submit a statement of fact and law on the issues raised by the Petition. Commission Staff (Staff) submits this response to that invitation.

2           PacifiCorp's Petition is brought under the authority of WAC 34.05.240(1) and WAC 480-07-930(1). Staff does not contest the Commission's authority to enter a declaratory

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<sup>1</sup> The heading of PacifiCorp's Petition also lists WAC 480-100-128(3). However, the body of the Petition does not ask the Commission for an interpretation of that specific rule, nor is it referenced in the Commission's November 20, 2013, Notice. Consequently, Staff's response does not discuss the interpretation of that rule.

order on the question posed by the Petition, which is whether WAC 480-100-128(6) and WAC 480-100-178 allow the Company to issue disconnection notices combined with regular billing statements. WAC 480-100-128(6) and WAC 480-100-178 are rules enforceable by the Commission with respect to PacifiCorp. As further discussed below, Staff disagrees with PacifiCorp's interpretation of the rules, and believes that the rules do not permit disconnection notices combined with regular billing statements.

## II. STATEMENT OF FACTS

3 In its Petition, PacifiCorp asserts that, in practice, it combines disconnection notices (which PacifiCorp refers to as "past due" notices) with regular billing statements, and does not issue them separately. PacifiCorp provides an example of this "combined" notice in Attachment A to its Petition. As described in the attached Declaration of Rayne Pearson (Declaration), this practice came to Staff's attention in the processing of a consumer complaint investigated in July, 2013.<sup>2</sup> This complaint directly involved a consumer's allegation that she had not received a first disconnection notice.<sup>3</sup> At that time, PacifiCorp informed Staff that it does not issue a monthly billing statement and a separate past due notice each month, and had been combining bills and first notices of disconnection since 1995.<sup>4</sup>

4 Staff, in processing the informal complaint, recorded violations of WAC 480-100-178 for including the customer's notice on the bill, and violations of WAC 480-100-128(6) for failing to properly issue a first disconnection notice separate from the customer's bill.<sup>5</sup> Staff upheld these findings on further review requested by PacifiCorp.<sup>6</sup> Staff informed the Company that the rules require that a company provide a separate notice of disconnection

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<sup>2</sup> Declaration of Rayne Pearson, ¶¶ 2, 14-19.

<sup>3</sup> *Id.* ¶ 19.

<sup>4</sup> *Id.* ¶¶ 14-15.

<sup>5</sup> *Id.* ¶ 15.

<sup>6</sup> *Id.* ¶¶ 16-18.

distinct from a regular billing statement, and that the Company cannot combine them together. However, no enforcement action or proceeding to impose penalties, related to this or any other Staff investigation, is presently before the Commission.

5           In addition to the July, 2013, consumer complaint, PacifiCorp's Petition refers to ten previous consumer complaints since 1995, described in its Attachment C. As Ms. Pearson describes in her Declaration, the July, 2013, consumer complaint stands alone as the only instance, including those ten complaints, in which the disconnection notice to the customer was a focal point of the complaint. Although PacifiCorp may have provided Staff with combined notices and billing statements in connection with the previous complaints, they all involved issues different from the one PacifiCorp raises in its Petition. In those complaints, Staff did not specifically perform compliance checks on the documents related to the issue in the Petition.<sup>7</sup> In addition, the recent consumer complaint was the first such instance in more than four years in which PacifiCorp provided its combined document to Staff.<sup>8</sup>

6           As far as Staff is aware, PacifiCorp is the only energy company in Washington of the five regulated by the Commission that combines disconnection notices into regular billing statements. Staff recently confirmed that each of the other four regulated energy companies – Puget Sound Energy, Inc., Avista Corp., Cascade Natural Gas Corp., and Northwest Natural Gas Corp. – issue disconnection notices separate from their billing statements.<sup>9</sup>

### III. STATEMENT OF LAW AND ARGUMENT

#### A. **The Commission's Requirements for Disconnection Notices and Billing Statements are Different and are Contained in Separate Commission Rules.**

7           The disconnection of service to a customer by an electric utility is governed by WAC

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<sup>7</sup> *Id.* ¶¶ 3-12.

<sup>8</sup> *Id.* ¶ 2.

<sup>9</sup> *Id.* ¶ 20.

480-100-128.<sup>10</sup> Except as described by subsection (2) of WAC 480-100-128, a utility must notify customers before disconnecting their service. WAC 480-100-128(6). The utility must serve a “written disconnection notice” to the customer by one of two means: either “by mail, or by personal delivery to the customer’s address with notice posted to the primary door.” WAC 480-100-128(6)(a). The rule also describes specifically what must be included in the written disconnection notice. WAC 480-100-128(6)(a)(i)-(iv). In addition to that first written disconnection notice, a second notice must be provided to the customer by one of three methods: 1) delivered to the service premises and attached to the customer’s primary door; 2) mailed; or 3) telephone notice. WAC 480-100-128(6)(d)(i)-(iii). There is no reference to bills or billing statements in WAC 480-100-128(6), nor does that rule expressly permit the “written disconnection notice” to be simply added into the billing statement. The rule does not refer to any other Commission rules regarding billing statements:

8           Rather, detailed billing requirements are set out in a separate Commission rule, WAC 480-100-178. Subsection (1) describes what must be contained in customer bills. WAC 480-100-178 contains no reference whatsoever to “disconnection” or a “disconnection notice.” It also does not refer to the disconnection rule, WAC 480-100-128.

9           Because the requirements for disconnection notices and the requirements for billing statements are contained in completely separate sections of the WAC, and neither of those cross-reference each other, the most reasonable interpretation is that the two documents are separate and may not be combined.

10           In addition, the allowable methods for providing notice of disconnection differ from the allowable methods for providing the customer’s regular bill. This too supports the interpretation that a written disconnection notice and a billing statement are separate

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<sup>10</sup> Disconnection of service to a customer by a gas utility is governed by WAC 480-90-128, which contains similar language. PacifiCorp did not seek a declaratory order regarding WAC 480-90-128.

documents. As noted above, the requirements governing notice of service disconnection are significantly detailed in WAC 480-100-128. There is no doubt that disconnection of service seriously impacts a customer, and the rule's detailed notice requirements recognize the importance that imminent disconnection, and how to avoid it, be clearly, prominently, and unambiguously communicated to the customer. Thus, in addition to being mailed, the notice may be personally delivered and attached to the customer's primary door. This is intended to get the customer's immediate attention. By contrast, it is unreasonable to expect that a company would provide a regular billing statement by hand delivering and posting it to a customer's door, so why should a company be permitted to post the billing statement like the one shown in Attachment B of PacifiCorp's Petition because it chooses to "combine" the notice with the billing statement?

11           The rules also provide that a second notice of disconnection may be provided to the customer by telephone notice, which further supports that this is a separate notice from the billing statement, and not intended to be conflated with it. WAC 480-100-128(6)(d)(iii). Telephone notice is expressly for the purpose of notifying the customer about the disconnection, and a customer does not receive their billing statement by telephone. If it would not be reasonable to provide a billing statement by telephone conflated with a disconnection notice, why is it reasonable to conflate the exact same things in a mailing? Staff submits that it is not.

12           Moreover, while WAC 480-100-178(4) permits a billing statement to be provided to a customer in an electronic form, WAC 480-100-128(6) does not allow for a disconnection notice to be provided in an electronic form. Another rule, WAC 480-100-179, addresses electronic information specifically, and *separately distinguishes* customer bills from notices of disconnection. WAC 480-100-179 provides, in part:

“With the prior consent (as defined in subsection (2) of this section) of the customer or applicant, a utility may provide the following by electronic means, instead of in paper copy sent to the customer's mailing address:

- Bills;
- Notices of tariff revisions; and
- Bill inserts containing information required to be provided to customers or applicants by statute, rule, or commission order.

...”

In contrast, WAC 480-100-179(4) also provides:

**Documents requiring paper delivery.** The following documents may not be provided solely by electronic means:

- (a) Notices of disconnection; and
- (b) Information regarding the winter moratorium on disconnection of low-income heating customers, including written copies, if any, of extended payment plans under the winter low-income payment program.

When the rules are read together, it appears clear that billing statements may be provided either electronically or by mail, while first disconnection notices may not be provided solely electronically, may be mailed, and may be personally delivered by posting the customer's door. That the Commission chose to clearly distinguish these two types of documents in WAC 480-100-179, and the methods by which they are provided to the customer, further supports the interpretation that they are, in fact, two separate documents and cannot be combined or conflated into a single document, as PacifiCorp suggests.

**B. Issuing Disconnection Notices Separate from Regular Billing Statements is Consistent with Industry Practice.**

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The industry practice in Washington is to issue disconnection notices separately from billing statements, further supporting the reasonableness of Staff's interpretation. As reflected in Ms. Pearson's Declaration, in response to an inquiry, representatives from each of the other regulated gas and electric utilities – namely, Puget Sound Energy, Inc., Avista Corp., Cascade Natural Gas Corp., and Northwest Natural Gas Corp. – each reported that they mail

first disconnection notices separately from bills.<sup>11</sup> Apparently, PacifiCorp is the only company that deviates from this industry-wide practice. No other energy company appears to require the “flexibility” or “discretion” that PacifiCorp believes necessary in this regard.

**C. Alleged Costs to the Company of Changing its Practice do not Support PacifiCorp’s Interpretation.**

14 PacifiCorp’s asserted costs to make significant system changes to issue separate disconnection notices and billing statements, and what specifically those changes are, are unsubstantiated. This claim is also suspect. First, as Ms. Pearson describes in her Declaration, the Company communicated to Staff in 2005 that despite the elimination of paper statements, it “still sends paper notices to customers when they become past due” when a customer otherwise receives electronic billing statements; thus, Staff believes the Company may have this mechanism in place to do so.<sup>12</sup> Second, since every other regulated energy company has found a way to do this, this certainly doesn’t appear to be an industry-wide issue. In any event, the alleged system changes PacifiCorp may need to implement, and the costs to do so, are not relevant to the legal question posed by the Petition as to the proper interpretation of the Commission’s disconnection rules.

**D. Past History of Communications between Staff and PacifiCorp are not Determinative of whether or not Disconnection Notices and Billing Statements must be Issued Separately under the Commission’s Rules.**

15 PacifiCorp mischaracterizes Staff’s interpretation that the rules require separate notices and billing statements as a “change in position,” and asserts that this, in part, necessitates its Petition. To this, Staff responds as follows: First, Staff did communicate its interpretation to the Company in the recent July, 2013, consumer complaint; there, the customer’s allegation was that the customer did not receive notice of disconnection, so the

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<sup>11</sup> *Id.* ¶ 20.

<sup>12</sup> *Id.* ¶ 11.

notice was central focus of the complaint. This was the first time in *four years* that PacifiCorp provided its “combined” document in connection with a consumer complaint. In all the previous complaints referenced by PacifiCorp, the issues presented were different than notice, and the “combination” aspect was not reviewed by Staff for compliance. PacifiCorp’s practice came to Staff’s attention only recently. Thus, for PacifiCorp to state that this past history implies a “change in position,” is simply not true.

16 In any event, the past history of communications between Staff and PacifiCorp is not relevant to the legal question that PacifiCorp has presented to the Commission, which is simply, what do the Commission’s rules require? Staff reiterates that this Petition is not part of a penalty proceeding related to the past practices of PacifiCorp. While past communications between Staff and PacifiCorp might be relevant in such a penalty proceeding, they do not govern the proper interpretation of Commission rules, and are not relevant here.

**E. Providing Disconnection Notices Separate from Billing Statements Best Serves the Interests of Both Customers and Utilities.**

17 PacifiCorp’s Petition discounts the customer impacts of the manner of disconnection notice, focusing instead on its alleged required system upgrades and the Company’s individual choice of how it believes “at the discretion of the utility” that it should provide notice to its customers. Staff disagrees that such unfettered company “discretion” is permitted by the Commission’s rules. Moreover, a notice of disconnection is least likely to be confusing, and most likely to be noticed and called to the customer’s attention when it is provided separately, and when that notice clearly informs the customer that it is a “notice of disconnection.” Providing this sense of urgency in a clear, separate “notice of disconnection” is more likely to call the customer to action, which also ultimately best serves the interests of



the utility.


#### IV. CONCLUSION

Staff requests that the Commission issue a Declaratory Order finding that Commission rules WAC 480-100-128(6) and WAC 480-100-178 require separate notices of disconnection and regular billing statements.

Dated this 6<sup>th</sup> day of December, 2013.

Respectfully submitted,

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