



**VIA ELECTRONIC MAIL**  
<records@wutc.wa.gov>

July 16, 2004

Ms. Carole J. Washburn  
Executive Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Drive S.W.  
P.O. Box 47250  
Olympia, WA 98504-7250

**Re: Docket No. A-021178**  
**PacifiCorp's Comments on Proposed Rules**

Dear Ms. Washburn:

In response to the Washington Utilities and Transportation Commission's (the "Commission") notice of July 2, 2004, PacifiCorp hereby submits its written comments on the fourth discussion draft rules in the above proceeding.

Sincerely,

A handwritten signature in cursive script that reads "Christy Omohundro".

Christy Omohundro  
Vice President, Regulation



36 USC 228506

Proud Sponsor of the  
2002/2004 U.S. Olympic Team

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of

Rulemaking for Reporting Financial  
Transactions Among Regulated  
Companies and Their Subsidiaries

Docket No. A-021178

PACIFICORP'S COMMENTS ON  
PROPOSED RULES

*1* In response to the Notice issued July 2, 2004 by the Washington Utilities and Transportation Commission (the "Commission") in this docket, PacifiCorp hereby submits its written comments on the fourth discussion draft rules. PacifiCorp has been an active participant in this proceeding, previously submitting comments on November 27, 2002, March 11, 2003, January 16, 2004, and May 18, 2004, participating in Commission workshops on these draft rules in November 2002 and in May 2003, and participating in follow-up discussions with Staff regarding our January 16 comments.

*2* PacifiCorp appreciates the opportunities provided by the Commission and its Staff to help shape these rules. In a number of situations, our suggested language revisions have been included in this fourth discussion draft. In other instances involving more substantive concerns, these issues remain, as we discuss in more detail below. We are hopeful that these remaining concerns will be addressed in the CR-102 draft to be made available the week of July 19, 2004 or, absent that, when the final CR-102 draft is presented to the Commission on July 28, 2004. Our comments on these specific remaining issues are set forth below.

## I. COMMENTS

### WAC 480-100-008

3           Our January 2004 and May 2004 comments on this provision went unaddressed, and thus will be repeated here. Through this proposed modification, the Commission apparently seeks to simplify its rules for granting exemptions with the statement that the Commission may do so pursuant to WAC 480-07-110. Under WAC 480-07-110, the Commission may grant exemptions and exceptions from its *procedural* rules contained in Chapter 480-07 WAC.<sup>1</sup> Consequently, by referencing that rule in this provision and providing no independent authority within Chapter 480-100 WAC to grant exemptions, the amendment would limit the Commission's discretion to grant substantive exemptions. Such exemptions may be warranted in many circumstances, and it would appear to be in the Commission's interests to retain its flexibility to grant such exemptions. The specific change proposed by PacifiCorp is to reject the proposed modification and to retain the existing provision.

### WAC 480-100-023

4           This fourth discussion draft represents a step backward from the improvements included in the April 2004 third discussion draft. The new draft continues to include references to an "*indirect*" ability to control management, which makes the standard so vague as to be unenforceable. The vagueness is compounded by reference to a "*power to direct or cause the direction of the management and policies of a company,*" which is incapable of being measured or quantified. Some examples are given as to how such "*power*" can be effected but, in the end, the draft refers to "*any other direct or indirect means*" of achieving such "*power*" which is so open-ended and vague as to make it impossible to administer. To be effective and

---

<sup>1</sup> WAC 480-07-110(1) provides that "[t]he commission may modify the application of *these* rules in individual cases if consistent with the public interest, the purposes underlying regulation, and applicable statutes." (Emphasis added.)

enforceable, the rule should define clear standards and be relatively easy to administer. These objectives are not served by reference to vague standards such as “power” and undefined “indirect” means of effecting “power.” Use of the term “indirect” is appropriate only if in reference to indirect ownership of shares, such as the definition of subsidiary under the Washington Corporations Act, which defines a subsidiary as “a domestic or foreign corporation that has *a majority of its outstanding voting shares* owned, directly or indirectly, by another domestic or foreign corporation.”<sup>2</sup>

5           As stated in our May 18 comments, PacifiCorp supports a definition that reflects a clear and enforceable standard, such as the definition in the Washington Corporations Act, which requires majority control. Specifically, PacifiCorp proposes the following definition of “Control”:

“Control” means the ability to control management or policies of a utility through the ownership, directly or indirectly, of a majority of voting shares.

6           Moreover, the proposed definition of “subsidiary” need not contain a separate reference to “indirect” control. Use of the defined word “control” in the definition avoids the need to refer to “indirect” control. PacifiCorp therefore continues to propose the following definition of “Subsidiary”:

“Subsidiary” means any company that the electric utility controls.

### **WAC 480-100-242**

7           The new discussion draft of this section appears to be largely unchanged from the third discussion draft (except for the elimination of the provision formerly included at (1)(b) requiring an estimate of the anticipated proceeds from the issuance). PacifiCorp continues to

---

<sup>2</sup> RCW 23B.19.020(17) (emphasis added).

object to that aspect of this proposed rule which requires that information be filed “at least five business days” before issuance. The applicable statute, RCW 80.08.040, allows an electric utility to supply the requisite information “any time” before issuing a security, and thus the proposed rule exceeds the Commission’s statutory authority.<sup>3</sup> Moreover, this requirement is impractical. Under the terms imposed by the market, it is often impossible for utilities to provide the information requested on any day other than the day of issuance. No explanation has been provided as to why this five-day requirement is necessary in order for the Commission to achieve its apparent objectives in this rulemaking.

#### **WAC 480-100-244**

8           PacifiCorp continues to object to the inclusion of transactions between a “subsidiary of an electric utility” and other subsidiaries or affiliates. This wording would include cross-organizational transactions among a regulated utility’s affiliates, even when the regulated utility is not involved in the transaction. This is neither necessary or appropriate, and seems to go beyond the Commission’s expressed concerns when this rulemaking was commenced. PacifiCorp therefore proposes that the words “or the subsidiary of an electric utility” be eliminated from the first sentence of the proposed rule.

#### **WAC 480-100-264**

9           PacifiCorp’s proposed language refinements to Subsections (2)(a) through (g) have been incorporated for the most part. The exception is Subsection (2)(a), where “or subsidiary” should be added at the end of the provision.

---

<sup>3</sup> In addition, the five-day-notice provision raises possible conflicts with federal securities law. *See* Section 5, Rule 502(c) of the Securities Act of 1933 (prohibiting written offers of securities and private offerings, of which notice provisions of rule might offend).

10 PacifiCorp continues to urge that the threshold level of \$100,000 in Subsection (2) be changed to correspond with the threshold set forth in proposed WAC 480-100-244, *i.e.*, 2% of the utility's common shareholders equity, so that the threshold appropriately captures materiality by reference to the size of the utility.

**WAC 480-100-268**

11 PacifiCorp appreciates the incorporation of its suggested revisions to extend the deadline for filing the essential utilities service contracts report be extended from ninety (90) days to one hundred twenty (120) days, and to clarify that the time period runs from the end of the reporting period, whether or fiscal or calendar year.

**WAC 480-100-275**

12 This provision, which is unchanged from the third discussion draft, requires the filing of Washington-only results of operations each quarter. As PacifiCorp indicated in its informal discussions with Staff, PacifiCorp customarily prepares results of operations on an individual state basis twice per year, consistent with requirements in its other jurisdictions. Requiring a quarterly report on a Washington-only basis would impose the burden of the extensive inter-jurisdictional allocation process for purposes of only one report, for Washington. PacifiCorp requests that the following be added as the second sentence in the proposed rule:

For multi-state utilities, such quarterly results may be reported on a total company basis so long as no less often than semi-annually the results are reported on a Washington-only basis.

13 The revision proposed above would ensure that a Washington-only report would be filed twice per year, but would allow the "off-quarters" to be satisfied with total company results. PacifiCorp respectfully submits that this is a reasonable accommodation that does not

impair the availability of the information reasonably necessary for the Commission and its staff to perform their oversight of utility financial performance.

14           In addition, PacifiCorp continues to request that the period for filing the report following the end of each quarter be extended from forty-five days to sixty days. The extension of the deadline is appropriate for a number of reasons. First, the Federal Energy Regulatory Commission (“FERC”) is now requiring quarterly reports, to include the current quarter and the calendar Year-to-Date. The deadline for filing these reports at FERC will be sixty days after the end of each quarter, and thus extending the Washington deadline to sixty days would permit the reports to be prepared on the same schedule. Second, the current forty-five day requirement results in the quarterly reports being filed prior to such financial results being filed with the Securities and Exchange Commission (“SEC”). This creates disclosure concerns for PacifiCorp, and presumably as well for other publicly traded companies. For the quarterly period ending March 31, 2004, for example, the due date for filing the financial results with the Commission fell on May 15, while the final results were not filed with the SEC and made public until later in May. To address the SEC non-disclosure requirements, these results were filed with the Commission on a confidential basis, and the confidentiality continued until the date upon which public disclosure occurred. With an extension to sixty days, however, the quarterly reports could be filed on a non-confidential basis, which would seem to be a preferable and less burdensome process, and would reduce the risk of inadvertent disclosure in violation of SEC regulations. Finally, submitting the quarterly reports to the Commission prior to filing with the SEC may result in filing data with the Commission that have not yet been finalized. In the second quarter filing, for example, PacifiCorp submitted its quarterly report subject to any adjustment that became necessary as the Company completed its final review in connection with the SEC filing. It is potentially confusing – and unnecessarily burdensome – to create and file multiple versions of the quarterly report filings. For these


reasons, PacifiCorp urges that the forty-five day period in the proposed rule be extended to sixty days.

## II. CONCLUSION

15 PacifiCorp appreciates the opportunity to comment on the fourth discussion draft, and will continue to play a constructive role as these rules continue to evolve. We acknowledge the extent to which some of our previous suggestions regarding language changes have been included in the fourth discussion draft, and express appreciation to Staff for accommodating these suggested revisions. More progress is necessary on the substantive issues identified in these comments, however. We look forward to continued involvement as the proposed rules move toward adoption and implementation.

RESPECTFULLY SUBMITTED this 16th day of July, 2004.

PACIFICORP

  
\_\_\_\_\_  
Christy Omohundro  
Vice President, Regulation