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August 26, 2005

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. UE-050802
Rulemaking to Consider Possible Corrections and Changes in Rules in Chapter 480-07 WAC, Relating to Procedural Rules

Dear Ms. Washburn:

In response to the Commission's July 20 Notice of Opportunity to File Written Comments, PacifiCorp dba Pacific Power & Light Company ("PacifiCorp") hereby submits written comments on correcting, changing, and/or clarifying the rules in Chapter 480-07 WAC relating to procedural rules.

In these comments, PacifiCorp will follow the outline of possible rule changes set forth in the June 30, 2005 Status Report from Judge Dennis Moss ("Report"). It has been PacifiCorp's experience that the current rules, which became effective on January 1, 2004 following a comprehensive review, have functioned very well, and that few revisions or clarifications are necessary. Our limited comments on the items in the Report are set forth below.

Part I: General Provisions

WAC 480-07-110. The suggested changes set forth in the Report are reasonable. Subsection (1) should be modified, as proposed, to make it clear that the exemption process applies to *all* of the Commission rules, not just the procedural rules. With respect to the other proposed additions, it is an improvement to provide greater detail regarding the procedures and standards for obtaining exemptions from the rules.

WAC 480-07-140. The suggested changes in the Report are appropriate.

WAC 480-07-141. The items mentioned in the first, second and fourth bullet points in the Report may not be appropriate for inclusion in rules. These seem to be internal administrative matters that are not necessary for the regulated industries to know. Inclusion in the rules would make it more difficult to make changes to these practices in the future, if necessary. The third bullet point is probably worth including to clarify that assignment of a docket number does not necessarily signify acceptance of a filing.

WAC 480-07-142. A roadmap to rules for various types of filings would be helpful, and should be included for consideration.

WAC 480-07-160. Amending 3(a) and (b) to specify colors for highlighting confidential documents would be helpful, to standardize Commission practice and reduce possible confusion among the parties. The proposed amendment to 3(b)(i) is necessary, and should be included for consideration.

With respect to the third bullet item, it may be appropriate to include language clarifying that this rule applies in proceedings in which a protective order is *not* in place. Without this clarification, there is a redundancy between the provisions of the protective order and this rule, and it is not clear which would apply in the event of a conflict between the two. Including the clarifying language would make it easier to change the provisions of the standard form of protective order, as necessary based on experience, since it would not require a rule change. More generally, it may be appropriate to open this rule to discussion in connection with the protective order rules, as suggested in the fifth bullet point.

The fourth bullet point seems reasonable, and the suggested amendment should be included for consideration.

WAC 480-07-190. Including the proposed definitions would be helpful. In particular, the use of a "docket monitor" category may reduce requests for intervention from persons who simply want to follow the proceeding and receive copies of filings.

Part II: Rulemaking Proceedings

There is probably no need to conduct a general inquiry into whether rulemaking procedures need to be modified. The existing rules (at WAC 480-07-210) incorporate the requirements of the Administrative Procedure Act (Chapter 34.05 RCW), which provides sufficient guidance for the processing of rulemakings at the Commission.

Part III: Adjudicative Proceedings

WAC 480-07-380(2)(c). The proposed revision is reasonable, and should be included for consideration.

WAC 480-07-395. We recommend against including the "oversize hole" requirement, as suggested in the first bullet item. All parties make reasonable efforts to follow the expressed preference for "oversize holes," but production logistics sometimes make it difficult to do this in all cases. Including it in the rules would be too prescriptive.

The suggested addition in the second bullet item is reasonable, and should be included for consideration.

Designating a standard format for citing transcript references would be helpful, and seems appropriate for consideration.

The inclusion of a table of authorities in briefs, as suggested by the fourth bullet item, should be discussed further. It may not be appropriate to impose this requirement in all proceedings, but rather allow the flexibility for case-by-case consideration.

WAC 480-07-400. We support the suggestion of including a "black out" or moratorium period on discovery sought (1) from the utility during the period between the filing of Staff/Public Counsel/Intervenor testimony and the filing of rebuttal testimony, and (2) from all parties immediately before and during hearings. This measure is commonly sought in prehearing conferences as part of the case schedule, and it would simplify and streamline the process if it is addressed by rule. With respect to seeking discovery from Staff, Public Counsel and intervenors prior to filing a responsive case, this measure should be limited to the statutory parties (Staff and Public Counsel) but not extended to intervenors. Discovery in this circumstance is rarely used, but it may be necessary to conduct limited discovery on intervenors given their reliance on outside consultants and considering the limited time available between the prefiling dates for responsive testimony and rebuttal.

The correction in the second bullet item should be made.

WAC 480-07-405. Clarifying the procedure for and use of bench requests is appropriate, and should be included for consideration.

WAC 480-07-420. With respect to both items, the clarifications should probably be made in the standard form of protective order rather than by rule, which would constrain flexibility.

WAC 480-07-423. We recommend against the suggestion stated in the first bullet point. In many cases, only one or two pages of a lengthy document contain confidential information, and the proposed revision would require providing the entire document rather than just the replacement sheets for confidential pages. This seems wasteful, since the extra set of non-confidential pages will likely be discarded. Moreover, it would create additional production challenges to prepare a complete version of the document with only a few sheets on colored paper.

The second bullet item seems reasonable, and should be included for consideration.

WAC 480-07-460. This proposed change is necessary, as the existing provision applies only to "minor" corrections. Inclusion of a new subsection (iv) makes it clear that this process must be followed in the case of any revisions to prefiled testimony.

WAC 480-07-460(2)(b). This suggested change may be unnecessary, and would create a significant burden in the case of very lengthy documents included as exhibits. The current rule requires page numbers on each page, and that should be sufficient for purposes of avoiding potential confusion at hearings.

WAC 480-07-460(2)(d). We recommend against including the "oversize hole" requirement for the reasons stated above. The remaining two bullet items seem reasonable, and should be included for consideration.

WAC 480-07-470(11). We support both recommended changes with respect to the "subject to check" process. With respect to the second bullet point in particular, it would be helpful to clarify when the "subject to check" process should be used, *e.g.*, in the case of numerical calculations and extracting detailed data and *not* in the case of references to exhibits or testimony already in evidence.

WAC 480-07-510(2). This rule should be modified to eliminate the filing of three copies of the tariff sheets as part of a general rate proceeding. The proposed tariff sheets are typically included as an exhibit in the case, and it is redundant (and seemingly of limited value) to include three copies separately in the filing. Moreover, an electronic copy of the tariff sheets would be included with the filing as well, in compliance with the electronic filing requirements for general rate case filings. The rule could be modified to provide that it is necessary to separately include three copies of the revised tariff sheets only if the proposed tariffs are not otherwise included.

WAC 480-07-510(3)(b). We do not recommend pursuing many of the suggestions included in the first bullet item. A "full explanation of each of the assumptions and underlying calculations" is not necessary in most instances. The discussion cites as an example a requirement to provide detailed support for the development of *any* percentage relationship or allocation factor, together with an explanation why that percentage or factor is appropriate. In many instances, there is no dispute or controversy regarding the use of a particular percentage or allocation factor – it could be widely used in the utility industry, or have been followed for many years by the individual utility – but this suggested change would nonetheless require a detailed support and a full explanation. In the case of a multi-state utility, for example, percentages and allocation factors are used in virtually all calculations. This suggestion seems burdensome, and of limited benefit in most instances. The filing utility has the burden of proof to substantiate and explain its

adjustments, and in satisfying that burden it is likely that the support and explanation will be provided in the circumstances where it is warranted.

With respect to the second bullet item, it may be difficult to standardize the presentation of adjustments, given the varying circumstances and complexities among utilities and among the types of adjustments. This objective would seem to be better pursued through informal discussions between Staff and the utility, where Staff could present its preference for presentation based upon the utility's particular circumstance. Trying to do so in a rule seems to be overly prescriptive and would unnecessarily burden the rules with detail.

WAC 480-07-620. Clarifying the process for authorizing a complaint to be issued is appropriate, and should be included for consideration.

WAC 480-07-650. No comment.

WAC 480-07-730. Use of the term "settlement" seems to be appropriate even if not all parties are involved; it does represent a settlement of the issues as among the settling parties. Use of the term "stipulation" does not make much difference.

On the broader issue of procedures for consideration of comprehensive stipulations in which there are non-settling parties, the Commission's existing rules in WAC 480-07-730(c) provide considerable remedies for non-settling parties. Opponents of a multi-party settlement have the right to cross-examine witnesses supporting the settlement, to present evidence in opposition to the settlement, and to present argument in opposition to the settlement. If appropriate, opponents may also conduct discovery on the proposed settlement. Given the adequacy of these procedures, there is probably no need to revisit this particular rule.

A related issue that may warrant discussion concerns the process followed for achieving settlement, and whether or not a prescriptive rule is warranted to ensure an opportunity for all parties to participate in settlement discussions. Some parties have also raised an issue regarding the assertedly unique role that Staff performs in Commission proceedings, and claim that Staff accordingly should be subject to particular restrictions before commencing settlement discussions with any party. On the issue of all-party participation in settlement discussions, this has been largely addressed through the Commission's practice in recent contested cases to include settlement conferences as part of the procedural schedule. By inclusion in the formal schedule, all parties will have adequate notice of the settlement discussions and an opportunity to participate, if desired. With respect to the role of Staff in settlement discussions, Staff certainly has a principal role in Commission proceedings, due in part to its ability to present a complete case on all the issues rather than the more limited scope of intervenors' involvement. At the same time, it is precisely because of this principal role that Staff should not be unduly constrained by prescriptive notice requirements before commencing any discussions regarding resolution of any issues in a rate case. This issue probably warrants further discussion in the

rulemaking process, which would enable a more thorough examination involving all interested persons.

WAC 480-07-750(2)(a). Some amendment of this rule may be appropriate to provide some flexibility to accommodate the Commission's other pending business when determining the length for which the time for completion of the hearings will be extended. At the same time, the absence of a scheduling constraint may create unintended consequences in which the Commission would be less inclined to accord deference to the settlement process, given its increased ability to impose different terms and conditions in the absence of concerns about suspension periods. The filing utility bears the consequences of failing to receive necessary rate relief within the suspension period, and the extension of that suspension period is probably best considered on a case-by-case basis – where the utility can evaluate the prospects for Commission approval before agreeing to extend the suspension period – rather than a standardized approach that would be required under a Commission rule.

WAC 480-07-883. It seems appropriate to permit compliance filings to be submitted electronically, given the time constraints that may come into play near the expiration of suspension period.

Hearing Transcript Issues. Substantive corrections to the transcript (*i.e.*, revisions other than to correct typographical revisions) should require some sort of process allowing responses by other parties – such as a motion to re-open the record – before they can be effected. With respect to the second bullet item, the current process of maintaining confidential treatment of transcript segments seems to have worked reasonably well, given the skill and competence of the Commission's court reporters. Requiring parties to submit redacted versions of transcripts may not be necessary.

Conclusion

PacifiCorp appreciates the opportunity to provide these preliminary comments, and looks forward to participating in any formal rulemaking that the Commission may commence in this docket. Please direct any questions regarding these comments to Karl Anderberg at (503) 813-6032.

Very truly yours,

PacifiCorp

By Jeff Larsen by CAO
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Managing Director, Regulatory Affairs