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May 31, 2006

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-060357
Rulemaking to Consider Rules Implementing SHB 2426, Delegation of Certain
Commission Decisions**

Dear Ms. Washburn:

In response to the Commission's May 2, 2006 Notice of Opportunity to File Written Comments, PacifiCorp dba Pacific Power & Light Company ("PacifiCorp") hereby submits written comments on the proposed rules to implement the portion of SHB 2426 regarding delegation of certain Commission decisions.

New Section WAC 480-07-904

As discussed at the May 11 workshop, the effect of the new rule should not be to require that *all* filings in the listed categories must be delegated. While most of the matters falling within these categories will be non-controversial and properly delegated, others – such as accounting orders, in some instances – may not be routine and should not be delegated. Given that, the purpose of the listing is to identify the categories of matters that *generally may* be delegated. PacifiCorp suggests the following revised language to clarify this approach:

The commission identifies in subsection (a) below the categories of delegates the following matters that may be delegated to the executive secretary for decision. The decision of the executive secretary shall take effect immediately on entry of an order, without prior notice, but upon request pursuant to subsection (c) of this rule, the commission will review the matter upon request under subsection 1(d) of this rule at a commission open meeting. Commission review of delegated decisions under this provision shall will be de novo.

(a) **Categories of delegable Mmatters delegated for
decision.**

....

In addition, the listing of delegable matters in subsection (a) should probably include a “catch-all” category to allow some flexibility for the delegation of similar matters. Item (xv) of the list could be added to state, for example, as follows: “Other routine, non-controversial matters of the kind usually considered on the consent agenda at the commission’s open meetings.”

New Section WAC 480-07-307

This new section should include a limitation that would generally prohibit the administrative law judge making the probable cause determination from having any further involvement in the proceeding. Although it was stated at the May 11 workshop that staffing constraints may make a firm requirement in this regard impractical, the rule should contain some commitment that addresses the issue of the potential unfairness of having the ultimate decision maker potentially becoming biased concerning the merits as a result of earlier participation in the matter. After all, it was this particular issue that was cited as the basis for seeking this delegation authority in the Commission’s “2006 WUTC Agency Request Legislation,” which stated that “commissioners and regulated companies have expressed discomfort with the current process [under which the commissioners must make both the probable cause determination and sit as judges in hearing the evidence and ultimately deciding the disposition of the complaint] and have expressed a desire that the decision regarding probable cause be made by an administrative law judge who would have no further association with the docket.” *Agency Request Legislation at 3*. This same document acknowledges that “[i]n the judicial system, a judge who has made a probable cause determination will generally not preside at the hearing.” *Id.* PacifiCorp suggests the following language be added at the end of the new section, in light of the expressed concern and given the staffing constraints that exist:

The administrative law judge involved in the probable cause determination shall not have any further association with the docket, unless such involvement is necessary due to commission staffing constraints or workload management issues.

Amendments to Section WAC 480-07-825

As discussed at the May 11 workshop, the second section in new subsection (10) is probably not necessary, given that the same language appears in the preceding subsection (9). In addition, it appears that the reference to “subsection 8 of this rule” should be changed to “subsection 7” inasmuch as subsection 7 discusses the process for an initial order becoming “final.”

Conclusion

PacifiCorp appreciates the opportunity to provide these comments on the proposed rules. Please direct any questions regarding these comments to Melissa Seymour at (503) 813-6711.

Very truly yours,

A handwritten signature in cursive script that reads "Andrea Kelly / MAS".

Andrea L. Kelly
Vice President, Regulation