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VIA ELECTRONIC MAIL

May 4, 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-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 April 4, 2006 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.

PacifiCorp has participated throughout the recent rulemakings regarding the Commission's procedural rules, and appreciates the attention the Commission and its staff have devoted to this effort. The new procedural rules which took effect on January 1, 2004 were an improvement over the predecessor rules in Chapter 480-09 WAC, and it is appropriate following two years of experience under the new rules to examine whether further refinements are necessary. We generally support the refinements proposed by the Commission in this rulemaking, as discussed further below.

In addition, PacifiCorp has reviewed the March 2, 2006 discussion paper regarding the comments received by the Commission on the proposed amendments to WAC 480-07-730 and -740 proposed by Public Counsel and other stakeholders regarding the settlement process. We agree with the Commission's conclusion that "the settlement practice is working satisfactorily under the current rules" and that the proposed amendments "could have significant negative impacts on settlement practice in Commission proceedings." *Discussion Paper at 17.* PacifiCorp's January 17, 2006 comments in this proceeding opposed the proposed amendments, and also noted that the opportunity for all parties to participate in settlement discussions "has been largely addressed through the Commission's practice in recent contested cases of including settlement conferences as part of the procedural schedule." The Commission's proposed addition to WAC 480-07-700(3) formalizes the inclusion of settlement conferences as part of the procedural schedule in adjudicatory proceedings, and PacifiCorp supports this amendment. With

this amendment, and given the due process rights that are granted under the existing rules to protect the rights of non-settling parties, the Commission has adequately addressed the legitimate concerns raised by Public Counsel and other stakeholders.

On a related issue, PacifiCorp also supports the Commission's apparent decision not to adopt Public Counsel's August 26, 2005 proposal to amend WAC 480-07-310(b) concerning *ex parte* communications. As discussed in our January 17, 2006 comments on this issue, Public Counsel offered no basis for revising the current *ex parte* rule, given Public Counsel's acknowledgement of the Commission's "exemplary record of dealing with matters of *ex parte* communications" and "the Commission's sensitivity to matters that might create an impression of impropriety as well as impropriety in fact." *Public Counsel's August 26, 2005 Comments at* __. Public Counsel's proposed revisions to the *ex parte* rule went far beyond the concerns expressed by Public Counsel, and were properly excluded from further consideration in this rulemaking.

PacifiCorp offers comments on several of the other proposed revisions to Chapter 480-07 below.

WAC 480-07-110 – Exemptions. The proposed additions to the existing rule, which would provide guidance on the process for obtaining an exemption from the procedural rules, are helpful and should be adopted.

WAC 480-07-140(1) – Communicating with the Commission. The distinction between "filing" in subsection (a) and "submitting" in subsection (b) is somewhat confusing, since the process is the same and it is the nature of the proceeding that is different. Moreover, later rules use the term "submit" in the case of rulemaking (*i.e.*, non-adjudicative) proceedings (*see, e.g., WAC 480-07-043*) and "file" in the case of adjudicative proceedings (*see, e.g., WAC 480-07-145*) which adds to the confusion. It may be easier to follow if the subsections in WAC 480-07-140(1) do not attempt to create the distinction between "filing" and "submitting," but rather are worded as follows:

- (a) **Electronic filing, limitations.** Documents that are not part of an adjudicative proceeding may be filed electronically using . . . and does not require a paper copy of the documents.
- (b) **Electronic filing, adjudications.** Documents in an adjudicative proceeding may be filed electronically using the commission's record center web portal (*see WAC 480-07-025*) or e-mail. Filing an electronic version of a document in an adjudicative proceeding does not constitute an official filing, but must be accompanied or followed by a paper copy of the document.

WAC 480-07-140(6)(b) – Electronic versions of all documents. The proposed revisions to WAC 480-07-140(6)(b) would require electronic versions of all documents to be filed with the Commission, and would further require, in addition to a .pdf (Adobe Acrobat) format, a separate file in MS Word, Excel or PowerPoint format. In addition, the proposed rule specifies that in the

case of Excel spreadsheets, “working” files must be included (*i.e.*, all formulas must be included, with no locked, password protected or hidden cells). This is a change from the existing rules, which expressed a preference – but not a requirement – for electronic copies in original format, and did so only in the case of word processing files. PacifiCorp has a number of concerns about imposing a *requirement* regarding original format electronic files, particularly in the case of Excel spreadsheets and PowerPoint presentations. (In the case of Word documents, PacifiCorp routinely includes copies of testimony, exhibits, and pleadings in their original .doc or .wpd formats when available, and it is not burdensome to create software files for such documents to include in the filings.)

In the case of some documents, however, electronic copies simply may not be available. While Adobe (.pdf) copies of PowerPoint presentations can easily be provided, for example, an electronic copy in original format is often not retained following the presentation. Similarly, other documents that may be used by a party as a reference source in their testimony or exhibits may not be available in their original electronic format. In such situations, the proposed rule should permit an exception when the document in its original electronic format is unavailable. In such a situation, the filing party could be required to provide an explanation for the unavailability in the transmittal letter. In the case of Excel files, a requirement to include working files may present other complications given the proprietary nature of some of those files. An exception should also be made where providing anything other than the output of the model would violate licensing agreements or raise competitive issues.

WAC 480-07-340 – Definition of Parties. PacifiCorp supports the creation of an “interested person” category in WAC 480-07-340(1)(c). Some participants may wish to monitor a proceeding, but may lack the standing necessary to be granted intervention under the Commission’s intervention standards. Development of this “interested person” category would enable the Commission to accommodate such participants, while still enforcing its intervention requirements. The service list prepared by the Commission in each proceeding should identify such participants as an “interested person,” and should further indicate the categories of documents to be served on each such interested person.

WAC 480-07-400(3) – Discovery. PacifiCorp supports the proposed revisions to this rule, which provides some guidance that data requests cannot be used to harass or to cause unnecessary delay or needless increase in the cost of litigation.

WAC 480-07-423 – Protective Orders. The proposed revisions to this section improve the rule by simplifying it through incorporation of the requirements of WAC 480-07-160(3).

WAC 480-07-460(1)(b)(iv) – Revisions to Testimony and Exhibits. The proposed revisions to this section provide helpful clarification of the process for submitting revisions to prefiled testimony and exhibits.

WAC 480-07-460(11) – Cross-Examination. The proposed revisions to this section appropriately limit the use of “subject to check” to prevent its use if the information is included in a prefiled exhibit or it is already in evidence.

WAC 480-07-510(3)(b) – Electronic Copies of Workpapers. The proposed revisions to this section would require parties to file electronic copies of workpapers, including “fully functional” spreadsheets, contemporaneously with the filing of their testimony and exhibits. (Please see our earlier comments under WAC 480-07-140(6)(b) with respect to our concerns regarding the filing of “fully functional” electronic files.) There seemed to be general support at the November 10, 2005 workshop for allowing a few days after the filing of testimony and exhibits to fulfill the requirement of submitting supporting workpapers. The proposed rule should be revised to permit workpapers to be provided within five business days after the filing of testimony and exhibits. This would represent an improvement over the existing process, where workpapers are typically provided as part of the discovery process, but would not impose undue burdens on parties to compile their workpapers at the same time they are meeting pre-filing deadlines for testimony and exhibits.

Conclusion

PacifiCorp appreciates the opportunity to provide these comments on the proposed revisions to the Commission’s procedural rules, and may participate in the May 18 adoption hearing in this docket. Please direct any questions regarding these comments to Shay LaBray at (503) 813-6176.

Very truly yours,

PacifiCorp

By Andrea Kelly / s
Andrea Kelly
Vice President, Regulation