**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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| In the Matter ofPACIFICORP d/b/a PACIFIC POWER& LIGHT COMPANY Petitioner, Petition for Declaratory Order Regarding Interpretation of WAC 480-100-128(6), WAC 480-100-178 and WAC 480-100-128(3) | **DOCKET UE-13\_\_\_\_****PACIFICORP’S PETITION FOR DECLARATORY ORDER** |

1. INTRODUCTION
2. In accordance with RCW 34.05.240, WAC 480-07-370, and WAC 480-07-930, PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp or Company) petitions the Washington Utilities and Transportation Commission (Commission) for a declaratory order clarifying its interpretation of WAC 480-100-128(6) and WAC 480-100-178. Specifically, PacifiCorp requests that the Commission find that combining the first of four “past due” notices with regular billing statements to be in compliance with the Commission rules. Based on the facts and circumstances described herein, any other interpretation will result in approximately $1.1 million in costs to PacifiCorp’s Washington retail customers for system upgrades with no material benefit. In addition, it is estimated that separate past due notice and billing statements will increase the Company’s Washington annual printing and postage costs by approximately $200,000. Before PacifiCorp embarks on system changes to separate past due notices and billing statements as requested by Commission Consumer Protection Staff (Staff), PacifiCorp respectfully requests clarification as to the intent of the applicable rules.
3. PacifiCorp is an electrical company and public service company doing business in the state of Washington under RCW 80.04.010 and is subject to the jurisdiction of the Commission with regard to its public utility operations, retail rates, service and accounting practices. The Company also provides retail electricity service under the name Pacific Power in Oregon and California and under the name Rocky Mountain Power in the states of Utah, Wyoming, and Idaho. PacifiCorp’s principal place of business is 825 NE Multnomah Street, Suite 2000, Portland, Oregon, 97232.
4. PacifiCorp’s name and address:

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In addition, PacifiCorp respectfully requests that all data requests regarding this matter be addressed to:

By e-mail (preferred) datarequest@pacificorp.com

By regular mail Data Request Response Center

PacifiCorp

825 NE Multnomah Street, Suite 2000

Portland, OR 97232

Informal inquires may be directed to Barb Coughlin, Director, Customer & Regulatory Liaison, at (503) 331-4306.

1. The following statutes and rules may be at issue in this proceeding: RCW 30.04.240, WAC 480-07-370, WAC 380-07-930, WAC 480-100-128(3), WAC 480-100-128(6), and WAC 480-100-178.
2. BACKGROUND AND FACTS
3. Question Presented
4. In response to a consumer inquiry, Staff recently recorded 434 violations of Commission rules against the Company regarding treatment of “past due” notices.[[1]](#footnote-1) The Company’s practice is to include the first of four past due notices with regular billing statements. PacifiCorp has been combining past due notices with regular billing statements, without incident or complaint, since 1995.
5. The Company interprets the Commission’s rules to allow the above-described practice. To the contrary, Staff has directed the Company to alter its longstanding practice and send past due notices in a communication separate from regular billing statements. The Company interprets the rules to allow utilities to either issue (1) a past due notice combined with billing statements or (2) separate past due notices and billing statements. In any event, it is at the utility’s sole discretion as to how to process a past due notice. Any change to the Company’s longstanding interpretation of the rules will be at considerable expense to customers.
6. Accordingly, PacifiCorp submits the following question to the Commission for consideration: Do the rules allow the Company to issue past due notices combined with regular billing statements?
7. The Commission has primary jurisdiction over the subject matter of this proceeding. The Commission may issue a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency.[[2]](#footnote-2) WAC 480-100-128 and WAC 480-100-178 contain rules promulgated by the Commission under its general statutory authority found in RCW 80.01.040 and RCW 80.01.060. Therefore, the Commission has authority to order the declaratory relief requested.

B. Relevant Rules

1. WAC 480-100-178 contains billing requirements and payment date. Subsection (1) details the minimum information that is required to be included on customers’ billing statements. Customer bills must be issued at intervals not exceeding two one-month billing cycles, show the amount due and payable, the date the amount becomes delinquent if not paid, the Company’s business address, business hours, a toll-free telephone number and an emergency telephone number, current and previous meter readings, the current read date and total kilowatt hours used, the amount of kilowatt hours used for each billing rate, the applicable billing rates per kilowatt hour and the basic charge or minimum bill, amount of any municipal tax surcharges or respective percentage rates, identify when a bill has been prorated, detail method(s) of estimating in tariff, and identify determination of maximum demand if service is provided on a demand basis.[[3]](#footnote-3) Included as Attachment A to this Petition is a copy of PacifiCorp’s standard Washington past due notice and billing statement with markers to indicate where each applicable section of the rule is shown on the bill.
2. WAC 480-100-128(6)(a) contains disconnection notice requirements, referencing a requirement to provide a first notice of disconnection, which the Company commonly refers to as “past due” notice. For customers with delinquent charges, utilities must provide written notice of disconnection to customers by mail or personal delivery to the customer’s address, with information on payment plan options and low-income assistance during winter months, and also include a disconnection date, all relevant information about the disconnection, including the cause, amount owed for regulated service and how to avoid disconnection, all relevant information about charges that may be assessed, and the Company’s name, address and a toll-free telephone number.[[4]](#footnote-4) Attachment B to this Petition shows where on the Company’s standard Washington past due notice and billing statement this information may be found.
3. ARGUMENT
4. The Company has the Discretion to Issue Past Due Notices Included with Billing Statements
5. The rules that are the subject of this declaratory order do not expressly or implicitly determine whether utilities may consolidate a past due notice with regular bills. Rules of statutory construction apply to administrative rules and regulations.[[5]](#footnote-5) An administrative rule is ambiguous if it can be reasonably interpreted in more than one way.[[6]](#footnote-6) Rules and regulations must be interpreted to ascertain and give effect to the underlying policy and intent.[[7]](#footnote-7) Rules and regulations must be given a rational, sensible interpretation.[[8]](#footnote-8) If ambiguous, the principles of statutory construction, legislative history and case law must be applied.[[9]](#footnote-9)
6. The Commission promulgated the disconnect notice and billing statement rules under its general statutory authority found in RCW 80.01.040 and RCW 80.04.160. Importantly, the Commission did not address a specific directive from the Washington Legislature. A review of relevant Commission rulemakings reveals no discussion about the method of sending past due notices to customers.[[10]](#footnote-10)
7. The intent of the rules is ensure that the past due notices contain specific information. The rules do not specify how or in what form the past due notices would be communicated. The form and method of communication is at the discretion of the utility. The Company’s interpretation of the rules is rational and sensible, and is correct. In the absence of express rule language, the utility is left with discretion as to whether to issue past due notices included with billing statements, as long as the billing statements and past due notices contain the information required by WAC 480-100-178 and WAC 480-100-128(6)(a). As demonstrated by Attachments A and B to this Petition, PacifiCorp meets the requirements of the rules by showing all required information.
8. Further, as part of its customer service offerings, the Company’s regular disconnection process includes notification to customers using a variety of methods including mailed bills, mailed notices, a courtesy outbound call and a courtesy 48 hour notice hand-delivered to the customer’s premises. The Company implemented the courtesy notices as a business decision in efforts to afford customers additional opportunities to become current on payments and avoid disconnection. The Commission’s rules allow for this flexibility.
9. Recent Facts and Circumstances Indicate a Need for Direction from the Commission
10. On August 20, 2013, a Staff analyst found the Company in violation of the Commission’s billing statement and disconnection notice rules and issued a directive to make the necessary corrections to avoid further enforcement action. PacifiCorp sought review of this finding from the Consumer Protection Manager, who upheld the analyst’s conclusions September 6, 2013. The issue was further discussed through the Company’s annual review of complaints and violations with the Assistant Director and Consumer Protection Manager, held September 12, 2013. During the meeting, Staff indicated it would seek a “verbal interpretation” from the attorney general’s office. PacifiCorp received an email from the Consumer Protection Manager dated October 4, 2013, indicating an oral opinion from the attorney general’s office agreed with Staff’s interpretation. Staff then requested information on when the Company could implement the change.
11. Staff’s direction appears to be based on its review of one customer’s inquiry, rather than a review of the Company’s longstanding practice and the applicable rules. The Company reviewed its records of customer complaints submitted to Staff prior to the complaint that triggered Staff’s direction and found no other instances of customers indicating confusion with the format of past due notices. The Company’s records show at least ten instances since 2005 where Staff was provided copies of combined past due notices and regular billing statements for review as part of Staff’s investigation of customer inquiries or complaints. A summary of the ten instances is included as Attachment C. Staff did not object to this practice during any of those instances even though the past due notices and billing statements were combined and the rules have remained the same. PacifiCorp understands Staff conducts thorough investigations into complaints to ensure utility compliance with the Commission’s rules. To find PacifiCorp’s practice of including past due notices with regular billing statements at this time represents a reversal of Staff’s earlier position. Staff has offered no explanation for this unexpected reversal. Such a reversal and lack of evidentiary basis for directing the Company to modify its business practice also raises fundamental due process concerns.
12. Staff’s primary concern focuses on minimizing confusion to customers and indicates that a separate notice of past due amounts will avoid confusion for customers. However, there is no basis for Staff’s position, and objective data supports the Company’s position. For example, a recent study published by Market Strategies[[11]](#footnote-11) International ranked Pacific Power number one among 83 utilities surveyed nationwide for ease of understanding bills for residential customers. An excerpt from Market Strategies International’s report is included with this Petition as Attachment D.
13. Staff’s insistence that the Company provide past due notices separate from billing statements will require a significant system change at Washington customers’ expense. The Company’s current customer service system was programmed to issue consolidated past due notices following acceptance of the billing practice by key stakeholders. To separate past due notices and billing statements will require a system change at an estimated cost of approximately $1.1 million. In addition to this cost, the separate past due notice and billing statements will increase the Company’s Washington annual printing and postage costs by approximately $200,000.
14. Staff’s direction to the Company to begin issuing past due notices in a separate communication from the regular billing statement is arbitrary and capricious and is devoid of any meaningful due process. An administrative decision is arbitrary and capricious if it is willful and unreasoning and disregards facts and circumstances.[[12]](#footnote-12) At a minimum, due process requires notice and an opportunity to be heard or defend before a competent tribunal in a proceeding adapted to the nature of the case.[[13]](#footnote-13) Notice must be reasonably calculated to inform the affected party and provide an opportunity to object.[[14]](#footnote-14) The opportunity to be heard must be meaningful in time and manner.[[15]](#footnote-15) To determine the appropriate due process depends upon the balancing of the private interest involved, the risk of erroneous deprivation through the procedures involved and the value of additional procedures, and the government’s interest.[[16]](#footnote-16) Due process is a flexible concept and the procedures required depend on the circumstances of the situation.[[17]](#footnote-17) Neither the Commission’s enabling statutes nor the Commission’s rules provide a mechanism for Staff to unilaterally require the Company to modify its practices in situations where Staff believes the Company to be out of compliance. Staff’s determinations are not the Commission’s final decision and the Company has not been provided adequate opportunity to be heard, thus raising questions about the adequacy of due process.

C. The Company has Interpreted the Rules in a Manner that is Cost Effective and Efficient for Customers

1. Because the rules do not expressly state that past due notices must be issued as a stand-alone document, it is up to each utility to determine the practice that best suits the needs of its customers. A long-standing principle of administrative law holds that public utility commissions are not the financial managers of utilities and may not substitute their judgment for business decisions.[[18]](#footnote-18)
2. The Company uses a variety of customer service tools not expressly contained in the rules as part of a comprehensive program for providing good customer service, which is integral to utility business. For example, the rules do not specify payment methods a customer may use, other than pay stations. However, for customer convenience, PacifiCorp offers a multitude of payment options, such as checks or money orders sent through U.S. mail, online payments, and pay by telephone. Also not expressly stated in the rules, but offered for customers’ convenience, are programs such as Landlord Link to conveniently stop and start service at rental properties, calls with updated information for customers experiencing an outage, and a website providing Company information and services. Although these services are not prescribed in the rules, the Company has received support from Staff on offering these services.
3. The Company established its current billing practice of consolidating past due notices with billing statements when it converted to a new customer service system in 1995 to address customer confusion and reduce monthly billing costs. In 2003, the Company redesigned its billing statement and notices, and at that time sought feedback from several stakeholders including employees, customers, and utility commission staff. Staff had the opportunity to provide feedback on the Company’s consolidated past due notices at that time; however, the Company has no record of any objections.
4. Based on efficiency and feedback, the Company has continued to execute its billing practices in a cost-effective and efficient manner, while meeting the requirements of the applicable rules. The Commission or Staff has never expressed concern about PacifiCorp’s interpretation of the applicable rules until the circumstances of this single customer inquiry.

D. Issuance of a Declaratory Order is Appropriate

1. RCW 34.05.240(1) and WAC 480-07-930 confer authority upon the Commission to enter a declaratory order upon showing that uncertainty necessitating resolution exists, there is actual controversy arising from the uncertainty so that a declaratory order will not be merely advisory, the uncertainty adversely affects PacifiCorp, and the adverse effect on PacifiCorp outweighs the adverse effects on other or the general public that may arise from the requested order.[[19]](#footnote-19)

1. Uncertainty Necessitating Resolution Exists

1. The uncertainty to be resolved by this Petition is whether PacifiCorp’s longstanding inclusion of the first of four past due notices with regular billing statements is consistent with the Commission’s rules. Staff disagrees with PacifiCorp’s well-established practice, which creates uncertainty for PacifiCorp. This uncertainty necessitates resolution by the Commission so that PacifiCorp can determine whether significant changes to its customer service system must be implemented, which will result in significant cost impacts for customers.

2. Actual Controversy Arising from the Uncertainty Exists Such That a Declaratory Order will not be Merely Advisory

1. As discussed above, there is actual controversy such that a declaratory order will not be merely advisory.

3. The Uncertainty Adversely Affects PacifiCorp

1. Staff has recorded rule violations against the Company for its past due notice practices and continues to record such violations for various customer inquiries. Staff has indicated it may initiate enforcement action against the Company.

4. The Adverse Effect of Uncertainty on PacifiCorp Outweighs Any Adverse Effects on Others or the General Public that May Likely Arise from the Order Requested

1. Issuing the order requested by PacifiCorp will not result in any adverse effects to others or the general public. PacifiCorp, its customers, and the public will benefit from obtaining a Commission ruling on this issue.
2. CONCLUSION
3. To avoid unnecessary costs and confusion for customers, the Company requests the Commission issue a declaratory order finding PacifiCorp’s practice of issuing the first of four past due notices with regular billing statements in compliance with the rules. PacifiCorp’s ultimate concern is ensuring it is in compliance with Commission rules. The rules are written in such a way to allow for utilities to choose the most efficient and cost-effective manner in meeting the intent of the rules. In this case, PacifiCorp has traditionally combined the first of four the past due notices with the regular billing statement. The Company seeks the Commission’s interpretation of the applicable rules before incurring significant costs for customers with no material benefit.

Respectfully submitted this 15th day of November, 2013,

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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1. WAC 480-128(6) is one of the rules at issue in this Petition and is identified by the heading “Disconnection Notice Requirements.” This rule requires utilities to send two “disconnection” notices to customers. PacifiCorp refers to the first disconnection notice as a “past due” notice. Throughout the Company’s discussions with Staff on this issue, the first disconnection notice has been referred to as “past due” notice, “first” notice or “disconnection” notice. [↑](#footnote-ref-1)
2. WAC 480-07-390(1). [↑](#footnote-ref-2)
3. WAC 480-100-178(1)(a)-(j). [↑](#footnote-ref-3)
4. WAC 480-100-128(6)(a)(i)-(iv). [↑](#footnote-ref-4)
5. *State Department of Licensing v. Cannon*, 50 P. 3d 627, 636 (2002). [↑](#footnote-ref-5)
6. *Id*. [↑](#footnote-ref-6)
7. *Id*. [↑](#footnote-ref-7)
8. *Id*. [↑](#footnote-ref-8)
9. *Id*. at 637. [↑](#footnote-ref-9)
10. *See*, General Order No. R-482, Docket No. UE-990473 (May 3, 2001). The Commission repealed many of its previous rules related to customer service requirements for electric utilities and promulgated new rules. [↑](#footnote-ref-10)
11. Market Strategies International is a leading customer satisfaction market research firm in the United States electric utility industry. [↑](#footnote-ref-11)
12. *Eggert v. Director, Employment Security Department*, 558 P. 2d 1368, 1370 (1976). [↑](#footnote-ref-12)
13. *In re Hendrickson*, 12 Wash.2d 600, 605 (1942); *Johnson v. Wash. Dept. of Fish & Wildlife*, 175 Wash.App. 765, 772 (2013). [↑](#footnote-ref-13)
14. *Johnson v. Wash. Dept. of Fish & Wildlife*, 175 Wash.App. 765, 772 (2013). [↑](#footnote-ref-14)
15. *Id*. at 773. [↑](#footnote-ref-15)
16. *Id*. [↑](#footnote-ref-16)
17. *Id*. [↑](#footnote-ref-17)
18. *Pacific Telephone & Telegraph Co. v. Whitcomb, Home Telephone & Telegraph Co. of Spokane v. Denney*, 12 F.2d 279, 285 (1926); *State Public Utilities Commission* ex rel. *City of Springfield v. Springfield Gas & Electric Co.*, 125 N.E. 891, 894 (1920); *Logan v. Public Utilities Commission of Utah*, 296 P. 1006, 1008 (1931). [↑](#footnote-ref-18)
19. RCW 34.05.240(1)(a)-(d). RCW 34.05.240(1)(e) requires petitions for declaratory orders to comply with any such requirements established by the Commission. The Commission has not established any further requirements. [↑](#footnote-ref-19)