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Portland, OR 97232

***VIA ELECTRONIC MAIL***

June 19, 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  
Comments on Supplemental Proposal for Revisions to WAC 480-07-700(3)  
Regarding Settlement Conferences**

Dear Ms. Washburn:

In response to the Commission's May 11, 2006 Notice of Opportunity to Comment on Supplemental Proposal, PacifiCorp dba Pacific Power & Light Company ("PacifiCorp") hereby submits written comments on the proposed revisions to certain procedural rules relating to settlement conferences set forth in WAC 480-07-700(3).

PacifiCorp submitted comments on May 4, 2006 in which it supported the inclusion of settlement conferences as part of the procedural schedule in adjudicative proceedings. In all other respects, however, PacifiCorp generally opposed the additional procedural requirements for settlement discussions proposed by Public Counsel and other stakeholders. PacifiCorp agreed with the conclusions reached by the Commission in its March 2, 2006 Discussion Paper that these proposed amendments "could have significant negative impacts on settlement practice in Commission proceedings." *Discussion Paper at 7; PacifiCorp's May 4, 2006 Comments at 1.* The Supplemental Proposal seems inconsistent with the Commission's conclusions in its *Discussion Paper*, as the Supplemental Proposal would place additional burdens on the settlement process that seem unnecessary and of little value. PacifiCorp generally opposes the Supplemental Proposal for the same reasons as expressed with respect to the earlier proposed amendments.

**Initial Settlement Conference.** Proposed WAC 480-07-700(3)(a) provides that an “initial settlement conference” would be included in the procedural schedule for each adjudicative proceeding. PacifiCorp supports this element of the Supplemental Proposal.

**“Early” Initial Settlement Conference.** Proposed WAC 480-07-700(3)(b) sets forth a procedure that would apply in the event a party wishes to initiate settlement “discussions” during the period between the filing of the docket and the initial prehearing conference. This proposal raises a number of issues:

- The initial prehearing conference in most adjudicative proceedings occurs about 45-50 days after the filing of the docket, or usually about two weeks following suspension of the filing at the Commission’s open meeting. It would be very unusual for settlement discussions to occur during this period, and thus the proposal seems to have little value.
- The proposal refers to settlement “discussions” rather than a “settlement conference,” which is the term defined in WAC 480-07-700(3). It is not clear what distinguishes settlement “discussions” from a “settlement conference” but, as discussed below, “settlement conference” is defined very broadly in WAC 480-07-700(3) and would effectively prevent most communications between parties regarding potential opportunities for settling issues.
- The notice requirement – 14 days – seems burdensome, particularly when it is considered that the window between the filing of the docket and the initial prehearing conference is so short. An “early” initial settlement conference would be rare in any event, and the notice requirement would virtually preclude it as a practical matter.

**Definition of “Settlement Conference.”** As noted above, “settlement conference” is defined very broadly in WAC 480-07-700(3). Moreover, in contrast to the original proposal in this docket, the restrictions applicable to “settlement conferences” would be extended to discussions involving any two parties, not just to discussions between Commission Staff and the utility. This broadening of the scope seems unwarranted, and goes far beyond the concerns expressed when the original proposal was offered, which related to discussions involving Staff. As discussed below, however, it is not clear that this definition has any practical effect in limiting settlement conferences except in the limited situation when a party seeks to initiate an “early” initial settlement conference.

**Applicability of Rule to All Settlement Discussions.** As currently drafted, the notice requirements for “settlement discussions” appear to be applicable only in the limited situation where a party seeks to initiate an “early” initial settlement conference, *i.e.*, during the period between the filing of the docket and the initial prehearing conference. The Supplemental Proposal does not seem to address the situation regarding settlement conferences other than (1) the “initial settlement conference,” which is to be included as part of the procedural schedule under WAC 480-07-700(3)(a), and (2) the “early” initial settlement conference, which is subject

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to the procedure and notice requirements of WAC 480-07-700(3)(b). In other words, so long as a party does not initiate discussions during the period prior to the initial prehearing conference, none of the procedure and notice requirements of WAC 480-07-700(3)(b) would apply. Nor, for that matter, would the broad definition of "settlement conference" seem to be of any consequence except in the case of settlement discussions that occur during this limited period. As written, the Supplemental Proposal seems to be of little value, and would seem to add confusion and uncertainty to the settlement process.

### **Conclusion**

PacifiCorp appreciates the opportunity to provide these comments on the Supplemental Proposal, and may participate in the June 28 adoption hearing in this docket. Please direct any questions regarding these comments to Melissa Seymour at (503) 813-6711.

Very truly yours,

**PacifiCorp**

By  /MAS  
Andrea L. Kelly  
Vice President, Regulation

[Service Date May 11, 2006]

May 11, 2006

**NOTICE CANCELLING ADOPTION HEARING  
(Thursday, May 18, 2006)**

**NOTICE OF OPPORTUNITY TO COMMENT  
ON SUPPLEMENTAL PROPOSAL  
(By Monday, June 19, 2006)**

**NOTICE OF RESCHEDULED RULE ADOPTION HEARING  
(Set for Wednesday, June 28, 2006, 1:30 p.m.)**

RE: Procedural Rules, Chapter 480-07 WAC  
Docket A-050802

TO INTERESTED PERSONS:

This letter is to inform you of the cancellation of public hearing on the proposed rules scheduled for May 18, 2006. This letter also provides notice of an opportunity to file written comments on a supplemental proposal (Supplemental CR-102), and participate in a rulemaking hearing to consider adoption of the rules that are the subject of the CR-102 filed at WSR #06-08-058, and a Supplemental CR-102 filed at WSR # 06-11-047.

**NOTICE OF CANCELLATION OF RULEMAKING ADOPTION HEARING.**

The Commission gives notice that the rulemaking adoption hearing previously scheduled for May 18, 2006, at 1:30 p.m. at the Commission offices in Olympia is cancelled due to scheduling conflicts and the filing of a supplemental notice of proposed rulemaking (CR-102). The adoption hearing for this rulemaking is rescheduled in this notice, below.

**NOTICE OF OPPORTUNITY TO COMMENT ON SUPPLEMENTAL PROPOSAL.** On May 11, 2006, the Commission filed with the Code Reviser a Supplemental Notice of Proposed Rulemaking (Supplemental CR-102) in this docket addressing two rules: WAC 480-07-700(3), relating to settlement conferences, and WAC 480-07-650(1) (c), concerning prefiling notice of a petition for enforcement of an interconnection agreement. This action initiates the final part of the rulemaking process, which includes a written comment period, a public adoption hearing, and a decision by the Commission.

**You may submit written comments on the supplemental proposed rules by filing them with the Commission Secretary either electronically, as described below, or physically delivering your comments to 1300 S. Evergreen Park Drive S.W., P.O. Box 47250, Olympia, Washington, 98504-7250, no later than 5:00 p.m., Monday, June 19, 2006.**

The supplemental proposed rules, as filed with the Code Reviser, are available for inspection on the Commission's web site at [www.wutc.wa.gov/050802](http://www.wutc.wa.gov/050802). The Commission will send you a paper copy of the proposed rules or will send the proposal via electronic mail, if you ask. You can also find a narrative and summary of stakeholder comments already filed with the Commission, as well as Commission responses on the web site listed above.

**Electronic copies:** The Commission requests that comments be provided in electronic format to enhance public access, for ease of providing comments, to reduce the need for paper copies, and to facilitate quotations from the comments. Comments may be submitted via the Commission's Web portal ([www.wutc.wa.gov/e-filing](http://www.wutc.wa.gov/e-filing)) or by electronic mail to the commission's Records Center at [records@wutc.wa.gov](mailto:records@wutc.wa.gov). Please include:

- The docket number of this proceeding (A-050802).
- The commenting party's name.
- The title and date of the comment or comments.

You may also submit comments electronically by mailing or delivering an electronic copy on a 3 ½ inch, IBM-formatted, high density disk, in .pdf Adobe Acrobat format and in .doc MSWord 97 or later. Include all the information requested above. The Commission will post on its web site all comments that are provided in electronic format. The web site is located at <http://www.wutc.wa.gov/050802>. If you are unable to file your comments electronically or to submit them on a disk, the Commission will always accept a paper document.

**NOTICE OF RESCHEDULED PUBLIC HEARING.** The Commission will convene a rulemaking adoption hearing to receive oral comments concerning possible adoption of the proposed rules and supplemental proposed rules at **1:30 p.m., Wednesday, June 28, 2006**. This hearing will be held in the Commission's Hearing Room, Second Floor, Chandler Plaza, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.

The Commission posts information about the rulemaking, including comments, on its web site as information becomes available. If you wish to receive further information on this rulemaking you may take any of the following steps. **(NOTE: if you are already on the notification list for this rulemaking, you need do nothing further to stay on the list.)**

- 1) Call the Commission's Records Center at 360-664-1234,
- 2) E-mail the Commission at [records@wutc.wa.gov](mailto:records@wutc.wa.gov),
- 3) File written comments as specified above.

Please refer to Docket A-050802 when contacting the commission to ensure that you are placed on the appropriate service list. The Commission's mailing address is:

Executive Secretary  
Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive SW  
P.O. Box 47250  
Olympia, Washington 98504-7250

**Questions:** If you have questions about this Notice, about the rulemaking process, or this rulemaking in particular, you may contact Administrative Law Judge Ann Rendahl or Administrative Law Judge Dennis Moss. Judge Rendahl may be reached by mail at the address on this Notice, or by e-mail at [arendahl@wutc.wa.gov](mailto:arendahl@wutc.wa.gov) or by calling 360-664-1144. Judge Moss may be reached by mail at the address on this Notice, or by e-mail at [dross@wutc.wa.gov](mailto:dross@wutc.wa.gov) or by calling 360-664-1164.

Sincerely,

CAROLE J. WASHBURN  
Executive Secretary