

September 29, 2017

VIA ELECTRONIC FILING

Steven V. King
Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S.W.
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RE: Docket A-130355—Pacific Power & Light Company’s Comments on Draft Rules for WAC 480-07-160

In response to the Notice of Opportunity to File Written Comments issued by the Washington Utilities and Transportation Commission (Commission) on September 6, 2017, Pacific Power & Light Company (Pacific Power or Company), a division of PacifiCorp, submits the following written comments on the draft rules for Washington Administrative Code (WAC) Chapter 480-07-160.

General Comments:

The draft rules only address the handling of confidential or sensitive information that regulated entities provide to the Commission (“The Commission will provide for special handling of, and restricted access to, information *provided to the Commission* under these provisions.”).¹ The narrow language implies that the proposed rules will not apply to the exchange of confidential or sensitive information between regulated utilities and other stakeholders. This regulatory gap will create significant uncertainty regarding utility and stakeholder obligations regarding the treatment of confidential information. Pacific Power accordingly recommends that the Commission include additional provisions detailing the procedures, protections, and remedies governing inter-party exchanges of confidential information (i.e., exchanges of confidential information in Commission proceedings between non-Commission actors). If staff’s intention is that inter-party transfers of confidential or sensitive information will be governed by WAC 480-07-420 (protective orders), then reference to that section may be useful to avoid confusion.

In a similar vein, Pacific Power recommends that the Commission expressly state that the rules governing confidential information apply to both contested and non-contested cases. The Washington Administrative Procedures Act contemplates the use of protective orders in contested cases.² The Commission, however, has been endowed with sufficient discretion to adopt rules that would protect confidential or sensitive utility information in non-contested cases via a protective order.³

¹ Staff Revised Draft 9-06-17 at 1 (emphasis added).

² RCW 34.05.446(4).

³ RCW 80.01.040 (4) (Granting the Commission the authority to “[make] rules and regulations necessary to carry out its other powers and duties.”)

Categories of Information

The proposed rules define four types of covered information and dictate how they should be handled. Subsection (3) defines the categories as follows:

- Exempt information: Information that is exempt from disclosure under the Public Records Act, including RCW 42.56.330. Generally speaking, this covers sensitive customer information.
- Valuable commercial information: Information exempt from disclosure under RCW 80.04.095 and RCW 81.77.210. Generally speaking, this covers trade secrets and other commercially-sensitive information.
- Protected Information: Information that is protected under a general protective order.
- Highly confidential information: Information that is protected under a commission-issued highly confidential protective order.

The “protected information” category is superfluous and has the potential to cause confusion. WAC 480-07-420 governs protective orders, and provides that standard protective orders address information exempt from disclosure under the Public Records Act (including RCW 42.56.330), RCW 80.04.095, and RCW 81.77.210. Summarized in the context of the proposed rules’ terminology, information subject to a standard protective order under WAC 480-07-420 (i.e., “protected information” under the proposed rules) is already defined as “exempt information” or “valuable commercial information.” Put another way, any information that would qualify as “protected information” under the proposed rules would, by definition, also qualify as “exempt information” or “commercially sensitive information.”

The proposed rules, however, specify distinct handling requirements for “protected information” that differs from the handling requirements for “exempt information” and “valuable commercial information.” Since any “protected information” is, by definition, also “exempt information” or “valuable commercial sensitive information” that is subject to standard protective order should be handled differently than the same type of information that is not subject to a standard protective order. For example, “valuable commercial information” and “protected information” are subject to different mechanisms when potentially covered under a public records request.⁴ But it is possible that “protected information” also qualifies as “valuable commercial information” per RCW 80.04.095 or RCW 81.77.210 since that could be the basis for its coverage under a standard protective order. The disparate language in subsections (5), (6), and (7) has the potential to lead to similar confusion. This is a reasonable reading of the rules, but it is unlikely that it is staff’s intended outcome.

Marking and Submission

Subsections – 160(5)(c)(i), -160(6)(c)(i), -160(7)(c)(i), -160(8)(c)(i) requires parties submitting covered information to include the designation “in a visible portion of the disc or electronic storage medium” that “one or more documents contain information designated as exempt under WAC 480-07-160.” This is confusing because “exempt information” is one of the four specific types of designations under the rule, so a designation on storage medium that indicates it

⁴ Compare Proposed Rules subsection (6) (d) with subsection (7) (e).

includes “information designated as exempt” could cause confusion about the actual designation of the information. To avoid confusion, Pacific Power suggests that the designation should state: “one or more documents contains information designated as restricted under WAC 480-07-160.” To further clarify, an overarching definition of “restricted information” could be included; it would define “restricted information” as including “protected information”, “exempt information”, “commercially sensitive information”, and “highly sensitive information.”

Also, it may be impossible to physically mark the exterior of certain commonly used storage devices, like USB drives. In those instances, Pacific Power recommends that the rules clarify that the designation can be included in a text file within the storage device.

Marking Voluminous Restricted Information

Subsections -180(5)(c)(iii), (6)(c)(iii), (7)(c)(iii), and (8)(c)(iii) require the party submitting restricted information to “clearly designate on the un-redacted version the information claimed to be” restricted “by highlighting the text...” The same standard applies to the redacted versions. *See* subsections -180(5)(c)(iv), (6)(c)(iv), (7)(c)(iv), and (8)(c)(iv).

Similar to the changes the Public Utility Commission of Oregon recently made to its general protective order, Pacific Power recommends including a “reasonable efforts” standard with respect to designating the specific information within a page that is confidential or highly confidential.⁵ In some circumstances (e.g., disclosing extremely voluminous modeling databases as part of the integrated resource planning process) it is not feasible to designate specific cells within the thousands of spreadsheets that comprise the database. Put another way, there are circumstances where the volume or extensive content of submitted documents would make it unreasonable for the disclosing party to designate with specificity. At minimum, the rules should clarify that a “reasonable efforts” applies to voluminous documents, modeling databases, and workpapers. In such cases, the balance should tip in favor of protecting confidential or highly confidential information.

Another situation has arisen in the context of Pacific Power’s integrated resource plan (IRP). Pacific Power’s IRP filing includes thousands of files that are designated as confidential information. Requiring submitting parties to include a single PDF page for each confidential file is exceptionally burdensome and serves no organizational or informational purpose. The rules should clarify that submitting parties are not required to include a single PDF page for each file that is considered confidential or otherwise restricted; instead, a single document identifying each of the files should be sufficient.

Multiple Types of Restricted Information

When a document contains multiple types of restrictions, Subsection -160(9)(a) requires a submitting party to mark the documents in accordance with the subsections applicable to each specific restriction. In un-redacted versions, the restricted information should be highlighted “with no more than twenty percent grey shading or other clearly visible designation.” In the case of un-redacted documents with multiple types of restricted information, the rule should clarify different highlight shadings for the different categories of restricted information. Otherwise, the

⁵ *See* Order No. 15-243, Docket No. AR 587 at 2 (Aug. 25, 2015) (adding language to the general protective order “requiring a designating party to use reasonable efforts to ensure that any designated information continues to warrant protection.”)

page header will identify two or more types of restricted information (i.e., a page that includes “exempt information” and “valuable commercial information”) but the reader will not be able to tell what text is covered by what designation unless the highlighting differs by designation.

Pacific Power appreciates the Commission’s efforts to update and clarify its procedural rules, as well as the opportunity to participate in the process. Pacific Power looks forward to having continued discussion with the parties regarding these proposed rules, and recommends a workshop to help facilitate further clarification on Staff’s position and to respond to the comments submitted in response to the proposed WAC 480-70-160 rules.

Please direct inquiries to Jason Hoffman, Regulatory Projects Manager, at (503) 331-4474.

Sincerely,

/s/

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