

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

|                                       |   |                   |
|---------------------------------------|---|-------------------|
| In the Matter of the Petition of      | ) | DOCKET UE-132119  |
|                                       | ) |                   |
| PACIFIC POWER & LIGHT                 | ) | ORDER 01          |
| COMPANY                               | ) |                   |
|                                       | ) |                   |
| For Declaratory Order Regarding       | ) | DECLARATORY ORDER |
| Interpretation of WAC 480-100-128(6), | ) |                   |
| WAC 480-100-178, and WAC 480-         | ) |                   |
| 100-128(3)                            | ) |                   |
| .....                                 | ) |                   |

**BACKGROUND**

- 1 On November 18, 2013, Pacific Power & Light Company (PacifiCorp or Company)<sup>1</sup> filed with the Washington Utilities and Transportation Commission (Commission) a Petition for a Declaratory Order (Petition). PacifiCorp seeks a determination that its practice of combining the first of four disconnection notices with a regular billing statement sent to customers with past due balances complies with WAC 480-100-128(6) and WAC 480-100-178.
  
- 2 The Company states that since 1995, it has included the first of four disconnection notices (to which PacifiCorp refers as “past due” notices) with regular billing statements. PacifiCorp interprets WAC 480-100-128 (Disconnection of service) and WAC 480-100-178 (Billing requirements and payment date) to specify only the information customers must receive and to grant companies discretion to determine whether to provide that information in a separate disconnection notice or to include the information as part of a billing statement. PacifiCorp has implemented the second option as part of its disconnection process pursuant to which it notifies “customers using a variety of methods, including mailed bills, mailed notices, a courtesy

---

<sup>1</sup> This filing was submitted in the name of “PacifiCorp d/b/a Pacific Power & Light Company,” but the Company’s official name in the Commission’s records is “Pacific Power & Light Company.” Unless and until the Company takes the necessary steps to change its name on file with the Commission, we will use the name in our records. We strongly encourage the Company to accurately identify itself as “Pacific Power & Light Company” in future filings as long as that is the Company’s name in the Commission’s records.

outbound call and a courtesy 48 hour notice hand-delivered to the customer's premises."<sup>2</sup>

3 PacifiCorp seeks a declaratory order because the Commission's Regulatory Staff (Staff) recently conducted an investigation in response to a customer complaint and found what Staff considered to be 434 violations of Commission rules resulting from the Company combining initial disconnection notices with regular billing statements.<sup>3</sup> Staff directed the Company to begin sending separate disconnection notices to avoid enforcement action. PacifiCorp claims that modifying its systems to comply with this directive would cost Washington ratepayers approximately \$1.1 million and would increase the Company's Washington annual printing and postage costs by approximately \$200,000.<sup>4</sup> Before taking such action, the Company requests a Commission interpretation of the applicable rules.

4 On November 20, 2013, pursuant to RCW 34.05.240 and WAC 480-07-930, the Commission gave notice of PacifiCorp's Petition and invited interested persons to submit statements of law and fact on the issues raised in the Petition. On December 6, 2013, the Commission received statements of fact and law from Staff, the Public Counsel Section of the Office of the Washington Attorney General (Public Counsel), and the Energy Project. No interested person objected to the Commission entering a declaratory order to address the issue presented in the Petition, but all of the responding entities disagree with PacifiCorp's interpretation of the applicable Commission rules.

5 Staff contends, "Because the requirements for disconnection notices and the requirements for billing statements are contained in completely separate sections of the WAC, and neither of those cross-reference each other, the most reasonable interpretation is that the two documents are separate and may not be combined."<sup>5</sup> Staff further observes that each rule's requirements are different and in some cases are irreconcilable with the concept of combination, *e.g.*, providing for telephonic notice for some disconnection notices but not for bills, and permitting electronic bills

---

<sup>2</sup> Petition ¶ 14.

<sup>3</sup> The Company contends that Staff's interpretation represents a change in position because Staff did not previously object to PacifiCorp's practice on any of the 10 prior occasions when the Company provided Staff with copies of combined initial disconnection notices and regular billing statements. *Id.* ¶ 16.

<sup>4</sup> *Id.* ¶ 18.

<sup>5</sup> Staff's Statement of Law and Fact ¶ 9.

but prohibiting electronic disconnection notices.<sup>6</sup> Staff asserts that a separate “notice of disconnection is least likely to be confusing, and most likely to be noticed and called to the customer’s attention,”<sup>7</sup> and that providing customers with a separate disconnection notice is the standard practice of all the other natural gas and electric companies the Commission regulates.<sup>8</sup>

6 Like Staff, Public Counsel believes, “The two rules at issue here contemplate two separate procedures, timelines, and notice to customers.”<sup>9</sup> Public Counsel argues that “the intent of these rules is to provide clear and effective notice,” and such “notice is lacking when both the disconnection notice and the regular billing statement are combined into one document as PacifiCorp does.”<sup>10</sup> Sample combined notices and billing statements, according to Public Counsel, illustrate the inherent confusion in such a practice, as well as contain other violations of the rule. Public Counsel also questions the evidentiary support and the need for the expenditures PacifiCorp claims would be required to modify its systems to issue separate disconnection notices and billing statements.

7 The Energy Project concurs with Public Counsel’s response to the Petition and emphasizes that “[i]t is the lack of clear communication that most concerns us.”<sup>11</sup> The Energy Project states, “Whether or not a separate notice is issued, it is imperative that PacifiCorp’s communication clearly delineate what must be paid to avoid disconnection distinctly from the current charges that are not past due or cause for disconnection and that the separate payment dates for each of these be clearly identified.”<sup>12</sup>

---

<sup>6</sup> *Id.* ¶¶ 10-12.

<sup>7</sup> *Id.* ¶ 17.

<sup>8</sup> *Id.* ¶ 13. Staff also notes that the costs of compliance PacifiCorp cites are both unsubstantiated and irrelevant to the legal issue presented and that the Company’s characterization of Staff’s position as a “change” is neither accurate nor germane.

<sup>9</sup> Public Counsel’s Response ¶ 7.

<sup>10</sup> *Id.* ¶ 6.

<sup>11</sup> The Energy Project’s Response at 1.

<sup>12</sup> *Id.*

## DISCUSSION

8 “Any person may petition an agency for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency.”<sup>13</sup> As relevant here, the petition must demonstrate “(a) That uncertainty necessitating resolution exists; (2) That there is an actual controversy arising from the uncertainty . . . ; (c) That the uncertainty adversely affects the petitioner; [and] (d) That the adverse effect of the uncertainty on the petitioner outweighs any adverse effect on others or on the general public that may likely arise from the order requested.”<sup>14</sup> No party disputes that an actual controversy exists between PacifiCorp and Staff arising from differing interpretations of Commission rules. The record further reflects that the resulting uncertainty adversely affects the Company in the form of a potential enforcement action, and there is no adverse impact on others or the general public if the Commission enters a declaratory order resolving the issue presented.<sup>15</sup> We find, therefore, that the Petition satisfies the statutory requirements for entering a declaratory order.

9 On the merits of the Petition, we conclude that WAC 480-100-128 and WAC 480-100-178 do not prohibit PacifiCorp from combining an initial disconnection notice with a regular billing statement. WAC 480-100-128(6) establishes notification requirements for disconnection, and WAC 480-100-178 prescribes the contents of electric customer bills. Neither rule expressly states that a company must use separate documents to satisfy these requirements. Nor can such an obligation be implied under the circumstances presented here.

10 Staff argues that an implied prohibition on using a combined document arises because requirements for disconnection notices and monthly billing statements are in separate rules that do not cross-reference each other. The existence of separate requirements, however, does not necessarily mean that a company can meet those requirements only by using separate documents. If a single document can incorporate all of the relevant rule provisions governing initial disconnection notices and billing statements, the Commission’s rules do not prohibit a company from using such a document to comply with these regulatory obligations.

---

<sup>13</sup> RCW 34.05.240(1); *accord* WAC 480-07-930(1).

<sup>14</sup> RCW 34.05.240(1).

<sup>15</sup> Petition ¶¶ 5-6 & 24-28.

- 11 Similarly, the availability of different and incompatible alternatives for providing customers with initial disconnection notices (via telephone) and billing statements (electronically) also does not imply that the Commission intended to prevent a company from combining an initial disconnection notice with a billing statement. Companies may choose to provide a disconnection notice through a telephone call under certain circumstances, but then they could not relate the customer's billing statement over the phone. A company that decides to use an electronic billing statement could not include a disconnection notice with that statement. But if PacifiCorp decides to mail customers a paper disconnection notice and a paper billing statement, the mere fact that the Company *could* use some other means does not preclude the Company from using a single paper document to serve both functions.
- 12 We nevertheless share the customer confusion concerns that Staff, Public Counsel, and The Energy Project have raised. A separate disconnection notice may be clearer and more emphatic than a notice combined with a monthly billing statement, but *not* including disconnection warnings on the monthly bill could give a customer some false comfort. By electing to use a single document for dual purposes, PacifiCorp must accept the heightened responsibility to ensure that customers are unambiguously informed of the actions they must take to avoid disconnection that are distinct from their obligations to pay their monthly bill.
- 13 The issue of the sufficiency of PacifiCorp's combined initial disconnection notices and billing statements, however, is not before us. The Petition seeks only a declaratory order "that combining the first of four 'past due' notices with regular billing statements to be in compliance with" WAC 480-100-128(6) and WAC 480-100-178.<sup>16</sup> We decline to expand the scope of this proceeding beyond the question presented to determine whether the language in the combined documents the Company uses is clear and unambiguous and otherwise complies with the rule requirements. However, we expect PacifiCorp to work with the parties in this docket to develop any reasonable modifications needed to ensure that the content of the combined initial disconnection notice and monthly billing statement does not confuse customers but clearly informs them of their rights and obligations.

---

<sup>16</sup> Petition ¶ 1; *accord id.* ¶¶ 7 & 29.

**ORDER**

THE COMMISSION DECLARES:

- 14 (1) WAC 480-100-128 and WAC 480-100-178 do not prohibit Pacific Power & Light Company from using the same document to provide an initial disconnection notice and a monthly billing statement.
- 15 (2) Pacific Power & Light Company should work with Commission Staff, Public Counsel, and the Energy Project to develop any modifications needed to the language and format of documents used to provide both an initial disconnection notice and a monthly billing statement to ensure that the document complies with WAC 480-100-128 and WAC 480-100-178 in a manner that clearly notifies customers of the actions they must take to avoid disconnection distinct from the customers' obligation to pay their monthly bill.

DATED at Olympia, Washington, and effective, January 29, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

JEFFREY D. GOLTZ, Commissioner