

August 31, 2018

VIA ELECTRONIC FILING

Mark L. Johnson
Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250

**RE: Docket A-130355—Pacific Power & Light Company’s Comments on
WAC 480-07-160 and WAC 480-07-420**

In response to the Notice of Opportunity to Submit Written Comments issued by the Washington Utilities and Transportation Commission (Commission) on July 31, 2018, Pacific Power & Light Company (Pacific Power), a division of PacifiCorp, submits the following written comments on the proposed draft rules for WAC 480-07-160 and WAC 480-07-420.

Pacific Power would like to reiterate our appreciation for staff’s efforts and leadership in forming the proposed procedural rules governing confidential and other restricted information. In particular, Pacific Power commends staff for the new subsection (8) in WAC 480-07-160, which governs spreadsheets. The new section, which allows parties to identify restricted information in a flexible way in circumstances where marking that information in accordance with subsections (4) through (7) would be impractical or unduly burdensome. This flexibility will definitely aid in promoting cooperation and open process in regulatory proceedings.

Pacific Power recommends one final clarification—that protective orders be available in non-contested cases. The need for exchange of information, discovery, or evidentiary filings that contain confidential information exists heavily in non-adjudicated proceedings as well as adjudicated proceedings. The lack of a protective order in non-adjudicated proceedings hinders the exchange of information between parties and creates uncertainty around the protection of commercially sensitive information. By making this change, the Commission would have the ability to approve or deny motions for protective orders in non-adjudicated, but potentially significant or contentious proceedings.

Pacific Power recommends changing one word in the draft rules as follows:

WAC 480-07-420 Discovery—Protective Orders

(1) Standard form. The commission may enter a standard form of protective order designed to promote the free exchange of information and development of the factual record in a proceeding when the commission finds that parties reasonably anticipate that discovery or evidentiary filings will require information designated as confidential as defined in WAC 480-07-160 to be disclosed to other parties in the ~~adjudication~~proceeding.

RCW 80.04.095 states that,

Nothing in this section shall prevent the use of protective orders by the commission governing disclosure of proprietary or confidential information in contested proceedings.

This provision is not an express grant of authority to issue protective orders, nor is it an express limitation of authority. Instead, the plain language simply states that nothing in the provision governing protection of confidential information (and procedures for contesting confidential designations) limits the Commission's authority to issue protective orders in contested cases.

Nothing in that provision authorizes or precludes the use of protective orders in any type of proceeding. And Pacific Power notes that RCW 80.01.040(4) grants the Commission broad discretion to develop rules to carry out its duties; that authority extends to developing procedural rules governing Commission proceedings. The Commission's broad discretion to develop rules extends to developing rules governing the use of protective orders in non-contested cases—particularly when such rules would help to protect confidential information, establish clear guidelines on how confidential information should be treated and protected in non-contested cases, minimize unnecessary disputes, and facilitate the open and transparent disclosure of information in complex dockets.

Once again, the company appreciates staff's thoughtful consideration of comments and development of much improved rules. Pacific Power supports the new draft rules.

Sincerely,

_____/s/
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