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BEFORE THE WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

vs.

PACIFIC POWER & LIGHT COMPANY,

Respondent.

Docket No. UE-161204

PACIFIC POWER'S RESPONSE IN  
OPPOSITION TO YAKAMA  
POWER'S MOTION FOR OFFICIAL  
NOTICE

Respondent Pacific Power & Light Company (Pacific Power or Company) opposes Yakama Power's Motion for Official Notice, seeking the admission of a document Administrative Law Judge Pearson previously, and properly, excluded as irrelevant. The unsigned, undated letter fails to rise to the level of an interpretive or policy statement of an agency, and has no bearing on the issue before the Commission - whether to approve Pacific Power's proposed revisions to its permanent disconnection and removal tariffs. Yakama Power's motion should be denied.

**I. The BIA Letter is not a Rule, Regulation, Interpretive or Policy Statement of an Agency.**

WAC 480-07-495(2)(a)(i)(A) allows (but does not require) the Commission to take official notice of "[r]ules, regulations, interpretive and policy statements, administrative rulings, and orders, exclusive of findings of fact, of the commission and other governmental agencies."

1           Yakama Power argues that the letter contains an “interpretive policy statement”<sup>1</sup> and  
2 the Commission should take official notice on that basis. However, the letter does not rise to  
3 the level of an “interpretive or policy statement” of the BIA. At best, it is a legal opinion of a  
4 non-lawyer, based on a hypothetical set of facts.

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6       **II. The BIA Letter was Properly Excluded During the Hearing Because it is  
not Relevant.**

7           Judge Pearson properly excluded the BIA letter during the hearing because it is not  
8 relevant to the issue presented in this docket - whether to approve Pacific Power’s revisions to  
9 its permanent disconnection and removal tariffs to eliminate confusion and avoid cost shifting  
10 when its customers disconnect to receive electric service from another energy provider. Pacific  
11 Power’s proposed tariff revisions apply to all customers, regardless of the status of the real  
12 property on which the customer is located. Under the Washington Administrative Code, an  
13 applicant for electric utility service is responsible for conforming to the rules and regulations  
14 that are in effect and on file with the Commission when the applicant orders service. WAC  
15 480-100-108(1).  
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17           The status of the real property of an individual customer has no bearing on whether  
18 Pacific Power’s proposed revisions constitute “just, reasonable, or sufficient rates, charges,  
19 regulations, practices or contracts to be thereafter observed and in force.” RCW 80.28.020.  
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23           <sup>1</sup> An interpretive rule is something an agency issues to advise the public of the  
24 agency’s construction of the statutes and rules which administers. *Chrysler Corp. v. Brown*,  
25 441 U. S. 281, 302, n. 31 (1979). Interpretive rules do not require notice and comment, do  
26 not have the force and effect of law, and are not accorded the weight of a law in an  
adjudicatory process. *Id.* Similarly, statements of an agency’s policy do not bind private  
parties or the agency itself with the force of law. *Croplife America v. Environmental  
Protection Agency*, 329 F.3d 876 (D.C. Cir. 2003).

1 **III. Yakama Power's Motion is Procedurally Defective.**

2 Yakama Power impermissibly seeks reconsideration of Judge Pearson's evidentiary  
3 ruling during the hearing. Under the Commission's procedural rules, "the presiding officer  
4 will consider, but is not required to follow, the rules of evidence governing general civil  
5 proceedings in nonjury trials before Washington superior courts when ruling on the  
6 admissibility of evidence." WAC 480-07-495(1). All relevant evidence is admissible if the  
7 presiding officer believes it is the best evidence reasonably obtainable, considering its  
8 necessity, availability, and trustworthiness; the presiding officer may exclude evidence that is  
9 irrelevant, repetitive, or inadmissible, whether or not a party objects to the evidence. *Id.*

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11 Parties objecting to the introduction of evidence must state the grounds for the  
12 objection at the time the evidence is offered. If the presiding officer excludes the evidence  
13 from the record, the presiding officer may provide the party offering that evidence with the  
14 opportunity to make an oral or written offer of proof briefly describing the nature and purpose  
15 of the evidence for subsequent review of the presiding officer's ruling. *Id.*

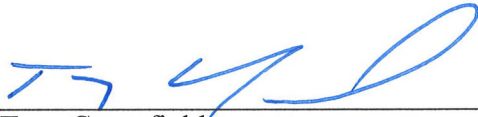
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17 Yakama Power waived its right to seek admission of the BIA letter through a post-  
18 hearing motion because it failed to identify WAC 480-07-495(2)(a)(i)(A) as an alternative  
19 basis for its admission during the hearing.

20 **IV. Conclusion.**

21 The BIA letter was properly excluded at the hearing because is not relevant to the issue  
22 before the Commission in this docket - whether to approve Pacific Power's proposed revisions  
23 to its permanent disconnection and removal tariffs. The unsigned, undated letter contains the  
24 lay opinion of a non-lawyer, and does not constitute a rule, regulation, interpretive or policy  
25 statement of an agency subject to official notice. In addition, Yakama Power waived its right  
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1 to seek reconsideration of the evidentiary ruling by not raising WAC 480-07-495(2)(a)(i)(A)  
2 as an alternative basis for its admission at the time of the hearing. Judge Pearson properly  
3 excluded the BIA letter during the rate hearing, and should not reconsider her ruling here under  
4 the guise of “official notice.” Yakama Power’s motion should be denied.  
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6 Respectfully submitted this 30<sup>th</sup> day of June, 2017.

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