

March 11, 2003

**VIA ELECTRONIC MAIL**

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Carole J. Washburn  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Drive SW  
P.O. Box 47250  
Olympia, WA 98504-7250

**Re: Docket No. A-021178  
Comments of PacifiCorp**

Dear Ms. Washburn:

In response to the Commission's notice of February 18, 2003, PacifiCorp hereby submits its written comments in the above proceeding. PacifiCorp previously submitted comments in this proceeding on November 27, 2002, following participation in the Commission's November 5, 2002 workshop. PacifiCorp intends to participate as well in the additional workshop scheduled for April 10, 2003.

The Commission's notice identifies three financial rules that are being proposed by Commission Staff for consideration:

- Financial transaction reports which are required twenty days prior to the transfer of cash, credit, or pecuniary interest when certain thresholds have been exceeded. (Proposed WAC 480-100-208(4)(a))
- Prefiling of contracts for "essential utility services." (Proposed WAC 480-100-208(4)(b))
- Annual subsidiary transaction reports which summarize all transactions that occurred between a utility and its subsidiaries during the preceding year. (Proposed WAC 480-100-208(4)(d))

PacifiCorp's comments are directed at each of these proposals. These comments are somewhat preliminary in nature, given the availability of an upcoming workshop in April to discuss the proposals further with the Commission and its Staff.

Of the three proposed financial rules, PacifiCorp generally supports the third proposal regarding the filing of annual subsidiary transaction reports, as discussed further below. This proposed financial rule is consistent with PacifiCorp's comments of November 27, 2002, which endorsed the requirement of a periodic filing identifying all agreements transacted between a utility and its subsidiaries. The other two proposed financial rules, however, impose costly and potentially burdensome filing requirements that seem to exceed any associated benefits, and which do not appear to have any relationship to the concerns previously identified by the Commission and its Staff in workshops in this and related proceedings. PacifiCorp has serious concerns regarding these proposed requirements, as discussed further below.

### **Financial Transaction Reports**

Proposed WAC 480-100-208(4)(a) would impose a requirement to pre-file with the Commission a report regarding transfers of cash, credit, or any pecuniary interest between an electric utility, its subsidiaries, or its affiliates. PacifiCorp's concerns with this proposed financial rule include the following:

- The proposed rule fails to distinguish between subsidiaries and affiliates with respect to the procedures that apply. As indicated in PacifiCorp's November 27, 2002 comments in this proceeding and in comments filed in Docket No. A-020683, imposing a pre-filing requirement may be acceptable with respect to such transfers involving an affiliate, given the statutory authority in Chapter 80.16 RCW with respect to affiliate transactions. In the case of transactions involving subsidiaries, however, PacifiCorp supports the filing of periodic reports detailing transactions only *after* they have occurred.
- As a practical matter, imposing a requirement to file such transactions "twenty days prior to the transfer" is probably not feasible in the case of financial transactions. Where market-based pricing of financial terms is used, for example, the "details of the transaction" simply may not be known twenty days in advance.
- The financial rule, by using "between" rather than "from" or "to," would seem to apply to transfers in both directions, *i.e.*, from a subsidiary to its parent and from a parent to its subsidiary. In cases of some types of flows in some directions, however, there does not seem to be a concern so urgent as to warrant a pre-filing requirement. The proposed rule is written broadly to address an apparent concern that probably does not exist in the case of most transactions technically falling within its scope.

### **Contracts for “Essential Utility Services”**

Proposed WAC 480-100-208(4)(b) would require the prefiling of contracts for “essential utility services.” PacifiCorp’s concerns with this proposed financial rule include the following:

- This new category of transactions has nothing to do with subsidiaries or affiliates, but applies to transactions between a utility and *any* party, whether affiliated or not. As such, this proposal seems to go far beyond any concerns previously identified as the basis for this rulemaking. The affiliated interest statute refers to “management or service contracts” between a utility and its affiliates, not all manner of contracts between a utility and any party, whether affiliated or not.
- The scope and breadth of the proposed rule, given the rather low threshold, is so broad as to impose costly and burdensome reporting requirements. The proposed \$10 million threshold, for example, as applied to contracts for the “purchase of electricity” would require the filing of hundreds of contracts each year in the case of PacifiCorp. Moreover, these contracts are subject to regulation at the federal level under the Federal Power Act, and it is unclear what benefits derive from additional reporting requirements at the state level.
- Categories (i), (ii), and (iv) arguably fall within the category of “management or service contracts,” although the threshold appears to be too low. Category (iii) does not fall within the category of “management or service contract.”
- It is not clear from the proposed rule when these contracts must be filed. If a prefiling requirement is contemplated, PacifiCorp reiterates its concerns expressed above in *Financial Transaction Reports*. Preferably, any requirement with respect to contracts for “essential utility services” could be satisfied by filing the annual report required by proposed WAC 480-100-208(4)(c).
- Given these fundamental concerns with respect to this proposed rule, it may be appropriate to withdraw this particular proposal, and replace it with a more narrow, tailored approach.

### **Annual Subsidiary Transaction Reports**

Proposed WAC 480-100-208(4)(d) would require annual subsidiary transaction reports summarizing all transactions that occurred between a utility and its subsidiaries during the preceding year. PacifiCorp’s comments with this proposed financial rule include the following:

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- As indicated above, PacifiCorp generally supports this new requirement as a reasonable response to the Commission's expressed concerns and the legitimate need for increased information regarding transactions between utilities and subsidiaries.
- The proposed rule refers to "the annual subsidiary transaction report," as if this filing requirement already exists. The rule should be re-written to define that particular report, specify what is to be included in that report, and the due date for its filing. The requirement should be formulated along the lines of the Avista proposal in its October 30, 2002 comments to require "all agreements transacted between a regulated company and its subsidiaries in the previous year [to] be itemized in an Annual Subsidiary Transaction Report."

Please contact the undersigned at (503) 813-6092 or Jeff Payne at (503) 813-6032 if there are any questions. We look forward to continued participation in discussions regarding these issues at the April 10 workshop. Thank you for your assistance.

Sincerely,

Christy Omohundro  
Director, Regulatory Policy