

November 21, 2014

***VIA ELECTRONIC FILING
AND OVERNIGHT DELIVERY***

Public Utility Commission of Oregon
3930 Fairview Industrial Drive, SE
Salem, OR 97302

Attn: Filing Center

Re: AR 583—PacifiCorp's Comments

PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) appreciates the opportunity to comment in this rulemaking to streamline the Public Utility Commission of Oregon's (Commission) electronic filing processes. PacifiCorp appreciates the Commission's efforts to implement a data sharing platform that will allow parties to post and respond to data requests. PacifiCorp has been participating in the Commission's efforts to implement the Huddle platform, and supports revisions to the procedural rules needed to effectively deploy that system. But because the Commission's evaluation of Huddle is ongoing, changes to the procedural rules aimed at implementing that platform are premature.

While well-intentioned, the proposed revisions to the Commission's procedural rules are far more than mere "housekeeping" changes. Instead, the Commission has proposed major changes to the procedures for filing and serving documents in contested cases and other formal proceedings, and the proposed changes raise due process concerns. Given the breadth of the proposed changes, PacifiCorp recommends that the Commission initiate a more robust public process for stakeholder input before significantly amending document filing and service procedures.

PacifiCorp is most concerned about the changes proposed for OAR 860-001-0180. Under proposed OAR 860-001-0180(2), a party would effectuate service by filing a document with the Commission's filing center, and the obligation to directly serve other parties would be eliminated. The Commission (rather than the filing party) would then be responsible for serving documents on other parties. It is unclear whether the Commission intended to shift the burden of service to itself.

Many jurisdictions have adopted court-administered electronic filing platforms (for example, the CM/ECF platform used in federal courts). Under platforms like CM/ECF, parties upload documents via the court-administered platform, and the electronic filing platform simultaneously delivers the document to the other case participants. These electronic filing platforms provide a convenient and reliable method for filing documents, and most importantly, ensure that other parties are served within moments of filing.

The Commission has not yet adopted an electronic case filing platform that guarantees real-time service of electronically filed documents. While the Commission emails parties a Notice of

Filing (which includes a link to the actual filing) after it has received a filing, the notices of filing are not received by parties contemporaneous with service on the Commission. Parties often receive the Notice of Filing hours, if not a day or two, after the document has been filed with the Commission.

Relying on the current Notice of Filing system to effectuate service on parties raises due process concerns. The gap between service on the Commission and the Commission's subsequent service on the case parties via the Notice of Filing has the potential to cause confusion about the timeliness of service and the calculation of due dates for responsive pleadings. For example, if a party served the Commission electronically at 4:50 p.m. on October 19, 2014, but a party does not receive the Notice of Filing until after 5:00 p.m. (or the next day), when was service made on the party receiving the Notice of Filing? For a filing with a 14-day response period, would the response be due 14 days from October 19 or 14 days from October 20? The proposed rule revisions leave these questions unanswered. These concerns would be further exacerbated by the proposal to eliminate the need for a certificate of service in OAR 860-001-180(5) because there would be no prima facie evidence of when service was made.

Due process requires certainty about the date of service, and the proposed rules do not provide this certainty. The simplest way to ensure certainty about service is to retain the current service requirements until the Commission has implemented a reliable electronic filing system that eliminates these types of due process concerns.

PacifiCorp provides the following additional comments on the proposed changes:


- Page 1—860-001-0020—PacifiCorp recommends removing the physical address from the rules and instead referring to the “Contact Us” page on the Commission’s website (http://www.puc.state.or.us/Pages/contact_us.aspx) to ensure the most up-to-date information is provided. This change would avoid the need for rule revisions if the Commission relocates offices.
- Page 4—860-001-0170(1)(f) & (g)—This proposed change reduces the time that parties have to deliver confidential filings and data request responses by one business day. PacifiCorp proposes the rule to allow for original confidential documents to be delivered on the following business day after electronic filing consistent with current practices.
- Page 5—860-001-0170(3)—PacifiCorp recommends that a set number of physical copies be stated in the rule to allow time to prepare documents for filing. For utilities to be required to contact the Commission’s Filing Center every time a filing goes over 100 pages is administratively burdensome and creates uncertainty in the time required to prepare the filing.
- Page 6—860-001-0180(4)—This proposed change reduces the time that parties have to prepare documents for filing. Under this change, parties would have to complete preparation of a filing the day *before* the deadline in order to meet the requirements. PacifiCorp proposes that the rule allow for physical copies to be delivered on the following business day after electronic filing consistent with current practices.
- Page 6—860-001-0180(2)(b)—The requirement for physically serving documents greater than 100 pages should be eliminated as it defeats the purpose of an electronic filing regime. The vast majority of parties in Commission proceedings do not elect the physical

service option, and modern electronic mail technology is more than capable of handling documents larger than 100 pages.

- Page 6—860-001-0180(5)—PacifiCorp believes that the requirement for filing a certificate of service currently found in subsection (5) is important and should remain in the rule. Certificates of service provide an important procedural check and are required for documents filed in CM/ECF and other electronic filing platforms. Eliminating the requirements for a certificate of service would exacerbate the due process problems raised by the proposal to eliminate direct service on case participants.
- Page 13—860-001-0480(5)—If the Commission implements a shared online workspace, PacifiCorp recommends that its use be limited to discovery. In cases where workpapers are submitted concurrent with initial filings, the shared workspace may not yet be established. PacifiCorp also recommends that parties continue to be required to provide electronic copies of workpapers if available.
- Page 14—860-001-0540(1)—PacifiCorp recommends changing the 14-day deadline back to 10 business days. This change was made in a previous housekeeping rulemaking that converted business days into calendar days. The current rule does not account for weekends or holidays, and therefore unintentionally shortens the discovery deadline in certain occasions.
- Pages 14-15—860-001-0540(2)-(3)—If the Commission implements a shared online workspace, PacifiCorp recommends that the rules provide service guidelines and requirements because the contacts on the service list in each proceeding may not match the online workspace user list. It is PacifiCorp's understanding that the Commission intends to limit the number of the online workspace users to reduce cost.
- Pages 14-15—860-001-0540(3)—If the Commission implements a shared online workspace, would non-confidential data requests and responses be available for viewing for all parties on the service list? If so, parties would no longer need to request copies of non-confidential data responses. Also, would this mean that the noticing email that responses have been uploaded would go to the entire service list in that proceeding?
- Pages 24-26—OAR 860-021-0015—The proposed changes in this section go beyond the housekeeping scope of this proceeding. The Company respectfully requests that these changes be addressed in a separate workshop or proceeding to allow sufficient time and opportunity for review.

Thank you for the opportunity to provide comments in this proposed rulemaking. If you have any questions, please contact Natasha Siores, Director, Regulatory Affairs & Revenue Requirement, at (503) 813-6583.

Sincerely,


R. Bryce Dalley
Vice President, Regulation
Enclosures

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of PacifiCorp's Comments on the parties listed below via electronic mail and/or US mail in compliance with OAR 860-001-0180.

SERVICE LIST
AR-583

Lisa Nordstrom (W)
Idaho Power Company
PO Box 70
Boise, ID 83707-0070
lnordstrom@idahopower.com

Onita King (W)
Northwest Natural
220 NW 2nd Ave
Portland, OR 97209-3991
ork@nwnatural.com

PGE Rates & Regulatory Affairs (W)
Portland General Electric
121 SW Salmon St., 1WTC0702
Portland, OR 97204
Pge.opuc.filings@pgn.com

Michael T. Weirich (W)
Department of Justice – Business Activities
Section
1162 Court St. NE
Salem, OR 97301-4096
Michael.weirich@state.or.us

Dated this 21st Day of November 2014.



Carrie Meyer
Supervisor, Regulatory Operations