

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	DOCKET NO. UE-100749
TRANSPORTATION COMMISSION)	
)	
Complainant,)	
)	
v.)	
)	
PACIFICORP d/b/a/ PACIFIC POWER &)	
LIGHT COMPANY)	
)	
Respondent.)	
.....)	

INITIAL BRIEF OF
THE ENERGY PROJECT

I. INTRODUCTION

The following brief of the Energy Project addresses the following issues:

- 1) LIBA Funding
- 2) Other LIBA Issues
 - Serving additional customers
 - Income eligibility
 - LIBA Certification Fee
 - Every Other Year Certification
- 3) Basic Charge
- 4) Low-Income Weatherization

II. ARGUMENT

1. LIBA Funding

The Energy Project proposes that the Commission issue an order approving a twenty-one percent (21%) increase in the existing amount of annual Low-Income Bill Assistance (LIBA) funding collected through the Company's Schedule 91 surcharge. The Energy Project recommends that this Commission accept PPL's firm commitment to make a 21% increase to LIBA without any connection to or dependence on the amount of rate increase potentially, either system-wide or class-specific, awarded to PPL by the Commission.

As an aside and discussed below, PPL proposes that 30% of the LIBA funding increase be dedicated to serving additional customers. This is an important issue to the agencies that will be addressed in detail below. The Energy Project submits that the full 21% increase be dedicated to increasing the existing discount.

The Energy Project respectfully asserts that there is abundant factual and legal support for approving a funding increase to PPL's LIBA program. First, no party to this proceeding, including PPL itself, disputes that the Company's LIBA funding, on a per capita basis, is considerably lower than either PSE or AVISTA.

In assessing the sufficiency, or lack thereof, of PPL's existing LIBA program, Mr. Eberdt compared the Company's per capita funding level to that of PSE and AVISTA concluding that PPL funds at an average of \$220 per qualifying participant whereas PSE funds at \$462 and AVISTA at \$555.¹

PPL apparently has no concerns about its relatively lower level of bill assistance funding in comparison to PSE's or AVISTA's as evidenced by Company witness William Griffith who testified during cross-examination: "I don't think our goal is to gain ground with the other utilities or to compete with them. Our goal is really to balance out the impacts of the rate increase on low-income customers and the other customers who fund the surcharge so that we have a fair balance for all the different classes."²

Mr. Griffith supports his position on the basis that PPL's rates are lower than those of PSE and AVISTA.³ First, Mr. Griffith did not state by how much PPL's rates are lower than PSE's or AVISTA's, whether PPL's residential class rates are equally lower than PSE's and AVISTA's, and to what extent PPL's lower rates offset the fact that its bill assistance funding is substantially below that of PSE and AVISTA. As noted above, PPL's LIBA funding is less than one-half that of PSE and roughly one-third that of AVISTA. Though both Mr. Griffith and Company President Reitten testified that PPL's lower level of bill assistance funding must be

¹ Eberdt, Exh. No. CME-1T, p. 5: Ins 5-10.

² Tr. p. 562: Ins. 5-10, Griffith Cross.

³ *Id.*, p. 561: ln. 17.

considered alongside the fact that the Company's rates are relatively low, no individual or party to this proceeding made any attempt to quantify the magnitude of differential between the three utilities' rates and to what extent that somehow offsets PPL's substantially lower bill assistance funding.

Furthermore, the Energy Project submits that to the extent PPL's rates are somewhat lower than other utilities such as PSE or AVISTA, there are numerous factors that offset this benefit to PPL's ratepayers. First, as already noted, PPL's service territory includes some of the most impoverished counties in Washington. Mr. Eberdt provided undisputed evidence regarding the relatively high levels of poverty in PPL's Washington service territory.⁴ Yakima County is one of only four counties in Washington that are estimated to have more than 25% of children under the age of 18 living in poverty.⁵ The two counties that comprise the PacifiCorp service territory, Yakima and Walla Walla Counties, have the 5th and 7th highest levels, respectively, of adult poverty among Washington's 39 counties according to the Bureau of Census, Small Area Income and Poverty Estimates.⁶ Walla Walla County poverty has increased four percentage points since 2000.⁷

Another point of reference used by Mr. Eberdt in his analysis to assess the adequacy of PPL's LIBA funding level is the federal Low Income Home Energy Assistance Program (LIHEAP). Mr. Eberdt testified that the average electric benefit provided through LIHEAP last year was \$384, roughly 1.75 times PacifiCorp's average benefit.⁸

⁴ Eberdt, Exh. No. CME-1T, at p. 6: lns. 19-23 - p.7: lns. 1-4.

⁵ *Id.*, p. 6: lns 19-23 - p. 7: lns 1-4; Exh. No. CME-3.

⁶ Eberdt, Exh. No. CME-1T, p. 6: lns. 19-23 – p. 7: lns. 1-4.

⁷ *Id.*

⁸ *Id.* at p. 5: ln. 4.

Another aspect of LIBA that diminishes its impact on bill assistance is that the rate discount provided under the program is available only during the six months of the heating season. The PSE and AVISTA programs by contrast, base the benefit level on the annual bill and a participant can apply and receive the benefit for a longer time of the year.⁹

Staff witness Thomas Schooley admitted that PPL customers receive lower bill assistance than qualifying PSE or AVISTA customers, but puts a positive spin on this testifying: “It is evident that PacifiCorp’s customers incur a lower “tax” for low income assistance than the other electric utilities.”¹⁰ Mr. Schooley characterizes the overall effect of PPL’s proposed funding increase to its LIBA program compared to PSE and AVISTA as bringing PPL a “smidgeon closer” to PSE and AVISTA.¹¹ Mr. Schooley does not recognize the benefits that LIBA provides to all of PPL’s customers (for example, helping customers stay more timely in paying their electric bills, help keep them from being disconnected due to inability to pay, etc.), let alone attempt to quantify those benefits in order to offset them against the LIBA surcharge collected through Schedule 91.

To be clear, the Energy Project agrees with one aspect of Staff’s recommendation regarding the proposal to increase LIBA funding by 21% regardless of whether a lower rate increase is ultimately granted wither system-wide or for the residential class. As will be demonstrated throughout this brief, Staff proposes changes to PPL’s LIBA program that will cause disruption to the LIBA certification process performed by the Community Action Agencies (CAAs) who implement LIBA. Staff also proposes changes to LIBA that, by Staff’s own admission, will result in revenue shortfalls for the CAAs implementing LIBA. The purpose of emphasizing Staff’s apparent distaste for LIBA is to highlight the

⁹ *Id.* at p. 5: lns 19-20 – p. 6: lns 1-3.

¹⁰ Schooley, Exh. No. TES-1T, p. 41: lns. 13-14.

¹¹ *Id.* at ln. 20.

untenable nature of Staff's recommendations, one of which will require the CAAs to certify more LIBA participants than it currently is with relatively less money to cover its costs. The solution that Staff offers is for the agencies to initiate a future proceeding seeking to increase the amount of money it is paid to implement (administer) LIBA.

Notwithstanding whatever philosophical objections Staff might have to LIBA, Mr. Schooley agreed that LIBA funding should be increased by 21% as proposed by the Company, "regardless of the level of revenues granted."¹²

Though the Company's initial application and supporting testimony and exhibits did not state whether the increase to LIBA funding would be affected by the amount of revenue requirement ultimately granted by the Commission, witness Eberle clarified on cross-examination that PPL would accept Mr. Schooley's proposal that LIBA be increased by 21% regardless of whatever rate increase is ultimately awarded.¹³ This was also confirmed by Company witness Griffith during cross-examination.¹⁴

2. Other LIBA Issues

A. Serving Additional Customers

The Energy Project objects to PPL's proposal that 30% of LIBA funding be dedicated to serving additional customers. Mr. Eberdt's testimony contains a reasoned explanation why this proposal is not in the best interests of the CAAs and the low-income customers they assist. Under more ideal circumstances, such as if PPL's LIBA funding was significantly higher than it is, the prospect of serving additional customers might very well become desirable. Under the circumstances extant at this time, however, this condition poses several problems. PPL's LIBA funding is far from adequate to meet the

¹² Schooley, Exh. No. TES-1T, p. 40: ln. 6.

¹³ Eberle, Exh. No. RME-1T, p. 3: lns. 3-5.

¹⁴ Tr. p. 559: lns. 5-11.

existing need of the Company's qualifying low-income customers. In its past few general rate cases, PPL has essentially just proposed increasing LIBA funding to more or less offset the amount of the rate increase proposed. Because, for many reasons, not all low-income customers receive the LIBA discount, the Company's low-income customers are worse off on the whole every time the Company's rates are increased.

As Mr. Eberdt explained, requiring the agencies to serve additional customers rather than increase the amount of the discount currently available, hampers their ability to make a significant difference to any given customer and to tailor LIBA discounts in a manner that is best for low-income customers on the whole.

Next, as even Staff conceded, requiring the agencies to serve more customers will require a "substantial" increase in LIBA funding, more than proposed in this case. Regarding the consequences of every other year LIBA certification, discussed below, Mr. Schooley noted that an increase in the number of customers served requires an increase in overall LIBA funding. He testified that: "If the agencies wish to maintain their income levels, they, and their advocates, have the opportunity to consider significantly increasing the number of participants. Of course, this would necessitate a substantial increase in the surcharge [referring to the Schedule 91 LIBA surcharge]."¹⁵

As discussed in greater detail below, the CAAs are not currently recovering their LIBA certification costs under the reduced fee of \$48 per household they receive. Thus, they are operating the program at a loss to them and requiring additional customers will simply compound the problem.

The agencies would be quite happy to serve every single eligible household under LIBA, but the insufficient amount of overall LIBA funding combined with a certification fee that falls short of actual costs makes serving additional customers impractical until other changes are made. Also discussed

¹⁵ Schooley, TES-1T, p. 42: lns 10-16.

below is the fact that converting to every other year certification as proposed by PPL and Staff will further exacerbate the existing problems just identified.

The Energy Project believes it important to point out that the Company's claim that its proposal to serve additional customers is consistent with a "consensus" supposedly received with the agencies during a meeting in Toppenish, Washington last spring (March 24, 2010) mischaracterizes the facts and, for a number of reasons, is not a legitimate basis for a ruling by the Commission.

First, as Ms. Eberle acknowledged, a number of ideas involving possible new programs, or changes to existing programs, to assist low-income customers was discussed during Toppenish. PPL has chosen to focus solely on the single idea of serving additional customers on which Ms. Eberle contends a "consensus" was reached at Toppenish and was agreed to and supported by a representative of each of the three Community Action Agencies (CAAs) present at the meeting.

As Ms. Eberle admitted during cross-examination, however, there was no stipulation or formal agreement reached at the meeting. In fact, nothing was ever reduced to writing. There were no minutes taken, no audio or video recording of the meeting, and no votes tallied regarding any issue whatsoever.¹⁶ Ms. Eberle's contention that the agencies agreed to serve more customers in this program under a 70/30 split of the incremental funding increase is based solely on her act of purportedly going around the room and privately speaking with each agency's representative.¹⁷ This is troubling on many levels.

Ms. Eberle admitted that there were a number of ideas discussed at Toppenish including implementation of a seniors assistance program similar to AVISTA's. There was consensus on this idea, but no action was ever taken by the Company to bring it to fruition. According to Ms. Eberle, the

¹⁶ Tr. p.523: lns 4-13, and p. 523: lns. 24-25 – p. 524: lns 1-12, Eberle Cross.

¹⁷ *Id.* p. 522: lns 24-25 – p. 523: lns 1-5.

reason she spoke privately with each agency about serving additional customers was that she “realized that would be an issue in the rate case.”¹⁸

The Toppenish meeting took place on March 24, 2011.¹⁹ The Company did not make its initial filing in this case until May 4, 2011. Thus, by Ms. Eberle’s own statements, PPL had apparently already decided to propose increasing the number of customers served through the LIBA program. This is an issue that has been in dispute for years between PPL and the Energy Project and is important to both PPL and the agencies. Given the importance of the issue and the fact that PPL intended to raise it in an upcoming general rate case, it would have been more than justified for the Company to pose the issue to the entire group, which consisted of only 12-15 people, and which also included the Energy Project’s representatives Charles Eberdt and Michael Karp.²⁰ Staff did not participate in the Toppenish meeting.²¹

Though Eberle claims that each of the three representatives she purportedly spoke with at the meeting agreed that they wanted to serve additional customers, her claims raise several concerns. First, as pointed out, if Eberle knew the matter was of sufficient importance that it would be part of the next general rate case, why didn’t she somehow formalize the agencies’ positions on the issue if, by no other means, than simply standing up before the small group, making the proposal, and asking for a consensus? Why didn’t Ms. Eberle ensure that all those participating, including the Energy Project’s representatives, Messrs. Eberdt and Karp, heard the proposal and could weigh in?

Of even greater curiosity, what was the specific question that Ms. Eberle asked each of the three agency representatives and exactly how did they respond? Is it possible that the

¹⁸ *Id.* p. 524: lns 6-7.

¹⁹ *Id.* p. 521: lns. 12-15.

²⁰ Tr. p. 522: ln. 16, Eberle cross.

²¹ Tr. p. 521: ln. 25 – p. 522: ln. 1, Eberle Cross.

representatives perceived Ms. Eberle's question to be whether, all other things being equal, would they like to see more low-income customers served? Is it possible that the agency representatives did not know that by serving additional customers, Ms. Eberle and PPL were also proposing that the amount of the discount per customer would have to be reduced? These are questions that can only be answered now through speculation. This untenable position that the Commission and the Energy Project has been placed in could have been avoided by simply posing the issue to the entire group and seeking a formal consensus that was somehow memorialized (i.e., simply written down on a piece of paper). The foregoing list of concerns highlights why it is inappropriate for this Commission to base its ruling on the issue of whether to reduce the LIBA discount to increase the number of customers served on the Toppenish meeting.

Finally, the Energy Project notes that using 30% of the incremental increase to serve additional customers, without a substantial increase in LIBA funding, will drive the benefit level down. Under PacifiCorp's proposed design, this would result in a reduction in the level of benefits – that is, a participant in the program will see comparatively less benefit; they will be exposed to more of the bill. Since the benefit level is already quite a bit lower than, say, LIHEAP, this raises concerns. In the past the Energy Project has advocated for all of a given increase to LIBA to go to serve the same number of customers thereby increasing or “deepening” the discount per qualifying customer.

In conclusion, the agencies applaud the Company's intention to serve more customers. Given the high level of poverty in the area, the agencies are only too aware of the greater number of households who are in need and strongly support reaching out to more of them. Even just adding a small number of additional LIBA recipients is difficult for the agencies. The Company proposes in this case increasing the program participant number from 4475 customer to 4720, an increase of 5%. This

5% increase might seem small, but it adds up over time. It is, of course, not possible to hire 5% of a person or buy 5% of a computer. The Company is asking the agencies to serve more households while at the same time removing funding needed to maintain their ability to provide service.

B. Income Eligibility

This issue is uncontested due to agreement by PPL to accept the Energy Project's position for the time being. The following information is provided for those who wish to understand the issue and why PPL agreed to essentially withdraw its proposal.

In its application, PPL proposed to increase LIBA eligibility by moving the threshold criterion from customers whose income is 125% of the federal poverty level to customer earning up to 150% of the federal poverty level (FPL). Though the Energy Project understands and appreciates the Company's motive for making this proposed eligibility criteria change, the Energy Project proposes leaving the eligibility at 125% of FPL for now. This is because it becomes problematic if making LIBA funding available to those additional households with income between 125% and 150% of the FPL results in reducing the benefits available for households at the bottom of the poverty ladder.

When program participation is dependent on a "first come-first served" basis, it can be unpredictable and difficult to manage. Last year the U.S. Department of Health and Human Services allowed states to increase the LIHEAP eligibility threshold to 175% FPL, but the Washington Department of Commerce and the LIHEAP agencies agreed to keep it set at 125% FPL because there were so many households at the 125% FPL level, who were not getting served. It can also set up a double standard that is difficult to explain.

As Mr. Eberdt noted in his responsive testimony, this was one of the items discussed when the Energy Project and the Washington CAAs handling PacifiCorp's service territory met

with the Company last March.²² The Energy Project proposes developing a distinct mechanism that is specifically targeted, something different enough that focuses on a clearly distinct population to avoid the complication of having two income thresholds, one for LIHEAP and one for LIBA. The Energy Project notes that the agencies are certainly willing to work with the Company on an alternative delivery mechanism, other than the LIBA program as it is currently designed but I believe it is more complicated to work out than can be accomplished here. Thus, the Energy Project proposes that PacifiCorp and all other parties meet to discuss this possibility prior to the Company's next general rate case.

PPL witness Eberle is the only other witness and party to respond to TEP's proposal. Ms. Eberle testified that "the Company can accept Mr. Eberdt's recommendation because it understands that there are many households with incomes at or below 125 percent of federal poverty guidelines today that are unable to enroll in the program due to the maximum annual cap of 4,475." Ms. Eberle further notes that if a different poverty guideline threshold were applied to this program than the one that is in place for LIHEAP, "it could increase the agencies' administrative costs." For these reasons, PPL agrees to maintain the income eligibility at or below 125 percent of federal poverty guidelines could be appropriate.²³

Considering the complete agreement between the only two parties weighing in on the issue, the Energy Project proposes that no change be made to the LIBA income eligibility criterion at this time.

C. LIBA Certification Fee

The Energy Project submits that the \$48 fee currently paid to the CAAs to certify LIBA participants is less than necessary to cover the agencies' actual certification costs and requests an

²² Eberdt, Exh. No. CME-1T, p. 8: Ins. 16-18.

²³ Eberle, Exh. No. RME-1T, p. 5: Ins. 3-10.

order from this Commission increasing the fee to \$65. As evidentiary support for this proposal, the Energy Project submitted Exhibit No. CME-4 which is an accounting of the costs incurred by the Blue Mountain Action Council to certify a LIBA participant. As explained in the testimony of Mr. Eberdt, the data contained in Exhibit No. CME-4 was obtained from Mr. Bob Casoldi who oversees implementation of both LIBA and LIHEAP for Blue Mountain.²⁴ To summarize Mr. Castoldi's analysis, the cost to his agency is approximately \$73 per qualified household to handle all the outreach, scheduling, calculation, verification, and communication needed to certify LIBA participants. Increasing the number of customers served under LIBA obviously increases the costs as outlined in Exhibit No. CME-4. Though the cost for certifying LIBA as calculated by Blue Mountain is \$73 per participant, the Energy Project proposes in this case that the certification fee be increased to \$65 per qualified participant.

Because the validity of several of PPL's and Staff's recommendations in this case involving LIBA rest on the assumption that the current certification fee of \$48 sufficiently recovers all of the CAAs certification costs, and the only evidence submitted by any party to this proceeding as to what those costs actually are, the issue of certification fee transcends whether the agencies are being fairly compensated into issues such as whether the agencies should be required to serve additional customers when, as asserted by the Energy Project, the agencies cannot afford to certify the existing number of customers due to an unreasonably low administrative fee.

As an example, Mr. Schooley proposes in his testimony that in order to overcome the revenue shortfall that the CAAs will face if required to serve additional customers that they simply serve more customers. Mr. Schooley testified: "If the agencies wish to maintain their

²⁴ Eberdt, Exh. No. CME-1T, p. 10: lns. 12-14.

income levels, they, and their advocates, have the opportunity to consider significantly increasing the number of participants.”²⁵ The fallacy of this logic is apparent. To draw an analogy, any business selling a product or service that does not cover the costs of that product or service cannot simply increase production to solve their financial dilemma. Mr. Schooley seems to recognize this himself when he testified: “Of course, this would necessitate a substantial increase in the surcharge. The agencies through their advocates may bring such proposals to the Commission for consideration.”²⁶ It is the last sentence of the foregoing quote that reveals the hole in Staff’s logic.

One of the proposals made by Mr. Eberdt is for an increase in the certification (administrative) fee in this case. Mr. Schooley’s logic, therefore, seems flawed. Staff supports PPL’s proposal that more customers be served under LIBA, then notes that the agencies will experience a revenue shortfall in LIBA certification, but that the answer is for their “advocates” to bring a request for increased funding, including administrative fee, before the Commission, when this is precisely what the Energy Project is doing in this proceeding. Staff’s position is difficult to understand logically. In reality, Staff is proposing that LIBA be increased by an amount that is roughly equal to the rate increase proposed by PPL for its residential customers, that the agencies be required to serve more customers which will require them to seek and obtain additional funding (which is what the agencies are doing in this case), but Staff opposes any increase in the administrative fee until some future time in a separate docket. This line of reasoning is circular at best.

Regarding the evidence put forth by the Energy Project to seek the additional funding, in the form of increased administrative fee, that Mr. Schooley refers to, Staff dismisses Exhibit No.

²⁵ Schooley, Exh. No. TES-1T, p. 42: lns 11-16.

²⁶ *Id.* [Emphasis added].

CME-4 and the Energy Project's contention that the agencies are not being sufficiently compensated on the basis that Exhibit CME-4 reflects the costs of only one of three agencies and one month of associated costs instead of an entire year. If one carefully examines Exhibit No. CME-4, however, it is stated at the bottom that it takes two employees working 13 weeks to certify 805 customers. The certification cost for Blue Mountain, therefore, is calculated by breaking out associated costs for one month, then using this figure to determine costs for the entire year.

The entirety of Staff's argument on this issue is as follows: "Staff is not opposed to the principle that PacifiCorp should fairly compensate low income agencies for this work. However, Mr. Eberdt's exhibit is insufficient to justify a change in the current level. For example, his exhibit contains information for one month, for one agency. The other two agencies and the other eleven months are notably absent. A thorough review of the low-income agency expenses and operations is needed in order to judge a realistic reimbursement rate. Therefore, the Commission should maintain the current rate of \$48 per certified customer."²⁷

Staff did not challenge any particular cost calculation contained in Exhibit CME-4 and did not offer any calculations or analyses of its own regarding the costs incurred by the agencies in certifying LIBA participants. Staff simply dismisses the Energy Project's evidence as insufficient and argues that "a thorough review of the low-income agency expenses and operations is needed in order to judge a realistic reimbursement rate."²⁸ Again, Staff simultaneously agrees with PPL's proposal for the agencies to serve additional customers, notes that this will cause an administrative revenue shortfall for the agencies, proposes to remedy this by serving more customers which will cost more money which the agencies must seek through

²⁷ Schooley, Exh. No. TES-4T, p. 17: lns. 20-23 – p. 18: lns. 1-3.

²⁸ *Id.* p. 18: lns. 1-3.

their advocates, then dismisses the agencies' attempts to prove the need for and obtain additional administrative funding as insufficient and propose that the matter somehow be resolved through a separate proceeding at some unspecified time in the future.

The entirety of PPL's position on the issue is set forth in Ms. Eberle's testimony as follows: "The Company does not believe that this is in the best interest of its customers. However, PacifiCorp recognizes that its partnering agencies are providing a variety of valuable services often with minimal funding. In fact, Ms. Eberle testified: "PacifiCorp recognizes that its partnering agencies are providing a variety of valuable services often with minimal funding."²⁹ (p.7, lns 10-19) Instead of increasing administrative costs, the Company requests Commission staff convene a collaborative meeting of interested parties to determine how the certification process can be modified in order to lower agency costs and increase benefits to people in need."³⁰ Thus, like Staff, the Company is asking the Commission to order the agencies to increase their output in terms of LIBA certification in spite of the fact that the agencies argue, and have filed supporting evidence, that they are not recovering their costs of certification, and to defer into the future any discussion of providing the compensation necessary for the agencies to continue implementing the LIBA program.

In summary, the Energy Project proposes that the administrative fee be increased to \$65 which will require \$76,000 in additional funding.

D. Every Other Year LIBA Certification

In a purported effort to reduce LIBA administrative costs, PPL, with Staff's support, proposes that the three CAAs implementing the LIBA program convert to every other year LIBA

²⁹ Eberle, Exh. No. RME-1T, p. 7, lns. 10-19.

³⁰ *Id.*, lns. 13-19.

certification. This, the Company and Staff contend, will result in cost reductions leaving additional monies available for disbursement to LIBA recipients.

The Energy Project is strongly opposed to every other year certification. In theory, and on its face, it might carry some degree of appeal, but as applied to PPL's LIBA program as administered by the community action agencies in the state of Washington, it could well prove extremely disruptive and financially impractical. Though the issue can be somewhat complex, it has been thoroughly analyzed in the prefiled testimonies of Mr. Eberdt and was discussed at length during cross-examination. To summarize, PPL's proposal would create what Mr. Eberdt has characterized as "logistical nightmares,"³¹ would make implementation of the Company's Washington bill assistance program difficult if not impossible, would actually increase the financial burden the agencies already face because of an administrative fee that is too low, and would not result in the cost savings claimed by PPL and Staff.

In support of its proposal to alter LIBA to certify participants every other year instead of annually, PPL places considerable weight on the Company's bill assistance programs in the states of Utah and California where certification is performed every other year. As was demonstrated during cross-examination, however, the Company's Utah and California bill assistance programs are significantly different from LIBA in many respects. Furthermore, neither PPL nor Staff made a thorough and fair comparison of the different programs' designs, the tasks performed in certifying recipients, the costs of certification, or program benefits to determine whether every other year certification in Washington would have the same cost savings effect PPL claims occurred in other states.

³¹ Eberdt, Exh. No. CME-1T, p. 10: ln. 23.

To illustrate, Ms. Eberle conceded numerous facts during cross-examination that bear repeating. First, PacifiCorp's California program is legislatively mandated and provides benefits all twelve months of the year, as opposed to LIBA which only provides benefits during the six months of the heating season. The California program is actually self-certifying and simply consists of a one-page document submitted by the applicant. There is no "cap" or participant limit under the program and the benefits received by customers are significantly higher than in Washington.³²

The Company provided less information about its Utah program, but stated that the LIHEAP and LIBA certification processes are conducted simultaneously in that state. PPL did not offer any other information about its Utah program, including relative benefits, exactly what certification involves and how it compares to Washington. This type of information is absolutely critical for the Commission to be able to determine whether the bald statement by PPL that PacifiCorp has had success with every other year certification in California and Utah without a shred of data, documentation, calculations, or any tangible, quantifiable evidence that 1) cost savings did in fact result from converting to every other year certification, 2) that said cost savings were solely and directly attributable to converting to every other year, 3) how certification is performed under the California and Utah programs and how the program design characteristics of those states compare to Washington, 4) how the Washington certification is performed, and 5) whether the California and Utah models are even feasible in Washington. These are but a few of many pieces of critical information that should have been provided to this Commission if PPL had truly wanted the Commission to be fully informed.

³² Tr. p. 530 – p. 531, Eberle Cross.

As was quickly revealed during cross-examination at hearing, there are significant differences between the Utah/California bill assistance programs and Washington's LIBA. Thus, PPL's premise that converting to every other year certification in Washington will necessarily reduce costs and increase direct benefits to customers is riddled with flaws including invalid assumptions, incomplete data, and a failure to compare the bill assistance programs of Utah, California and Washington in their entirety to ensure that a fair and full comparison and consideration of the differences between the programs are made.

When asked whether the California self-reporting requirement was "voluntary" and "somewhat of an honor system" Eberle testified in the affirmative.³³ While the Energy Project is not suggesting that any LIBA recipient would knowingly refuse to notify a community action agency of a change in eligibility, this honor system artificially assumes that the customers will remember to monitor their eligibility, know how to determine it, how/where to report their altered circumstances, etc.

When questioned during cross-examination about how the LIBA certification process takes place in Washington compared to other states, Ms. Eberle was unfamiliar with many aspects of the Washington process. First, she conceded that each of the CAAs performs its certification during different times of the year and that the number of participants certified by the three Washington agencies varies.³⁴

Ms. Eberle admits that each CAA does its LIBA intake during different times of the year and that the number of participants certified by each agency varies considerably. Ms. Eberle does not know how many people each of Washington's CAAs require to perform LIBA

³³ Tr. p. 528: Ins. 16-25, Eberle Cross.

³⁴ Tr. p. 524: Ins. 5-21, Eberle Cross.

certification.³⁵ Ms. Eberle doesn't know how many people each agency needs to do LIBA certification, how much time it requires for each employee to complete LIBA certification, what percentage of the year each employee needs to complete LIBA certification, and what those employees spend their work time doing for the remainder of the year when they are no longer performing LIBA certification.³⁶ Ms. Eberle is aware that the Company's Washington LIBA program includes a multi-tier rate discount and that it takes longer to perform certification under this arrangement.³⁷ This fact, however, and other similar program design differences between the bill assistance programs in California, Utah, and Washington, do not seem to have been taken into consideration in reaching the conclusion that every other year certification would not just result in cost savings in Washington, but be practical from an administrative standpoint.

Mr. Eberdt set forth a number of practical reasons why every other year LIBA certification is not feasible as a means to fund the increased administrative costs to the agencies resulting from serving additional customers. Mr. Eberdt testified: "Unfortunately doing that [certifying every other year] would create other logistical nightmares."³⁸ Mr. Eberdt noted that the Company's proposal presents a huge barrier to the agencies' ability to maintain LIBA in a number of respects, but particularly in terms of the cost to train and/or retain skilled employees to do the work. The staff who operate the program need to be trained to know what documentation is required, how to communicate effectively with customers, how to calculate and verify their incomes, as well as some other general clerical and computer skills. Because the programs serve on a first come first served basis, agency staff will need to know how to qualify customers for LIHEAP or other programs as well. According to Mr. Eberdt, even with other

³⁵ *Id.* p. 526: Ins. 1-10.

³⁶ *Id.*

³⁷ Tr. p. 531: Ins 14-25 – p. 532: Ins. 1-2, Eberle Cross.

³⁸ Eberdt, Exh. No. CME-1T, p. 10: ln. 23.

funding sources, many agency personnel are already only working part-time, while the rest of the year they are either laid off or work for some other program at the agency if there is one that can work with that arrangement. In addition, one must consider the costs incurred for materials, equipment, and space as well as personnel, necessary to implement LIBA. Mr. Eberdt asserts that it just isn't practical to expect that agency staff can do the necessary work to serve roughly 5000 households, in addition to LIHEAP, in one year, but none or few the next. This sort of "feast or famine" approach, Mr. Eberdt opines, is just not manageable from an administrative standpoint or from the point of just managing the demand that comes in the door. Finally, one must realize that energy assistance intake is the doorway that most low-income customers enter to get to the energy efficiency programs. Every other year certification for LIBA eligibility will disrupt the flow for that program.³⁹

Finally, one must consider the overarching, fundamental equity of PPL and Staff's positions on all LIBA issues considered as a whole. To summarize, PPL is proposing an increase in LIBA barely offsetting its proposed residential class rate increase, is proposing that the CAAs serve additional customers, refuses to even consider in this proceeding increasing the administrative fee paid to the CAAs even though the latter strongly believe, and have submitted supporting evidence, that they are not covering LIBA costs as it is, and finally to require the CAAs to certify LIBA every other year which even Staff witness Schooley is precisely the opposite of what is needed for the agencies to increase the money they receive to cover their LIBA costs. It defies logic that the agencies can simply serve additional customers to make up for their revenue shortfall, while simultaneously cutting back on the number of customers they certify every year. Again, when one combines the logic advanced by PPL and Staff, it is quite

³⁹ Eberdt, Exh. No. CME-1T, p. 11: lns 1-19.

difficult to understand who the suite of proposals put on the table by those parties in this case will do anything but drastically diminish the system-wide benefits that LIBA provides. If one has predetermined that LIBA should be curtailed, it would seem that the totality of proposals put on the table by PPL and Staff will certainly accomplish that, at least to some degree.

In summary, The Energy Project contends that switching the LIBA program to qualify participants every other year should only be done after consideration of a number of factors that the Company and Staff appear not to be familiar with or to have addressed. Simply holding up the example of how this is successful in other states without any detailed analysis of how the programs are similar or different is not a valid justification to make the change. For some unexplained reason, parties who are typically very concerned about customers taking advantage of benefits for which they don't qualify appear to discount that as a potential problem while ignoring that it will deprive other eligible families from much-needed assistance. The sole goal appears to be to shift funding from program implementation to program benefits with no regard for the impact that will have on the agencies' abilities to implement the program. The Energy Project believes this proposal is ill-advised and should be rejected by the Commission. If the Company and Staff are truly interested in exploring ways to make the program more effective and less costly to administer, The Energy Project is willing to participate and to recruit knowledgeable staff from the agencies to help develop reasonable, appropriate, and effective alternatives.

3. BASIC CHARGE

PPL offers a number of reasons why its basic charge should be increased. Those reasons run the gamut from the objective of sending appropriate price signals to customers to the purported logic of recovering what are labeled "customer charges" through a fixed charge. Both

PPL and Staff argue strenuously that a relatively higher basic charge actually works to the benefit of low-income customers which those two parties characterize as “high-usage” customers. For reasons outlined below, the Energy Project has consistently opposed any increase to PPL’s existing \$6.00 basic charge.

One justification offered by PPL for increasing its basic charge is based on a “survey” of 17 other utilities’ basic charges referred to by Company witness Griffith which, purportedly, demonstrates that PPL is 9th lowest among the 17. As Mr. Griffith conceded, however, only three of the 17 were IOUs. The rest are non-profit electric providers whose customer costs might differ substantially from a large IOU such as PPL. The survey was never made part of the record and not disclosed during hearing.⁴⁰

Regarding price signals, Mr. Griffith agreed that increasing the basic charge undermines the price signals sent by an otherwise well designed tiered rate design.⁴¹

When asked about his contention that low-income users are relatively higher residential users, and that a higher basic charge benefits them, Mr. Griffith relied upon Exh. No. WRG-11 showing the consumption levels of all residential customers compared to customers receiving LIBA discounts. When questioned whether there might be any number of low-income customers who do not receive LIBA discounts and whether their consumption would be reflected or rolled into the non-low-income data in exhibit WRG-11, Mr. Griffith acknowledged that this was possible.⁴²

Mr. Griffith agrees with “certainty” that there might be any number of reasons or factors that distinguish LIBA participants from other low-income residential customers explaining why

⁴⁰ Tr. p. 549: lns 8-11, Griffith Cross.

⁴¹ Tr. p. 549: lns 15-25, Griffith Cross.

⁴² Tr. p. 555: lns 11-17, Griffith Cross.

LIBA recipients might consume relatively more electricity⁴³ He notes, however, that the Company “doesn’t collect income data on its customers and that it doesn’t know about the incomes of Schedule 16 customers [all residential customers, including low-income, who do not receive assistance under LIBA (Schedule 17)].⁴⁴

The Energy Project submits that whatever price signals PPL believes its basic charge sends to customers including whether fixed costs should be recovered through a fixed charge, the reality is that, in all likelihood, and without meaning disrespect to anyone, the average residential customer is concerned about one thing; the amount of his or her bill. Should that amount grab their attention, the most likely thing they are to do is then look at their level of consumption for the month. Absent some extraordinary event of which they are already aware, they will possibly then contact their electric provider and inquire why their bill seems high. Any answer given to that customer that fails to tie their bill to their monthly consumption is not likely to be well received, even if it is technically understood.

The Energy Project does not dispute that there are any number of price signals that could be sent through rate design, but as far as residential customers are concerned, it is intuitive that the most powerful signal is one that rewards customers when they are judicious with their power consumption and that imposes a premium on them when they are not. To the extent that rate design should encourage conservation which typically is in all customers’ best interests, then a rate design that emphasizes the connection between consumption and total bill is going to be the most effective.

⁴³ *Id.*

⁴⁴ Tr. p. 556: lns 18-20.

Staff witness Thomas Schooley also weighed in on PPL's proposed basic charge. Though Staff supports an increase that is 50% of that requested by PPL, Mr. Schooley agreed that categorizing costs to include in a basic residential customer charge is inherently subjective.⁴⁵

Staff agrees that in recent years, there is a trend on the part of utilities to increasingly seek to recover costs they deem to be "fixed" through fixed charges that do not vary with consumption. Mr. Schooley actually supports this on the basis that it constitutes "risk mitigation" for the utilities. Mr. Schooley's theory is that by helping utilities ameliorate their risk somehow keeps costs down. It is not clear how this necessarily works in favor of ratepayers unless the utilities' authorized returns are lowered to reflect that mitigated risk.⁴⁶

4. LOW-INCOME WEATHERIZATION

As far as the Energy Project is able to understand, it is Staff's, and possibly PPL's, position that the issue of low-income weatherization assistance (LIWA) cannot or at the least should not be addressed by the parties and ruled upon by the Commission in this case simply because PPL declined to include the issue in its application and supporting testimonies and exhibits, failed to file related tariffs and, consequently, the Commission did not suspend any tariffs pertaining to LIWA when it suspended all other tariffs related to the Company's filing. The Energy Project respectfully submits that not only is this argument utterly without basis in law, precedent, or common sense, but it could lead to a very dangerous and regrettable precedent in future proceedings before this Commission.

First, the Energy Project is unaware of any Commission rule or precedent established by UTC rulings or appellate courts empowering regulated public utilities to dictate which issues will

⁴⁵ Tr. pp. 778-779, Schooley Cross.

⁴⁶ Tr. p. 779: lns 5-18, Schooley Cross.

and will not be litigated in a general rate case. Thus, the matter becomes one of practicality and equity.

Staff seems to believe that if a utility does not raise an issue AND does not file related tariffs with the Commission as part of its general rate case, the Commission “should not accept” whatever proposal a third party such as the Energy Project makes.⁴⁷ In his cross-answering testimony, Mr. Schooley testified: “First, Tariff Sheet 191 does not appear to be before the Commission in this docket; it was not among the tariffs filed by PacifiCorp and suspended by the Commission.”⁴⁸

As a practical matter, absent a motion by the Energy Project to force PPL to include associated tariffs or rate schedules in its direct filing, there is nothing Energy Project could have done to force PPL to have addressed an issue it didn’t want to address. Putting the onus on other parties to have prescience regarding what a utility is going to file and/or require a utility to change its filing every time an issue isn’t raised in a filing & related tariffs included & suspended is impractical.

First, TEP is asking for an increase to a program that does have related tariffs, but if the Company doesn’t want to change them, why would it include them w/its filing? What would including them accomplish if PPL proposes no changes to them? Thus, contrary to Mr. Schooley’s statement, there was no low-income weatherization for the Commission to have suspended. In any event, because PPL did not want to increase or alter low-income weatherization, even if it had filed Schedule 191, it would have done so without changes. Again, why would the Commission have found it necessary to suspend a tariff already in place and for which no changes had been made by the party filing it as part of the rate case?

⁴⁷ Schooley, Exh. TES-4T, p. 19: lns. 2-5.

⁴⁸ *Id.*

Perhaps the most important and concerning aspect of Staff's legal position taken in this case is that it sets a very dangerous precedent for future cases if utilities are allowed iron-fisted control over what issues they will deal with and which they won't. It is well understood that a Commission may, for any legitimate reason, bifurcate issues out of a general rate case. These reasons might include convenience to the Commission and all parties, to expedite the case, because the issue is already being addressed in another proceeding, and so on. But the unfettered power of a utility to shut issues out of a general rate case that it wishes not to be bothered by would have a highly chilling effect on future cases.

Regardless of how the Commission rules on the Energy Project's request for an increase in LIWA, it is hoped that the Commission does not condone the procedural path that Staff would allow for utilities in future rate cases.

Regarding LIWA itself, it might well be that the Commission believes the issue of LIWA can and should better be addressed in another docket. The Energy Project is well aware that the Commission is currently examining this issue in the context of at least one other proceeding or process. Suffice it to say, the Energy Project was the only party to provide any substantive input into LIWA and, at the very least, hopes that the Commission at least provide an opportunity in the near future to address this important issue.

III. CONCLUSION

The Energy Project wishes to express its gratitude to the Commission, the Company, and all parties for their participation in this proceeding. Though the Energy Project obviously has strong differences of opinion with the Company and Staff, particularly on LIBA-related issues, it is important to remember that this intervenor represents agencies whose mandate is to use any and all tools at their disposal to assist PPL's low-income customers, to do so in the most cost-

effective manner, and in a way that hopefully results in benefits passed along to all customers, low-income or otherwise.

The Energy Project places greatest importance in this case on the proposal to certify LIBA every other year. The issue has been fully fleshed out, but given the conflicting and sometimes contradictory nature of the numerous proposed changes to LIBA, the agencies are being placed in a financial and logistical squeeze that is simply untenable. As PPL witness Becky Eberle noted several times throughout this proceeding, these agencies do good work with very limited resources. The Energy Project submits that until there is sufficient LIBA funding available, the requirement to serve additional customers, while keeping the LIBA administrative fee below actual costs, while simultaneously requiring agencies to only certify every other year likely reducing their compensation but causing disruptive logistical administrative problems is simply not justifiable and the Energy Project strongly urges the Commission to not allow this scenario to develop.

In summary, 1) The LIBA discount does not provide enough relief compared to other existing programs. 2) The existing program certification fee does not cover the agency's cost to do the work. 3) The proposal to certify every two years cripples the agencies' abilities to maintain the program. 4) The desire to serve more clients without a significant budget adjustment just makes problems 1-3 above even worse. Funding the increased number of customers the Company has proposed with an increase equal to the proposed 21% revenue and a \$65 certification fee will cost an additional \$365,264 over the \$1,200,000.00 the current program is projected to collect. This is \$111,264.00 more than the Company's proposed 21% increase (\$1,452,000.00).

RESPECTFULLY SUBMITTED, this 11 day of February, 2011,

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of February, 2011, I served the foregoing document on the following individuals via email and U.S. Mail at the addresses shown.

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