

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.)	
.....)	

REPLY BRIEF OF
THE ENERGY PROJECT

I. INTRODUCTION

Only PPL and Staff addressed issues pertinent and contrary to the Energy Project's position and involvement in this case. Staff's relevant briefing consists of a few pages containing nothing but criticisms of the Energy Project's positions taken in this case and offering little if any evidentiary support to challenge those positions. The only issue Staff substantively addresses is whether this Commission has the authority to rule on the Energy Project's request for increased weatherization funding.

PPL and Staff carry the burden of proof to support their proposal to eliminate 50% of LIBA certifications. PPL's brief consists of only two relevant paragraphs offering little more than the brief's Table of Contents. PPL offered no argument that the Commission lacks authority to rule on low-income weatherization having apparently not taken Staff's position on that issue.

II. ARGUMENT

A. Background

PPL and Staff consistently and repeatedly state in testimonies and briefing what they presume the community action agencies that administer LIBA want or don't want and what is in their best interests.¹ For example, PPL witness Eberle relies heavily on the Toppenish meeting perceiving that she obtained a "consensus" based on personal conversations she purportedly had with agency representatives.

To the extent the Toppenish meeting is even relevant to this rate case, it was an informal meeting held to discuss a number of low-income issues and ideas and did not result in any type

¹ Tr. p. 522: Ins. 24-25 – p. 523: Ins. 1-3, Eberle Cross. (Ms. Eberle's purported informal discussions with agency representatives during the Toppenish, WA meeting regarding their positions on whether to serve additional LIBA customers).

of formal agreement or “consensus” on any issue other than what Ms. Eberle perceived through unrecorded, private sidebar conversations had with select, unnamed individuals purportedly representing the agencies rather than asking for a true consensus from the entire group, including the agencies’ representatives Charles Eberdt and Michael Karp, simultaneously and in an open and obvious manner. This is a very thin thread from which PPL hangs its contention that there was “consensus” among the agencies to dedicate nearly a third of the proposed LIBA increase to increasing the number of LIBA recipients and, as detailed below, consequently increasing the administrative or implementation costs to the agencies without duly compensating them for those increased costs.

In proclaiming to have the agencies’ best interests in mind and at heart, PPL and Staff have apparently overlooked the fact that the Energy Project is the duly appointed representative of the community action agencies for purpose of this proceeding. Staff and the Company are effectively suggesting that there is disparity between the interests of the agencies and the positions taken by the Energy Project. There should be no doubt that the agencies, through their representative the Energy Project, speak as one voice on the issues addressed in this rate case.

B. LIBA

To facilitate analysis and to rebut Staff’s contention that the evidence does not support its position in this case, the Energy Project has broken LIBA issues into separate categories. There is an overlap, however, between all LIBA issues and they must all be taken into consideration to fully understand their individual and collective significance. For example, PPL contends that LIBA implementation costs are excessive so proposes every other year certification to reduce costs, yet proposes serving additional customers while opposing an increase to the LIBA

certification fee. Even Staff witness Schooley acknowledges that the agencies will experience a revenue shortfall as a result of this collective group of individual proposals.²

Staff argues that the Energy Project is seeking both an increase in LIBA participants served and an increase in the total amount of LIBA funding under Schedule 91 stating: “The Energy Project agrees more people would be served, but notes the increase in the bill discounts would be less. The Energy Project’s solution? Use more ratepayer money to fund both an increase in participants and an increase in the level of subsidy.”³

Staff offers no cite to Mr. Eberdt’s testimony to support this claim because it is quite simply incorrect. Mr. Eberdt discusses the program changes that would be necessary to serve additional LIBA customers, but he does not propose serving additional customers in this case absent those changes. In fact, his testimony is quite clear on this point. The Energy Project proposes allocating the entire 21% increase in LIBA funding proposed by PPL to increase the discount received by existing customers, rather than use 30% of the increase to serve additional customers.⁴

Staff’s brief further concludes that: “the Commission should accept PacifiCorp’s proposal to increase the number of participants in the LIBA program. More people in need will be served, and the rate subsidy will increase to 4.7 cents per kWh from the current 4.07 cents (a 15.5 percent increase), which is greater than Staff’s proposed overall revenue increase percentage. This proposal is just, reasonable and more than fair, and the Commission should accept it.”⁵

This is an obtuse statement loaded with assumptions and not put into fair context.

² See, Section II(D) of this brief.

³ Staff Br. P. 57.

⁴ Eberdt, Exhibit No. CME-1T, p. 4: lns 4-9.

⁵ Staff Br. p. 57.

PPL proposes increasing LIBA by 21% and has not conditioned this proposal on anything other than Commission approval. The Company's other proposals should be taken into consideration when assessing the impact and value of this proposed increase. First, PPL proposes increasing residential rates 20.2%,⁶ countering the effect of the increase to LIBA. For eligible low-income customers who, for any number of reasons, do not receive LIBA benefits, the effect of PPL's proposal will be to increase their rates nearly 21%, a substantial increase by any measure.

Obviously, LIBA recipients will also experience a 21% rate increase. The LIBA funding increase simply offsets the impact of the requested rate increase. LIBA rate discounts are only valid for six months of the year. Rate increases are obviously in effect all year. To the extent that the LIBA increase "offsets" the rate increase for recipients, therefore, it only does so 50% of the time.

Because PPL proposes dedicating 30% of the LIBA funding increase to serving additional customers, existing LIBA recipients will not realize a full 21% increase to their benefits. If 30% of the 21% increase is dedicated to additional customers, only 14.7% of the increase goes to the discount level (70% of 21% equals 14.7%), less than the 15.5% claimed in Staff's brief.⁷ Thus, when the residential rate increase is taken into account, all low-income customers, including LIBA recipients, will be worse off under PPL's proposal than they are today.

C. Serve Additional Customers or Increase Discount Level

The Energy Project appreciates both the Company's willingness to fund the LIBA program with a 21% increase, regardless of the actual rate increase ultimately awarded by the

⁶ Tr. p. 777: ln. 7, Schooley Cross.

⁷ Staff br. p. 57, par. 230.

Commission. To put things in perspective, however, as pointed out low-income customers are worse off under the collective proposals made by PPL and Staff in this case.

Requiring the agencies to serve additional customers under the collective proposals also lowers the relative impact of the LIBA benefit, thereby exacerbating the disparity between need for the program and resources. Given that LIBA participants are already at the bottom of the economic ladder, it is not wise to erode the available assistance further. It is important to realize that the addition of participants with the same amount of funding exerts upward pressure on the funding required to implement the LIBA program. This increase in implementation cost is significant because it further pulls funds away from the adequacy of the benefit level.

D. 50% LIBA Certification Cut/Administrative Fee

Reducing LIBA certifications was originally the Company's proposal but, through collaboration with Staff, has been altered without much substantive effect. The two parties still propose reducing LIBA certifications by 50%. The burden of proof whether this proposal is reasonable rests with both PPL and Staff who have offered no meaningful support for their proposal aside from blind faith and baseless assumptions. The Energy Project's Initial Brief, by contrast, critiqued and dissected the foundation for reducing LIBA certifications by 50% demonstrating this to be a one-sided proposal without a shred of thought given to the potentially negative consequences of adopting it.

Incidentally, Staff makes a statement in its initial brief that requires correction. Staff argues: "The Energy Project agrees more people would be served, but notes the increase in the bill discounts would be less. The Energy Project's solution? Use more ratepayer money to fund both an increase in participants and an increase in the level of subsidy."⁸

⁸ Staff Br. P. 57.

Though Mr. Eberdt identifies other conditions that would need to occur in order to justify serving more customers, nowhere in his testimony does he support serving additional customers under the proposals set forth by PPL and Staff.

Based on a comparison to bill assistance programs in California and Utah, PPL contends that LIBA administrative (implantation/certification) costs are excessive and, along with Staff, propose reducing certifications by 50% while simultaneously proposing to increase program recipients but strenuously opposing any attempt to increase the certification fee. Staff claims that this substantial change in LIBA implementation will “free up dollars to provide greater benefits to those in need.”⁹ Staff argues that the Commission should accept all of its program design changes “so the program can move forward more successfully.”¹⁰ Staff fails to provide a single fact proving that the program is not already operating successfully. Just the same, Staff asserts that the Energy Project’s position on these issues has no evidentiary support.¹¹ Again, it is Staff and PPL that carry the burden of proof on reducing LIBA certification. For reasons already briefed, those parties have failed to carry that burden of proof.

PPL and Staff have demonstrated a lack of understanding of LIBA certification, and related costs and benefits, in Washington, California and Utah. Neither PPL nor Staff conducted an analysis of the true “costs” of reducing LIBA certifications by half nor have they compared LIBA to the California and Utah programs on an “apples to apples” basis.¹²

PPL witness Eberle conceded that she did not know how many employees each agency needs to administer LIBA, how many employees are needed to complete the certification

⁹ Staff Br. p.57.

¹⁰ Staff. Br. p. 58.

¹¹ Staff Br. p. 56, par. 227.

¹² Tr. p. 527: lns. 9-15.

process, how much of the employees' time is expended each year performing LIBA certification, or what those employees' responsibilities are for the remainder of the year.¹³

Ms. Eberle conceded that the programs and certification processes in California and Utah differ substantially from LIBA. Certification in California consists of a one-page application filled out by customers spanning a two year period during which, both PPL and Staff agree, a given customer's financial circumstances can change, making them no longer eligible for LIBA. To address this latter problem, PacifiCorp relies on a "voluntary" act of the customer to notify the company, not the agency, that they are no longer eligible; an "honor system."¹⁴

It is a significant difference that there is no cap on the total number of customers in California who can receive bill assistance, overall benefits are greater than in Washington, unlike California, Washington has a multi-tiered, income-based discount levels which requires more work by the agencies and, finally, the California program provides benefits all year long, compared to LIBA's six month effective period.¹⁵

Clearly, California's certification costs as a percentage of benefits are going to be lower given the highly expedited certification process and year-long benefits with unlimited participants which Ms. Eberle noted was due to state legislation.¹⁶ These profound differences between California's and Washington's programs render any comparison futile. Thus, contrary to Staff's initial brief, it is Staff and the Company who have failed to provide evidentiary support for their proposal.

PPL offered little information about the Utah program other than to say that program costs are lower in that state than Washington because the CAAs certify LIBA and LIHEAP

¹³ Tr. p. 525: lns 22-25 – p. 526: lns. 1-10, Eberle Cross.

¹⁴ Tr. p. 528: lns. 23-25, Eberle Cross.

¹⁵ Tr. p. 531: lns. 7-13, Eberle Cross.

¹⁶ Tr. p. 530: ln. 19.

simultaneously.¹⁷ PPL has not even proposed this program design characteristic in this case. On cross-examination, Ms. Eberle conceded that, though she hasn't actually read the relevant statute, she has "heard" that according to the Washington Department of Commerce, LIHEAP data is only effective for six months, after which it must be renewed.¹⁸ This raises the question of whether simultaneous LIBA/LIHEAP certification is feasible for the Washington agencies. There was no discussion of it in other parties' opening briefs. Absent a thorough analysis comparing the relative costs and benefits to LIBA, reliance on Utah's program is equally unfounded and meaningless.

Though Ms. Eberle agrees that the concerns expressed by Mr. Eberdt in his testimonies and summarized in the Energy Project's Initial Brief "have merit," the Company proposes nothing to specifically address those concerns, or even to gain a better understanding of them.¹⁹

Finally, PPL witness Eberle did not deny when asked during cross-examination whether the LIBA certification fee, which was lowered to its current level of \$48 from \$64.52 in the early 2000's, that one reason LIBA administrative costs was due to a program design that resulted in some customers being certified twice in one year. This problem was changed when PPL agreed to modify LIBA to extend the validity of certification intake data for an entire year.²⁰ There has been no recalculation by PPL or Staff of actual administrative costs following this program design change to determine what actual costs are today, whether the design change reduced them and by how much. In its initial brief, PPL opposes increasing the certification fee, but proposes a

¹⁷ Exh. No. RME-1T, p. 7: Ins. 2-5, Eberle Rebuttal.

¹⁸ Tr. p. 529: Ins. 15-19, Eberle Cross.

¹⁹ Tr. p. 527: Ins. 1-4, Eberle Cross.

²⁰ Tr. p. 533: Ins. 23-25 – p. 534: Ins. 1-12.

“meeting of interested parties to evaluate how the certification process can be modified to lower agency costs.”²¹

The Energy Project does not object to reasonable attempts to reduce LIBA costs, but the collective proposals made in this case would significantly increase the burden on agencies already under-compensated for implementing LIBA. Proposing a meeting in the future to reduce LIBA costs does nothing to alter this fact.

For its part, Staff concedes that PPL’s proposal to certify LIBA recipients every other year would have negative financial repercussions to the agencies stating: “Staff accepts the concept [every other year certification], but recognizes that the low income agencies would see a reduction in revenues.”²² Though Staff debases and supposedly “ignored” as “hyperbole” the legitimate concerns articulated by Mr. Eberdt associated with every other year LIBA certification, it proclaims to “resolve” all of those problems with what it deems a “creative solution” under which the low income agencies would certify one-half the participants for two years in Year 1, and the other half for two years in Year 2. Thereafter, each participant would be recertified every two years, thereby resolving the “nightmares” that seem to concern The Energy Project.²³ In spite of Staff’s perception of its “solution,” the fact remains that it still requires eliminating one-half of LIBA certifications and by no means “resolves” the potential problems the agencies would experience. As the data provided by the Blue Mountain Action Council indicated,²⁴ implementing the LIBA program is not a full time job. There is a minimal economic limit below which it is not practical for an agency to incur the cost to hire and train staff or allocate space and equipment in order to run the program. The truth of Staff’s “solution” is that

²¹ PPL Br. p. 59.

²² Staff Br. P. 57.

²³ Br. P. 58.

²⁴ Exhibit No. CME-4.

Staff has unilaterally, and with little or no first-hand knowledge about the actual LIBA certification process, decided that cutting the administrative compensation paid to the agencies in half does not harm the agencies' ability to provide the service.

Staff has clearly not consulted with the agencies about the proposal to certify one-half of all LIBA customers every year, and has demonstrated that it does not understand what is required to run the program. Consequently, Staff's insistence that it has resolved the concerns the agencies raise is presumptuous. How can Staff possibly know that it has resolved the type of day-to-day operational concerns expressed by Mr. Eberdt regarding every other year certification?

Staff recognizes that its "creative solution" will leave the agencies financially short-handed requiring them to "approach the Commission and to file with the Commission changes to accomplish that [serving more customers and receiving more compensation]."²⁵ Mr. Schooley concludes that "it is not incumbent on the company to propose such things when the agencies may come forth with a program to substantially increase their operations."²⁶ Mr. Schooley does not dispute that his proposals would "necessitate a substantial increase in the LIBA funding surcharge."²⁷ Mr. Schooley did concede that certifying LIBA every other year poses "a potential for disruptive work flow for the agencies."²⁸

Staff was asked why it doesn't make more sense to resolve the issue of agency compensation in this case, Mr. Schooley responded that: "the agencies need to take control of

²⁵ Tr. p. 787: Ins. 1-7, Schooley Cross.

²⁶ *Id.*

²⁷ Tr. p. 787: Ins. 8-11, Schooley Cross.

²⁸ Tr. p. 783: Ins. 22-25 – p. 784: Ins. 1-4. Schooley Cross.

their own destinies and provide the rate of relief to their constituents that they would like to do so.”²⁹

This set of conclusions is difficult to understand when it is the Company proposing an increase in the number of customers served and the agencies are in fact doing what Mr. Schooley proposes which is to seek greater compensation for LIBA certification costs in this case. It is unclear what Mr. Schooley would have the agencies do that they are not already doing in this case.

What Mr. Schooley’s testimony makes clear is that Staff’s “creative solution” for LIBA certification, as well as its position on the adequacy of LIBA funding and the LIBA certification fee, is based on a stack of assumptions and conditions that, if accepted, would require the agencies to come back to this Commission seeking the necessary funding to accomplish.

Given the harsh rhetoric employed by Mr. Schooley and Staff in this case regarding LIBA and the agencies’ implementation of that program, it would hardly be a stretch to presume that Staff, and likely the Company, will vigorously oppose any future filings in which the agencies seek to “take control of their own destinies.” Meanwhile, what does comport with logic is to continue certifying LIBA annually until all of the negative consequences can be compared to the perceived benefits, rather than adopting Staff and PPL’s one-sided, unilateral, presumptive approach. Meanwhile, the agencies should be compensated at a rate that more closely matches their actual costs.

Regarding the evidence presented by the Energy Project in support of its request for an increase to the certification fee, Exhibit No. CME-4, dismissed by Staff because it “proves

²⁹ Tr. p. 787: lns. 22-25, Schooley cross.

nothing, because it reflects just one month of expense for just one of the three low income agencies.”³⁰

Had Staff paid closer attention to Exhibit CME-4, it would have noted the following explanatory text located conspicuously at the bottom of the page:

“It takes 2 staff members 13 weeks (1040 hours) to certify 805 customers for the Liba program. This includes prep time to advertise, schedule appointments, interview customers and procure needed documentation, calculate input income tier level, input data on Pacific Power’s spreadsheet and send to Pacific Power. **1040 hours @ \$56.61 = \$58,874.40 or \$73.14 per customer.**” [Emphasis original].

Staff’s objection to Exhibit CME-4 is irrelevant. It does not matter what particular month this data pertains to because it is a calculation of all costs incurred in certifying LIBA (\$56.51 per employee) multiplied by the total time required every year to perform certification (1040 hours) divided by total customers certified by Blue Mountain (805). No party disputes that LIBA certification fees are paid to the agencies for every household certified. Exhibit CME-4 demonstrates that for Blue Mountain, those costs are far in excess of what the agencies are actually paid.

Thus, the fact is that the cost to determine eligibility is substantially greater than what the Company pays the agencies who are implementing the program at a loss. Increasing the number of households to be served, therefore, only exacerbates this loss for the agencies, forcing greater reliance on some other funding source to carry the Company’s program. Halving the number of customers served in one year may satisfy the Company’s desire to divert more funds from implementation to direct service and possibly to serve more customers, but it does not respond to the inadequacy of the existing certification fee and places the future of the program in jeopardy. Although Exhibit CME-4 shows that Blue Mountain’s certification costs are \$73.14 per

³⁰ Staff br. p. 54, par. 234.

customer, the Energy Project only seeks an increase to the preexisting level of \$64.52, a reasonable compromise.

While the Energy Project appreciates any and all good faith efforts by others to make LIBA a program that accomplishes not only the social objectives codified in RCW 80.28.068, but provides tangible, system-wide financial benefits to all customers, the proposals made by the Company and whole-heartedly embraced by Staff in this case will do nothing to further LIBA's success. At the end of the day, the collective recommendations of PPL and Staff are more likely to set LIBA back, not advance it as those parties claim.

E. Low-Income Weatherization

During the hearing in this matter, Commissioner Goltz asked that the basis for Staff's position that PPL's Low-Income Weatherization Assistance (LIWA) program funding cannot be addressed and ruled upon by the Commission because, as stated by Staff witness Thomas Schooley, modification to LIWA funding was not part of the Company's initial filing and there were no related tariffs filed or suspended by the Commission. Prior to its initial brief, Staff had not explained its theory that LIWA cannot be addressed in this case. PPL chose not to address this aspect of LIWA, but simply objects to increasing LIWA "on the basis that the current budgeted amount of \$1million is not being fully used."³¹

In its brief, Staff based its legal theory entirely on one statute, RCW 80.04.130(1) (the tariff suspension statute), and a prior ruling made in Docket No. UE-090704 (occasionally referred to herein as the "PSE case").

1. Statutory Law

³¹ PPL Br. p. 59.

The analysis should begin with fundamental logic. Utilities file changes to tariffs for one of two reasons; they are somehow required to or they want to. Tariffs that are not suspended go into effect. Thus, in cases where the Commission deems it appropriate to thoroughly analyze the proposed tariff changes and allow Staff and interested persons to do the same and weigh in, the tariff is suspended, solely to keep it from going into effect.

Absent some sort of legal mandate, a utility is not obligated to, and will not, propose changes to any given tariff or to file those tariffs as part of a general rate case, that it does not wish to change. The question being addressed, therefore, is whether a utility has the power to dictate to the Commission and all interested persons what issues will or will not be addressed in the course of a general rate case. For the reasons outlined below, the answer must be that a utility does not have this considerable power. Indeed, such a notion, if put into effect, would render public utility regulation meaningless.

In its interpretation of 80.04.130(1), Staff grasps for a nuance based on the fact that the statute authorizes the Commission to suspend a proposed “change” to a tariff filed by a utility. By inference, Staff interprets this statute to mean that only issues raised by a utility in its direct case resulting in a tariff change filed with the Commission, and then suspended, are eligible for and subject to Commission consideration and ruling. By logical extension, any proposal raised by Staff or any intervenor to a general rate case falls outside the jurisdiction of the Commission unless the utility unilaterally chose to incorporate the proposal into its direct filing.

In reality, RCW 80.04.130(1) simply authorizes the Commission to suspend proposed tariff changes for a period of ten (10) months pending review through hearing by the Commission. The statute reads:

“(1) Except as provided in subsection (2) of this section, whenever any public service company shall file with the commission any schedule, classification, rule,

or regulation, the effect of which is to change any rate, charge, rental, or toll theretofore charged, the commission shall have power, either upon its own motion or upon complaint, upon notice, to enter upon a hearing concerning such proposed change and the reasonableness and justness thereof. Pending such hearing and the decision thereon, the commission may suspend the operation of such rate, charge, rental, or toll for a period not exceeding ten months from the time the same would otherwise go into effect. After a full hearing, the commission may make such order in reference thereto as would be provided in a hearing initiated after the same had become effective.

The suspension statute above is essential for the Commission to perform its statutory mandate to ensure that the rates and charges of an electric public utility are “just, fair, reasonable and sufficient.” RCW 80.28.010. In no respect, however, does this statute bar the Commission from ruling on issues raised by non-utility parties to the general rate case proceeding even though no related tariffs were filed.

Staff is well aware, but fails to mention, that the Washington Legislature has spoken to this issue. RCW 80.28.068, effective in 2009, long before this proceeding was filed on May 24, 2010, provides that

Upon request by an electrical or gas company, or other party to a general rate case hearing, the commission may approve rates, charges, services, and/or physical facilities at a discount for low-income senior customers and low-income customers. Expenses and lost revenues as a result of these discounts shall be included in the company’s cost of service and recovered in rates to other customers.

Staff has not taken the position that the LIWA program does not constitute rates, charges, services, and/or physical facilities at a discount for low-income customers and, therefore, falls within the letter and intent of 80.28.068. This is logical. Low-income weatherization is an important service, affecting rate and charges, provided by the utility to those who are financially unable to implement basic weatherization measures to avoid unnecessary consumption of electricity and to reduce their bills.

If Staff's interpretation of the suspension statute forbids the Commission from even considering proposals by non-utility parties unless the utility first chose to address that proposal in its initial filing and include related tariffs, then the effect and intent of 80.28.068 is completely thwarted. Staff's interpretation creates a "Catch 22" for The Energy Project. Staff's theory means that the Company alone decides whether to file a tariff which covers its low income programs and The Energy Project could never advance a change to these programs unless the Company does so in its filing.

This would mean, of course, that settlement discussions could not logically include issues not included in a utility's initial filing, yet this occurs frequently, and has for years. In fact, the very scenario just outlined recently occurred. In Docket No. UE-100467, Avista filed a general rate case but did not propose increasing its bill assistance program (LIRAP) or low-income DSM assistance in testimony or exhibits. Thus, no related tariff was included with the initial filing and subsequently suspended. All parties to the case, including Staff, subsequently reached a full settlement which included, among other things, reallocating "Avista's existing levels of demand side management (DSM) funding under Schedules 91 and 191 in order to increase low income DSM by another \$500,000."³²

In spite of the fact that no related tariff was filed, the Commission approved and adopted the proposed settlement. Order No. 07 states:

While approving increased rates in recognition of our obligation to ensure rates that are fair, just, reasonable and sufficient, we remain mindful of the impact rate increases have on the utility's customers, particularly those least able to afford it. We commend the parties for their attention to this important issue and approve the Settlement's increase in Low Income Ratepayer Assistance Program (LIRAP) funding and low-income DSM assistance." However, testimony at hearing indicated that these increases in assistance programs may not be keeping pace

³² Order 07, p. 6: par. 15 (Docket UE-100647), issued November 19, 2010.

with customer needs [citing the testimony of Mr. Eberdt]. We appreciate the continued involvement of the Energy Project in rate cases....³³

Incidentally, the Energy Project did not file testimony in Docket 100647, but participated in settlement negotiations. The PSE case is certainly not the only case in which issues not reflected in a utility's direct filing and tariffs were raised by other parties, settled on, and approved by the Commission.³⁴

2. Prior Commission Ruling (the “PSE Case” – Docket No. 090704).

In the PSE case, to which the Energy Project was not a party, PSE had of its own volition, proposed an increase to its bill assistance program to match whatever rate increase was ultimately granted by the Commission. PSE supported its proposal with the testimony of witness Markell consisting of two sentences related to PSE's low-income bill assistance program³⁵ but failed to file the related tariff (PSE Schedule 129).

Staff argued in a post-hearing reply brief that the Commission could not approve any change to low-income bill assistance because PSE had failed to file the related tariff. The Commission did not address the issue in its first Order No. 07. Consequently, PSE moved for reconsideration seeking approval of its proposal to increase low-income bill assistance funding. On reconsideration, PSE justified its failure to file related tariffs on the basis that “PSE did not request to increase its current low income tariff; rather, PSE requested that the Commission approve an increase so that PSE could apply such increase to its new low income tariff at the

³³ Order No. 07 at pp. 12-13, par. 35 [Emphasis added].

³⁴ See, e.g., Docket 090134 (increased LIRAP funding for AVISTA); 080416 (increased low-income DSM for AVISTA); 070804 (increased AVISTA LIRAP funding); 050482 (increased funding to both LIRAP and low-income DSM for AVISTA).

³⁵ Order 13, p. 2, section 4.

next program year. Accordingly, it is irrelevant whether PSE's low income tariff was suspended during this proceeding."³⁶

Staff objected for the first time in its post-hearing reply brief to any increase in PSE's bill assistance program on the basis that related Schedule 129 had not been filed with proposed changes.³⁷ When the Commission issued Order No. 11, it failed to rule upon the issue of PSE's proposed increase to the Company's low-income bill assistance program. PSE filed a Motion for Reconsideration seeking, among other things, that the Commission reconsider Order No. 11 and approve the proposed changes to Schedule 129. PSE noted that RCW 80.28.060 did not preclude an order granting an increase to low-income bill assistance because PSE was not requesting a change to its existing Schedule 129. Rather, all that PSE proposed in the case was that Schedule 129 be increased at the next program year. Thus, PSE argued, it was irrelevant whether it had filed a tariff at that point in time.³⁸

In Order No. 13 issued April 29, 2010, the Commission rejected PSE's Petition for Reconsideration suggesting that PSE was effectively asking the Commission to "pre-approve" a tariff change, something the Commission does not do. The Commission ruled:

"The Commission does not pre-approve tariff changes; it should not do so here. While we acknowledge the importance of low income programs, it is necessary and important to ensure that all potentially interested persons are on notice and given an opportunity to participate when the subject of their funding is an issue. PSE did not file any proposed revisions to Schedule 129 and, therefore, the Commission's suspension order and notice of hearing cannot be considered to have given due and proper notice that it might make a determination in this proceeding that would lead to a change in that tariff schedule either now or in the future."³⁹

³⁶ PSE Mtn. for Reconsideration, p. 3.

³⁷ Staff Reply br. P. 9.

³⁸ Petition for reconsideration at p. 3.

³⁹ Order 13, p. 4.

The case at hand is factually distinguishable from the PSE case. In the case at hand, PPL did not file tariff changes to its weatherization program because the Company proposes no changes to that program. Unlike the PSE case, therefore, PPL did not make a proposal that would affect rates, but then fail to file related tariffs. As Order No. 13 issued in the PSE case notes, the failure of PSE to file the actual tariff through which bill assistance would be increased, resulted in a sufficient lack of notice to the public effectively denying interested persons the “opportunity to participate.” In this case, though PPL did not propose increasing LIWA, the Energy Project most certainly did in its initial testimony and has fully participated in this case from intervention through the present. Thus, the issue has been fully litigated in this case and no party was denied the opportunity to participate as a result of a claimed procedural mistake on the part of the utility.

The Energy Project, in a timely fashion compliant with all applicable scheduling orders, administrative rules and state statutes, properly raised the issue of low-income weatherization, a “service” provided by PPL that affects “rates” and “charges,” fully argued the issue during hearing, and has briefed it post-hearing. Because PPL chose to not file a tariff reflecting to changes to low-income weatherization, and resulting changes in rates, there was nothing for the Commission to suspend in this case regarding this issue. But, as RCW 80.28.060 makes clear, this does not prohibit the Energy Project from raising the issue, nor does it prohibit the Commission from ruling upon it.

What is relevant here is that, pursuant to RCW 80.28.068, the Energy Project properly raised the issue and state law allows the Commission to address and rule upon that issue. To require a utility to have previously filed tariffs related to proposals subsequently made by an intervenor would emasculate RCW 80.28.068 and, as argued, effectively give iron-fisted control

over the scope of general rate cases to utilities, thereby minimizing public input. The Energy Project respectfully submits that the Commission should not set such far-reaching and potentially dangerous precedent.

Cases are settled and approved by the commission on issues not raised in company's direct filing. Thus, by inference, suspension of tariffs related to issues ultimately ruled upon by the Commission is not required in every case.

Because the PSE case is obviously distinguishable from this one, what Staff is really proposing in this case, is that the Commission issue a ruling allowing utilities unfettered control over the scope of issues addressed in any given general rate case. To say the least, this would have a chilling effect on intervention and public input in future cases before this Commission and for that reason alone, Staff's position on this issue should be soundly rejected.

III. CONCLUSION

The initial briefs filed by PPL and Staff offer little or no substantive basis to challenge the Energy Project's positions in this case that: 1) the existing LIBA benefit level is insufficient to begin with; 2) serving additional customers under LIBA would lower the relative benefit level; 3) there is insufficient data to demonstrate that significant savings will occur from the change from annual certification without endangering the ability of agencies to implement the program; 4) the agencies are not currently receiving sufficient compensation to recover the costs of implementing LIBA and the fee should be increased, and 5) the issue of low-income weatherization may be addressed by the Commission.

The Energy Project has cited to numerous instances where witnesses Eberle or Schooley admit, explicitly and implicitly, that Mr. Eberd's concerns about the proposed LIBA changes, particularly eliminating half the LIBA certifications, have merit. Mr. Schooley admits that his

proposals will require the agencies to take control of their own destinies by seeking additional funding, but fails to explain how it is that the agencies aren't already doing that very thing in this case. All of their concessions notwithstanding, both the Company and Staff insist that the Commission accept vague references to programs from other states, and ignore the merits of Mr. Eberdt's concerns, which Staff oddly dismisses as "hyperbole," and order program design changes without conducting the very analysis that Staff claims is missing from the Energy Project's request for increased certification fees. In other words, PPL and Staff's positions are self-contradictory and should be rejected.

RESPECTFULLY SUBMITTED, this 18TH day of February, 2011,

Brad M. Purdy
Attorney for the Energy Project

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of February, 2011, I served the foregoing document on the following individuals via email and U.S. Mail at the addresses shown.

WUTC
Records Center
1300 S. Evergreen Dr. SW
Olympia, WA 98504-7250
records@utc.wa.gov

Cathie Allen
PacifiCorp
825 NE Multnomah Street
Suite 2000
Portland, OR 97232
Cathie.allen@pacificorp.com

Katherine McDowell
Pacific Power & Light
520 SW 6th Avenue
Suite 830
Portland, OR 97204
Katherine@mcd-law.com

Amy Jamison
Pacifcorp d/b/a PPL
825 NE Multnomah, Suite 1800
Portland, OR 97232

Melinda Davison
333 SW Taylor
Suite 400
Portland, OR 97204
mail@dvclaw.com

Irion A. Sanger
333 SW Taylor
Suite 400
Portland, OR 97204
mail@dvclaw.com

Don Trotter
WUTC
Attorney General Section

1400 S. Evergreen Park Dr. SW
Olympia, WA 98504-7250
dtrotter@utc.wa.gov

Sarah Shifley
Public Counsel
800 5th Ave
Suite 2000
Seattle, WA 98104-3188
Sarah.Shifley@atg.wa.gov

Arthur A. Butler
Ater Wynne LLP
601 Union Street, Suite 1501
Seattle, WA 98101-3981
aab@aterwynne.com

Brad M. Purdy
Attorney for the Energy Project