

**TABLE OF CONTENTS TO THE
REBUTTAL TESTIMONY OF DAVID J. MARNE, P.E.**

	<u>Page</u>
I. INTRODUCTION	1
II. OPERATIONAL AND SAFETY CONSIDERATIONS WITH REGARD TO THE WALLA WALLA COUNTRY CLUB	3
III. TESTIMONY OF WILLIAM G. CLEMENS	7
IV. TYPICAL PRACTICES WITH REGARD TO ABANDONMENT OF UNDERGROUND CONDUIT	9

EXHIBIT LIST

Exhibit No.__(DJM-6)—NESC Excerpt

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is David J. Marne, P.E., and my business address is 619 S.W. Higgins Avenue,
4 Suite C, Missoula, Montana 59803. I am the President and Senior Electrical Engineer for
5 Marne and Associates, Inc.

6 **Q. ARE YOU THE SAME DAVID J. MARNE WHO PREVIOUSLY FILED**
7 **TESTIMONY IN THIS PROCEEDING?**

8 A. Yes. I filed Complainant Testimony on behalf of the Walla Walla Country Club
9 (“Country Club”), which is presently served by Pacific Power & Light Company
10 (“Pacific Power” or the “Company”).

11 **Q. WHAT IS THE SCOPE OF YOUR TESTIMONY?**

12 A. This rebuttal testimony follows my direct testimony concerning the National Electric
13 Safety Code (“NESC”) as it relates to Rule 6 of Pacific Power’s General Rules and
14 Regulations for Washington and the permanent disconnection of Pacific Power’s
15 facilities from the Walla Walla Country Club.

16 **Q. WHAT HAVE YOU REVIEWED PRIOR TO SUBMITTING THIS**
17 **TESTIMONY?**

18 A. Prior to submitting this testimony, I have reviewed both the Direct Testimony of R. Bryce
19 Dalley and the Direct Testimony of William G. Clemens submitted by Pacific Power,
20 including exhibits.

21 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

22 A. With regard to Pacific Power’s claimed operational and safety reasons for removing the
23 underground conduit on the Walla Walla Country Club property, it is typical and
24 accepted good practice to abandon underground conduit that does not contain wire to

1 provide electric service. In keeping with such practice, Pacific Power “for a period of
2 time” sold and transferred underground facilities upon permanent disconnection.^{1/} As
3 testified by Mr. R. Bryce Dalley, however, Pacific Power’s new practice is that it will not
4 sell and transfer underground facilities.^{2/} This position fails to recognize that it is an
5 accepted good practice to abandon empty, underground conduit, especially when
6 transferred upon permanent disconnection.

7 Further, as stated in my previous testimony, Washington code places a duty on
8 electric utilities to “maintain **their** lines and equipment according to the requirements of
9 the 2002 National Electric Safety Code (NESC).”^{3/} This means when the underground
10 conduit on the Country Club property is abandoned and transferred, the requirements
11 under Washington law and the NESC do not apply to Pacific Power.

12 The NESC also recognizes that if “particulars” are not specified in the NESC,
13 accepted good practice for the local conditions should be followed.^{4/} Accepted good
14 practice includes the abandonment of empty underground conduit. Mr. Dalley testified
15 “Pacific Power interprets the NESC to require removal of all underground facilities
16 unless the utility provider is willing to assume the duty to perpetually maintain those
17 facilities after permanent disconnection.”^{5/} However, the NESC does not contain such a
18 directive and this position is also contrary to the Company’s own standards calling for the
19 abandonment of old conduit.^{6/} In any event, even assuming Pacific Power’s erroneous
20 interpretation to be correct, the Country Club’s request to be served by an alternative

^{1/} Exh. No.__(RBD-1T) at 15:18.

^{2/} Id. at 16:9-11.

^{3/} WAC § 296-45-045(1) (emphasis added).

^{4/} NESC Rule 012.C. See Exh. No. __(DJM-4) (NESC Excerpts).

^{5/} Exh. No.__(RBD-1T) at 23:4-6 (emphasis added).

^{6/} See Exh. No. __(DJM-3C) at 3 (Confidential Pacific Power Responses to Club Data Requests).

1 electric utility provider would result in another provider assuming the duty to maintain
2 any abandoned facilities—meaning that there would still be no violation of the NESC.

3 **II. OPERATIONAL AND SAFETY CONSIDERATIONS WITH REGARD TO THE**
4 **WALLA WALLA COUNTRY CLUB**

5 **Q. IS THERE AN OPERATIONAL REASON UNDER THE NESC TO REMOVE**
6 **ABANDONED UNDERGROUND CONDUIT?**

7 A. The testimony from Mr. Dalley and Mr. Clemens does not identify operational reasons
8 under the NESC to remove abandoned underground conduit. Instead, the stated concerns
9 of Pacific Power are internal to their business operation. Mr. Bradley G. Mullins
10 provides rebuttal testimony on behalf of the Country Club in response to these Company
11 concerns.^{7/}

12 **Q. IS THERE A SAFETY REASON TO REMOVE ABANDONED UNDERGROUND**
13 **CONDUIT?**

14 A. If Pacific Power removes from the Country Club property its meter, electric wire lines,
15 and the aboveground sweeps, it will be leaving a generally straight run of empty
16 underground conduit. Under the NESC and the WAC rule cited above, Pacific Power
17 will not have maintenance responsibilities upon abandonment and transfer of these
18 facilities. The NESC Rule 011(B) entitled “Scope” states “[t]he NESC covers utility
19 facilities and functions up to the service point.”^{8/}

20 If the underground conduit on the Walla Walla Country Club property is
21 abandoned and transferred, and service is discontinued from Pacific Power, then there
22 would be no “service point” to the Walla Walla Country Club. Nor would there be any

^{7/} See Exh. No. ___(BGM-6T).

^{8/} Exh. No. ___(DJM-4) at 2 (NESC Excerpts).

1 Pacific Power “utility facilities” remaining on Country Club property. Thus, the NESC
2 will not impose a duty as claimed by Mr. Dalley.

3 **Q. PLEASE EXPLAIN THE APPLICATION OF THE NESC, PART 3, ENTITLED**
4 **“SAFETY RULES FOR UNDERGROUND LINES.”**

5 A. The NESC, Part 3, Section 31 entitled “General Requirements Applying to Underground
6 Lines” provides in Rule 311.A entitled “Installation and Maintenance” the following:

7 Persons responsible for underground facilities shall be able
8 to indicate the location of their facilities.^{9/}

9 In this proceeding, Pacific Power has offered, and I understand the Country Club will
10 accept, through a bill of sale, complete responsibility and liability for the abandoned
11 underground conduit.^{10/} Thus, where a transfer of the underground facilities occurs
12 through a bill of sale, the underground facilities will no longer be “their” (Pacific
13 Power’s) facilities. Consequently, just like the NESC coverage to the “service point,” the
14 NESC removes the “responsibility” to locate “their” facilities.^{11/} Pacific Power will not
15 have a duty to indicate the location of this underground conduit on private Country Club
16 property.

17 Second, Rule 313.B(3) entitled “Lines Permanently Abandoned” states “[l]ines
18 and equipment permanently abandoned shall be removed or maintained in a safe
19 condition.”^{12/} Mr. Dalley testified “Pacific Power interprets the NESC to obligate the

^{9/} Exh. No. ___(DJM-4) at 5 (NESC Excerpts) (emphasis added).

^{10/} For purposes of facilities transfer, it is also conceivable that a bill of sale could be made directly to an alternative service provider. Either way, the end result and essential point is that responsibility and liability will ultimately shift completely from Pacific Power.

^{11/} Exh. No. ___(DJM-4) at 5 (NESC Excerpts).

^{12/} Id. (emphasis added).

1 Company to remove or perpetually maintain the underground facilities upon
2 disconnection.”^{13/} In response, the following points are made.

3 (1) It is not typical practice to remove abandoned underground conduit, especially
4 from private property, which will no longer be served by the electric utility that has
5 previously used the conduit.

6 (2) NESC Rule 011.B entitled “Scope” does not impose a duty to maintain this
7 abandoned line since Pacific Power only has responsibility up to the “service point” on
8 the Country Club property, and only as to its own “utility facilities.”

9 (3) Where there is a transfer of the underground conduit to the Country Club
10 through a bill of sale, not only does the County Club assume the responsibility to
11 maintain the conduit, but that responsibility will shift to a subsequent electric service
12 provider according to WAC § 296-45-045(1), and NESC Rule 012.B that imposes
13 responsibility on a utility when it is “performing...operation or maintenance tasks for
14 electric supply.”^{14/}

15 (4) As mentioned in my summary, Mr. Dalley interprets the NESC to allow “the
16 utility provider...to assume the duty to perpetually maintain those facilities after
17 permanent disconnection [by Pacific Power].”^{15/} The plan is for the Country Club to
18 switch electric service providers, thus the new provider will be subject to the NESC.

19 (5) Finally, Pacific Power for years followed the accepted good practice of
20 abandoning empty conduit in place. Presumably, Pacific Power understood this was done
21 in compliance with Washington law and the NESC.

^{13/} Exh. No.__(RBD-1T) at 16:11-13.

^{14/} Exh. No.__(DJM-4) at 1 (NESC Excerpts).

^{15/} Exh. No.__(RBD-1T) at 23:4-6.

1 **Q. PLEASE ADDRESS PACIFIC POWER’S ARGUMENT THAT REMOVAL OF**
2 **THIS CONDUIT ELIMINATES THE NEED TO TRACK AND MAINTAIN IT**
3 **UNDER THE NESC.**

4 A. Mr. Dalley suggests that removal is required by the NESC.^{16/} That is not the correct
5 interpretation of the NESC in this circumstance. Second, Rule 6 states that when there is
6 a disconnection, the customer shall pay for “only those facilities that need to be removed
7 for safety or operational reasons.”^{17/} Certainly, Pacific Power’s safety considerations
8 should relate to the NESC. Regarding operations, Mr. Dalley also states that removal
9 eliminates the need to track or maintain the facilities. Common sense indicates that if the
10 facilities are sold and transferred, Pacific Power has relieved itself of its need to “track or
11 maintain” the facilities which it no longer owns.

12 **Q. PLEASE COMMENT ON MR. DALLEY'S CRITICISM OF YOUR TESTIMONY**
13 **CONCERNING NESC SECTION 3 WITH REGARD TO THE SALE OF**
14 **UNDERGROUND FACILITIES TO A DEPARTING CUSTOMER OR THE NEW**
15 **UTILITY PROVIDER.**^{18/}

16 A. To begin, on page 23, line 21, Mr. Dalley fails to quote my entire statement. I will repeat
17 it:

18 Taking into consideration Pacific Power’s position, my opinion is
19 that the NESC does not prohibit the abandonment of underground
20 conduit. NESC Rule 313.B.3 does not provide specific details for
21 individual circumstances. NESC Rule 012.C applies when
22 particulars are not specified in the NESC Rules. Rule 012.C
23 requires accepted good practice for the given local conditions.^{19/}

24 The underlined sentences are statements that Pacific Power omitted from its testimony.
25 Pacific Power then concluded that there is “absolutely no limitation upon the duty of the
26 disconnecting utility provider to remove or maintain the underground facilities in a safe

^{16/} Exh. No. ___(RBD-1T) at 23:2-16.

^{17/} Rule 6.I.

^{18/} Exh. No. ___(RBD-1T) at 23:17-24:4.

^{19/} Exh. No. ___(DJM-1CT) at 2:15-20.

1 condition.”^{20/} It is a typical and historical practice throughout the United States for a
2 utility provider to abandon conduit in place. Further, upon the sale and transfer of the
3 conduit, the NESC does not impose a duty to remove or maintain the conduit on the
4 transferring utility.

5 With regard to my entire statement, NESC Rule 012.C requires that “[f]or all
6 particulars not specified in these rules...maintenance should be done in accordance with
7 accepted good practice for the given local conditions.”^{21/} Even though Pacific Power has
8 recently adopted the position that it will no longer sell and transfer underground facilities,
9 this has not been their past practice. This fact is admitted by Mr. Dalley when he
10 acknowledges that the recent policy is “Pacific Power no longer agrees to accommodate
11 the disconnecting customer by selling underground facilities.”^{22/} The point is: Pacific
12 Power’s past practices were an accepted good practice for the given local condition
13 according to NESC Rule 012.C.

14 III. TESTIMONY OF WILLIAM G. CLEMENS

15 Q. PLEASE COMMENT ON THE TESTIMONY OF WILLIAM G. CLEMENS 16 SUBMITTED IN THIS MATTER.

17 A. A considerable amount of Mr. Clemens’ testimony contains his allegations of safety
18 issues encountered in Walla Walla, including pictures. Regardless of what the pictures
19 depict, I understand these pictures and claims do not exist on the Walla Walla Country
20 Club property.

^{20/} Exh. No.__(RBD-1T) at 23:23-24:1.

^{21/} Exh. No.__(DJM-4) at 2 (NESC Excerpts).

^{22/} Exh. No.__(RBD-1T) at 5-6.

1 **Q. PLEASE SUMMARIZE MR. CLEMENS’ “FUTURE SAFETY ISSUES.”**

2 A. First, I disagree with Mr. Clemens’ statement that the NESC imposes continuing duties
3 and liability.^{23/} As set forth in the Rules I have quoted, the NESC covers “utility
4 facilities,” and only up to the service point. In this circumstance, upon a disconnection
5 and transfer, Pacific Power would not have facilities on the Walla Walla Country Club
6 property.

7 Second, with regard to the claim of what a worker “may” discover during an
8 excavation and the assumptions that he or she “may” make, these do not create, in this
9 circumstance, a safety problem.^{24/} In this case, the accepted good practice under NESC
10 Rule 012.C would be to abandon the underground conduit after Pacific Power removes its
11 meter, wires, and other facilities. Mr. Clemens’ speculation of encountering an
12 “energized circuit” on the Walla Walla Country Club property will not exist after the
13 conduit is properly abandoned by Pacific Power. Abandoned empty conduit does not
14 pose a safety risk—and the Company would have no rational reason to dig up such
15 conduit on Country Club property, especially following a facilities transfer.

16 **Q. PLEASE COMMENT ON MR. CLEMENS’ TESTIMONY CONCERNING**
17 **MUNICIPALITIES ENACTING LOCAL REGULATIONS.**^{25/}

18 A. Essentially, Pacific Power is looking to adopt local standards with regard to the co-
19 location of facilities within public right-of-way. It should be noted that NESC Rule 353
20 calls for a one-foot separation of underground lines.^{26/} However, co-location for two
21 utilities is not proposed to serve the County Club property.

^{23/} Exh. No.__(WGC-1T) at 6:7-8.

^{24/} Id. at 6:10-12.

^{25/} Id. at 5.

^{26/} See Exh. No.__(DJM-6).

1 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

2 A. Yes.