

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PACIFIC POWER & LIGHT
COMPANY, d/b/a PACIFICORP,

Respondent.

DOCKET UE-140762 and UE-140617
(*consolidated*)

In the Matter of the Petition of

PACIFIC POWER & LIGHT
COMPANY,

For an Order Approving Deferral of Costs
Related to Colstrip Outage.

DOCKET UE-131384 (*consolidated*)

In the Matter of the Petition of

PACIFIC POWER & LIGHT
COMPANY,

For an Order Approving Deferral of Costs
Related to Declining Hydro Generation.

Docket UE-140094 (*consolidated*)

**REPLY BRIEF ON BEHALF OF
THE ALLIANCE FOR SOLAR CHOICE**

February 3, 2015

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1. The Alliance for Solar Choice (“TASC”) respectfully submits this reply brief in the above docket pursuant to the Administrative Law Judge’s Prehearing Conference Order of June 10, 2014. TASC advocates for maintaining successful distributed solar energy policies throughout the United States. Founding members represent the majority of the nation’s rooftop solar market and include Demeter Power, SolarCity, Solar Universe, Sunrun, and Verengo. These companies are responsible for tens of thousands of residential, school, and commercial solar installations across the country and have brought thousands of jobs and many tens of millions of dollars of investment to America’s cities and towns.

1. Introduction and Summary

2. By this reply, TASC responds to the portions of the initial briefs of Pacific Power and Light Company (“PacifiCorp” or the “Company”) and Commission Staff (“Staff”) concerning residential rate design. With regard to the Company’s brief, TASC demonstrates below that PacifiCorp: a) continues to make inappropriate and unsupported claims about its customers that have installed distributed generation; b) provides no evidence that its requested fixed charge increase is consistent with Washington’s energy efficiency policies and goals; c) confuses fixed costs with long-run marginal costs and incorrectly insists that fixed costs should be recovered through fixed charges; and d) relies on extra record evidence to support its position. In response to Staff’s Initial Brief, TASC notes that Staff expressly acknowledges the various pitfalls and shortcomings of raising the residential basic service charge, but nonetheless supports the Company’s desire to do so. Finally TASC emphasizes that the Commission should let the energy policies of the state guide its residential rate design decisions, which would include approving a third rate tier for residential customers. TASC will attempt to not repeat arguments contained in its Initial Brief, but incorporates that document by reference.

2. PacifiCorp’s Initial Brief Regarding the Residential Basic Charge Inappropriately Scapegoats Customers with Distributed Generation, is Misleading, and Lacks Evidentiary Support

3. PacifiCorp’s Opening Brief fails to demonstrate that its request to raise the residential basic service charge by 81% from \$7.75 to \$14.00 per month is reasonable or justified by the evidence in the record. The Company provides no support for its claims that solar DG is a cause of its inability to earn its commission authorized rate of return. The Company’s arguments in support of its proposal are misleading, lack citations, ignore precedent and traditional rate design principles, and partially rely on extra-record evidence. TASC continues to recommend that the Commission reject PacifiCorp’s proposed fixed charge increase.

a. PacifiCorp Continues to Make Inappropriate and Unsupported Claims About Customers With Distributed Generation

4. In attempting to justify its proposed 81% increase to the Residential Basic Charge, PacifiCorp asserts without proof that the increase “will also mitigate cost-shifting from increased DG resulting from state policies.”¹ In support of this bare assertion, the Company cites to three sources. However none of the Company’s citations support its assertion that DG customers create a cost shift, or that its’ proposal would mitigate such a shift if it did exist.

5. First, PacifiCorp cites to the Commission’s Interpretative Statement in Docket UE-112133. This document discusses only the Commission’s authority and jurisdiction with regard to third party owners of net metering facilities and contains no discussion of cost shifting.²

6. Second, PacifiCorp cites to Ms. Steward’s rebuttal testimony, which indicates that DG adoption has grown substantially in recent months.³ As explained in TASC’s Initial Brief, this

¹ PacifiCorp Opening Brief, ¶ 148.

² *Re Amending and Repealing Rules in WAC 480-108 Relating to Electric Companies-Interconnection With Electric Generators*, Docket UE-112133, Interpretive Statement Concerning Commission Jurisdiction and Regulation of Third-Party Owners of Net Metering Facilities (July 30, 2014), ¶ 6 (“This statement provides our current opinion regarding the Commission’s jurisdiction over third-party owners of net-metered systems.”)

growth must be placed in context to demonstrate its lack of substance: despite any “substantial” growth, net-metered residences still account for less than .02% of PacifiCorp’s customer base.⁴

7. Third, the Company cites the hearing testimony of Staff witness, Mr. Jeremy Twitchell and grossly mischaracterizes his testimony. In footnote 400 of its Opening Brief, the Company interprets Mr. Twitchell’s testimony to mean that the Commission should “address DG now.” However, Mr. Twitchell’s testimony discussed energy efficiency measures very broadly, and did not expressly or implicitly state that DG customers create a cost-shift.⁵ In fact, as explained in TASC’s Initial Brief, Mr. Twitchell specifically acknowledged on cross-examination that the low number of DG customers have no significant impact on PacifiCorp’s ability to recover fixed costs.⁶ Mr. Twitchell specifically testified that “Staff’s position is that at 0.2 percent of the customers, there are just not enough [DG] customers to be materially impacting the Company’s system in any way to be creating any kind of cost shift.”⁷ In fact, Mr. Twitchell further testified that if anything, DG customers provide a benefit to other customers.⁸

8. The Company also continues to claim that the Commission itself has recognized “that the growth in DG should not compromise a utility’s ability to recover fixed costs nor unreasonably shift costs,”⁹ citing for support to page 5 of the UTC Report on the Potential for Cost-Effective Distributed Generation in Areas Served by Investor Owned Utilities in Washington State, from Docket UE-110667. However, this citation provides no support for the Company on this point

³ Steward, Exh. No. JRS-13T 24:5-7 (60 percent growth in DG from 2013 through October 2014).

⁴ Twitchell, TR. 652: 5.

⁵ Twitchell, TR. 631:2-14.

⁶ Twitchell, TR. 615: 9-17.

⁷ Twitchell, TR. 652: 5-8.

⁸ Twitchell, TR. 652: 17-24 (*stating* “[s]taff’s position, based on the data we looked at, is during heavy load hours these customers are actually producing energy that offsets the energy that PacifiCorp needs to provide for its customers. And any production that takes place during heavy load hours, even if it’s just a fraction of the capacity, even if it’s just a few hundred watts, has a benefit to PacifiCorp, to its investors, to ratepayers.”)

⁹ PacifiCorp Opening Brief, ¶ 148.

because the Commission has made no such statement. The Report summarizes stakeholder—not *Commission*—findings:

There are several stated goals and purposes of distributed generation, which follow the goals established in statute and rule for the state’s electric system. *The stakeholders identified a number of purposes.* These goals include:

- Maintaining low retail electric rates;
- Maintaining reliability of the electric system;
- Fostering economic development and job creation;
- Protecting the environment;
- Ensuring energy independence;
- Protecting consumers (including protection from cost-shifts between rate classes and types of customers); and
- Ensuring sufficient returns for utility investors.¹⁰

Not only is the cited document plainly not an order, decision, or policy statement signed by the Commissioners themselves but a report by UTC Staff, the report clearly identifies the matters listed as issues identified by stakeholders.

9. PacifiCorp’s repeated mischaracterization of the Commission’s and Staff’s positions on this issue is disingenuous. The Company has simply and repeatedly failed to provide compelling evidence that DG customers cause the Company’s inability to recover fixed costs, or that they create intra-class cost shifts. Therefore, TASC continues to request that, in its final written decision, the Commission specifically note the Company’s failure to meet its burden of proof on this issue.

b. PacifiCorp Fails to Provide Evidence that its Requested Fixed Charge Increase Is Consistent With Washington’s Energy Efficiency Policies and Goals

10. The Company acknowledges that state and federal policy encourages increasing energy efficiency and conservation and that new regulation under Section 111(d) of the Clean Air Act

¹⁰ *UTC Report on the Potential for Cost-Effective Distributed Generation in Areas Served by Investor Owned Utilities in Washington State*, Docket UE-110667 at 5, 29 (October 7, 2011). (Emphasis added, internal citations omitted).

may require additional measures to reduce carbon emissions.¹¹ As demonstrated in TASC’s Initial Brief, PacifiCorp’s proposal sends the wrong price signals to customers to facilitate efficiency objectives.¹² Without providing evidence or citation to the record, PacifiCorp flatly claims that its recommended basic service charge “does not diminish incentives to conserve.”¹³ Yet this bare assertion is immediately followed by an implicit acknowledgement that volumetric charges encourage efficiency. Any rate design that diminishes the portion of an electric bill that a customer can control with usage will also diminish a customer’s incentive to conserve.¹⁴

11. Sister commissions reviewing utility rate cases have reached similar conclusions. For example, with regard to Commonwealth Edison’s 2013 electric rate case, the Illinois Commerce Commission concluded,

... it is not reasonable or consistent with public policy to structure rates so that the poor, the frugal and the energy efficient are required to subsidize those who are not, when a more equitable method of allocation exists. A more reasonable policy allocates the same aggregate costs so that individual customer costs are reasonably proportionate to the demands that their use places on the system.¹⁵

Similarly, the Maryland Service Commission recently rejected Baltimore Gas and Electric’s proposal to increase fixed customer charges because doing so was contrary to state efficiency goals stating, “we reject BGE’s proposal to increase either residential or non-residential customer charges. This decision will afford ratepayers a better opportunity to control their

¹¹ PacifiCorp Opening Brief, ¶ 152.

¹² TASC Initial Brief, ¶ 16-21.

¹³ PacifiCorp Opening Brief, ¶ 148.

¹⁴ See, Fulmer, Exh. No. MEF-1Tr, 10: 10-12 (stating the converse: “any variable costs provides some level incentive to conserve consumption of a good.”)

¹⁵ Illinois Commerce Commission Final Decision in Docket No. 13-0387, issued on 12/18/2013, p. 75, *available at*, <http://www.icc.illinois.gov/docket/files.aspx?no=13-0387&docId=207265>; See also, Illinois Commerce Commission Final Decision in 2014 Peoples Gas Rate Case, Docket No. 14-0224, issued on 1/26/15, p. 176, *available at*, <http://www.icc.illinois.gov/docket/files.aspx?no=14-0224&docId=224001> (stating, “It is patent that high customer charges mean the Companies’ lowest users bear the brunt of rate increases, and subsidize the highest energy users. Steadily increasing customer charges diminish the incentives to engage in conservation and energy efficiency because a smaller portion of the bill is subject to variable usage charges and customer efforts to reduce usage.”)

monthly bills by controlling their energy usage. This decision is consistent with EmPOWER Maryland goals and with our decision in BGE’s last base rate case.”¹⁶

c. PacifiCorp Confuses Fixed Costs with Long-Run Marginal Costs and Incorrectly Insists that Fixed Costs Should Always Be Recovered Through Fixed Charges.

12. The Company’s Opening Brief continues to characterize all of its distribution costs as “fixed costs”¹⁷ even though several parties provided testimony and evidence that many of these costs are actually long-run marginal costs that vary over time.¹⁸ The Company hedges by noting that distribution assets will not vary in the “*near term*,” thereby implicitly acknowledging that such costs do vary over longer periods.¹⁹ The Illinois Commerce Commission has also recently come to the conclusion that delivery charges are not fixed and are directly impacted by customer usage.²⁰
13. Even if one assumed that all distribution costs are “fixed,” PacifiCorp continues to miss the point by insisting “it is unreasonable to recover these costs through a variable rate.”²¹ This position ignores the fact that the Company has traditionally recovered most of its fixed costs through volumetric rates, just as most competitive industries do.²² Because regulation is supposed to be a surrogate for competition, electric utility rates should largely mirror those of unregulated firms.²³

¹⁶ Maryland Public Service Commission, Order No. 8060 in Case No. 9326 issued on 12/13/13), p. 105, *available at*, http://webapp.psc.state.md.us/Intranet/casenum/CaseAction_new.cfm?CaseNumber=9326 (Note: EMPOWER Maryland is the state energy efficiency/reduction requirement for investor owned utilities); *See also*, Commonwealth of Virginia State Corporation Commission, Final Order in Appalachian Power Company Rate Case, Case No. PUE-2014-00026, issued on 11/26/14, p. 33 *available at*, <http://docket.scc.virginia.gov/vaprod/main.asp> (rejecting proposed fixed charge).

¹⁷ PacifiCorp Opening Brief, ¶ 147.

¹⁸ Fulmer, Exh. No. MEF-1Tr, 7: 4-6; Watkins, Exh. No. GAW-1T, 18: 14; Watkins, Exh. No. GAW-6T, 18: 15-16.

¹⁹ Steward, Exh. No. JRS-13T, 27: 6. (Emphasis added).

²⁰ Illinois Commerce Commission Final Decision in Docket No. 13-0387, issued on 12/18/2013, p. 75, *available at*, <http://www.icc.illinois.gov/docket/files.aspx?no=13-0387&docId=207265>.

²¹ PacifiCorp Opening Brief, ¶ 150.

²² Initial Brief of Public Counsel, ¶ 110.

²³ Initial Brief of Public Counsel, ¶ 110.

d. PacifiCorp Cites to Information Not in the Record

14. In rebutting Public Counsel’s arguments against increasing the residential fixed charge, PacifiCorp surreptitiously cites to evidence that is not contained in the record of this proceeding. On page 57, paragraph 152 of its Opening Brief, the Company attempts to rebut evidence put forth by Public Counsel, which demonstrates that PacifiCorp’s residential Washington loads are increasing and are expected to increase in the near future.²⁴ The Company states “Pacific Power’s temperature normalized residential sales decreased 5.1 percent between 2010 and 2013” and cites to four separate Results of Operations reports.²⁵ However these reports do not have exhibit numbers in this proceeding because they are not in the evidentiary record. While PacifiCorp could have requested official notice of these records pursuant to Commission Rule, it did not.²⁶ Because the Administrative Law Judge closed the evidentiary record at the conclusion of hearing, the Commission should refuse to consider this information.²⁷

3. Staff Acknowledges Many Flaws with Increasing The Residential Basic Charge, Yet Continues to Support it

15. Staff is the only party besides PacifiCorp that supports any increase to the residential basic charge and only because the Company failed to propose other alternatives, such as decoupling. However, Staff is careful to note that it supports such an increase only in conjunction with the creation of a third rate tier for residential customers.²⁸ Its support is conditional because Staff recognizes that without an off-setting measure to promote efficiency, “the price signal to support efficiency would be diluted.”²⁹ In other words, Staff continues to

²⁴ PacifiCorp Opening Brief, ¶ 152.

²⁵ PacifiCorp Opening Brief, FN 417.

²⁶ WAC 480-07-495 (2), regarding Official Notice.

²⁷ TR. 764: 7-9.

²⁸ Staff’s Initial Brief, ¶130.

²⁹ Staff Initial Brief, ¶ 130.

recognize that raising the basic charge is in “direct conflict” with the “goal of creating price signals for customers that encourage investments in energy efficiency and distributed energy.”³⁰

16. Staff’s primary argument in favor of raising the basic charge is not that it is a good price signal, but that it would “improve the company’s cost recovery.”³¹ Staff’s other proposal – to create a third rate block - is intended to counteract any negative price signal that increasing fixed charges would have in an effort to “balance two opposing policies.”³² Staff therefore appears to acknowledge that its overall rate design proposal sends mixed signals.³³

17. Staff also acknowledges that raising the basic charge is an incomplete solution compared to other revenue stabilizing measures, such as decoupling.³⁴ Fortunately, the Commission has the option to send proper price signals to customers *and* to address the Company’s fixed cost recovery issues. As fully explained in TASC’s Initial Brief, the Commission should maintain current fixed charges, adopt Staff’s proposed third tier, and encourage PacifiCorp to file a separate application to address fixed cost recovery issues in a way that continues to encourage efficiency and conservation. Decoupling could be one solution among others, as discussed in TASC’s Initial Brief.

18. It is also important to note that unlike PacifiCorp, Staff fully acknowledges that raising the residential basic charge to include more fixed costs is a substantial departure from Commission history and general rate making principles.³⁵ Staff notes that “[i]n general, basic charges (including the Company’s) only include costs that vary with the addition of another customer, such as service drops, meters, billing, etc.”³⁶ Staff defends this departure from

³⁰ Twitchell, Exh. No. JBT-1T, 25: 8-11. (Emphasis added).

³¹ Staff Initial Brief, Section VII, B.

³² Staff’s Initial Brief, ¶130.

³³ Energy Project’s Initial Brief, p.4.

³⁴ Staff’s Initial Brief, ¶ 117.

³⁵ Staff’s Initial Brief, ¶ 114.

³⁶ Staff’s Initial Brief, ¶ 114.

traditional practice by stating that it is reasonable in light of the Company's negligible customer growth, and concludes that the Commission should therefore begin the practice of including the cost of transformers in fixed charges.³⁷ Again, this suggestion is somewhat baffling given Staff's acknowledgement that other options exist, such as decoupling, that would address fixed cost recovery more broadly and would not require such a "diversion from current practice."³⁸

4. TASC Continues to Support Staff's Three Tier Rate Design

19. The Commission should approve rate designs that are consistent with Washington's policy goals of increasing efficiency and promoting conservation and the development of DG. As such, it should adopt Staff's proposal to create a third tier because it is designed to achieve Washington's policy goals. As Staff correctly notes in its Opening Brief, "the new rate block would incent investment in energy efficiency by providing high use customers a stronger and more aggressive price signal."³⁹ Given TASC's recommendation that the residential basic charge should be no higher than \$9 per month, TASC proposes slightly different rates as detailed in its Initial Brief.⁴⁰

5. Conclusion

20. For all of the reasons stated herein and in TASC's Initial Brief, TASC makes the following requests:

1. TASC requests that that the Commission deny PacifiCorp's request to increase the residential basic service charge.
2. TASC requests that the Commission find that PacifiCorp has failed to demonstrate that DG is a cause of its inability to recover fixed costs.

³⁷ Staff's Initial Brief, ¶ 114.

³⁸ Staff's Initial Brief, ¶ 114.

³⁹ Staff's Initial Brief, ¶ 118.

⁴⁰ Fulmer, Exh. No. MEF-6T, 4: 17-22; TASC Initial Brief, ¶ 51.

3. TASC recommends that the Commission encourage the Company to file a separate application to institute an alternative approach to fixed cost recovery issues, such as revenue decoupling, a properly designed PCAM, a minimum bill approach, or use of a forward looking test year.
4. If the Commission nevertheless decides that an increase to the residential basic charge is justified in this proceeding, TASC requests that it only allow such a charge to be based on actual customer related costs, not to exceed \$9.00 per month.
5. TASC requests that the Commission specifically instruct the Company not to propose demand charges for DG customers in its next rate case.
6. TASC requests that the Commission adopt Staff's proposal to move to a three-tier rate design for residential customers.

DATED this 3rd day of February 2015.

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