

**BEFORE WASHINGTON UTILITIES AND  
TRANSPOTATION COMMISSION**

<b>WASHINGTON UTILITIES AND</b>	)	
<b>TRANSPORTATION COMMISSION,</b>	)	<b>DOCKET NO. UE-001734</b>
	)	
<b>Complainant,</b>	)	<b>CREA’S ANSWER TO MOTION</b>
	)	<b>TO STRIKE TESTIMONY</b>
<b>PacifiCorp, d/b/a/ Pacific Power &amp; Light,</b>	)	
	)	
<b>Respondent.</b>	)	

Pursuant to WAC 480-09-420(9)(a), CREA files this Answer to PacifiCorp’s motion to strike the Response Testimony of Thomas H. Husted.

**1. Direct and Response Testimony:** In May 2001, PacifiCorp filed the Direct Testimony of its Regional Community Manager, William G. Clemens, in support of its application for a tariff revision allowing it to charge its customers a fee for permanent disconnection from that company’s electric service facilities. Response Testimony, dated July 3, 2001, was subsequently filed by Thomas H. Husted, General Manager (now CEO) of Columbia Rural electric Association, Inc. This Response Testimony concisely followed the Direct Testimony of Mr. Clemens. Excerpted testimony of each of those witnesses is set out below:

**Mr. Clemens** - Page 1, lines 16-20 –

Question: Please describe the Company’s proposed change to Electric Service Rule 4.

Answer: The Company is proposing to add tariff provisions enabling the Company to charge a customer who requests disconnection of Company facilities in order for the customer to switch electric suppliers, to pay for the estimated net removal cost of those facilities. The proposed tariff language was included in the Company's initial filing.

**Mr. Clemens** - Page 2, lines 8-16 –

Question: Why is the Company receiving requests for removal of distribution facilities?

Answer: All such requests to date have occurred in Eastern Washington. The Columbia Rural Electric Association, Inc., (“CREA”) is an electric cooperative providing retail service to its members in and around Dayton, Washington. CREA is soliciting PacifiCorp's current retail customers in an effort to provide retail electric service to these electric end users. CREA has constructed a new substation, presumably to increase their system capabilities and has been active in seeking franchise rights from local governments. To date, PacifiCorp customers switching to CREA are located in Walla Walla County in Eastern Washington.

**Mr Husted** – Page 2, lines 18 to Page 3, line 2 –

Question: Has Columbia REA been soliciting existing customers of PacifiCorp?

Answer: No. However, on several occasions PacifiCorp customers have approached me or other employees of Columbia REA about switching their electric service to us.

**Mr Clemens** – Page 3, lines 6-9 –

Question: Does the introduction of competition in an area result in duplication of facilities?

Answer: Yes. In College Place, adjacent to Walla Walla, Washington, there are now a number of streets where PacifiCorp distribution facilities have been present for some time and where new, duplicative CREA distribution facilities have recently been installed.

**Mr. Husted** – Page 2, lines 1-17 -

Question: Does Columbia REA hold any city franchises for the providing of electricity?

Answer: Yes. We have a nonexclusive franchise for College Place, Washington, last granted by ordinance for 20 years on October 14, 1996, and a nonexclusive franchise for Dayton, Washington for 20 years, granted by ordinance on January 9, 2000. On June 27, 2001, the City of Walla Walla granted Columbia REA a nonexclusive, site specific “mini-franchise” for an area bordering the intersection of Myra Road and SR125 in that city.

Question: Is Columbia REA duplicating the facilities of PacifiCorp in those cities?

Answer: No. In College Place, WA the installation of service facilities by Columbia REA is, and has been, done through permits and other approvals first obtained from that city. In Dayton, WA the franchise ordinance was joined with a right of way ordinance to regulate new or relocated facilities and guard against duplication of facilities. PacifiCorp’s franchise in Dayton, WA was granted at the same time as Columbia REA’s, contains essentially the same language and is also subject to Dayton’s right of way ordinance. With respect to Columbia’s mini-franchise in the City of Walla Walla , Washington, no utility presently has metered service in that area.

**Mr Clemens** – Page 3 line 14 to page 4 line 9 –

Question: Why should the customers that seek disconnection pay the net removal costs?

Answer: PacifiCorp believes that customers that cause costs to be incurred should bear responsibility for paying those costs. When a customer initiates service with PacifiCorp, the Company incurs costs for labor and investments in assets to bring service to the customer. These include the costs to install the meter, the service drop and frequently new poles, conductor and a transformer.

Question: Does PacifiCorp currently charge removal less salvage to any group of customers?

Answer: Yes. For years customers requesting a relocation of facilities pay for the removal costs less salvage. In addition, the customer pays for any new facilities installed. Rule 14, VI. Relocation or Replacement of Facilities. The circumstances behind this filing are very similar to a relocation, but involve two utilities, with the new supplier contracting with the customer for the new facilities and the old line being removed and salvaged by the former supplier.

Question: If departing customers do not pay the net removal costs, what will PacifiCorp propose to do?

Answer: PacifiCorp will record the removal costs less salvage value on its books and records. Should these entries be within a test year utilized for ratemaking purposes, these costs will be properly reflected in future rates of those customers that remain customers of PacifiCorp.

**Mr. Husted** – Page 3 line 3 to page 4 line 4 –

Question: When a member discontinues service with Columbia REA, is there a charge to that member for removing the meter and any related facilities?

Answer: No. The cost of removing facilities is charged off as a general operating expense rather than charged to the departing

member or directly assessed against his or her patronage capital in the Cooperative.

Question: Is the removal of a meter and, say, two or three poles, a significant cost?

Answer: No. And even if the departing member were a large industrial load or large irrigator, the removal costs would still be booked as retirement work orders and, after allowance for depreciation and salvage made part of overall operating expenses. Columbia Rural Electric does not restrict the freedom of its members to choose to receive service from a different utility by imposing exit fees or stranded cost charges on them.

Question: Has PacifiCorp solicited utility business from Columbia Rural Electric's members?

Answer: Yes. For example, one of Columbia's largest accounts is Walla Walla College in College Place and Bill Clemens of PacifiCorp has approached it about switching utilities in the last twelve months.

Question: is that to say you are opposed to competition?

Answer: No. Competition fairly brought promotes better service and better rates to the end consumers.

Question: Do you see PacifiCorp's request to impose "net removal cost charges" as an effort to limit competition?

Answer: I do, especially since it is designed to apply only to customers who want to switch utilities and not to customers who abandon or otherwise discontinue service with PacifiCorp. It imposes and additional cost that could become the deciding factor in whether a customer changes utilities.

## **2. Discussion**

Contrary to PacifiCorp's assertion in the instant motion, CREA is a customer of that company. As such, CREA has an interest in this proceeding. Further, CREA has intervenor status here, under the Second Supplemental Order entered July 9, 2001, which status the Commission granted, as consistent with the public interest, to address:

(1) That the proposed tariff charges are an unlawful restraint of trade, restricting competition and customer choice in contravention of law and public policy; and (2) factual contentious about CREA in PacifiCorp's testimony.

By seeking to strike the testimony of Mr. Husted, PacifiCorp is really seeking to put the Commission in the position of deciding this application in a vacuum. Yet in Section 33 of the Second Supplemental Order the Commission stated:

*In the instant case, PacifiCorp's proposal occurs not in isolation but in the context of potential competition among neighboring utilities. PacifiCorp's customers, whether potential migrants from PacifiCorp or the customers who don't migrate to another utility, are affected by this broader context. In this proceeding, CREA's participation may help us to determine the effects of the Proposed Tariff Revision on the customers, which we find to be in the public interest. Accordingly, we grant CREA's petition to intervene only on the fifth ground (issue(e)) prescribed by CREA, and for the purpose of addressing factual contentions about CREA in the parties' testimony.*

From the August 2002 Rebuttal Testimony of William G. Clemens, it appears that PacifiCorp now intends to amend its application for an exit fee (so that it conforms to Staff's views on the matter) by making the cost to the customer

applicable in the event of permanent disconnection for any reason and not just upon the customer switching service to another utility. One may reasonably infer that the purpose of that gambit is to finesse the application into a posture that can be represented by PacifiCorp as making the testimony of Tom Husted irrelevant, along with competition, customer choice and the public interest. This new approach by PacifiCorp is disingenuous. The exit fee being sought by PacifiCorp would still apply to its customers seeking to switch utilities just as in its original filing. The question comes down to quality of service, customer choice and the effects the proposed tariff would have on those customers.

PacifiCorp's residential rates tend generally to be lower than CREA's residential rates. Still PacifiCorp's residential customers have and are asking to move to CREA. And PacifiCorp attempts to block that move by imposing a charge for disconnection of facilities. In the just opened UTC compliant file, 78523, PacifiCorp is shown to have wanted \$1,200.00, from Alan Laib, to have his service taken off that system. (Cascade Natural Gas and Charter Communications do not charge their customers for such disconnections; neither does Quest for telephone disconnects, which are surely numerous in this age of cell phones.) But PacifiCorp wants to impose that charge on its customers. In the case of Mr. Laib, it was to impede his ability to choose a different utility and switch to CREA. The Testimony of Tom Husted presaged the situation involving Alan Laib and is relevant to restraint of trade issue as well as refuting the factual contentions made by PacifiCorp in its testimony.

3. **Cole Inapplicable:** In support of its motion to strike, PacifiCorp relies at length on *Cole v. Washington Utilities and Transportation Commission* 79 Wn 2d 302, 485 P. 2d 71 (1971). It relied in like fashion on that case to oppose CREA's intervention in this proceeding. But, the Commission stated in its Second Supplemental Order in this proceeding: "We disagree with Commission Staff and PacifiCorp that the *Cole* decision controls our decision in this case." Intervention was granted to CREA. The public interest reasoning used by the Commission in reaching that result applies just as well to a ruling that sustains Mr. Husted's testimony and denies PacifiCorp's motion to strike.

4. **Conclusion:** The Commission allowed CREA to intervene with the words "...CREA's participation may help as to determine the effects of the Proposed Tariff Revision on the customers [of PacifiCorp], which we find to be in the public interest." Tom Husted's testimony needs to remain in his case or PacifiCorp's proposal is one made in a vacuum to serve its ultimate ends, the good of its shareholders.

Finally, and to put the matter conversely, if Mr. Husted's testimony is stricken then also should all of the testimony of Mr. Clemens be stricken as irrelevant. And then, at that point, this case dismissed as being without any basis in fact.

Respectfully submitted this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

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