

I. INTRODUCTION

Pursuant to WAC §§ 480-09-420 and -770 and the Fourth Supplemental Order Re-Establishing Procedural Schedule, the Industrial Customers of Northwest Utilities (“ICNU”) submits this Post-Hearing Reply Brief (“Brief”) regarding PacifiCorp’s (or the “Company”) request to charge customers who permanently disconnect from PacifiCorp the net costs of removing the Company’s facilities from the former customer’s property (“Net Removal Tariff”).

The Washington Utilities and Transportation Commission (“WUTC” or “Commission”) should reject PacifiCorp’s Net Removal Tariff because the Company has not met its burden of proof to demonstrate that the proposed tariff is just, reasonable, non-preferential and non-discriminatory for all customers. In the alternative, if the Commission does not reject the Net Removal Tariff, the Commission should require PacifiCorp to modify the tariff to make it inapplicable to commercial and industrial customers, or establish a reasonable, cost-based cap for those customers.

Staff and PacifiCorp urge the Commission to approve the Net Removal Tariff based on the notion that “cost-causers” must pay the costs of removal and disconnection. Staff Brief at 8-9; PacifiCorp Brief at 15. The Commission should not be fooled by this argument despite its superficial appeal. The Net Removal Tariff is a mechanism designed to discourage customers from leaving PacifiCorp’s system and purchasing electric service from a competitive service provider. PacifiCorp and Staff focus considerable efforts in their Briefs on attacking competition and erroneously claiming that the Commission cannot consider the competitive interests of customers when analyzing electric utility rates. PacifiCorp Brief at 10-15; Staff Brief at 14-16. Contrary to Staff’s and PacifiCorp’s assertions, this Commission previously ruled in

this proceeding that it could consider competitive issues. WUTC v. PacifiCorp, Second Suppl. Order at 7-8 (July 9, 2001).

Regardless of how this Commission feels about competition, it should not approve the Net Removal Tariff for the following reasons:

- The Net Removal Tariff contains no rate and no method for determining the rate, and there is no evidence providing any cost-basis for charging commercial and industrial customers removal costs;
- The Net Removal Tariff is poorly drafted, vague, and ambiguous;
- The Net Removal Tariff is discriminatory, it provides a rate cap for residential customers but does not provide a rate, or a mechanism for establishing the rate, for commercial and industrial customers;
- Approval of the Net Removal Tariff requires the Commission to adopt an entirely new approach to allocating system costs—this Commission does not set rates on the basis that “cost-causers” pay;
- There is no evidence of any real safety problems that warrant the Net Removal Tariff;
- The evidence suggests that there is no need for this tariff on a cost-recovery basis—removal costs are already recovered in rates (including depreciation rates) or they can be recovered through the Accommodation Tariff; and
- The Net Removal Tariff is designed to limit competition.

Neither Staff nor PacifiCorp adequately addressed these deficiencies in their Briefs. The “sunset” and reporting conditions that PacifiCorp and Staff agreed to do not cure the fundamental legal defects in the Net Removal Tariff. PacifiCorp and Staff persist in taking the illogical position that the discrimination, vagueness, and lack of cost support only needs to be fixed for residential customers, but can be ignored for commercial and industrial customers. PacifiCorp Brief at 4; Staff Brief at 2-7. The Commission is responsible for establishing just, reasonable, and non-discriminatory rates for all customers, including commercial and industrial customers. RCW §§ 80.28.010, .20, .90, .100.

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II. ARGUMENT

A. The Commission Does Not Establish Rates Solely on the Basis that “Cost-Causers” Pay

Staff mistakenly confuses the concept that the Commission establishes and approves a regulated electric utility’s rate on a cost of service basis as support for the notion that the Commission has a policy that “cost-causers” pay. Staff Brief at 8-9, 16-18. Cost of service and cost causation are two very different concepts. The Commission routinely approves fair, just and reasonable electric rates on an average cost of service basis. In the case of PacifiCorp, industrial customers’ rates cover some portion of the costs of residential and commercial utility disconnections, payment centers, low income bill assistance, uncollectibles, and numerous other utility costs unrelated to industrial service. Industrial customers do not cause any of these costs, nor do they directly benefit from paying these costs in their rates.

While cost-causation can be a consideration in setting rates, it is not the basis upon which rates are set. If the Commission adopts the cost-causers pay policy, it must apply this policy consistently and not just in certain instances designed to prevent customers from changing electric utility providers.

B. PacifiCorp is Already Recovering Removal Costs in its Rates

PacifiCorp claims, without adequate evidentiary support, that net removal costs are not included in the Company’s rates. The only evidence supporting this claim cited in either the PacifiCorp or Staff Briefs is a single statement by Mr. Clemens that net removal costs are not being passed on to all of the Company’s customers. PacifiCorp Brief at 7; Tr. at 70. However, Mr. Clemens is not an expert in the Company’s rates. Tr. at 68:9-69:4, 120:15-17. Furthermore, Mr. Clemens subsequently admitted that he did not know if net removal costs are included in

PacifiCorp's rates. Tr. at 108-109, 133, 169. Mr. Clemens' contradictory testimony is not sufficient evidence to carry the Company's burden of proof to establish that it is not fully recovering all of its net removal costs. The Commission should not permit either the Company or Staff to cure this evidentiary defect by making unsupported assertions in their Briefs.

The issues raised by the Net Removal Tariff are complex as they relate to cost-of-service issues. PacifiCorp's depreciation costs, which are in the rates for all customers, already recover costs associated with recovery of the total investment in its property and the cost of removal of that property at the end of its estimated life. Therefore, PacifiCorp's current rates already allow the Company to recover its net removal costs. PacifiCorp provided no evidence to refute this assertion.

C. The Net Removal Tariff is Not Like the Line Extension Tariff

Staff and PacifiCorp argue that it is okay for the Commission to approve the Net Removal Tariff because it is "just like the Line Extension Tariff. Included as Attachment A is PacifiCorp's Line Extension Tariff. This tariff is 13 pages long. Its first paragraph references the need for a contract. The tariff identifies the category of costs that are covered: engineering services, transformers and meters, labor, materials, and overheads. The Line Extension Tariff sets forth detail on how costs will be recovered from customers, any allowances given to customers, and how customers can recover their costs from PacifiCorp. A cursory review of the Line Extension Tariff and the proposed Net Removal Tariff shows that the Line Extension Tariff provides much more specificity. In fact, the Line Extension Tariff demonstrates the degree of specificity that is required in order to charge rates that are not fixed. The Net Removal Tariff is

not specific, does not detail what equipment is covered, and does not indicate how PacifiCorp will recover its costs from customers.

D. To the Extent Real Safety Issues are Present, They Can be Addressed Without the Net Removal Tariff

PacifiCorp and Staff attempt to justify the Net Removal Tariff by claiming that it is necessary to prevent safety and operational problems. PacifiCorp Brief at 8; Staff Brief at 4-5. The problem with these justifications is that the record does not demonstrate that these problems actually exist.

PacifiCorp has not submitted credible evidence to demonstrate that any specific safety and operational problems exist, or that the Net Removal Tariff is an appropriate tool to address them. ICNU Brief at 10-11. The only “evidence” on this issue is speculative assertions by PacifiCorp’s and Staff’s witnesses about dangers to fire fighters. If PacifiCorp is really concerned about safety and operational issues, the Company could avoid these problems without reliance on the Net Removal Tariff and simply sell their facilities to the customer or the new utility service provider. ICNU Brief at 11. PacifiCorp indicated that it was unwilling to sell assets except to the extent “the folks in Portland” approve such asset sales on a case-by-case basis. Tr. at 76. Likewise, PacifiCorp could mark facilities as no longer in use to avoid confusion during a fire. Removing used and useful facilities is an unnecessary solution to the safety concerns identified.

E. The Net Removal Tariff Allows PacifiCorp to Unilaterally Determine Net Removal Costs

PacifiCorp and Staff admit that the Net Removal Tariff does not contain charges for non-residential net removal services or detail the specific facilities that would be covered.

PacifiCorp Brief at 8-9; Staff Brief at 7; Tr. at 89:14-18, 239-242. PacifiCorp and Staff claim that the Commission can approve a Net Removal Tariff completely lacking in cost justification because: 1) it is too “hard” to determine the average cost of removal; and 2) charges will be based on what PacifiCorp determines to be its actual costs. These arguments ignore the fact that the Net Removal Tariff departs from well-established ratemaking principles and that there is no evidence in the record that supports the application of the tariff to commercial and industrial customers.

1. **The Net Removal Tariff Could Have Included Cost-Based Charges for Commercial and Industrial Customers**

PacifiCorp could have provided cost-based numbers for all customers, but simply refused to do so. Tr. at 237; Ex 26. PacifiCorp and Staff incorrectly claim that it would be too “hard” to provide cost-based numbers for commercial and industrial customers. PacifiCorp Brief at 8-9, Staff Brief at 7. PacifiCorp never submitted into the record, or provided in discovery responses, any information regarding commercial or industrial costs for net removal services. There is no evidence that either the Company or Staff even attempted to perform a cost-based analysis of commercial and industrial net removals. The Commission should not accept the claim that it was too “hard” to determine cost-based charges, when PacifiCorp simply refused to perform the analysis or provide parties with the information to independently calculate cost-based charges. If net removal costs are too difficult to calculate, then they should not be recovered in a tariff of general applicability.

The Staff Brief also alleges, without any citation or evidentiary support, that records are inadequate to determine the average cost of removing commercial and industrial facilities. Staff Brief at 7. PacifiCorp has removed commercial and industrial facilities

throughout its various jurisdictions in numerous instances due to relocations, line extensions, change in service providers, self-supply, and other reasons. *See* Ex. 26-29. PacifiCorp refused to provide information related to these removals because the Company does not store the information in an easily presentable format. *Id.* PacifiCorp even refused to agree to, or provide information to establish, a reasonable outer limit on net removal costs. Tr. at 104: 6-10; Ex. 33. This does not mean that there are not adequate records, it simply means that PacifiCorp elected not to perform the work necessary to provide cost-based numbers for all customer classes. Tr. at 237.

PacifiCorp could and should have proposed cost-based charges for all customers. It would not be difficult for PacifiCorp to have proposed cost-based charges for the small commercial customers that are “almost identical with residential customers.” Tr. at 245:8-11; ICNU Brief at 21-22. At the hearing, Mr. McIntosh stated that PacifiCorp could have proposed cost-based charges for all customers, “but it would require some empirical work on the part of the utility and in cooperation with other parties to make sure that reasonable numbers were arrived at” Tr. at 237:19-238:2. Mr. McIntosh further stated that it would have been “a reasonable thing” for PacifiCorp to have done this empirical work and propose a series of cost-based caps for commercial and industrial customers. Tr. at 238:11-17.

Therefore, contrary to the claims in the Briefs of PacifiCorp and Staff, the evidence demonstrates that the Commission could adopt cost-based charges if PacifiCorp had performed some analysis and provided the parties with relevant information. PacifiCorp elected not to propose cost-based rates in the tariff for commercial and industrial customers because it wanted the discretion to charge whatever it unilaterally deemed appropriate. The Commission’s

role is to prevent utilities from using their discretion to charge customers rates that are not just and reasonable. The Commission should not approve a deliberately vague tariff and then put the onus on customers to bring complaints that the Company is charging inappropriate rates. Customers bear the burden of proof in a complaint proceedings and relying on customer complaints impermissibly shifts the burden customers to demonstrate that the charges under the Net Removal Tariff are not just and reasonable.

2. **It is Impossible for the Commission or Customers to Ascertain How PacifiCorp Will Determine Net Removal Costs**

There is no guarantee that customers will be charged just and reasonable net removal charges under the Net Removal Tariff. At the hearing, PacifiCorp asserted that it would use its line extension software program, the Retail Construction Management System (“RCMS”), to calculate net removal costs. PacifiCorp’s method of calculating its actual costs, including use of the RCMS, is not mentioned in the Company’s Net Removal Tariff, or in any of the Company’s pre-filed testimony. The RCMS was not provided in response to discovery requests, submitted into evidence, or thoroughly investigated in this proceeding. PacifiCorp’s customers have no guarantee that the Company will use the RCMS to calculate net removal costs. There is no evidence that is it appropriate to use this software program to calculate net removal costs, or that the Company will utilize the program in a responsible manner. ICNU asked repeatedly how these charges would be calculated using the software program and PacifiCorp refused to provide this evidence. Ex. 3, 7-8, 10-11, 13-17, 19-29, 32. PacifiCorp would not even perform one calculation to show parties an example of how this model would work or would be applied to commercial and industrial net removals. *See*, Ex. 11.

PacifiCorp attempts to shift the burden to ICNU by falsely stating that ICNU did not investigate the RCMS model. The only support PacifiCorp can identify for this claim is a statement made at hearing by PacifiCorp attorney James Paine. Mr. Paine was not a witness and should not be permitted to testify on disputed issues in this proceeding. In addition, the evidence in this proceeding demonstrates that ICNU made every reasonable effort to investigate both the types of facilities and the method that PacifiCorp would use to calculate its net removal costs. ICNU submitted numerous data requests seeking to identify how PacifiCorp would determine the RCMS inputs, including which facilities would be removed and what work was necessary for removal. Tr. at 245:12-15; Ex. 3, 7-8, 10-20, 22-23, 26-29, 47-48.

PacifiCorp's responses to data requests provided little useful information. In response to a question regarding which facilities would be covered under the Net Removal Tariff, PacifiCorp responded, "The types and magnitude of distribution facilities used to service customers can vary widely on a case-by-case basis." Ex. 22. PacifiCorp further explained that the definition of distribution facilities "leaves [PacifiCorp] latitude in determining which facilities are required to be removed." Ex. 23. In response to a question seeking to identify which specific industrial facilities that would be subject to the Net Removal Tariff, PacifiCorp simply refused to answer because "no general industrial customers have made such a request." Ex. 10.

ICNU also investigated how the RCMS would calculate industrial customer net removal charges. ICNU sought to obtain past industrial removal expenses in Oregon and Washington related to line extensions, customer relocation, self-supply, change in service provider, or any other reason. Ex. 26-29. PacifiCorp admitted that it had the information, but

refused to provide it because the Company “does not maintain the data in the format requested.”

Id. In addition, in response to an ICNU request that PacifiCorp estimate the net removal costs for a specific industrial customer, PacifiCorp refused to provide the information, provided broad categories of costs, and qualified its answer: “above categories of costs are examples and should not be construed to limit the types of costs that may be considered net removal costs in the future.” Ex. 20 (emphasis added). ICNU extensively investigated these issues and concluded that, based on PacifiCorp’s answers, it was impossible to determine which facilities are subject to the tariff and how the costs will be calculated. Furthermore, the record does not contain any evidence regarding how the RCMS takes into account its revenues for utility plant through its depreciation rates.

PacifiCorp and Staff also argue that if a customer is charged the actual costs of removing facilities, then the charge is per se just and reasonable. Staff Brief at 10; Ex. 32. This simplistic position conflicts with Commission precedent and the testimony of Mr. McIntosh. Mr. McIntosh stated that, if possible, net removal charges should be pre-determined and not based on after-the-fact calculations of actual costs to protect customers and prevent discrimination. McIntosh Rebuttal at 5:10-12. This logic is also circular—how do we know the charge is in fact cost-based? Further, Staff’s position in this case is fundamentally inconsistent. Staff concluded that vague tariff terms without cost support were unreasonable for residential customers, but Staff now supports application of similar vague tariffs to commercial and industrial customers.

III. CONCLUSION

The Commission should reject the Net Removal Tariff, or in the alternative, place significant conditions upon its approval. The Net Removal Tariff is a discriminatory and

ambiguous charge designed to harm customers and prevent competition in eastern Washington. PacifiCorp could have submitted a non-discriminatory, cost-based tariff for the Commission to review and approve. However, PacifiCorp refused to provide information in this proceeding in an effort to obtain approval of a tariff that will allow the Company unfettered discretion to impose net removal charges. The Commission should not reward the Company for its failure to submit evidence or provide the Company with an incentive to discriminate against and harm customers.

WHEREFORE, ICNU respectfully requests that the Commission reject PacifiCorp's Net Removal Tariff.

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Respectfully submitted,

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