BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PACIFICORP D/B/A PACIFIC POWER & LIGHT COMPANY, Respondent.	)	DOCKET NO. UE-130043 COLUMBIA RURAL ELECTRIC ASSOCIATION'S REPLY TO PACIFICORP RESPONSE IN OPPOSITION TO PETITION TO INTERVENE

I. INTRODUCTION

1 Pursuant to WAC § 480-07-370(1)(d) Columbia Rural Electric Association ("Columbia REA") submits this reply to PacifiCorp's (or the "Company") Response in Opposition ("Response") to Columbia REA's Petition to Intervene in this proceeding. The Washington Utilities and Transportation Commission (the "Commission" or "WUTC") should allow Columbia REA to intervene as a party in this proceeding to address PacifiCorp's proposed revisions to its net removal tariff, as the Company has placed the net removal tariff squarely at issue in this proceeding. PacifiCorp is wrong to assert that the Commission's previous approval of a different net removal tariff permanently foreclosed future consideration of the appropriateness of its new net removal tariff or the intervention of Columbia REA. The Commission should reject these arguments for the same reasons the Commission rejected them in 2001[1/], when Columbia REA was permitted to intervene in Docket UE-001734 to consider

[1/] PacifiCorp makes similar arguments in opposition to Columbia REA's interventions as it did in 2001.

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PacifiCorp's first net removal tariff. Finally, there is no merit to PacifiCorp's broad and unsubstantiated claims that allowing Columbia REA to intervene or Davison Van Cleve, P.C., to represent Columbia REA will result in the disclosure of competitively sensitive information or place PacifiCorp at a competitive disadvantage.

II. REPLY

A. The Commission Has Previously Rejected PacifiCorp's Arguments

2 PacifiCorp's primary argument is essentially the same as it made and lost in 2001, which is that Columbia REA, as a non-regulated competitor of PacifiCorp, does not have an interest in this proceeding.[2/] As it did in Docket No. UE-001734, PacifiCorp relies upon a 1971 Washington Supreme Court case, as well as a few utility decisions from other states dating from the 1930s to 1960s.[3/] PacifiCorp, however, glosses over the Commission's grounds for rejecting these arguments in UE-001734, which remain equally valid today.

3 The Commission recognized that Cole was decided prior to the passage of the modern Administrative Procedure Act that provides broader grounds to allow interventions. As the Commission explained:

> We disagree with Commission Staff and PacifiCorp that the Cole decision controls our decision in this case. The Cole case was decided in 1971, and precedes the adoption of the Administrative Procedure Act. RCW 34.05.443 governs intervention and provides broad discretion in granting a petition for intervention.[4/]

2/ Response at 2-4.
3/ Id. (citing inter alia, Cole v. Washington Utilities and Transportation Comm'n, 79 Wash.2d 302 (1971)).
4/ WUTC v. PacifiCorp, Docket No. UE-001734, Second Suppl. Order ¶ 29 (July 9, 2001).

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The Commission explained that intervention can be granted based on the substantial interest of the petitioner or if the intervention would be in the public interest in assisting the Commission's decision in the proceeding.[5/] While the Commission concluded that Columbia REA had not shown a substantial interest, the Commission found that Columbia REA had established that it would serve the public interest because Columbia REA'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."[6/] Thus, the Commission has already considered and rejected PacifiCorp's arguments regarding the Cole case, and PacifiCorp offers no new grounds to reconsider or revisit those conclusions in this case. It would be arbitrary and capricious to reach a different conclusion now.

B. Granting Columbia REA's Intervention Will Assist the Commission in Determining Whether the New Net Removal Tariff Is in the Public Interest

4 PacifiCorp argues that "the Commission resolved once and for all CREA's claims that the PacifiCorp net removal tariff stymied competition, in violation of the public interest" and the "Commission closed the door to future intervention by CREA . . . ."[7/] PacifiCorp misconstrues the grounds upon which Columbia REA was previously granted intervention, and upon which Columbia REA seeks to intervene in the proceeding. The Commission previously granted Columbia REA's intervention so that Columbia REA could: 1) help in evaluating the net removal tariff on PacifiCorp's customers, which would be in the public interest, and 2) address

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5/ Id. at ¶ 31.
6/ Id. at ¶ 33.
7/ PacifiCorp Response at ¶¶ 12-13.

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issues related to competition, customer choice and unlawful restraint of trade.[8/] Both grounds remain valid today and warrant granting Columbia REA's intervention in this proceeding. In fact, Columbia REA now has extensive experience related to the net removal tariff.

5 It is PacifiCorp, not Columbia REA, who has raised issues related to the net removal tariff in this proceeding. PacifiCorp has proposed substantive and significant revisions to its net removal tariff, which raise questions about how the tariff is currently operating and whether any changes should be made.[9/] PacifiCorp has previously filed general rate cases, which did not include revisions to its net removal tariff.[10/] Thus, PacifiCorp cannot claim that issues related to the net removal tariff are not valid and within the scope of this proceeding.

6 Columbia REA's participation will assist the Commission in determining the impact of the net removal tariff on customers, and whether any changes (including PacifiCorp's or any proposed by other parties) should be made. Some of Columbia REA's current customers are former PacifiCorp customers, and Columbia REA can provide the Commission with information about the impact of the net removal tariff upon customers that seek to leave PacifiCorp's system. In addition, Columbia REA itself is a former customer of PacifiCorp, and has direct and personal experience with how PacifiCorp utilizes the net removal tariff. No other party will be able to bring this specific information about how PacifiCorp has applied the current tariff, and may in the future apply a new net removal tariff, on customers that seek to depart its system.

[8/] Id.
[9/] Testimony of Barbara Coughlin, BAC-1T at 3-7.
[10/] See, e.g., WUTC v. PacifiCorp, Docket No. UE-111190.

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7 Columbia REA's participation can also assist the Commission in determining its impact on competition, customer choice, and restraint of trade issues. PacifiCorp argues that the Commission rejected Columbia REA's concerns on these issues when the net removal tariff was approved, and that these issues can never be raised again.[11/] PacifiCorp's argument is incorrect. The Commission approved a version of the net removal tariff, based on the "evidence presented" in that case.[12/] The final version of the net removal tariff included significant revisions from what PacifiCorp originally proposed, including conditions that: 1) the tariff sunset on December 31, 2005, so that it could be reexamined based on its application during the three years following adoption; and 2) PacifiCorp would be required to report annually on its use of the tariff, in order to facilitate evaluation after the tariff expired.[13/] The Commission expressly approved the tariff subject to these conditions, stating: "Staff's recommended sunset date and reporting requirements will help ensure reasonable conduct by all concerned, and will provide data to evaluate the tariff's operation."[14/] Rather than affirmatively bring the tariff to the Commission for evaluation, PacifiCorp has continued to charge under the tariff after the sunset date and denied the Commission and the parties to Docket No. UE-001734 the opportunity to scrutinize its operation.

8 PacifiCorp's representation that the Commission settled matters related to the tariff's operation is false; the Commission has never performed its review of the net removal tariff to ascertain whether it is meeting its purpose and is in the public interest. Now is the time

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[11/] Response at 5-7.
[12/] WUTC v. PacifiCorp, Docket No. UE-001734, Eighth Suppl. Order at ¶ 82 (Nov. 27, 2002).
[13/] Id. at ¶¶ 22, 82, 87.
[14/] Id. at ¶ 82.

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for thorough review of the net removal tariff and whether it is fair, just and reasonable, and, as before, Columbia REA's participation will provide a unique and useful customer perspective and will assist the Commission in its determinations on the tariff by developing a full, complete, and accurate record.

C. There Are No Concerns Regarding Competitive Information

9 PacifiCorp argues that concerns regarding competitively sensitive information warrant rejecting Columbia REA's intervention out of hand and preventing different attorneys from Davison Van Cleve, P.C., from representing both Boise White Paper, L.L.C. ("Boise") and Columbia REA.[15/] Other than generic citations regarding protecting confidential business information, PacifiCorp does not cite any authority that supports its position, nor does the Company cite any specific confidential information that it is concerned about. There is no basis in law or fact to reject Columbia REA's intervention or Davison Van Cleve, P.C.'s representation in this proceeding.

10 PacifiCorp broadly asserts that "[a]llowing CREA to intervene in this proceeding is contrary to the state's public policy of protecting competitively sensitive information."[16/] Columbia REA participated in the original proceeding regarding the net removal tariff, without any concerns regarding competitively sensitive information and has only requested an intervention limited to these same issues in the present docket. PacifiCorp has not asserted that any information regarding its net removal tariff, or any information that Columbia REA may request in this proceeding will be competitively sensitive. Issues related to the net removal tariff

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[15/] Response at 8-9.
[16/] Id. at 8.

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should be resolvable without the need for the review of competitively sensitive information, and if for some reason disputes regarding access to confidential information arise, then the Commission has ample experience and can resolve any such concerns.

11 Without any citation, PacifiCorp also argues that different attorneys at Davison Van Cleve, P.C. should not be permitted represent Boise and Columbia REA, because "CREA would have access to sensitive commercial and proprietary information to which it would not otherwise have access."[17/] PacifiCorp does explain how this would occur, but it could only happen if Melinda J. Davison or Joshua D. Weber, the attorneys representing Boise, violated the express terms of the Commission's protective order, which prohibits counsel for one party from disclosing confidential material to counsel for another party who has not signed the protective order.[18/] Davison Van Cleve, P.C.'s attorneys have a long history of practice before the WUTC with the highest degree of integrity and ethical responsibility, and it is offensive that PacifiCorp would suggest that they would violate the Commission's rules and protective order. Davison Van Cleve, P.C.'s attorneys have extensive experience with the Commission's rules and requirements regarding confidential material, including limitations on which attorneys within a firm can view different types of information.[19/] PacifiCorp does not cite to any legal authority supporting its position, as there is no, legal basis to prevent different attorneys from Davison Van

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[17/] Response at 8.

[18/] See, e.g., WUTC v. PacifiCorp, Docket No. UE-130043, Order 02 ¶¶10-11 (Jan. 25, 2013).

[19/] For example, in PSE's 2011 general rate case, Davison Van Cleve, P.C. attorneys S. Bradley Van Cleve, Melinda Davison, and Irion A. Sanger had access to review only PSE's regular confidential material, while Davison Van Cleve, P.C. attorney Jesse Cowell had access to review PSE's highly confidential material. Davison Van Cleve, P.C.'s attorneys strictly followed the Commission's requirements regarding confidential material and did not share any highly confidential material with individuals who were not permitted access. See, e.g., WUTC v. Puget Sound Energy, Inc., Docket Nos. UE-111048/UG-111049, Order 01 (June 17, 2011).

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Cleve, P.C. from representing two different parties in this proceeding. While PacifiCorp may like to choose which lawyers represent various parties, it is not PacifiCorp's decision to make.

III. CONCLUSION

12 Columbia REA should be allowed to intervene in this proceeding because its participation will assist the Commission in resolving the issues and is therefore in the public interest, and Columbia REA has a direct and substantial interest in this proceeding that will not be adequately represented by any other party, and may be affected by any Commission determination made in connection with this proceeding. The Commission should once again reject PacifiCorp's attempts to prevent a thorough review of the impact of its net removal tariff upon its customers, and should disregard the Company's scurrilous insinuations that Davison Van Cleve's attorneys will violate the Commission's rules and protective order.

Dated this 12th day of February, 2013.

Respectfully submitted,

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