BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

THE WALLA WALLA COUNTRY CLUB, Complainant, v. PACIFICORP D/B/A PACIFIC POWER & LIGHT COMPANY, Respondent.	)	DOCKET NO. UE-143932

OPENING BRIEF OF THE WALLA WALLA COUNTRY CLUB

October 16, 2015

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases Page

Administrative Orders

Statutes and Rules

I. INTRODUCTION

1 Pursuant to Washington Administrative Code ("WAC") § 480-07-390 and Prehearing Conference Order 01,[1/] the Walla Walla Country Club ("WWCC" or the "Club") hereby submits its opening brief requesting that the Washington Utilities and Transportation Commission ("WUTC" or the "Commission"): 1) require Pacific Power & Light Company ("Pacific Power" or the "Company") to disconnect its electric service facilities from Club property in accordance with the Company's Net Removal Tariff; and 2) order damage reparations and/or an overcharges refund resulting from the Company's refusal to disconnect its facilities in accordance with the Net Removal Tariff.

2 The Club's requested relief should be granted for the reasons detailed in this brief, including the following significant factors:

- Over the course of this proceeding, the Club has demonstrated that no safety or operational reasons exist to justify removal of conduit and vaults on Club property, under the terms of the Net Removal Tariff—which is and has always been the central issue in this proceeding;
- The Company's insistence that the Club pay $66,718 for the unnecessary removal of conduit and vaults violated the plain terms of the Net Removal Tariff. Likewise, the alternative presented to the Club—that the same $66,718 be paid for the sale and transfer of the facilities, in lieu of removal— cannot be justified under the Net Removal Tariff or any fair and reasonable utility service standard;
- Pacific Power's sale offer to the Club confirmed the fact that conduit and vault removal was unnecessary in order to effect permanent disconnection; i.e., if safety or operational reasons actually necessitated conduit and vault removal, then an offer to sell and transfer those facilities would not have been a viable option for the Company; and
- Pacific Power's failure to comply with its Net Removal Tariff justifies the relief sought by the Club in the amount of approximately $1,000/month, representing savings that would have been realized had Pacific Power not prevented the Club from obtaining electric service from an alternative electric service provider from about January 2013.

[1/] As modified by Notice Revising Procedural Schedule (Sept. 16, 2015).

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

II. BACKGROUND

A. Both the Net Removal Tariff and Traditional Company Disconnection Policy Support the Club's Complaint

3 The Commission originally approved the Company's Net Removal Tariff governing permanent disconnection requests in 2002,[2/] including the following provision of primary importance in this case: "Customer shall pay to Company the actual cost for removal less salvage of *only* those distribution facilities that need to be removed for safety or operational reasons, and only if those facilities were necessary to provide service to Customer."[3/] Thirteen years later, this provision of the Net Removal Tariff remains substantively unchanged, with the Commission still authorizing payments for facilities removal of "only those facilities that need to be removed for *safety or operational reasons*."[4/]

4 Until March 2015—i.e., in the midst of the current proceedings challenging the Company's actions under the Net Removal Tariff—Pacific Power followed a policy which allowed for the conveyance and transfer of facilities in lieu of removal to customers requesting permanent disconnection.[5/] In accord with the Company's internal facilities removal guidelines and public service contracts, Pacific Power has historically been able (and still may) "abandon" or leave facilities "in place" on customer property, including underground conduit or cables.[6/]

2/ WUTC v. PacifiCorp, Docket UE-001734, Eighth Suppl. Order at ¶ 95 and App. A (Nov. 27, 2002).

3/ Id. at App. A (emphasis added).

4/ Pacific Power Tariff WN-U75, Rule 6.I.1 (emphasis added). The only difference between the original provision and the current rule text is that the word "distribution" has been removed.

5/ WWCC Response to Bench Request No. 2 (including Pacific Power's admission to this fact via the Company's Response to WWCC Data Request ("DR") 74); accord Dalley, TR. 51:18-24.

6/ E.g., Exh. No. DJM-3C at 3; Exh. No. BGM-7 at 2, 5 (including a five-year term expiring in 2018); Exh. RBD-15CX at 2, 4, 6; Dalley, TR. 58:13-18.

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

5 Historically, the Company has exercised this "abandonment" option in the context of permanent disconnections and facilities transfer offers.[7/] The Company itself acknowledges more than twenty instances in which facilities have been abandoned or transferred in connection with a permanent disconnection; in none of those instances did Pacific Power precondition its abandonment by a prohibition against another electric service provider using the abandoned facilities.[8/] Indeed, "even if there is a safety or operational issue" associated with customer facilities, under traditional Company policy Pacific Power would still consider the option to "negotiate with an individual customer to leave certain facilities in place *provided the customer agrees to purchase and assume liability for those facilities.*"[9/] As Pacific Power witness R. Bryce Dalley acknowledged at hearing, abandonment has also been an option for Club facilities.[10/] What distinguishes this case from years of Pacific Power precedent is the Company's insistence that no abandoned facilities be used by another electric service provider—that is, unless Pacific Power's price demands are met.

B. Specific Pacific Power Actions in Relation to the Club's Permanent Disconnection Request Form a Basis for the Club's Complaint

6 In the summer of 2012, the Club discovered that, based on a review of the Club's past power usage by alternative electric service provider Columbia Rural Electric Association, Inc. ("Columbia REA" or "CREA"), the Club could save an estimated $1,000 per month by changing its electric service from Pacific Power to Columbia

---

7/ E.g., Exh. Nos. JCT-8, JCT-9. JCT-10, JCT-12 (including facility transfer offers to the Club); Exh. No. RBD-1T at 15:18-20 (acknowledging that "Pacific Power agreed to sell and transfer underground facilities upon permanent disconnection as an accommodation to disconnecting customers"); Re PacifiCorp, Docket UE-132182, PacifiCorp's Report on Permanent Disconnection and Removal of Facilities ("PacifiCorp's Report") at Att. D (Nov. 27, 2013) (containing several examples of abandoned underground facilities in association with facility removals from 2002 to 2012, in the "Description of Facilities Removed" column).

8/ Pacific Power Response to Bench Request No. 1.

9/ Exh. No. BGM-3 at 7 (emphasis added).

10/ Dalley, TR. 88:5-8.

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

REA.[11] Club Board members then met with William ("Bill") Clemens of Pacific Power, regarding a potential change in electric service provision.[12] Mr. Clemens advised that the transfer to an alternate service provider would first require payment of $19,581 to remove Company facilities presently used to service the Club.[13] The Club then decided to change service providers in October 2012 and informed the Company of its decision.[14]

7 By November 2012, however, Pacific Power informed the Club that actual removal costs would be "much" more than the $19,581 amount previously stated by Mr. Clemens.[15] The Company's increased estimate now included the costs associated with removing conduit and vaults on Club property through the use of a backhoe to dig up the golf course and other property improvements—despite acknowledgement by Company representatives that metering and wires could be removed without the need for any digging.[16]

8 Through a letter to Pacific Power dated December 11, 2012, the Club stated that it understood and agreed with the need for the Company to remove its wiring and other hardware, in order to perform the permanent disconnection requested by the Club.[17] Club counsel noted, however, that the Company's express demand to also remove conduit located on Club property seemed in direct violation of Net Removal Tariff Rule 6, given the authorization for Pacific Power to charge for the costs of "only those facilities that need to be removed for safety and operational reasons."[18] On the same day, in accordance with Mr. Clemens' original estimate, Club General Manager Jeff

---

11/ Exh. No. JCT-6 at ¶ 10; Exh. No. JCT-1T at 4:16-21.
12/ Exh. No. JCT-6 at ¶ 11.
13/ Id.
14/ Id. at ¶ 12.
15/ Id. at ¶ 13.
16/ Id.
17/ Exh. No. JCT-7.
18/ Id. (quoting Rule 6.I.1).

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

Thomas delivered a check to Pacific Power in the amount of $19,581, in order to effect permanent disconnection and removal of Company facilities.[19/] The Company refused to accept this payment.[20/]

9 On January 25, 2013, Pacific Power submitted a removal estimate to the Club demanding payment of $104,176 in order to effect the permanent disconnection and removal of its facilities.[21/] This overall estimate included a $19,373 estimate for the removal of wires, transformers, and metering—almost identical to the $19,581 estimate initially stated by Mr. Clemens. A second component of this new estimate included $19,877 for the net book value of facilities to be removed, alongside an estimated salvage credit of $1,792. But, by far the largest component of the overall removal estimate was a $66,718 quote for the "Removal or Sale of Conduits and Vaults."[22/]

10 As Company Distribution Manager Mike Gavin explained in the accompanying letter, "Pacific [Power] offers to *sell* the Country Club conduit and vaults for the same $66,718" cost estimate associated with *removal* of those same facilities.[23/] Mr. Gavin instructed the Club to submit "[t]wo signed copies of the [included] Bill of Sale for the conduit and vaults, if the Country Club decides to take ownership."[24/]

11 The Bill of Sale terms provided for the "Conveyance" of 1580 feet of underground conduit and three concrete vaults to the Club, in conjunction with an all-caps "disclaimer" section whereby Pacific Power disclaims "ANY EXPRESS OR IMPLIED … OBLIGATION, LIABILITY … OF ANY KIND" in connection with the conduit and vaults. Further, the Bill of Sale also provided that "[i]n no event shall Seller

---

19/ Exh. No. JCT-6 at ¶ 14.
20/ Id.
21/ Exh. No. JCT-8.
22/ Id.
23/ Id. (emphasis added).
24/ Id.

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

be liable in connection with the Facilities for" damages or economic loss, while the "Buyer expressly assumes all risk in connection with Buyer's purchase and use of the Facilities," including an agreement to indemnify and hold the Company harmless against all claims "in any way connected to Buyer's purchase, acceptance and/or use of the Facilities." Finally, the Bill of Sale provided that the Club, upon taking ownership of the underground conduit and vaults, would "assume sole and exclusive responsibility and legal liability for the … *maintenance of the Facilities*."[25/]

12 On March 1, 2013, the Club responded to the Company's offer by indicating a willingness to pay $37,458 to effect permanent disconnection,[26/] a figure encompassing Pacific Power's estimates for the removal of wiring, metering, and transformers (i.e., everything except underground conduit and vaults), the full net book value of all facilities (including conduit and vaults), minus the salvage value estimate. In reply, the Company insisted that conduit and vaults be either removed or sold to the Club, again linking responsibility for facilities maintenance with ownership: "Because Pacific Power *owns* the conduit and vaults, it would be responsible for *maintaining* these facilities …."[27/] Legal counsel for Pacific Power then stated that, rather than "inconveniencing the Country Club with the removal of the conduit and vaults," the Company was still willing to sell such facilities to the Club because it would "absolve Pacific Power of the liability of maintaining the conduit and vaults if left in place."[28/]

13 The Club responded on May 3, 2013, renewing its permanent disconnection request while objecting to the Company's identical charges for the removal or sale of conduit and vaults. Counsel for the Club again directly quoted from the Net

---

25/ Id. (emphasis added).
26/ Exh. No. JCT-9.
27/ Id. (emphasis added).
28/ Id.

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

Removal Tariff, to point out that the Company is permitted to charge for the costs "of only those facilities that need to be removed for safety or operational reasons"—thereby rendering invalid the Company's $66,718 charge for conduit and vaults, since Pacific Power's repeated offers "to leave the conduit and vault upon payment clearly establishes there is no safety or operational reason to remove the facilities."[29/]

14 While the Club stated a willingness to provide the Company with replacement conduit or vaults or pay the reasonable value of such facilities, Club counsel noted the impropriety of the Company's offer to either sell *or* remove facilities at the same price, i.e., "reasonable value cannot be equal to the cost to remove the facilities."[30/] In fact, Mr. Dalley acknowledged at hearing that the stated facilities sale price was based upon a contractor's removal estimate composed entirely of costs which would be paid to a contractor.[31/] Moreover, the Company was also reminded in the May 2013 letter that, as originally stated in March 2013, "the Country Club is experiencing increased power costs with Pacific Power every month over and above equivalent service from another provider."[32/]

15 Additional correspondence continued in May 2013. The Club again expressed its willingness to resolve any dispute by providing replacement conduit to the Company or paying the reasonable value for abandoned facilities.[33/] Although noting that one of two conduit segments running under the golf course property had been "installed by and at the sole expense of" the Club—and that the Club "would prefer not to pay twice for this conduit"—in an attempt to resolve matters the Club still included such costs

---

29/ Exh. No. JCT-10 (quoting Rule 6.I.1).
30/ Id.
31/ Dalley, TR. 32:7-12, 37:1-6. See also Exh. No. BGM-4C at 3.
32/ Exh. No. JCT-10.
33/ Exh. No. JCT-11.

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

in presenting the Company with an offer of $7,760 for the reasonable value associated with these facilities. Indeed, the Club's offer "reflect[ed] the cost for new facilities," thereby overstating the value for the existing, used facilities.[34/]

16 On May 31, 2015, the Company replied that it stood "firm on its offer to sell the vault and conduit to the country Club for $66,718."[35/] From a legal perspective, Pacific Power counsel acknowledged the controlling terms of the Net Removal Tariff by summarizing the dispute as follows: "When a customer requests removal of facilities, Pacific Power's tariffs, approved by the Washington Utilities and Transportation Commission, govern such removal and provide the method for calculating the removal costs. Pacific Power's Washington Tariff Rule 6, Section I ("Rule 6") describes permanent disconnection and removal of facilities."[36/] Pacific Power counsel also stated that the Company's sale offer was based on the lowest bid price received from outside contractors, and that "Pacific Power makes this offer in order to allow the Country Club to transition its electric service to CREA, *while protecting Pacific Power's other customers from paying these costs.*"[37/]

17 To date, however, the Company has refused to perform the Club's permanent disconnection request in accordance with the Net Removal Tariff terms. Nevertheless, the Club has diligently continued its efforts to reasonably resolve the dispute outside of an adjudicatory forum during this proceeding, including an express offer to pay Pacific Power for: 1) a new and significantly higher facilities net book value estimation issued by the Company in June 2015; and 2) reasonable costs "necessary to effect permanent disconnection, such as the costs associated with meter removal and the

---

34/ Id.
35/ Exh. No. JCT-12.
36/ Id.
37/ Id. (emphasis added).

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

disconnection of wiring and hardware heretofore used in providing electric service to the Club."[38] Pacific Power has not responded to this offer, or made any attempt to settle this long-running dispute.

C. Federal Litigation Provides Insight on Commission Authority

18 On August 6, 2013, the Club initiated a proceeding in Walla Walla Superior Court to require the Company to effectuate the requested permanent disconnection and to recover damages resulting from Pacific Power's refusal to disconnect its service.[39] The Company first removed the case to the United States District Court, Eastern District of Washington (the "Court") on a diversity basis, then succeeded on a motion to dismiss the case for lack of subject matter jurisdiction,[40] arguing "that the Commission has exclusive and/or primary jurisdiction over the dispute."[41]

19 The Court's decision to dismiss the case from federal court was based upon the same facts at issue in this docket.[42] In finding that the Commission had exclusive jurisdiction over this same matter, the Court stated that the Club was "complaining that PacifiCorp is charging an excessive or exorbitant amount ($104,176) for [] disconnection services, which is impeding [the Club's] ability to switch utility companies."[43] The Court then found that RCW § 80.04.220, the statute governing reparations, "is the statute on point for this complaint," as it expressly provides the WUTC a "process for a formal complaint concerning the reasonableness of *any* charge

---

38/ Exh. No. BGM-5C.
39/ Exh. No. JCT-5 at 6.
40/ Id. at 6, 14.
41/ Exh. No. JCT-2 at 1.
42/ Answer to Complaint ("Answer") at ¶ 6.
43/ Exh. No. JCT-5 at 8.

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

for *any* service performed" by a regulated utility such as Pacific Power.[44] The Court added that neither PacifiCorp nor the Club "dispute that Rule 6 would guide the commission in determining if the public service company has charged in excess of the lawful amount," with the Court ultimately concluding "that the commission appears to have ample statutory authority to afford meaningful relief" under statutes cited in the Court's order.[45]

20 In finding that the doctrine of primary jurisdiction also applied, the Court noted the Company's representation "that the very same issues before this court currently stand as an administrative proceeding in front of the WUTC."[46] This reference was to Docket UE-132182, containing PacifiCorp's Report filed on November 27, 2013; specifically, the Court previously observed that the Commission had already (in July 2013) granted "PacifiCorp's withdrawal of its proposed changes" to Rule 6, but had required the Company "to initiate another proceeding within the next four months in which the Commission can carefully review PacifiCorp's costs, terms, and conditions of service and the Company's administration of Schedule 300 and Rule 6."[47] This contributed to the Court's conclusion that "removal of facilities when a customer requests permanent disconnection, particularly the amounts charged, has been placed within the special competence of the WUTC by RCW 80.04.220-.240."[48]

III. LEGAL STANDARDS

21 Under RCW § 80.04.110, a complaint may be made setting forth any act or thing done or omitted to be done by a public service company, in violation (or claimed

---

44 Id. at 8, 9 (emphasis in original).
45 Id. at 10, 11.
46 Id. at 13.
47 Id. at 6.
48 Exh. No. JCT-5 at 13.

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

violation) of statute or any order or rule of the Commission. Under RCW §§ 80.04.220 and 80.04.230, the Commission may, upon complaint of any party, order a public service company to refund any amounts, with interest, that it finds were excessive or charged in excess of the lawful rate, regardless of whether the excess amounts were charged before or after the filing of the complaint.

22 RCW § 80.28.010 provides that all electric company charges made or demanded for any service to be rendered must be fair, just, and reasonable; that electric companies must furnish services which are in all respects just and reasonable; and that any rules and regulations issued by such companies must also be just and reasonable. Pacific Power must charge the rates published in its tariffs.[49/] Tariffs cannot be changed except by following statutory notice procedures.[50/] The Company also has a statutory obligation to serve all those reasonably entitled to service and cannot unduly discriminate among customers or provide unreasonable preferences.[51/]

IV. ARGUMENT

23 The record in this proceeding establishes that no safety or operational reasons existed which could have justified the Company's demand in 2013 that the Club pay for removal of conduit and vaults prior to compliance with the Club's permanent disconnection request.[52/] Indeed, no safety or operational reasons associated with these facilities exist which should prevent Pacific Power from complying with the Club's request.

49/ RCW § 80.28.010.

50/ RCW § 80.04.130.

51/ RCW §§ 80.28.090, .100, and .110.

52/ At times, statements and references in the record simply refer to "conduit" or "underground facilities" when discussing the facilities removal dispute in these proceedings. The Company also interprets "underground facilities" to include both conduit and vaults. Exh. No. RBD-1T at 26:7; accord Dalley, TR. 66:13-14 (noting, with respect to the removal or sale estimate associated with conduit and vaults, that "66,000 was associated with certain underground facilities").

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

24 Since the original events forming the basis of this proceeding occurred, the Company has unilaterally changed both its interpretation of the Net Removal Tariff and its internal disconnection policies to the detriment of customers. Now, the Company claims that safety and operational reasons necessitating facilities removal *always* existed. This is completely at odds with the actual text of the Net Removal Tariff, which allows for removal charges "only" when specified conditions are met. Similarly, the Company now alleges that it cannot leave or abandon facilities, contrary to standard industry practice and even its own traditional policy. This has prompted the Company, midway through the current proceedings, to further modify its customary disconnection policy by no longer allowing customers to acquire facilities in lieu of removal.[53/]

25 All of these actions are contrary to Pacific Power's duties to provide just and reasonable utility service in conformance with statute and Commission governance. Accordingly, the Club's request for a Commission order requiring the Company to perform a permanent disconnection should be approved. Likewise, the Company's violation of its legal obligations as of late 2012 warrants a Commission order requiring Pacific Power to make damage reparations and/or refund overcharges due to the Club's inability to change service providers and benefit from significantly lower rates offered by Columbia REA.

A. Neither Safety nor Operational Reasons Exist that Would Necessitate Removal of Conduit and Vaults on Club Property

26 The Commission has authorized the Company to charge its customers for the removal of facilities in connection with a permanent disconnection request in expressly *limited* circumstances, i.e., "of only those facilities that need to be removed for

---

53/ WWCC Response to Bench Request No. 2 (including Pacific Power's admission to this fact via the Company's Response to WWCC DR 74).

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

safety or operational reasons, and only if those facilities were necessary to provide service to Customer."[54] When the same facts at issue in this docket were presented in federal court, Pacific Power did not "dispute that Rule 6 would guide the commission in determining if the public service company has charged in excess of the lawful amount."[55]

27 Notwithstanding, the Company has attempted to effectively rewrite the Net Removal Tariff, contrary to the existing Rule 6 terms and without Commission approval, by application of the following new guideline: "Pacific Power has concluded that when a customer requests a permanent disconnection, safety and operational reasons necessitate removal of the facilities."[56] In other words, the Company has fully altered the Commission's explicit directive that removal costs "only" be charged when specific conditions are met, because the Company has now "ultimately concluded that safety *and* operational reasons exist necessitating the removal of facilities in *each* circumstance of a request for permanent disconnection."[57]

28 The Club respectfully submits that the Company's blanket removal policy cannot be squared with the terms of the Net Removal Tariff, as approved by the Commission, and which cannot be altered without approval of the Commission.[58] Accordingly, the absence of specific safety or operational reasons necessitating the removal of conduit and vaults on Club property can only lead to one rational conclusion—Pacific Power has violated the Net Removal Tariff in demanding $66,718 from the Club for the removal or sale of underground conduit and vaults prior to disconnecting its service.

54/ Rule 6.I.1.
55/ Exh. No. JCT-5 at 10.
56/ Exh. No. BGM-4C (Company Response to Club DR 031).
57/ Id. (Company Response to Club DR 030) (emphasis added).
58/ Docket UE-001734, Eighth Suppl. Order at ¶ 56, n.3 ("Tariffs cannot be changed except by following statutory notice procedures. *RCW 80.04.130.*").

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

29 The Company's election to devote considerable portions of its testimony to Columbia REA, irrelevant as that has been to the Net Removal Tariff violation at issue in this proceeding, nevertheless reveals the actual and illegitimate "reason" for its alleged need for facilities removal. When the Company was asked in discovery to provide explanation and support for its statement that allowing conduit and vaults "to remain in place would place other customers at an unfair advantage," Pacific Power referred the Club to an earlier discovery response addressing purported "safety, operational and *policy* reasons for removal."[59/]

30 As the Net Removal Tariff makes no provision for "policy reasons" necessitating facilities removal, the Company's answer demonstrates the essential, ultimate, and completely improper actual reason for its insistence upon conduit and vault removal—i.e., Company "policy" against Columbia REA, exercised through discriminatory application of the Net Removal Tariff to the detriment of a customer seeking to transition its electrical service. This policy is seen in the statement of then-Company Vice President Pat Egan, who in January 2013 responded to a commendable suggestion from Mr. Gavin to "save Pacific, contractors, and customers time on the removals" of facilities; Mr. Egan stated in response: "we don't want to better facilitate removal of our customers."[60/]

31 In all events, the Company itself has demonstrated that there are and never have been any reasons necessitating conduit and vault removal from Club property, due to Pacific Power's repeated offer "to leave the conduit and vault upon payment."[61/] More specifically, the Company's offer to sell and transfer conduit and vaults and "absolve"

59/ Exh. No. BGM-4C (Company Response to Club DR 017) (emphasis added).
60/ Id. at 7.
61/ Exh. No. JCT-10.

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

itself of further liability through a Bill of Sale,[62] as explained in some detail in the Background briefing section above, is conclusive in this regard.

1. The Company Has Never Demonstrated that Safety Reasons Necessitating Removal Exist

32 When the Commission approved the Net Removal Tariff, Pacific Power filed testimony that explained "safety reasons" necessitating facilities removal as follows: "Certain facilities should be removed to avoid placing electric supplier employees and public safety personnel such as firemen in a potentially harmful situation where duplicative electric distribution facilities are present; some energized, some not."[63] As Club witness David Marne explained, however, a duplicative facilities situation would not be a feature of the Club's request for permanent disconnection.[64] Mr. Marne attests—as a nationally recognized expert on the National Electric Safety Code ("NESC"), author of *McGraw-Hill's NESC Handbook*, and a member of several NESC subcommittees, including subcommittees on "Underground Lines" and "Interpretations"[65]—"it is an accepted good practice to abandon empty, underground conduit, especially when transferred upon permanent disconnection."[66] The record plainly indicates that the Company would have no reason to even contemplate a potential duplicative facilities scenario on the Club's private property after permanent disconnection.

a. The Company's Evidence Does Not Demonstrate Duplicative Safety Concerns Are Relevant

33 The same Bill Clemens of Pacific Power—who originally estimated in

---

62/ Exh. No. JCT-9.
63/ Exh. No. BGM-3 at 5 (Rebuttal of Clemens at 4).
64/ Exh. No. DJM-1CT at 4:8-21.
65/ Exh. No. DJM-2.
66/ Exh. No. DJM-5T at 2:4-6.

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

2012 that Club facilities removal could be accomplished for $19,581 (i.e., absent the need for conduit or vault removal)—submitted testimony in this case stating that "[t]he majority of Pacific Power's safety concerns arise from duplicate facilities."[67] It should be noted that Mr. Clemens has testified that (in direct contrast to Mr. Marne) he is neither an engineer nor a safety instructor, with most of his Pacific Power service performed in a customer service and public relations capacity.[68] Nevertheless, Mr. Clemens provides examples in an attempt to illustrate safety concerns, such as when Pacific Power was contacted about a substation fire, or about a primary line being too close to the ground. Mr. Clemens concludes from these instances that "[e]mergency responders are increasingly confused by duplicate facilities," and warns that delayed utility response "can have dire consequences."[69]

34 Yet, neither Mr. Clemens' examples nor his conclusions have any relevance to the Club's situation. At issue in this proceeding is whether empty conduit and vaults on Club property need to be removed for "safety reasons." As Mr. Clemens testified at hearing, however, any alleged "duplication is outside the Country Club property."[70] Mr. Clemens also confirmed that none of the safety or operational reasons discussed in his direct testimony in this proceeding were present in 2013 on Club property.[71] Thus, duplicative facility safety concerns regarding substations and primary service lines cannot be compared to those involving abandoned plastic piping and concrete vaults left on the private property of an ex-customer, after all wiring and electric hardware has been removed following a permanent disconnection.

67/ Exh. No. WGC-1T at 1:23.
68/ Clemens, TR. 94:7-25.
69/ Exh. No. WGC-1T at 2:15-3:4.
70/ Clemens, TR. 101:6-7.
71/ Id. at 104:13-16.

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

35 Indeed, just attempting to conceive of the "dire consequences" ensuing from an emergency report to investigate empty, underground conduit on Club property strains all reasonable credulity. Mr. Clemens admits that he has never encountered a single reported instance related to abandoned conduit excavation in more than thirty years with the Company.[72] This supports Mr. Marne's testimony that there "is nothing special" about an abandoned conduit scenario because "that is [done] in the industry all the time," including the Company's own practice of installing spare empty conduit for potential future use.[73] In fact, Mr. Marne went on to testify that "[y]ou locate the conduit with the wires in it. You can't locate an empty plastic conduit"[74]—which explains why Mr. Clemens has never heard of a safety reporting incident involving empty conduit in his three decades of Company service.

36 Mr. Clemens also explained at hearing that, when the Company left facilities in place at a City of Walla Walla site, the circumstances pertaining to safety were purportedly distinguishable from the scenario in this case because those facilities were "not accessible" by the public.[75] The City of Walla Walla scenario is quite similar to the circumstances of the present case involving facilities on private Club property, however, as the Company acknowledges: "Pacific Power will have no access to the facilities on the property of the Complainant" following disconnection.[76]

37 Pacific Power's renewed attempts at hearing to allege safety concerns are also without relevance to the facts of this proceeding. As a cross-examination exhibit, the Company submitted an "Aerial Photo of the Walla Walla Country Club and Surrounding

---

[72] Id. at 95:18-21.
[73] Marne, TR. 180:10-14.
[74] Id. at 180:16-20.
[75] Clemens, TR. 105:2-9.
[76] Exh. No. WGC-3CX.

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

Area, with Indication of the Electric Facilities."[77] The legend for this exhibit displays the marking indications used for Company meter locations, "energized cable" allegedly dug up by a Columbia REA contractor, and both Pacific Power and Columbia REA lines.

38 None of this information is relevant, however, to the ultimate issue of whether safety reasons would necessitate the removal of empty conduit and vaults on Club property. In other words, after an appropriate disconnection executed in accordance with the Net Removal Tariff, there would be no Company meters or "energized" cable or line remaining on Club property which could possibly implicate any ongoing safety concerns. The Club has repeatedly requested that Pacific Power metering and wiring be removed in association with a permanent disconnection.[78]

39 In any event, the accuracy and value of Pacific Power's representations on the marked up "Aerial Photo" are subject to considerable doubt, given the Company's full disclaimer on the exhibit's accuracy.[79] To this end, Club witness Bradley Mullins expressly noted probable inaccuracies in regard to the photo markings, confirming the admonition against reliability in the Company's disclaimer.[80]

b. The Company Misinterprets Safety Obligations under Washington Law and the NESC

40 Under the Washington Administrative Code, electric utilities like Pacific Power are required to "maintain *their* lines and equipment according to the requirements

---

77 Exh. No. DJM-7CX; Exh. No. JCT-24CX.

78 E.g., Exh. No. JCT-7 (stating, in December 2012: "We can certainly understand and agree that the company's wiring and other hardware can and should be removed by Pacific Power"); Exh. No. BGM-5C at 1(reaffirming, in June 2015, a willingness to pay "costs associated with meter removal and the disconnection of wiring and hardware heretofore used in providing electric service to the Club").

79 Exh. No. DJM-7CX; Exh. No. JCT-24CX ("PacifiCorp makes *no representations* or warranties *as to the accuracy*, completeness or fitness for a particular purpose with respect to the information contained in this map") (emphasis added).

80 E.g., Mullins, TR. 158:21-25 ("I'd just caveat that this map, from our perspective, is not an accurate map"); Mullins, TR. 171:23-25 (indicating inaccurate representation by the Company on the enlargement of the exhibit presented at hearing); Mullins, TR. 171:23-25 (indicating an understanding of where a line actually extends to, contrary to the exhibit depiction).

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

of" NESC, Part 3.[81] As Mr. Marne has explained, "[t]his means when the underground conduit on the Country Club property is abandoned and transferred, the requirements under Washington law and the NESC do not apply to Pacific Power."[82] That is, the code requirement for utilities—to maintain only "their" facilities—means that once a utility transfers its facilities, those facilities are, by definition, no longer "their" facilities, and the code requirement no longer applies.

41 This common sense interpretation of the Washington code was shared by the Company until a contrary theory was introduced in this proceeding. For instance, Pacific Power counsel informed the Club in a 2013 letter that NESC, Part 3 required the Company to maintain facilities in a safe condition.[83] In lieu of removal, however, Company counsel conveyed Pacific Power's offer to sell conduit and vaults to the Club; this was done not simply "[t]o avoid inconveniencing the Country Club with the removal of" such facilities, but also "to *absolve Pacific Power of the liability of maintaining* the conduit and vaults if left in place."[84] Likewise, the Bill of Sale provided with this 2013 letter explicitly provided that the Club "shall assume sole and exclusive responsibility and legal liability for the … *maintenance of the Facilities* transferred to it."[85]

42 Plainly, the Company was interpreting the Washington code as the Club and common sense would suggest—that the Company's responsibility and liability to maintain "their" facilities transfers completely upon conveyance of those facilities. Mr. Clemens' testimony to the contrary at hearing is unconvincing in this regard, i.e., that Pacific Power continues to track and maintain facilities regardless of bill of sale clauses

---

81/ WAC § 296-45-045(1) (emphasis added).
82/ Exh. No. DJM-5T at 2:9-11.
83/ Exh. No. JCT-9.
84/ Id. (emphasis added).
85/ Id. (emphasis added); see also Dalley, TR. 45:17-19 ("At this time, the Company made an offer to sell and tried to absolve itself, as much as it could, through this bill of sale, of the liability").

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

expressly absolving the Company of liability.[86] The notion that any utility would continue to maintain sold and transferred facilities violates common sense, not to mention the unavoidable implications of contract, property, and trespass law.

43 Notwithstanding, even assuming that Washington code *did* require utilities to maintain facilities that were not "theirs" in accordance with NESC requirements, NESC expert Mr. Marne testified "that the NESC does not prohibit the abandonment of underground conduit."[87] More particularly, NESC, Part 3 does not provide specific details for individual circumstances such as these; in turn, NESC Rule 012.C, which "applies when particulars are not specified in the NESC rules .... [R]equires accepted good practice for the given local condition."[88] As Mr. Marne then testified: "It is a typical, accepted good practice to abandon underground conduit in place."[89] Thus, regardless of whether the Company were to sell and transfer empty conduit and vaults to the Club, or simply leave such facilities in place after permanent disconnection, in no event would the Company violate a requirement to maintain these facilities in accordance with the NESC. Simply put, "abandoned empty conduit does not pose a safety risk."[90]

44 The Company attempts to counter such expert testimony with a completely new interpretive theory, one affirmed by an admitted non-expert on the NESC,[91] and one which is irreconcilable with prior Company attempts to "absolve" itself of liability for future facilities' maintenance via a sale and transfer: "Pacific Power interprets the NESC to obligate the Company to remove *or perpetually maintain* the

---

86/ Clemens, TR. 115:18-22.
87/ Exh. No. DJM-1CT at 2:16-17.
88/ Id. at 2:17-20.
89/ Id. at 2:20-21.
90/ Id. at 3:2.
91/ Dalley, TR. 56:12-13 ("I'm not an expert on the NESC").

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

underground facilities upon disconnection."[92] In response, Mr. Marne testifies that "the NESC does not contain such a directive."[93]

45 In fact, the "Scope" of the NESC, by its own terms, only "covers utility facilities and functions *up to the service point*."[94] Thus, Pacific Power interpreting the NESC to obligate perpetual maintenance of facilities where there is no service point—which would describe the state of all conduit and vaults on Club property, once the Company disconnected its service—is to interpret the NESC in flat contradiction to its own terms. Moreover, the fact that the NESC's scope only "covers *utility* facilities" accords with the WAC requirement that utilities only need to maintain "their" facilities; that is, neither the NESC nor the WAC would cover facilities transferred by a utility, since those facilities would no longer belong to that utility.

46 Pacific Power's arguments further ignore, or at least disregard, their own tariff. Rule 4.F.1-3 states the following:

> Company shall not be required to maintain facilities in place or to continue the availability of facilities installed for the Customer's service when:
>
> 1. Facilities are not being utilized to provide service in accordance with an application for service; or
>
> 2. Such service is not furnished in accordance with contract provisions set forth in this tariff.
>
> 3. Customer requests Permanent Disconnection of Customer's facilities. Refer to Rule 6 for requirements of Permanent Disconnection and Removal of Company's facilities.

Once the Company disconnects its service, Rule 4 makes it clear that the Company "shall not be required to maintain facilities." Thus, if transferred or abandoned facilities

---

92/ Exh. No. RBD-1T at 16:11-13 (emphasis added); accord id. at 23:4-6 ("Pacific Power interprets the NESC to require removal of all underground facilities unless the utility provider is willing to assume the duty to perpetually maintain those facilities after permanent disconnection").

93/ Exh. No. DJM-5T at 2:17-18.

94/ Exh. No. DJM-4 at 2 (NESC Rule 011.B).

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

are used by an alternative electric provider and the Company is not providing electric services, then Pacific Power's theories of liability disappear. As discussed above, Rule 4.F.1-3 conforms with the WAC, NESC "accepted good practice," and terms of abandonment set forth in the Company's service agreements.

c. Upon the Company's Disconnection of Electric Service the Tariff no Longer Applies.

47 Under the tariff, Pacific Power should not legally retain any ownership interest upon disconnection for facilities paid for and installed by a customer. Rule 4.A. provides that the contract for service continues "until service to the customer is permanently discontinued," with the contract terms being "the applicable rates, rules and regulations contained in this tariff." That is, ownership of facilities installed by and paid for by a customer is only transferred to Pacific Power by the operation of the general tariff provision that states: "The Company will own, operate, and maintain all Extensions made under these Rules."[95/] Indeed, the Company emphasized this fact in a March 2013 letter to the Club.[96/]

48 The Club presumes that the ownership transfer occurs once Pacific Power begins supplying and the customer accepts service through the installed facilities.[97/] Accordingly, the corollary of this initial ownership transfer should apply when a customer will no longer receive electric service from the Company after permanent disconnection. Specifically, ownership of these facilities should revert back to the customer by operation of law upon disconnection—otherwise, the Company would be unjustly enriched by an inequitable (and ultra vires) application of Rule 1, an application

---

95/ Pacific Power Tariff WN-U75, Rule 1.
96/ Exh. No. JCT-9.
97/ See Rule 4.A. See also the definition of "Tariff" at WAC § 480-80-030.

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

which only benefits Pacific Power.

49 This reversionary interest upon disconnection in facilities that were paid for and installed by customers would not deprive the Company of its entitlement to the undepreciated value of equipment under Rule 6 terms. But, the ownership reversion should act to transfer all forward-going liability and control of such facilities back to the customer, thereby eliminating any ongoing "maintenance" concerns alleged by Pacific Power in association with Rule 1 ownership.

2. Pacific Power Has Never Demonstrated that Operational Reasons Necessitating Removal Exist

a. The Company Originally Treated "Safety" and "Operational" Reasons for Removal Interchangeably, Possibly Mooting the Need for Separate Consideration

50 Before the Commission authorized the Net Removal Tariff in 2002, and in response to a request to "summarize the Company's reasoning for proposing implementation of net removal cost charges," Pacific Power submitted testimony stating that "[t]he need to remove the facilities is grounded on safety and operational concerns."[98/] The Company's conjunctive phrasing, i.e., "safety *and* operational concerns," is relevant to the Commission's determination in this case.

51 Specifically, after explaining the Company's safety concerns regarding "duplicative" facilities and the consequent desire of the Company to remove such facilities,[99/] Mr. Clemens concluded his 2002 testimony by stating:

> The reason to impose such costs on departing customers is that these persons cause PacifiCorp to incur the removal costs. The Company believes that it is not fair or reasonable that PacifiCorp be required to absorb such net removal costs or to have an annualized net removal expense incorporated into rates under which remaining customers would shoulder the burden of the removal costs incurred. PacifiCorp maintains

---

98/ Exh. No. BGM-3 at 5 (Rebuttal of Clemens at 4:23).

99/ Id. (Rebuttal of Clemens at 4:24-26).

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

> that it is sound regulatory policy to impose such costs on the departing customers.[100/]

In sum, the Company never actually distinguished between "safety *and* operational concerns" necessitating facilities removal in 2002 testimony. The Company's rationale for imposing costs on the departing customer was only a concern in relation to cost recovery, *after* a removal had already been performed, and not an "operational concern" justifying removal in the first place. The testimony shows the "operational concern" upon which a "need for removal" was grounded would have to relate to the duplicative safety hazards. Therefore, in 2002 the Company's use of the conjunctive phrasing for "safety and operational" removal concerns was contextually limited.

52 This is important to consider when interpreting Net Removal Tariff terms authorizing Pacific Power to charge for the actual costs "of only those facilities that need to be removed for safety or operational reasons."[101/] The Commission approved the disjunctive phrasing of "safety *or* operational reasons" necessitating facilities removal, in contrast to the Company's supporting testimony using conjunctive phrasing which did not separate safety and operational concerns. Washington courts often decline to strain for distinctions between the use of conjunctive or disjunctive phrasing when interpreting statutes, and the Commission may choose to apply the same rubric to Rule 6.[102/] If the Net Removal Tariff is to be interpreted with "safety" and "operational" being interchangeable or synonymous terms—similar to the Company's indistinguishable use of these terms in original supporting testimony for Rule 6—then Pacific Power's failure to demonstrate any "safety" reasons necessitating removal of conduit and vaults from

---

100/ Id. at 6 (Rebuttal of Clemens at 5:1-7).

101/ Rule 6.I.1.

102/ State v. McDonald, 183 Wash. App. 272, 278 (2014) (citing numerous cases in support of the proposition that "[w]here the plain language and intent of the statute so indicate, '[t]he disjunctive 'or' and conjunctive 'and' may be interpreted as substitutes'").

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

Club property obviates the need for any further consideration as to "operational" reasons.

b. Separate Consideration of "Operational" Reasons Yields No Basis for Conduit and Vault Removal

53 Alternatively, the Commission may place emphasis on its decision to approve the disjunctive phrasing of "safety *or* operational reasons" necessitating facilities removal in Rule 6, and inquire separately as to whether "operational" reasons, independent of "safety" concerns, necessitate the removal of conduit and vaults from Club property in order for the Company to permanently disconnect its service.[103] Even if the Commission elects to do so, however, the Company has still failed to show any rational "operational" reason that strictly requires removal of these facilities.

i. Maintenance Concerns Are Not Implicated under the Facts of This Case

54 Through discovery, the Club asked the Company to explain and support Pacific Power's claim that removal of the conduit was "required" under Net Removal Tariff terms. Besides alleging safety concerns, the Company stated: "Removal of facilities upon permanent disconnection eliminates future and *perpetual liability for maintaining those facilities* in a safe condition. Pacific Power's remaining customer base should not be saddled with the cost or risk of maintaining the abandoned facilities in a safe condition."[104] As noted, however, the preceding statement does not comport with Rule 4.F or the NESC.

55 Essentially, the Company is alleging an "operational" concern of indefinitely continuing costs associated with its erroneous re-interpretation of the NESC as creating a "perpetual" obligation for facilities maintenance following a service

---

[103] See WUTC v. Puget Sound Energy, Inc., Docket PG-060215, Order 02 at ¶¶ 34-35 (Apr. 3, 2008) (finding the use of a conjunctive confusing, when a proposed settlement agreement contained both conjunctive and disjunctive terms, and ultimately interpreting the disjunctive phrasing to control).

[104] Exh. No. BGM-4C at 1 (Company Response to Club DR 008) (emphasis added).

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

disconnection.[105] As explained above, the Company's interpretation of the NESC is unsound—both generally and in the specific context of factual circumstances relating to conduit and vaults on Club property, as well as being contrary to the Company's traditional practices of facilities abandonment and facilities transfer to customers requesting permanent disconnection. Thus, the inextricable joinder of this alleged maintenance cost concern, i.e., an unsupportable safety consideration, cannot stand as an independent, "operational" reason necessitating removal of Club conduit and vaults.

ii. Removing Facilities Will Not Help the Company to Recover Net Book Value

56 The Company states another "operational" concern in its discovery response: "Additionally, a customer seeking a permanent disconnection should be required to cover the net book value of the facilities. Otherwise, that cost is unreasonably borne by Pacific Power's other customers."[106] This concern is not, however, a justification for facilities removal, as the Company can be fully reimbursed for the net book value of facilities associated with a permanent disconnection without any need to remove those same facilities.

57 As already noted, in offering to either remove or sell conduit and vaults to the Club, Pacific Power separately itemized and estimated the cost for "Net Book Value of facilities to be removed" *in addition to* the cost for "Removal or Sale of Conduits and Vaults."[107] This means that the Company contemplated receiving payment for net book value without any conduit and vault removal ever taking place, had the sale offer been accepted (albeit, at the Company's unreasonable $66,718 asking price). Indeed, in lieu of removal, the Club has repeatedly offered to pay the full net book value of conduit and

---

[105] Accord Dalley, TR. 81:15-16.
[106] Exh. No. BGM-4C (Company Response to Club DR 008).
[107] Exh. No. JCT-8.

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

vaults, including the Company's increased net book value estimation in 2015, and has even offered to pay the costs required for the purchase of brand new facilities.[108] Thus, any concern about the costs of net book value for conduit and vaults being "unreasonably borne by Pacific Power's other customers" is not at issue in this proceeding.

58 Given that the Club has been and remains willing to compensate Pacific Power for the net book value of facilities, as Mr. Mullins has testified, "there is no reason established in the Net Removal Tariff that requires the Company to undertake invasive and costly deconstruction activities on the golf course property in order to remove the facilities."[109] The Company may opt to continue its practice of abandoning facilities in place following disconnection, without any reasonable concern of violating Washington code, the NESC, or its own Rules. Alternatively, but also in keeping with prior practice, PacifiCorp can opt to transfer conduit and vaults to the Club—e.g., "when the Company can transfer the facilities to the customer at a purchase price that would hold it harmless relative to the Net Removal Tariff, the Company should have an obligation not to remove the facilities."[110] Either way, the Company's operational cost concerns related to net book value recovery are satisfied without the need for conduit and vault removal.

iii. "Stranded Costs" Are Not at Issue in This Proceeding

59 Discussion regarded "stranded costs" is notably absent from the Company's initial explanation and purported support for the assertion that conduit and vault removal is "required" under the Net Removal Tariff.[111] In written testimony, however, Mr. Dalley elaborates on a new claim that net book value does not capture all of the costs resulting from a permanent disconnection request, arguing that that "additional

---

108/ E.g., Exh. No. JCT-9; Exh. No. JCT-10; Exh. No. JCT-12; Exh. No. BGM-5C.
109/ Exh. No. BGM-1CT at 8:20-22.
110/ Id. at 6:8-10.
111/ Exh. No. BGM-4C at (Company Response to Club DR 008).

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

stranded costs should be evaluated as part of the net removal tariff to ensure remaining customers are not negatively harmed by a departing customer."[112]

60 But, consideration of this newly stated "operational" concern is not appropriate to the Commission's determination in this case, regardless of the ultimate merit of Pacific Power's theory. As Mr. Dalley himself explains, "[t]he Company intends to address these items in a future revision to the net removal tariff, but Pacific Power is not proposing those modifications in this docket."[113] Mr. Mullins has testified to the same effect, noting the controversy implicated by the stranded costs issue and concluding that "[t]his proceeding concerns the application of the Net Removal Tariff as it currently exists."[114]

iv. Pacific Power Unduly Discriminates against the Club by Focusing on Columbia REA rather than Providing Reasonable Customer Service

61 Likewise, any Pacific Power "operational" concerns related to Columbia REA are also irrelevant to the Commission's determination in this proceeding. As stated by Mr. Mullins, "this proceeding concerns the specific facts and circumstances surrounding the Club's request for permanent disconnection and how the Net Removal Tariff should apply to that request."[115] Moreover, the Company cannot treat the Club differently from any other customer under the Net Removal Tariff, regardless of whether a customer seeks to switch service providers, self-generate, or simply disconnect from PacifiCorp service through an atavistic desire to "get off the grid." In approving the Net Removal Tariff, the Commission expressly stated: "PacifiCorp has a statutory obligation to serve all those reasonably entitled to service. PacifiCorp cannot unduly discriminate

---

[112] Exh. No. RBD-1T at 24:12-25:20.
[113] Id. at 25:18-20.
[114] Exh. No. BGM-6T at 4:9-17.
[115] Id. at 2:10-12.

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

among customers or provide unreasonable preferences. *RCW 80.28.090, .100, and .110.*"[116]

62 Mr. Dalley claims that Columbia REA would enjoy a competitive advantage by acquiring facilities installed by the Company "for just net book value," contending that "Pacific Power's remaining customers should not be required to subsidize Columbia REA's expansion of its service area."[117] The irony of Mr. Dalley's argument is that Columbia REA would, in fact, only be interested in using "very limited pieces of conduit" to run their conductor, while neither the Club nor Columbia REA actually intend to use any of the electrical components reflected in net book calculations.[118] Owing to Columbia REA's use of "a different voltage than PacifiCorp," Columbia REA "actually can't use any of the electrical equipment."[119]

63 In this case, the use of "very limited," existing facilities by Columbia REA would only avoid an estimated $18,066 otherwise required to bore new conduit to two locations on the Club's property,[120] and possibly even less if a current investigation reveals that only one conduit run may actually be useful.[121] At most, this is almost $6,000 less than Pacific Power's calculation of the net book value for all facilities,[122] and far less than the $94,500 estimation Mr. Dalley claims would be required for the installation of "underground facilities (conduit and vaults)."[123]

64 Similarly, Mr. Mullins explained at hearing that the $318,732.50 facilities installation cost stated in the electric service agreement between Columbia REA and the

---

116/ Docket UE-001734, Eighth Suppl. Order at ¶ 56, n.3 (emphasis in original).
117/ Exh. No. RBD-1T at 26:1-17.
118/ Exh. No. BGM-15CX at 2.
119/ Mullins, TR. 159:11-14; accord id. at 164:3-11.
120/ Exh. No. BGM-15CX at 2; accord Mullins, TR. 166:12-17, 168:20-169:1, 171:8-9.
121/ Mullins, TR. 159:15-16; accord id. 164:20-165:2, 171:13-19.
122/ Exh. No. BGM-15CX at 2.
123/ Exh. No. RBD-1T at 26:6-7.

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

Club "predominantly related to those -- the *outer underground facilities*" located in the surrounding area off-site from Club property, and "not the facilities that would be the subject of the Net Removal Tariff" on Club property.[124/] Accordingly, Mr. Dalley's testimony is inaccurate in stating that "Columbia REA anticipates the cost of constructing necessary facilities *on the WWCC property* will total $318,732.50."[125/] In turn, the notion is unfounded that Pacific Power's remaining customers would somehow "be required to subsidize Columbia REA" in relation to the facilities on Club property.

v. The Appraisal Report Has No Value

65 Finally, on August 27, 2015—the same day that cross-examination exhibits were due, and just four business days before the hearing—the Company received and filed a 40-page "appraisal report for the electric distribution equipment located at or near the Walla Walla Country Club."[126/] Whatever the Company's purpose(s) in adding this very late piece of evidence into the record, it adds no support to the Company's arguments concerning: 1) subsidization, given the unsuitability of the vast majority of Pacific Power's facilities for Columbia REA's use; 2) "stranded costs," given the Company's own statement that it intends to address that issue in a future docket; or 3) net book value, given the Company's prior testimony establishing its calculation of that value.[127/]

66 The appraisal report is also unhelpful in regard to fair market value, given the statement within the report that "[a]ny other use," apart from Club use, "would

---

124/ Mullins, TR. 158:11-159:4 (emphasis added).

125/ Exh. No. RBD-1T at 26:12-13 (emphasis added).

126/ Exh. No. BGM-14CX. But cf. WUTC v. PacifiCorp, Dockets 140762 *et al.*, Order 08 at ¶¶ 79-80 (Mar. 25, 2015) (cautioning "that the Commission may not be receptive in a future case to allowing" late-filed evidence which "potentially can disrupt a carefully planned procedural schedule close in time to a planned evidentiary hearing").

127/ E.g., Exh. No. BGM-4C at 11-12; Exh. No. BGM-5C; Exh. No. RBD-1T at 26:9.

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

negatively affect the fair market value that is concluded in this report."[128/] This not only eliminates any comparable "market" value—i.e, since limiting the value of the report to a single use has no larger comparative value to a general "market"—but also demonstrates the deficiency of the report for comparative purposes in the particular context of this case. Specifically, Mr. Mullins testified at hearing that the appraisal "assumes that Columbia REA will actually use those facilities, which it will not," leaving the only "market value" to Columbia REA as "the salvage value."[129/] The Company confirmed that it had no "actual" methodology to determine facility "market value" as of July 20, 2015, and the report does nothing to change this fact.[130/] Finally, as Deborah Reynolds of WUTC Staff explained in December 2012, "(the conduit) is something that has no value to (Pacific Power) ratepayers."[131/]

67 In all events, the appraisal report contains so many disclaimers as to be of no probative or evidentiary use, while the report often cautions against any reliance upon it for decision-making purposes. In the report's 34-item, seven-page appendix titled "Statement of Assumptions and Limiting Conditions," a sampling of these disclaimers includes:

- "The reader should be aware that there are also inherent limitations to the accuracy of the information and analysis contained in this appraisal." *(Statement 1)*;
- "… it should be clearly understood that this information is only to be used as a general guide for property valuation and not as a complete or detailed physical report. We are not construction, engineering, environmental, or legal experts, and any statement given on these matters in this report should be considered preliminary in nature." *(Statement 8)*;
- "Because no detailed inspection was made and because such knowledge goes

---

128/ Exh. No. BGM-14CX at 11.
129/ Mullins, TR. 161:11-12, 160:11-13.
130/ Exh. No. BGM-8C at 1.
131/ Exh. No. JCT-3 at 2.

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

beyond the scope of this appraisal, any observed condition or other comments given in this appraisal report should not be taken as a guarantee that a problem does not exist … If any interested party is concerned about the existence, condition, or adequacy of any particular item, we strongly suggest that a construction expert be hired for a detailed investigation." *(Statement 16)*; and

- "Opinions and estimates expressed herein represent our best judgement [sic], **but should not be construed as evidence or recommendation to act**." *(Statement 26)* (emphasis added).[132]

Moreover, as Mr. Mullins pointed out at hearing, the appraisal report was not sponsored by a witness, the Club had no opportunity to conduct discovery on it, and it appears to contain a value "very much inflated relative to the Company's historical costs," based on what analysis Mr. Mullins was able to perform.[133] In sum, the Commission should "afford it the weight that it's due in the context of this proceeding,"[134] or essentially none, given all its deficiencies and the Commission's recent admonition to Pacific Power against this precise tendency to rely upon such late-filed evidence.[135]

B. The Commission Should Use Its Statutory Authority to Order Pacific Power to Pay Damage Reparations and/or Refund Overcharges, with Interest

68 In the body of its originating complaint, the Club stated the fact that Pacific Power's refusal to disconnect its service, subject to the terms of the Net Removal Tariff, "has prevented, and continues to prevent, the Club from switching its electrical service to CREA, resulting in the loss of approximately $1,000 per month in savings that the Club would have been able to realize by transitioning its service to CREA."[136] The record contains ample support of this fact,[137] which has not been rebutted by the

---

132/ Exh. No. BGM-14CX at 30-36.
133/ Mullins, TR. 160:20-22; 161:17-18.
134/ Id. at 160:23-25.
135/ Dockets UE-140762 *et al.*, Order 08 at ¶¶ 79-80.
136/ Complaint of The Walla Walla Country Club ("Complaint") at ¶ 19.
137/ E.g., Exh. No. JCT-6 at ¶ 10; JCT-1T at 9:15-16; JCT-2 at 4 (estimating an annual savings of over $12,000 through off-peak pump usage).

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

Company save for an unspecific answer denial.[138]

1. An Award of Damages Is Reasonable Given the Company's Violation of the Net Removal Tariff

69 In dismissing the Club's federal action because the WUTC was found to have both primary and exclusive jurisdiction over the same facts at issue in this case, the Court held that the Club's complaint "is covered by RCW 80.04.220."[139] This statute authorizes the Commission to order a utility to pay reparations in regard to "the reasonableness of any rate, toll, rental or charge for any service performed."[140] If the Commission finds that a utility: 1) "has charged an excessive or exorbitant amount for such service"; and 2) "that any party complainant is entitled to an award of damages"; then 3) " the commission *shall* order that the public service company pay to the complainant the excess amount found to have been charged."[141]

70 Both of the above statutory conditions and the resultant conclusion apply to this case. First, the record in this proceeding shows that Pacific Power has charged an excessive amount in order to perform disconnection services because it demanded payment for facilities that did not need to be removed prior to disconnection. Next, the Club should be entitled to damages because PacifiCorp's violation of the Net Removal Tariff, in demanding an unreasonable and excessive charge, has directly resulted in the Club's inability to switch service providers and realize approximately $1,000 in monthly savings.

71 As the statute authorizes the Commission to order damage reparations whether charges occurred "before or after the filing of said complaint, with interest from

---

138 Answer at ¶ 19.
139 JCT-5 at 9.
140 RCW § 80.04.220.
141 Id. (emphasis added).

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

the date of the collection of said excess amount,"[142] the Club is entitled to reparations payments with interest reaching back before the originating complaint was filed in this docket. The Club submits that a beginning date as of January 2013 would be appropriate.

2. The Commission Also Has the Option to Provide a Remedy in the Form of a Refund

72 Considering again the very same facts at issue in this proceeding, the Court also found that RCW § 80.04.230 provides the Commission with the authority to provide a refund as a remedy for Pacific Power service overcharges.[143] The statute covers a complaint made to the Commission that a utility "has charged an amount for any service rendered in excess of the lawful rate in force at the time such charge was made."[144] As the Net Removal Tariff has not been modified at any time relevant to the facts at issue in this proceeding, i.e., 2012 to the present, the Club's complaint, that the Company has charged for unnecessary removal costs not permitted under Rule 6, falls directly under the purview of this statute.

73 If the Commission finds "that the overcharge allegation is true," then the statute authorizes the Commission to order the utility to pay "the amount of the overcharge so found, whether such overcharge was made before or after the filing of said complaint, with interest from the date of the collection of such overcharge."[145] Much like the reparations statute, therefore, the overcharges refund statute allows the Commission to order Pacific Power to pay the Club an amount found to be overcharged, with interest, dating back to a period predating the originating complaint filing. As noted above, the Club has been overcharged for electric service since about December 2012 or

---

[142] Id.
[143] JCT-5 at 9.
[144] RCW § 80.04.230.
[145] Id.

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

January 2013, which is the time that the Club would have been realizing savings of approximately $1,000 per month, had the Company disconnected its service under the terms of the Net Removal Tariff, as requested by the Club.

V. CONCLUSION

74 For the reasons stated in this brief, the Complaint, Club testimony, and as supported by Club exhibits and the record in this proceeding, the Club respectfully requests that the Commission order the Company to perform a permanent disconnection of its services according to the terms of the Net Removal Tariff, including an express prohibition on the Company's demand that underground conduit and vaults on Club property be removed prior to the performance of disconnection services.

75 As a result of the Company's violation of the Net Removal Tariff, and the electric service overcharges paid to the Company, as the result of the Club's inability to switch service providers and realize savings of approximately $1,000 per month, the Club also requests that the Commission exercise its authority under statute to order Pacific Power to pay damage reparations or refunds, with interest, for the amount of such overcharges since December 2012 or January 2013.

DAVISON VAN CLEVE, P.C.
333 SW Taylor, Suite 400
Portland, OR 97204
Telephone (503) 241-7242

Dated in Portland, Oregon, this 16th day of October, 2015.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

Melinda J. Davison
Jesse E. Cowell
333 S.W. Taylor, Suite 400
Portland, Oregon 97204
(503) 241-7242 telephone
(503) 241-8160 facsimile
mjd@dvclaw.com
jec@dvclaw.com
Of Attorneys for The Walla Walla Country Club

Dated in Walla Walla, Washington, this 16th day of October, 2015.

MINNICK-HAYNER, P.S.

/s/ *David S. Grossman*

David S. Grossman, WSBA No. 18428
P.O. Box 1757
249 West Alder
Walla Walla, WA 99362
(509) 527-3500 telephone
(509) 527-3506 facsimile
grossman@minnickhayner.com
Counsel for The Walla Walla Country Club

Dated in Spokane, Washington, this 16th day of October, 2015.

WITHERSPOON • KELLEY

/s/ *Stanley M. Schwartz*

Stanley M. Schwartz, WSBA No. 15518
422 W. Riverside Ave., Ste. 1100
Spokane, WA 99201
(509) 624-5265 telephone
(509) 458-2728 facsimile
sms@witherspoonkelley.com
Counsel for The Walla Walla Country Club