

November 13, 2015

***VIA ELECTRONIC FILING
AND OVERNIGHT DELIVERY***

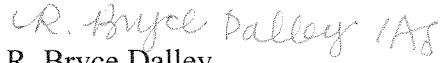
Steven V. King
Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, Washington 98504-7250

RE: Docket UE-143932—Pacific Power & Light Company's Reply Brief

Pacific Power & Light Company, a division of PacifiCorp (Pacific Power or Company), submits for filing its reply brief in the above-referenced proceeding.

If you have any informal inquiries regarding this matter, please contact Ariel Son, Manager, Regulatory Projects, at (503) 813-5410.

Sincerely,


R. Bryce Dalley
Vice President, Regulation

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that I have this day served this document upon all parties of record in this proceeding by electronic mail.

Walla Walla Country Club

Melinda Davison
Jesse E. Cowell
Davison Van Cleve, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
jec@dvclaw.com
mjd@dvclaw.com

Walla Walla Country Club

Stanley M. Schwartz
Matthew Daley
Witherspoon-Kelley
422 W. Riverside Ave., Suite 1100
Spokane, WA 99201
sms@witherspoonkelley.com
mwd@witherspoonkelley.com

The Walla Walla Country Club

1390 Country Club Road
Walla Walla, WA 99362
jeff@wwocountryclub.com

PacifiCorp

Troy Greenfield
Claire Rootjes
Schwabe, Williamson & Wyatt
1420 5th Ave., Suite 3400
Seattle, WA 98101
tgreenfield@schwabe.com
crootjes@schwabe.com

Washington Utilities & Transportation Commission

Sally Brown
Assistant Attorney General
1300 S. Evergreen Park Dr. SW
Olympia, WA 98504-7250
sbrown@utc.wa.gov

Walla Walla Country Club

David Grossman
Minnick-Hayner, P.S.
PO Box 1757
Walla Walla, WA 99362
grossman@minnickhayner.com

PacifiCorp

R. Bryce Dalley
Vice President Regulation
825 NE Multnomah, Suite 2000
Portland, OR 97232
bryce.dalley@pacificorp.com

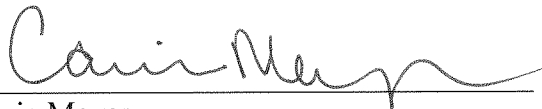
PacifiCorp

Sarah K. Wallace
Vice President and General Counsel
825 NE Multnomah, Suite 2000
Portland, OR 97232
sarah.wallace@pacificorp.com

Public Counsel

Simon ffitch
Office of the Attorney General
800 Fifth Ave., Suite 2000
Seattle, WA 98104-3188
simonf@atg.wa.gov

DATED at Portland, OR this 13th day of November 2015.



Carrie Meyer
Supervisor, Regulatory Operations

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

THE WALLA WALLA COUNTRY CLUB,

Complainant,

vs.

PACIFIC POWER & LIGHT COMPANY,

Respondent.

DOCKET UE-143932

REPLY BRIEF OF PACIFIC POWER & LIGHT COMPANY

November 13, 2015

TABLE OF CONTENTS

I.	After more than two years of litigation in three different venues, Columbia REA and the Walla Walla Country Club now represent that they would remove Pacific Power’s facilities.....	1
II.	The estimated cost of removing Pacific Power’s facilities is based on competitive bidding.	2
III.	Removal of Pacific Power’s facilities under its net removal tariff will cause very limited disruption and will have limited, temporary effect on the grounds.....	3
IV.	Pacific Power’s appreciation of the safety and operational reasons necessitating removal of its facilities on a customer’s request to permanently disconnect has increased over time since the net removal tariff was approved and implemented in 2002.....	3
V.	Columbia REA and the Walla Walla Country Club could have secured the Club’s disconnection from the Pacific Power system at the outset, by simply paying the actual cost of removal.	5
VI.	Conclusion	6

I. After more than two years of litigation in three different venues, Columbia REA and the Walla Walla Country Club now represent that they would remove Pacific Power’s facilities.

1 Columbia Rural Electric Association (Columbia REA) intervened in the Company’s 2013 general rate case, Docket UE-130043, and proposed a number of changes to Schedule 300 and Rule 6, all pertaining to facilities removal.¹ When Pacific Power elected to withdraw the portion of its proposed tariff revision pertaining to Schedule 300 and Rule 6, Columbia REA objected to that withdrawal.² On August 6, 2013, very shortly after the Commission granted Pacific Power’s motion to withdraw and dismissed Columbia REA as a party to Docket UE-130043, a civil lawsuit was initiated against Pacific Power in Walla Walla County Superior Court.³ That civil action was removed to the United States District Court for the Eastern District of Washington, and subsequently dismissed by the Honorable Lonny R. Suko.⁴

2 Shortly thereafter, this docket was initiated with the filing of the Complaint in the name of the Walla Walla Country Club. All of Walla Walla Country Club’s prefiled direct and rebuttal testimony was geared toward a forced sale of Pacific Power’s facilities to the country club, for use by Columbia REA. Mr. Bradley G. Mullins, the primary witness on behalf of the Walla Walla Country Club, identified what he referred to as a fair price for those facilities and stated his opinion that the “objective” of Pacific Power’s net removal tariff is to “effectuate a fair transfer price.”⁵

3 After years of litigation intended to force the sale of Pacific Power’s facilities for less than fair market value and ultimate use by Columbia REA, the Walla Walla Country

¹ Dalley, Exhibit No. RBD-1T 8:6-7.

² Dalley, Exhibit No. RBD-1T 8:10-15.

³ Dalley, Exhibit No. RBD-1T 8:15-17.

⁴ Dalley, Exhibit No. RBD-1T 8:19-22.

⁵ Mullins, Exhibit No. BGM-6T 11:4-5.

Club and Columbia REA suddenly switched positions and clearly stated that “*all* of the electrical components included in the list of facilities *transferred* will be of no value to Columbia Rural Electric Association and will be removed and scrapped at the expense of the Club.”⁶

4 If the recent representations of Columbia REA and the Walla Walla Country Club are to be taken at face value, after years of unnecessary litigation, this matter boils down to whether Pacific Power’s facilities will be removed by Pacific Power in accordance with its net removal tariff or whether Pacific Power will be forced to sell those facilities which will then be “removed and scrapped at the expense of the Club.”

II. The estimated cost of removing Pacific Power’s facilities is based on competitive bidding.

5 Under Pacific Power’s net removal tariff, the Walla Walla Country Club is responsible for the “actual cost of removal less salvage...”⁷ The unequivocal representation of Columbia REA and the Walla Walla Country Club that the subject facilities would be removed “at the expense of the Club” cannot be reconciled with Columbia REA’s contractual obligation to largely foot the bill for the Walla Walla Country Club to disconnect from Pacific Power’s system, including removal of facilities.⁸ Putting aside the issue of relative responsibility between Columbia REA and the Walla Walla Country Club, the actual cost of removing the facilities will be roughly the same, regardless of whether the process is coordinated by Pacific Power under its net removal tariff or by Columbia REA. During the hearing, Mr. Mullins mistakenly testified that

⁶ Exhibit No. BJM-15CX (emphasis added).

⁷ Rule 6; Dalley, Exhibit No. RBD-1T 14:13-15.

⁸ The Walla Walla Country Club is only responsible for paying \$271 per month on a 36-month, no interest loan of \$9,790.50. Dalley, Exhibit No. RBD-1T 9:12-14; Exhibit No. RBD-5.

Pacific Power's estimate for the cost of removing its facilities was "hypothetical."⁹ In fact, Pacific Power received bids from a number of outside contractors to establish the cost to remove its underground facilities.¹⁰ The estimated cost communicated to the Walla Walla Country Club was based on the most competitive bid.¹¹

III. Removal of Pacific Power's facilities under its net removal tariff will cause very limited disruption and will have limited, temporary effect on the grounds.

6 Given the issue now appears to be whether Pacific Power will oversee the removal of its facilities or whether Columbia REA will do so following a forced sale of those facilities, the goal is to limit disruption to operations and minimize the effect on the grounds of the Walla Walla Country Club. Pacific Power has repeatedly offered to complete the necessary work during early January, when the clubhouse is closed for cleaning and there is very limited use of the golf course.¹² Mr. Clemens provided extensive testimony regarding the pains to which Pacific Power will go to limit the temporary effects on the grounds. In fact, he noted that Pacific Power previously replaced conduit on the Walla Walla Country Club grounds and there is currently no trace of that underground work.¹³

IV. Pacific Power's appreciation of the safety and operational reasons necessitating removal of its facilities on a customer's request to permanently disconnect has increased over time since the net removal tariff was approved and implemented in 2002.

8 A significant portion of the Opening Brief of the Walla Walla Country Club is devoted to essentially arguing that Pacific Power should somehow be prevented from

⁹ Mullins, Tr. 170:3-6.

¹⁰ Exhibit No. JCT-12.

¹¹ *Id.*

¹² Thomas, Tr. 141:1-11.

¹³ Clemens, Tr. 107:5-11; 109:8-13.

removing the subject facilities due to previous application of the net removal tariff that was uninformed by experience. In its prefiled direct testimony, Pacific Power was candid regarding the evolution of its interpretation and application of the net removal tariff as it confronted mounting safety issues and the potential liability exposure arising from failing to remove or maintain previously abandoned facilities as mandated under the National Electric Safety Code (NESC) Section 313.B.3. As explained by Mr. Dalley, the net removal tariff is unique. Pacific Power's focus is always on providing safe and reliable electric service to its customers at reasonable rates, rather than on how to permanently disconnect electric service to customers offered an alternative pricing structure by a provider that is not subject to regulation by the Commission.¹⁴ Pacific Power has been steadfastly focused on safety issues relating to duplicate facilities and preventing remaining customers from subsidizing the costs created by departing customers.¹⁵ As reflected in Pacific Power's thoroughgoing report in Docket UE-132182, application of its net removal tariff has been inconsistent but appropriately evolving as the Company has gained experience and knowledge.¹⁶

9 During the course of that evolution, Pacific Power agreed to sell and transfer underground facilities on permanent disconnection as an accommodation to disconnecting customers.¹⁷ Although Mr. Mullins incredulously argued that the “objective” of Pacific Power's net removal tariff is to effectuate a fair transfer price, on cross-examination he ultimately conceded that the net removal tariff does not provide for

¹⁴ Dalley, Exhibit No. RBD-1T 15:9-13.

¹⁵ Dalley, Exhibit No. RBD-1T 15:13-15.

¹⁶ Dalley, Exhibit No. RBD-1T 15:15-18.

¹⁷ Dalley, Exhibit No. RBD-1T 15:18-20.

the sale of Pacific Power's facilities.¹⁸ Consistent with its net removal tariff, Pacific Power no longer agrees to sell and transfer underground facilities.¹⁹ Pacific Power correctly interprets the NESC to obligate the Company to remove or perpetually maintain underground facilities on disconnection. The NESC does not provide for contractually transferring the duty to maintain facilities that are not removed.²⁰

10 Pacific Power's net removal tariff provides for the removal of underground facilities, on a customer's request for permanent disconnection. It is interesting to note that Columbia REA provides for the same in its customer contracts.²¹

V. **Columbia REA and the Walla Walla Country Club could have secured the Club's disconnection from the Pacific Power system at the outset, by simply paying the actual cost of removal.**

11 A portion of the Opening Brief of the Walla Walla Country Club is devoted to discussion of the Honorable Lonny R. Suko's Order Regarding [Pacific Power's] Motion to Dismiss.²² Judge Suko dismissed the claims of the Walla Walla Country Club, noting it can proceed under RCW 80.04.230, which provides for refunds of any overcharges.²³ Presumably for tactical reasons, Columbia REA and the Walla Walla Country Club chose not to simply pay the actual cost of removal to secure permanent disconnection in 2012, but rather have pursued litigation before two civil courts and the Commission. If they had chosen to pay the actual cost of removal to secure disconnection in 2012, the Walla Walla Country Club would have been charged the rates offered by Columbia REA over the past three years and, if they felt the actual cost of removal was somehow an

¹⁸ Mullins, Tr. 152:9-18.

¹⁹ Dalley, Exhibit No. RBD-1T 16:9-14.

²⁰ *Id.*

²¹ Exhibit No. RBD-6 3:Section 9.

²² Brief 9:18-10:20.

²³ Exhibit No. JCT-5 9:10-10:4.

overcharge, they could have pursued a refund in accordance with RCW 80.04.230.

12 Judge Suko noted the probable motivation for the tactical decision of Columbia REA and the Walla Walla Country Club: “Considering the actions of CREA in front of the WUTC, i.e., intervening to challenge PacifiCorp’s potential changes to the tariff at issue here, the Country Club appears to be seeking a ruling that would be common to all PacifiCorp customers who wish to disconnect and switch service to CREA.”²⁴

13 Columbia REA has invested heavily in facilities around the perimeter of the Walla Walla Country Club and throughout the greater Walla Walla area.²⁵ As noted by Judge Suko, it appears Columbia REA seeks some form of precedent by way of this proceeding.

VI. Conclusion

14 Numerous safety and operational concerns necessitate removal of Pacific Power’s facilities from the Walla Walla Country Club property. Pacific Power’s net removal tariff provides for removal—but not a forced sale—of Pacific Power’s facilities. Columbia REA and the Walla Walla Country Club now represent that the facilities will be removed one way or another. Pacific Power will do so at a cost reflecting competitive bidding and in an extremely efficient manner with limited disruption. Columbia REA’s effort to create some form of precedent and resulting competitive advantage should be denied. Pacific Power should be allowed to remove its facilities, with Columbia REA and the Walla Walla Country Club paying the actual cost of removal less salvage, in accordance with the terms of their contracts.

²⁴ Exhibit No. JCT-5 11:17-21.

²⁵ Exhibit No. JCT-24 CX.

Dated this 13th day of November, 2015.

PACIFIC POWER & LIGHT
COMPANY

SCHWABE, WILLIAMSON & WYATT,
P.C.

By: Sarah Wallace / As
Sarah Wallace
Vice President and General
Counsel
sara.wallace@pacificorp.com
Attorney for Respondent

By: Troy Greenfield / As
Troy Greenfield
Claire L. Rootjes
tgreenfield@schwabe.com
crootjes@schwabe.com
Attorneys for Respondent