

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WALLA WALLA COUNTRY CLUB,)	DOCKET UE-143932
)	
Complainant,)	
)	ORDER 03
v.)	
)	
PACIFIC POWER & LIGHT)	INITIAL ORDER
COMPANY,)	
)	
Respondent.)	
.....)	

BACKGROUND

- 1 On November 20, 2014, the Walla Walla Country Club (Club) filed with the Washington Utilities and Transportation Commission (Commission) a formal complaint against Pacific Power & Light (Pacific Power or Company). The Club requests that the Commission compel Pacific Power to disconnect its facilities from Club property under the terms of the Company’s Net Removal Tariff, Rule 6. The Club also requests the Commission order damages or a refund for the difference between the monthly payments made to Pacific Power and the rates the Club would have paid to an alternate electric provider, Columbia Rural Electric Association (CREA), from the date of the initial disconnection request in December 2012 forward.
- 2 On September 3, 2015, the Commission conducted an evidentiary hearing before Administrative Law Judge Rayne Pearson. The parties stipulated to the admission of all 27 exhibits.¹
- 3 The Club presented testimony and exhibits documenting its negotiations with Pacific Power to permanently disconnect its service, and explaining the parties’ disagreement

¹ In compliance with Judge Pearson’s bench requests, two additional exhibits were submitted after the close of the evidentiary hearing. On September 11, 2015, Pacific Power submitted two documents. The first, which was marked as Exhibit RBD-17, was a list of the permanent disconnection requests made between 2002 and the present where the Company abandoned or transferred its facilities to departing customers in lieu of removing those facilities. The second, which was marked as Exhibit RBD-18, was the date that Pacific Power implemented its policy prohibiting the sale and transfer of the Company’s facilities in lieu of removal. With permission from Judge Pearson, the Club also responded to Bench Request No. 2. The parties agree that the Company’s policy was implemented on or around March 9, 2015.

over the interpretation and application of the Net Removal Tariff, Rule 6, which governs permanent service disconnections. The following witnesses testified on behalf of the Club: Bradley G. Mullins, Independent Consultant; David J. Marne, President and Senior Electrical Engineer, Marne and Associates, Inc.; and Jeffrey C. Thomas, General Manager for the Club.

- 4 Witnesses for the Club testified generally that Pacific Power's Net Removal Tariff only allows the Company to charge a fee to remove facilities when a safety or operational reason exists to warrant their removal. Both Mr. Marne and Mr. Mullins testified that neither safety nor operational reasons exist to remove the empty vaults and conduit on Club property. Mr. Mullins testified that those facilities should be sold to the Club or abandoned according to past Company practice.
- 5 Mr. Marne testified that the National Electric Safety Code (NESC) does not prohibit abandonment of empty underground conduit, which is an industry-accepted good practice and poses no safety risk. In fact, Mr. Marne opined, the safety reasons cited by the Company have no merit. Not only does the NESC allow utilities to abandon facilities in place and transfer liability of those facilities to the departing customer, the abandonment and reuse of conduit is a recognized and common practice. Although Pacific Power raised concerns in testimony and at hearing about duplicate facilities, there is no co-location of facilities proposed here.
- 6 Mr. Thomas testified about negotiations between the Club and the Company to date, which include several offers from Pacific Power to sell and transfer the underground vaults – small concrete boxes located in several places on Club property – and the conduit – two segments of 4-inch PVC piping – to the Club. The quotes for removal or sale in lieu of removal have ranged from \$9,581 to \$66,718.
- 7 Pacific Power presented testimony from R. Bryce Dalley, Vice President of Regulation, and William G. Clemens, Senior Regional Business Manager. Mr. Dalley testified generally about the competitive practices of CREA, which he believes highlight the safety and operational reasons that necessitate removing all facilities when a customer requests permanent disconnection. Namely, Mr. Dalley argues, CREA's aggressive pursuit of Pacific Power's customers has resulted in unnecessary and unsafe duplication of facilities. Mr. Dalley interprets the NESC to require the Company to either remove or perpetually maintain its underground facilities following permanent disconnection. Removing underground facilities, like the empty vaults and conduit at issue in this case, eliminates the need for the Company to track those facilities, which in turn reduces costs for ratepayers.

- 8 Mr. Clemens testified generally about the safety issues created by duplicate facilities that necessitate removal of Company facilities upon permanent disconnection. Emergency responders may be confused by duplicate facilities, and abandoned facilities pose a risk to excavators, who may unknowingly encounter energized facilities.
- 9 On October 16, 2015, the parties filed post-hearing briefs. In its initial brief, the Club argues that Pacific Power has historically abandoned facilities in place on customer property, including underground conduit and cables. In fact, the Company acknowledges more than 20 instances when facilities have been abandoned or transferred in connection with a permanent disconnection. The Company's past practice, coupled with its repeated offers to leave the conduit and vaults in place upon payment for their transfer, clearly establishes there are no safety or operational reasons to remove them.
- 10 The Club argues that Pacific Power's new blanket policy to remove all facilities – rather than removing only those facilities that need be removed for safety or operational reasons – also violates Rule 6. Moreover, duplicate facility issues, which Mr. Clemens cited as the Company's primary safety concern, are not relevant in this case. The Club again requests reimbursement for the difference between what it has paid Pacific Power since it originally requested permanent disconnection in 2012 and what it would have paid CREA for service during that timeframe, which it estimates to be \$1,000 per month.
- 11 In its initial brief, Pacific Power argues that the NESC requires removal of all underground facilities upon permanent disconnection unless the Company is willing to assume the duty to perpetually maintain those facilities. Company facilities not likely to be reused should therefore be removed as part of a permanent disconnection to avoid the costs associated with tracking and maintaining those facilities.
- 12 On November 13, 2015, the parties filed reply briefs. In its reply brief, the Club argues that it is not necessary to transfer liability for the underground facilities at issue because the NESC requirement to maintain facilities no longer applies when the service point is eliminated. The Club further argues that while both Mr. Dalley and Mr. Clemens testified they are not experts on the NESC, the Club's witness, Mr. Marne, is a NESC expert. Accordingly, his testimony should be afforded more weight.
- 13 In its reply brief, Pacific Power acknowledges that its application of Rule 6 has been inconsistent, but believes it has been appropriately evolving over time. Rather than seek a refund for overpayment now, Pacific Power believes the Club should have paid the removal costs, disconnected its service, and then sought a refund.

- 14 Jesse Cowell, Davison Van Cleve, Portland; David Grossman, Minnick-Hayner, P.S., Walla Walla; and Stanley Schwartz, Witherspoon-Kelley, Spokane, represent the Club. Sarah Wallace, Senior Counsel, Pacific Power, Portland; and Troy Greenfield, Schwabe, Williamson, & Wyatt, Seattle, represent Pacific Power.

DISCUSSION AND DECISION

Net Removal Tariff – Rule 6

- 15 The Commission finds that, under the terms of Pacific Power’s Net Removal Tariff, the Company may not remove the empty conduits and vaults at issue in this proceeding when it permanently disconnects the Club’s service.
- 16 Rule 6 provides that, “When Customer requests Permanent Disconnection of Company’s facilities, Customer shall pay to Company the actual cost for removal less salvage of only those facilities that need to be removed for safety or operational reasons, and only if those facilities were necessary to provide service to Customer.” Pacific Power interprets this provision to authorize the Company to require the removal of all facilities, without exception, because “any permanent disconnection has safety or operational concerns that would necessitate removal of facilities.”² We find that Rule 6 is not reasonably susceptible to Pacific Power’s interpretation.
- 17 Consistent with its duty to regulate in the public interest, the Commission must give effect to all of the language in the Company’s tariff. The phrase “safety or operational reasons” clearly offers guidance to determine which of the Company’s facilities may be removed upon permanent disconnection. The inclusion of the term “only” necessarily means that those reasons do not always apply.
- 18 Accordingly, Pacific Power must demonstrate that safety or operational reasons require that the Company remove its facilities from the Club’s property as part of any service disconnection. The Company argues here that leaving the empty conduits and vaults in place would: 1) pose a safety risk to excavators and other contractors who may dig on Club property, 2) create duplicate facilities that are part of CREA’s larger pattern of co-locating facilities in this service area, 3) and violate the NESC unless the Company perpetually tracks and maintains the facilities. We find that none of these claims

² Dalley, TR 34:22-35:3.

demonstrate that safety or operational reasons require the removal of the empty concrete vaults and plastic conduit at issue in this proceeding, and address each of the Company's arguments in turn.

- 19 **Excavation Risk.** Pacific Power expresses concerns about the potential for an excavator to encounter empty conduit on Club property, mistake it for the energized facility, continue digging, and then strike the energized facility and sustain a serious or fatal injury. The Club correctly characterizes this scenario as implausible. First, the location of the empty facilities is known; the Club is well aware of their position on its property. Second, the empty conduit would not be locatable, because, as Mr. Marne noted at hearing, only energized facilities can be located. Finally, Mr. Clemens admitted at hearing that the Company's hypothetical scenario has never occurred in his 30 years of experience.³
- 20 The Company's own practices further undermine its argument. Pacific Power has consistently abandoned underground conduit in place, as demonstrated by the list it produced of 21 instances between 2003 and 2013 when it abandoned underground facilities in connection with permanent disconnections.⁴ The Company cannot reasonably claim that this is an unsafe practice. Accordingly, the Company's argument that the empty conduits and vaults pose a safety risk is unpersuasive.
- 21 **Duplicate Facilities.** Pacific Power provided several examples of CREA co-locating its facilities near Pacific Power's facilities, which the Company claims creates safety risks for emergency responders, utility employees, and contractors by making it more difficult to determine which utility owns a given facility. The Company's attempt to correlate these examples to the facilities at issue here – isolated, empty conduits and vaults situated on private property in a known location – is misplaced. While we understand that Pacific Power has broader concerns about facility co-location, this docket relates only to the Club's request for permanent disconnection and is not the proper forum to address those concerns.
- 22 **NESC Requirements.** Finally, we are not persuaded by the Company's argument that the NESC prohibits the Company from abandoning empty conduit in place, or otherwise

³ Clemens, TR 95:18-22.

⁴ See Dalley, Exh. No. RBD-17.

requires it to maintain abandoned facilities in perpetuity. Mr. Dalley, admittedly not an expert on the NESC, testified that he believes the Company must perpetually maintain the underground facilities upon permanent disconnection because the Company may not transfer ownership of its underground facilities to the Club, but cites no basis for his opinion.

23 Although no provision of the NESC directly addresses abandoning facilities in place, NESC Rule 012.C requires accepted good practice for the given local conditions. Mr. Marne, who is a qualified expert on the NESC, testified that abandoning underground conduit in place is, in fact, a common and accepted good practice. Mr. Marne also explained that the NESC only applies up to the service point; once service is disconnected, the service point ends and the NESC no longer applies to the abandoned facilities. Moreover, Mr. Marne testified that nothing in the NESC prohibits utilities from transferring ownership of their facilities. To ensure Pacific Power is relieved of any liability, the Club may simply assume ownership of the facilities following permanent disconnection, which it intends to do.

24 In sum, Pacific Power failed to carry its burden to prove the NESC prohibits abandoning empty facilities in place, and the record evidence supports the opposite conclusion. The Commission finds that abandoning empty conduit in place and transferring its ownership to the Club neither violates the NESC nor places a burden on the Company to maintain it in perpetuity.

25 **Decision.** Pacific Power has failed to demonstrate that safety or operational reasons justify the removal of the empty vaults and conduit at issue in this case. The Company, therefore, must disconnect the Club's service without removing those facilities or assessing any charge in connection with those facilities.

Refund for Overpayment

26 The Club requests the Commission order damages equal to the difference between the amount it paid Pacific Power since requesting permanent disconnection and the amount it would have paid CREA for service during that same period. Pacific Power estimates this amount to be \$1,000 per month.

27 The Commission does not have the authority to award damages. Rather, the Commission is limited to requiring refunds for overcharges or unlawful rates. RCW 80.04.220

provides that the Commission may order reparation damages for any excessive amount charged, and RCW 80.04.230 permits the Commission to order a utility to refund an overcharge. Under both statutes, the remedy available to the complaining party is an award in the amount overpaid for the impermissible charge. Although the charge for removal of the conduit and vaults arguably falls within the Commission's authority to address, the Club elected not to pay it. Accordingly, there is no unlawful charge or overcharge for the Company to refund.

28 The Club has continued to pay the Company's tariffed rates for electric service. The Club does not contend that it has not received such service. Neither RCW 80.04.220 nor RCW 80.04.230 authorizes the Commission to require Pacific Power to refund any portion of those charges under these circumstances. Accordingly, no refund is due.

FINDINGS AND CONCLUSIONS

- 29 (1) The Washington Utilities and Transportation Commission is an agency of the state of Washington vested by statute with the authority to regulate the rates, rules, regulations, and practices of public service companies, including electric companies.
- 30 (2) Pacific Power is an electric company and a public service company subject to Commission jurisdiction.
- 31 (3) Pacific Power's Net Removal Tariff, Rule 6, permits the removal of facilities upon permanent disconnection only when a safety or operational reason exists to justify their removal.
- 32 (4) Pacific Power failed to demonstrate that safety or operational reasons exist that require the removal of the empty underground conduit and vaults at issue in this proceeding.
- 33 (5) Pacific Power should be required to permanently disconnect the Club's service according to the terms of its Net Removal Tariff as properly applied.
- 34 (6) RCW 80.04.220 and RCW 80.04.230 authorize the Commission to provide refunds for unlawful charges. Although Pacific Power has attempted to collect unlawful charges, the Club has not paid those charges. Accordingly, the Club is

not entitled to a refund for services received from Pacific Power during the pendency of this proceeding.

ORDER

THE COMMISSION ORDERS:

- 35 (1) Pacific Power & Light Company shall permanently disconnect Walla Walla Country Club's electric service without any requirement to remove the empty vaults and conduit at issue in this proceeding or to charge the Walla Walla Country Club a fee in lieu of removing those facilities.
- 36 (2) The request of Walla Walla Country Club for a refund for services received from Pacific Power & Light Company is DENIED.

DATED at Olympia, Washington, and effective January 15, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge

NOTICE TO THE PARTIES

This is an initial order. The action proposed in this initial order is not yet effective. If you disagree with this initial order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this initial order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this initial order to file a *Petition for Administrative Review*. Section (3) of the rule identifies what you must include in any petition as well as other requirements for a petition. WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will not accept answers to a petition to reopen unless the Commission requests answers by written notice.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion.

You must serve on each party of record one copy of any Petition or Answer filed with the commission, including proof of service as required by WAC 480-07-150(8) and (9). To file a Petition or Answer with the Commission, you must file an original and **two (2)** copies of your Petition or Answer by mail delivery to:

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