

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)

Complainant,)

v.)

Docket No. UE-161204

PACIFIC POWER & LIGHT COMPANY,)

Respondent.)
_____)

RESPONSE TESTIMONY OF RAYMOND WISEMAN

ON BEHALF OF

YAKAMA POWER

April 21, 2017

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EXHIBITS

- Exhibit No. RW-2 – Pacific Power’s Responses to Yakama Power Data Requests 01-06
- Exhibit No. RW-3 – Tiin Ma Logging Company Disconnection Documents

1 **I. WITNESS IDENTIFICATION AND QUALIFICATIONS**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 **A.** My name is Raymond “Ray” Wiseman, and my business address is P.O. Box 1279,
4 Toppenish, Washington 98948.

5 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**
6 **PROFESSIONAL EXPERIENCE.**

7 **A.** I received my Bachelors of Science Degree from the University of Idaho in 1992. I
8 have worked for the Yakama Nation for over 26 years, and have served in many
9 capacities. As the Geographical Information Systems (GIS) Manager, from 1995 to
10 2004, I oversaw the development of a survey based parcel mapping project which
11 identified ownership and easements on the 1.4 million acre reservation, including
12 mapping over 33,000 power poles on the Reservation, many of which are owned by
13 PacifiCorp and many of which remain in violation of applicable laws for failure to be
14 located in lawful rights-of-way.

15 I became the General Manager for Yakama Power in 2004, building it from the
16 ground up, from 1.8 MW and a few accounts (mostly irrigation) to over 22 MW and
17 3000 accounts today. In doing so, I have been involved in all aspects of the utility,
18 including financial oversight, engineering, construction and maintenance, and daily
19 operations

20
21 **Q. WHAT IS YOUR CURRENT POSITION AND WHAT ARE YOUR DUTIES?**

22 **A.** I am still the General Manager, and my duties remain largely the same as
23 described above. I also oversee the development of telecommunication lines using our

1 system, work with our Board of Directors and manage the continued development and
2 expansion of our utility.

3
4 **Q. ON WHOSE BEHALF ARE YOU APPEARING IN THIS PROCEEDING?**

5 **A.** I am testifying on behalf of Yakama Power, an intervenor in this proceeding. Yakama
6 Power is a non-profit tribal electric utility created and wholly-owned by the
7 Confederated Tribes and Bands of the Yakama Nation (“Yakama Nation”), a federally
8 recognized Indian Tribe. Yakama Nation formed Yakama Power in 2004 for the
9 purpose of providing long term cost savings, economic development and job creation
10 opportunities, and to generally enhance the tribe’s sovereign ability to provide
11 essential government service within the boundaries of the Yakama Indian Reservation
12 (“Reservation”)¹ and adjacent areas where doing so is cost-effective. Later in my
13 testimony I will provide details of the actions Yakama Power has taken since 2004 to
14 achieve the goals set for it by the Yakama Nation.

15
16 **II. PURPOSE AND SUMMARY OF TESTIMONY**

17 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

18 **A.** The purpose of my testimony is to address PacifiCorp’s net removal tariff and
19 proposed stranded cost recovery fee in order to provide the Washington Utilities and
20 Transportation Commission (“WUTC” or “Commission”) with background
21 information regarding the reason the Yakama Nation formed Yakama Power, the goals

¹ As used herein, “Reservation” means the area of land reserved for the Yakama Indian Nation as its permanent tribal homelands and where the federal government holds title to the land in trust on behalf of the Yakama Nation. The Yakama Nation Reservation covers approximately 2,185.94 square miles located primarily in Yakima County, Washington but also including portions of Lewis and Klickitat counties in Washington.

1 Yakama Power is working to achieve, and certain legal and practical issues applicable
2 to Pacific's operation on Trust Land that make a one-size-fits-all approach to its
3 permanent disconnection tariffs and rules inapposite on the Reservation.

4 In addition, I will describe how Pacific's current practices for customers on the
5 Reservation seeking permanent disconnection is to demand unreasonably high and
6 unverifiable up-front payment demands for the costs of removing its facilities, and to
7 stall and delay when its demands are not met. I will also describe how PacifiCorp
8 routinely recovers more than current facilities investment when it is willing to
9 negotiate in good faith for a sale of its assets to Yakama Power.

10 Lastly, I will explain why there is no basis for allowing Pacific to charge its
11 proposed stranded cost recovery fee to departing customers located on the Reservation
12 because it lacks a reasonable expectation of continued service where it: (i) has no
13 exclusive right to serve, (ii) has limited or no rights to long-term placement of its
14 facilities on Trust Land, and (iii) has been given ample notice that its customers on the
15 Reservation have a viable alternative in the form of Yakama Power.

16 **Q. PLEASE SUMMARIZE YOUR TESTIMONY IN THIS PROCEEDING.**

17 **A.** I recommend that the Commission reject Pacific's proposed tariff and rule changes
18 outright. In addition, or alternatively should the Commission decide some aspect of
19 Pacific's proposal warrants approval, I propose the following specific changes to
20 ensure that departing customers located within the Reservation boundaries are treated
21 fairly and consistently, and with an appreciation of the limited to non-existent right
22 Pacific has to hold them captive:

- 1 • Pacific should provide a detailed removal cost estimate within thirty (30)
2 days of receiving a customer's request for permanent disconnection. The
3 removal cost estimate should include engineering plans, a description of
4 the facilities to be removed, transferred or abandoned in place, and identify
5 any safety or operational reasons for any required removals.
- 6 • Pacific should not be allowed to recover removal costs for any facility
7 located on property for which Pacific does not have a valid right to use, or
8 located on Trust Land where the BIA has the right to require removal with
9 60 days or less notice.
- 10 • Pacific's cost for removing facilities should not exceed their salvage value,
11 and departing customers should have the right to obtain cost estimates and
12 removal services from qualified independent service providers.
- 13 • Pacific should not be allowed to recover stranded costs from departing
14 customers located within the Reservation and served in whole or in part by
15 facilities located on Trust Land.

16
17 **III. UNIQUE YAKAMA NATION ISSUES RELEVANT TO TARIFF**

18 **Q. AS A TRIBAL UTILITY, HOW WOULD YOU DESCRIBE YAKAMA**
19 **POWER?**

20 **A.** Yakama Power is a non-profit electric utility, incorporated under the laws of the
21 Yakama Nation, a federally recognized Indian tribe, with a large reservation located in
22 the Yakima valley of central Washington. Yakama Power's mission is to provide at-
23 cost electric services to all areas within the boundaries of the Reservation,

1 consolidating the electrical services on the Reservation into one entity instead of the
2 multiple intermingled entities that are currently active (besides Yakama Power,
3 PacifiCorp, Benton REA and Klickitat County PUD also serve the Reservation). The
4 vast majority of Yakama Power's residential customers are tribal members who live
5 near or below the Federal poverty level. Almost all of Yakama Power's customers are
6 located on Trust Lands within the Reservation. Also, since Yakama Power is a full
7 requirements customer of the Bonneville Power Administration (BPA) its customers
8 share the benefits of public preference access to federal power.

9 **Q. HOW HAS YAKAMA POWER'S UNIQUE SITUATION INFORMED**
10 **INTERACTIONS WITH PACIFICORP RELEVANT TO THE TARIFF?**

11 **A.** After initial efforts to negotiate a voluntary sale of Pacific's facilities on the
12 Reservation did not bear fruit, the Yakama Nation exercised its sovereign
13 condemnation powers to force a sale of certain PacifiCorp utility assets located on
14 Trust Lands within the Yakama Nation. Ultimately, Yakama Power and Pacific
15 reached a settlement which this Commission approved on January 25, 2006, Order No.
16 01, Docket No. UE-051840. Since that date, after Yakama Power's efforts to
17 negotiate a bilateral purchase of Pacific's facilities were repeatedly rebuffed, the two
18 utilities have settled another Tribal condemnation process involving PacifiCorp's
19 assets located on Trust Lands in or near the town of White Swan on the Reservation.
20 The Yakama Nation has begun additional condemnation proceedings involving
21 PacifiCorp's assets located on Trust Lands in or near the town of Wapato on the
22 Reservation. To date, we have not taken any PacifiCorp customers outside of a sale or
23 condemnation settlement.

1 We do not have a service territory agreement with PacifiCorp and have never
2 had discussion with them about one.

3 **Q. CAN YAKAMA POWER ONLY ACQUIRE ANOTHER UTILITY'S ASSETS**
4 **THROUGH TRIBAL CONDEMNATION?**

5 **A.** No. For example, we recently completed a deal with Benton REA, funded by the U.S.
6 Rural Utilities Service, to purchase all of Benton's utility assets located within the
7 boundaries of the Reservation over a three year time period. This large sale was
8 approved by a vote of Benton's customers. We have had a number of statements by
9 PacifiCorp about a willingness to sell, but then little to no follow up by PacifiCorp or
10 responses to our requests for meetings or actions on such sales.

11 **Q. HOW ARE TARIFF ISSUES DIFFERENT ON THE YAKAMA**
12 **RESERVATION?**

13 **A.** Well, first and foremost, the use of Trust Land for utility purposes is regulated by the
14 U.S. Bureau of Indian Affairs (BIA), as the U.S. trustee, and by applicable Tribal
15 laws. As a result of the unique status of Trust Lands, my understanding is that the
16 State has no civil regulatory jurisdiction, including utility regulation, over such Trust
17 Lands.

18 Also, no adverse possession or prescriptive easements are allowed across Trust
19 Land. Instead, the BIA, working with the Tribal land owners, determines whether to
20 issue an easement, a lease, or merely a permissive license for the use of the Trust Land
21 by a utility. This unique status of Trust Land has been in place since the late 1930s
22 after passage of the Indian Reorganization Act. Numerous federal court cases have
23 reinforced it and the BIA has had a presence on our Reservation long before the

1 1930s. Despite all of this, PacifiCorp has routinely failed to obtain any easements or
2 leases for the use of the Trust Land on which it either serves or crosses to serve
3 customers. As a result, the Tribal landowners, through the BIA, can have PacifiCorp's
4 assets removed from trust land with a 30 day notice following federal regulations. It is
5 my understanding that PacifiCorp has received letters to this effect from the BIA,
6 although I do not have a copy of any such letters.

7 Finally, despite Pacific's response to Yakama Power's DR-06, Pacific clearly
8 has access to Trust Land data sufficient to track such lands as evidenced by its use of
9 such data in the documents it sent to TML.²

10 **Q. HOW DOES THIS IMPACT THE NET REMOVAL TARIFF?**

11 **A.** PacifiCorp has no reasonable expectation of continued service on Tribal Land. For
12 example, they have long been on notice that the Reservation is regulated differently,
13 including when the first poles and wires went in almost a century ago. Since at least
14 2004, they have been on notice from the Yakama Nation and Yakama Power of our
15 intent to serve our own people and Reservation. The ongoing Yakama Nation
16 condemnations of PacifiCorp's assets, and the possible future sales of PacifiCorp
17 assets to Yakama Power, more than adequately ensure that PacifiCorp recoups its
18 remaining facilities investment.

19 Also, once a customer has connected directly to Yakama Power, given the
20 Yakama Nation's control over its Reservation, PacifiCorp has no reasonable
21 expectation of continued or future service to such a customer, and in fact ceases to

1 provide a utility “service” for which it can claim ongoing rights pursuant to the
2 Commission’s jurisdiction.

3 Finally, it is highly questionable whether a State tariff of any kind can even be
4 applied to customers located on Trust Lands, raising issues that will ultimately be
5 resolved between PacifiCorp and the BIA and Yakama Nation.

6 **Q. ARE YOU AWARE OF ANY RECENT EXAMPLES OF SITUATIONS**
7 **WHERE PACIFIC IMPEDED A CUSTOMER REQUESTING PERMANENT**
8 **DISCONNECTION FOR THE PURPOSE OF RECEIVING SERVICE FROM**
9 **YAKAMA POWER?**

10 A. Yes. Tiin Ma Logging (“TML”) operates a logging maintenance and service shop on
11 ten (10) acres of Trust Land leased from the BIA. TML is owned by an enrolled
12 member of the Yakama Nation, and has been in operation for over forty years. In
13 early 2016, TML came to Yakama Power and asked if we could provide electric
14 service. On June 30, 2016, TML gave notice to Pacific that it desired to disconnect
15 from Pacific and obtain service from Yakama Power.³

16 On or about January 30, 2017, approximately *seven months after* TML
17 requested disconnection and after this proceeding had begun, Pacific sent TML two
18 agreements that it required to be executed before disconnection could begin. The first
19 agreement, labeled a “Customer Requested Disconnection Agreement (CRDA),”⁴
20 estimates the actual cost of removal, for which TML would be responsible, at
21 \$8,472.00, and states that such amount must be tendered to Pacific before work could

³ Exh. RW- 3, at 1.

⁴ Exh. RW- 3, at 3-5.

1 commence. Moreover, the CRDA provides that, if Pacific determines the actual cost
2 of removal exceeds \$8,472.00, TML would be obligated to pay such overage.

3 The second agreement, labeled a “Service Line Agreement (SLA)”, purports to
4 have TML grant Pacific permission to construct, operate and maintain a service line
5 on and across” the 10-acre parcel of Trust Land that TML leases from the BIA.⁵
6 As it currently stands, almost nine months after TML requested disconnection from
7 Pacific, Yakama Power has extended facilities to TML and is ready, willing and able
8 to provide service to TML at such point as Pacific disconnects its facilities from TML.
9 Moreover, to my knowledge, Pacific has not provided TML any detail identifying the
10 facilities it claims must be removed, their associated value or details as to how the
11 estimated \$8,472.00 removal cost charge was derived. Likewise, to the best of my
12 knowledge, Pacific has not asked for and received permission from the BIA (the only
13 entity authorized to grant rights associated with Trust Land) to install and maintain the
14 facilities it is trying to charge TML to remove.

15
16 **IV. EFFECT OF PACIFIC’S PROPOSED NET REMOVAL TARIFF**

17 **Q. WHAT IS YOUR UNDERSTANDING OF THE MAIN COMPONENTS OF**
18 **THE TARIFF AND RULE CHANGES FOR WHICH PACIFIC IS SEEKING**
19 **APPROVAL IN THIS PROCEEDING?**

20 **A.** As I understand it, Pacific’s proposal in this proceeding is two-fold. First, Pacific is
21 asking the Commission to approve changes to Pacific’s tariffs and rules governing
22 situations where Pacific’s customers ask to permanently disconnect from Pacific and

⁵ Exh. RW- 3, at 6-7.

1 begin taking service from another utility. Specifically, Pacific is proposing changes to
2 its Rule 1, Rule 6 and Schedule 300 that would allow it to charge departing customers
3 the Actual Cost of Removal⁶ and disconnection of Pacific’s facilities, or a Fair Market
4 Value⁷ purchase (hereinafter “Net Removal Tariff Proposal”).

5 Second, Pacific is asking the Commission to approve a revision to its Schedule
6 300 that would establish and require departing customers to pay a stranded cost
7 recovery fee before permanent disconnection would be allowed to take place
8 (hereinafter “Stranded Cost Recovery Fee”). Pacific is asking for the right to charge
9 departing residential customers a flat fee of \$6,153.00 and non-residential customers
10 an amount equal to 4.5 times the customer’s annual revenue for the twelve-month
11 period before Pacific receives the customer’s request to disconnect.⁸

12 **Q. DOES PACIFIC INTEND FOR ITS NET REMOVAL TARIFF PROPOSAL**
13 **AND STRANDED COST RECOVERY FEE TO APPLY TO ALL ITS**
14 **CUSTOMERS WITHOUT REGARD TO WHETHER A CUSTOMER IS**
15 **LOCATED ON OR SERVED USING FACILITIES THAT RESIDE ON TRUST**
16 **LAND?**

17 **A.** Yes. Pacific has expressly stated that it does not distinguish between customers
18 located within the Reservation on Trust Land, or served using facilities that utilize
19 Trust Land, and those lands located outside the Reservation on non-Tribal property.⁹

20 **Q. DO YOU AGREE WITH PACIFIC THAT IT MAKES NO DIFFERENCE IF A**
21 **DISCONNECTING CUSTOMER WITHIN THE RESERVATION**

⁶ “Actual Cost of Removal” as defined in Rule 1 (Revision of Sheet No. R1.1).

⁷ “Fair Market Value” as defined in Rule 1 (Third Revision of Sheet No. R1.2).

⁸ As detailed in Exh. RW-2, at 1.

⁹ See Exh. RW-2 at 4.

1 **BOUNDARIES IS SERVED BY FACILITIES ON OR UTILIZING TRUST**
2 **LAND?**

3 **A.** Absolutely not. As discussed earlier in my testimony, if Pacific’s facilities are located
4 on Trust Land, or need to use Trust Land in order to provide service, then Pacific’s
5 rights to continue service are limited by the Yakama Nation’s sovereign condemnation
6 authority, the need for BIA authorization to utilize such property, and the BIA’s
7 treatment of utility assets as fixtures on the land. Any claim by Pacific that it is
8 entitled to recover stranded costs or other investments made with respect to such
9 property cannot be evaluated without weighing the impact of these Tribal-specific
10 rights on the reasonableness of Pacific’s claims.

11 **Q.** **CAN YOU PROVIDE A SPECIFIC EXAMPLE OF HOW PACIFIC’S**
12 **PROPOSALS IN THIS PROCEEDING COULD UNFAIRLY EFFECT**
13 **PACIFIC CUSTOMERS ON THE RESERVATION WHO WANT TO BE**
14 **SERVED BY YAKAMA POWER?**

15 **A.** Yes. Tiin Ma Logging (“TML”) discussed earlier is a perfect example. TML is
16 owned by an enrolled member of the Yakama Nation, and its facilities are located on
17 Trust Land leased from the BIA. TML wants to receive electric service from Yakama
18 Power, a non-profit utility created and wholly-owned by the Yakama Nation. Based
19 on the information contained in Exhibit RW-2 and Exhibit RW-3, it appears that
20 Pacific is demanding \$8,472 (or more if actual costs exceed Pacific’s estimate) to
21 remove facilities that do not appear to be authorized by a valid easement agreement.
22 Even more egregious, a customer such as TML with a monthly usage charge of under
23 \$1000.00 could be assessed a Stranded Cost Recovery Fee of \$35,000 - \$40,000

1 without any consideration as to whether Pacific actually prudently incurred any costs
2 pursuant to a reasonable expectation of future service.