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

REPLY BRIEF OF THE WALLA WALLA COUNTRY CLUB

November 13, 2015

TABLE OF CONTENTS

I. INTRODUCTION

1 The Walla Walla Country Club ("WWCC" or the "Club") hereby submits its reply brief to the Washington Utilities and Transportation Commission ("WUTC" or the "Commission") in response to the Initial Brief of Pacific Power & Light Company ("Pacific Power" or the "Company"). The Company's Initial Brief fails to justify Pacific Power's continued refusal to disconnect its electric service facilities from Club property in accordance with the Company's Net Removal Tariff.

2 The Company's Initial Brief also mischaracterizes or misinterprets relevant issues in this proceeding, including:

- Improper focus on Columbia Rural Electric Association, Inc. ("Columbia REA"), including the treatment of Columbia REA as the alleged "real party in interest in this docket,"[1/] notwithstanding the Company's failure to seek joinder of Columbia REA as a necessary party;
- The erroneous assertion that the Commission can or should "force" a facilities sale, which ignores the fundamental issue of whether the Company can refuse to perform a permanent disconnection until a customer pays removal charges for facilities that do not need to be removed under Net Removal Tariff terms;
- Pacific Power's failure to recognize plain distinctions between electric service hardware and separate conduit, inappropriately lumping all facilities together instead of acknowledging the Club's oft-repeated willingness to pay removal charges for all service facilities except underground conduit and vaults; and
- The lack of safety concerns related to empty, abandoned conduit established through expert testimony on standard industry practice, including the Company's historical abandonment practice, and underground locate procedures that demonstrate Pacific Power's hypothetical safety concerns are without merit.

1/ Initial Brief of Pacific Power ("Initial Brief") at 1, n.1.

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II. REPLY

A. The Proper Focus in this Proceeding Is whether Pacific Power Provided Disconnection Service to Its Customer in Accord with Tariff and Statute

3 The Club is a Pacific Power customer, albeit now unwillingly, and the ultimate issue for Commission determination in this proceeding is whether the Company acted in accordance with the Net Removal Tariff and governing statute when the Club requested permanent disconnection. More specifically, the dispositive issue is whether Pacific Power demanded removal charges prior to disconnection for underground facilities which did not need to be removed for safety or operational reasons, contrary to Rule 6.I.1.

4 In briefing, the Company continues to improperly focus upon Columbia REA, rather than the appropriate service (or lack thereof) provided to its own customer. While Pacific Power never sought a joinder of Columbia REA as a necessary party to this proceeding, the Company frames its initial briefing section as if it had, and as if the Club does not exist, i.e., "The Net Removal Tariff does not provide for a forced sale of Pacific Power's facilities, *as sought by Columbia REA*."[2/] The manner in which Pacific Power ignores party joinder rules,[3/] as well as the Club, effectively tells the story of this whole case—that is, the Company apparently believes that it may ignore applicable tariff rules that prescribe its duty to provide reasonable service to and disconnection of customers.

5 In the very order authorizing the Net Removal Tariff, the Commission expressly reminded the Company that "PacifiCorp has a statutory obligation to serve all those reasonably entitled to service. PacifiCorp cannot unduly discriminate among

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2/ Initial Brief at 1 (emphasis added).

3/ E.g., Re the Petition of Verizon Nw., Inc., Docket UT-011439, Third Suppl. Order at ¶¶ 14, 28 (May 31, 2002) (making another utility service provider a party, in order "to protect its interests under Civil Rule 19," Joinder of Persons Needed for Just Adjudication).

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customers or provide unreasonable preferences. *RCW 80.28.090, .100, and .110.*"[4] As noted in opening briefing, however, Pacific Power has serviced the Club in a discriminatory manner,[5] due to the Company's inability (or unwillingness) to separate its responsibilities to the Club from its competitive policy concerns with Columbia REA.

6 Still further, the Company's unjustified and inappropriate concentration upon Columbia REA has caused Pacific Power to lose hold on a consistent position in this case. In briefing, Pacific Power claims that what Columbia REA "might do" with facilities, after a permanent disconnection and facilities transfer, would be "a complete unknown."[6] Yet, this claim is contrary to Company testimony declaring that Columbia REA would secure "a competitive advantage" and force remaining Pacific Power customers to "subsidize" Columbia REA through a facilities acquisition by the Club.[7] In other words, a rational claim that Columbia REA would be advantaged by use of facilities cannot be made while the Company simultaneously alleges complete ignorance of what Columbia REA would actually do with such facilities.

7 Pacific Power's desire to remove the facilities is born of its business concerns. Rule 6 tells us when Pacific Power can shift facility removal costs onto a departing customer. However, Rule 6 does not permit cost shifting where a facility's removal is motivated by business or competitive concerns.

4/ WUTC v. PacifiCorp, Docket UE-001734, Eighth Suppl. Order at ¶ 56, n.3 (Nov. 27, 2002) (emphasis in original).
5/ Opening Brief of the Walla Walla Country Club ("Opening Brief") at ¶¶ 61-64.
6/ Initial Brief at ¶ 27.
7/ Exh. No. RBD-1T at 26:1-17.

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B. The Commission Should Reject the Company's Attempts to Shift Attention from Pacific Power's Disconnection Obligations to "Forced Sale" Arguments

1. Pacific Power's Case Includes a Material Misrepresentation of Rule 6

8 In association with a request for permanent disconnection, the Commission "only" allows Pacific Power to charge its customers for the removal costs of those facilities that need to be removed: "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."[8/] Thus, prior to disconnection, Pacific Power cannot insist that customers pay removal costs for facilities that do not need to be removed under the Net Removal Tariff, since doing so would effectively write the word "only" out of Rule 6. In other words, without the express limitation of the word "only," the Company would have carte blanche to insist upon any removal charges and could effectively hold customers hostage to unauthorized demands before providing mandatory disconnection service. To this end, the Company expressly argues on brief that a "customer is required to pay the estimated amount [of the cost of removing facilities], *before disconnection* and removal of the facilities."[9/]

9 Clarification on what the Net Removal Tariff actually permits is necessary because the Company continues to ignore the explicit wording of Rule 6. As Company witness R. Bryce Dalley also did in filed testimony,[10/] the Initial Brief omits the word "only" in alleging that Rule 6 provides that a "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."[11/]

8/ Pacific Power Tariff WN-U75, Rule 6.I.1 (emphasis added).
9/ Initial Brief at ¶ 1 (emphasis added).
10/ Exh. No. RBD-1T at 14:12-15.
11/ Initial Brief at ¶ 1.

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10 The inaccurate quote twice presented by the Company—i.e., "of those facilities," rather than "of *only* those facilities"—is being used to demand customer payment for removal costs of facilities that do not need to be removed for safety or operational reasons. In this manner, the Company is attempting to bypass the specific prohibition established by the actual Net Removal Tariff terms. Pacific Power's repeated misquotation of Rule 6 should not go unnoticed by the Commission, especially given that an accurate reading of Rule 6 reveals that the Company violated the Net Removal Tariff by requiring pre-payment of removal costs for certain underground facilities that did not need to be removed for safety or operational reasons.

2. The Commission Does Not Need to Consider "Forced Sale" Issues

11 Pacific Power couples its inaccurate portrayal of Rule 6 terms by arguing the Company cannot be "forced" to sell *its* facilities. The Company misses the relevant point. Namely, the Company's specific and repeated sale offer to the Club—to convey facilities ownership and absolve the Company of all liability related to conduit and vaults on Club property—conclusively demonstrates that such facilities did not need to be removed for safety or operational reasons. As the Club explained in its Opening Brief, "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."[12/] Accordingly, the Company's sale offer settles the "safety or operational" issue. It is only the Company's recent "no sale" policy that creates its "forced sale" theory.

12/ Opening Brief at ¶ 2.

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a. "Forced Sale" Issues Are Irrelevant

12 In any event, the "forced sale" issue is ultimately irrelevant in this proceeding, since a finding that Pacific Power has violated the Net Removal Tariff, and a subsequent order requiring the Company to act on the Club's long-standing disconnection request, is premised upon what facilities "need" to be removed. The Club explained in its Opening Brief that, "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."[13/]

13 As Club witness and nationally recognized expert on the National Electric Safety Code ("NESC") David Marne testified, "it is an accepted good practice to abandon empty, underground conduit, especially when transferred upon permanent disconnection."[14/] Mr. Marne acknowledged that, in circumstances of a facilities transfer, the abandonment of empty conduit falls "especially" within the confines of "accepted good practice"; however, by its very terms, this expert testimony was not *limited* to a transfer scenario. Rather, as a general proposition, Mr. Marne explained: "It is a typical, accepted good practice to abandon underground conduit in place for the simple reason[] that … abandoned empty conduit does not pose a safety risk."[15/]

14 Mr. Marne's testimony is validated by the Company's response to Bench Request No. 1, in which Pacific Power listed over twenty instances in which it either "abandoned or transferred facilities in lieu of removal when a customer requested

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13/ Id. at ¶ 43.
14/ Exh. No. DJM-5T at 2:4-6.
15/ Exh. No. DJM-1CT at 2:20-3:2.

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permanent disconnection."[16] As seventeen of these instances occurred on private property, and only one of those involved a bill of sale,[17] it cannot be rationally argued that the Company has not *often* simply abandoned facilities on customers' private property without any formal transfer of those facilities. Additionally, the Club has explained that a facilities transfer is not a prerequisite to the granting of a disconnection order, given: 1) the absence of any NESC requirements to maintain facilities "where there is no service point"; 2) Rule 4 provisions which do not require Company maintenance of facilities after a disconnection; and 3) the probable reversion of ownership interests to the Club, upon disconnection, for facilities paid for and installed by the Club, based on Rule 1 and 4 terms.[18]

15 In this light, the Company's emphasis upon the "forced sale" issue has no bearing on the Club's primary request 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."[19]

b. Club Witnesses Do Not Add Support for Company Arguments

16 While Pacific Power attempts to place great significance upon Club witness Bradley Mullins' recommendation for a facilities transfer, even the Company concedes that Mr. Mullins incorporated a "telling qualifier" in testimony.[20] Specifically, Mr. Mullins plainly stated that his testimony "addresses issues of fair valuation under the

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16/ Pacific Power Response to Bench Request No. 1. See also Docket UE-132182, Report on Permanent Disconnection and Removal of Facilities under Schedule 300 and Rule 6, Att. D (Nov. 27, 2013).
17/ Pacific Power Response to Bench Request No. 1.
18/ Opening Brief at ¶¶ 45-49.
19/ Id. at ¶ 74.
20/ Initial Brief at ¶ 3.

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Company's application of the Net Removal Tariff" and "does not contain any legal conclusions … as to the tariff's application to the sale and transfer of facilities absent removal."[21] Hence, fully appropriate to the role of an expert witness testifying on applied issues of fair valuation under the Net Removal Tariff, Mr. Mullins recommended, from a *policy* standpoint, "that the Commission find that it is in the public interest for the Company to transfer the facilities at net book value, plus reasonably negotiated labor charges necessary to effect permanent disconnection."[22] The fact that Mr. Mullins did not testify as to any *legal* aspects of a potential facilities transfer, either in filed testimony or at hearing, was also appropriate and in no way helps the Company to obscure the crucial issue of whether it violated the Net Removal Tariff.

17 As an additional note, in attempting to critique Mr. Mullins' qualifications and cast dispersions on the Club's case, the Company opens the door to significant criticism of its own witnesses and expertise. For instance, Pacific Power notes that Mr. Mullins testified at hearing that he was "not qualified to answer" a legal question regarding eminent domain.[23] Far more telling, however, are the admissions of Company witnesses Mr. Dalley and William Clemens, testifying that they do not have expertise or experience on the NESC and safety matters upon which they testify.[24] While Mr. Mullins, who is not an attorney, cannot be faulted for a lack of legal qualifications, Messrs. Dalley and Clemens lack comparable qualification to Club expert Mr. Marne on the very matters upon which they hope to persuade the Commission.

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[21] Exh. No. BGM-6T at 2, n.1.
[22] Exh. No. BGM-1CT at 17:6-9.
[23] Initial Brief at ¶ 4 (citing Mullins, TR. 154:6-9).
[24] E.g., Dalley, TR. 56:12-13 ("I'm not an expert on the NESC"); Clemens, TR. 94:7-25 (testifying 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).

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18 Similarly, Pacific Power offers a hearing colloquy in which Mr. Mullins stated a lack of detailed familiarity with what the Company portrays as "the *commonly-recognized* definition of fair market value."[25] It is also difficult to attribute any fault to Mr. Mullins on this matter, however, since the Company claimed, as late as July 2015, not to "have any actual (e.g., non-proximate) methodology to determine the 'market value' of facilities associated with the Club's permanent disconnection request."[26] Further, given the Company's alleged ignorance, prior to the filing of Mr. Mullins' Rebuttal Testimony, as to any methodology to determine market value, it is more than a little disingenuous to challenge Mr. Mullins over something styled at hearing as a "commonly-recognized" market value definition, or to claim that Pacific Power initially commissioned a fair market value appraisal because of the alleged "degree to which Mr. Mullins' prefiled testimony deviated from *recognized* valuation standards."[27]

19 The Company also mischaracterizes Mr. Marne as testifying that, "in the event of permanent disconnection, there are only two alternatives, namely removing the facilities or selling them to the departing customer."[28] The Company concludes that Mr. Marne "was required to concede that the Net Removal Tariff does not provide for the sale or transfer of Pacific Power's facilities in the event of permanent disconnection."[29] As noted above, however, Mr. Marne expressly stated that "[i]t is a typical, accepted good practice to abandon underground conduit," which presents an obvious third "abandonment" alternative for the Company. Accordingly, Pacific Power significantly

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25/ Initial Brief at ¶ 8 (emphasis added) (citing Mullins, TR. 155:16-156:10). Notably, the Company cited a legal standard found in the Washington Pattern Jury Instructions. See Initial Brief at 3, n.15.

26/ Exh. No. BGM-8C at 1 (Company Response to Club Data Request ("DR") 088).

27/ Initial Brief at ¶ 10 (emphasis added).

28/ Id. at ¶ 20; see also id. at ¶ 23 ("according to Mr. Marne, the only alternative to a forced sale is removal").

29/ Id. at ¶ 20.

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mischaracterizes record evidence in asserting that "Mr. Marne's testimony is *entirely predicated* upon a forced sale of Pacific Power's facilities."[30]

c. Pacific Power's "Forced Sale" Reasoning Is Unsound

20 Even if the Commission were to consider the Company's irrelevant "forced sale" arguments, Pacific Power's reasoning is unsound. Simply put, it is irrational for the Company to suggest that a return of property originally paid for by a customer is a "forced sale" that somehow "takes" Pacific Power property—or that this alleged "taking" then authorizes payment of fair market value as "just compensation" through a misplaced analog to the law of eminent domain.

21 A more accurate characterization of what the Company seems to implicate would be an inequitable "forced repurchase" by the Club. That is, after already having paid to install facilities, and having those facilities "automatically" transfer to the Company under the operation of Rule 1,[31] Pacific Power is effectively arguing that the Club must now re-appropriate and pay once more for those same facilities, as some sort of "virtual condemnor."

22 The Company goes on to argue that the law of eminent domain establishes the "measure of damages … for the property taken."[32] The supposed "damages" are then presented as equal to the fair market value of facilities, i.e., the value as alleged by Pacific Power. For starters, this equation fails because the Company's fair market value estimation, as presented in this case, assumes that there is "a *willing* buyer and a *willing* seller, neither being under any compulsion to buy or sell."[33] Additionally, it would be improper and inconsistent as a regulatory matter for Pacific Power to accept facilities as

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30 Id. at ¶ 21 (emphasis added).
31 See Opening Brief at ¶¶ 47-49.
32 Initial Brief at ¶ 4.
33 Exh. No. BGM-14CX at 10 (emphasis added).

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acquired property under the operation of Rule 1, but then claim that a return of those facilities is only authorized once "fair market value" has been received, contrary to any provision within Rule 6—which addresses only "net book value," in relation to "salvage value," and that in relation to facilities removed.[34/]

C. Pacific Power's Refusal to Recognize Important Distinctions between Facilities Should Be Rejected

23 In addition to the irrelevance of the Company's "forced sale" arguments, Pacific Power fails to acknowledge critical differences between two separate categories of facilities: 1) "Wires, Transformers and Metering"; and 2) "Conduits and Vaults." This distinction is not a Club invention—it is the categorization originally used by Pacific Power in its "Removal Estimate" of January 2013.[35/]

24 Notwithstanding, the Company inappropriately lumps all facilities together in this proceeding, both of the electric hardware category and of the separate conduit and vault, underground facility type. For instance, Pacific Power claims that a Club data response "clearly indicates that *all of the subject facilities* will be removed" by the Club, if the Club were to receive service by Columbia REA.[36/] Yet, the Company is only able to reach the improper conclusion that "all" facilities would be removed by selectively quoting from a portion of the Club's data response, a portion that merely addresses the first, electrical hardware category of facilities.[37/] A simple examination of the very next paragraph of the same Club response demonstrates that "very limited pieces of conduit already in place" could be of use to Columbia REA. Thus, facilities in the

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[34/] E.g., Rule 6.I.1; Rule 6.I.5.
[35/] Exh. No. JCT-8.
[36/] Initial Brief at ¶ 26 (emphasis added).
[37/] Id. at ¶ 25.

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second category (i.e., conduit and vaults) would not be removed and would, therefore, be treated differently than facilities in the first, electric hardware category.

25 Pacific Power's election not to distinguish between facility categories accounts for the Company's failure to acknowledge certain statements made by Club witnesses. For example, the Company finds it remarkable that Mr. Mullins stated the Club would remove electric hardware, of the first facilities category, after Mr. Mullins had testified that removal of conduit and vaults, in the second facilities category, would be invasive, costly, and unnecessary.[38/] There is nothing the least bit "remarkable" about Mr. Mullins' statement, of course, so long as a distinction between facilities categories is recognized. Similarly, in examining Club General Manager Jeffrey Thomas, Pacific Power counsel failed to observe facilities distinctions, first referring to the removal of "all of the electrical components" in the first category of facilities, but then improperly lumping everything together in a follow-up question about the removal of "all of Pacific Power's facilities."[39/] When counsel attempted the same tactic with Mr. Marne, however, the Club's expert repeatedly corrected such conflation by specifying distinctions within the broad "facilities" and the indiscriminate "all" terminology used by the Company.[40/]

26 Likewise, Pacific Power states removal costs in the undifferentiated sum of $104,176, and alleges a fair market value appraisal in the equally non-discrete amount of $108,262.[41/] Only by relying on such lump sums, however, is the Company able to

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38/ Id. at ¶ 26.

39/ Id.

40/ Marne, TR. 175:21-177:7 (clarifying "[f]acilities as in conduits," specifying that only "beneficial" facilities would be passed on by the Club in the event of a facilities transfer and "[t]here would be [ ] empty plastic pipe in the ground")

41/ Initial Brief at ¶¶ 10-11.

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make the erroneous claim that the Club seeks the "forced sale" of Pacific Power facilities "for less than 25 percent of the fair market value of those facilities."[42/]

27 The recognition and application of the distinctions between facilities categories are critically important to this proceeding, because the Club has never wavered from its understanding that the electrical hardware in the first facilities category should be removed, with such costs fully reimbursable by the Club.[43/] Thus, only the costs associated with the second category of facilities—underground conduit and vaults—are actually in dispute in this case. If the two facilities categories are appropriately distinguished and then considered separately, the Commission only needs to consider whether conduit and vaults comprise "facilities that need to be removed for safety or operational reasons" under the Net Removal Tariff.[44/] In turn, none of the Company's lump sum valuations will have any relevance, should the Commission find that no safety or operational reasons necessitate removal of facilities in the second facilities category.

28 Pacific Power's improper conflation of facilities merits further note, in regard to the lack of value that should be attached to the alleged $142,588 "new" facilities cost mentioned in Company briefing and stated in the Company's appraisal report.[45/] Specifically, this cost figure not only fails to distinguish between facilities categories, but also bears no reasonable correlation to the Club's 2013 valuation of just

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42/ Id. at ¶ 11.

43/ 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").

44/ Rule 6.1.1.

45/ Initial Brief at ¶ 10 (citing Exh. No. BGM-14CX, App. at 1). In its Opening Brief, the Club offered a sampling as to why the Company's last-minute appraisal report should be given no weight in the Commission's deliberations in this proceeding. Opening Brief at ¶¶ 65-67.

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$7,760 for the cost of new conduit and vaults.[46] Such a vast difference in the representation of new facilities costs supports Mr. Mullins' hearing testimony that the values contained in the appraisal report appear to be "very much inflated."[47]

D. Expert Club Testimony, Demonstrating a Lack of Safety Issues Related to Conduit and Vaults on Club Property, Has Not Been Rebutted

1. The Company's "Serious" Injury Hypothetical Is Unsupported by Industry Practice

29 In briefing and at hearing, the Company has failed to persuasively rebut the expert testimony of Mr. Marne, who explained that there would be no safety concerns related to empty conduit and vaults on Club property, if the Company were either to abandon or transfer such underground facilities to the Club in connection with a permanent disconnection. The Company suggests a scenario that could result in "serious if not fatal injury," involving a hypothetical third-party contractor on Club property who "may secure a locate."[48] According to the Company, serious injury might occur if a contractor were to: a) reveal the presence of an energized line through the locate; b) come across empty conduit first; and then c) incur injury or death by continuing to dig while being "entirely unaware of additional conduit containing energized lines buried beneath the empty conduit run."[49]

30 The Company's scenario is a flawed syllogism—it would never occur in the real world, because it fails to account for the expert testimony of Mr. Marne, who explained at hearing: "You can't locate an empty plastic conduit. You locate the conduit with wires in it. That's the electronic locating system."[50] Thus, a contractor who located conduit with wires in it, which describes the Company's first briefing premise, could

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[46] Exh. No. JCT-11.
[47] Mullins, TR. 161:17.
[48] Initial Brief at ¶ 17.
[49] Id.
[50] Marne, TR. 180:18-20.

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never be "entirely unaware" that digging may reveal conduit with wires in it. In other words, since an electronic locating system, by definition, does not produce a "locate" due to the existence of empty conduit, the Company's hypothetical contractor would know that a locate could *only* indicate the presence of conduit with wires. Upon excavation, the contractor would be *fully expecting* to find conduit containing wires. Thus, if empty conduit was encountered first, the contractor would know underground wires exist nearby. The implausibility of the Company's scenario is confirmed by the fact that Mr. Clemens testified to never having encountered an "empty conduit" report in over three decades of employment, coupled with Pacific Power's own customary practice of installing spare empty conduit for potential future use.[51/]

31 As the Club explained in its Opening Brief, given its oft-repeated willingness to pay for the removal costs of all facilities except plastic conduit and vaults, "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."[52/] The Company's additional briefing concerns, related to "[i]nexperienced road crews" and the Company's "overhead facilities,"[53/] also have no bearing upon any safety issues that could exist in relation to empty conduit and vaults on Club property (considering the irrelevance of "road" and "overhead" line concerns on Club property).

[51/] Opening Brief at ¶ 35.
[52/] Id. at ¶ 38.
[53/] Initial Brief at ¶ 12.

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2. Photographs Illustrating Alleged Safety Issues Are Not Relevant to Duplicative Safety Concerns Associated with Empty Conduit on Club Property

32 At hearing, Mr. Clemens conceded that eight of the nine pictures contained in Exhibit No. WGC-2, purportedly "illustrating some of the safety issues encountered in Walla Walla,"[54] were taken at locations outside Club property.[55] When questioned as to why the Company offered only one photographic example depicting an alleged safety issue or concern in the area of the Club, Mr. Clemens testified: "the reason for that is [Columbia REA has] only built *around the perimeter* of the Country Club. They haven't actually installed the lines into the actual facilities where the meters and the transformers could be."[56]

33 This testimony from Mr. Clemens, placing actual Columbia REA facility installation "around the perimeter of the Country Club," is highly significant. First, it is relevant to the question of whether there are or have been any duplicative facility safety concerns related to conduit and vaults in the midst of Club property (as distinguished from any facilities outside or "around the perimeter" of Club property). That is, Mr. Clemens testified that "current duplication is outside the Country Club property" and that none of the safety and operational issues discussed in his direct testimony (e.g., duplicative safety concerns) were present in 2013, "on the Country Club property."[57] Given Mr. Clemens' definitive testimony, it is impossible to attribute any accuracy to the Company's briefing claim that "[t]he sixth photograph in the sequence comprising Exhibit No. WGC-2 captures *just a single* example of the *prevailing duplicate facilities*

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[54] Exh. No. WGC-1T at 2:13-14.
[55] Clemens, TR. 95:23-97:21; 99:13-100:2.
[56] Id. at 100:3-10 (emphasis added).
[57] Clemens, TR. 101:6-7; 104:13-16.

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condition currently on the property of the Walla Walla Country Club."[58]

34 Next, the sole photograph taken around the perimeter of Club property (i.e., the "sixth"), in which Columbia REA purportedly "struck Pacific Power's facilities," related to an incident occurring "early in 2012 … either January or February," according to the testimony of Mr. Clemens.[59] This puts the lone safety incident in the record, alleged by the Company to have occurred in the vicinity of Club property, as taking place *several months before* any of the relevant facts occurred in this case, since discussions between the Club and Columbia REA did not take place until "the early summer of 2012."[60] Consequently, because the early 2012 incident is chronologically unrelated to any possible provision of service by Columbia REA to the Club, the incident is irrelevant to safety concerns related to conduit and vaults on Club property—the only real issue in dispute in this case.

35 Also, there is a strongly overstated, if not wholly inaccurate quality to the Company's briefing assertions: 1) that, "in the face of the *unequivocal contrary* testimony of Mr. Clemens"; 2) "Mr. Thomas ultimately retracted" a statement; 3) that Mr. Clemens' "exhibits do not reflect a single photograph of facilities relevant to the Club and its property."[61] As already noted, Mr. Clemens specifically testified that his sixth photographic illustration occurred "around the perimeter" of Club property, and explicitly stated that there is no current duplication of facilities, nor had there been any facilities duplication in 2013 "on the Country Club property." These plain statements as to location make it very difficult to construe Mr. Clemens' testimony as "unequivocal[ly] contrary" to Mr. Thomas' testimony. Further, given Mr. Clemens' testimony that the

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58/ Initial Brief at ¶ 17 (emphasis added).
59/ Clemens, TR. 111:23-112:6.
60/ Exh. No. JCT-1T at 4:18-19.
61/ Initial Brief at ¶¶ 14-15 (emphasis added).

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sixth exhibit photograph dated to early 2012—well before the Club and Columbia REA entered electric service discussions—Mr. Thomas' testimony that no Company photographs contained "facilities *relevant* to the Club and its property" is fully justified; even Mr. Clemens does not impute any actual facilities duplication on "Club property" in regard to the 2012 photograph.

3. The Record Does Not Plainly Establish the Presence of Duplicative Facilities Implicating Safety Concerns on Club Property

36 It is worthwhile to clarify what the record actually indicates in regard to work already performed by Columbia REA on Club property. As Mr. Thomas explained on redirect at hearing, most of Columbia REA's work in anticipation of servicing the Club had been "just around the perimeter" of Club property, while "[t]hey mainly bored on Club property."[62/] Mr. Thomas testified that such activity "would have been after that date of November 9th [2012], and .... They probably finished sometime in January, February of '13."[63/] This dating places Columbia REA's work for the Club as occurring a full year after the incident in "early 2012," alleged by Mr. Clemens to have occurred around the perimeter of the Club's property. Therefore, there is no validity to Pacific Power's briefing claim that, "[w]hile installing its facilities, Columbia REA damaged Pacific Power's facilities on the Walla Walla Country Club property ...."[64/]

37 Further, it is extremely doubtful that Mr. Thomas actually meant to testify to anything more than a belief that Columbia REA had performed some boring activity by early 2013, notwithstanding testimony about service being "all in place," as quoted in

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62/ Thomas, TR. 146:18-147:2.

63/ Id. at 139:4-8. The Company itself supplies the bracketed 2012 date, in association with quoting the "November 9th" testimony of Mr. Thomas. Initial Brief at ¶ 13.

64/ Initial Brief at ¶ 14.

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Company briefing.[65] The record contains Club statements concerning an August 27, 2015 discussion between Mr. Mullins and a Columbia REA representative "regarding projected costs, in the event that Columbia [REA] was to use Pacific Power facilities, rather than installing new facilities at the Club."[66] Such a discussion would not make sense if Columbia REA actually had necessary service facilities "all in place" since 2013. Likewise, the hearing testimony of Mr. Mullins concerning his conversations with Columbia REA, e.g., "it would be convenient if they could use the [ ] runs of conduit rather than boring new conduit," also indicates that facilities are not "all in place" in 2015.[67] Indeed, such testimony by Mr. Mullins indicates that Columbia REA has not even completed all *boring* work deemed necessary for eventual service to the Club.[68]

III. CONCLUSION

38 To frustrate the Club's desire to switch electric providers, the Company—during this proceeding—has unilaterally changed the operation of its Net Removal Tariff. Pacific Power claims that its action, wholly outside the scope of this case, was to prevent subsidization of an alternative electric provider. But, the Company's action punishes the customer and exceeds the permitted Net Removal Tariff charges. There is simply no authority for the Company changing its historical underground abandonment practice and policy. The proper approach, as suggested by the Company, is to seek a modification of its tariff and perhaps its WUTC-approved contracts (WAC § 480-80-141) to provide the authority and methodology to recover its "damages." The public and the customer deserve a clear and predicable understanding of the terms for electric service.

39 For the reasons stated in this Reply Brief, in addition to the Club's

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65/ Id. at ¶ 13 (quoting Thomas, TR. 138:25-139:21).
66/ Exh. No. BGM-15CX at 2 (Club Second Suppl. Response to Pacific Power DR 58).
67/ Mullins, TR. 166:9-17.
68/ See Exh. No. BGM-15CX at 2 (Club Second Suppl. Response to Pacific Power DR 58).

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Opening Brief, the Club respectfully requests that the Commission: 1) 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; and 2) exercise its authority under statute to order Pacific Power to pay damage reparations or refunds, with interest, for the amount of 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 since December 2012 or January 2013.

Dated in Portland, Oregon, this 13th day of November, 2015.

Respectfully submitted,

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