

Service Date: May 5, 2016

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WALLA WALLA COUNTRY CLUB,  Complainant,  v.  PACIFIC POWER & LIGHT COMPANY,  Respondent.	DOCKET UE-143932  ORDER 05  FINAL ORDER DENYING PETITION FOR REVIEW; CLARIFYING ORDER 03
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**SUMMARY**

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 requested that the Commission require Pacific Power to disconnect its facilities from Club property under the terms of the Company's Net Removal Tariff, Rule 6. The parties' dispute how Rule 6 should be interpreted and applied under the facts of this case. The Club also requested that 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 Club's initial disconnection request in December 2012 forward.
2. On January 15, 2016, following an evidentiary hearing and briefing, the Commission entered Order 03, its Initial Order. Order 03 would grant relief to the extent of requiring Pacific Power to disconnect permanently its service to the Club without charging the Club for the costs of excavating and removing empty conduit and vaults from which the Company's wires and electrical equipment can be pulled without disturbing the conduit and vaults.<sup>1</sup> Order 03 denies the Club's request for damages, which are beyond the

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<sup>1</sup> The Club does not dispute that Pacific Power should remove its wires and electrical equipment or that the costs of doing so are "fully reimbursable by the Club." *See* Walla Walla Country Club Reply Brief ¶¶ 27, 31.

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Commission's authority to award, or refunds that are not the result of overcharges or unlawful rates charged by Pacific Power.

3. On February 4, 2016, Pacific Power filed a Petition for Administrative Review of the Initial Order insofar as it grants relief to the Club. The Commission, for the reasons discussed below, sustains the Initial Order in terms of its results, but clarifies the Initial Order in certain respects.

### **MEMORANDUM**

4. Pacific Power's Net Removal Tariff, Rule 6, with emphasis added, 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.

The tariff language is unambiguous. If a Pacific Power customer requests permanent disconnection of the Company's facilities and any or all of those facilities "need to be removed for safety or operational reasons," then Pacific Power can charge the departing customer for the actual costs of removal less salvage. On the other hand, with respect to facilities that do not "need to be removed for safety or operational reasons," the departing customer is not required to pay any costs for removal. In such circumstances, the Company can simply transfer ownership of, and liability for, such facilities to the departing customer or, perhaps, to another utility.<sup>2</sup> Alternatively, the Company can remove the facilities at its own expense, including the expense of restoring the departing customer's property to the extent it is disturbed by removal.

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<sup>2</sup> We note that under general principles governing asset transfers by utilities such as Pacific Power that we regulate under a rate base rate of return approach, the utility is considered to have recovered all it is entitled to recover (*i.e.*, return of and return on the asset) if the facilities are fully depreciated at the time the transfer takes place. If the facilities are not fully depreciated, the Company may be entitled to recover their net book value (*i.e.*, original cost less depreciation). See generally, *In the Matter of the Petition of Puget Sound Energy for an Accounting Order Approving the Allocation of Proceeds of the Sale of Certain Assets to Public Utility District #1 of Jefferson County*, Docket UE-132027, Order 04 (September 11, 2014).

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5. Order 03 discusses the evidence showing that Pacific Power itself has consistently interpreted and applied Rule 6 this way from the time of its approval in 2002.<sup>3</sup> Even now, Pacific Power does not squarely dispute this interpretation of Rule 6. Since inception of the rule, and until several months after Walla Walla Country Club brought this complaint, Pacific Power recognized that not all facilities installed on customer premises need to be removed for safety or operational reasons, when a customer permanently discontinued service. Indeed, as noted, on 21 occasions between 2002 and 2013, Pacific Power abandoned or transferred its facilities to a departing customer rather than insisting on their removal. However, beginning in early March 2015, Pacific Power implemented an internal policy under which it refuses to sell or transfer ownership of any facilities when a customer wishes to change service providers, arguing that all such facilities need to be removed for safety or operational reasons.<sup>4</sup> Pacific Power thus, in practice, now interprets Rule 6 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.”<sup>5</sup> The Initial Order finds that “Rule 6 is not reasonably susceptible to Pacific Power’s interpretation.”<sup>6</sup> We agree. As discussed in Order 03:

[T]he 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

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<sup>3</sup> *WUTC v. PacifiCorp*, Docket UE-001734, Eighth Suppl. Order, ¶ 95 and App. A (Nov. 27, 2002). See Dalley, Exhibit No. RBD-17 (Pacific Power response to Bench Request 1 providing a list of the 21 permanent disconnection requests made between 2002 and the present where the Company abandoned or transferred its facilities to departing customers instead of removing those facilities).

<sup>4</sup> Dalley, Exhibit No. RBD-18 (Pacific Power response to Bench Request 2). We note that this proceeding had already been underway for several months when the Company adopted this policy.

<sup>5</sup> Dalley, TR 34:22-35:3. We acknowledge that Pacific Power’s overlapping service territory with that of CREA can lead to circumstances where collocated facilities, in fact, may present safety or operational concerns. However, Pacific Power failed to establish that those circumstances are present in this case and this is what is required in order for Pacific Power to require the Club to pay the costs of removing the Company’s empty conduit and vaults. Our obligation is to enforce Pacific Power’s tariff, as written, under the specific facts presented. Pacific Power’s broader complaints that arise from there being no law in Washington that establishes exclusive service territories for utilities are not for us to resolve. Pacific Power’s recourse in this regard is to the Washington legislature, not the Commission.

<sup>6</sup> Order 03 ¶ 16.

upon permanent disconnection. The inclusion of the term “only” necessarily means that those reasons do not always apply.<sup>7</sup>

6. It follows, as Order 03 observes, that Pacific Power is required to analyze the facts specific to individual circumstances to determine whether it is necessary to remove specific facilities for safety or operational reasons. Forced to that task because of the Club’s complaint, Pacific Power argues that leaving empty conduits and vaults in place on Club property would:

- Pose a safety risk to excavators and other contractors who may dig on Club property.
- Create duplicate facilities that are part of CREA’s larger pattern of co-locating facilities in this service area.
- Violate the National Electric Safety Code (NESC) unless the Company perpetually tracks and maintains the facilities.

Order 03 rejects all three arguments, in turn, offering well-reasoned discussions of the evidence presented by Pacific Power that fails to establish any of these assertions, and the evidence presented by the Club that affirmatively rebuts them.<sup>8</sup> We find no need to repeat this discussion here, but simply adopt by reference the cited paragraphs in Order 03.

7. Again, we agree with the determination in Order 03 that Pacific Power “failed to demonstrate that safety or operational reasons justify the removal of the empty vaults and conduit at issue in this case.”<sup>9</sup> While it follows from this that Pacific Power cannot require the Club to pay the costs of removing these facilities, we think Order 03 requires clarification. Order 03 states, in light of the determination quoted above, that Pacific Power “must disconnect the Club’s service without removing those facilities or assessing any charge in connection with those facilities.”<sup>10</sup> We clarify this language in two respects. First, Pacific Power can remove the conduit and vaults if it wishes to do so, at its own expense, including the expense of restoring the Club’s property to its pre-removal

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<sup>7</sup> *Id.* ¶ 17.

<sup>8</sup> *Id.* ¶¶ 19-24.

<sup>9</sup> *Id.* ¶ 25.

<sup>10</sup> *Id.*

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condition.<sup>11</sup> Second, Pacific Power and the Club can agree that ownership of the conduit and vaults will be transferred to the Club and appropriately documented, as apparently has been done in previous, similar circumstances.<sup>12</sup>

8. By way of further clarification following from the discussion in the preceding paragraph, we modify by this reference, Order 03's finding, 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," as indicated by the redlining below. The revised finding states that: "under the terms of Pacific Power's Net Removal Tariff, the Company may not charge Walla Walla Country Club the costs of removing ~~remove~~ the empty conduits and vaults at issue in this proceeding when it permanently disconnects the Club's service." In similar vein, we modify, by this reference, Finding and Conclusion (3), as follows: "Pacific Power's Net Removal Tariff, Rule 6, permits the Company to assess the costs of removal of Pacific Power empty conduit and pipe facilities against Walla Walla Country Club upon permanent disconnection of the Club from Pacific Power service only ~~when~~ if a safety or operational reason exists to justify their removal." And last, we clarify Order 03 by reference, deleting ordering paragraph (1) (*i.e.*, ¶ 35 of Order 03) and substituting our ordering paragraph (1) as set forth below in ¶ 9 this Order 05.
9. In all other respects, we leave Order 03 undisturbed and adopt it as our final order on the issue of refunds as to which no party sought administrative review.

**ORDER**

**THE COMMISSION ORDERS:**

10. (1) Within 30 days following notice from Walla Walla Country Club that it wishes to proceed, Pacific Power & Light Company shall permanently disconnect Walla Walla

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<sup>11</sup> We caution, however, that in a future case in which the Company might seek to recover such costs, the prudence of such a decision could be challenged.

<sup>12</sup> See Dalley, Exhibit No. RBD-17 (lines 3 and 8, column C, indicating the use of a Bill of Sale).

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11. Country Club's electric service without requiring Walla Walla Country Club to pay the costs to remove the empty vaults and conduit at issue in this proceeding.

DATED at Olympia, Washington, and effective May \_\_\_\_, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

ANN E. RENDAHL, Commissioner

**NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.**

### Separate Statement of Chairman Danner

- 1 I support the Final Order as a correct reading of Pacific Power’s obligations under the applicable tariff. However, I write separately to express my concerns about policy issues underlying the facts that gave rise to this case.
- 2 Regulation of investor-owned electric utilities in the United States is largely based upon the notion of a “regulatory compact,” under which the state “grants the company a protected monopoly, essentially a franchise, for the sale and distribution of electricity or natural gas to customers *in its defined service territory*. In return, the company commits to supply the full quantities demanded by those customers at a price calculated to cover all operating costs plus a ‘reasonable’ return on the capital invested in the enterprise.”<sup>13</sup>
- 3 In recent years, the compact has been evolving as some utilities have had to adjust their traditional business models to address lower load growth due to conservation, changes in technologies, distributed generation, and changing customer expectations. I expect that the compact will evolve further in the years to come. Yet for all intents and purposes, the regulatory compact continues to this day and has served the customers of Washington’s investor-owned electric utilities well, ensuring that service is available, safe, and affordable.
- 4 It is not simply an evolution of the regulatory compact, however, that underlies the issues that this case brings to the foreground. Rather, the Columbia Rural Electric Association’s (CREA’s) encroachment into Walla Walla threatens to undermine the regulatory compact altogether. If CREA can continue to “cherry-pick” the existing large commercial or high-density customers inside what traditionally has been Pacific Power’s service territory, then over time we can expect cost shifts and higher prices for Pacific Power’s remaining customers, who must continue to cover the fixed costs of infrastructure that Pacific Power must maintain to ensure vital electric services to their communities.<sup>14</sup>
- 5 Moreover, in this environment, the lack of legally established service territories in Washington puts at risk the concept of a utility’s obligation to serve. Currently, with rare exceptions, a regulated utility provides service to every customer in its traditional service

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<sup>13</sup> Lesser and Giacchino, *Fundamentals of Energy Regulation* (2007) at p.43 (emphasis added, footnote omitted).

<sup>14</sup> This situation is different from that occurring when a community votes to municipalize assets of an investor-owned utility. In that situation, the voters agree to compensate the investor-owned utility for the assets transferred, either through an eminent domain proceeding or negotiation, thereby ensuring that no assets are stranded or duplicated, and no costs are shifted to remaining customers of the investor-owned utility.

territory who requests it, regardless of whether the utility's cost of serving that customer is high or low. When there is an apparent effort by a cooperative association to erode an investor-owned utility's traditional service territory, then the utility may be forced to argue that, to blunt upward pressure on rates caused by the actions of the association, it must decline to serve higher-cost customers in low-density areas, such as farms or isolated rural customers, as the costs of serving these customers are no longer offset by lower-cost commercial or urban residential customers who have been cherry-picked by adjacent providers.

- 6 Ultimately, as noted in the Final Order, the establishment of legally-defined service territories is not a matter for the Commission, but for the Washington Legislature. The Legislature has already raised concerns about the duplication of infrastructure that results from encroachment, stating:

The legislature hereby declares that the duplication of electric lines and service of public utilities and cooperatives is uneconomical, may create unnecessary hazards to the public safety, discourages investment in permanent underground facilities, and is unattractive, and thus is contrary to the public interest and further declares that it is in the public interest for public utilities to enter into agreements for the purpose of avoiding or eliminating such duplication.<sup>15</sup>

- 7 I hope the Legislature will give this issue further consideration in the future so that it can assess fully the risk to the regulatory compact and the impacts to captive utility customers when a utility established in one community builds duplicative infrastructure and cherry-picks large commercial or high-density customers in another.

DAVID W. DANNER, Chairman

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<sup>15</sup> RCW 54.48.020.