

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

**PACIFIC POWER & LIGHT
COMPANY,**

Respondent.

DOCKET UE-161204

BRIEF ON BEHALF OF COMMISSION STAFF

July 28, 2017

**ROBERT W. FERGUSON
Attorney General**

**CHRISTOPHER M. CASEY
JEFF ROBERSON
Assistant Attorneys General
Office of the Attorney General
Utilities & Transportation Division**

**1400 S Evergreen Park Drive S.W.
P.O. Box 40128
Olympia, WA 98504-0128
(360) 664-1189**

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I. INTRODUCTION

1 This case presents policy questions about the appropriate balance between providing economic protection and preserving customer choice. PacifiCorp d/b/a/ Pacific Power & Light (“Pacific Power” or “Company”) proposes drastic revisions to its tariff provisions governing the permanent disconnection of its customers. It seeks to require customers to pay two significant costs prior to disconnection: (1) either the fair market value for their customer-dedicated facilities or the actual cost of removing these facilities, and (2) a “Stranded Cost Recovery Fee.” The Commission should reject these proposed tariff revisions because they are a heavy-handed and unwarranted response to a situation whose severity is overstated.

2 Pacific Power failed to demonstrate that its proposed tariff revisions are necessary. Customer disconnections are barely occurring—in nearly two decades only 68 customers have disconnected.¹ The disconnections that have occurred have not caused appreciable cost shifts. Nor are such cost shifts markedly different in nature or magnitude from the many cost shifts that are inherent to cost-of-service ratemaking. At best, the Company presents a theoretical problem and the specter of future harm if a significant amount of customers or load leave its system. Currently, cost shifts from disconnecting to remaining customers are not a material issue.

3 Pacific Power also failed to demonstrate that its proposed tariff revisions are reasonable. The proposed tariff revisions are ill-conceived, broadly-applicable responses to highly contextual issues. Consequently, the inaccuracy of the fees will likely create more conflict than they solve. Moreover, the proposed tariff revisions would have significant,

¹ Panco, Exh. DJP-1T at 14:4-5; Meredith, TR. at 156:21-24.

direct impacts on individual customers that would serve to dramatically impede customer choice by making disconnection cost-prohibitive. The proposed tariff revisions are seriously, if not fatally, flawed.

4 Ultimately, the proposed tariff revisions would shelter Pacific Power from competition more than they would safeguard customers from cost shifts. The proposed tariff revisions would erect significant economic barriers to disconnection, and in effect, grant the Company the exclusive service territory that Washington law does not provide to it. The Company claims economic protection is needed because it cannot compete with the inherent advantages of non-regulated entities, but there is no evidence that it has even tried. The Company should first attempt to retain business by better meeting its customers' needs before imposing unfair fees. Both the Company, and its customers, might benefit from the effort. The Commission should reject Pacific Power's proposed tariff revisions to maintain the appropriate balance between providing economic protection and preserving customer choice that is currently in place.

II. BACKGROUND

A. Pacific Power Competes With CREA And Yakama Power To Provide Electric Service In Southeastern Washington

5 This docket, at its root, concerns three utilities competing to provide electrical service in Southeastern Washington.

6 The first, Pacific Power, is an investor-owned utility that has served Walla Walla and the surrounding communities since its inception in the early 1900s.² Pacific Power considers these areas part of its service territory based on that history.³

² Panco, Exh. DJP-1T at 8:17-19; Bolton, TR. at 107:17-22.

³ Bolton, TR. at 107:15-22.

7 The second, Columbia Rural Electric Association (“CREA”), is a member-owned cooperative managed by an elected board of directors.⁴ It is governed based on Seven Cooperative Principles: (1) Voluntary and Open Membership; (2) Democratic Member Control; (3) Members’ Economic Participation; (4) Autonomy and Independence; (5) Education, Training and Information; (6) Cooperation among Cooperatives; and (7) Concern for Community.⁵ Its founding members formed CREA in 1939 to provide electrical service to rural areas through loans from the federal Rural Electrification Administration.⁶

8 The third, Yakama Power, is a non-profit tribal electric utility created and wholly-owned by the Confederated Tribes and Bands of the Yakama Nation (“Yakama Nation”), a federally recognized Indian Tribe.⁷ Yakama Nation formed Yakama Power in 2004 to provide long-term cost savings, economic development, and job creation opportunities, and to enhance the tribe’s sovereign ability to provide essential government services within the boundaries of the Yakama Indian Reservation.⁸

9 Pacific Power has no boundary agreement with either CREA or Yakama Power.⁹ The Company would apply its proposed tariff provisions to any customer that chooses to disconnect from its system to take service from either of these entities.¹⁰

⁴ Panco, Exh. DJP-1T at 8:19-21; Columbia Rural Electric Association, About Us, *available at* <http://www.columbiarea.com/content/about-us>.

⁵ Columbia Rural Electric Association, Your Co-Op, *available at* <http://www.columbiarea.com/content/your-co-op>.

⁶ Panco, Exh. DJP-1T at 8:19-21; *see* the Rural Electrification Act of 1936, 7 U.S.C. § 901 et seq.; *Tanner Elec. Co-op. v. Puget Sound Power & Light Co.*, 128 Wn.2d 656, 659–60, 911 P.2d 1301, 1303 (1996). (“The basic purpose of the [Rural Electrification Act] was to extend electric service to those rural areas of the country without central station service by providing government loans at low interest rates.”).

⁷ Wiseman, Exh. RW-1T at 2:6-8.

⁸ *Id.* at 2:8-12.

⁹ Bolton, TR. at 149:3-10.

¹⁰ *See* Wiseman, Exh. RW-1T at 10:12-19.

B. Pacific Power And CREA Have Been Unable To Come To A Service Territory Agreement For Nearly Two Decades

10 Pacific Power has served Walla Walla and the surrounding communities since its inception in the early 1900s.¹¹ CREA originally provided service around Dayton, Washington.¹² As the population of Walla Walla and the surrounding communities began to grow in the 1990s,¹³ CREA began developing infrastructure to allow it to serve those areas.¹⁴ As a result, CREA is now positioned “to capture growth along the developing edge of the Walla Walla and College Park communities.”¹⁵

11 CREA’s expansion did not immediately trigger conflict with Pacific Power. For years, CREA and Pacific Power operated under an informal agreement in which the utility with facilities closest to a customer would serve that customer.¹⁶ This agreement held until 1999;¹⁷ its breakdown caused Pacific Power to first propose tariff provisions to govern the removal of its facilities from the premises of customers choosing to permanently disconnect from its system (collectively, the “net removal tariff”).¹⁸

12 CREA and Pacific Power have attempted, at various times since 1999, to negotiate a formal boundary agreement. The first attempt, which occurred immediately after Pacific Power proposed the net removal tariff, had some initial momentum. Pacific Power and CREA agreed to an interim service territory agreement and a Memorandum of

¹¹ Panco, Exh. DJP-1T at 8:17-19; Bolton, TR. at 107:17-22.

¹² Panco, Exh. DJP-1T at 8:19-21.

¹³ *Id.* at 9:5-10.

¹⁴ Bolton, TR. at 121:25-126:5; *see* Bolton, Exh. RBD-2 (RBD-1T and RBD-2 were originally sponsored by Pacific Power witness Bryce R. Dalley. After Mr. Dalley left the Company, Pacific Power witness Bolton adopted them, save a small portion adopted by Pacific Power witness Meredith. Staff therefore treats Mr. Bolton as the sponsoring witness).

¹⁵ Panco, Exh. DJP-1T at 23:17-19; *accord* Bolton, TR. at 122:10-17.

¹⁶ Bolton, Exh. RBD-1T at 4:14-16.

¹⁷ *Id.* at 4:19-20.

¹⁸ *Id.* at 4:11-20.

Understanding about the process for negotiating a final service area agreement.¹⁹ The Commission suspended the adjudication over the net removal tariff proposal,²⁰ approved the interim service territory agreement in a separate docket,²¹ and appointed an administrative law judge to mediate the negotiations.²² However, the negotiations ultimately failed, the adjudication over the proposed net removal tariff resumed,²³ and the interim boundary agreement expired on December 31, 2001.²⁴

13 Pacific Power and CREA engaged in further negotiations about a service territory agreement in 2003 and 2004, 2007, and 2013, but to no avail.²⁵ No service territory agreement is in place today.²⁶ The lack of a service territory agreement leaves CREA and Pacific Power in open competition for the provision of electrical service in and around Walla Walla. CREA and Pacific Power offer conflicting, mostly unsubstantiated, reasons for their inability to come to agreement.²⁷

C. The Proposed Tariff Revisions Are A Response To Competition From CREA

14 According to Pacific Power, “the purpose for revising [its] net removal tariff is to respond to the presence of competition that is increasing the number of customers who may request permanent disconnection.”²⁸ Washington does not have statutes that permit the state

¹⁹ *Wash. Utils. & Transp. Comm’n v. PacifiCorp d/b/a Pac. Power & Light*, Docket No. UE-001734, Third Suppl. Order, at 1-2 ¶ 4 (Aug. 10, 2001).

²⁰ *Id.* at 2 ¶ 7.

²¹ Panco, Exh. DJP-1T at 9:11-15; see *In re Petition For an Order Approving an Interim Service Territory Agreement Between PacifiCorp and Columbia Rural Elec. Ass’n*, Docket UE-011085, Order Approving PacifiCorp’s Participation in an Interim Service Territory Agreement, at 2 ¶ 6 (Oct. 24, 2001).

²² *Wash. Utils. & Transp. Comm’n v. PacifiCorp d/b/a Pac. Power & Light*, Docket No. UE-001734, Fourth Suppl. Order, at 2-3 ¶¶ 7-9 (June 5, 2002).

²³ *Id.* at 2 ¶ 8.

²⁴ Panco, Exh. DJP-1T at 10:10-12.

²⁵ *Id.* at 11:4-6.

²⁶ Bolton, Exh. RBD-1T at 2:18-3:10.

²⁷ *E.g.*, Bolton, TR. at 238:9-241:2.

²⁸ *Id.* at 121:9-10.

to grant exclusive service territories to electric utilities.²⁹ From the Company’s perspective, “This unique situation mandates adoption of a revised tariff governing the terms of permanent disconnection.”³⁰

15 Pacific Power testifies that CREA is successfully “cherry-picking” its high-margin customers³¹ because CREA, as an unregulated entity, possesses competitive advantages that Pacific Power cannot overcome. The Company specifically notes that it must charge only filed-rates, “no more, no less,”³² and it cannot choose its customers;³³ whereas CREA, as a member-owned cooperative, is not bound by either limitation.³⁴ The Company testifies that economic incentives are primarily driving customer disconnections.³⁵ The record, however, lacks conclusive evidence of what has caused past disconnections.

16 Pacific Power also highlights CREA’s business practices: “[CREA], frankly, is able to exploit those conditions of not having standards of conduct or . . . terms and conditions as to how it interacts with Pacific Power’s customers, and can actively market and solicit the acquisition of those customers.”³⁶ CREA engages in “direct solicitation,” that include “offers of rates that are lower than Pacific Power’s authorized rates, offers to cover the line extension expenses, offers to pay the cost of removing Pacific Power’s facilities, . . . [and] offers to lock in rates for five years.”³⁷ The Company also suggests that CREA engages in sharp practices, such as “coach[ing] customers on ways to avoid paying proper

²⁹ Bolton, Exh. RBD-1T at 2:20-21

³⁰ *Id.* at 3:20-21.

³¹ *Id.* at 6:1-8.

³² *Id.* at 7:4-14; Bolton, TR. at 123:19-25; *see* RCW 80.28.080(1)(a).

³³ Bolton, Exh. RBD-1T at 7:4-14; *see* RCW 80.28.110.

³⁴ *See* Bolton, RBD-1T at 8:4-14.

³⁵ Bolton, TR. at 119:4-16.

³⁶ *Id.* at 121:19-24.

³⁷ Bolton, Exh. RBD-1T at 5:3-6.

disconnection costs.”³⁸ CREA, for its part, disputes these allegations, and Pacific Power was unable to substantiate its claims during discovery.³⁹

17 Ultimately, Pacific Power acknowledges that CREA does nothing wrong by engaging in competition with it.⁴⁰ The Company, however, believes that Walla Walla and the surrounding communities are within what Washington should recognize as its exclusive service territory.⁴¹ It testifies that over time CREA has “encroach[ed] within the urban interface moving beyond where traditional rural electric associations would serve into where . . . an incumbent investor-owned utility serves.”⁴²

D. Customer Disconnections Are Barely Occurring

18 The number of customers Pacific Power serves in Washington fluctuates in any given year.⁴³ Between 1999 and 2016, a total of 68 customers choose to permanently disconnect from Pacific Power’s facilities.⁴⁴ For perspective, as of 2016, Pacific Power had approximately 129,000 customers in Washington,⁴⁵ an increase of around 12,000 customers since 1999.⁴⁶ The churn of customers in and out of Pacific Power’s system leaves the number of disconnections lost in the “noise” of Pacific Power’s changing customer count.⁴⁷

19 The majority of “customers who inquire about disconnection ultimately choose not to disconnect.”⁴⁸ Both requests for disconnection estimates and disconnection completions

³⁸ *Id.* at 5:6-8.

³⁹ Gorman, Exh. MPG-1T at 4:6-16

⁴⁰ Bolton, TR. at 121:13-24.

⁴¹ *Id.* at 135:10-14.

⁴² *Id.* at 122:21-25.

⁴³ Meredith, TR. at 256:8-10.

⁴⁴ Panco, Exh. DJP-1T at 14:4-5; Meredith, TR. at 156:21-24.

⁴⁵ Panco, Exh. DJP-1T at 15:1.

⁴⁶ *Id.* at 15:1-2.

⁴⁷ *See* Panco, TR. at 372:15-20.

⁴⁸ Panco, Exh. DJP-1T at 16:3-4.

peaked in 2013.⁴⁹ Between 2013 and 2016, 60 different customers representing 117 different accounts requested estimates for the cost of disconnection. In the end, only 11 customers representing 15 different accounts paid to disconnect,⁵⁰ meaning that roughly 87 percent of the customers asking for a disconnection estimate eventually remain with Pacific Power.

20 Disconnecting customers belonged primarily to the residential class during the early years of Pacific Power’s competition with CREA. Prior to 2010, residential customers accounted for 23 of the 26 departing customers; however, no residential customer has disconnected since 2013.⁵¹ Since 2010, commercial and industrial customers have come to make up the bulk of the disconnections.

E. Customers May Choose To Disconnect For A Variety Of Reasons

21 The record does not conclusively reveal why past customers have chosen to disconnect from Pacific Power; however, reasons why customers *may* choose to disconnect include: (1) rates; (2) service quality; (3) local ownership and control; and (4) cleaner resources. First, relative to other Northwest utilities, the Company’s commercial and industrial rates are considerably less competitive than its residential rates.⁵² In particular, Pacific Power’s industrial rates “are not as competitive” as those offered by other providers.⁵³ The competitiveness of its commercial rates “has been declining over time.”⁵⁴ The Company implies that this is out of its control because it is cost-of-service regulated.⁵⁵ However, Pacific Power must prove the prudence of its investment decisions precisely

⁴⁹ *Id.* at 16:12-13.

⁵⁰ *Id.* at 16:5-11.

⁵¹ *Id.* at 14: 8-9, 12.

⁵² Gorman, Exh. MPG-4.

⁵³ Gorman, Exh. MPG-1T at 5:5-6.

⁵⁴ *Id.* at 5:3-4.

⁵⁵ *See* Bolton, TR. at 123:19-25.

because it has the ability to control costs and a financial incentive to grow rate base.⁵⁶

22 Pacific Power's rate structure also contributes to its less competitive rates. Comparison of Pacific Power's "cost of service by rate schedule shows a spread in rate of return index between rate schedules ranging from 0.59 for residential customers on [S]chedule 16 to 1.82 for commercial customers on [S]chedule 24."⁵⁷ That spread "indicates that commercial customers are providing revenues in excess of their costs."⁵⁸ In other words, Pacific Power's non-residential customers subsidize its residential customers, and non-residential customers may switch their service to CREA to avoid paying that subsidy.⁵⁹

23 Second, customers may choose to disconnect from Pacific Power because of service quality issues.⁶⁰ Pacific Power would not supply customer satisfaction survey results, data about its interactions with its customers, or service interruption data.⁶¹ The Commission thus cannot rule out the possibility that the Company's customers choose to disconnect because service quality problems drive them to a provider the customer perceives more as reliable. Of note, reliability and power quality issues have been a source of tension between the Company and Boise White Paper.⁶²

24 Third, customers may prefer a utility provider that is locally owned and controlled.⁶³ Pacific Power is an operating division of PacifiCorp, an entity wholly owned by Berkshire Hathaway Energy, which, in turn, is primarily owned by Omaha-based Berkshire

⁵⁶ See *Wash. Utils. & Transp. Comm'n v. Pac. Power & Light*, Docket No. UE-152253, Order 12, ¶¶ 94-95 (Sept. 1, 2016).

⁵⁷ Panco, Exh. DJP-1T at 24:16-18; Exh. DJP-3.

⁵⁸ *Id.* at 24:18-19.

⁵⁹ *Id.* at 24:18-21.

⁶⁰ Gorman Exh. MPG-1T at 5:18-6:7.

⁶¹ *Id.* at 5:22-6:4.

⁶² See Docket UE-121680, Letter from Dave Danner to Pat Reiten (October 26, 2012) (informal investigation into Pacific Power's electric service reliability issues at the Boise White Paper, L.L.C. Wallula Mill).

⁶³ Gorman Exh. MPG-1T at 6:5-6.

Hathaway.⁶⁴ CREA, on the other hand, is a member-owned cooperative.⁶⁵ Yakama Power is also locally owned, in this case by the Yakama Nation, on whose tribal lands it provides service.⁶⁶ Notably, some of the larger loads disconnecting from Pacific Power's service have belonged to municipal governmental entities,⁶⁷ the type of entities that might prefer a local provider.⁶⁸

25 Lastly, customers may prefer a utility provider that offers a more environmentally friendly product. In several recent Commission dockets, new services have been created to enable large customers to procure renewable energy.⁶⁹ Existing voluntary green power programs that match renewable energy certificates to customer-load, like Pacific Power's Blue Sky Renewable Energy,⁷⁰ were insufficient fulfil these large customers' desire for renewable energy.⁷¹ Both CREA and Yakama Power provide customers with less carbon-intensive electricity than Pacific Power.⁷²

F. The Net Removal Tariff Prevents Duplication Of Utility Facilities And Service

26 The breakdown of CREA and Pacific Power's informal service territory agreement in 1999 prompted Pacific Power to file with the Commission the first version of the net

⁶⁴ *Wash. Utils. & Transp. Comm'n v. Pac. Power & Light Co., a Division of PacifiCorp; Re Pac. Power & Light Co.*, Docket Nos. UE-140762, 140617, UE-131384, UE-140094, Order 08 *as corrected*, 320 PUR 4th 178 at n.2 (March 26, 2015).

⁶⁵ Panco, Exh. DJP-1T at 8:19-21.

⁶⁶ Wiseman, Exh. RW-1T at 2:6-8.

⁶⁷ Bolton, TR. at 109:18-110:13.

⁶⁸ See Gorman Exh. MPG-1T at 6:5-6.

⁶⁹ See *In the Matter of Tariff Revisions Filed by Puget Sound Energy Offering Voluntary Long Term Renewable Energy*, Docket UE-160977, Order 01 (Sept. 28, 2016); *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Docket UE-161123, Order 06 (July 13, 2017).

⁷⁰ See Bolton, TR. at 120:19-23

⁷¹ See *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Docket UE-161123, Joint Memorandum in Support of Full Settlement Agreement, ¶ 8 (April 11, 2017).

⁷² CREA and Yakama Power are requirements customers of Bonneville Power Administration, which markets wholesale electrical power mostly from federal hydroelectric projects in the Northwest. See Bonneville Power Administration, BPA Facts, available at <https://www.bpa.gov/news/pubs/GeneralPublications/gi-BPA-Facts.pdf>.

removal tariff.⁷³ As originally proposed by Pacific Power, the revisions, made to Tariff WN U-75 Rule 4(f), would have “applied to customer requests to disconnect [the Company’s] facilities so that the customer” could “switch to another electric utility.”⁷⁴ The revisions would have “impose[d] on the requesting customer the actual removal costs incurred by [Pacific Power] to remove the facilities, less salvage value of the assets removed.”⁷⁵

27 Staff objected to the proposed tariff on various grounds and offered an alternative.⁷⁶ Staff’s proposal more narrowly applied when a customer requested permanent disconnection “under circumstances where the facility would likely not be reused at the same site.”⁷⁷ Staff’s proposal generally required customers requesting disconnection to pay the “actual cost of removal less salvage of only those distribution facilities that need to be removed for safety or operational reasons, and only if those facilities were necessary to provide service to the customer.”⁷⁸ Staff’s proposal specifically exempted most distribution facilities located on public easements from the net removal tariff and provided for flat fees for the removal of residential service and meter drops.⁷⁹ Pacific Power accepted Staff’s proposed revisions on rebuttal,⁸⁰ and the Commission approved the tariff as revised because it placed the removal cost responsibility on the customer imposing the cost in a manner that is “cost-based, non-discriminatory, and similar to several provisions in existing tariffs.”⁸¹

⁷³ Mullins, Exh. BGM-1T at 2:21-3-5.

⁷⁴ *Wash. Utils. & Transp. Comm’n v. PacifiCorp d/b/a Pac. Power & Light*, Docket No. UE-001734, Eighth Supplemental Order, at 5 ¶ 16 (Nov. 27, 2002).

⁷⁵ *Id.* at 5-6 ¶ 16.

⁷⁶ *Id.* at 6 ¶ 17.

⁷⁷ *Id.* at 32 (Appendix A).

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* at 5 ¶ 14.

⁸¹ *Id.* at 28-30 ¶ 82-96.

28 In Docket UE-120846, the Company revised the net removal provisions to relocate them to a more appropriate location in the tariff and to clarify how net removal costs are calculated.⁸² Accordingly, the provisions now reside in Rules 1, 6, and 300.⁸³

29 Pacific Power also attempted to revise its net removal tariff in its 2013 general rate case, Docket UE-130043. It proposed “replac[ing] the fixed Residential Service Removal Charge in Schedule 300 and instead charg[ing] customers actual costs for facilities removal.”⁸⁴ The Company also proposed “describing the calculation of the costs of permanent disconnection and removal of facilities and . . . increasing reconnection fees.”⁸⁵

30 The Company, however, moved to withdraw these proposals so that it could gather data to address objections to the revisions raised by various parties.⁸⁶ The Commission granted that motion, but required Pacific Power to initiate a proceeding in which the Commission could review the net removal tariff.⁸⁷ In that proceeding, Docket UE-132182, Pacific Power produced a report detailing its experiences administering the net removal tariff.⁸⁸

G. The Current Net Removal Tariff Requires Customers To Pay The Actual Cost Of Removal Only If Needed For Safety Or Operational Reasons

31 Currently, Rule 6 provides that:

When a 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

⁸² Panco, Exh. DJP-1T at 11:10-13 (The Commission approved these proposed revisions through its No Action Agenda at the July 12, 2012 Open Meeting; they became effective on July 13, 2012.).

⁸³ *Id.* at 11:13-16; Mullins, Exh. BGM-1T at 3:2-5.

⁸⁴ *Wash. Utils. & Transp. Comm’n v. PacifiCorp d/b/a Pac. Power & Light Co.*, Docket UE-130043, PacifiCorp’s Motion to Withdraw Tariff Filing, at 2-3 ¶ 5 (July 11, 2013).

⁸⁵ *Id.*

⁸⁶ *Id.* at 1 ¶ 1.

⁸⁷ *Wash. Utils. & Transp. Comm’n v. PacifiCorp d/b/a Pac. Power & Light Co.*, Docket UE-130043, Order 04, at 6-7, ¶ 14-15 (July 29, 2013).

⁸⁸ See generally *In re PacifiCorp d/b/a Pacific Power, PacifiCorp’s Report on Permanent Disconnection and Removal of Facilities*, Docket No. UE-132182, Report on Permanent Disconnection and Removal of Facilities Under Schedule 300 and Rule 6 (Nov. 27, 2013).

service to Customer. However, the actual cost for removal less salvage charged to Customer making a request under this paragraph shall not include any amount for any facilities located on public right of way (other than the meter and service drop) or for the removal of area lights which have been installed and billed for a minimum of three years. When facilities removed by the Company are the overhead or underground residential service drop and meter only, the Customer shall pay the applicable Residential Service Removal Charge as described in Schedule 300.

32 In 2015, the Walla Walla Country Club (the “Club”) complained to the Commission about Pacific Power’s application of the net removal tariff. The Club had requested disconnection from Pacific Power’s facilities to switch to CREA as a provider of electrical service. Pacific Power, upon receiving that request, had informed the Club that the net removal tariff required removal of all of its unsold facilities from the Club’s property, including underground vaults.

33 The Commission rejected Pacific Power’s interpretation of the plain language of the net removal tariff, which required disconnecting customers to pay “the actual cost of removal less salvage of only those facilities that need to be removed for safety or operational reasons.”⁸⁹ The Commission reasoned that “[t]he inclusion of the term ‘only’ necessarily means that those reasons do not always apply.”⁹⁰ The Commission, therefore, determined that Pacific Power needed to justify the application of the net removal tariff based on safety or operational concerns, and that it had failed to do so when requiring the Club to pay removal costs.⁹¹ Consequently, the Commission ordered Pacific Power to disconnect the Club’s service without removing the property at issue or charging the Club a fee under the net removal tariff.⁹²

⁸⁹ *Walla Walla Country Club v. Pac. Power & Light Co.*, Docket No. UE-143932, Order 03, at 4 ¶ 16 (Jan. 15, 2006) (quoting Tariff WN U-75, Rule 6).

⁹⁰ *Id.* at 4 ¶ 17.

⁹¹ *Id.* at 4 ¶ 18, 6 ¶ 25, 7 ¶ 32.

⁹² *Id.* at 6 ¶ 25, 8 ¶ 35.

H. Pacific Power Proposes To Revise its Tariff To Require Customers To Pay Two Significant Costs Prior To Disconnection

34 Pacific Power’s revisions to Rule 6, as they exist on rebuttal, would present a departing customer two options unless the Company decides to abandon facilities in place: (1) pay the actual cost of removing dedicated customer facilities; or (2) pay fair market value for those facilities.⁹³ Per definitions that Pacific Power would add to Rule 1, the “Actual Cost of Removal” means “[a]ll removal costs, including, but not limited to labor costs, contractor costs, cost to investigate redundant services, and Net Book Value of Facilities less Salvage.”⁹⁴ “Fair Market Value” means “[t]he prices at which Facilities would sell on the open market between a willing buyer and a willing seller.”⁹⁵

35 Pacific Power’s revisions to Schedule 300 would impose what the Company terms a “Stranded Cost Recovery Fee” on departing customers. As these revisions exist after rebuttal, this fee consists of a multiple of the customer’s annual revenue, 2.83 times annual revenue for residential customers and 3.19 times annual revenue for industrial and commercial customers.⁹⁶ Customers would owe this fee in a lump-sum, up-front payment before the Company would perform the disconnection.⁹⁷

I. Cost Shifts Between Customers Occur Whenever The Customer Count Changes Or Actual Load Differs From The Baseline Used To Set Rates

36 Pacific Power claims that the proposed tariff revisions are necessary to prevent cost-shifting associated with the departing customer, which causes the decrease of two factors

⁹³ Kelly, TR. at 340:16-341:5.

⁹⁴ *Wash. Utils. & Transp. Comm’n v. Pacific Power & Light Co.*, Docket No. UE-161204, Advice 00001, UE-161204 – PPLC – Tariff (Nov. 14, 2016).

⁹⁵ *Id.*

⁹⁶ Meredith, Exh. RMM-2 at 1. The above numbers include the low-income and demand-side management riders proposed by Public Counsel and adopted by Pacific Power in rebuttal. *See id.*, TR. at 276:1-8.

⁹⁷ Kelly, TR. at 299:21-25.

that drive cost of service and rate design, specifically the customer count and load.⁹⁸ In other words, changes to the customer count and load affects how the Company's revenue requirement is distributed across its customer base. Pacific Power acknowledges that cost shifts from disconnection do not affect its shareholders because it will assign the revenue deficiency to its remaining customers.⁹⁹

37 Cost shifting is, to some extent, inherent in ratemaking. Utilities present the Commission with proposed rates based on class-based cost-of-service studies.¹⁰⁰ The utility groups similarly situated customers together in order to determine the average cost of serving the class.¹⁰¹ While the customers situated in each class are similar, they are not identical. Some will cost more to serve than others, some less. Those customers the utility must pay more to serve shift the difference between their cost of service and the class average on others; those who cost less to serve absorb the difference between the class average cost of service and their cost of service.¹⁰² The Commission accepts these cost shifts because they involve reasonable cost sharing between similarly situated customers and because it would be impossible to calculate the cost of serving each and every individual utility customer,¹⁰³ even if the Company can identify the cost of serving a particular customer.¹⁰⁴

38 The proposed revisions to the net removal tariff do not address a number of other cost shifts that are similar to those potentially caused by disconnection. Any customer who

⁹⁸ Meredith, TR. at 244:2-14, 251:1-7.

⁹⁹ Bolton, TR. at 105:15-20.

¹⁰⁰ Meredith, TR. at 252:21-253:4.

¹⁰¹ *Id.* at 252:21-253:4.

¹⁰² *Id.* at 252:1-12.

¹⁰³ *Id.* at 252:16-18.

¹⁰⁴ *See id.* at 272:6-13.

removes himself or herself from the Company's service reduces the total number of customers.¹⁰⁵ Any customer who decreases his or her load compared to the utility's projected load causes a cost shift: the utility receives less money than expected.¹⁰⁶

39 Some of these cost shifts occur due to competition. Electric utilities like Pacific Power compete to some extent with gas utilities to provide the energy for certain appliances. For example, if an electric utility customer switches his or her oven or water heater to take advantage of cheap natural gas, he or she may significantly cut his or her load.¹⁰⁷ Doing so could theoretically shift costs onto Pacific Power's remaining customers.¹⁰⁸ The net removal tariff would not address these cost shifts unless the customer disconnected from Pacific Power's electrical service.

40 A customer may also cause cost shifts without switching some or all of his or her service to another provider. For example, any customer that attempts to make more efficient use of electricity also creates a smaller utility load and potential cost shifts.¹⁰⁹ This could occur from something as minimal as installing high-efficiency lighting or something as significant as weatherizing a house and installing proper insulation and efficient windows. A customer could also cause cost shifts by engaging in self-generation. For example, a customer installing solar panels on a residence to engage in net metering theoretically causes a cost shift.¹¹⁰ A customer could even cause cost shifts by moving, or by closing a business.¹¹¹ Again, the proposed revisions to the net removal tariff do not address these cost shifts.

¹⁰⁵ *Id.* at 244:2-14, 251:3-7.

¹⁰⁶ *See id.* at 251:23-252:9.

¹⁰⁷ *See id.* at 251:5-17.

¹⁰⁸ *Id.* at 254:5-25.

¹⁰⁹ *Id.* at 253:19-25.

¹¹⁰ *Id.* at 253:10-18.

¹¹¹ *Id.* at 255:25-256:6.

III. DISCUSSION

A. Washington State Permits Competition Between Electric Service Providers.

41 The Legislature delegated to the Commission the power to “regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons . . . supplying any utility service.”¹¹² The Commission’s “paramount objective . . . [is] to secure for the public safe, adequate, and sufficient utility services at just, fair, reasonable, and sufficient rates.”¹¹³ Rates also cannot be unjustly discriminatory or unduly preferential.¹¹⁴ PacifiCorp bears the burden of proving its proposed tariff revisions are “just and reasonable.”¹¹⁵

42 Unlike many other states, Washington does not provide exclusive service areas to electric utilities.¹¹⁶ State law strongly disfavors monopolies. The “state’s abhorrence of monopolies” is manifested in the Constitution.¹¹⁷ “[T]he Legislature must expressly grant to the Commission the authority to grant monopolies before the Commission may exercise such rights.”¹¹⁸ The Legislature has granted this authority to the Commission for some industries, but not for electric utilities.¹¹⁹ Indeed, the public service laws recognize that

¹¹² RCW 80.01.040(3).

¹¹³ *People’s Org. for Wash. Energy Res. v. Wash. Utils. & Transp. Comm’n*, 104 Wn.2d 798, 808, 711 P.2d 319 (1985); RCW 80.28.010.

¹¹⁴ RCW 80.28.020, .090, .100.

¹¹⁵ RCW 80.04.130(4) provides: “At any hearing involving any change in any schedule classification, rule or regulation the effect of which is to increase any rate, charge, rental or toll theretofore charged, the burden of proof to show that such increase is just and reasonable shall be upon the public service company.”

¹¹⁶ Bolton, Exh. RBD-1T at 2:20-21.

¹¹⁷ *In re Elec. Lightwave, Inc.*, 123 Wn.2d 530, 538, 869 P.2d 1045, 1050 (1994), *as amended on denial of reconsideration* (Apr. 28, 1994); WASH. CONST. art. 12 § 22 (“Monopolies and trusts shall never be allowed in this state, and no incorporated company, copartnership, or association of persons in this state shall directly or indirectly combine or make any contract with any other incorporated company, foreign or domestic, through their stockholders, or the trustees or assignees of such stockholders, or with any copartnership or association of persons, or in any manner whatever for the purpose of fixing the price or limiting the production or regulating the transportation of any product or commodity.”).

¹¹⁸ *In re Elec. Lightwave, Inc.*, 123 Wn.2d at 536-38.

¹¹⁹ Compare RCW 81.84 (requires certificate of convenience and necessity required for commercial ferries) and RCW 80.28 (no certificate requirement); *See also Kitsap County Transportation Company v. Manitou*

utilities regulated by the Commission may compete with each other and with entities not regulated by the Commission.¹²⁰ The Legislature has softened its refusal to provide exclusive service territories by conditioning utilities' obligation to serve on reasonableness in several ways.¹²¹

43 Washington State has a uniquely diverse mix of electrical companies, municipal utilities, public utility districts, and cooperatives that provide retail electric service to consumers.¹²² These entities mostly operate as *de facto* monopolies with limited competition at their boundaries because utility service generally gains efficiency through economies of scale.¹²³ Consequently, Commission regulation of for-profit public utilities, like Pacific Power, “replaces competition and ensures the public interest is protected.”¹²⁴ Not-for-profit entities, like CREA and Yakama Power, are not Commission regulated because “[t]here is complete identity of interest between the [entity] supplying the service and the persons who are being served. It is a league of individuals associated together in corporate form for the sole purpose of producing and procuring for themselves a needed service at cost.”¹²⁵ Accordingly, customer-owned utilities have their own governing structures.

44 Washington law does permit public utilities and cooperatives to enter into service areas agreements: (1) to designate the boundaries of adjoining service areas; (2) to establish

Beach-Agate Pass Ferry Association, 176 Wash. 486, 489-90, 60 P.2d 233 (1934) (Supreme Court held that the commercial ferry certificate requirement does not violate Article XII, section 22); *Elec. Lightwave v. Utils. & Transp. Comm'n*, 123 Wn.2d 530, 537, 869 P.2d 1045 (1994) (Commission improperly imputed authority to grant exclusive rights to certain telecommunications companies).

¹²⁰ See RCW 80.04.110; RCW 80.28.075; see also *Panco*, Exh. DJP-1T at 7:6-10.

¹²¹ RCW 80.28.110 (requiring service only after reasonable notice, and only if the requester is reasonably entitled to service); see WAC 480-100-123 (refusal of service rules).

¹²² *Panco*, Exh. DJP-1T at 6:9-13.

¹²³ *In re Elec. Lightwave, Inc.*, 123 Wn.2d at 541 (“[a] *de facto* monopoly does not constitute a *de jure* monopoly.”).

¹²⁴ *Tanner Electric Coop v. Puget Sound Power & Light*, 128 Wn. 2d 656, 911 P.2d 1301 (1996).

¹²⁵ *Inland Empire Rural Electrification, Inc. v. Dep't of Pub. Serv.*, 199 Wash. 527, 540, 92 P.2d 258, 263-64 (1939).

procedures for the extension of service in adjoining areas not currently served; and (3) for the acquisition or disposal by purchase or sale of duplicating utility facilities.¹²⁶ “Without this statutory validation permitted by chapter 54.48 RCW, service area agreements would be invalid as violative of antitrust laws.”¹²⁷ Under chapter 54.48 RCW “the [Commission] has jurisdiction not only to approve or disapprove service area agreements but also to apply and interpret relevant statutes where a dispute arises pursuant to such an agreement and to issue appropriate orders.”¹²⁸ The Legislature enacted chapter 54.48 RCW to “avoid or eliminate duplication of electric lines and service” because that duplication is “uneconomical, may create unnecessary hazards to the public safety, discourages investment in permanent underground facilities, and is unattractive.”¹²⁹ Chapter 54.48 RCW does not eliminate competition between public utilities and cooperatives absent their voluntary agreement.

B. The Current Net Removal Tariff Balances Consumer Protection and Customer Choice While Avoiding Duplication of Electrical Lines and Service

45 Pacific Power’s currently effective tariff fulfils the purpose of chapter 54.48 RCW—to avoid or eliminate the “duplication of electric lines and service.” Pacific Power’s tariff expressly prohibits duplicative service.¹³⁰ The currently effective net removal provisions also avoid duplication of facilities by allowing the Company to charge a disconnecting customer the costs of removal, less salvage, of customer-dedicated facilities if removal is necessary for safety or operational reasons.¹³¹ This ensures that customers pay the net cost of

¹²⁶ RCW 54.48.030.

¹²⁷ *Tanner*, 128 Wn.2d at 666.

¹²⁸ *Id.* at 665-67 (discussing how the Commission broad authority to regulate the practices of public utilities relates to the statutory directives in Chapter 54.48 RCW).

¹²⁹ RCW 54.48.020 (emphasis added).

¹³⁰ See Tariff WN U-75, Sheet R2.2, Rule 2.D; cf. WAC 480-100-123(2) (permitting a utility to refuse to provide service if doing so does not comply with electric industry accepted standards or if doing so is hazardous or unsafe in the utility’s reasoned judgment).

¹³¹ *Walla Walla Country Club v. Pac. Power & Light Co.*, Docket No. UE-143932, Order 03, at 4 ¶ 16.

removal when they cause the Company to incur the cost,¹³² but it does not unnecessarily limit a customer's right to choose another provider by erecting burdensome fees. In this manner, the Commission has struck a delicate balance between Pacific Power's disconnecting and remaining customers.

46 Pacific Power now seeks to upset that balance. It proposes drastic tariff revisions that would require customers to pay two significant costs prior to disconnection: (1) either the fair market value for their customer-dedicated facilities or the actual cost of removing these facilities, and (2) a "Stranded Cost Recovery Fee."

47 Pacific Power fails to prove that its proposed revisions to the net removal tariff are necessary or reasonable. Changes to the net removal tariff are not necessary because the few disconnections that are occurring are not causing appreciable costs shifts between disconnecting and remaining customers. Moreover, the proposed revisions unreasonably prevent customers from exercising the right to choose a service provider, create impermissible cost-shifts, and single out disconnecting customers for harsh, discriminatory treatment. The Commission should reject these proposed tariff revisions.

C. Pacific Power Fails To Prove That Its Proposed Revisions To The Net Removal Tariff Are Necessary

1. The proposed tariff revisions are not necessary because permanent disconnections are barely occurring.

48 Cost shifts between customers occur whenever the customer count changes or actual load differs from the baseline used to set rates.¹³³ Customers have not suffered appreciable cost shifts based on changes in either of these factors.

¹³² *Wash. Utils. & Transp. Comm'n v. PacifiCorp d/b/a Pac. Power & Light*, Docket No. UE-001734, Eighth Supplemental Order, at 28 ¶ 82 (Nov. 27, 2002).

¹³³ Meredith, TR. at 251:3-7.

49 Despite some customer disconnections, Pacific Power’s customer count is growing. The Company serves approximately 129,000 customers in Washington.¹³⁴ Over the past 17 years, only 68 customers have permanently disconnected from Pacific Power’s facilities, which amounts to an average of 4 customers per year.¹³⁵ Over the same period, the Company has gained approximately 12,000 customers, which amounts to an average increase of approximately 700 customers per year.¹³⁶ New customer acquisitions far outpace customer disconnections. The number of customers lost through disconnection every year is engulfed by the number of new customers taking service from Pacific Power. The Company’s load data bears this out: despite the Energy Independence Act’s energy-efficiency requirements,¹³⁷ the Company’s load has remained essentially flat over the last ten years.¹³⁸ Neither customer count changes or actual load loss from disconnection have caused remaining customers to experience appreciable cost shifts.

50 Moreover, customer disconnections are on the decline. Both disconnection requests and completed disconnections peaked between 2010 and 2013. Since then, disconnections have trended downward.

51 Ultimately, no disconnection problem of sufficient magnitude is occurring to justify the proposed revisions. There never has been, nor does there appear to be moving forward, sufficient disconnections or load loss to warrant the proposed revisions. Customer disconnections are simply lost in the noise of Pacific Power’s increasing customer count and load fluctuations.¹³⁹

¹³⁴ Panco, Exh. DJP-1T at 15:1-2.

¹³⁵ *Id.* at 14:4.

¹³⁶ *Id.* at 15:1-2.

¹³⁷ RCW 19.295.040.

¹³⁸ Panco, Exh. DJP-1T at 18:3-5.

¹³⁹ Panco, TR. at 372:15-20; *see* Kelly, Exh. KAK-1T at 25:11-26:9.

2. Pacific Power’s annual revenue loss figure is overstated.

52 Pacific Power nevertheless attempts to justify its proposed tariff revisions based on its “per year revenue loss.”¹⁴⁰ The Company testifies that its total revenue loss from disconnections now has “skyrocketed” to approximately \$1.8 million dollars per year.¹⁴¹ The Company’s “per year revenue loss” figures are overstated, for three reasons.

53 First, Pacific Power includes in this sum the yearly revenue it would collect from every customer it has ever lost. That inclusion is improper – Pacific Power acknowledges that customers should not contribute to the system’s fixed costs forever because fixed costs depreciate and because it can, over time, avoid the costs that it would have incurred to serve departing customers.¹⁴² That same logic applies to revenue lost by the departure of a customer in 1999, or even in 2009: Pacific Power has had the time necessary to optimize its operational practices and avoid or otherwise mitigate many of the costs it would have incurred to serve customers that have departed. The Company cannot lay claim to the revenue loss of disconnected customers in perpetuity.

54 Second, Pacific Power’s testimony about the annual lost revenue distorts the data. Its testimony implies that revenue losses are trending steeply upward.¹⁴³ The reality is quite different.¹⁴⁴ Disconnections peaked between 2010 and 2013, when nearly half of the total number of disconnections ever occurring took place.¹⁴⁵ The Company’s two worst years of incremental revenue loss occurred in 2010 and 2011.¹⁴⁶ In other words, revenue loss due to

¹⁴⁰ See Bolton, Exh. RBD-1T at 5:18.

¹⁴¹ *Id.*

¹⁴² Bolton, TR. at 178:15-18, 20-25; Meredith, TR. at 262:15-21.

¹⁴³ Bolton, Exh. RBD-1T at 5:19-20.

¹⁴⁴ Compare Bolton, Exh. RBD-3 (graph of cumulative annual revenue loss by class) and Panco, Exh. DJP-1T at 14 (graph of incremental annual revenue loss by class).

¹⁴⁵ See Panco, Exh. DJP-1T at 14:13-14.

¹⁴⁶ *Id.* at 14 (graph of incremental revenue loss by class since 1999).

disconnection is trending downward, not upward.¹⁴⁷ Pacific Power's worst years in terms of disconnections occurred six years ago, and, again, it should have already avoided or mitigated the costs incurred to serve those customers that departed.¹⁴⁸

55 Finally, even if the Commission considers Pacific Power's proposal through the lens of revenue losses rather than customer losses, the Company failed to demonstrate a problem sufficient to justify the revisions. Pacific Power's annual Washington revenues amounted to over 343 million dollars in 2015.¹⁴⁹ Pacific Power's inflated \$1.8 million dollar annual revenue loss figure amounts to a fraction of a percent of the Company's annual Washington revenues.¹⁵⁰ Whether the Commission looks at the number of lost customers or the amount of lost annual revenue, Pacific Power's losses due to disconnection are lost in the noise.

3. The specter of future disconnections does not justify drastic revisions to the Company's tariff.

56 Perhaps recognizing that customer disconnections have not caused material cost shifts, Pacific Power presents its proposed tariff revisions as necessary safeguards to protect customers from the impacts of future disconnections that will "accumulate over time."¹⁵¹ Relatedly, the Company implicitly attempted to justify the tariff revisions by invoking the specter of losing one of its larger accounts at some future time.¹⁵² Neither the specter of accumulating future disconnections nor the threat of a single large customer leaving the system justifies the proposed revisions.

¹⁴⁷ *Id.* (graph of incremental revenue loss by class since 1999).

¹⁴⁸ *See* Kelly, Exh. KAK-1T at 41:8-21.

¹⁴⁹ Panco, Exh. DJP-1T at 17:9.

¹⁵⁰ *Id.* at 377:11-16.

¹⁵¹ Bolton, Exh. RBD-1T at 7:19-21.

¹⁵² *See* Panco, TR. at 375:16-376:1.

57 Importantly, the current net removal tariff already dissuades most customers that inquire about disconnection from actually doing so. Since 2003, the Company has provided annual Reports on Costs Associated with Permanent Disconnection and Removal of Facilities.¹⁵³ Beginning in 2013, these reports included information on customer accounts requesting estimates of removal costs, subsequent estimate amounts, payment, and completion dates for disconnection of facilities.¹⁵⁴ Between 2013 and 2016, a total of 60 customers requested estimates of the cost to permanently disconnect, but only 11 customers follow through with disconnection.¹⁵⁵ Accordingly, most customers that inquire about disconnection ultimately choose not to disconnect.

58 The specter of future significant customer disconnections—either in the aggregate or a single large customer—is not some emergency that requires a preemptive safeguard. As noted above, the number of disconnections has trended downward in recent years. If this trend reverses, and disconnections appear to be becoming material, the Company can raise the issue with the Commission at that time. Moreover, the Company acknowledged that the process for disconnection is lengthy, requiring months of notice.¹⁵⁶ Pacific Power would have ample time to address the disconnection of a large industrial load through negotiations with the customer or a complaint to the Commission.¹⁵⁷

¹⁵³ Panco, Exh. DJP-1T at 15:12-13.

¹⁵⁴ *Id.* at 15:14-17.

¹⁵⁵ *Id.* at 16:5-11.

¹⁵⁶ Bolton, TR. at 126:5-13.

¹⁵⁷ *See* RCW 80.28.020.

D. Pacific Power Fails To Prove That Its Proposed Revisions To The Net Removal Tariff Are Reasonable

1. Requiring customers to purchase their customer-dedicated facilities at fair market value is not fair, just, or reasonable.

59 When the Commission first approved the net removal tariff in 2002, it did so because it found: “The proposed charges for net cost of removal place cost responsibility on the customer imposing the cost on [the Company]. The proposal is cost-based, non-discriminatory, and similar to several provisions in existing tariffs [i.e., line extensions, relocation, and undergrounding of overhead lines].”¹⁵⁸ The proposed revisions to Rule 6 that give disconnecting customers the option to pay fair market value for facilities have no such merits. The Commission should reject this proposed revision because it is unmoored to cost-of-service principles, is discriminatory, and bears no resemblance to other existing tariff provisions, making it unfair, unjust, and unreasonable.

60 The use of fair market valuation would likely result in a higher price for the assets sold to departing customers than net book valuation.¹⁵⁹ Pacific Power’s proposed revisions to Rule 6 thus creates an unreasonable cost subsidy paid by disconnecting customers to remaining customers in the form of the difference between the fair market value and the net book value. This subsidy serves no social good and is simply an unjustified wealth transfer that unreasonably prejudices departing customers in violation of Washington law.¹⁶⁰

61 Moreover, allowing Pacific Power to determine fair market value for customer-dedicated facilities will likely lead to controversy about the accuracy of the Company’s assessment. Fair market value establishes a price between willing buyers and sellers—

¹⁵⁸ *Wash. Utils. & Transp. Comm’n v. PacifiCorp d/b/a Pac. Power & Light*, Docket No. UE-001734, Eighth Supplemental Order, at 28 ¶ 82 (Nov. 27, 2002).

¹⁵⁹ Bolton, TR. at 181:24-25.

¹⁶⁰ RCW 80.28.090.

neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts—within a broadly defined market; however, the market for installed distribution facilities is a unique, one-off transaction between begrudging buyers and sellers.¹⁶¹ The proposed revisions to Rule 6 that give disconnecting customers the option to pay fair market value for facilitates will likely lead to disputes about proper valuation. The Commission should reject this proposed revision.

2. Requiring disconnecting customers to pay a stranded cost fee is not fair, just, or reasonable.

62 Pacific Power’s second major proposed revision, which would establish a stranded cost fee in Schedule 300, is particularly problematic. It provides an unreasonable uniform response to a highly contextual issue. The Commission should reject this burdensome, ill-conceived fee because it is unwarranted, imprecise, and discriminatory.

63 A stranded cost fee is not warranted under these circumstances. Stranded cost recovery is appropriate where there are “significant or abrupt changes” to the regulatory structure in place.¹⁶² No such change has occurred in Washington given that it has never allowed for exclusive service territories.¹⁶³ The Supreme Court held that cooperatives like CREA were outside of the Commission’s regulatory jurisdiction approximately 80 years ago, a holding that remains good law today.¹⁶⁴ The Legislature specifically contemplated

¹⁶¹ Panco, Exh. DJP-1T at 22:1-12; Exh. DJP-4X at 5.

¹⁶² See *In re Recovery of Stranded Costs Rulemaking*, Docket No 95-055, 159 PUR.4th 279, 282 (Me. Pub. Utils. Comm’n Feb 27, 1995).

¹⁶³ Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, 61 Fed. Reg. 21,540, 21653 (May 10, 1996) (to be codified at 18 C.F.R. Parts 35 and 385) (affirming the reasonable expectation test for stranded cost recovery and noting that “[w]hether state law awards exclusive service territories and imposes a mandatory obligation to serve would be among the factors to be considered in determining whether the reasonable expectation test is met in a particular case.”) (hereinafter “FERC Order 888”).

¹⁶⁴ *Inland Empire Rural Elec., Inc. v. Dep’t of Pub. Serv.*, 199 Wash. 527 (1939).

competition between entities like CREA and Pacific Power in 1969.¹⁶⁵ CREA and Pacific Power have been actively competing for nearly 20 years.¹⁶⁶ There simply has been no significant, recent change in the regulatory environment that would warrant the recovery of stranded costs.

64 Further, the Commission should reject Pacific Power’s attempt to impose a blanket, solution on a contextual problem. The Commission has previously noted that “[s]tranded costs are determined on a case-by-case basis”¹⁶⁷ and has recently reaffirmed that it has not determined that any particular methodology is appropriate for determining stranded costs.¹⁶⁸ The Commission requires a case-by-case analysis because factual circumstances can drastically change the stranded cost created by a departing customer.

65 The timing of a customer’s departure is particularly critical in determining stranded cost. A customer’s departure, if occurring at the right time, may provide remaining customers significant cost savings by obviating the need for a utility to build a costly new generating resource or enter into a power supply contract that it would then recover through rates.¹⁶⁹ Pacific Power’s proposed tariff takes no account of the types of factual circumstances that can drastically change the stranded cost fee, and provides no procedural mechanism to allow for a more refined valuation or to challenge the accuracy of the fee. To charge a disconnecting customer a fee that could approach \$100 million¹⁷⁰ when that

¹⁶⁵ See LAWS OF 1969, ch. 102 §§1-4, *codified as* RCW 54.48.010-.040.

¹⁶⁶ Bolton, Exh. RBD-1T at 4:13-20.

¹⁶⁷ See, e.g., *Air Liquide Am. Corp., Air Products and Chems., Inc., The Boeing Co., CNC Containers, Equilon Enterprises, LLC, Georgia-Pac. W., Inc., Tesoro Nw. Co., and the City of Anacortes, Wash. v. Puget Sound Energy, Inc.; In re Petition of Puget Sound Energy, Inc. for an Order Reallocating Lost Revenues Related to any Reduction in the Schedule 48 of G-P Special Contract Rates*, Docket Nos. UE-001952 and UE-001959, Eleventh Supplemental Order, at 14 n. 18 (Apr. 5, 2001).

¹⁶⁸ *Wash. Utils. & Transp. Comm;n v. Puget Sound Energy*, Docket No. UE-161123, Order 06, at 23 ¶ 57 (July 13, 2017).

¹⁶⁹ See Kelly, Exh. KAK-4 at 15:15-16:2.

¹⁷⁰ Meredith. TR. at 275:21-24.

customer's departure could actually provide significant cost savings to remaining customers would be patently unfair, unjust, and unreasonable. The Commission should not embed a particular methodology for determining stranded costs in the Company's tariff.

66 Even if the Commission felt inclined to disregard past statements that stranded costs require case-by-case treatment, it should reject Pacific Power's proposed method for calculating stranded costs. The proposed method fails to reasonably calculate the costs "stranded" by a departing customer, for four reasons.

67 First, Pacific Power fails to provide a methodology that generates an accurate fee. Pacific Power constantly experiences load variations.¹⁷¹ The load losses caused by disconnections are so small as to be impossible to detect within the normal variations in Pacific Power's load.¹⁷² It is essentially impossible for the most sophisticated analytical tools available to the Company to identify whether, and to what extent, cost shifts actually occur. Pacific Power's method imposes a fee to make up for losses that the Company cannot detect, let alone quantify.¹⁷³ Pacific Power cannot recover costs that it cannot prove because stranded costs must be "verifiable" in order for the utility to recover them.¹⁷⁴ Pacific Power's inability to satisfy the verifiability requirement makes the proposed fee unfair, unjust, or unreasonable.

68 Second, Pacific Power's proposed fee is unreasonably imprecise because it changes wildly based on largely subjective assumptions. At hearing, Public Counsel's witness, Ms. Kelly, acknowledged that the period used to determine the fee is subjective,¹⁷⁵ yet that period

¹⁷¹ See *Panco*, TR. at 372:15-20.

¹⁷² *Panco*, TR. at 372:15-20; see *Kelly*, Exh. KAK-1T at 25:11-26:9.

¹⁷³ See *Kelly*, Exh. KAK-1T at 26:4-7.

¹⁷⁴ FERC Order 888 at 21643.

¹⁷⁵ *Kelly*, TR. at 302:25-303:3.

largely drives the size of the fee. Pacific Power claims that certain costs are fixed for twenty years after a customer leaves, and that twenty years would thus be a reasonable length of time over which to collect the stranded cost fee.¹⁷⁶ Nevertheless, the Company based its initial stranded cost fee on a ten-year fixed-cost period¹⁷⁷ and accepted a six-year fixed-cost period on rebuttal.¹⁷⁸ The stranded cost fee associated with a six-year timeframe is a third less the fee associated with a ten-year timeframe and over fifty percent less than the fee associated with a twenty-year timeframe.¹⁷⁹ Such variation is not reasonable. Imposing such a significant fee on a single customer demands greater precision.

69 Third, Pacific Power's proposed stranded cost fee is ill-conceived. As originally proposed, it would have recovered the same costs that it proposed to recover through the revisions to Rule 6.¹⁸⁰ The amount of double recovery allowed by the revisions amounted to nearly ten percent of the total stranded cost fee.¹⁸¹ While Pacific has stripped that double recovery, and another instance of double recovery, out of the fee,¹⁸² the fact that Pacific Power's proposal contained such a large and obvious error should create significant doubt that the Company's proposal properly captures only those costs truly stranded by customer departure.

70 Fourth, Pacific Power's methodology creates specific cost-causation problems with regard to departing commercial and industrial customers. Pacific Power's commercial and industrial customers subsidize its residential customers.¹⁸³ While this subsidy may be a

¹⁷⁶ See Meredith, TR. at 262:18-21.

¹⁷⁷ Bolton, Exh. RBD-1T at 16:1-7.

¹⁷⁸ Bolton, Exh. RBD-15T at 2:12-13, 11:6-14.

¹⁷⁹ Kelly, Exh. KAK-1T at 29:6.

¹⁸⁰ Meredith, TR. at 262:22-263:16.

¹⁸¹ See *id.* at 263:8-13.

¹⁸² See *id.* at 262:22-263:16.

¹⁸³ Panco, Exh. DJP-1T at 24:16-21.

reasonable within the rate structure, it is not a reasonable component of the stranded cost fee. Because Pacific Power's stranded cost fee works as a revenue multiplier, commercial and industrial customers would pay a multiple of the subsidy to disconnect.¹⁸⁴ The stranded cost fee, in other words, requires disconnecting commercial and industrial customers to pay for costs caused by residential customers, not by themselves.

71 Finally, the Commission should reject the proposed stranded cost fee as unduly discriminatory. While Pacific Power claims the stranded cost fee is necessary to prevent cost shifts between customers, cost shifts occur constantly, for many reasons, and a number of these cost shifts are nearly identical to the ones caused by disconnecting customers – they result from a change in a customer's load. Public Counsel witness Kelly admitted that customers who moved or shuttered businesses could create cost shifts just the same as a disconnecting customer;¹⁸⁵ Pacific Power witness Meredith similarly admitted that customers that change their demand by installing distributed generation,¹⁸⁶ pursuing energy efficiency;¹⁸⁷ or switching to natural gas for the provision of heat would all create cost shifts.¹⁸⁸ Despite the similarity of these other cost shifts, customers causing them are not accountable for them. Pacific Power instead singles out a single type of potential cost shift, the one possibly caused by a disconnecting customer, for the assessment of a fee. That violates the public service laws' proscription of undue prejudice and discrimination.¹⁸⁹

72 Further, the Commission should be wary of the precedent the proposed stranded cost fee would establish. As noted, the cost shifts caused by a customer pursuing energy

¹⁸⁴ Meredith, TR. at 249:18-250:24.

¹⁸⁵ Kelly, TR. at 340:16-341:5.

¹⁸⁶ Meredith, TR. at 255:25-256:6.

¹⁸⁷ *Id.* at 253:19-25.

¹⁸⁸ *Id.* at 254:5-25.

¹⁸⁹ RCW 80.28.090, .100.

efficiency or installing distributed generation are essentially identical to the cost shifts Pacific Power would assess the stranded cost fee for. Approving the proposed fee could create a slippery slope and inhibit pursuit of important carbon-reduction policies.

3. Pacific Power should either compete with CREA or settle on terms for a service territory agreement.

73 The proposed revisions to the net removal tariff shelter Pacific Power from competition more than they would safeguard customers from cost shifts. Even if not their intent, Pacific Power’s proposed revisions to the net removal tariff tilt the balance too far toward protecting its interest in captive customers and too far away from those customers’ right to choose an alternative service provider where possible.

74 As discussed above, Washington’s Legislature never provided for exclusive service franchises, which is a key component of the regulatory compact in other states.¹⁹⁰ Indeed, the Legislature has resisted the urging of investor-owned utilities to take that step.¹⁹¹

75 The proposed revisions to the net removal tariff drastically “change[] the economics and change[] the decision for a customer who might depart.”¹⁹² Specifically, the revised net removal tariff “make[s] permanent disconnection less economic for the departing customer.”¹⁹³ Any customer wishing to depart would have to pay the fees required by the net removal tariff, whatever the customer’s reason for wanting an alternative supplier. Those fees include a stranded cost fee that is roughly three times Pacific Power’s annual revenue from that customer. The customer would owe this payment in a single, upfront lump sum.

¹⁹⁰ See generally chapter 80.28 RCW.

¹⁹¹ Bolton, TR. at 137:17-138:1.

¹⁹² Kelly, TR. at 310:11-13.

¹⁹³ Bolton, TR. at 111:24-112:2.

76 The proposed revisions, given the size and manner in which they assess fees on departing customers, essentially make those customers’ right to choose an alternative provider a dead letter.¹⁹⁴ The revisions nullify the right to choose a provider irrespective of a customer’s reasons for wishing to depart: a customer seeking to obtain service from cooperatives run by members of their own communities or those seeking greener power lose the right just the same as a customer seeking a better deal. ¹⁹⁵ The tariff revisions give Pacific Power what the Legislature did not – a type of an exclusive service territory.

77 Pacific Power’s answer appears to be that the Commission should not worry about the imposition of these fees because departing customers will not pay them, CREA will. The Commission must reject this reasoning. The Legislature tasked the Commission with regulating public service company rates and practices: it must evaluate the justness or fairness of Pacific Power’s tariffs, not the practices of CREA.¹⁹⁶ The Commission must base its decision on whether proposed revisions are just and reasonable to the Company and its customers.

78 In addition, Pacific Power proposes to make generally applicable revisions to its tariffs. A customer living on Yakama Nation lands and seeking to take service from Yakama Power would face the same fees as someone living in Walla Walla and seeking to take power from CREA. The tariff is unjust or unfair to those customers outside of CREA’s service territory.

¹⁹⁴ See, e.g., Meredith, TR. at 275:16-24 (the fee is approximately 80 million for one of Pacific Power’s customers).

¹⁹⁵ Panco, Exh. DJP-1T at 21:1-9.; Gorman, Exh. MPG-1 at 3:21-4:3, 13:22-24.

¹⁹⁶ *Cole v. Washington Utilities & Transp. Comm’n*, 79 Wn.2d 302, 306, 485 P.2d 71, 74 (1971) (Nonregulated fuel oil dealers are not “within the jurisdictional concern of the commission. . . . [T]he commission correctly determined that it had no authority to consider the effect of a regulated utility upon a nonregulated business.”).

79 Moreover, even if CREA has paid the net cost of removal for a disconnecting Pacific Power customer, that does not guarantee it will do so in the future, let alone pay the significant additional fees that the Company has proposed. As described above, the proposed revisions create fees that are unjust or unreasonable, and the Commission should reject them.

80 Importantly, the protection offered Pacific Power by the proposed revisions is unnecessary. To the extent that disconnections are driven by competitive pressures, the Company should just more effectively compete. If Pacific Power's customers are truly choosing alternative service providers for economic reasons, Pacific Power should engage those providers economically. Pacific Power's claims that it cannot compete because it must charge filed rates is unpersuasive given that the Legislature has specifically provided the Commission with tools to bolster regulated utilities' ability to compete to retain or acquire customers. These tools include banded rates,¹⁹⁷ which the Company has never even attempted to use.¹⁹⁸ The Commission should require Pacific Power to exhaust legislatively approved techniques before approving something like a stranded cost fee, which the Legislature has not specifically authorized.¹⁹⁹ More effective competition from the Company might inspire CREA to pursue a service territory agreement.

81 Pacific Power could also use other means to address the potential loss of a large industrial load. The Company could propose to revise its rate spread in a rate case in order to eliminate the incentive for commercial and industrial customers to disconnect. It could also use a special contract to retain unique, large loads. Pacific Power should address issues

¹⁹⁷ RCW 80.28.075.

¹⁹⁸ Panco, Exh. DJP-1T at 25:11-12.

¹⁹⁹ See generally chapter 80.28 RCW.

related to competition and the loss of a single customer with appropriate tools rather than holding all of its customers hostage with a generally applicable tariff.

82 Pacific Power could also more effectively address other potential reasons customers may choose an alternative provider. For example, it could be more responsive to its customers service quality needs, or develop greener products to retain customers wishing to move from coal-fill to carbon-free electrical generation.

83 This competition would benefit Pacific Power by allowing it to attempt to retain customers rather than lose them. Competition would also benefit Pacific Power's customers without nullifying their right to choose a service provider. They may receive a better deal, more responsive service, or products that better meet their ecological commitments. The Company should try to retain customers by meeting their needs before it employs the harsh measures found in the tariff revisions.

IV. CONCLUSION

84 The Commission should reject Pacific Power's proposed revisions to the net removal tariff. Pacific Power has not shown the necessity of the revisions. Even if the Company had made that showing, the fees the revisions impose unjustifiably subsidize remaining customers, impermissibly discriminate against departing customers by imposing harsh fees calculated based on ill-conceived methods, and heavily burden customers' right to choose an alternate service provider. The Commission should require that Pacific Power employ the

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tools granted to enable it to compete by the Legislature and the Commission before turning to the type of solution proposed in this docket.

DATED this 28th day of July 2017.

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General

CHRISTOPHER CASEY
JEFF ROBERSON
Assistant Attorneys General
Counsel for Washington Utilities and
Transportation Commission Staff