BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, vs. PACIFIC POWER & LIGHT COMPANY, Respondent.	**DOCKET UE-161204**

PACIFIC POWER & LIGHT COMPANY'S INITIAL BRIEF

July 28, 2017

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I. INTRODUCTION

1 In this proceeding, Pacific Power & Light Company (Pacific Power or Company), a division of PacifiCorp, has asked the Washington Utilities and Transportation Commission (Commission) to approve reasonable changes to tariff rules governing permanent customer disconnections. The record evidence demonstrates that the proposed rule changes are necessary to protect Pacific Power's remaining customers from the competitive practices of unregulated cooperative electric associations.

2 Pacific Power's service territory in the Walla Walla and Yakima areas is fairly unique in Washington. Most Washington utilities with adjoining service territories have formal or informal territory allocation agreements that define which utility serves which customers, and prevents uneconomic and hazardous redundant facilities. Pacific Power and Columbia Rural Electric Association, Inc. (Columbia REA) historically operated cooperatively under an informal service territory agreement. But that changed in 1999 when Columbia REA began disregarding that informal arrangement and instigated a campaign to solicit Pacific Power's higher-margin customers in the Walla Walla area.

3 Columbia REA's solicitation of Pacific Power's customers is not a case of simple competition. Columbia REA is an unregulated electric cooperative that can offer special rates and agree to pay disconnection and line extension costs to Pacific Power's customers who switch utilities. As a cost-of-service regulated utility, Pacific Power cannot offer similar discriminatory rates and inducements. Competition exists when parties are permitted to play by the same rules, and that is not the case with Pacific Power and Columbia REA.

4 Pacific Power's remaining customers are experiencing quantifiable harm because the current permanent disconnection rules (Rule 1, Rule 6 and Schedule 300) do not reflect the actual financial impact resulting from a customer's voluntary economic decision to switch

electric service providers. Indeed, unrebutted record evidence demonstrates that Pacific Power's cumulative annual revenue loss sustained as a result of Columbia REA's aggressive competitive practices within Pacific Power's traditional service area has risen to nearly $1.9 million. That amount will continue to grow unchecked unless Pacific Power's proposed tariff changes are adopted.

5 Pacific Power's proposal: (1) informs customers who may be contemplating a switch to Columbia REA of the economic impact caused by such a decision; (2) protects remaining customers from the economic consequences of a customer's voluntary economic decision to switch utilities; and (3) ensures that Columbia REA cannot freely conscript facilities used to serve Pacific Power customers. As fully discussed below, these changes are reasonable, supported by the record, and in the public interest.

II. REGULATORY FRAMEWORK

A. In Washington, Pacific Power has both an obligation to serve and a reasonable expectation of serving customers in its traditional service area.

6 Pacific Power was formed in 1910 to serve four communities, including Walla Walla and Yakima.[1] As noted by Mr. Scott Bolton, Pacific Power's Senior Vice President of External Affairs and Customer Solutions, the Company appreciates that Walla Walla and Yakima are two of the foundational communities that collectively comprise a significant portion of the Company's traditional Washington service area.[2]

7 Pacific Power has a statutory duty to serve those customers who request service within its traditional service area,[3] and witnesses for both Commission Staff and Public

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[1] RBD-1T 2:14-17.

[2] Bolton TR. 107:16-22.

[3] RCW § 80.28.110 ("Every … electrical company … engaged in the sale and distribution of … electricity … shall, upon reasonable notice, furnish to all persons and corporations who may apply therefor and be reasonably entitled thereto, suitable facilities for furnishing and furnish all available … electricity … as demanded…."); *Wash Utils. & Transp. Comm'n, vs. Pac. Power & Light Co.,* Docket No. U-86-02, Second Supp'l Order (Sept.

Counsel acknowledged this statutory duty to serve. Ms. Kathleen Kelly, a well-qualified electric utility expert engaged on behalf of Public Counsel, testified that Pacific Power appropriately understands that it has an obligation to serve those customers who reasonably request service within its traditional service area.[4] Ms. Kelly further recognized that fulfilling that obligation to serve necessarily requires long-term investments to keep the system reliable and useful for its customers.[5]

8 On behalf of Commission Staff, Mr. David Panco agrees that regulated utilities such as Pacific Power "have an obligation to serve" customers who make a reasonable demand for service.[6]

9 Even Mr. Michael Gorman, the only witness on behalf of Columbia REA, readily acknowledges that an exclusive service territory is not required for a utility to have a reasonable expectation of continuing to serve.[7] He further acknowledged that Federal Energy Regulatory Commission (FERC) Order 888 does not require that utilities have designated exclusive service territories to have a reasonable expectation of continued service.[8]

10 FERC issued Order 888 in 1996 to remove impediments to competition in the wholesale power markets by requiring public utilities who own transmission to provide open access to their systems. The resulting competition imposed stranded costs on utilities that had acquired resources with the expectation, and often the regulatory requirement, to

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19, 1986) ("The Commission must consider the utility's statutory duty to serve its customers" in regulatory proceedings).

[4] Kelly TR. 313:21-25.

[5] *Id.*

[6] Panco TR.370:23

[7] Gorman TR. 90:20-23.

[8] Gorman TR 90:11-19.

maintain service to customers that ultimately decided to receive service elsewhere.[9] Recognizing this problem, FERC Order 888 allows a public utility to recover stranded costs from a departing wholesale requirements customer or retail customer for a period of time equal to the utility's reasonable expectation that it would have continued to serve the customer.[10]

11 FERC evaluates each matter on a case-by-case basis to determine the length of the reasonable-expectation period, but often looks to the utility's planning horizon. In *City of Las Cruces*, FERC found the reasonable expectation period to be 20 years.[11]

B. Pacific Power's obligation to serve is one component of the regulatory compact consistently recognized and affirmed by the Commission.

12 The regulatory compact is a fundamental construct that governs traditional electric utility service.[12] In return for fulfilling its statutory obligation to serve, Pacific Power is entitled to Commission-established rates, charges, regulations, practices, and contracts that are "[ ]sufficient to yield a reasonable compensation for the service rendered."[13] As noted by Chairman Danner, under the regulatory compact, 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."[14] The Commission, Staff, and other parties to this docket routinely apply the regulatory compact in a variety of

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[9] See *Transmission Access Policy Study Group v. FERC*, 255 F.3d 667, 683 (DC Cir. 2000).
[10] 18 C.F.R § 35.26(c)(2)(i).
[11] *City of Las Cruces, New Mexico v. El Paso Electric Co.*, 87 F.E.R.C. ¶ 61,201 at 61,750 (1999).
[12] Bolton TR. 113:18-20.
[13] RCW 80.28.020.
[14] *Walla Walla Country Club v. Pacific Power & Light Company*, Docket UE-143932, Order No. 05 (Separate Statement of Chairman Danner, ¶2) (May 5, 2016).

proceedings. The following list provides a non-exhaustive example of instances where the regulatory compact has been applied in Commission proceedings:

- *In re Petition of Puget Sound Energy, Inc., Docket UG-151633,* Order No. 10 p.104 (Oct. 13, 2016)—"PSE would still maintain its ultimate responsibility under the regulatory compact to provide safe, reliable natural gas service at reasonable rates."

- *WUTC v. Pacific Power & Light Company, Docket UE-140762,* Final Order p.219 (March 25, 2015)—Mr. Mullins for Boise White Paper testified "customers rely on the regulatory compact and the oversight of the Commission's rate case process to capture and balance both the costs and the benefits the Company realizes between rate cases."

- *In re Petition of Puget Sound Energy, Inc., 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 p. 16-17—"The arguments of Staff, Public Counsel and ICNU are grounded in the most basic underpinnings of utility regulation, sometimes referred to as the 'regulatory compact'. . . . [I]n its most basic form, the regulatory compact is that utilities have an obligation to provide all customers in their territory with safe and reliable service in return for the regulator's promise to set rates that will compensate the utility for the costs incurred to meet that obligation."

- *WUTC v. Rainier View Water Company, Inc.,* Docket UW-110054, Order 05 p.48 (Oct. 17, 2012) (Concurring Opinion of Commissioner Oshie)—"Without the assurance that such economic discipline is expressed in a company's investment decisions, we lose a fundamental component of the regulatory compact—the belief that owners are expected to be careful and prudent with their capital."

- *WUTC v. Puget Sound Power & Light Company,* Cause No. U-83-84, Order p.57-58 (Sept. 28, 1984)—"A note on the concept and existence of the social and economic compact of utility regulation is necessary to in part help communicate the reasons for the decisions made by the Commission in this order. The social and economic compact of utility regulation begins with the premise that a regulated utility has an obligation to serve the public. In a decision by an earlier Commission an effort was made to put a limit on that obligation by enacting a moratorium on new electrical hookups to Puget's system. That effort was rejected in a King County Superior Court decision, *Seattle Master Builders v. Commission,* No. 80-2-11632-1. This leaves the state of the law as a utility possesses an unending obligation to provide service to anyone within the service territory of that utility who demands service in accordance with approved tariffs. [I]n order for the social duty to serve to be viable, the compact must also provide for a utility to recover expenses it prudently undertakes to meet that obligation."

13 As correctly appreciated by Ms. Kelly, the regulatory compact as recognized in Washington is the product of intermingled rules, requirements, and laws.[15] Ms. Kelly's clear understanding of the regulatory compact is a result of her own personal research, the research and analysis of her staff, discussions with Public Counsel, and information provided by Pacific Power in its testimony.[16] As noted by Mr. Bolton, Pacific Power has a reasonable expectation of continuing to provide service to any and all qualified customers within its traditional service area as a result of: (1) the regulatory compact; (2) local franchise agreements; and (3) its significant investment in facilities necessary to provide service within its traditional service area.[17]

III. COMPETITIVE PRACTICES IN PACIFIC POWER'S TRADITIONAL SERVICE AREA

A. The proposed tariff revisions are needed to address competitive practices in Pacific Power's traditional service area.

14 The lack of a service area agreement between Pacific Power and Columbia REA, coupled with Columbia REA's aggressive competitive practices, necessitate the proposed revisions to Pacific Power's tariffs. As recognized by Chairman Danner, the lack of a service area agreement between Pacific Power and Columbia REA stands in stark contrast to the regulatory compact.[18]

15 In 1999, Pacific Power customers began requesting to permanently disconnect from the Company's system so they could receive service from Columbia REA.[19] Before 1999, Pacific Power and Columbia REA had an informal agreement that whichever utility's

[15] Kelly TR 315:18-20.
[16] Kelly TR. 316:4-8.
[17] Bolton TR. 112:10-14.
[18] *Walla Walla Country Club v Pacific Power & Light Company*, Docket UE-143932, Order No. 05 (separate statement of Chairman Danner, ¶ 4) (May 5, 2016).
[19] RBD-1T 4:12-13.

facilities were closer to a customer would serve that customer. That informal agreement prevented duplication of facilities and the resulting safety and operational concerns. A management change at Columbia REA in 1999 marked the end of the informal agreement.[20]

16 The graphic reports in Exhibit RBD-2 clearly demonstrate the aggressive expansion of Columbia REA's customer base and facilities in and around Walla Walla over the past nearly 20 years. Pacific Power's cumulative annual revenue loss sustained as a result of Columbia REA's aggressive competitive practices within Pacific Power's traditional service area has risen to nearly $1.9 million.[21] Over the same period of time, Pacific Power's load growth, on a general-service basis, has been flat.[22]

17 The types of customers requesting disconnection indicates that Columbia REA targets Pacific Power's higher-margin customers. As noted by Mr. Bolton, whenever a customer departs, cost shifting occurs. However, the magnitude or impact of the cost shifting is far more severe when a higher-margin customer leaves the Pacific Power system.[23] Mr. Panco noted that, since 2010, the permanent disconnection losses sustained by Pacific Power have been "significantly commercial and industrial."[24] Mr. Gorman necessarily conceded that none of Pacific Power's customers who permanently disconnected to be served by Columbia REA qualify for a low-income program.[25]

18 In Docket UE-143932, Chairman Danner accurately noted that Columbia REA's practice of targeting commercial or high-density customers inside Pacific Power's traditional service area, over time, results in cost shifting and higher prices for Pacific Power's

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[20] RBD-1T 4:14-18.
[21] RBD-3.
[22] Bolton TR. 118:6-8.
[23] Bolton TR. 176:10-15.
[24] DJP-1T 15:6.
[25] Gorman TR, 85:20-22.

remaining customers, who must continue to cover the fixed costs of infrastructure that Pacific Power must maintain to ensure vital electric services to the communities within its traditional service area.[26] When an unregulated cooperative association erodes a utility's traditional service area, then the utility may be forced to argue for exceptions to its obligation to serve higher-cost customers in low-density areas to blunt upward pressure on rates caused by the actions of the unregulated cooperative association.[27]

19 Columbia REA actively markets to and incentivizes existing Pacific Power customers to permanently disconnect and receive service from Columbia REA.[28] Pacific Power is aware of direct solicitations that Columbia REA has made to existing Pacific Power customers by in-person visits to businesses, media ads, and direct electronic mail.[29] These solicitations have included 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 rates for five years.[30] Pacific Power is even aware of instances where Columbia REA went as far as to coach customers in ways to avoid paying proper disconnection costs.[31] Pacific Power has absolutely no evidence of customers in its traditional service area permanently disconnecting and thereafter receiving service from Columbia REA other than as a result of being economically enticed to do so.[32] Service quality is clearly not an issue.[33]

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[26] *Walla Walla Country Club v Pacific Power & Light Company*, Docket UE-143932, Order No. 05 (separate statement of Chairman Danner, ¶ 4) (May 5, 2016).
[27] *Walla Walla Country Club v Pacific Power & Light Company*, Docket UE-143932, Order No. 05 (separate statement of Chairman Danner, ¶ 5) (May 5, 2016).
[28] Bolton TR. 119:15-16.
[29] RBD-1T 4:22-5:6.
[30] *Id.*
[31] *Id.*
[32] Bolton TR. 120:12-15.
[33] Bolton TR. 159:13-15.

20 The retail service offering of a utility regulated by the Commission is fundamentally different than that of a cooperative association that operates outside of the regulated environment.[34] A particularly relevant example is Columbia REA's practice of selectively paying the costs of some of Pacific Power's customers to permanently disconnect from the Pacific Power system and be served by Columbia REA. As noted by Mr. Bolton and confirmed in Columbia REA's response to Bench Request No. 1, Columbia REA has had a business practice of doing so for quite some time.[35] During the course of the Walla Walla Country Club matter, Columbia REA was required to produce its agreement with the country club, which clearly reflected that Columbia REA would cover all costs of permanently disconnecting from Pacific Power's system.[36]

21 Columbia REA has consistently argued that customer disconnections are simply the result of a competitive market. But the "competitive market" in Washington is not a level playing field. Columbia REA is not regulated by the Commission and its rates and practices are not subject to regulatory review. This allows Columbia REA to offer rate incentives that undercut Pacific Power's regulated rates and reimburse customers for disconnection costs. In contrast, Pacific Power cannot tailor its rates, which are regulated by the Commission, to respond to Columbia REA's practices. It is a stretch to characterize Washington as having a "competitive market" when the parties play by completely different rules.

22 Columbia REA also minimizes the fact that it receives preference power rates from the Bonneville Power Administration (BPA) by noting that Pacific Power participates in

[34] Bolton TR. 123:19-25.
[35] Bolton TR. 125:1-2.
[36] Bolton TR. 200:21-23.

BPA's Residential Exchange Program. But the limited benefits of the Residential Exchange Program do not flow to large commercial or industrial customers.[37]

B. Without a service territory agreement, revising Pacific Power's tariffs is the only means by which the Commission can adequately protect Pacific Power's remaining customers from the cost shifting that results from permanent disconnections.

23 It appears that negotiating a service area agreement with Columbia REA in the near future is unlikely, particularly in light of the favorable environment for unregulated cooperative associations to cherry-pick higher margin customers under the Company's current net removal tariff. Under these circumstances, revising Pacific Power's tariffs is necessary to protect Pacific Power's remaining customers from the cost shifting that results from permanent disconnections.

24 The legislature has clearly indicated that it is in the public interest for utilities and cooperatives to enter into service area agreements:

> The legislature hereby declares that the duplication of the 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 and cooperatives to enter into agreements for the purpose of avoiding or eliminating such duplication.[38]

25 The records in this docket and Docket UE-143932 are replete with evidence that Columbia REA has constructed duplicative facilities throughout Pacific Power's historic service territory in Walla Walla and the surrounding areas. As noted by the legislature, the existence of those duplicative facilities is uneconomical. They present a public safety hazard. The duplicative facilities are unattractive and contrary to the public interest.

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[37] Bolton TR. 162:22-24.
[38] RCW 54.48.020.

Ms. Kelly has extensive experience in the electric utility industry. Her pre-filed testimony included stated concerns regarding safety, including when first responders become confused by duplicative facilities, some of which may be live and some of which may be abandoned. When asked whether she was basing her opinions regarding those serious safety concerns on testimony presented in Docket UE-143932, Ms. Kelly responded that her concerns are based upon her experience as a utility executive and understanding what happens when first responders encounter duplicative facilities.[39]

26 Pacific Power is aware of at least two circumstances of redundant service (i.e., a single customer connected to and receiving electricity from two utilities for the same equipment). In other words, Columbia REA energized lines to Pacific Power customers who were simultaneously receiving service from Pacific Power.[40]

27 Pacific Power has consistently engaged in good faith efforts to reach a service area agreement with Columbia REA. As reflected in Exhibit RBD-2 (the graphic representations of Columbia REA's expansion within Pacific Power's traditional service area), Columbia REA now has infrastructure located very near some of Pacific Power's largest industrial loads.[41] When asked by Commissioner Balasbas, Mr. Bolton cited that fact as a major obstacle to negotiating a service area agreement. In response to subsequent questions from Commissioner Rendahl, Mr. Bolton noted that, in light of Columbia REA's build-out of its system, it would now be even more difficult to settle on service area boundaries and appropriate consideration for the transfer of facilities—two of the historical stumbling blocks.[42] In response to inquiry by Chairman Danner, Mr. Panco even stated that he is not

[39] Kelly TR 328:9-11.
[40] Bolton TR 133:9.
[41] Bolton TR 238:20-22.
[42] Bolton TR. 239:20-240:11.

optimistic that Pacific Power and Columbia REA can ever successfully negotiate a service area agreement.[43]

28 Negotiating a service area agreement is not necessarily impossible, and Pacific Power will continue to seek out ways to reach a mutually agreeable outcome.[44] But given the history and increasing impediments, appropriately revising Pacific Power's tariffs is the Commission's best available mechanism to deal with the significant impacts of cost shifting occurring as a result of Columbia REA's actions and the economic decisions of departing customers.[45] If adopted by the Commission, the balanced tariff revisions proposed by the Company may facilitate productive negotiations toward service area agreements with unregulated cooperative associations consistent with the public interest articulated by the legislature in RCW 54.48.020.

29 To the best of Pacific Power's understanding, Mr. Panco argued that the increasing cumulative annual revenue loss experienced by Pacific Power—almost $1.9 million as of 2016—is insufficient to warrant a revision of Pacific Power's tariffs. In response to questions by Chairman Danner, Mr. Panco could not articulate the thresholds at which revenue loss and cost shifting would necessitate revision of the net removal tariff.[46] Mr. Panco did concede that the loss of a large industrial customer could create "a significant cost that would fall outside of the noise of the regular cost shifting that occurs[.]"[47] Mr. Panco's testimony on this point illustrates the pressing need for regulatory reform *before* Pacific Power's customers are saddled with the "significant costs" Mr. Panco anticipates.

[43] Panco TR. 377:24.
[44] Bolton TR. 240:17-21.
[45] Bolton TR. 240:22-25.
[46] Panco TR. 377:4-5.
[47] Panco TR. 372:15-18.

30 Counsel for Boise White Paper questioned Mr. Bolton regarding Schedule 48 Dedicated Facility customers. In Washington, Pacific Power has one such customer—Boise White Paper. The total annual revenue corresponding to that Schedule is $27,400,253.[48] Boise White Paper's counsel pointed out, using the stranded cost recovery fee multiplier proposed by Pacific Power and fully recommended by Public Counsel reflects stranded costs of roughly $80 million that would be borne by remaining Pacific Power customers if Boise White Paper permanently disconnects.[49] Without the proposed revisions to the Company's tariffs, a loss of a single large industrial customer would result in massive cost shifting that would be borne by Pacific Power's remaining customers.

IV. PACIFIC POWER'S CURRENT TARIFFS ARE INADEQUATE

A. Pacific Power's current tariffs do not address the cost shifting that occurs when a Pacific Power customer permanently disconnects and, further, do not contemplate a commercially reasonable sale of Pacific Power's facilities nor the attendant necessary transfer of liability.

31 Pacific Power's current tariffs governing permanent disconnections are contained in Rule 1, Rule 6 and Schedule 300. Permanent Disconnection is defined as follows: "Disconnection of service where the customer has either requested the Company permanently disconnect the company's facilities or chosen to be served by another electric utility provider."[50] Rule 6 provides: "When Customer requests Permanent Disconnection of Company's facility, 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[.]"[51] Pacific Power is required to provide an estimate of the cost of removing facilities, before initiating

[48] RBD-4, p. 3.
[49] Bolton TR. 140:18-19.
[50] Rule 1.
[51] Rule 6.

the work.[52] The customer is required to pay the estimated amount, before disconnection and removal of the facilities.[53] No later than 60 days after disconnection and removal, Pacific Power determines the actual cost of removal less salvage, and issues either an invoice for additional costs or refund for any overpayment.[54] Schedule 300 also provides that the rate charged for removal of facilities for "non-residential service removals" is the "actual cost less salvage."[55]

32 The Walla Walla Country Club adjudicative proceeding (Docket UE-143932) highlighted the numerous deficiencies in the current tariffs. Pacific Power noted the various comments of the Commission regarding those deficiencies in how the current tariffs are constructed.[56] The current tariffs do not provide an option for the sale of facilities to the departing customer. Accordingly, Pacific Power has proposed revisions to permit the sale of facilities.[57] The Company's proposed revisions are intended to address contingencies that the Company may face upon a request to permanently disconnect and, in those circumstances, ensure that the cost shifting resulting from the permanent disconnection is not visited upon the Company's remaining customers.[58] The remaining customers should not be forced to subsidize the departure of a customer who makes an economic decision encouraged by the practices of an unregulated cooperative association.[59]

33 Doing nothing, preserving the status quo, is simply not an option. The circumstance of cost shifting being borne by Pacific Power's remaining customers has been in place for a

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[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] Schedule 300.
[56] Bolton TR. 198:23-199:1.
[57] Bolton TR. 199:2-4.
[58] Bolton TR. 199:5-10.
[59] Bolton TR. 199:10-12.

number of years and should be addressed by the Commission through adoption of Pacific Power's proposed revisions to its tariffs.[60] The Stranded Cost Recovery Fee proposed by Pacific Power appropriately ensures that remaining customers do not subsidize departing customers. As noted by Ms. Kelly, "it is an issue of fairness and equity."[61] It is important to make sure that Pacific Power's remaining customers are held harmless from the cost shifting resulting from customers permanently disconnecting to the fullest extent possible. The departing customer or the new electric service provider should not benefit at the expense of Pacific Power's remaining customers.[62] This is a significant and broad issue that is being addressed by utilities throughout the United States.[63]

34 Mr. Bolton made it very clear that the goal of this proceeding is not to prevent competition or migration of customers from one electric service provider to another. The goal is to mitigate the impact when Pacific Power customers permanently disconnect and depart the system to be served by another electric service provider.[64] On behalf of Public Counsel, Ms. Kelly echoed Mr. Bolton's definitive statement. She does not believe that a stranded cost recovery fee is intended to impede competition, but rather ensure that Pacific Power's remaining customers are treated fairly.[65] Ms. Kelly believes that the proposed revisions to Pacific Power's tariffs allow potential departing customers to appreciate the economics of their decision and understand, by making that decision, that there are associated costs that they (as opposed to Pacific Power's remaining customers) should bear.[66]

[60] Kelly TR. 364:4-5 and 312:7-9.
[61] Kelly TR. 297:5-6.
[62] Kelly TR. 300:14-20.
[63] *Id.*
[64] Bolton TR. 128:15-19.
[65] Kelly TR. 310:5-7.
[66] Kelly TR. 302:4-8.

B. While Public Counsel supports the proposed revisions to Pacific Power's tariffs, three interveners oppose the revisions out of economic self-interest.

1. Columbia REA

35 Mr. Gorman was asked questions relating to his client's economic self-interest. For example, Pacific Power's counsel pointed out that his client often contractually agrees to pay all costs incurred by a Pacific Power customer permanently disconnecting and later receiving service from Columbia REA.[67] Since 1999, Columbia REA has enjoyed a windfall. It has not been required to pay fair market value for desired facilities owned by Pacific Power nor has it been required to pay a stranded cost recovery fee necessary to address the resulting cost shifting to Pacific Power's remaining customers.

36 The difference between what Columbia REA has paid to acquire Pacific Power's customers to date is certainly different than what it would be required to pay under the proposed revised tariffs. Mr. Gorman was asked whether his client had explained the economic issues it is confronting in this docket.[68] Mr. Gorman responded: "Well, in the economics of the transactions that I looked at, it seemed like that would be something that my client would take into consideration."[69]

2. Boise White Paper

37 As noted by Mr. Bolton, the proposed revisions to Pacific Power's tariffs represent the Commission's best opportunity to address cost shifting borne by Pacific Power's remaining customers, specifically including that which would occur if a large industrial customer were to permanently disconnect.[70] Boise White Paper certainly qualifies as a large

[67] Gorman TR. 77:18-21.
[68] Gorman TR. 77:24-25.
[69] Gorman TR. 78:1-3.
[70] Meredith TR. 275:21-24.

industrial customer. Boise White Paper falls under Schedule 48 Dedicated Facility.[71] Its total annual revenue is $27,400,253.[72]

38 Pacific Power and Public Counsel agree that the proposed stranded cost recovery fee multiplier is fair and equitable because it captures most of the costs that would otherwise shift to Pacific Power's remaining customers. If Boise White Paper permanently disconnects from Pacific Power's system, the proposed methodology would calculate stranded costs in the range of $80 million.[73] Given the significant economic ramification of being unable to shift stranded costs to Pacific Power's remaining customers if it were to seek to permanently disconnect from the Pacific Power system, it is certainly understandable why Boise White Paper opposes the necessary revisions to Pacific Power's tariffs.

3. Yakama Power

39 Yakama Power ultimately seeks to displace a number of electric utilities, including Pacific Power, who has served customers on the Yakama Indian Reservation (Reservation) since 1910.[74]

40 Yakama Power's contention that there is no basis for allowing Pacific Power to recover a stranded cost recovery fee from departing customers located on the Reservation because of the trust status of some of the properties served is beyond the scope of this proceeding, lacks evidentiary support and is contrary to state and federal law.

41 An applicant for electric utility service is responsible for conforming to the rules and regulations that are in effect and on file with the Commission when the applicant orders

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[71] Exhibit RBD-4 at 3.
[72] *Id.*
[73] Bolton TR. 140:18-19 (statement by counsel for Boise White Paper).
[74] RW–1T 4:22-5:3 and RBD–1T 2:14-17.

service.[75] Any customer who applies for service from Pacific Power thereby agrees to the application of Commission-prescribed rules and regulations. Under state law, Pacific Power is required to provide service to these customers.[76]

42 When individuals residing on the Reservation applied for service from Pacific Power and satisfied the Commission's rules and regulations for service, the Company was obligated to provide that service.

43 Yakama Power argues that Pacific Power has no reasonable expectation of continued service on the Reservation because the improvements constructed on trust property to provide power are not authorized under 25 CFR Part 169. Whether or not that is true—and Pacific Power submits that it is not—that argument has no bearing on the fact that by applying for service from Pacific Power, customers on trust land agreed to be regulated by Pacific Power's filed tariffs and the rules of the Commission, and consented to the Commission's authority to set the Company's tariffs.

44 Unlike the general common law of property, permanent improvements or fixtures on Indian trust land do not take on the characteristics of the underlying trust property and do not automatically become trust assets but, rather, remain as personal property.[77] Pacific Power's assets on Indian trust land are not fixtures and, therefore, are not trust assets subject to the Bureau of Indian Affairs' jurisdiction.

[75] WAC 480-100-108(1).
[76] RCW 80.28.110.
[77] 25 U.S.C. § 2201(7).

V. STRANDED COST RECOVERY FEE

A. The Stranded Cost Recovery Fee, particularly as modified in accordance with the recommendations of Public Counsel, fairly balances the interests of Pacific Power's remaining customers and any customer who makes the economic decision to permanently disconnect from Pacific Power's system.

45 As noted by Mr. Robert Meredith, Pacific Power's Manager, Pricing and Cost Service, while the Company was considering the most appropriate design for the Stranded Cost Recovery Fee, it became apparent that balancing accuracy and simplicity would be a significant challenge but absolutely necessary.[78] Pacific Power could have designed an even more detailed study examining the minutiae of different costs that could possibly be incurred or avoided due to the permanent disconnection of customers. It also could have proposed a methodology allowing for separate detailed calculations performed for each individual customer requesting permanent disconnection.[79] Pacific Power ultimately proposed a sufficiently accurate (but simple, understandable, and verifiable) methodology to determine stranded costs.[80]

46 On behalf of Public Counsel, Ms. Kelly supports Pacific Power's appropriate effort to simplify the methodology for determining the Stranded Cost Recovery Fee, one which affords a customer contemplating disconnection the ability to understand the economic ramifications of that voluntary decision.[81] Ms. Kelly very carefully outlined the various methodologies that can be used to determine stranded costs, including the pros and cons of using each methodology.[82] Ms. Kelly concluded that the Company's decision to use the direct categorization methodology is reasonable, in light of the necessary accuracy,

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[78] RMM-1T 2:9-12.
[79] RMM-1T 2:12-17.
[80] RMM-1T 2:17-20.
[81] Kelly TR. 311:12-14.
[82] KAK-1T 17:16-22:7.

significant administrative expense associated with other methodologies, and the ability of customers to easily understand the economic ramifications of their voluntary decisions.[83]

B. While ten years is a reasonable time frame over which to calculate the Stranded Cost Recovery Fee, in accordance with the recommendations of Public Counsel, the Company modified the time period used in calculating the fee to six years.

47 Twenty years is a "standard" time period used for determining stranded cost recovery fees by FERC.[84] Pacific Power believes that a twenty-year period is reasonable and results in a more accurate calculation of the stranded costs resulting when a customer elects to permanently disconnect.[85] Twenty years is also a reasonable time period in light of the fact that it corresponds with the long-term planning horizon used in the Company's integrated resource plan (IRP) and the depreciable lives for some of the Company's assets used to serve customers.[86]

48 The Oregon Direct Access program presents a markedly different circumstance than what Pacific Power encounters in Washington. In Oregon, a customer may receive alternative generation supply service from another provider. However, the incumbent utility continues to be connected to that customer as a distribution utility and is responsible for delivery service.[87] Because the customer electing alternative generation supply service continues to receive distribution service from the incumbent utility, the potential for cost shifting is limited to costs associated with generation supply.

49 In contrast, when a Washington customer makes the economic decision to disconnect and receive service from another provider, the potential for cost shifting includes *all* costs associated with serving that customer. Put another way, the departing customer is not simply

[83] KAK-1T 27:15 and Kelly TR. 347:18-21.
[84] Kelly TR. 302:17-19.
[85] Meredith TR. 260:19-21.
[86] Bolton TR. 178:20-25.
[87] Bolton TR. 233:19-23.

choosing a new energy supplier; instead, they are choosing an entirely new utility for all energy and distribution services.

50 In Oregon, Pacific Power proposed a twenty-year period for calculation of stranded costs for customers electing to permanently receive alternative generation supply, again consistent with both the standard enunciated by FERC and the Company's IRP. In response to parties' testimony, the Company agreed to a ten-year period, which the Oregon Commission ultimately adopted.[88]

51 Even though the costs shifted to Pacific Power's remaining customers are greater in the circumstance of a permanent disconnection, Pacific Power truly sought to balance the interests of its remaining customers and those of customers making the economic decision to permanently disconnect from Pacific Power's system by initially proposing a ten-year period for calculation of stranded costs.

52 On behalf of Public Counsel, Ms. Kelly recommended that the Commission approve a different means of calculating the Stranded Cost Recovery Fee based on a calculation of net present value of non-net power costs over a six-year time frame.[89] On cross-examination, Ms. Kelly stated that five to ten years is the more common approach to determining stranded costs around the country.[90] In this matter, Ms. Kelly recommended six years, at the low end of the scale, corresponding to three of the Company's IRP planning cycles.[91] In doing so, she focuses on Pacific Power's operations, noting that three planning cycles allows for revised rate planning, securing intermediate contracts or changes in its intermediate

[88] Bolton TR. 180:9.
[89] KAK-1T 59:17-20.
[90] Kelly TR. 308:9-10.
[91] Kelly TR. 303:10-11.

purchases called for under the IRP.[92] Over a six-year period Pacific Power can make at least some operational changes as well as revise distribution planning.[93] It would also allow for some changes in the Company's staffing—how it does some of the necessary work to support its customers.[94]

53 Again, Pacific Power's goal is to strike a fair and equitable balance between the interests of its remaining customers and those of departing customers who make the economic decision to permanently disconnect.[95] Six years represents a fair compromise.[96] With assets in place that have a much longer life, there is certainly a measure of costs that will continue to be borne by Pacific Power's remaining customers.[97] On behalf of Public Counsel, Mr. Kelly appreciates that it is a "balancing act" and any period less than six years would be insufficient.[98]

54 Modifying the calculation to include just six years of stranded costs rather than ten as originally proposed reduces the Stranded Cost Recovery Fee by thirty-three percent.[99]

C. The Microsoft/Puget Sound Energy (PSE) settlement is readily distinguishable.

55 Microsoft's negotiated resolution with Puget Sound Energy provides no guidance in addressing necessary revisions to Pacific Power's tariffs. During the hearing, counsel for Boise White Paper and Columbia REA both inferred that the settlement between Microsoft and PSE should guide the Commission's decision regarding the proposed revisions to Pacific Power's tariffs. Boise White Paper's counsel pointed to the fact that the total annual revenue

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[92] Kelly TR. 303:11-15.
[93] Kelly TR. 303:15-18.l
[94] Kelly TR. 303:19-21.
[95] Meredith TR. 261:13-17.
[96] Meredith TR 259:24.
[97] Meredith TR 259:5-7.
[98] Kelly TR 353:8-10 and 354:3.
[99] RMM-1T 5:16-18.

resulting from Microsoft is significantly greater than that from Boise White Paper and yet it would pay less as a result of the settlement than Boise White Paper would pay under Pacific Power's proposal. The stranded cost fee in the Microsoft-PSE docket would be determined using a five-year period.

56 Mr. Bolton correctly pointed out that Microsoft will not be entirely disconnecting from PSE's system; PSE will continue to provide distribution services.[100] Furthermore, as noted by Ms. Kelly, there are unique circumstances of avoided costs and alignment with the closing of a generation resource in the Microsoft-PSE docket.[101] On the issue of avoided costs, Mr. Meredith pointed out that PSE was previously planning to build a generation resource and was able to immediately avoid that cost. Pacific Power has no present capacity need, as reflected in its current IRP.[102]

D. Pacific Power's initial and its modified Stranded Cost Recovery Fee proposals both incorporate the value of freed-up energy, however, the modified proposal uses more recent information and better estimates the incremental impact from a permanent disconnection of load.

57 Under the Company's initial proposal, net power costs in base rates were removed from the revenue requirement to determine stranded costs.[103] The Company modified its proposal to use a different methodology to determine the value of freed-up energy. Mr. Meredith carefully explains the modification in his pre-filed testimony.[104] As a result of that modification, the proposed Stranded Cost Recovery Fee is reduced by approximately

[100] Bolton TR 145:7-9.
[101] Kelly TR 306:2-15 and 307:5-9.
[102] Meredith TR 286:1-6.
[103] RMM-1T 5:22-23.
[104] RMM-1T 6:17-7:11.

four percent.[105] Ms. Kelly concluded that Pacific Power appropriately addressed freed-up energy or, as Columbia REA's counsel referred to it, additional market revenue.[106]

E. Pacific Power made a number of additional modifications to its Stranded Cost Recovery Fee proposal, which are consistent with the recommendations of Public Counsel and other participants in this docket.

58 During the hearing, the net present value period used to determine the Stranded Cost Recovery Fee and the credit for incremental freed-up energy were the primary topics of examination. However, Pacific Power made a number of other modifications to its Stranded Cost Recovery Fee consistent with the recommendations of Public Counsel and other participants in this docket. Those modifications are thoroughly addressed in the pre-filed testimony of Mr. Meredith.[107] Specifically, Pacific Power proposes the following modifications:

- Remove the estimated costs of meters, services, line transformers, and customer accounts expense as well as customer service expense, excluding FERC Account 902;
- Charge residential customers who permanently disconnect a revenue multiplier as opposed to a flat fee; and
- Include a Low Income Program Recovery Fee and a Demand Side Management Recovery Fee.[108]

F. Stranded Cost Recovery, Low Income Assistance Program, and Demand Side Management Recovery Fees – Multipliers and Cap

59 The Company originally proposed a flat stranded cost recovery fee for residential customers who make the economic decision to permanently disconnect from Pacific Power's system. In response to input from Public Counsel, the Company modified its proposal to use a revenue multiplier for residential customers, which will capture some of the differences in

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[105] RMM-1T 7:13-16.
[106] Kelly TR 362:6-8 and 312:7-9.
[107] RMM-1T 7:22-10:2.
[108] RMM-1T 16:10-16.

load that may exist among different residential customers.[109] Public Counsel also recommended setting a cap on the Stranded Cost Recovery Fee for residential customers of $4,138.00.[110] Commissioner Rendahl asked Mr. Bolton whether the Company agreed with the recommendation of a cap on the residential Stranded Cost Recovery Fee, and Mr. Bolton indicated the Company's acceptance of the recommendation of Public Counsel.[111]

60 As modified, the Company proposes a residential Stranded Cost Recovery Fee of 2.63 times annual revenue and a non-residential Stranded Cost Recovery Fee of 2.98 times annual revenue.[112] For both residential and non-residential, Pacific Power proposes a Low Income Assistance Recovery Fee of 0.03 times annual revenue.[113] Finally, Pacific Power proposes a residential Demand Side Management Recovery Fee of 0.17 times annual revenue and 0.18 times annual revenue for non-residential departing customers.[114]

G. The modifications to the Company's proposed Stranded Cost Recovery Fee result in a significant reduction from what was originally proposed and garnered the support of Public Counsel.

61 Modifications to the proposed Stranded Cost Recovery Fee, together with the addition of the proposed Low Income Assistance Program Fee and Demand Side Management Recovery Fee, result in a net reduction of approximately 36 percent over what was originally proposed for residential customers and approximately 29 percent over what was originally proposed for non-residential customers.[115]

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[109] RMM-1T 14:5-7.
[110] KAK-1T 59:23-60:1.
[111] Bolton TR. 235:5-8.
[112] Schedule 300 - Third Revision of Sheet No. 300.1.
[113] *Id.*
[114] *Id.*
[115] RMM-1T 16:24-17:2.

62 With these modifications, Public Counsel recommends that the Commission adopt Pacific Power's proposed Stranded Cost Recovery Fee.[116]

VI. CUSTOMER PURCHASE OPTION

A. The proposed revisions to Pacific Power's tariffs afford departing customers the option of purchasing certain of Pacific Power's facilities that may be used by the new utility.

63 As demonstrated in the Walla Walla Country Club adjudicative proceeding, Docket No. UE-143932, Pacific Power's current tariffs are deficient in a number of respects. They do not provide for the sale of facilities to a departing customer and its new electric service provider. And they do not provide for the transfer of liability if the facilities are not removed.

64 Pacific Power has made a concerted effort to not only address the cost shifting that results when a customer makes the economic decision to permanently disconnect from Pacific Power's system, but to also address the full scope of practical circumstances that may arise with permanent disconnection.

65 As proposed, a customer triggers application of the permanent disconnection and removal tariffs by:

1. Requesting to be permanently disconnected;
2. Choosing to be served by another electric utility provider; or
3. Obtaining redundant service from another electric utility provider.[117]

66 The proposed permanent disconnection and removal tariffs do not apply if a residential customer uses distributed generation or a battery.[118] In very simple terms, the proposed permanent disconnection and removal tariffs do not apply if a customer remains

[116] Kelly TR 312:7-9.
[117] Rule 6I.1. – Second Revision of Sheet No. R6.2.
[118] Bolton TR 104:19-25.

connected to Pacific Power's system.[119] They do not apply to customers who simply move or shut down operations.[120] In those circumstances, the connection between the property and Pacific Power's system remains and may later be used to serve a new customer or when an existing customer resumes operations (replacement load).

67 As noted by Mr. Bolton, in almost every circumstance, it will be a combination of a request to permanent disconnect and a choice to be served by another electric utility provider that will trigger the permanent disconnection and removal tariffs.[121] When that occurs, the departing customer has the option of purchasing underground conduit and vaults at Fair Market Value, in lieu of removal.[122] As Ms. Kelly testified, Fair Market Value is a standard means of addressing the transfer of electric utility facilities in the United States. The parties essentially establish what the real value of those facilities are on the open market. A valuation is often conducted by an independent appraiser.[123]

68 During the hearing, counsel for Columbia REA questioned Mr. Bolton about Pacific Power customers who elect to underground facilities and whether those customers pay the cost of doing so less the Pacific Power line extension credit. Mr. Bolton carefully explained some of the reasons why Pacific Power then assumes ownership of those underground facilities. For example, Pacific Power is then obligated to perpetually maintain the facilities.[124] Pacific Power also indemnifies the customer from any loss resulting from the facilities.[125] From the Company's perspective, the maintenance obligations as well as the

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[119] *Id.*
[120] Bolton TR. 127:18-22.
[121] Bolton TR 104:16-18.
[122] Rule 6I.b. - First Revision of Sheet No. R6.3.
[123] Kelly TR. 336:20-337:2.
[124] Bolton TR 217:23-218:1.
[125] Bolton TR 213:11-16.

service and indemnification obligations certainly offset the customer's one-time cost of installation resulting from the customer's decision to underground facilities.[126]

69 All of the Company's facilities dedicated to the service of a departing customer other than those that the departing customer elects to purchase will be removed.[127] The departing customer will pay the Actual Cost of Removal as defined in Rule 1.[128] Actual Cost of Removal is defined as all removal costs, including but not limited to, labor costs, contractor costs, costs to investigate redundant services, and Net Book Value of Facilities less Salvage.[129]

70 In his pre-filed testimony, Mr. Gorman mistakenly argued that Pacific Power will over-recover dismantlement or removal costs from a departing customer under the proposed revisions to its tariffs.[130] He correctly notes that Pacific Power's approved depreciation rates for distribution facilities include a component for the cost of removing the facilities when they are necessarily replaced.[131] Net Book Value is defined as the installed cost of an asset less any accumulated depreciation as reflected in the Company's accounting records.[132] Because the cost of removing facilities is included within the Company's approved depreciation rates, when accumulated depreciation is subtracted to reach the Net Book Value, the cost of removing facilities is no longer included within Net Book Value. Accordingly, as the Company has defined Actual Cost Removal, it does not double-count for the labor associated with removing the facilities.

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[126] *Id.*
[127] Rule 61.1.a - Second Revision of Sheet No. R6.2.
[128] *Id.*
[129] Rule 1 - First Revision of Sheet No. R1.1.
[130] MPG-1T 10:4-6.
[131] MPG-1T 10:12-13.
[132] Rule 1 - Third Revision of Sheet No. R1.2.

B. The process for determining Fair Market Value

71 The initial determination of Fair Market Value will be performed by either a Company representative or a third-party appraiser chosen by the Company.[133] In response to recommendations by Ms. Kelly and other witnesses submitted in pre-filed testimony, Pacific Power modified its proposal to include the possibility of a second appraisal. Specifically, if a departing customer disagrees with the initial determination of Fair Market Value, the customer may secure a second Fair Market Value determination by an appraiser chosen by the customer from a list of appraisers previously approved by the Commission. The lower of the two determinations will control.[134]

72 The Company anticipated developing a list of Commission-approved appraisers through a subsequent compliance filing.[135] During the hearing, both Chairman Danner and Commissioner Rendahl questioned Mr. Bolton regarding potential difficulty in developing a Commission-approved list of appraisers. A Commission-approved list of appraisers is not necessary, and, as noted by Mr. Bolton, Pacific Power is certainly willing to assist customers with identifying available appraisers.[136]

73 Pacific Power's goal is to create an additional measure of integrity in the process.[137] In what Pacific Power assumes would be the incredibly rare circumstance of a departing customer being dissatisfied with two separate determinations of Fair Market Value, including one by an appraiser of the customer's choice, the customer would still have the option of initiating an adjudicative proceeding under RCW 80.04.220.[138]

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[133] Rule 1 – definition of Fair Market Value – Third Revision of Sheet No. R1.2.
[134] Rule 6I.b. - First Revision of Sheet No. R6.3.
[135] Bolton TR. 184:5-6.
[136] Bolton TR. 235:20-24.
[137] Bolton TR. 235:24-236:1.
[138] Bolton TR. 230:12-16.

C. In certain circumstances, a departing customer who elects to purchase underground conduit and vaults may be entitled to a credit.

74 A customer who makes the economic decision to permanently disconnect from Pacific Power's system, within five years of initially connecting to the system, may receive a partial credit for the cost that customer paid to install underground conduit and vaults.[139] This credit is intended to generally align with Pacific Power's line extension credit.[140]

D. The Company has the discretion to abandon and decommission underground facilities in the event of potential safety issues or negative impact on service.

75 It is challenging to prepare comprehensive tariffs capable of addressing every conceivable circumstance. As indicated by Mr. Bolton, Pacific Power contemplates that the vast majority of permanent disconnections under the revised tariffs will involve removal and, in some cases, the purchase of facilities.[141] However, under the proposed revisions of the tariffs, Pacific Power retains the discretion to abandon some or all of the customer-dedicated facilities, if there are safety concerns or when service may be negatively impacted.[142]

76 During the hearing, counsel for Columbia REA spent considerable time and effort mistakenly arguing that the proposed revision to Rule 6 provides for the abandonment and decommissioning of underground facilities if the departing customer and Pacific Power cannot reach resolution on the Fair Market Value of facilities the departing customer or its new electric service provider wishes to purchase. Mr. Bolton ultimately clarified that the tariffs provide for abandonment and decommissioning of facilities only when concerns regarding safety or service integrity make removal or purchase not feasible.[143]

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[139] Rule 6I.b - First Revision of Sheet No. R6.3.
[140] Bolton TR. 229:10-12.
[141] Bolton TR. 194:20-24.
[142] Rule 6I.2. - First Revision of Sheet No. R6.3.
[143] Bolton TR. 228:11-25.

VII. CONCLUSION

77 Pacific Power's current net removal tariff creates an extremely favorable environment for unregulated cooperative associations to cherry-pick the Company's higher-margin customers. When those departing customers leave Pacific Power's system, significant costs are shifted to the Company's remaining customers. The proposed revisions to Pacific Power's tariffs are intended to balance the interests of those remaining customers and the departing customers. In addition to addressing the cost shifting that results from the economic decisions of customers to permanent disconnect, the tariff revisions proposed by the Company may facilitate productive negotiations toward service area agreements with unregulated cooperative associations consistent with the public interest articulated by the legislature. For these reasons, Pacific Power respectfully urges the Commission to adopt the appropriately balanced proposed tariff revisions.

Respectfully submitted this 28th day of July, 2017.

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