

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PACIFIC POWER & LIGHT
COMPANY,

Respondent.

DOCKET UE-161204

INITIAL POST-HEARING BRIEF
OF THE ENERGY PROJECT

JULY 28, 2017

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I. INTRODUCTION

1. The Energy Project has maintained a limited role in this docket, not filing testimony and monitoring the case to understand the impact of parties' proposals on Pacific Power's low-income bill assistance and energy efficiency programs. In keeping with that narrow focus, The Energy Project does not take a position on the specific recommendations regarding the calculation of permanent disconnection and stranded cost fees. The Energy Project, however, does have a general policy concern about the impact of larger and "high-margin" customers in Washington who may seek alternatives to regulated utility providers. The Energy Project's brief focuses on the issue of holding Pacific Power's remaining customers harmless from impacts of departing customers by protecting against unfair cost-shifts and by maintaining support for Pacific Power's low-income and energy efficiency programs. The Energy Project recommends that, in the event the Commission determines that stranded cost recovery fees are appropriate in this case, such fees should include support for Pacific Power's low-income and conservation programs.

II. OVERVIEW OF PACIFIC POWER LOW-INCOME PROGRAMS

A. Electric Bill Assistance Program

2. As the Commission has previously noted, the issue of low-income bill assistance for Pacific Power customers is "critically important and deserves close attention on a continuing basis."¹ In Pacific Power's 2011/2012 General Rate Case (GRC), the Commission approved an

¹ *Washington Utilities & Transportation Commission v. Pacific Power & Light Co.*, Docket UE-140762 et al, Order 08, ¶ 242 (Pacific Power 2014 GRC).

all-party settlement that included a five-year plan to increase funding for Pacific Power's Low-Income Bill Assistance (LIBA) program gradually over time.² As the initial five-year plan was coming to a close, Pacific Power, The Energy Project, Commission Staff, Public Counsel, and other stakeholders in early 2017 agreed to proposed modifications and an extension of the LIBA plan for the next five years beginning October 2017. In summary, the new plan provides for increasing enrollment by 2 percent annually, an increase in credit levels in conjunction with Pacific Power's September 2017 rate increase, and a gradual increase in revenue collections through the 2021-2022 program year from \$2.5 million in 2016-2017 to \$3.3 million in 2021-2022. The collaborative also agreed to a number of other technical changes to improve the program. The details of the plan are available in Advice 17-04 filed with the Commission on March 29, 2017.³

3. The LIBA program is offered under Schedule 17 and is a discount-based program currently serving approximately 4700 customers.⁴ Discount credits were provided to customers in the amount of \$1.26 million in 2016. The maximum income for customer eligibility for the program is 150 percent of Federal Poverty Level. Customer eligibility is determined by local community action agencies, including Blue Mountain Action Council (BMAC) in Walla Walla,

² *Washington Utilities & Transportation Commission v. PacifiCorp*, Docket UE-111190, Order 07, ¶ 17 (Pacific Power 2011/2012 GRC).

³ The Energy Project requests that the Commission take official notice of the tariff and tariff filing, pursuant to WAC 480-07-495(2)(a)(i)(C). Planned revenue collections, credits and participation for the next five years are shown at Advice 17-04, Exhibit A (Proposed Enrollments, Administrative Costs, and Customer Credits), Pacific Power Low-Income Bill Assistance (LIBA) Program, Program Years 2017-2022. Additional stakeholders participating in the collaborative included Boise, NW Energy Coalition, Blue Mountain Action Council, Northwest Community Action Center, and Opportunities Industrialization Center.

⁴ *Pacific Power 2014 GRC*, Order 08, ¶ 240.

NW Community Action (NCAC) in Toppenish, and Opportunities Industrialization Center (OIC) in Yakima.⁵

4. The LIBA program is funded through Schedule 91. The cost of the LIBA program was initially allocated to each customer class based on each class' percentage of base revenues to total Washington base revenues, with a \$50 per month cap. After prices were originally set, further changes in collections for the program were made on an equal percentage basis.⁶

5. In addition to these sources of bill assistance, customers in Pacific Power's service territory are eligible to receive help under the federal Low-Income Heating Assistance Program (LIHEAP). LIHEAP provided approximately \$2 million annually in support from 2014-2016, with eligibility determination and fund distribution conducted by the community action agencies mentioned above.⁷

B. Low-Income Weatherization Program

6. Pacific Power also provides a low-income weatherization program under Schedule 114, partnering with Blue Mountain Action Council, Northwest Community Action, and Opportunities Industrialization Center to install energy efficiency measures in the homes of income-eligible customers. The funding through the Low-Income Weatherization Program, reimburses the agencies for 50 percent of the cost of installing the measures when the agencies have state Match Maker Program funds. If these agency Match Maker funds are depleted,

⁵ Exh. RMM-4X (Pacific Power Response to Public Counsel Data Request No. 15), pp. 1-2.

⁶ *Id.*, p. 4.

⁷ *Id.*, p. 2. Pacific Power also provides bill assistance through Project HELP, a fuel fund supported by donations which are matched by the Company with \$2 for each \$1 donated. Project HELP provided \$56,445 of bill assistance in 2016. *Id.*

Pacific Power will cover up to 100 percent of the costs. The weatherization services are available at no cost to homeowners and renters residing in single family, manufactured homes, and apartments. Program funding was in the \$700-800,000 range in the 2014-2016 period. Energy savings reported were 294,000 kW for 2016. Funding for the program is provided under Schedule 191. Costs are allocated to customer classes based on each class' percentage of base revenues to total Washington base revenues.⁸

III. PACIFIC POWER'S PROPOSAL FOR STRANDED COST RECOVERY TO MAINTAIN SUPPORT FOR LOW-INCOME AND ENERGY EFFICIENCY PROGRAMS

A. The Pacific Power Proposal

7. Pacific Power's testimony in the case has raised from the outset the concern that departure of high-margin customers creates the potential for shifting of costs to the detriment of low-income customers:

The current one-off permanent disconnections occurring in the Company's Washington service area provide little in terms of relief to the Company's remaining customers. In fact, these permanent disconnections, accumulated over time, will only increase the burden on the Company's remaining customers, including low- and fixed-income customers.⁹

8. To address its concerns about cost shifts and increased rate pressures on remaining customers, Pacific Power has proposed to modify its permanent disconnection and removal tariffs. In addition, Pacific Power proposes to establish a "Stranded Cost Recovery Fee," the

⁸ *Id.*, p. 4.

⁹ Revised Direct of Dalley, Exh. RBD-1T, at 7:17-21. Bolton, TR. 176:10-15 ("The Company incurs stranded costs whenever any customer departs, but certainly those -- the magnitude or the impact of cost shifting is much more severe when it's a higher-margin customer leaving the system and, frankly, lower-margin or low-income customers continue to remain.") Mr. Dalley's testimony was adopted by Scott Bolton.

purpose of which is “to mitigate the financial impact to remaining customers when a customer opts to permanently disconnect and receive service from another service provider.”¹⁰

9. Although the Company had identified concerns with the impact on low-income customers, it did not include in its initial Stranded Cost Recovery Fee specific cost-recovery components to mitigate impacts on low-income or energy efficiency programs. Public Counsel’s expert witness Kathleen Kelly addressed this in her responsive testimony, observing that continued migration of customers from Pacific Power to Columbia Rural Electric Association (REA) would erode support for Pacific Power’s LIBA programs, as well as its conservation program. Ms. Kelly recommended that “[f]urther modifications [to the Stranded Cost Recovery Fee] based on capturing the impact of contributions to low-income rate assistance programs and energy efficiency programs would be appropriate.”¹¹

10. In its rebuttal testimony in this case, Pacific Power accepted Public Counsel’s recommendation and amended its Stranded Cost Recovery Fee proposal to include a Low-Income Program Recovery Fee and a Demand Side Management Recovery Fee.¹² Mr. Dalley confirmed that Pacific Power distributed over \$2 million in energy bill assistance through the LIBA program between 2014 and 2016. He noted that both the LIBA program and the conservation programs are funded by tariff riders and that the burden of the riders on remaining customers will increase absent stranded cost recovery.¹³ Pacific Power witness Robert Meredith

¹⁰ Revised Direct of Dalley, Exh. RBD-1T, at 13:9-12, 14:12-21.

¹¹ Responsive Testimony of Kathleen Kelly, Exh. KAK-1T at 60:5-6. Ms. Kelly’s general discussion of low-income and energy efficiency programs appears at pp. 53-57 of her testimony.

¹² Revised Rebuttal of Dalley, Exh. RBD-5Tr, at 9:12-10:6.

¹³ Revised Rebuttal of Dalley, Exh. RBD-5Tr, at 9:7-19.

provided testimony containing the specific support for the recommended fees “[t]o ensure permanently disconnecting customers do not adversely impact the low-income assistance and demand side management programs or shift those costs to remaining customers [.]”¹⁴ His Exh. RMM-2 calculates the specific stranded cost for an individual customer within each class on a net present value basis over the six-year analytic period. His analysis presents a significant disparity in stranded costs between residential and larger customers.¹⁵

B. Pacific Power’s Proposal Is A Reasonable And Necessary Response To Potential Cost-Shifting

11. Pacific Power’s proposal for a stranded cost fee for recovery of low-income and DSM (conservation/energy efficiency) program costs is a reasonable and necessary response to the potential for cost-shifting. As Pacific Power notes, both the LIBA and conservation programs are funded by tariff riders. For the LIBA program, the rider (surcharge) is collected under Schedule 91 from the broad range of Pacific Power customer classes.¹⁶ The surcharge is based upon an allocation of customer costs based on each customer class percentage of base revenues to total Washington base revenues.¹⁷ As a general proposition, therefore, if revenue from non-residential classes declines, the residential class will be allocated a greater share of costs, assuming a constant level of program costs. This causes an unfair cost shift unless there is mitigation.

¹⁴ Revised Rebuttal Testimony of Robert M. Meredith, Exh. RMM-1T, at 15; Exh. RMM-2T.

¹⁵ For example, the six-year net present value cost he calculates for a residential customer (Schedule 16) is \$41. For a large general service customer using less than 1000 kW (Schedule 36) the cost is \$2209. Exh. RMM-2, at 2, 4.

¹⁶ The classes listed in the tariff are: outdoor lighting, residential, low-income, small general service, partial requirements, large general service, agricultural pumping, street and recreational field lighting.

¹⁷ Exh. RMM-4X, p. 4.

12. As discussed above, the costs of the LIBA program will be increasing through 2022, under the agreed five-year plan filed with the Commission. While in theory, the departure of very significant numbers of low-income customers from the Pacific Power system might reduce LIBA program costs and mitigate cost-shifting, there is no evidence that such migration is occurring.¹⁸ On the contrary, in response to discovery, both Pacific Power and Columbia REA provided information indicating that low-income customers were not transferring to Columbia REA.¹⁹ Further, because there is no expected reduction in the Pacific Power low-income population, the Company's low-income customers will continue to need the same or increased levels of bill assistance and low-income weatherization programs. If, at the same time, the departure of larger customers continues or increases, program costs will inevitably fall more heavily on remaining customers.

C. The Company Proposal Is Consistent With Washington Regulatory Policy

1. Guiding principles

13. Washington regulatory policy recognizes that at the interface between regulated industries and competition, there is the potential for unfair cost shifting, for improperly stranded costs, and for harm to important public policy goals. These factors can cause harm to remaining customers at a regulated company when other customers, usually larger customers, choose to leave the

¹⁸ Mr. Gorman for Columbia REA responds to Ms. Kelly's recommendation regarding low-income support by arguing that customer departures will reduce the need for low-income and energy efficiency programs and therefore obviate any cost shift to remaining customers. Exh. MPG-8T, at 8:14-24. He does not reference Pacific Power's multi-year LIBA program or its funding mechanism.

¹⁹ Exh. RMM 5X (Pacific Power Response to Public Counsel Data Request No. 20(a)) ("The Company has not received any permanent disconnection requests from customers who qualify for Pacific Power's low-income bill assistance program."); Exh. MPG 10X (Columbia REA Response to Public Counsel Data Request No. 2)("No customers who qualify for CREA's low-income programs have switched their electric service from Pacific Power to CREA."); Gorman, TR. 85:3-22.

regulated provider for a competitive service. During the 1990s, as Washington State, along with the rest of the country, considered whether to adopt a transition to retail competition in electricity, the Commission conducted a policy inquiry to review issues raised by the potential transition, and issued a Policy Statement announcing Guiding Principles for Regulation in an Evolving Electricity Industry.²⁰ Regarding cost shifting the Commission stated:

“Non-economic bypass and the inappropriate shifting of costs of the electric system between or among customers do not constitute fair and efficient competition, are contrary to the public interest, and should be avoided. Customers of continuing monopoly service should benefit, or at least not be harmed, from choices made by customers with access to competitive options.”²¹

14. Addressing stranded costs, the Commission went on to state that “[w]hen justified by the public interest, regulatory policy should seek flexible ways to reduce both shareholder and ratepayer exposure to potentially stranded costs.”²²

15. The Commission also expressed concern that public policy goals should not be negatively impacted, stating that: “[d]evelopment of competitive electricity markets should not undermine

²⁰ *In the Matter of the Commission’s Notice of Inquiry: Examining Regulation of Electric Utilities in the Face of Change in the Electric Industry*, Docket UE-940932, Policy Statement, Guiding Principles for Regulation in an Evolving Electricity Industry (Policy Statement). Of some concern is the fact that Staff’s witness David Panco testified he was “not familiar” with the Policy Statement and did not consider it in this case. Panko, TR. 369:9-20, 370:4-6.

²¹ Policy Statement at 2. Mr. Panco testified he did not “explicitly consider the principle” that customers not be harmed. Panko, TR. 369:21-370:6. Staff did not file cross-answering testimony responding to the recommendation that low-income and energy efficiency programs be supported. Mr. Panco’s stated at hearing that “it wasn’t clear ...that the low-income or conservation issues deserved special mention or attention” given his overall recommendation.

²² *Id.* In this regard, the Commission cautioned that regulation should not and cannot be expected to guarantee utilities will, in all circumstances, be made entirely whole for generation or other costs that are determined through actual and fair competition to be stranded or uneconomic. As noted above, the Policy Statement also notes that unfair cost shifting does not constitute fair competition.

public policies favoring environmental protection, energy efficiency, resource diversity, and technological innovation.”²³

16. Although Washington ultimately chose not to adopt a statutory framework for retail electric competition, these principles continue to provide guidance in Washington utility regulation. The Policy Statement was recently reaffirmed in the Commission’s order in the *Microsoft Special Contract* case:²⁴

“We reaffirm the Commission’s 1995 Policy Statement....In particular, we stress that ‘[e]lectricity service should be available to customers at prices that are both reasonable and affordable,’ and ‘[t]he long term integrity, safety, reliability, and quality of the bulk electric system and retail electricity service should not be jeopardized.’ We are acutely concerned that large business access to wholesale markets, regardless of the rationale, should not result in unreasonable or affordable rates for remaining customers, especially those least able to pay [.]”²⁵

17. While the *Microsoft Special Contract* case involves a customer’s departure to the wholesale market, rather than to an alternate retail provider as in this case, the policy guidance of the order is relevant for this docket. Both cases involve the need to protect remaining customers from harm that results from larger customers leaving the regulated utility’s system.

18. In the *Microsoft* case, the Commission approved Microsoft’s departure from the PSE system because the settlement in the case directly addressed the issues of stranded costs, cost-shifting, and continued support for public policy programs:

“Microsoft’s suite of commitments in the Settlement addresses these concerns to a significant degree. Microsoft’s payment of the Transition Fee and agreement to continue or increase its contribution to conservation, energy efficiency, and low-income support funding reasonably protects remaining customers from the

²³ *Id.*

²⁴ *Washington Utilities & Transportation Commission v. Puget Sound Energy*, Docket UE-161123, Order 06, Order Approving Settlement Agreement, ¶ 91. (*Microsoft Special Contract* case).

²⁵ *Id.*

potentially adverse effect of by [sic] Microsoft's change from a core to a non-core customer."²⁶

19. This statement highlights that one of the key problems raised by the departure of customers from a regulated company is the challenge of maintaining equitable support for public policy goals, including adequate support for energy efficiency and low-income programs. In the *Microsoft Special Contract* case, the Commission concluded that "Microsoft's agreement to continue its contributions to PSE's conservation and low-income assistance programs and to contribute additional funds for energy efficiency and access to renewable resources for low-income customers is lawful, supported by an appropriate record, and consistent with the public interest in protecting ratepayers from Microsoft's departure and in promoting the State's and the Commission's conservation, energy efficiency, and low-income assistance policies."²⁷ The same rationale applies in this case.

2. The "Regulatory Compact"

20. The Commission continues to recognize the viability of the "regulatory compact" in Washington. Chairman Danner's Separate Statement in the *Walla Walla Country Club* case acknowledges that there is an evolution of the regulatory compact in Washington, while at the same time accurately concluding that "for all intents and purposes, the regulatory compact continues to this day and has served the customers of Washington's investor-owned electric utilities well, ensuring that service is available and affordable."²⁸

²⁶ *Id.*, ¶ 92.

²⁷ *Id.*, ¶ 63.

²⁸ *Walla Walla Country Club v. Pacific Power & Light Co.*, Docket UE-143932, Order 05, p. 7, ¶ 3 (Separate Statement)(Walla Walla Country Club).

21. In the Jefferson PUD case, the Commission described the regulatory compact as constituting the “most basic underpinnings” of utility regulation, going on to say:

This compact, or understanding, between utilities and those who regulate them is necessary because utilities generally are regarded as being natural monopolies. They are capital intensive to the point that it is economically inefficient for more than one firm to build, operate and maintain the infrastructure necessary to provide service in the public interest. Monopolies, by their nature, are able to restrict output and charge prices higher than what is economically justified. Governmental oversight, such as provided by the Commission, prevents utilities such as PSE from exercising monopoly power, with regulation substituting for competition as the determiner of price. Thus, in 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.²⁹

22. While an in-depth discussion of the regulatory compact is beyond the scope of this brief, the accuracy of Chairman Danner’s observation above is apparent.³⁰ Although there is no dispute that Washington law does not establish *de jure* franchises for its investor-owned utilities, with minor exceptions,³¹ Washington IOUs operate as *de facto* monopolies in their service areas as court and Commission decisions recognize.³² Territorial issues with neighboring utilities are

²⁹ *In the Matter of the Petition of Puget Sound Energy For An Accounting Order Approving The Allocation Of Proceeds Of The Sale Of Certain Assets To Public Utility District # 1 Of Jefferson County*, Docket UE-132027, Order 04, ¶ 15 (September 11, 2014).

³⁰ As described by Pacific Power witness Bolton, the regulatory compact is a “governing construct” grounded in statutory and constitutional requirements and reflected in the rules and decisions of the Commission. Bolton, TR. 112:19-113:5.

³¹ The situation presented in this case was described as a “very localized problem” by Pacific Power witness Bolton. TR. 138:8-9.

³² *Tanner Electric Cooperative v. Puget Sound Power & Light*, 128 Wn.2d 656, 682-685), 911 P.2d 1302 (1996) (Observing that “state law exempts public utilities from the sphere of free competition, and in fact discourages it,” and discussing the “monopoly status” of public utilities)(*Tanner Electric*); *Jewell v. Washington Utilities & Transportation Commission*, 90 Wn.2d 775, 776, 585 P.2d 1167 (1978)(“The public interest, in return for the grant of

primarily resolved by service area agreements, encouraged by statute.³³ The Commission's regulatory authority over rates, service, safety and reliability for regulated utilities is "pervasive", in recognition of the monopoly character of regulated utility service.³⁴ Regulated electric utilities have an obligation to service all customers who request service, and may charge only fair, just, reasonable, and sufficient rates set by the Commission.³⁵ The statutory framework of Title 80 regulation recognizes the importance of affordability,³⁶ low-income programs,³⁷ and energy efficiency.³⁸ The provision by regulated utilities in Washington of system benefits such as energy efficiency and low-income programs has evolved to become an integral part of regulated service.

23. As the *Tanner Electric* decision makes clear, the Commission has the authority to regulate the relationship between an electric cooperative and the regulated monopoly utility and to do so in the broader context of the exercise of its Title 80 powers to regulate in the public interest for the protection of its customers and the interest of the regulated utility in financial soundness.

a monopoly" requires quality service and the company is entitled to fair, just, reasonable and sufficient rates). IOUs have defined service areas, as reflected in service area maps available on the UTC website.

³³ RCW 54.48.020.

³⁴ *Tanner Electric*, 128 Wn.2d at 682 ("The public utilities industry is one where the legislature has decided that the public interest is best served by direct and uniform regulation of almost every phase of industry activity.")

³⁵ RCW 80.28.110 (obligation to serve); RCW 80.28.010 (rates).

³⁶ RCW 80.28.074.

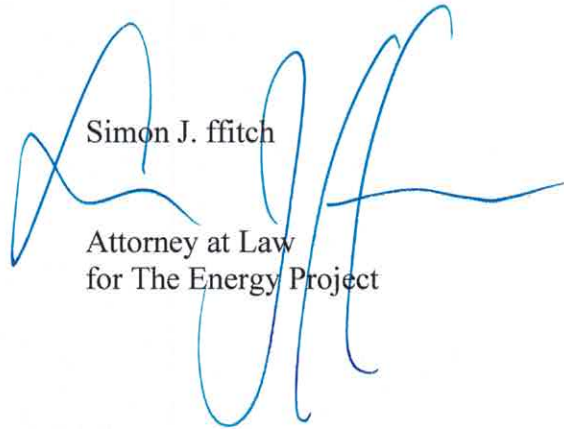
³⁷ RCW 80.28.010, generally requiring "fair, just, reasonable, and sufficient" rates, also incorporates a winter shut-off moratorium and contemplates the availability of weatherization programs for low-income customers provided by the utility or other appropriate agency. RCW 80.28.068 authorizes the Commission to approve low-income discount programs

³⁸ RCW 80.28.025 (encouraging energy conservation).

IV. CONCLUSION

24. For the foregoing reasons, if the Commission concludes that stranded cost fees may reasonably be imposed on departing Pacific Power customers in order to prevent cost-shifting, The Energy Project respectfully recommends that the Commission require the inclusion of recovery for low-income and conservation programs as a part of the stranded cost fee structure. Such a result is consistent with the regulatory policies of the Commission, and is necessary and appropriate to preserve system benefits and advance important state policy goals.

DATED this 28th day of July 2017.


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