BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

INITIAL BRIEF

OF

BOISE WHITE PAPER, L.L.C.

July 28, 2017

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I. INTRODUCTION

1 Pursuant to Prehearing Conference Order 03 and WAC § 480-07-390, Boise White Paper, L.L.C. ("Boise") submits this initial post-hearing brief, requesting that the Washington Utilities and Transportation Commission ("WUTC" or the "Commission") reject Pacific Power & Light Company's ("Pacific Power" or the "Company") proposed revisions to the Net Removal Tariff. Pacific Power's proposals have not been adequately supported by evidence in this docket and would produce patently unreasonable results.

2 Most notably, the Company's requested establishment of a new Stranded Cost Recovery Fee would, if applied toward Boise, more than *triple* a stranded cost recovery amount that the Commission just found to be reasonable for almost an identical, large industrial-type load in Washington. Likewise, the Company would materially increase permanent disconnection costs through sundry rule modifications—including far more frequent facilities removal charges, and an inflated Fair Market Value sales valuation—without adequate basis to justify such a fundamental restructuring of the Net Removal Tariff.

3 Finally, beyond direct evidentiary inadequacies, Pacific Power's entire case is founded upon a misplaced and legally misguided construction of the "regulatory compact." The Company presents a notion of the regulatory compact which would supersede all positive iterations of conflicting Washington law, including statutes, WUTC rules, and precedential Commission orders. Boise respectfully requests that the Commission decline an invitation to exceed its rightful authority in this manner, leaving matters of competitive controversy for proper resolution by the Washington Legislature.

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II. ARGUMENT

A. The Proposed Stranded Cost Recovery Fee Is Unreasonable and Not Adequately Supported

1. The Fee Amount Applied to Boise Would Be Facially Unreasonable

4 As confirmed at hearing, the Company's proposed Stranded Cost Recovery Fee would produce an approximate $80 million, up-front payment requirement for Boise, as the sole customer on Pacific Power's Dedicated Facilities schedule.[1/] On its face, this exorbitant $80 million figure cannot be squared with the Commission's fundamental "end results" test: "The Commission's responsibility to set rates that are *fair, just, reasonable,* and sufficient turns not on the particular rate making methodology it selects … but on its outcome, or 'end results.'"[2/] Thus, even if Pacific Power's methodological underpinnings were sound in producing an $80 million stranded cost fee—although Boise emphatically asserts that the Company's methodology and evidentiary support are acutely deficient—the "end results" test would still warrant rejection of the Stranded Cost Recovery Fee, by reason of producing an amount that is not fair, just, or reasonable.

5 Only two weeks ago, the Commission approved a settlement agreement involving Puget Sound Energy ("PSE") and Microsoft, including a $23.685 million "Transition Fee," which the Commission found to be "a reasonable estimate of the

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1/ See Meredith, TR. 275:2-24 (confirming "around $80 million that would be required for a dedicated facilities customer"); Bolton, TR. 141:16-20 (agreeing that any customer would need "to pay the stranded cost recovery fee up front in one lump sum").

2/ WUTC v. Avista, Dockets UE-150204 and UG-150205 (*consolidated*), Order 05 at ¶ 132 (Jan. 6, 2016) (citing Fed. Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944) (emphasis added). Boise does not emphasize the "sufficiency" element of this test, because Pacific Power has confirmed that neither the Company nor its shareholders would not realize any gain from Net Removal Tariff revisions. See Bolton, TR. 105:3-14.

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difference … with and without Microsoft as a core customer" of PSE.[3/] In terms of assessing the reasonableness of Pacific Power's proposed Stranded Cost Recovery Fee relative to Boise's load, the PSE/Microsoft case is about as near an "apples-to-apples" comparison as could be hoped for, and is crucially relevant here.

6 First, Boise's Dedicated Facilities load, at around 51 average Megawatts ("aMW"), is virtually identical to the Microsoft load at issue in the PSE/Microsoft case, which a Microsoft witness affirmed to be "50 aMW."[4/] Next, Boise and Microsoft are the largest customers of their respective utilities within Washington.[5/] The Commission also noted that the PSE/Microsoft "Settlement's benefits," including the $23.7 million Transition Fee, "arise in the context of PSE's largest customer *no longer purchasing electricity from the Company's power supply network*."[6/] Plainly, the prospective circumstance of permanent disconnection, at issue in this proceeding, similarly contemplates a customer "no longer purchasing electricity from the Company's power supply network."

7 Further, the Commission has not drawn a relevant distinction between a "Transition Fee" stylization and the foundational issue of "stranded costs," which are central to both the PSE/Microsoft case and this proceeding. For instance, the Commission linked the terms by noting that PSE originally sought approval of a "$23.685 million Power Supply Cost Charge (Transition Fee)," in support of which PSE

[3/] WUTC v. PSE, Docket UE-161123, Order 06 at ¶ 100 (July 13, 2017) ("PSE/Microsoft case").

[4/] Compare WUTC v. Pacific Power, Dockets UE-140762 *et al.*, Steward, Exh. JRS-3 at 7 (stating 447,981,631 annual Kilowatt hours for the Dedicated Facilities schedule in the Company's last cost of service study, translating to about 51.1 aMW, i.e., 447,981,631 MWh ÷ 8,760 hours in a year), with Docket UE-161123, Plenefisch, Exh. IP-1T at 6:7 (stating "our load is 50 aMW").

[5/] Compare Bolton, TR. 138:23-25, with Docket UE-161123, Order 06 at ¶¶ 11, 38.

[6/] Docket UE-161123, Order 06 at ¶ 38 (emphasis added).

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"evaluates the stranded cost associated with Microsoft's potential decision."[7/] Likewise, PSE/Microsoft settlement provisions are "meant to hold other customers harmless from stranded costs,"[8/] including the following, explicit equation from the Commission: "The Transition Fee recovers the stranded costs associated with the loss of Microsoft's load from PSE's generation system."[9/]

8 Notwithstanding, Pacific Power requests (well more than) a 200% increase in stranded cost fees associated with its largest customer, as compared to PSE. Facially, this quantum leap from $23.7 million to over $80 million in stranded cost calculations, for the same load size in Washington, should be considered as a patently unreasonable "end result"—even factoring any potential differences between PSE and Pacific Power's systems. Indeed, the fact that Pacific Power's electric retail revenues in Washington comprise a mere 18.1% of PSE's is enough to demonstrate how thoroughly unreasonable the Stranded Cost Recovery Fee is in this proceeding.[10/] That is, if $23.7 million, spread as an offset amidst current PSE revenues of $1.96 billion, is deemed reasonably sufficient to hold remaining PSE ratepayers "harmless," then spreading over $80 million to remaining Pacific Power customers for the same purpose, amidst a much smaller revenue base of $349 million, would seem wildly excessive and far from reasonable.

9 Stated differently, the Commission should not rationally determine that a $23.7 million stranded cost payment for the 50 aMW load of one Washington customer is "reasonable," while simultaneously finding that another Washington customer with a

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7/ Id. at ¶¶ 1-2.
8/ Id. at ¶ 37.
9/ Id. at ¶ 45.
10/ Compare WUTC v. PSE, Dockets UE-170033 and UG-170034 (*consolidated*), Piliaris, Exh. JAP-1T at 2:11-12 (stating current electric revenues of about $1.964 billion), with WUTC v. Pacific Power, Docket UE-152253, Steward, Exh. JRS-2 at 1 (stating Washington electric revenues of about $356 million for the Company's upcoming rate year).

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51 aMW load should "reasonably" pay three times more. At some point, "reasonable" loses any signification if the word can be used so expansively as to encompass virtually any possible outcome, and a three-fold increase would certainly seem too expansive. As Public Counsel's witness testified, "plus or minus 20 percent would be a reasonable range," in attempting to pinpoint stranded cost fee accuracy.[11/] Accordingly, an expansion of the "reasonable range" for stranded costs of identical Washington load, even assuming a full concession to the presence of *some* differences between utilities, should be considered manifestly unreasonable, unfair, and unjust when proposed to increase by more than a factor of 10 (i.e., +/- 20% to > 200%), as in this proceeding.

10 Lastly, multiple parties to this proceeding were also part of the PSE/Microsoft settlement, which all parties to that case supported.[12/] More specifically, the Commission recounts that witnesses for Staff, Public Counsel, and The Energy Project all filed testimony that "focuses on the calculation of the Transition Fee, which all witnesses who address it agree that PSE's *remaining ratepayers will be held harmless* as a result of Microsoft's decision to no longer be a core customer."[13/] If these parties, common to each case, agreed that a $23.7 million stranded cost fee would hold remaining customers "harmless" for the loss of a 50 aMW load, then surely an $80 million fee for the loss of virtually the same load should be found facially improper, and more than excessive for any equitably adjudged "held harmless" purposes.

11 Commendably, Staff has not supported Pacific Power's onerous Stranded Cost Recovery Fee in this docket, despite supporting the far more modest stranded cost fee in the PSE/Microsoft case. Boise attributes this telling difference, at least in

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11/ Kelly, TR. 302:9-13.
12/ Docket UE-161123, Order 06, App. A at ¶¶ 1-2.
13/ Id. at ¶ 46 (emphasis added).

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significant part, to Staff's conscientious fulfillment of a duty to not favor one rate class or set of customers over any others. Whereas Staff presumably found a stranded cost fee reasonable on the *balance* of large and small customer interests in the PSE/Microsoft case, Staff has properly found the Pacific Power proposal to be too large or material to merit approval. Indeed, when cross-examined by Public Counsel, Staff witness David Panco testified that "there didn't appear to be a significant enough issue to warrant *this large* of a change in the tariff structure."[14/]

12 Indeed, the crux of relevant stranded cost considerations would appear to primarily revolve around Boise in this proceeding, especially as to the magnitude of impacts associated with application of a fee on Boise. Mr. Panco testified: "It's difficult for me to imagine an individual customer other than a large industrial customer creating enough of a significant cost that it would fall outside of the noise of the regular cost shifting that occurs in the course of a utility doing business and dealing with variable loads."[15/] Similarly, Pacific Power limited its cross-examination of Mr. Panco to stranded costs associated with "a large industrial customer."[16/] Thus, even if not expressly articulated, the reasonableness of the proposed Stranded Cost Recovery Fee, as applied to the Company's largest industrial customer, would appear to be "the proverbial 'elephant in the room' that must be handled appropriately lest serious damage be caused to the occupant[]"[17/]—i.e., Boise.

[14/] Panco, TR. 373:4-6 (emphasis added). See also id., TR. 379:19-23 ("… I really don't feel that the issue has risen to the magnitude that we should be actively pursuing it at the level that it's been proposed in terms of *the magnitude* of the tariff changes that are recommended" (emphasis added)).

[15/] Id. at 372:15-20.

[16/] See id. at 375:16-376:14.

[17/] Docket UE-161123, Order 06 at ¶ 37.

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13 In contrast to Staff, Public Counsel has been the only non-Company party to support the establishment of the proposed Stranded Cost Recovery Fee in this docket, at least beyond what would be necessary to hold any remaining customers harmless in the event of a loss of Boise's load.[18] In short, improper or excessive fee collections from the Company's largest customer would provide a windfall for residential customers.[19]

14 Yet, as Boise witness Bradley Mullins demonstrated in cross-answering testimony, Public Counsel's entire approach to stranded cost calculation has centered upon the application of an unjustifiably different standard between residential and non-residential customers, ultimately leading to impermissibly discriminatory rate treatment.[20] Accordingly, Boise urges the Commission to follow the recommendations of Staff rather than Public Counsel, among parties common the both recent stranded cost proceedings, in rejecting an unfair and unjust "end result" for Boise (and potentially other large customers). The same legal mandates acknowledged in the very recent PSE/Microsoft case should apply with equal force here:

> Washington statutes prohibit an electrical company from making or granting any undue or unreasonable preference or advantage to any person, or from charging or receiving a greater or less compensation from any person than the company charges or receives from any other person for a comparable service under substantially similar circumstances.[21]

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[18] Boise anticipates that The Energy Project, while not sponsoring any witnesses in this proceeding, may also support the Company's Stranded Cost Recovery Fee proposal on brief, for the same reasons apparently inducing Public Counsel—i.e., residential-benefit/large customer-cost.

[19] See Dalley, Exh. RBD-33X at 16 (the Company's Response to Boise Data Request ("DR") 0024(f)) (objecting to the characterization that a "windfall" or extra compensation to remaining customers when a mechanism would "*properly* compensate" customers" (emphasis added)).

[20] Mullins, Exh. BGM-4T at 1:20-2:17 (including what Mr. Mullins graciously understated as "strange" and "perplexing" decisions by Public Counsel to recommend grossly disproportionate stranded cost fee multipliers for residential and non-residential customer classes).

[21] Docket UE-161123, Order 06 at ¶ 41 (citations omitted).

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2. The Company's Stranded Cost Recovery Fee Methodology Is Not Sufficiently Detailed for Potential Application to Boise

15 At the very least, Pacific Power has proposed an overly simplistic, "one-size-fits-all" methodological approach to calculating stranded costs which does not adequately account for the sophistication of Boise or its importance to the Company's system. Ultimately, there is a reasonable medium between Pacific Power's blanket approach, which improperly fails to distinguish relevant differences between customer class contributions to the Company's system, and Public Counsel's discriminatory class weighting, which is purposely designed to benefit one subset of customers at the expense of others.

16 In the PSE/Microsoft case, the Commission stated that "the shift of a large business core customer to a non-core customer impacts all customers and the electric system that serves them."[22/] By so affirming, the Commission recognized the special considerations that must be attached to specific cost shifts associated with very large customers, which justify particularized analysis due to the magnitude of impacts associated with such load. As PSE's largest customer, the Commission rightly held that "Microsoft is *unique* in terms of both the amount and concentration of its load."[23/] In turn, the "unique" characteristics of Microsoft justified consideration, not of loose estimates or attempts to parse through an amorphous cloud of generalized concerns, but of "evidence in the record," as to whether PSE would have calculated fees differently for "any other similarly situated customer,"[24/] even if necessarily contemplated in theory or as a hypothetical (i.e., since Microsoft is "unique").

[22/] Id. at ¶ 38.
[23/] Id. at ¶ 43 (emphasis added).
[24/] Id. at ¶ 42.

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17 Nevertheless, Pacific Power has eschewed the tailored approach favored by PSE and Microsoft, and exhibited little cognizance of the unique characteristics for Boise within the Company's Washington system. For example, the Company's lead witness in this proceeding, Senior Vice President Scott Bolton, was oblivious to the fact that Boise is serviced on a unique rate schedule, Schedule 48T-Dedicated Facilities[25/]—which, if recognized and properly considered, would have provided a notable analog to the "concentration" of almost identical Microsoft load on PSE's system. Also, despite acknowledging the Company's usual practice of individually negotiating with large, sophisticated customers—and the option of conducting a more detailed stranded cost study that catered to the issues and impacts associated with the unique Dedicated Facilities rate schedule—Pacific Power opted instead for a "simpler approach."[26/] Company witness Robert Meredith, who supervised the Stranded Cost Recovery Fee proposal,[27/] even confirmed that, beyond simple segmentation between residential and non-residential customers, Pacific Power's proposal "should be a one-size-fits-all."[28/]

18 In short, the Company has failed to carry its burden of proof by proposing a "one-size-fits-all" stranded cost methodology. In stark contrast to the Commission's finding in the PSE/Microsoft case—that, concerning the stranded cost or Transition Fee detailed for the utility's single largest customer, "the record contains *extensive* evidence

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25/ Bolton, TR. 142:25-143:13.

26/ See, e.g., Meredith, TR. 279:1-5; id. at 283:9-18; id. at 282:3-7.

27/ Meredith, Exh. RMM-1Tr at 2:6-7.

28/ Meredith, TR. 280:6-8 ("That's our proposal"). Mr. Meredith then attempted to "potentially" qualify this answer, by testifying that the proposal was "*not necessarily* a one-size fits-all." Id. at 280:8-9 (emphasis added). However, Boise notes that the Commission met similar attempts, by a ratepayer advocate witness—i.e., to testify "that he did not 'necessarily disagree with'" a position that was "a little bit nuanced"—by concluding that, such "testimony notwithstanding, the record is clear." Docket UE-161123, Order 06 at ¶¶ 85-86. Boise believes that, similarly, little weight should be attached to Mr. Meredith's attempt at what amounts to a "qualified qualifier."

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of the costs that are included in that fee and how PSE calculated them"[29]—the Company's Stranded Cost Recovery Fee is little more than a simplistic revenue multiplier, lacking substantive justification for any particular customer, let alone Boise.[30] In fact, when asked at hearing about the proposed stranded cost fee being a revenue multiplier, Mr. Meredith confirmed: "So it's a revenue multiplier, so whatever those rates are, it's based upon those rates and that recovery, which has been deemed to be a – reasonable charges for those customers."[31]

19 Mr. Meredith explained, in written testimony, that this simplistic, one-size-fits-all approach was "reasonable" because "I believe that it is not overly complicated and is based on information that is easily verifiable."[32] But, when later pressed at hearing to explain why the Company had opted for such an undifferentiated stranded cost fee approach, especially in regard to the acknowledged differences in sophistication between customers,[33] Mr. Meredith offered completely contradictory explanations to the Commission.

20 First, when explaining why it was purportedly "necessary to balance the accuracy of the fee's calculation and application to customers with having a methodology that would be easy for others to understand and interpret,"[34] Mr. Meredith testified: "But I think that when I was making this statement, I don't know that it was so much around

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[29] Docket UE-161123, Order 06 at ¶ 47 (emphasis added).

[30] E.g., Dalley, Exh. RBD-1Tr at 16:3-4 ("For non-residential customers, the Company is proposing a Stranded Cost Recovery Fee equal to 4.5 times the customer's annual revenue"); Meredith, Exh. RMM-1Tr at 18, Table 2 (illustrating non-residential proposed fees still totaling a 3.19 revenue multiplier). See also Meredith, TR. 258:5-9 ("So initially our proposal was to look at cost recovery less net power costs that were in base rates. The purpose of that was … having a methodology that would be easy for someone to understand and to verify").

[31] Meredith TR. 250:19-24.

[32] Meredith, Exh. RMM-1Tr at 19:18-19.

[33] Meredith TR. 278:16-17 ("No, not all of our customers have the same level of sophistication").

[34] Id. at 278:3-11 (quoting Meredith, Exh. RMM-1Tr at 2:10-12).

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customers necessarily understanding and interpreting the calculations, but as far as *parties* who would evaluate our proposal, understanding and being able to interpret those calculations."[35] Mr. Meredith, having worked at the Company for 12 years,[36] should almost certainly have expected Boise to be involved in this proceeding, both as a customer and as a party[37]—which would fatally undermine the purported desirability of using a simplistic, one-size-fits-all approach to allow for the understanding of all "parties." Further, this is to say nothing of what Pacific Power apparently considers to be the comprehensive capacity of Staff, Public Counsel, or other customary "parties," such that a "simpler" and "easily verifiable" approach was deemed necessary for these parties.

21 That said, Mr. Meredith soon revealed that the "simpler approach," chosen to incorporate the "balance" between accuracy and simplicity, was *actually* for the benefit of "customers," and not really for parties, after all. Specifically, when asked whether a more detailed study could have been conducted, Mr. Meredith emphatically reversed his prior testimony: "We could have done that …. Again, we wanted to balance that and have a fee that was easy for *customers* to understand that didn't introduce a lot of complexity."[38] If this "retelling" is accurate, however, then Mr. Meredith's simplistic focus, for the benefit of "customers," would only confirm that Pacific Power disregarded

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[35] Id. at 278:17-22 (emphasis added).

[36] Id. at 282:9-11.

[37] See, e.g., WUTC v. Pacific Power, Docket UE-152253, Order 12 at 3 (Sept. 1, 2016); WUTC v. Pacific Power, Docket UE-144160, Order 04 at 2 (May 12, 2015); WUTC. v. Pacific Power, Docket UE-140762 *et al.* (consolidated), Order 08 at 3 (March 25, 2015) (noting Boise's party status in all cited proceedings).

[38] Meredith TR. 283:9-18 (emphasis added). See also Kelly, TR. 311:11-18 (affirming, in essence, that Pacific Power chose to avoid the detailed and sophisticated analysis appropriate to Boise in favor of residential customers: "I think what the Company has offered is a simplification so that customers understand what they will be facing should they be trying to make an economic decision …. [T]he approach the Company took is a simplification to ease the efforts the customers have to make").

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the option of a detailed and accurate analysis appropriate for a sophisticated customer like Boise, in decided preference for smaller and less sophisticated customers.

22 Boise does not draw attention to the (irreconcilable) inconsistency in Mr. Meredith's testimony—i.e., attributing the Company's approach first to benefit "parties," then "customers," after having expressly differentiated between the two groups—to impute intentional malfeasance on the Company's part. Indeed, the fact that Mr. Meredith mistakenly prefaced his contradictory testimony, with an emphatic "Again," tends to prove that the witness was completely mixing up his foundational arguments, rather than cleverly attempting to mislead the Commission. Boise *does* draw attention to such contradictions, however, to highlight the glaring deficiencies in the Company's efforts to carry its burden of proof in this case. The fact that the witness supervising Stranded Cost Recovery Fee preparation was unable to consistently explain the fundamental basis for Company's approach is reason enough to reject Pacific Power's proposal.

23 Moreover, Mr. Meredith's inconsistent testimony elucidates a certain cavalier or ad hoc thematic quality to the Company's entire approach to its evidentiary burden in this proceeding. Given the virtual identity of Microsoft and Boise load in Washington—and the "stranded cost" calculations equally at issue in these largely contemporaneous proceedings associated with the largest customers for two of three regulated electric utilities in the state—the utter lack of comparative stranded cost analysis conducted by Mr. Meredith does little to convey a sense of diligence or regional expertise from the Company's supervisor of the Stranded Cost Recovery Fee proposal. As Mr. Meredith admitted at hearing, "I don't have *any* knowledge of Microsoft's load or

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their recovery of their revenue."[39] Unfortunately, Mr. Meredith's total absence of knowledge on this critical issue is consistent with Mr. Bolton also having no knowledge that Boise was served on a unique Dedicated Facilities schedule.[40]

24 Such demonstration of unfamiliarity with crucial components of the Company's business, as well as a manifest lack of preparation for this proceeding, would seem too incredible to believe—except that the Company's testimony seems to convey an overweening confidence that mere recitation of Chairman Danner's Separate Statement, as appended to the unanimous decision of the final order in Walla Walla Country Club v. Pacific Power,[41] has apparently given Pacific Power carte blanche to enact any competitive protectionist measures deemed necessary to stop alleged "cherry-picking" by Columbia Rural Electric Association ("Columbia REA" or "CREA").[42] While policy issues underlying this proceeding are addressed later in briefing, the following cannot be overemphasized here—Boise should not become a casualty of any existing animus between the Company and Columbia REA, via adoption of onerous new Net Removal Tariff provisions, nor should the Commission allow itself to be manipulated toward becoming an active participant in competitive battles between the two entities.

25 Ultimately, Pacific Power still bears the burden to prove the reasonableness of its Stranded Cost Recovery Fee on an evidentiary basis, regardless of any perceived policy imprimatur from the Chairman. Mr. Meredith admitted at hearing that it would be possible for the Company "to accurately identify" the cost of a single

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[39] Meredith TR. 277:22-23 (emphasis added). Presumably, Mr. Meredith had not so much as looked at the publicly filed testimony of Microsoft in Docket UE-161123, since the statement of a 50 aMW load was hardly buried within a 10-page testimony filing. See Docket UE-161123, Plenefisch, Exh. IP-1T at 6:7 (stating "our load is 50 aMW").

[40] Bolton, TR. 142:25-143:13.

[41] Docket UE-143932, Order 05 (May 5, 2016) ("Walla Walla case").

[42] See, e.g., Dalley, RBD-1Tr at 3:10-16 & n.1, 6:16-7:2 & n.4, 7:3-8 & n.5; Dalley, RBD-5Tr at 12:6-7 & n.12, 13:8-9.

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customer disconnecting from the system,[43] which was never so much as attempted for Boise. Thus, the Company's decision to ignore detailed stranded cost analysis, especially in association with its largest customer, merits rejection of the fee proposal—at least as applied to Boise.

3. Flaws in Pacific Power's Methodology Are Too Numerous and Too Significant to Merit Adoption of the Stranded Cost Recovery Fee

26 In the interests of brevity, Boise generally refers the Commission to the testimony of Mr. Mullins, who explained the methodological inadequacies of Pacific Power's Stranded Cost Recovery Fee proposal in considerable detail.[44] However, to rebut Company replies to the flaws noted by Mr. Mullins and other witnesses, and for clarity and emphasis, Boise addresses certain issues bearing upon the sufficiency of Pacific Power's stranded cost analysis below. In sum, support for the Stranded Cost Recovery Fee proposal is too flawed to justify adoption, as the Company has essentially patched together a premature and threadbare methodology that falls well short of carrying the requisite burden of proof.

a. The Company's Proposal Is Fundamentally Bound to an Outdated and Evidentiarily Inadequate Cost of Service Study

27 Arguably, the most notable and fatal of the methodological flaws associated with the Company's proposal concerns extremely stale cost of service study data. Mr. Meredith repeatedly testifies to the Company's reliance on its cost of service study in support of adjustments incorporated into the Stranded Cost Recovery Fee.[45] But, Mr. Meredith also acknowledges that the last cost of service study conducted by the

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[43] Meredith TR. 258:15-17.
[44] See Mullins, Exh. BGM-1T at 26:1-34:19.
[45] See, e.g., Meredith, Exh. RMM-1Tr at 7:7-11, 8:11-15, 9:16-20; Meredith TR. 274:4-15, 288:23-289:9.

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Company dates to calendar year 2013, and that the Company would prepare a new cost of service study before ever attempting to file a new general rate case.[46] In fact, the reasonableness of performing an updated cost of service study, in support of major ratepayer impacts likely to be caused by a general rate case, is articulated by Mr. Meredith as follows: "I think that any time you perform a new cost-of-service-study, there are going to be changes with the different test period."[47]

28 Therefore, on this same basis of accurately capturing "changes" relative to any number of factors at play in different time periods, the major ratepayer impacts associated with the Company's proposed Stranded Cost Recovery Fee *should* have been based upon updated cost of service study information. That is, if the proposed fee impacts are to be considered reasonable, particularly as Mr. Meredith repeatedly references the factoring of fee adjustments based on cost of service data. Put another way, if a comparatively "modest" 3% rate increase request (i.e., qualifying as a general rate proceeding,[48] and amounting to a roughly $810,000 annual impact for Pacific Power's largest customer[49]) would justify a refreshed cost of service update in the Company's view, then surely a rate impact for that same largest customer of *$86.1 million* (a 219% increase)—caused by the potential application of Pacific Power's proposed Stranded Cost Recovery Fee[50]—also *should* have justified a refreshed cost of service study analysis.

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[46] Meredith, TR. 270:22-272:4.

[47] Id. at 271:18-20. See also id. at 251:4-5 ("a number of factors [are] at play in a cost-of-service study").

[48] WAC § 480-07-505(1)(a).

[49] See Meredith, Exh. RMM-2 at 9 (stating $27.0 million as the average annual revenue of the lone customer on Schedule 48T-Dedicated Facilities).

[50] See Meredith, Exh. RMM-1Tr at 18, Table 2 (proposing total fees amounting to a 3.19 revenue multiplier for non-residential customers) ($27.0 million * 3.19 = $86.1 million). See also id. at 15:10-12 (regarding the associated Low Income Assistance Program Recovery Fee and Demand Side Management Recovery Fee, proposed on top of the Stranded Cost Recovery Fee: "The

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The absence of such a refreshed cost of service analysis in this docket, however, demonstrates an acute flaw in Pacific Power's methodology.

29 Moreover, the unreasonableness of using stale 2013 cost of service data runs deeper than just an association with the fee adjustments that the Company has calculated. When asked at hearing whether the 2013 cost of service study had been used in the estimation of "fixed costs" in the Company's modified stranded cost proposal, Mr. Meredith affirmed: "It is using the … cost-of-service study."[51/]

30 As Mr. Mullins points out, however, the Company "uses the Peak & Average methodology for cost of service purposes in Washington, in order to *classify fixed production costs*."[52/] Thus, Pacific Power's estimation of "fixed costs," for stranded cost calculation purposes, is necessarily "… based on cost information that is stale and outdated. The last time power costs were updated was in Docket UE-140762,"[53/] using 2013 calendar year cost of service data.

31 This stale and outdated fixed cost data relied upon by the Company creates an insoluble dilemma, as far as the reasonableness of the proposed Stranded Cost Recovery Fee is concerned. As Mr. Meredith explains, Pacific Power's conception of stranded and fixed costs are inextricably entwined:

> the Company's *stranded* cost calculations take a more limited term perspective and consider all costs which are *fixed* and non-deferrable with a customer's departure as *stranded*. The Company's proposed *stranded* cost calculations, as modified in my rebuttal testimony, utilize an

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Company calculated both of these fees using the *same approach* that it took for determining the Stranded Cost Recovery Fee" (emphasis added)).

51/ Meredith, TR. 288:15-289:9 (omitting only counsel's interjection of "Okay").

52/ Mullins, Exh. BGM-1T at 30:15-17 (citation omitted) (emphasis added).

53/ Id. at 31:5-6.

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intermediate period of time over which to include all *fixed* costs of six years.[54/]

Notably, such emphasis on the "limited term" and "intermediate period of time" at issue, for "all" fixed costs and stranded cost analyses, renders the staleness of the Company's cost of service data all the more inappropriate. In other words, the smaller concentration of time here makes updated and accurate data more imperative, especially given the sheer magnitude of the proposed fee and the practical, if not strictly legal, precedential effect of any Commission adoption of such a fee.

32 In any event, a dependency is apparent upon accurate fixed costs that are necessary to produce accurate stranded costs, according to Pacific Power's own testimony. But, the fact that the Company finds itself in a dilemma to show the accuracy and reasonableness of future stranded cost fees, based on fixed cost data that are already materially outdated, is a problem entirely of Pacific Power's creation. Ratepayers should not be burdened with a deeply flawed Stranded Cost Recovery Fee, or have their interests glossed over as a sort of tactical sacrifice formulated by the Company, simply for the purposes of ameliorating potential Pacific Power/Columbia REA competitive disputes.

33 The Company devotes a page and a half of rebuttal testimony in an attempt to discredit cost of service classification points raised by Mr. Mullins, particularly in relation to energy- and demand-related costs and corresponding fixed and variable distinctions.[55/] However, much like Mr. Meredith's attempt at a "qualified qualifier" at hearing,[56/] little weight should be placed on such ostensibly discrediting testimony. That is, all the argument in this portion of testimony ultimately boils down to

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54/ Meredith, Exh. RMM-1Tr at 13:6-10 (emphasis added).
55/ Id. at 12:12-13:21.
56/ Meredith, TR. 280:8-9, supra note 28.

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another non-committal and unhelpful qualifier from Mr. Meredith: "Cost of service classification is the process of determining which costs are demand-related, energy-related, and customer-related. Cost of service classification does *not necessarily* delineate costs in terms of fixed versus variable."[57/] But, as soon as the obvious corollary is applied to Mr. Meredith's qualifier—i.e., "cost of service classification does not necessarily *not* delineate costs in terms of fixed versus variable, *either"*—Pacific Power's argument becomes vacuous, and almost certainly useless toward persuasively bolstering the Company's evidentiary case.

34 Elsewhere, Mr. Meredith does concede that parties raised some valid concerns, including an acknowledgment of Boise's concern that "stale and outdated" data were used in the development of stranded costs, and that Pacific Power's reliance upon such stale data "may not appropriately capture the most recent incremental impact of a reduction in load."[58/] While Mr. Meredith proposes an ad hoc adjustment to address this methodological flaw, however, even his proposed fix still incorporates class allocators from the critically outdated "cost of service study in the Company's last general rate case in Docket UE-140762 (2014 Rate Case)."[59/]

35 At best, Pacific Power's attempted patchwork solution still fails to fully remedy the fundamental staleness issue in the Company's proposal. But, since Mr. Meredith testifies to having supervised the Stranded Cost Recovery Fee proposal throughout this proceeding,[60/] the broader and more troubling concern is that this flaw is not the only very significant Company gaffe to have been identified by other parties, and

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57/ Meredith, Exh. RMM-1Tr at 13:15-18 (emphasis added).
58/ Compare id. at 6:3-4, with id. at 6:9-15.
59/ Id. at 7:7-11.
60/ Id. at 2:6-7.

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later acknowledged by Mr. Meredith. For instance, despite supervising Pacific Power's proposal from the beginning, Mr. Meredith agreed that the initial fee proposal also included "double recovery" of facility value.[61/]

36 Further, Boise's additional concerns, about the Company's apparent cavalier approach to such a massive Stranded Cost Recovery Fee proposal, were then amplified considerably when, having been directly asked about his awareness of this double recovery error, Mr. Meredith testified: "It was just something that I didn't consider."[62/] Worse, when understandably asked how, as the supervisor of the entire stranded cost proposal, a full "ten percent of the total fee [was] so easy to overlook," Mr. Meredith again offered nothing but a casual sense of how the Company prepared its case: "… this was something that I had not considered. I had not spent a lot of time reviewing particularly the Rule 6 changes in the initial filing, but I think that it's a very valid concern and so that's why we made the adjustment." And, if this were not alarming enough, Mr. Meredith also conceded that, in the initial stranded cost proposal which he supervised, Pacific Power "included some elements that maybe could be argued to be avoidable."[63/]

37 All told, the critically stale and evidentiarily inadequate cost of service study that undergirds the Company's stranded cost proposal, and even provides the basis for several attempted "fixes" to conceded proposal flaws, is but a piece of a larger picture, revealing a utility seemingly unconcerned or uninclined to present the Commission with a rigorously substantiated methodological analysis. From Boise's perspective, Pacific Power plainly approached this case with the belief that merely

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61/ Meredith, TR. 262:22-263:3 (citing Meredith, Exh. RMM-1Tr at 8:4-7).
62/ Id. at 263:4-7.
63/ Id. at 263:25-264:1.

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showing up and repeatedly invoking Chairman Danner's apparent displeasure with Columbia REA would suffice to secure an approval for a revised Net Removal Tariff, with little further effort required. Nevertheless, Boise urges the Commission to keep ratepayer interests and evidentiary standards foremost in its considerations—lest the Company's attempt to cloud all issues with competitive policy complaints, and turn the WUTC into an ersatz Legislature,[64/] obscure proper burden of proof requirements.

b. Pacific Power Fails to Analyze or Incorporate the Huge Purported Benefits Presented in the 2017 Integrated Resource Plan ("IRP")

38 The rare Pacific Power/Public Counsel alliance that has emerged in this proceeding is largely, if not almost exclusively, based upon Pacific Power's acceptance of Public Counsel recommendations associated with the Stranded Cost Recovery Fee.[65/] Primary among these accepted recommendations, at least from the standpoint of overall ratepayer impact, was the Company's agreement to calculate only six years of stranded costs, which Mr. Meredith justified on the following basis: "This modification is in line with Public Counsel's recommendation and is also *reasonable since it represents three IRP cycles*."[66/] Accordingly, regardless of whether parties agree with the Stranded Cost Recovery Fee proposal or the Company's rationale, the incontrovertible fact is that Pacific Power has now pinned the reasonableness of its proposal to future "IRP cycles."

[64/] See, e.g., Dalley, Exh. RBD-45X (the Company's Response to Public Counsel DR 13) (acknowledging all efforts before the Washington Legislature have been "unsuccessful," even though "[t]he Company was involved in several legislative proposals during the last three years which it advocated for the inclusion of provisions to strengthen service territory protections in the State of Washington"); Bolton TR. 137:17-22 (testifying "that we go back much more than just three years" with legislative proposals concerning Washington service territory protections).

[65/] Compare Kelly, Exh. KAK-1T at 59:16-17 ("I recommend that the Commission deny Pacific Power's proposed revision to Rule 6 and Schedule 300 as filed"), with Meredith, RMM-1Tr at 5:8-14, 5:1-18, 16:4-7, 15-16 (modifying Stranded Cost Recovery Fee proposals consistent with Public Counsel recommendations), and Kelly, TR. 312:6-9 ("My primary recommendation, before the Company modified its proposal, was to reject it. But with the modifications, my recommendation is to move forward with that approach").

[66/] Meredith, Exh. RMM-1Tr at 5:13-14 (emphasis added).

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39 Yet, the Company has failed to correspondingly adjust its stranded cost analysis to factor the 2017 IRP, the next future IRP cycle, which includes purportedly "exciting" and presumptively massive ratepayer benefits—e.g., of the magnitude that should reasonably be considered a sine qua non to justify the equally massive risk associated with the Company's monumental $3.5 billion wind investment plan, to be completed in a staggeringly short time frame, by 2020.[67/] More specifically, the Company claims that the economic opportunity associated with 2017 IRP investment plans "will save customers hundreds of millions of dollars."[68/] For this very reason, however, Mr. Mullins explained why 2017 IRP benefits should have been incorporated within the Company's stranded cost analysis: "If this opportunity truly is economic to customers, the benefits associated with the project to remaining customers *will increase if a customer departs*, as the economic benefits of the project will be spread over a smaller load."[69/]

40 Economic benefits resulting from a customer departure, which could materially offset potential stranded costs—especially in reference to the largest customer on a utility system—is a very real possibility, and one that was expressly analyzed and calculated by both PSE and Microsoft in Docket UE-161123.[70/] Notwithstanding, the

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67/ Re Pacific Power's 2017 IRP, Docket UE-160353, PacifiCorp 2017 IRP, Volume I at 2-3. See also Re Pacific Power's 2017 IRP, Public Utility Commission of Oregon Docket No. LC 67, Staff's Initial Comments (June 23, 2017) (providing detailed analysis and breakdown of the Company's $3.5 million investment plans associated with wind repowering, new wind, and associated new transmission).

68/ Docket UE-160353, PacifiCorp 2017 IRP, Volume I at 3.

69/ Mullins, Exh. BGM-1T at 30:2-5 (emphasis added).

70/ See, e.g., Kelly, Exh. KAK-4 at 7:10-16 (containing the following testimony from PSE witness Jon Piliaris: "… PSE's loss of Microsoft's Schedule 40 loads and associated power-related revenues results in an estimated net cost … over the first four years of the projections, after which there is estimated to be a net benefit." In fact, according to Mr. Piliaris: "By 2035, the net present value of PSE's loss of Microsoft's Schedule 40 load is estimated to be a net benefit of approximately $23 million"); Docket UE-161123, Order 06 at ¶ 54 (noting that correcting PSE

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Company did not incorporate such benefit considerations when formulating its proposal.[71] Similarly, Mr. Meredith has remained steadfast in rejecting consideration of 2017 IRP benefits,[72] despite explicitly hinging the reasonableness of Pacific Power's modified proposal on the next "three IRP cycles."

41 The Company's logic for this inconsistent position does not hold up under rational scrutiny. Mr. Meredith testified at hearing that "three IRP cycles represents some period of time for adjustment," such that "you could look to the IRP for" help to "*identify costs that you can avoid* as a consequence of a customer departure."[73] To this end, Mr. Meredith also testified that 2017 IRP wind investment would "replace other types of generation …. So having more energy produced by the wind would – would, in fact, replace other forms of generation or market purchases."[74]

42 In sum, therefore, the Company is claiming that 2017 IRP wind investment benefits are expected to include the displacement of generation or market purchases otherwise necessary to serve current load, including load associated with present customers that may choose to permanently disconnect from the Company's system in the future. Under this Company paradigm, Pacific Power makes a plain connection between 2017 IRP wind investment plans and current load considerations, thereby demonstrating the relevance of factoring such expected benefits into a reasonable and evidentiarily sufficient stranded cost analysis, just as Mr. Mullins had testified.

"assumptions, according to Microsoft, would result in PSE receiving a net benefit of $35.2 million from no longer serving Microsoft as a core customer").

[71] See Kelly, Exh. KAK-12 (the Company's Response to Boise DR 001).

[72] Meredith, Exh. RMM-1Tr at 11:13-16.

[73] Meredith, TR. 293:2-9 (answering "yeah" to the last quoted question excerpt of counsel) (emphasis added).

[74] Id. at 267:18-21.

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43 Notwithstanding, according to Mr. Meredith, 2017 IRP wind investments are "not part of the costs that customers *currently pay* in their rates. It would be inappropriate to include costs and resultant benefits from *resources* that are not being driven by a need to serve loads in the Company's stranded cost calculation."[75/] As an initial matter, in light of the foregoing demonstration of a relevant connection between 2017 IRP wind benefits and current customer load considerations, this written testimonial argument of Mr. Meredith could, at best, be characterized as a form of tortured reasoning in acute tension, if not outright conflict, with his own positions at hearing. Moreover, the fact that PSE *did* perform an IRP analysis in the recent PSE/Microsoft case, as Mr. Mullins points out,[76/] only tends to affirm the tortuous nature of Mr. Meredith's reasoning.

44 A further inconsistency in Mr. Meredith's logic also emerges, however, regarding the Company's modified proposal to add demand side management resource fees. Particularly, as a modification to the Stranded Cost Recovery Fee, the Company proposes to "[i]nclude separate fees for the recovery of the low income assistance program and energy efficiency programs."[77/] Mr. Meredith later confirmed that the proposed demand side management recovery includes energy efficiency,[78/] and that he considers energy efficiency to be "a resource."[79/] But, his proposal to modify the Stranded Cost Recovery Fee to include this resource cost is admittedly *not* based on what any customer would "currently pay in their rates," which Mr. Meredith had formerly presented as a prerequisite for proper analysis of stranded costs.

75/ Meredith, Exh. RMM-1Tr at 12:2-5 (emphasis added).
76/ Mullins, Exh. BGM-1T at 30:9-10.
77/ Meredith, Exh. RMM-1Tr at 16:4-5, 15-16.
78/ Meredith, TR. 284:21-24.
79/ Id. at 285:1-3.

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45 Instead, Mr. Meredith testified that proposed demand side management recovery is "meant to collect what essentially is a *prospective* cost," by "seeking to collect what [customers] otherwise would pay if they stayed on" the Company's system.[80/] In other words, such recovery has nothing to do with specific resource costs that customers "currently pay in their rates"—a fact later confirmed when Public Counsel witness Kathleen Kelly testified that the six-year-term obligation, for both low income and energy efficiency fees, was not based on actual resource causality, "[b]ut the intent here is to ensure that there is continued support for those programs for that same time frame *as there would be* for the rest of the stranded costs."[81/] Thus, if the Company justifies the recovery of a "prospective cost" associated with future demand side management resources (and low income assistance), then Pacific Power can hardly refuse to acknowledge the "prospective" benefit of 2017 IRP investment—at least, so far as rationality and fairness are to enter the equation.

c. The Stranded Cost Recovery Fee Proposal Omits Numerous Important Analytical Considerations

46 From a methodological standpoint, Pacific Power's failure to update its cost of service study or consider the potentially massive economic benefits of the 2017 IRP should each, independently, justify a rejection of the Stranded Cost Recovery Fee. But, the omission of many other important analytical considerations should also warrant rejection of the Company's proposal, especially given a cumulative effect that

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80/ Id. at 288:8-13 (answering "Right" to the quoted question excerpts of counsel) (emphasis added).

81/ Kelly, TR. 325:5-16. Ms. Kelly expressly noted that low income funding operates on a "shorter" planning cycle than even she proposes in this proceeding, which further emphasizes the inconsistency in Mr. Meredith's objection to considering 2017 IRP wind investment plans because they are "not part of the costs that customers currently pay in their rates."

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tends to demonstrate a decided lack of thorough analytical rigor, which is all too typical of Pacific Power's approach to its burden of proof.

47 As a partial list of such additional factors (e.g., Boise does not attempt here to list all flaws noted by other parties, which makes this a partial list for that reason alone), which were not incorporated within the Company's stranded cost analysis, Boise offers the following:

- No analysis of the margins earned from serving customers in different rate classes.[82]
- The Company bases calculations on decoupling revenues established in Docket UE-152253, rather than actual stranded costs, adopting an unreasonable view that every dollar of revenue requirement, minus power costs, translates to stranded costs.[83]
- Stranded costs are calculated as a static value.[84]
- Pacific Power omits the impacts associated with reductions to jurisdictional allocation factors.[85]
- Owing to PacifiCorp's operational system spanning six states, generation assets are not certain to be stranded by the disconnection of Washington customers.[86]

4. The Company Never Establishes a Credible Basis for Stranded Costs

48 If a stranded cost fee *was* to be deemed appropriate for current consideration by the Commission, the foregoing sections establish that the Stranded Cost Recovery Fee, as proposed in this docket, should be rejected on its particular (de)merits. The Company has not established, however, that a stranded cost fee is appropriate in the first place, at least at this present time.

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[82] Bolton, TR. 165:11-16.
[83] Mullins, Exh. BGM-1T at 26:20-27:4.
[84] Id. at 27:4-6.
[85] Id. at 27:7-9. See also id. at 31:14-21.
[86] Kelly, TR. 317:15-25.

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a. Staff Persuasively Demonstrates that a Stranded Cost Recovery Fee Is Economically Unjustified

49 At the end of the day, the Commission will presumably be weighing whether the extreme cost impacts demanded of customers like Boise, under Pacific Power's proposed Stranded Cost Recovery Fee, are fair and just within the context of the historical impact of disconnections on the Company. As Staff has persuasively demonstrated, Pacific Power has not incurred a level of costs resulting from historic disconnections that would warrant the magnitude of stranded cost recovery proposed.

50 More specifically, Mr. Panco testified at hearing that, "… in looking at the instances of customers leaving through time, there didn't appear to be a significant enough issue to warrant this large of a change in the tariff structure."[87/] Staff's conclusion is based on tangible evidence in the record, including a comparison of claimed revenue loss versus Pacific Power's total Washington sales—leading to the observation that the entirety of cumulative annual revenue loss, as alleged by Pacific Power, amounts only to "approximately one half of one percent (0.5%) of" reported Washington sales.[88/] When placed in the context of a potential 219% rate impact for Boise, such a monumental customer impact is extremely difficult to justify from a fairness perspective, given the comparatively miniscule effect on Pacific Power sales.[89/]

51 The unfairness of a proposed fee application to Boise, as the Company's largest industrial customer, would be all the more unjust when viewed in light of Staff's analysis of annual Pacific Power reporting data, revealing that recent disconnection

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87/ Panco, TR. 373:3-6.

88/ Panco, Exh. DJP-1Tr at 17:10-12.

89/ Accord Panco, TR. at 373:20-374:2 ("I'm continuing to stand by the position that given the reported trends in permanent disconnections being *relatively insignificant* in comparison to overall operations … ultimately I think that the existing tariffs in place are sufficient") (emphasis added).

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requests are "dominated by commercial accounts," not industrial.[90/] But, even the need for a new stranded cost fee for "commercial" customers appears lacking, given the further conclusion Staff has drawn from market data: "The commercial class appeared to represent the most significant opportunity for load growth in the service areas, and *both* the Company and CREA appeared to share that growth."[91/]

52 Based on such evidence of a demonstrably minor historical sales impact from past disconnections, and the reasonable prospect that Pacific Power will share in future commercial load growth, Boise fully agrees with the conclusions reached by Staff in this proceeding: "The proposed tariff revisions unfairly favor protecting the traditionally defined utility business model over allowing customer choice. They impose disconnection related fees that are substantially higher than those under the current tariff, even though the current provisions appear to be effective."[92/]

53 Similarly, Boise concurs with the prudency of Mr. Panco's testimony at hearing, when asked by the Commission when a potential stranded cost issue should be addressed, if not now: "I believe that when the rate structure *starts to be affected in a meaningful way* within the context of a rate case would be the point at which we would consider that."[93/] First, Staff's position rightly identifies the lack of "meaningful" impact, yet to be proven, on Pacific Power's overall revenues—as Mr. Panco later emphasized to the Commission, when explaining why Staff did not even feel compelled to expend any

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[90/] Panco, Exh. DJP-1Tr at 16:12-13. Boise notes that Staff differentiates between the commercial and industrial classes in its supporting analysis, lest there be a question of whether "commercial" was being used in a broader sense to capture all non-residentials. See id. at 14:1-14.

[91/] Id. at 20:7-10 (emphasis added).

[92/] Id. at 21:3-6.

[93/] Panco, TR. 377:5-8 (emphasis added).

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time or effort on cross-answering testimony in this proceeding.[94] Second, considering stranded costs "within the context of a rate case," as Mr. Panco suggests, would address concerns associated with very stale cost of service data (given the Company's testimony that any future general rate case will contain such an update),[95] as well as allow for holistic revenue analysis to ensure relevant offsets and interclass considerations are appropriately considered.

b. The Company Has Not Shown the Existence of Changed Circumstances to Merit Stranded Cost Recovery

54 Multiple parties have testified to the propriety of stranded cost recovery in the express context of new or changed regulatory circumstances, but such circumstances are conspicuously absent in this case. For instance, Mr. Panco confirmed that Staff did not support the establishment of the proposed Stranded Cost Recovery Fee, in part, on the following basis: "My understanding of stranded costs is that they are costs that occur unexpectedly due to changes in regulatory policy or the advent of market competition. And I don't think there's been an advent or a change in this case."[96] Even Pacific Power and Public Counsel, who both support approval of the Stranded Cost Recovery Fee in this docket, acknowledge the same standard prerequisite for implementation of stranded cost recovery—i.e., new or changed regulatory or competitive circumstances.[97]

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[94] See id. at 379:19-23 ("Because I really don't feel that the issue has risen to the magnitude that we should be actively pursuing it at the level that it's been proposed to in terms of the magnitude of the tariff changes that are recommended").

[95] Meredith, TR. 271:21-272:4.

[96] Panco, TR. 370:25-371:6.

[97] See, e.g., Dalley, Exh. RBD-1Tr at 14:3-8 ("FERC noted that 'public utilities … should be allowed to recover the costs incurred *under the old regulatory regime* under the expectations of cost recovery established *under that regime*'") (quoting 1 Robert Hahne *et al.*, Accounting for Public Utilities, 20-20 (2006)) (emphasis added); Kelly, Exh. KAK-1T at 16:7-13 (noting the Commission recognizes "the existence of stranded costs" when prudently incurred costs "may become unrecoverable if the industry is deregulated so that the utility's historic customers are given access to competitive markets") (quoting Air Liquide *et al.* v. PSE, Dockets UE-001952 and UE-001959 (*consolidated*), Eleventh Suppl. Order at ¶ 34 n.8 (April 5, 2001)).

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55 The record in this proceeding is clear, however, in showing a decided absence of any new regulatory or competitive market dynamics which would justify the novel regime of stranded cost recovery that Pacific Power proposes. Public Counsel acknowledges that Washington has neither been subject to recent deregulation nor changes in service territory laws.[98/] Likewise, Pacific Power concedes that customers have requested disconnections in every single year since 1999, when the Company alleges that Columbia REA stopped respecting "an informal agreement" on competition, yet Pacific Power has never sought stranded cost recovery through the Net Removal Tariff over all that time.[99/] Far from signifying any regulatory or market competition changes that might justify stranded cost recovery, therefore, the Company has merely succeeded in establishing that *nothing* has changed for almost two decades. In fact, Mr. Bolton confirmed that the Company's openly competitive relationship with Columbia REA is the overwhelming norm in Washington, since Pacific Power only has a service area agreement in place with one of five neighboring, unregulated utilities.[100/]

56 Thus, the long-standing reality for the Company in Washington has been a competitive environment, in which Pacific Power willingly chooses to operate in full knowledge of the risks attendant to open competition. In this sense, responsibility for any alleged stranded costs should remain firmly at the feet of Company shareholders. As Pacific Power itself acknowledges: "Stranded costs must necessarily be borne by the departing customers, remaining customers, *shareholders* or some combination of the three."[101/] Similarly, the Commission has long affirmed that "regulation cannot and

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98/ Kelly, TR. 318:16-18, 320:6-12.
99/ Bolton, TR. 150:13-17, 151:4-7, 21-25.
100/ Id. at 148:10-149:11.
101/ Dalley, Exh. RBD-1Tr at 13:20-21 (emphasis added).

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should not 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."[102/]

57 Crucially, the Commission policy guideline just referenced is as applicable today as when first articulated over two decades ago, based on express affirmation in the PSE/Microsoft case: "We reaffirm the Commission's 1995 Policy Statement, Guiding Principles for an Evolving Electricity Industry."[103/] Moreover, the Commission made a particular point to "stress that '[e]lectricity service should be *available* to customers at prices that are both reasonable and affordable.'"[104/] Yet, the Company has boldly affirmed that the entire design of the revised Net Removal Tariff is to create a de facto or "practical exclusive service territory" in Washington[105/]—effectively hemming large customers in, like Boise, through prohibitive stranded cost fees that render the whole notion of "available" alternative electric service, at reasonable and affordable prices, a functional nullity.

58 The continued availability of "reasonable and affordable" electric service, in the area in which Pacific Power operates, is not a trivial issue. According to Mr. Bolton, customers request disconnection from Pacific Power service precisely on the basis of affordability: "Based on what I know from customers who have reached out to the Company and have requested permanent disconnection, in almost every single circumstance where it was clear why that customer was leaving was for an economic

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102/ Re 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 at 2 (Dec. 13, 1995).

103/ Docket UE-161123, Order 06 at ¶ 91.

104/ Id. (quoting Docket UE-940932, Policy Statement, Guiding Principles for Regulation in an Evolving Electricity Industry at 1) (emphasis added).

105/ Bolton, TR. 135:10-14, 136:23-137:7.

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reason …."[106] Likewise, the record indicates that Columbia REA has, since the Net Removal Tariff was originally established, publicly offered new customers the prospect of "reasonable rates."[107]

59 In contrast to the affordable and reasonable electric service rates that Pacific Power's competition appears to offer, Mr. Bolton testifies that the Company cannot compete "successfully" with neighboring utilities.[108] When directly asked whether the Commission "positively impeded" the Company "from competing with unregulated utilities," however, Mr. Bolton responded emphatically: "No, I wouldn't say that at all. The presence of Commission regulation in and of itself does not prevent competition."[109]

60 Reasonably speaking, Mr. Bolton's cumulative testimony leads to an obvious conclusion—that, not being impeded by the Commission from competing with neighboring unregulated utilities "at all," the Company's admitted inability to compete "successfully" with these same utilities can only be attributed to Pacific Power's own management, or lack thereof. To the extent that stranded costs result from Company mismanagement, therefore, shareholders should be held responsible, and *not* departing or existing customers of Pacific Power. Such a "shareholder responsibility" policy would be consistent with the Commission's freshly reaffirmed guideline, providing that

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106/ Id. at 159:9-13.

107/ Dalley, Exh. RBD-41Xr at 9 (the Company's 1st Suppl. Response to CREA DR 0012, Att. CREA DR 0012 1st Suppl. (CREA Responses to PacifiCorp's Second Set of DRs in Docket UE-001743)).

108/ Bolton, TR. 160:19-21 ("Can we compete successfully and under the same terms and conditions? No").

109/ Id. at 161:18-24.

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"regulation cannot and should not be expected to guarantee utilities will … be made entirely whole" for stranded costs resulting from "actual and fair competition."[110]

61 Indeed, Pacific Power affirmed at hearing that the competition at issue in this proceeding is not alleged to be anything but "fair," meaning the Company should have no reasonable expectation of being made entirely whole for stranded costs. By testifying that, "frankly, the purpose of revising our net removal tariff, is to respond to the presence of competition,"[111] Mr. Bolton concedes that "actual" competition is at issue. Then, when given a direct invitation to opine about the fairness of that competition, Mr. Bolton declined to attribute anything "wrong" to the conduct of electric utilities "offering" alternative customer service: "Again, I think that's a value judgment. I don't think we look at it in those terms."[112] If anything, Mr. Bolton's testimony highlights the reasonableness of all customer elections to switch service providers, thereby taking advantage of more affordable pricing, as currently "available" in lieu of Pacific Power service: "In fact, I think we would look at each customer dispassionately as being a *rational*, economic actor."[113]

62 Finally, as far as shareholder responsibility and the Company's reasonable expectations of stranded cost recovery go, another aspect of the Commission's policy guidelines bears discussion. Namely, that "… regulatory policy should seek flexible ways to reduce both shareholder and ratepayer exposure to potentially stranded costs."[114]

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[110] Docket UE-940932, Policy Statement, Guiding Principles for Regulation in an Evolving Electricity Industry at 2.
[111] Bolton, TR. 121:9-11.
[112] Id. at 121:13-16.
[113] Id. at 121:2-8 (emphasis added).
[114] Docket UE-940932, Policy Statement, Guiding Principles for Regulation in an Evolving Electricity Industry at 2.

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63 This recently reaffirmed policy, encouraging flexible alternatives to foster effectual competitiveness (i.e., reducing exposure), perfectly complements the position of Staff, who provided testimony "… to illustrate the fact that there are options open to the Company under … their existing tariff and under the existing laws. And that was to primarily address the Company's contention that they had no ways to be able to compete."[115/] Specifically, when challenged by the Company to consider the prospect of "a large industrial customer" permanently disconnecting to take service under Columbia REA, Mr. Panco presented two express options that Pacific Power could explore to prevent losing such a customer (or the incurrence of any potential stranded costs): "I would point out that, along with the banded rates, special contracts are another option that's open to the Company to pursue."[116/]

64 Nonetheless, Pacific Power responds to calls for competitive flexibility, pursuant to Commission policy, with a marked intransigence. First, the Company dismisses, completely out of hand, any prospect of a banded rate option.[117/] Such obstinacy cannot be rationally squared with the Company's own "frank" testimony, however, that "the purpose of revising our net removal tariff, is to respond to the presence of competition,"[118/] since "banded rates *allow public service corporations to compete* against unregulated entities."[119/]

65 Indeed, no other construction than to ascribe the opportunity for competitiveness via banded rates is reasonable, given that the Commission itself

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[115/] Panco, TR. 374:8-13.
[116/] Id. at 375:20-376:1.
[117/] See, e.g., Dalley, RBD-5Tr at 14:28 ("Banded rates are not an appropriate solution …."); id. at 15:5-6 ("While I appreciate Staff's creative, outside-the-box attempt to help the Company, banded rates would only exacerbate cost shifting").
[118/] Bolton, TR. 121:9-11.
[119/] Panco, Exh. DJP-1Tr at 25:8-9 (emphasis added).

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"established the requirements for a banded rate filing" through the adoption of WAC § 480-80-112(2), which explicitly states: "… electric companies may file banded rate tariffs for any nonresidential … electric service that is subject to effective competition from energy suppliers not regulated by the commission."[120/] In other words, brusquely dismissing the banded rate option under current circumstances, as the Company does, renders the Commission's rule nonsensical (and, thereby, the thinking of the Commission), since the rule would serve no actual purpose. Worse, Pacific Power would effectively attribute the same nonsensical approach to the Washington Legislature, which enacted statute to allow the WUTC to establish banded rate tariff regulation, and specifically to deal with the very form of unregulated competition that the Company complains of in this docket.[121/]

66 Second, the record shows little indication that Pacific Power would consider the additional option of a special contract to address effective competition, or to retain customers. In response to Staff's suggestion, counsel for Pacific Power asked the following question of Mr. Panco, which seems to implicitly reason that the absence of any existing special contracts would militate against a good faith exploration of that option: "But there are no special contracts in place at this point, *are there*?"—to which Mr. Panco responded, "[n]ot that I'm aware of."[122/]

[120/] Id. at 25:5-8 (quoting WAC § 480-80-112(2)).

[121/] See RCW § 80.28.075 ("… the commission may approve a tariff that includes banded rates for any nonresidential natural gas or electric service that is subject to effective competition from energy suppliers not regulated by the utilities and transportation commission").

[122/] Panco, TR. 376:2-4 (emphasis added).

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c. Pacific Power Is Improperly Targeting a Single Form of Alleged Cost Shifting, Focusing only on Columbia REA

67 As Mr. Mullins points out, the Company does not propose stranded cost recovery under several analogous circumstances where load is lost on the Washington system.[123/] The Company's singular focus upon load lost to Columbia REA is, therefore, essentially a form of improper competitive targeting—i.e., as "… discriminatory to single out loads lost to departing customers for stranded cost recovery, when there are many other instances when lost loads are not subject to such a charge."[124/] Put another way, "… the Company's proposal has less to do with economic principles surrounding stranded costs, and more to do with penalizing certain customer behavior."[125/] Once more, Boise urges the Commission not to penalize customers to address what is ultimately a competitive battle between utilities.

d. Customers with Existing Service Contracts Had No Reasonable Expectation of Stranded Cost Recovery

68 Even assuming a stranded cost fee were to be established in certain circumstances, customers with existing service contracts should be exempted from such a charge under a grandfathering provision. Pacific Power has disclosed that 629 customers presently have active service contracts with the Company, including 12 contracts associated with Schedule 48T.[126/] These contracts do not, however, "possess any language that would explicitly allow the Company to collect a stranded cost fee if the customer load were to depart from the Company's system, for whatever reason."[127/] Accordingly, suddenly implementing a prospective Stranded Cost Recovery Fee would

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123/ Mullins, Exh. BGM-1T at 32:19-33:1.
124/ Id. at 33:2-4.
125/ Id. at 33:4-6.
126/ Pacific Power Response to Bench Request No. 2.
127/ Mullins, Exh. BGM-1T at 34:4-6.

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violate the reasonable expectations of all such customers who agreed to an existing service contract.

69 The Commission's role, to ensure that contract terms between utilities and customers are honored, was articulated in the recent PSE/Microsoft case:

> The Commission could not enforce a contract if the Commission could not require one or both parties to take the actions necessary to comply with their agreement. The Commission's governing statutes recognize this reality and extend the Commission's personal jurisdiction to entities that are not independently and directly regulated as public service companies.[128]

With such personal jurisdiction over individual customers also comes responsibility—namely, that contracts are interpreted and enforced fairly, according to their terms, without inserting terms at the sole request of a utility.[129] Thus, should a stranded cost fee be established in any form, a grandfathering exemption, applicable to all customers governed under existing service contracts omitting stranded cost recovery exposure terms, would be a faithful exercise of the Commission's duty toward these customers.

B. Pacific Power Has Not Carried Its Burden of Proof to Revise the Net Removal Tariff in other Aspects

70 In addition to the novel imposition of a Stranded Cost Recovery Fee, the Company is effectively attempting to reverse the outcome of the Walla Walla case.[130] Principally, the proposed tariff revisions in this proceeding, if adopted, would:

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[128] Docket UE-161123, Order 06 at ¶ 67.

[129] Cf. McCormick v. Dunn & Black, 140 Wn. App. 873, 891–92 (2007) ("Courts may not interfere with the freedom of contract or substitute their judgment for that of the parties to rewrite the contract or interfere with the internal affairs of corporate management") (citing Clements v. Olsen, 46 Wash.2d 445, 448 (1955).

[130] See, e.g., Dalley, RBD-1Tr at 6:9-19 (alleging the "revision of the Company's tariffs governing the terms of permanent disconnection" is necessitated by the Commission "applying Pacific Power's current tariff as written" in the Walla Walla case); id. at 10:2-4 (claiming "the facts and circumstances" of Docket UE-143932 "clearly illuminated the need to revise the tariffs"); Mullins, BGM-1T at 6:18-19 & n.15 (referring to the Walla Walla case: "The Company requests to relitigate many of the same issues in this proceeding").

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1) materially increase future removal cost collections, by granting the Company plenary authority to remove and charge for facilities removal in all circumstances, whenever a customer seeks permanent disconnection; and 2) grossly inflate facilities valuation by replacing Net Book Value ("NBV") with Fair Market Value ("FMV"). Neither of these modifications has been justified, however, especially when considered in the context of Net Removal Tariff precedent.

1. The Company Has Not Justified a Grant of Plenary Authority for Facilities Removal

71 Perhaps *the* critical issue in the Walla Walla case concerned the Company's interpretation of the following text from Rule 6 of its Net Removal Tariff—which has existed in its essential form since the tariff was originally adopted,[131/] and which was deemed sufficiently central and important as to merit block quotation in the Commission's final order:

> When Customer requests Permanent Disconnection of Company's facilities, Customer shall pay to Company the actual cost for removal less salvage of *only those facilities that need to be removed for safety or operational reasons*, and only if those facilities were necessary to provide service to Customer.[132/]

The Commission also observed that Pacific Power, "in practice, now interprets Rule 6 to authorize the Company to require the removal of *all facilities, without exception*."[133/] The Commission determined that "[t]he tariff language is unambiguous,"[134/] however,

131/ Compare WUTC v. PacifiCorp, Docket UE-001734, Eighth Suppl. Order at ¶ 95 and App. A (Nov. 27, 2002), with Pacific Power Tariff WN-U75, Rule 6.I.1 (omitting only the word "distribution" from the original rule provision).

132/ Docket UE-143932, Order 05 at ¶ 4 (emphasis by Commission).

133/ Id. at ¶ 5 (emphasis added).

134/ Id. at ¶ 4.

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and affirmed the finding of the initial order in the case, stating that "Rule 6 is not reasonably susceptible to Pacific Power's interpretation."[135]

72 As a result, the Commission appropriately denied the Company's attempt to seize plenary authority to remove, and charge for the removal of, "all facilities, without exception"—which would have made the limitation on charging, concerning "only those facilities that need to be removed for safety or operational reasons," an absolute nullity. The Commission explained:

> with respect to facilities that do not 'need to be removed for safety or operational reasons,' the departing customer is *not required to pay any costs for removal*. In such circumstances, the Company can simply transfer ownership of, and liability for, such facilities to the departing customer or, perhaps, to another utility.[136]

73 All this context from the Walla Walla case is important, because the final order contains a clear demonstration that the Commission did not choose to maintain the explicit charging limitations within the Net Removal Tariff, for facilities removals, in a light-handed or irresponsible manner. Rather, the Walla Walla case was a fully litigated proceeding with a lengthy evidentiary record, whose "facts and circumstances" Pacific Power has confirmed to be "relevant to the current proceeding,"[137] with such relevance thereby including the discussion and findings in both the initial and a final order.

74 To this end, the Commission affirmed: "Pacific Power is required to analyze the facts specific to individual circumstances to determine whether it is necessary to remove specific facilities for safety or operational reasons."[138] The Company's specific arguments—"that leaving empty conduits and vaults in place" would pose a

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[135] Id. at ¶ 5 (quoting Docket UE-143932, Order 03 at ¶ 16 (Jan. 15, 2016)).
[136] Id. at ¶ 4 (emphasis added).
[137] Mullins, Exh. BGM-3 at 7 (the Company's Response to Boise DR 0016(a)).
[138] Docket UE-143932, Order 05 at ¶ 6.

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safety risk, violate the National Electric Safety Code, and "[c]reate duplicate facilities that are part of CREA's larger pattern of co-locating facilities"—were all rejected, based on "well-reasoned discussions of the evidence presented by Pacific Power that fails to establish *any* of these assertions."[139]

75 In sum, the Commission upheld the long-standing constraints on Pacific Power's ability to charge for facilities removal in the Walla Walla case, based on a thorough consideration of evidence equally "relevant" to this proceeding, and expressly rejecting the Company's plenary authority argument—i.e., that "*any* permanent disconnection has safety or operational concerns that would necessitate removal of facilities."[140] Likewise, in this proceeding, the Company does not allege a single instance of current redundant service or redundant facilities that conceivably *could* implicate safety or operational concerns now, nor any more than two such incidents over nearly twenty years of competitive interaction with Columbia REA.[141]

76 Notwithstanding, the Company's proposed revisions to the Net Removal Tariff would allow the Company unbridled power to remove facilities and then charge for removal, at will. That is, a "departing customer may elect to purchase" facilities at FMV, or be left with the only remaining and unenviable "option" of paying "the actual cost of removing facilities used to provide service to that customer,"[142] which effectively translates to all facilities, regardless of need or rationale. More specifically, under the revised Net Removal Tariff proposal, "Facilities subject to Permanent Disconnection and

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[139] Id. at ¶ 6 (emphasis added).
[140] Id. at ¶ 5 (quoting Docket UE-143932, Dalley, TR. 34:22-35:3) (emphasis added).
[141] See, e.g., Mullins, BGM-3 at 22 (the Company's Response to Boise DR 63(a)); Bolton, TR. 132:15-133:9.
[142] Dalley, Exh. RBD-1Tr at 10:8-11:1.

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Removal"—and, hence, eventual customer charges, at "actual cost"—would include *any* "Facilities in place to serve the Customer."[143/]

77 The Company concedes that the "term 'safety or operational reasons,'" and the limitation to removal and charging for "only" those reasons, would no longer be included in the tariff.[144/] Thus, any departing customer not willing to pay inflated FMV costs for a facilities sale (as discussed below) would now be subject to removal costs that have *never* been chargeable under the Net Removal Tariff—i.e., costs for the removal of facilities that do not actually need to be removed for any safety or operational reason. This outcome would grant Pacific Power plenary charging authority in circumstances applicable to "any permanent disconnection," which is *precisely* the outcome the Commission rejected in the Walla Walla case.

78 The Company's approach of effectively reversing the Walla Walla decision on this point, and the original terms of the Net Removal Tariff, merit heightened scrutiny. On three separate occasions, Pacific Power has confirmed its erroneous omission of the critically limiting term "only" in the Company's alleged quotations of the existing Rule 6—including the direct testimony of witness R. Bryce Dalley, in this proceeding.[145/] According to Pacific Power, all such erroneous omissions were "entirely inadvertent," and simply attributable to a lack of editorial acumen when "cutting and pasting."[146/]

79 This explanation strains credulity, however, given that Pacific Power once more filed a revised version of Mr. Dalley's direct testimony on June 9, 2017, again

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143/ Meredith, Exh. RMM-3r at 2.
144/ Dalley, Exh. RBD-33X at 7 (the Company's Response to Boise DR 0015).
145/ Id.
146/ Id.

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omitting the critically limiting term "only," to once again misrepresent existing Rule 6—despite having just acknowledged several prior, erroneous omissions. The continued omission in recently revised testimony is particularly relevant, because the absence of this single word "only" would give Rule 6 the appearance of being far less proscriptive on the Company's permanent disconnection charging authority, thereby casting Pacific Power's present revision proposals in a falsely genteel light by comparison; i.e., according to the Company, existing "Rule 6 provides: 'When Customer requests Permanent Disconnection of Company's facilities, Customer shall pay to Company the actual cost for removal less salvage of those facilities that need to be removed for safety or operational reasons ….'"[147] A rule providing that a customer will pay removal charges in certain circumstances, but not "only" in those circumstances, would obviously allow the Company incomparably more discretion.

80 Tellingly, the Company's current interpretation of existing Rule 6, even after the Commission found that "Rule 6 is not reasonably susceptible to Pacific Power's interpretation," is consistent with the mischaracterized version of Rule 6 that continues to be promulgated through the Company's unrelenting pattern of erroneous and "entirely inadvertent" omissions. Specifically, Pacific Power alleges that "the absence of 'only' does *not* impact how the rule was previously applied."[148] Such revisionist history, however, as to how the Company previously applied its Net Removal Tariff, is impossible to square with the Commission's own finding that "Pacific Power thus, in practice, now interprets Rule 6 to authorize the Company to require the removal of all

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[147] See Dalley, Exh. RBD-1Tr at 9:1-4.
[148] Dalley, Exh. RBD-33X at 7 (the Company's Response to Boise DR 0015) (emphasis added).

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facilities, without exception …."[149] Put differently, the Company's prior failure to recognize the "only" limitation in its application of purported removal and charging authority was the very reason the Walla Walla case was filed and then litigated to the very end, culminating in a Commission order that Pacific Power was to allow permanent disconnection "without requiring Walla Walla Country Club to pay the costs to remove the empty vaults and conduit."[150]

81 At best, the Company's continued practice of "entirely inadvertent" omissions of a crucial element to the Net Removal Tariff is indicative of a sloppy, cavalier approach to the Company's own evidentiary case, which Boise has now referenced on multiple occasions. Conversely, if such arguably credulous generosity is not extended to the Company's explanation, then a certain hubris, sufficient to embolden the Company to play games with governing tariffs, is all that remains—which certainly should justify a flat rejection of Pacific Power's proposal.

2. Use of FMV Would Impermissibly Inflate Disconnection Costs

82 The Walla Walla case is also highly instructive, if not plainly dispositive, on the merits of Pacific Power's proposal to force departing customers to pay FMV for any facilities sales. After recognizing the Company's existing ability (i.e., without necessitating any Net Removal Tariff revisions) to "transfer ownership of, and liability for, facilities to the departing customer," the Commission affirmed that, "… under general principles governing asset transfers by utilities such as Pacific Power …. If the

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[149] Docket UE-143932, Order 05 at ¶ 5 (quoting Docket UE-143932, Dalley, TR. 34:22-35:3) (emphasis added).
[150] Id. at ¶¶ 10-11.

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facilities are not fully depreciated, the Company *may* be entitled to recover their net book value (i.e., original cost less depreciation)."[151]

83 Notably, the Company's entitlement to NBV recovery, in the context of a facilities transfer to a departing customer, was a ceiling or best-case scenario for Pacific Power—that is, the Company "may" be entitled to NBV, assuming original costs were not already fully depreciated. This is perfectly logical, because full depreciation would indicate that Pacific Power (and, by extension, all remaining customers) had already been fully compensated for original facilities costs. Indeed, the Company has agreed that, when "facilities have nominal or no NBV after having been in place for a significant amount of time … *customers have been properly compensated* for facilities payment through rates."[152]

84 Thus, any attempt to seek more than NBV for facilities transfers to departing customers would amount to improper compensation, by definition, in so much that such valuation would exceed what is required for remaining customers to be "properly compensated." Yet, such improper compensation is exactly what the Company requests through the "option" of FMV facilities sales, in lieu of removal.[153] To demonstrate this point, the Company has confirmed that valuation at FMV for the underground conduit and vaults at issue in the Walla Walla case would have exceeded valuation at NBV, as provided in the existing Net Removal Tariff, by an order of magnitude verging on the astronomical.

151/ Id. at ¶ 4 & n.2 (emphasis added).

152/ Dalley, Exh. RBD-33X at 15-16 (the Company's Response to Boise DR 0024(d)) (emphasis added).

153/ Meredith, Exh. RMM-3r at 6.

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85 For instance, Pacific Power proffered an FMV assessment of underground conduit and vaults in Docket UE-143932 that was *1,130% higher* than the Company's prior offer to sell the very same facilities to a departing customer.[154/] At least two factors should be borne in mind here, when considering this stunning FMV figure. First, the relevance of the "facts and circumstances" in the Walla Walla case have been repeatedly confirmed by the Company,[155/] including the explicit illustration of "underground conduit and vaults" as the type of facilities that would be subject to valuation using FMV under the revised Net Removal Tariff.[156/]

86 Second, Pacific Power could not attempt to reasonably claim now that its previous offer to sell facilities to a departing customer, at a cost 1,130% less than the Company's FMV estimation, would not have "properly compensated" all remaining customers. To argue in this fashion would concede that the Company followed prior practices that utterly failed to properly compensate customers for transferred facilities upon permanent disconnection, and at an obscene margin (e.g., by at least 1,130%). Worse, the Company's acknowledged practice of simply abandoning facilities, on as many as 21 occasions during prior permanent disconnections,[157/] would implicate even lesser "proper compensation" for remaining customers, since no sale would have been consummated at all.

87 Of course, the foundational principles governing asset transfers, as articulated by the Commission in Docket UE-143932, would obviate the specter of any false conundrums raised by the Company having abandoned or transferred facilities at

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154/ Dalley, Exh. RBD-33X at 10 (the Company's Response to Boise DR 0018(b)).

155/ See, e.g., Mullins, Exh. BGM-3 at 7 (the Company's Response to Boise DR 0016(a)); Dalley, Exh. RBD-1Tr at 6:17-19, 10:2-4.

156/ Dalley, Exh. RBD-1Tr at 10:22-11:1.

157/ Docket UE-143932, Order 05 at ¶ 5.

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less than FMV in the past. In other words, if the Company is only entitled to NBV for facilities transfer upon permanent disconnection, and only then when original costs have not been fully depreciated, then grossly inflated valuation at FMV is never necessary to "properly compensate remaining" customers. Instead, the Company's FMV proposal is revealed for what it truly is—a naked, improper, and anti-competitive measure against Columbia REA, to be levied at the full expense of Pacific Power's own departing customers.

C. The Commission Fulfills Legal and Policy Duties by Rejecting Proposed Revisions to the Net Removal Tariff

1. The Company Does Not Present an Articulable or Useful Conception of the "Regulatory Compact"

88 Throughout this proceeding, Pacific Power has alleged that the "regulatory compact" both enables and compels the adoption of revised Net Removal Tariff proposals. For instance, Mr. Dalley opened this proceeding by declaring that "[t]he absence of a service area agreement with Columbia REA stands in stark contrast to the 'regulatory compact' …. This unique situation *mandates* adoption of a revised tariff governing the terms of permanent disconnection …."[158/] Likewise, at hearing, Mr. Bolton affirmed that, in his view, the "regulatory compact" should "operate to create a practical exclusive service territory for Pacific Power in Washington."[159/]

89 Boise adamantly contests the Company's conception of the "regulatory compact," and what amounts to a cloying attempt to suborn the Commission into violation of proper authority, based on a mischaracterization of both the letter and spirit of Chairman Danner's Separate Statement in the Walla Walla final order. The

158/ Dalley, Exh. RBD-1Tr at 3:10-21 (emphasis added).
159/ Bolton, TR. 135:10-14.

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Company's revised Net Removal Tariff would, for all intents and purposes, create a de facto or "practical exclusive service territory," just as Pacific Power desires. That is, the combination of a massive Stranded Cost Recovery Fee obligation—along with the "choice" of paying actual removal costs in all circumstances, for all service facilities, or farcically inflated FMV transfer valuations—should be enough to effectively hem virtually all existing Pacific Power customers into forced Company service.

90 Thus, the question of whether the "regulatory compact" truly "mandates" adoption of the revised Net Removal Tariff is vital to this proceeding, and worthy of careful consideration by this Commission. According to Pacific Power, the regulatory compact actually "governs" these proceedings, as an apparent fount or well-spring from which all positive law descends: "… the regulatory compact is a fundamental construct that governs traditional electric utility service."[160/] Indeed, the regulatory compact is "a living policy" says Mr. Bolton, "enshrined in concepts of Washington statute," and a principle that "informs all of those statutes, rules and orders" (i.e., "those" tangible iterations of comprehensible positive law one might normally expect to govern utility regulation).[161/] Yet, the regulatory compact itself is not apparently reducible to common articulation in the Company's view, as Mr. Bolton explains: "I don't think you can just pull open a page and read the regulatory compact, you know, in bright lights in Washington statute, but there are portions of Washington statute that do support the underpinnings of the regulatory compact, *just to be clear*."[162/]

91 To be even more clear, the Company's entire conception of a regulatory compact—as a living, unidentifiable, yet underpinning policy enshrined in the very fabric

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[160/] Id. at 113:18-20.
[161/] Id. at 113:1-5, 115:14-15; accord id. at 146:9-12.
[162/] Id. at 146:16-21 (emphasis added).

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of Washington statute—reads like a mystery religion, in which Pacific Power, and Mr. Bolton in particular, serve as self-appointed oracles to the unenlightened. Needless to say, an alleged policy lurking in some amorphous form, irreducible to the "bright lights" of presumably banal statutory articulation, would be a poor basis on which to adopt the major tariff revisions that Pacific Power has proposed.

92 In fact, the Commission expressly distinguished between legal and philosophical paradigms in the PSE/Microsoft case, differentiating between a legal tension that "establishes an ambiguity," and a philosophical tension that "violates the principle of non-contradiction, which can be reduced to the simple proposition that a thing cannot both be and not be."[163/] To this rubric, at least a third category could be added that is distinct from both those identified by the Commission, but inherently incompatible with either—i.e., the mystical paradigm raised by Pacific Power, in its regulatory compact presentation.[164/]

93 Yet, the incompatibility of Mr. Bolton's conception of the regulatory compact, when juxtaposed with governing Washington statute, was manifest at hearing. Mr. Bolton affirmed that "the regulatory compact was enshrined in Washington statute,"[165/] yet simultaneously acknowledged that the Company does "not have a

163/ Docket UE-161123, Order 06 at ¶ 74 (citing Paula Gottlieb, "Aristotle on Non-contradiction," The Stanford Encyclopedia of Philosophy (Edward n. Zalta ed., Summer 2015).

164/ For example, the "mystery of concurrence," which simultaneously holds that complete human freewill coexists with absolute divine sovereign direction over human actions, is utterly incompatible with the philosophical principle of non-contradiction, which the Commission presented as complementary to a legal paradigm. See Kenneth Keathley, A Theology for the Church 721-22 & n.98 (Daniel J. Akin ed., 2007) (following an "affirmation of the truthfulness of the divinely revealed mystery of concurrence …. The concurrence position does not attempt to find a compromise between divine sovereignty and human responsibility; rather it claims none is possible").

165/ Bolton, TR. 146:9-12.

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statutory right" to an exclusive service territory in Washington.[166] When considered in the context of Mr. Bolton's testimony, however, that the "regulatory compact" should nevertheless "operate to create a practical exclusive service territory for Pacific Power in Washington,"[167] the Company's overall position contains an unmistakable "tension," to use the Commission's phrasing, via either a legal or philosophical lens.[168]

94 In other words, there is either infinite ambiguity or a violation of the principle of non-contradiction in Pacific Power's claim that: a) Washington statute does *not* grant an exclusive service territory right; but b) the regulatory compact, enshrined in that self-same statutory construct, positively "mandates" or should "operate" to "practically" create an exclusive service territory. When directly asked to account for such apparent contradiction, and specifically whether Washington statute and the Company's "notion of the regulatory compact starkly contrast with one another," Mr. Bolton responded in a fashion consistent with a proponent of an irreconcilable (and inarticulable), mystical paradigm: "I'm not sure I can answer yes or no to that."[169]

2. Pacific Power Misappropriates Chairman Danner's Statements in the Walla Walla Case

95 The Company cites so fulsomely to Chairman Danner's Separate Statement in the Walla Walla case, however, that an impression is seemingly conveyed that the Chairman has rendered a thinly veiled imprimatur for Pacific Power to create a practical exclusive service territory through wholesale Net Removal Tariff revisions, all under the auspices of the regulatory compact. For instance, among eight distinct

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166/ Id. at 134:13-16.
167/ Id. at 135:10-14.
168/ Docket UE-161123, Order 06 at ¶ 74 (citing Paula Gottlieb, "Aristotle on Non-contradiction," The Stanford Encyclopedia of Philosophy (Edward n. Zalta ed., Summer 2015).
169/ Bolton, TR. 148:3-6.

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references to Chairman Danner in the Company's filed testimony,[170] six of these relate directly to the Chairman's discussion of a regulatory compact.[171] Notwithstanding, Boise does not understand the Chairman to have intended to grant Pacific Power a coded "license" to create a practical exclusive service territory via Net Removal Tariff revisions; indeed, once Chairman Danner's Separate Statement is considered in its full context, the Company's presentation of the regulatory compact takes on the appearance of a mawkish mischaracterization.

96 To begin, the Chairman expressly stated his support for the final order in the Walla Walla case "as a correct reading of Pacific Power's obligations under the applicable tariff."[172] In so doing, the Chairman necessarily affirmed the legal propriety of long-standing Net Removal Tariff restrictions on facility removal charges, as well as the "general principles governing asset transfers"—i.e., that in selling facilities to a departing customer, the Company "may be entitled to recover their net book value."[173] Moreover, there is no rational reason to believe the Chairman's Separate Statement provides a lodestone for fundamental Net Removal Tariff revisions in this proceeding, since the Chairman supported the legal findings in the Walla Walla case on the very "facts and circumstances" that Pacific Power affirms to be relevant now.[174]

97 As to the Chairman's references to the "regulatory compact" in the Separate Statement, Boise understands all such discussion to be encapsulated within Staff's characterization, as articulated in this proceeding: "The regulatory compact is only

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[170] Id. at 135:15-19.

[171] See Dalley, RBD-1Tr at 3:10-16 & n.1, 6:16-7:2 & n.4; Dalley, RBD-5Tr at 12:6-7 & n.12, 13:8-9. The two exceptions were associated with the Chairman's charge that Columbia REA may "cherry-pick" customers. Dalley, RBD-1Tr at 7:3-8 & n.5.

[172] Docket UE-143932, Order 05, Separate Statement of Chairman Danner at ¶ 1.

[173] Docket UE-143932, Order 05 at ¶ 4 & n.2 (emphasis added).

[174] Mullins, Exh. BGM-3 at 7 (the Company's Response to Boise DR 0016(a)).

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a metaphor …."[175/] Consistent with Staff's view that the regulatory compact does not have "legal effect in Washington,"[176/] the Chairman properly phrased his own conception in metaphorical terms, e.g., that utility regulation "is largely based upon the *notion* of a 'regulatory compact.'"[177/] Plainly, this view sharply contrasts with Pacific Power's conception of a regulatory compact that actually "governs" with legal effect, and "informs all … statutes, rules and orders," as if in a preeminent relationship to positive law.

98 In fact, to construe the Chairman as holding anything but a metaphorical understanding of the regulatory compact would be incompatible with explicit quotations contained within the Separate Statement. The Chairman adds emphasis to a textbook description of the "regulatory compact," as providing a monopoly to a utility within "*its defined service territory*."[178/] This emphasis indicates a telling recognition of how the traditional notion of a regulatory compact does not neatly comport with existing Washington law—which is then confirmed once the Chairman notes "the lack of legally established service territories in Washington,"[179/] and later concludes: "Ultimately, as noted in the Final Order, the establishment of legally-defined service territories *is not a matter for the Commission*, but for the Washington Legislature."[180/]

99 There is nothing to suggest, therefore, within the holistic context of the Separate Statement, that the Chairman was secretly greenlighting a Company attempt to subvert Washington law by the "practical" establishment of legally-defined service

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175/ Panco, Exh. DJP-1Tr at 5:15.
176/ Id. at 5:14-15.
177/ Docket UE-143932, Order 05, Separate Statement of Chairman Danner at ¶ 2 (emphasis added).
178/ Id. (quoting Lesser and Giacchino, Fundamentals of Energy Regulation 43 (2007)) (emphasis added by Chairman Danner).
179/ Id. at ¶ 5.
180/ Id. at ¶ 6.

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territories. Unquestionably, the Chairman expressed a certain personal frustration, apparent in the threefold-reference to "cherry-pick," "cherry-picked," and "cherry-picks," in regard to alleged Columbia REA activities.[181/] But, the Chairman closed the Separate Statement by appropriately presenting his personal concerns, not as an attempt to justify ultra vires, activist WUTC measures, but as a measured plea within the permitted legal framework of this state: "I hope the Legislature will give this issue further consideration in the future …."[182/]

100 The full and fair presentation of the Chairman's views are nowhere apparent in the Company's selective quotations from the Separate Statement. At hearing, however, Mr. Bolton acknowledged that the Chairman had expressed his hope that "the *legislature* would give [these] issues further consideration."[183/] Likewise, Mr. Bolton conceded that the Chairman had also stated that "[t]he establishment of legally defined service territories is not a matter for the Commission but for the Washington [L]egislature."[184/] In this light, Pacific Power's attempt to parlay the Chairman's discussion of the "regulatory compact" into an authoritative mandate, superseding even the powers of statute, is a gross mischaracterization of the Separate Statement, at best—and certainly an insufficient basis on which to justify adoption of the revised Net Removal Tariff proposed.

III. CONCLUSION

101 Based upon the evidence on record in this proceeding, and given the reasons stated in this brief along with those contained in testimony and supporting

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181/ Id. at ¶¶ 4, 5, 7.
182/ Id. at ¶ 7.
183/ Bolton, TR. 136:5-9 (emphasis added).
184/ Id. at 136:16-22 ("Sounds familiar, yes").

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exhibits, Boise respectfully requests that the Commission reject all of the Company's proposed revisions to the Net Removal Tariff.

Dated in Portland, Oregon, this 28th day of July, 2017.

Respectfully submitted,

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