

**BEFORE THE**  
**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND	)	DOCKET NO. UE-130043
TRANSPORTATION COMMISSION,	)	
	)	
Complainant,	)	RESPONSE OF COLUMBIA RURAL
	)	ELECTRIC ASSOCIATION IN
v.	)	OPPOSITION TO PACIFICORP'S
	)	MOTION TO WITHDRAW TARIFF
PACIFICORP d/b/a/ PACIFIC POWER &	)	FILING
LIGHT COMPANY,	)	
	)	
Respondent.	)	

---

**I. INTRODUCTION**

*1* Pursuant to the Washington Utilities and Transportation Commission's ("WUTC" or the "Commission") notice, Columbia Rural Electric Association ("Columbia REA") submits this response in opposition to PacifiCorp's (or the "Company") Motion to Withdraw Tariff Filing ("Motion"). PacifiCorp seeks not only to withdraw its proposed revisions to Schedule 300 and Rule 6, but also to inappropriately terminate any further litigation in this docket related to Schedule 300 and Rule 6. Moreover, PacifiCorp is improperly attempting to use its Motion as a means to essentially dismiss Columbia REA from actively participating in these proceedings. Columbia REA does not oppose PacifiCorp changing its position in rebuttal testimony to abandon its proposals to change Schedule 300 and Rule 6; however, Columbia REA respectfully requests that the Commission deny PacifiCorp's Motion, in so far as the Company seeks to do anything other than simply withdraw its own proposed revisions.

## II. RESPONSE IN OPPOSITION

### A. Columbia REA Has Provided Testimony In Accordance with the Commission's Order

2           The Administrative Law Judge (“ALJ”) granted Columbia REA’s petition to intervene “for the limited purpose of addressing the issues raised by [PacifiCorp’s] filing relative to Schedule 300, and related changes to Rule 6.”<sup>1/</sup> That is, Columbia REA has been authorized to address issues relating to the net removal tariff, which is what PacifiCorp proposed to change in this docket through revisions to Schedule 300 and Rule 6. The ALJ granted the intervention based on “a strong interest in seeing that the record is fully developed relative to changes PacifiCorp proposes.” Specifically, the WUTC held that Columbia REA’s “participation, limited to this issue”—i.e., changes to the net removal tariff—“may result in a record that more fully informs the Commission on this matter than would be the case without CREA’s participation.” Accordingly, Columbia REA’s participation under these terms would be in the public interest.<sup>2/</sup>

3           Through testimony filed on June 21, 2013, and pursuant to the ALJ’s direction, Columbia REA has furthered the public interest by providing the WUTC with fuller information and recommendations on net removal tariff issues. Columbia REA’s testimony addresses issues raised by PacifiCorp’s proposed changes to the net removal tariff, including: 1) changes that would better protect customers who are considering removal from PacifiCorp electric service; 2) modifications providing certainty as to how the Company applies its disconnection practices, such as when facilities will remain on-site; 3) reasonable costs associated with the net removal

---

<sup>1/</sup> Order 03 at ¶6.

<sup>2/</sup> Id.

tariff; 4) qualified third-party removal options; 5) proper accounting of salvage values; 6) the propriety of PacifiCorp recovering its stranded costs or depreciation; 7) issues associated with removal estimates, such as time periods, detailed accounting, and the authority to charge for estimates; 8) full, final cost accounting; and 9) the authority for the Company to implement new charges without Commission approval.<sup>3/</sup>

4           The testimony provided by Columbia REA addresses issues raised by PacifiCorp’s initial filing. For instance, the Company filed testimony whose express purpose was to propose changes to the net removal tariff charges, so that “[b]y aligning the charges with current actual costs, the costs would be paid by the cost-causer, rather than by the Company’s other customers,” and such that its proposed changes were said to be “more equitable to the Company, requesting customer, and all other Company customers.”<sup>4/</sup> PacifiCorp even raised such broad issues as to how use and removal options should be determined—in the context of proposed charges, the Company testified: “If the facilities will no longer be used by the Company at the site, the Company will remove the facilities at the customer’s expense in accordance with Rule 6.I.”<sup>5/</sup> Columbia REA responded to this testimony by, for example, providing specific evidence where removal and abandonment charges are arbitrary.<sup>6/</sup>

5           PacifiCorp argues that “the Commission limited the scope of Columbia REA’s intervention in this proceeding to responding to PacifiCorp’s proposed changes,” concluding that it is not “appropriate for the additional issues raised by Columbia REA to continue to be

---

<sup>3/</sup> Exhibit No. \_\_ (PLT-1T) at 2-4 (Response Testimony of Paul Les Teel, David Reller and Scott Peters on behalf of the Columbia REA) (June 21, 2013).

<sup>4/</sup> Exhibit No. \_\_ (BAC-1T) at 1-2 (Direct Testimony of Barbara A. Coughlin) (January 11, 2013).

<sup>5/</sup> Id. at 4.

<sup>6/</sup> Exhibit No. \_\_ (PLT-1T) at 20-22.

considered in this case.”<sup>7/</sup> Intervention was granted to develop a full record, which goes beyond the specific changes to Schedule 300 and Rule 6 raised in PacifiCorp’s testimony. The issue is not simply a “yea or nay” resolution of PacifiCorp’s revisions, but a full and complete resolution of the issues broadly related to the net removal tariff.

6 In sum, the Company did not merely raise pro forma or housekeeping matters in its filing, but proposed substantive changes to the net removal tariff accompanied by testimony presenting fundamental cost-causation and fairness issues. Columbia REA’s responsive testimony addresses these issues, thereby adding to the record and informing the Commission on these cost-causation and fairness issues.

**B. The Motion Stands on an Uncertain Procedural Foundation**

7 As a legal basis for the Motion, PacifiCorp notes that, on its face, WAC § 480-07-380(3) “does not appear to apply to a motion to withdraw a tariff filing.”<sup>8/</sup> To that end, the Company expressly relies upon WAC § 480-07-380(3), but only to the extent it applies.<sup>9/</sup> Otherwise, the Motion is based on the general motions rule, WAC § 480-07-375. In sum, the Company never definitively provides the grounds upon which the Motion should be considered, thereby prejudicing the Commission and responsive parties who must discern the governing standards. Notwithstanding, sufficient authority exists to demonstrate that the Motion should not be granted, at least not beyond the withdrawal of the Company’s own proposals.

8 PacifiCorp fails to cite, and Columbia REA is unaware of, any precedent allowing the Commission to suspend a general rate case and its accompanying tariffs, and thereby

---

<sup>7/</sup> Motion at ¶ 3 (emphasis added).  
<sup>8/</sup> Id. at n.1.  
<sup>9/</sup> Id.

withdraw one of the tariffs over the objection of another party. The Commission has suspended PacifiCorp's tariffs and rules, and PacifiCorp cannot now selectively withdraw one of its suspended tariffs or rules. PacifiCorp elected to file a new rate case with its accompanying tariffs and rules, placing the reasonableness of its net removal tariff at issue in this proceeding. The Company cannot escape review merely because it does not want to respond to the issues raised by Columbia REA.

### **1. The Rule Governing Motions to Withdraw Does Not Apply**

9 As PacifiCorp acknowledges, the Commission's rule on motions to withdraw is inapplicable on its face. This is because the rule refers only to the withdrawal of a party from a proceeding, and not the dismissal PacifiCorp is actually seeking: "A party may withdraw from a proceeding only upon permission granted by the commission . . . ." <sup>10/</sup> Likewise, the WUTC "will grant a party's motion to withdraw from a proceeding when the party's withdrawal is in the public interest." <sup>11/</sup> Thus, a straightforward reading of this rule renders it inapplicable to the Motion.

10 Even if the Commission were to apply the rationale behind WAC § 480-07-380(3) to the Motion, it would still be inappropriate for the Commission to adopt the requests and rationale of the Motion. The Company asserts that granting the Motion would mean "there is no basis for Columbia REA's continuing, active participation in this case." <sup>12/</sup> As withdrawal from a proceeding is only appropriate when "in the public interest," PacifiCorp is effectively arguing that, were the Motion to be granted, Columbia REA's participation would no longer be in the

---

<sup>10/</sup> WAC § 480-07-380(3) (emphasis added).

<sup>11/</sup> Id. (emphasis added).

<sup>12/</sup> Motion at ¶12.

public interest. The problem with the Company's logic, however, is that it does not square with the Commission's stated basis for granting intervenor status to Columbia REA. Over PacifiCorp's opposition, the ALJ held that Columbia REA's participation is in the public interest to address Schedule 300, and related changes to Rule 6.<sup>13/</sup>

11           Therefore, to the extent that Columbia REA has addressed issues raised by PacifiCorp (which Columbia REA has done, in testimony), its continuing participation in this docket remains in the public interest. It would now be contrary to the public interest for the Commission to ignore the record, in the form of the testimony and recommendations of Columbia REA, absent an *independent* motion from Columbia REA to withdraw. In other words, at this point, the "cat is out of the bag" in regard to Columbia REA's testimony now being open for consideration by the Commission. The Commission rule allows "[a] party [to] withdraw,"<sup>14/</sup> and does not state that "multiple parties may be withdrawn upon motion of a single party." If this is the application of the rule, PacifiCorp will be allowed to effectively prevent parties from addressing the Company's filing.

12           Functionally, in contending that Columbia REA has no basis for continuing, active participation in this case, PacifiCorp has in effect filed a motion to dismiss. The Commission allows such a motion "on the asserted basis that the opposing party's pleading fails to state a claim on which the commission may grant relief."<sup>15/</sup> In this case, the "pleading" which PacifiCorp opposes (as presumably insufficient for the Commission to consider and act upon) is Columbia REA's testimony. But, in considering a motion to dismiss, the WUTC "assumes all

---

<sup>13/</sup> Order 03 at ¶ 6.

<sup>14/</sup> WAC § 480-07-380(3) (emphasis added).

<sup>15/</sup> WAC § 480-07-380(1)(a).

facts in the opposing party's complaint are true and may even consider hypothetical facts supporting the opposing party's claims."<sup>16/</sup> Given the numerous instances suggesting serious flaws in the present net removal tariff, if the WUTC were to consider all facts stated in Columbia REA's testimony as true, it would be detrimental to customers for the Commission *not* to consider the issues addressed by Columbia REA in relation to the tariff.

13                   Indeed, on a motion to dismiss, the Commission is bound to consider standards applicable to Washington Superior Court Civil Rule ("CR") 12(b)(6), which governs motions for failure to state a claim upon which relief can be granted.<sup>17/</sup> To that end, courts have held "that CR 12(b)(6) motions should be granted sparingly and with care" and that "dismissals are only warranted if the agency concludes that, beyond a reasonable doubt, the complainant cannot prove any set of facts which would justify recovery."<sup>18/</sup> Thus, based on "the stringent standard for CR 12(b)(6) motions," PacifiCorp's functional attempt to dismiss Columbia REA from effective participation in this docket should be rejected.

**2.     The Rules of Court and Commission Precedent Favor Rejection of the Motion**

14                   Columbia REA has actively participated for the good of the public interest in this docket according to WUTC directive, including more fully developing the record on issues raised by PacifiCorp and thereby allowing the Commission to properly consider whether the Company's net removal tariff results in fair and just utility services and rates. In Commission proceedings, parties are not limited to only responding to the specific issues raised by a party's

---

<sup>16/</sup>     WUTC v. Points Recycling and Refuse, LLC, Docket No. TG-080913, Order 04 at ¶ 19 (Jan. 13, 2009).

<sup>17/</sup>     WAC § 480-07-380(1)(a).

<sup>18/</sup>     Docket No. TG-080913, Order 04 at ¶ 19 (internal quotations and citations omitted).

tariff filing, but can raise all similar and related concerns. A utility cannot control the scope of a proceeding by withdrawing part of its tariff to avoid addressing properly presented issues.

15 In going well beyond mere withdrawal of its own proposals, PacifiCorp runs afoul of Washington Superior Court Civil Rules. On the dismissal of counterclaim actions, CR 41(a)(3) provides: “If a counterclaim has been pleaded by a defendant prior to the service upon him of plaintiff’s motion for dismissal, the action shall not be dismissed against the defendant’s objection unless the counterclaim can remain pending for independent adjudication by the court.” The analog here is that the Motion—filed well after Columbia REA’s testimony and recommendations regarding net removal tariff issues—cannot function as a means to remove Columbia REA’s testimony from this docket, especially over the opposition stated in this response.

16 The Commission often follows CRs, sometimes by express directive of WUTC rule,<sup>19/</sup> other times in specific holdings. For instance, the Commission has granted a motion to involuntarily dismiss a claim pursuant to CR 41(b)(3).<sup>20/</sup> In reaching that result, the WUTC was also following former rule WAC § 480-09-420(8), which expressly allowed the Commission to be guided by CRs.<sup>21/</sup> In any event, however, CR 41(a)(3) achieves an equitable result which the Commission should follow in the present circumstances. PacifiCorp may have initiated discussion on the net removal tariff, but Columbia REA has now addressed issues raised by the Company. This is consistent with the Commission’s goal of developing a record which more fully informs the WUTC. Similarly, in further keeping with CR 41(a)(3), “Public Counsel notes

---

<sup>19/</sup> E.g., WAC §§ 480-07-380(1) and (2); WAC § 480-07-410(3); WAC § 480-07-650(3).

<sup>20/</sup> Stevens v. Rosario Utilities, LLC, Docket No. UW-011320, Third Suppl. Order at ¶ 56 (July 12, 2002).

<sup>21/</sup> Id. at ¶ 38.



that Columbia [REA] has raised issues related to the Company’s net removal tariff that appear to be appropriate for Commission review.”<sup>22/</sup>

17           Moreover, the Commission has specifically rejected the use of “withdrawal” as a means to dismiss other parties from a case. Just like CR 41(a), which governs voluntary dismissals, “[u]nder the Commission’s rules, a party may withdraw *voluntarily* from a proceeding only after filing a written motion and after receiving permission from the Commission. *See WAC 480-07-380(3)*.”<sup>23/</sup> In that case, Verizon overtly sought to dismiss parties involuntarily from the proceeding,<sup>24/</sup> just as PacifiCorp calls for the functional dismissal of Columbia REA.<sup>25/</sup> The Commission reasoned that, “to the extent that a responding party has raised issues in addition to those raised by Verizon . . . . It would not be appropriate . . . to remove or dismiss parties . . . who have actively participated in the proceeding and have raised additional issues . . . .”<sup>26/</sup>

18           In addition, a full grant of all PacifiCorp’s requests in the Motion would violate Columbia REA’s right to be heard under the Washington Administrative Procedures Act (“APA”). The Commission has stated: “Procedural due process, recognized generally as notice and an opportunity to be heard, arises under state laws and rules . . . .”<sup>27/</sup> Specifically, the Commission recognizes that the APA includes the following provision: “To the extent necessary for full disclosure of all relevant facts and issues, the presiding officer shall afford to all parties

---

<sup>22/</sup> Motion at ¶ 2.

<sup>23/</sup> Re Verizon, Docket No. UT-043013, Order No. 12 at ¶ 54 (Nov. 19, 2004) (emphasis added).

<sup>24/</sup> Id. at n.6.

<sup>25/</sup> Motion at ¶ 12. “PacifiCorp does not object to Columbia REA remaining a party for the sole purpose of monitoring the proceeding.” Id. at n.13.

<sup>26/</sup> Docket No. UT-043013, Order No. 12 at ¶ 55 (emphasis added).

<sup>27/</sup> WUTC v. Advanced Telecom Group, Inc., Docket No. UT-033011, Order No. 19 at ¶ 27 (Dec. 22, 2004).

the opportunity to respond, present evidence and argument, . . . except as restricted by a limited grant of intervention . . . .”<sup>28/</sup> A party has a right to be heard in Commission proceedings, which ensures that the rights of the parties and the public are protected.<sup>29/</sup> In this case, Columbia REA is permitted to address issues concerning the net removal tariff under the ALJ’s grant of limited intervention. Thus, in so far as the Motion seeks to remove Columbia REA testimony from the Commission’s consideration, Columbia REA’s rights would be unlawfully abridged—e.g., the rights to respond and present evidence and argument.

19 Finally, independent of PacifiCorp’s desire to withdraw its own proposals, equity and fairness can best be served via ongoing consideration of issues addressed by Columbia REA in these present proceedings. The Commission has stated: “If a party has filed testimony in a proceeding, and later withdraws from the proceeding, the testimony may be used to support a proposed settlement filed in the proceeding.”<sup>30/</sup> Application of the principle underlying this statement means that, once relevant information is before the Commission whose consideration furthers the public interest, procedural withdrawals should not have the effect of adversely diminishing the record. While PacifiCorp conditions the Motion “on the Commission terminating all litigation over revisions to Schedule 300 and Rule 6 in this case,”<sup>31/</sup> the Commission has the authority and duty to make a determination that best serves the public interest, independent of the Company’s terms.

---

<sup>28/</sup> Id. at ¶ 30 (quoting RCW § 34.05.449(2)) (emphases omitted).

<sup>29/</sup> Re Verizon, Docket No. UT-050814, Order No. 6 at ¶¶ 6,7 (Nov. 9, 2005)

<sup>30/</sup> Docket No. UT-033011, Order No. 19 at ¶ 78.

<sup>31/</sup> Motion at ¶ 12.

### C. The Time for Commission Review of the Net Removal Tariff Is Long Overdue

20 The Commission originally approved the net removal tariff, based on the “evidence presented” in that case.<sup>32/</sup> The final version of the net removal tariff included significant revisions from what PacifiCorp originally proposed, including conditions that: 1) the tariff sunset on December 31, 2005, so that it could be reexamined based on its application during the three years following adoption; and 2) PacifiCorp would be required to report annually on its use of the tariff, in order to facilitate evaluation after the tariff expired.<sup>33/</sup> In the original proceeding to adopt the net removal tariff, PacifiCorp agreed that the tariff would automatically expire after three years, which PacifiCorp explicitly stated would result in “placing the burden on the Company to affirmatively come before the Commission to extend or modify the charges.”<sup>34/</sup> The Commission expressly approved the tariff subject to these conditions, stating the “recommended sunset date and reporting requirements will help ensure reasonable conduct by all concerned, and will provide data to evaluate the tariff’s operation.”<sup>35/</sup> Yet, rather than affirmatively bring the tariff to the Commission for evaluation, PacifiCorp has continued to charge under the tariff after the sunset date, which has denied the Commission and the parties to Docket No. UE-001734 an opportunity to scrutinize its operation.

21 The Commission’s approval of the net removal tariff contained the express safeguard of further review. Now, PacifiCorp is asking the Commission to ignore its safeguard by asserting that Columbia REA has recommended a number of revisions to the net removal

---

<sup>32/</sup> WUTC v. PacifiCorp, Docket No. UE-001734, Eighth Suppl. Order at ¶ 82 (Nov. 27, 2002).

<sup>33/</sup> Id. at ¶¶ 22, 23, 82.

<sup>34/</sup> Exhibit No. \_\_ (PLT-5) at 10 (Rebuttal Testimony of William Clements in Docket No. UE-001734).

<sup>35/</sup> Docket No. UE-001734, Eighth Suppl. Order at ¶ 82.

tariff that go beyond the scope PacifiCorp’s proposed changes.<sup>36/</sup> The issues raised by Columbia REA primarily address whether PacifiCorp is properly applying, and not abusing, the net removal tariff. This is exactly the type of re-examination that the Commission intended to occur almost eight years ago. Review of the net removal tariff is long overdue and especially appropriate, given that PacifiCorp has raised the issue and the Commission has granted Columbia REA intervenor status specifically for the purpose of addressing net removal tariff changes.

22                   PacifiCorp proposes to withdraw its filing so that it can gather additional data and analysis demonstrating its actual costs to inform and support future revisions.<sup>37/</sup> It is unclear when, if ever, PacifiCorp intends to file revisions to its net removal tariff for Commission review, particularly if the data does not support PacifiCorp’s assertions. In addition, 2010 was the last time the Company obtained cost data associated with the type of small residential removals it now claims it plans to gather. Therefore, it may be a long time before PacifiCorp voluntarily re-files its net removal tariff, if ever.

**D. Removing Columbia REA from Active Participation in this Case Would Be Unfair**

23                   PacifiCorp wrongly asserts that preventing Columbia REA from addressing issues related to the net removal tariff “might” avoid unnecessary litigation expenses and future litigation over Schedule 300 and Rule 6.<sup>38/</sup> Columbia REA has already invested significant fees, costs, and expenses toward the effort to review the issues related to the net removal tariff and proposed revisions to ensure that departing customers are fairly and accurately treated. The

---

<sup>36/</sup> Motion at ¶ 7.

<sup>37/</sup> Id. at ¶ 1.

<sup>38/</sup> Id. at ¶ 11.

Commission has generally recognized it is unfair to remove or dismiss parties from a proceeding “who have actively participated in the proceeding and have raised additional issues” that are related.<sup>39/</sup> PacifiCorp seeks to bury this central issue in the case, and instead invite litigation by PacifiCorp customers who have been harmed by the Company’s actions. Granting PacifiCorp’s requested relief would be a dangerous precedent of giving the regulated utility control over the issues parties can responsively raise in a rate case.

### III. CONCLUSION

24           The Commission should reject PacifiCorp’s Motion to Withdraw Tariff Filing, at least to the extent PacifiCorp requests the WUTC to grant anything besides a simple withdrawal of the Company’s own filings. PacifiCorp’s request to terminate all litigation relating to the net removal tariff and to exclude Columbia REA from continuing, active participation in this docket should not be approved. The Motion is not founded on any discernible basis which would allow the Commission to take the highly unusual step of tossing a part of rate case in mid-stream from the proceedings. The Commission precedent and Superior Court Civil Rules militate against the Company misappropriating a motion to withdraw to serve as a means to dismiss Columbia REA from this case.

25           The WUTC originally authorized the net removal tariff with the expectation of periodic review and reauthorization. The Commission now is squarely faced with the long overdue opportunity to serve the interests of PacifiCorp customers by considering the net removal tariff through the testimony of Columbia REA. Accordingly, Columbia REA respectfully requests that the Commission not foreclose net removal tariff litigation and allow

---

<sup>39/</sup>       Docket No. UT-043013, Order No. 12 at ¶ 55.

Columbia REA to continue in its sanctioned role of more fully informing the Commission on net removal tariff issues.

Dated in Portland, Oregon, this 18th day of July, 2013.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Irion Sanger

Irion Sanger

333 S.W. Taylor, Suite 400

Portland, Oregon 97204

(503) 241-7242 telephone

(503) 241-8160 facsimile

ias@dvclaw.com

Of Attorneys for Columbia Rural Electric Association