**BEFORE THE**

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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| WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, | ) | DOCKET NO. UE-161204 |
| Complainant, | ) | |
| v. | ) | |
| PACIFIC POWER & LIGHT COMPANY, | ) | |
| Respondent. | ) | |

**Initial Post-Hearing Brief of**

**Columbia Rural Electric Association**

**July 28, 2017**

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## I. INTRODUCTION

1 Pursuant to the Administrative Law Judge's ("ALJ") Prehearing Conference Order, Order 03, in this proceeding, the Columbia Rural Electric Association ("Columbia REA") files this Initial Post-Hearing Brief.

2 Pacific Power & Light Co.'s ("Pacific Power" or the "Company") application claims that customers departing for a competing utility impose system costs that remaining customers must cover because its current tariffs prevent it from assigning these costs to the departing customer. The Company frames this case as a choice between the interests of its remaining customers and those of customers seeking to switch to another utility.

3 But competition, which the State has authorized between electric utilities, promotes the best product or service for the best price. Rather than work to reduce costs or improve service, the Company has aggressively pursued ever-higher rates, filing rate cases in seven out of eight years between 2008 and 2015.[1/] Notably, notwithstanding claims of financial harm from customer departures for competitive alternatives, none of the Company's requested rate increases was due to these alleged costs. This is not surprising given the evidence that shows cumulative revenue effects from departing customers account for less than one-half of one percent of the Company's revenue.

4 Pacific Power now asks the Commission to approve tariff revisions that are demonstrably intended to impose a "practical exclusive service territory for the Company in

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1/ Docket Nos. UE-080220, UE-090205, UE-100749, UE-111190, UE-130043, UE-140762, and UE-152253. One of these, Docket No. UE-152253, includes the "Expedited Rate Filing" Pacific Power filed in 2015, which included a two-year rate plan that is currently in effect.



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Washington" by imposing economic barriers to customer choice.[2] That is why they require a departing customer to pay for the cost of removing "Facilities" without any need to remove them. It is why, as an alternative to removal, they require a departing customer to purchase Facilities at "Fair Market Value" despite the inconsistency of this with long-established principles of regulatory valuation of utility plant. And it is why they require a departing customer to pay a "Stranded Cost Recovery Fee" the Company made no serious attempt to calculate accurately and that only applies to "stranded costs" incurred from customer departures and not to any other circumstance creating the same stranded costs.

*5* Given the Company's aggressive pursuit of higher rates while Columbia REA presents a viable competitive alternative, it would be fair for the Commission to question why the Company's remaining customers would be better off if that alternative is eliminated. Any costs remaining customers have borne because of customer departures have been demonstrably insignificant, to the extent they exist at all. The Company's tariff revisions will eliminate competitive alternatives that keep pressure on the Company to manage its costs merely to protect against insignificant and unverified cost shifts. Moreover, these revisions are illegal, inconsistent with established policies, unsupported, and unnecessary. They do not result in just, fair, reasonable, and sufficient rates, and they are not in the public interest.

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[2] Id. at 136:23-137:1.



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## II. BACKGROUND

### A. The Net Removal Tariff

6 Pacific Power proposes revisions to its Schedule 300, Rule 1, and Rule 6.[3/] The applicable portions of these tariffs are commonly referred to as the "Net Removal Tariff". It has this name because the tariff requires a customer permanently disconnecting from the system to pay for "the actual cost for removal less salvage" of a limited subset of customer-dedicated facilities – i.e., the *net* cost of *removing* these facilities.[4/]

7 The Net Removal Tariff has been in existence since 2002.[5/] When the Company initially proposed the Net Removal Tariff, it sought to require only customers who chose to switch to an alternative electric utility to pay for the costs of removal.[6/] Commission Staff argued that, as proposed, the Net Removal Tariff would be discriminatory because it would only apply to customers seeking to switch electric suppliers.[7/] Staff proposed alternative language that would apply to any customer who requested permanent disconnection.[8/] The Company agreed to this and certain other modifications, which the Commission approved.[9/] While some changes have been made to the Net Removal Tariff since its creation, the fundamental purpose has remained the same – to charge customers for the net cost of removing certain facilities when they request to permanently disconnect. This represents a "cost-based" approach to allocating the actual costs incurred from a customer departure.[10/]

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3/ Exh. No.__(RBD-1T) at 8:19-20.
4/ Rule 6 § I.1.
5/ WUTC v. Pacific Power, Docket No. UE-001734, 8th Supp. Order (Nov. 27, 2002).
6/ Id. ¶ 16.
7/ Id. ¶ 17.
8/ Id. ¶ 18.
9/ Id. ¶ 82.
10/ Id.



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8 In its current form, the Net Removal Tariff requires a disconnecting customer to pay "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."[11/]

9 The meaning of this language was recently litigated before the Commission in Walla Walla Country Club v. Pacific Power & Light Co., Docket No. UE-143932, in which the Company sought to require the Walla Walla Country Club to pay for the cost of removing customer facilities which did not pose a safety or operational risk.[12/] The Commission held that the plain language of the Company's tariff prohibited the Company's interpretation.[13/] It found that "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 …. Alternatively, the Company can remove the facilities at its own expense."[14/]

10 Chairman Danner issued a separate statement concurring in this order, but expressing concern that customer migrations from Pacific Power to Columbia REA would, over time, result in "cost shifts and higher prices for Pacific Power's remaining customers, who must continue to cover the fixed costs of infrastructure that Pacific Power must maintain to ensure vital electric services to their communities."15/ Ultimately, however, the Chairman recognized

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11/ Rule 6 § I.1 (emphasis added).
12/ Docket No. UE-143932, Order 05 ¶¶ 1-4 (May 5, 2016).
13/ Id. ¶ 3-4.
14/ Id. ¶ 4
15/ Id., Separate Statement of Chairman Danner ¶ 4.



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that "the establishment of legally-defined service territories is not a matter for the Commission, but for the Washington Legislature."[16]

11 The Company's application in this docket is a direct response to the Walla Walla Country Club order. The Company's witness testifies that "the facts and circumstances presented in the Walla Walla Country Club's formal complaint proceeding … clearly illuminated the need to revise the tariffs."[17] These revisions propose the following:

1) A customer is subject to the rules regarding permanent disconnection and removal when it (1) requests permanent disconnection, (2) chooses to be served by another electric utility provider, or (3) obtains redundant service from another electric utility provider;[18]

2) Rather than being limited to removing customer-dedicated "Facilities" (as newly defined in Rule 1) only for safety or operational reasons, a customer can either pay the "Actual Cost of Removal" (also as newly defined in Rule 1 to include both the cost to remove Facilities and the net book value of the removed facilities), or purchase the Facilities at their Fair Market Value (also newly defined in Rule 1 as the "price at which Facilities would sell on the open market between a willing buyer and a willing seller as determined by the Company …");[19]

3) In addition to either paying the Actual Cost of Removal of Facilities or purchasing them at Fair Market Value, the departing customer will be required to pay a "Stranded Cost Recovery Fee," which is newly defined in Rule 1 to recover "the stranded fixed costs associated with providing electric service to a departing customer."[20]

As originally proposed, the Stranded Cost Recovery Fee was calculated by subtracting "net power cost revenues from total revenues" over a ten-year period, meaning that anything that is

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[16] Id. ¶ 6.
[17] Revised Exh. No.__(RBD-1T) at 10:2-4.
[18] Revised Exh. No.__(RMM-3) at 16.
[19] Id. at 1-2.
[20] Id. at 3. Throughout this Initial Post-Hearing Brief, Columbia REA uses capitalized terms as they are defined in the Company's proposed revisions to the Net Removal Tariff.



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not a "net power cost" is, by definition, a "stranded cost."[21/] The Company selected ten years because it was "consistent with the time period utilized in Pacific Power's calculation of the Customer Opt-Out Charge on Schedule 296 in Oregon for customers voluntarily opting out of the system."[22/] Each customer within a rate schedule, regardless of its individual characteristics, is then subject to the same Stranded Cost Recovery Fee based on a multiplier of that schedule's average per-customer revenue.[23/]

12 On rebuttal, and in direct response to the testimony of Kathleen Kelly for Public Counsel, the Company revised the period over which it calculated the Stranded Cost Recovery Fee from ten to six years "for purposes of this proceeding," and included costs associated with energy efficiency and low-income programs in the Stranded Cost Recovery Fee.[24/] It also made a number of other modifications, including: (1) removing certain costs from the Stranded Cost Recovery Fee calculation on the basis that they would be double-counted; (2) allowing the customer to obtain a second fair market valuation for Facilities from a Commission-approved list of appraisers; and (3) providing departing customers with a credit for Facilities they installed based on the Company's line extension policy.[25/]

**B. Competition between Pacific Power and Columbia REA**

13 The Company asserts that its revisions to the Net Removal Tariff are primarily intended "to eliminate confusion and avoid cost shifting to remaining customers when departing

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21/ Revised Exh. No.__(RMM-1T) at 18:9-10.

22/ Id. at 19:10-12.

23/ For residential customers, the Company originally proposed a flat fee, but agreed to a revenue multiplier on rebuttal. Revised Exh. No.__(RBD-1T) at 15:18; Exh. No.__(RMM-1T) at 14:2-7.

24/ Exh. No.__(RBD-5T) at 11:12-13; 9:20-10:6.

25/ Id. at 5:14-9:4; Exh. No.__(RMM-1T) at 7:19-10:2.



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customers opt to permanently disconnect from the Company's system and receive service from another electric service provider."[26] The Company claims that its proposed revisions to the Net Removal Tariff are not intended to prevent competition between itself and non-regulated utilities in the area, particularly Columbia REA.[27]

14 Yet, there is little doubt that Pacific Power's historic competition with Columbia REA influences the Company's proposals. According to the Company, Pacific Power – a utility with 129,000 customers in Washington, a direct parent utility in PacifiCorp that has millions more customers in other states, and an ultimate parent in Berkshire Hathaway that is a multibillion dollar international corporation – is unable to compete with a 4,500-member electric cooperative operating in Southeastern Washington because the Company is subject to Commission regulation.[28] The Company decries the unfair situation it is in, claiming that the loss of 68 customers to Columbia REA over a 17-year period, an average of four per year, has resulted in $1.8 million in cumulative lost revenue over this period, out of the over $343 million in revenue it collected from its Washington operations in 2015 alone.[29] It accuses Columbia REA of "cherry-picking" "high-margin" customers and offering special rates.[30] It complains that Columbia REA has competitive advantages, including freedom from Commission rate regulation and access to preference power from the Bonneville Power Administration ("BPA").[31]

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[26] Exh. No.__(RBD-1T) at 9:15-18.
[27] Exh. No.__(RMM-1T) at 4:13-17.
[28] Exh. No.__(RBD-1T) at 8:1-3.
[29] Id. at 5:16-18; Exh. No.__(DJP-1T) at 17:9.
[30] Exh. No.__(RBD-1T) at 5:21-6:5, 8:3-4.
[31] Id. at 8:4-6.



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15 Columbia REA, of course, has a very different perspective on the actions that take place within the competitive space between the utilities. Nevertheless, Columbia REA did not sponsor testimony in response to the Company's charges because the jurisdictional customers at issue in this proceeding are those customers who continue to be Pacific Power customers.[32/] The Company acknowledges that its customers have a legal right to switch suppliers and does not claim that anything Columbia REA does is unlawful.[33/] The central questions, then, are whether remaining customers – the jurisdictional customers at issue – are impacted by customers who switch and, if they are, what if any remedy should the Commission adopt.

16 In any event, few of Pacific Power's charges regarding Columbia REA's allegedly nefarious competitive actions and advantages withstand scrutiny. The Company was unable to support the claim that Columbia REA is "cherry-picking" its customers.[34/] The Company admits to having no evidence to indicate that Columbia REA charges anything other than the rates in its tariffs,[35/] and acknowledges that, while Columbia REA is not rate-regulated, it is constrained in the rates it can charge by its debt covenants.[36/] Meanwhile, Columbia REA's preference power rates from BPA are currently well above market prices available to Pacific Power.[37/]

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32/ See Docket No. UE-161204, Order 04 ¶ 12 (Jan. 4, 2017) (noting that "the primary issue in this proceeding relates to the rates, terms, and conditions of the Company's proposed tariff filings").

33/ Exh. No.__(RMM-1T) at 4:13-15; Exh. No.__(RBD-33X) at 3.

34/ Exh. No.__(MPG-3).

35/ Tr. at 189:8-11.

36/ Tr. at 188:12-189:6.

37/ Exh. No.__(RBD-6X) at 1, 3 (showing current BPA Priority Firm Tier 1 rates at $33.75/MWh and current Mid-Columbia market prices based on the Company's October Official Forward Price Curve below $30/MWh).



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17 Rather, customers switch to Columbia REA because it considers competition to be beneficial to its membership and beneficial to the new members who transition to Columbia REA's service, and accordingly works to provide competitive rates with quality service and infrastructure. Members receive an ownership interest in a not-for-profit cooperative that is locally-focused and overseen by a board of directors elected directly from the membership – they are part of a community.

18 Pacific Power, conversely, has not identified any efforts it has taken to compete with Columbia REA in order to retain its customers or even attract customers from Columbia REA.[38/] It claims that customers switch to Columbia REA solely for economic reasons,[39/] yet has not identified a single customer that has switched from Columbia REA to Pacific Power, despite some customers being able to save money,[40/] and the lack of any Columbia REA tariff equivalent to the Net Removal Tariff that would erect economic barriers to such customers. While the Company blames Commission regulation for its inability to compete, it acknowledges that its rates would be even higher had the Commission approved the rates it has requested.[41/] Moreover, the Commission is not a super-board of directors over the Company. Pacific Power has any number of competitive tools at its disposal, including advertising the advantages of its service, enhancing its presence in the community, working to bring customer classes closer to their cost of service,[42/] and, as Staff has suggested, filing for banded rates.[43/] Instead of using

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38/ See Exh. No.__(RBD-33X) at 3-4, 6.
39/ Tr. at 119:4-16.
40/ Exh. No.__(MPG-10X) at 1 (noting that Columbia REA's residential rates are higher than Pacific Power's).
41/ Tr. at 187:1-14.
42/ Exh. No.__(DJP-1T) at 24:16-21.
43/ Id. at 4:14-16.



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these tools, however, it pursues revisions to the Net Removal Tariff which the Company acknowledges will make it more difficult for customers to exercise their legal right to choose an alternative utility,[44] a result that will, as a practical matter, enact administratively what Chairman Danner recognized the State has refused to implement legislatively.

## III. ARGUMENT

### A. Legal Standard

#### 1. Pacific Power has the burden to demonstrate that its proposed revisions are just and reasonable and in the public interest.

19 Fundamentally, the Commission must review the Company's changes to the Net Removal Tariff to determine whether they are "in the public interest" and result in "just, fair, reasonable and sufficient" rates.[45] As the applicant, Pacific Power bears the burden of proof and persuasion on these issues.[46] The applicable statutes present broad standards that give the Commission significant discretion.[47] As the Commission has previously stated, "[p]ractically speaking, when a matter concerning rates comes before us for decision, we look for the fairest way to set rates."[48] Similarly, "what is, or is not, in the public interest is not a static determination or concept. We must assess it anew in every case …."[49] Nevertheless, these standards are not unlimited. They are informed by state policies and laws the Commission is charged with enforcing – the Commission is to regulate in the public interest "as provided by the public service laws."[50] The Commission's task here, then, is to balance the interests of

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[44] Id. at 111:24-112:2.
[45] RCW 80.01.040(3), 80.28.010(1)
[46] RCW 80.04.130(4)
[47] People's Org. for Wash. Energy Res. v. WUTC, 104 Wash.2d 798, 808 (1985).
[48] Docket No. UE-001734, 8th Supp. Order ¶ 81.
[49] Re Petition of Puget Sound Energy, Docket No. UG-151663, Order 10 ¶ 124 (Nov. 1, 2016).
[50] RCW 80.01.040(3).



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remaining customers in paying just and reasonable rates with a state policy, reflected through its laws, that authorizes, and even encourages, competition.

2. Competition is in the public interest

20 Columbia REA intervened in this proceeding to address what it considers to be consistent with the public interest and Washington State law. Contrary to Pacific Power's implication, the interests of remaining customers in paying just and reasonable rates and of public policies authorizing competition between utilities do not inherently conflict such that a balancing of these interests must necessarily advantage one at the expense of the other. The point of encouraging competition is to "expand[] choices for customers, bring[] prices closer to costs, spur[] innovation, driv[e] down costs, and driv[e] up quality of service,"[51] goals that advantage all customers.

21 While the Washington legislature has expressed a policy discouraging duplication of facilities,[52] it has nevertheless enabled competition between utilities by refusing to mandate exclusive service territories in the State; it has authorized, but not required, service territory agreements between utilities.[53] By implication, it has authorized electric utilities to compete with each other in the absence of a service territory agreement and allowed customers to switch service providers.

22 To be sure, the legislature certainly has not required competition in the electric industry in this state. It has, for instance, shielded regulated utilities from antitrust liability under the Consumer Protection Act, including the practice of entering into service territory

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[51] Re Qwest Corp., Docket No. UT-030614, Order 17 ¶ 145 (Dec. 22, 2003).
[52] RCW 54.48.020.
[53] RCW 54.48.030.

agreements.[54] But enabling electric utilities to avoid liability for anticompetitive practices is not the same as prohibiting, or even discouraging, competition altogether. Indeed, the legislature has expressly *encouraged* competition between public service corporations in statutes the Commission is charged with enforcing:

> When two or more public service corporations … are engaged in competition in any locality or localities in the state, either may make complaint against the other or others that the rates, charges, rules, regulations or practices of such other or others with or in respect to which the complainant is in competition, are unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, *to stifle competition, or to create or encourage the creation of monopoly*, and upon such complaint … the commission has power … to … correct the abuse complained of by establishing such uniform rates, charges, rules, regulations or practices in lieu of those complained of, to be observed by all of such competing public service corporations in the locality or localities specified as is found reasonable, remunerative, nondiscriminatory, legal, and fair or *tending to prevent oppression or monopoly or to encourage competition* ….[55]

While Columbia REA is not a public service corporation,[56] a consistent interpretation of this statute in conjunction with the others noted above is that competition between electric utilities is not required, but when competition exists the Commission is to encourage it, and to discourage rates and practices, such as those Pacific Power requests here, that monopolize and oppress competition.

23 The Company's proposed changes to the Net Removal Tariff represent little more than an economic barrier to competition and, as an additional consequence, would require

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[54] RCW 19.86.170; Tanner Elec. Co-op. v. Puget Sound Power & Light Co., 128 Wash.2d 656, 681 (1996).
[55] RCW 80.04.110(1)(c) (emphasis added).
[56] RCW 80.01.040; Inland Empire Rural Electrification, Inc. v. Dept. of Public Service of Wash., 199 Wash. 527, 539 (1939)



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departing customers to subsidize the rates of remaining customers.[57/] In this sense, they violate the very principles of cost-based ratemaking under which the Commission approved the original Net Removal Tariff and which have guided utility rate regulation for nearly a century.[58/] In approving the Net Removal Tariff in 2002, the Commission noted that it:

> [E]ngages in a balancing process to determine what costs (or portion of costs) should be borne by all ratepayers and what costs should be borne by individual ratepayers …. Where the cost is instigated by the customer for the benefit of the customer … it is fair to place more of the cost on the individual requesting that service …. The proposed charges for net cost of removal place cost responsibility on the customer imposing the cost on PacifiCorp.[59/]

*24* Nothing in the record of this proceeding shows that this balance between the interests of remaining and departing customers does not still exist today. Any impact to remaining customers has been *de minimis* and, in any event, certainly has not been significant enough to justify adopting tariff revisions that would eliminate competition through substantial economic barriers.[60/] As the Commission has previously held:

> When justified by the public interest, regulatory policy should seek flexible ways to reduce both shareholder and ratepayer exposure to potentially stranded costs. However, regulation cannot and 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.[61/]

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[57/] Exh. No.__(MPG-1T) at 12:1-15.

[58/] Fed. Power Comm'n v. Hope Natural Gas, 320 U.S. 591, 606 (1944); Missouri ex rel. Southwestern Bell Telephone Co. v. Public Serv. Comm'n of Missouri, 262 U.S. 276, 301 (1923) (Brandeis, J., dissenting).

[59/] Docket No. UE-001734, 8th Supp. Order ¶¶ 81-82.

[60/] Exh. No.__(DJP-1T) at 14:4-5, 17:8-12.

[61/] Re Commission's Notice of Inquiry: Examining Regulation of Electric Utilities in the Face of Change in the Electric Industry, Docket No. UE-940932, Policy Statement at 2 (Dec. 11, 1995)



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The current Net Removal Tariff strikes the appropriate balance between ensuring just and reasonable rates for remaining customers and maintaining the ability of utilities without a service territory agreement to compete. The Company's proposed revisions, conversely, eliminate this balance, for these changes are, to one degree or another: (1) illegal; (2) bad policy; (3) unsupported; or (4) simply unnecessary.

### B. Pacific Power's Stranded Cost Recovery Fee is illegal, bad policy, and unnecessary.

25 Pacific Power proposes to charge a Stranded Cost Recovery Fee to any customer who: (1) permanently disconnects from the Company's Facilities; (2) chooses to be served by another electric utility provider; or (3) obtains redundant service from another electric utility provider.[62] The purpose of this fee, according to the Company, "is to mitigate the financial impact to remaining customers when a customer opts to permanently disconnect and receive service from another service provider."[63] When a customer leaves the system, the Company states, "remaining customers are at risk of being required to pick up a larger portion of the costs as a result.[64]

#### 1. The Stranded Cost Recovery Fee is illegal.

##### *a. Application of the Stranded Cost Recovery Fee would result in rate discrimination.*

26 At the hearing in this case, the Company's witnesses confirmed that the Stranded Cost Recovery Fee would not apply in circumstances in which a customer: (1) moved or shut

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[62] Revised Exh. No.__(RMM-3) at 16.
[63] Exh. No.__(RBD-1T) at 13:10-12.
[64] Id. at 14:17-19.



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down operations; (2) installed self-generation; or (3) converted its operations to a different fuel such as natural gas.[65]

RCW 80.28.100 provides that:

> No … electrical company … may, directly or indirectly, or by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for … electricity … services … or for any service rendered or to be rendered, or in connection therewith … than it charges, demands, collects or receives from any other person or corporation for doing a like or contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

In interpreting this statute, the Commission has previously held that "to substantiate a discrimination claim under RCW 80.28.100 against a power company for alleged overcharges based on the fact that [] consumers were being charged lesser rates, the complainant must prove that the service to the other consumers was given 'under the same or substantially similar circumstances and conditions,' or that the charges to which it was subjected were not just, fair, reasonable, and sufficient, as compared with the rates charged the other consumers."[66]

27 Here, departing customers will be subject to charges that do not apply to other customers in the same or substantially similar circumstances. There is no substantive difference between the "stranded costs" Pacific Power incurs from a permanent disconnection and those it incurs from a customer moving or shutting down operations, installing self-generation, or switching to natural gas. Even a customer who implements aggressive energy efficiency measures is comparably situated.[67] All of these situations result in customers electing to reduce

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[65] Tr. at 253:5-256:6.
[66] Re PacifiCorp, Docket No. UE-981627, 5th Supp. Order at 12 (Oct. 14, 1999).
[67] Exh. No.__(BGM-1T) at 32:19-33:6.



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or eliminate purchases of electricity from Pacific Power and their associated contributions to Pacific Power's fixed costs.[68] Public Counsel's witness, Kathleen Kelly, explicitly testified that costs incurred from a customer shutting down operations met her definition of "stranded costs."[69] Mr. Bolton, for the Company, testified that, similar to a customer switching utilities, a customer who shut down operations would require other customers to pick up a larger portion of the costs of the system.[70]

28 Mr. Bolton attempted to distinguish this situation by noting that when a customer shuts down operations, that site remains available for a new customer.[71] But that is a distinction without a difference. It relies entirely on speculation that a new customer will in fact move into the existing site. If that site remains unused, the Company will incur the exact same "stranded costs" it would have incurred if that customer had exercised its competitive option to switch to a different utility.

29 Mr. Meredith testified that a customer switching to natural gas or installing solar panels was "a totally different situation" than a customer who switches to a different electric utility,[72] but he offered no rational explanation for why. Instead, he claimed that these other circumstances are:

> [J]ust a natural part of our customer base. Over time, some of those customers switch to natural gas heating, some of them will put solar panels up on their roof, other things will happen like that over time that would otherwise reduce load. But I think it's fundamentally different than the unique circumstance we are experiencing specifically in the Greater Walla Walla area where

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[68] Tr. at 253:5-256:6.
[69] Id. at 340:16-341:8.
[70] Tr. 176:23-177:2.
[71] Id. at 177:3-9.
[72] Tr. at 254:21-22.



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> we are having a customer completely stop taking service from the Company.[73]

The distinction for Mr. Meredith appears to be that customers all over Pacific Power's six-state service area switch to natural gas and install solar panels, but only in Washington do they switch to another utility. Again, though, that distinction is irrelevant. Legally what matters is that load lost from fuel switching and self-generation creates the same "stranded costs" as load lost from customers switching utilities such that these are "the same or substantially similar circumstances or conditions."[74] If a customer installs self-generation, switches to natural gas, or even makes material investments in conservation, the Company loses that portion of the customer's load, which cannot be made up by a new customer utilizing the same site, just as it loses load from a customer switching utilities. Further, the "stranded costs" that arise from these actions are only offset by new customer connections or increased load from other customers. These same new customer connections and load increases would offset stranded costs due to load lost to competition just as effectively as they offset stranded costs due to load lost for any other reason.

*30* In other words, there are many examples of circumstances that can create "stranded costs" as defined by the Company, yet the Company only imposes a "Stranded Cost Recovery Fee" in one of these situations. It does not provide any explanation for why this situation is distinct from the others that would justify treating a subset of customers differently.[75] Just as Staff found that the Company's proposal in the original Net Removal Tariff would have been discriminatory when it sought only to impose removal costs on customers seeking to switch

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[73] Id. at 255:8-18.

[74] RCW 80.28.100.

[75] Indeed, even energy efficiency could result in stranded costs to the extent a utility incurs fixed costs to meet projected load growth that did not materialize as a consequence of energy efficiency measures.



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electrical suppliers rather than any customer requesting permanent disconnection,[76] so here the proposal to impose a Stranded Cost Recovery Fee only on customers requesting to permanently disconnect would require such customers to pay greater charges than other customers who also impose stranded costs on the Company in "the same or substantially similar circumstances." The Stranded Cost Recovery Fee is a textbook example of rate discrimination.

*b. The Stranded Cost Recovery Fee would impose an undue and unreasonable prejudice or disadvantage on departing customers.*

31 Just as the Stranded Cost Recovery Fee discriminates against departing customers by requiring them to pay this fee when they impose the same "stranded costs" on the Company as other similarly situated customers, it also subjects departing customers to an undue and unreasonable prejudice or disadvantage relative to these other customers. RCW 80.28.090 provides:

> No … electrical company … may make or grant any undue or unreasonable preference or advantage to any person … or to any particular description of service in any respect whatsoever, or subject any particular person … or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

The Commission's rate discrimination and undue preference statutes are often linked such that a practice that results in rate discrimination also constitutes an undue preference or prejudice. The rate discrimination statute, however, "puts a more absolute limit on the Commission's discretionary authority to set rates" because the preference statute only prohibits "undue or unreasonable" preferences or prejudices.[77] Thus, a preference in favor of certain customers, or

[76] Docket No. UE-001734, 8th Supp. Order ¶ 17.
[77] ARCO Prods. Co. v. WUTC, 125 Wash.2d 805, 816 (1995).



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prejudice against certain customers, is not illegal so long as the preference or prejudice is justified.[78] Like the rate discrimination statute, the preference must be in favor of a similarly situated customer in order to be legally objectionable.[79] Thus, recently the Commission approved a special contract between Puget Sound Energy ("PSE") and Microsoft Corp. based in part on a finding that the special contract did not provide Microsoft with an undue or unreasonable preference because "Microsoft is unique in terms of both the amount and the concentrated location of its load."[80]

*32* Conversely here, as noted above, there is nothing unique or distinguishable about a customer that departs for a competing utility relative to one that reduces its load for other reasons, relative to the "stranded costs" resulting from such customers' actions. The Stranded Cost Recovery Fee does not apply only to particularly large customers, it applies to *any* customer that chooses to be served by a competing utility. If a customer that chose to switch utilities could impose the exact same stranded costs on the Company by reducing its load in an alternative manner, such as by installing solar panels or simply shutting down, but not have to pay the Stranded Cost Recovery Fee, then there is plainly a prejudice against customers that choose to depart for a competing utility. Moreover, if the same customer can impose the same stranded costs on the Company in different ways, but be required to pay additional charges in only one of these ways, this prejudice also plainly is "undue [and] unreasonable."

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[78] Cole v. WUTC, 79 Wash.2d 302, 311 (1971).
[79] Id.
[80] WUTC v. PSE, Docket No. UE-161123, Order 06 ¶ 43 (July 13, 2017).



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33 In approving the original Net Removal Tariff, the Commission considered and rejected an argument of undue preference.[81] That circumstance, however, is easily distinguishable from the Company's current proposal. In the original docket, the dispute was over whether Pacific Power was providing an undue preference by applying different net removal charges to similarly situated customers in different classes when they choose to permanently disconnect.[82] The Commission found that this was a natural part of the ratemaking process and that there was no support in the record to support a claim of disparate treatment among different customer classes.[83] Here, by contrast, the Company is proposing to apply a new charge – the Stranded Cost Recovery Fee – specifically to recover stranded costs related to a disconnecting customer without imposing the same fee on other customers who reduce their load for any number of other reasons that both the Company's and Public Counsel's witnesses admitted repeatedly at the hearing cause the same stranded costs.[84]

2. The Stranded Cost Recovery Fee is bad policy.

*a. Stranded costs have not been recoverable to compensate utilities for the normal risks of competition.*

34 While it would be discriminatory and unduly prejudicial to impose the Stranded Cost Recovery Fee only on customers who switch utilities and not on other customers who may also cause stranded costs, including those who shut down, install self-generation, invest in conservation, or switch fuels, no one would seriously contend that the Stranded Cost Recovery Fee should apply in all of these situations. This is because when stranded costs have been

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81/ Docket No. UE-001734, 8th Supp. Order ¶ 47.
82/ Id.
83/ Id.
84/ Tr. at 176:23-177:2, 253:5-256:6, 340:16-341:8.



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authorized, this has typically been in situations representing a fundamental and unforeseeable shift in market dynamics, specifically transitions to more competitive markets – not in situations where a utility is, and always has been, operating in competition with other utilities or technologies. State laws authorizing full deregulation of the electric industry, for instance, explicitly authorize the recovery of stranded costs.[85/] States, like Oregon, that have adopted partial customer choice, authorize the imposition of "transition charges" on customers electing a market-based alternative supplier in order to recover the cost of investments rendered uneconomic by the customer's departure.[86/] These stranded cost recovery mechanisms are enabled only by a legislative determination to fundamentally alter the market in which utilities operate – alterations that, incidentally, *enhance* competition.

*35* Like state deregulation laws, recovery of stranded costs at the Federal level is only an ancillary component of a move toward *greater* competition, not a tool to restrict competition, as Pacific Power proposes to use it here. In Order 888, which established open access transmission, FERC authorized the recovery of stranded costs "to address a new and specific problem: The fact that a utility that historically has supplied bundled generation and transmission services to a wholesale requirements customer and incurred costs to meet reasonably expected customer demand may experience stranded costs when its customer is able to reach a new generation supplier due to the availability of open access transmission."[87/] FERC

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85/ See, e.g., Md. Public Util. Code § 7-513 (authorizing recovery of "transition costs" in Maryland incurred through deregulation); Tex. Util. Code Ann. § 39.252 (providing the "right to recover stranded costs" in Texas deregulation statutes).

86/ Or. Rev. Stat. 757.607(2).

87/ Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, 61 F.R. 21,540, 21,630 (May 10, 1996) ("Order 888").



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determined that it would be fundamentally unfair to require public utilities to bear all "uneconomic sunk costs that utilities prudently incurred under an industry regime that rested on a regulatory framework and a set of expectations that are being *fundamentally altered*."[88] FERC made it clear, therefore, that:

> The Rule is not intended to apply to costs associated with the *normal risks of competition, such as self-generation, cogeneration, or loss of load, that do not arise from the new, accelerated availability of Commission-required transmission access. If a customer leaves its utility supplier by exercising options that could have been undertaken prior to mandatory transmission* … or that do not rely on access to the former seller's transmission, there is no direct nexus to Commission-required transmission access and thus no opportunity for stranded cost recovery under the Rule.[89]

As FERC later clarified following Order 888, "[i]n a competitive market for any product, a competitor generally has no claim to its sunk costs … when a customer chooses to purchase from a different supplier."[90] Thus, FERC's provision for stranded cost recovery should not "be understood as an integral feature of the competitive markets that [FERC] was seeking to promote. Stranded cost recovery is rather intended to serve as a means of ensuring that the *transition* to such markets is fair and equitable."[91] That is why FERC's rules prohibit utilities from recovering stranded costs under a contract executed after July 11, 1994 (the date of the initial Notice of Proposed Rulemaking ultimately finalized by Order 888), unless that contract includes an exit fee or explicit stranded cost provision.[92]

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[88] Id., 62 Fed. Reg. 12,274, 12,373 (Mar. 14, 1997) ("Order 888-A") (emphasis added).
[89] Id. at 12,374 (emphasis added).
[90] City of South Daytona, Florida, 2011 WL 6523662 at *9 (Dec. 6, 2011).
[91] Id. (emphasis in original).
[92] 18 C.F.R. § 35.26(c)(1)(ii).



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36 A utility claiming stranded costs at FERC, therefore, must demonstrate that it "incurred costs to provide service to a … retail customer based on a reasonable expectation that [it] would continue to serve the customer."[93/] This is a fact-based inquiry undertaken on a case-by-case basis, but includes an examination of "[w]hether the state law awards exclusive service territories and imposes a mandatory obligation to serve."[94/]

37 FERC has found a reasonable expectation of continued service in at least two cases, City of Las Cruces, New Mexico, and City of Alma, Michigan.[95/] In City of Las Cruces, FERC found that, when the incumbent utility made investments to serve the departing customer, that customer had no plans to municipalize and no ability to access other power suppliers, and that New Mexico law protected the incumbent utility from competition from other providers.[96/] In City of Alma, the ALJ found that, while the incumbent utility did not have an exclusive service territory around Alma,[97/] it did, among other things: (1) have a state-mandated obligation to serve Alma; and (2) provide Alma with "over eighty-one years of continuous service … without *any serious threat of competition from another utility*.[98/] FERC summarily affirmed the ALJ's findings.[99/]

38 There is little doubt that Pacific Power would not meet FERC's test for finding a reasonable expectation of continued service that may allow recovery of stranded costs. Even assuming the Company has a mandatory obligation to serve its customers (an obligation shared

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93/ 18 C.F.R. § 35.26(c)(2)(i).
94/ Order 888 at 21,653.
95/ City of Las Cruces, New Mexico, 87 FERC ¶61,201 (May 26, 1999); City of Alma, Michigan, 96 FERC ¶61,163 (July 30, 2001).
96/ City of Las Cruces, 87 FERC at P. 61,747.
97/ City of Alma, Michigan, 88 FERC ¶ 63,002 at P.65,014 (July 16, 1999).
98/ Id. at P. 65,017 (emphasis added).
99/ City of Alma, Michigan, 96 FERC at P.61,712.



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by Columbia REA, whose customers are also free to switch to another utility), it proposes a Stranded Cost Recovery Fee following decades of competition in the region. Indeed, there is no evidence in the record that the Company and Columbia REA have ever had a formalized service territory agreement.[100] Public Counsel's witness testified at the hearing that she was unaware of any situation in which a utility that operated without a franchise agreement was awarded stranded costs.[101] In her prefiled testimony, the only example she provided of a circumstance in which stranded costs arose from a utility operating without a franchise agreement was a Pennsylvania case in which both the Pennsylvania Public Utility Commission and the reviewing court found that the utility was not entitled to recover stranded costs because it operated in competition with other utilities in the area and, therefore, that it was "in the public interest to spur the efficiencies that are created by competition by permitting customers to choose among suppliers in overlapping service territories."[102]

*39* Like the utility in this Pennsylvania case, Pacific Power has no interest in "spur[ring] the efficiencies" of competition – it seeks to eliminate competition by making departures economically prohibitive through the Stranded Cost Recovery Fee. And also like the utility in this Pennsylvania case, Pacific Power has no justification for recovering stranded costs when those costs are incurred "through actual and fair competition."[103]

*40* The Commission's recent approval of the special contract between PSE and Microsoft also conforms to federal and state precedent from other jurisdictions. The settlement

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[100] Exh. No.__(RBD-1T) at 4:12-19.
[101] Tr. at 345:4-8.
[102] Exh. No.__(KAK-21X) at 9.
[103] Docket No. UE-940932, Policy Statement at 2.



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agreement the Commission approved included a provision for Microsoft to pay a "transition fee" to ensure remaining customers were held harmless from the costs of Microsoft's decision to purchase its electric commodity from third-party suppliers.[104/] Unlike customers who have a legal right to switch utility suppliers entirely, however, there is no legal right in Washington for a customer to receive retail wheeling service from the incumbent utility. FERC is without authority to order a utility to provide transmission service directly to an ultimate consumer, except in certain limited circumstances,[105/] and no Washington State law has required the unbundling of electric service. The Commission noted that its decision in the PSE/Microsoft docket was "a narrow one" and did not signal a determination that broader retail wheeling in the state was in the public interest.[106/] Accordingly, absent PSE's agreement to provide transmission service, and the Commission's approval of the terms of the settlement, Microsoft would have had no ability to access third-party suppliers. PSE, therefore, could not have anticipated that Microsoft would leave its service when it made investments to serve that customer. This is fundamentally distinct from a utility that operates without a service territory agreement and knowingly competes for customers.

*41* The Company may complain that it is unfair to require it to make investments to serve all customers in its service area without assurances that those customers will remain to pay for these investments, but this is not a one-sided risk.[107/] Columbia REA has the same obligation and faces the same risk. The reason competition works is because companies are faced with

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104/ Docket No. UE-161123, Order 06 ¶ 53.
105/ 16 U.S.C. § 824k(h).
106/ Docket No. UE-161123, Order 06 ¶ 94.
107/ Exh. No.__(RBD-1T) at 3:10-16.



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such risks and accordingly take actions, such as reducing costs, to mitigate those risks. This works to the advantage of both competitors' customers. That is why other jurisdictions do not award stranded costs in such circumstances. It would be counterproductive by reducing the incentive to compete and the associated efficiencies. If Pacific Power does not want to compete, then the Commission should consider requiring the Company's shareholders to assume any stranded costs associated with customer departures on the grounds that the Company is acting imprudently.

*b. The Company has not adequately demonstrated its stranded costs.*

*42* In addition to authorizing recovery of stranded costs only in narrow circumstances not present here, jurisdictions that have authorized stranded cost recovery have required these stranded costs to be prudent and verifiable.[108/] FERC accomplishes this by requiring a utility claiming stranded costs to calculate them based on a "revenues lost" formula.[109/] While this is not the only means of calculating stranded costs, it does represent an effort to obtain a "verifiable" result.

*43* Pacific Power, on the other hand, makes no such effort here. It initially proposed its stranded cost recovery fee by netting out variable power costs and then recovering all remaining "fixed" costs over a ten-year period.[110/] As multiple witnesses noted, this would have resulted in double-recovery of certain costs because the departing customer would have had to

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108/ Md. Public Util. Code § 7-513 (allowing recovery of "prudently incurred and verifiable net transition costs, subject to full mitigation"); Tex. Util. Code Ann. § 39.252 (allowing recovery of "net, verifiable, nonmitigable stranded costs"); Order 888, 61 F.R. at 21,629 (allowing recovery of "legitimate, prudent and verifiable stranded costs")

109/ Order 888, 61 F.R. at 21,658. The formula is SCO = (RSE – CMVE) x L, where: SCO is the stranded cost obligation; RSE is "revenue stream estimate;" CMVE is the "competitive market value estimate;" and L is the length of the obligation.

110/ Revised Exh. No.__(RMM-1T) at 18:9-19:3.



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pay the same cost when purchasing the Facilities as well.[111] Boise's witness testifies that the Company improperly determined its "stranded costs" based on stale data.[112] Both Columbia REA's and Public Counsel's witnesses also noted that the Company's Stranded Cost Recovery Fee did not account for the value of freed-up energy associated with a customer departure, which the Company could now sell into the market.[113] In response to this observation, the Company performed a particularly deceitful slight-of-hand by claiming to modify its Stranded Cost Recovery Fee to account for the "value of freed up energy" when, in fact, it merely performed an alternative calculation of its variable net power costs that would be avoided by a customer departure.[114] As can be seen in Exhibit RBD-4, the Company originally subtracted "NPC Revenue" from the Stranded Cost Recovery Fee up-front.[115] The modified Stranded Cost Recovery Fee calculation contained in RMM-2, however, eliminates the line item that subtracts "NPC Revenue" and replaces it with a new line item farther down on the page called "Freed-Up Energy Value per Customer."[116] These two items, however, are essentially the same – they identify *avoidable* variable power costs.[117] Neither – and despite the latter's name – actually values freed-up energy. Thus, the Company has not accurately identified the costs that would be "stranded" by a customer's departure.

*44* Meanwhile, with respect to the period over which it calculated the Stranded Cost Recovery Fee, the Company initially chose ten years because it was consistent with the period

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111/ Exh. No.__(MPG-1T) at 17:14-20; Exh. No.__(KAK-1T) at 44:10-17; Exh. No.__(DJP-1T) at 23:4-7.
112/ Exh. No.__(BGM-1T) at 31:3-6.
113/ Exh. No.__(MPG-1T) at 17:28-18:2; Exh. No.__(KAK-1T) at 33:19-22.
114/ Exh. No.__(RMM-1T) at 5:20-7:16.
115/ Exh. No.__(RBD-4), line 2.
116/ Exh. No.__(RMM-2) at 1, line 14.
117/ Exh. No.__(RMM-1T) at 7:13-16.



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over which it calculates the "consumer opt-out charge" for its long-term direct access program in Oregon.[118] The Company made no attempt to demonstrate that this period was appropriate for its Washington service territory. On rebuttal, the Company then decreased the period over which it calculated stranded costs from 10 to six years, on the recommendation of Public Counsel.[119] At the hearing, the Company's witness acknowledged that six years was "a compromise based upon the testimony that we reviewed of Ms. Kelly,"[120] and that any length of time between six and 20 years would be reasonable,[121] despite the fact that simply reducing the period from 10 to six years reduces the Stranded Cost Recovery Fee by *33 percent*.[122] The Company's witness even testified that six years would continue to subject remaining customers to stranded costs.[123]

*45* The Company simply put no effort at all into accurately calculating "stranded costs" to the extent such costs even exist. This strongly indicates that the Company does not care about accuracy; it only cares about erecting barriers to customer departures. Six years is still likely to be a sufficient economic disincentive for customers to switch utilities,[124] so why not agree and at least get one other party (Public Counsel) to support the Company's proposal?

*46* Furthermore, the rationale for calculating the Stranded Cost Recovery Fee over six years is nonsensical. The Company adopted Public Counsel's position that this is reasonable because six years is "approximately equal to three IRP planning cycles."[125] Public Counsel's

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[118] Revised Exh. No.__(RMM-1T) at 18:8-19:12.
[119] Id. at 5:10-14.
[120] Tr. at 261:11-17.
[121] Id. at 290:2-6.
[122] Exh. No.__(RMM-1T) at 5:16-18; Tr. at 290:24-291:5.
[123] Tr. at 291:17-292:1.
[124] A small commercial customer on Pacific Power's Schedule 24 would need to pay a stranded cost recovery fee of over $7,600 under the Company's revised proposal. Exh. No.__(RMM-2) at 3.
[125] Exh. No.__(KAK-1T) at 41:17-18; Exh. No.__(RMM-1T) at 5:13-14.



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recommendation was based on the notion that the period over which stranded costs are calculated "should allow the utility to review the potential changes to its resource portfolio and demand requirements over two or three IRP planning cycles. This recognizes that changes in the portfolio or the market price for power may occur in later years."[126/] But a utility's ability to review its resource portfolio in the years following a customer departure has nothing to do with avoiding any stranded costs created by that customer departure. As Mr. Meredith testified, "[o]ur IRP does not help us necessarily avoid a [sunk] cost … that's already been incurred, but it does help us as we look forward to making good decisions about … which resources to acquire to meet our loads."[127/] Similarly, Ms. Kelly testified that an IRP helps "avoid[] costs that are variable costs over time. So they're avoiding some of the variable costs, and they're also not making decisions to acquire new facilities or to enter into contracts …."[128/] These are descriptions of investments a utility can *avoid* from a customer departure, not descriptions of a way to mitigate costs associated with investments that have already been made.

*47* Rather, just as a decrease in load may create "stranded costs" if a utility made investments to serve the lost load, these same stranded costs are avoided by new load replacing that lost load. There is no evidence in the record to demonstrate that six years is necessary to make up for load lost to a customer departure and eliminate any stranded costs. Nor could such evidence exist. The Company's proposal to calculate stranded costs over six years applies to every single customer regardless of size and circumstances. Six years is likely to be more than

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126/ Exh. No.__(KAK-1T) at 41:10-12.
127/ Tr. at 293:17-22.
128/ Id. at 351:7-10.



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sufficient to recover load lost from some customers departures, while it may be insufficient to recover load lost from others.

48 Again, FERC's methodology is instructive here. A utility's assertion that it had a reasonable expectation of continued service to a departing customer has been judged at the time the utility made investments to serve that customer, not at the time the petition for stranded costs is filed.[129/] This is so because if a utility had a reasonable expectation when it was incurring costs to serve the customer, but subsequent events resulted in it no longer having a reasonable expectation of continued service, the utility cannot "unspend" the capital it invested to serve the departing customer.[130/] FERC explicitly rejected the type of "one-size-fits-all" approach to the reasonable expectation period Pacific Power proposes here.[131/] Rather, the length of time over which stranded costs are incurred is a factual issue to be determined on a case-by-case basis.[132/] Those costs are then figured by multiplying the difference between the estimated revenue stream from the departing customer and the estimated revenues that could be earned from the market in place of sales to the customer by the reasonable expectation period.[133/] It goes without saying that FERC's methodology only applies to a customer at the time it actually seeks a competitive alternative and to which a specifically calculated stranded cost fee can be assigned.

49 Conversely, here Pacific Power proposes to calculate costs it has insufficiently demonstrated to be "stranded" over an arbitrary six-year period that begins when the customer departs and which applies to all customers regardless of their individual circumstances. There is

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129/ City of Las Cruces, 87 FERC at P.61,746-47.
130/ Id. at P. 61,750.
131/ Order 888 at 21,658.
132/ Id.
133/ Supra n. 109



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no evidence in the record that such a calculation would come anywhere close to accurately identifying costs that may be stranded by a departing customer.

### 3. The stranded costs the Company complains of are immaterial

*50* Notwithstanding the fact that the stranded cost recovery fee the Company proposes in this case is illegal, bad policy, and unsupported, it is also unnecessary. The Company proposes this fee "to mitigate the financial impact to remaining customers when a customer opts to permanently disconnect and receive service from another service provider."[134/] This "financial impact" to remaining customers, however, is so miniscule as to be unnoticeable. The Company's alleged *cumulative* revenue loss between 1999 and 2016 from departing customers amounts to $1,872,445.[135/] As Staff's witness identified, this equates to approximately one-half of one percent of the Company's 2015 Washington sales.[136/] And this is overstating the impact to a significant degree because it compares the cumulative revenue loss over 17 years with a single year's sales statistics.

*51* Similarly, while Public Counsel's witness draws the wrong conclusions from the data, she makes the salient observation that using the preferred planning and financial model to determine stranded costs from a customer departure would be useless because the negligible impact "would be within the tolerance band of a production cost model's optimization algorithm."[137/]

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[134/] Exh. No.__(RBD-1T) at 13:10-12.
[135/] Id. at 5:17-18.
[136/] Exh. No.__(DJP-1T) at 17:10-12.
[137/] Exh. No.__(KAK-1T) at 26:8-9.



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52 This conclusion can easily be confirmed by noting the stranded cost obligations a typical customer would have under the Company's proposal. A small commercial customer on Schedule 24 would pay just over $7,600.[138] This amounts to approximately 0.002% of the Company's 2015 Washington sales revenue. Even the stranded cost payment of a large commercial customer on Schedule 36, which would amount to over $204,000,[139] equates to only 0.06% of the Company's 2015 Washington sales revenue. In other words, even if these payments accurately represented the "stranded costs" resulting from a customer departure, remaining customers are effectively indifferent to those impacts. The departing customer, on the other hand, certainly would not be indifferent to this cost. A $7,600 fee for a small commercial customer, or a $204,000 fee for a large commercial customer, represents a clear economic barrier to the legal exercise of customer choice.

53 In balancing the interests of encouraging competition with that of ensuring just and reasonable rates, the Stranded Cost Recovery Fee would effectively eliminate competition to protect customers from immaterial costs. This fee, in other words, is not in the public interest and does not result in just and reasonable rates. There may, however, be circumstances in which a customer is so large that it would have a material impact on the costs remaining customers must bear if that customer left the system. Columbia REA addresses this circumstance later.

4. The costs of energy efficiency and low-income riders also are not appropriately included in stranded costs.

54 On rebuttal, and in response to Public Counsel's testimony, Pacific Power proposes to increase the Stranded Cost Recovery Fee to account for lost contributions to its

[138] Exh. No.__(RMM-2) at 3 ($2,595 x 2.93 = $7,603.35).
[139] Id. at 4 ($67,517 x 3.03 = $204,576.51).



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energy efficiency and low-income programs.[140] These additions are illegal and unnecessary for the same reasons as discussed above. They discriminate against customers switching service providers when similarly situated customers who simply shut down or move operations would have no corresponding stranded cost obligation. Moreover, given the revenue impact from customers who have switched since 1999, the impact on these programs is so small as to be *de minimis*.

*55* Indeed, with respect to energy efficiency in particular, there is demonstrably no impact. Pacific Power's witness acknowledged that the Company is currently acquiring all cost-effective energy efficiency in its Washington service territory and that, if a customer departs, it will lose that customer's energy efficiency potential.[141] Thus, the only use the Company could have for payments it receives from a departed customer for its energy efficiency program would be to acquire energy efficiency that is *not* cost-effective. The Company also acknowledged that the rates it charges customers to cover the costs of its energy efficiency program would not automatically increase upon a customer departure.[142] The Company would need to file for revised rates, which would presumably incorporate the lower energy efficiency potential, thus ensuring that remaining customers are not required to pay more than they otherwise would.

*56* Meanwhile, Public Counsel's witness admitted that her concerns that overall energy efficiency acquisition in the region may be harmed because Columbia REA may have a less robust conservation program with lower oversight than Pacific Power is based entirely on

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[140] Exh. No.__(RMM-1T) at 15:3-22.
[141] Tr. at 185:22-186:5.
[142] Id. at 186:7-12.



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speculation.[143] Those concerns are, in fact, easily refuted. As the Company recognizes, Columbia REA is a BPA customer.[144] The Northwest Power Act requires BPA to "acquire such resources through conservation, [and] implement all such conservation measures … as [BPA] determines are consistent with the plan …."[145] The "plan" referred to in this section is the Northwest Power and Conservation Council's Power Plan.[146] The current Seventh Power Plan unquestionably includes robust conservation goals – over 4,000 average megawatts by 2035, enough to meet all load growth in the region in over 90% of future scenarios.[147] This reflects the Council's own statutory responsibility to prioritize energy efficiency,[148] which flows through to BPA, and ultimately to Columbia REA. Lest there be any doubt about BPA's mandate to prioritize energy efficiency, the Northwest Power Act prohibits BPA from "reduc[ing] [its] efforts to achieve conservation,"[149] and provides that:

> In order to effectuate the priority given to conservation measures … [BPA] shall, to the *maximum extent practicable*, make use of [its] authorities under this chapter to acquire conservation measures …, to implement conservation measures, and to provide credits and technical and financial assistance for the development and implementation of such resources and measures.[150]

Columbia REA's energy efficiency programs may not be subject to Commission oversight, but they are subject to oversight that is every bit as demanding as Washington State law.

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143/ Tr. at 358:12-360:16.
144/ Exh. No.__(RBD-1T) at 8:4-6.
145/ 16 U.S.C. § 839d(a)(1).
146/ Id. § 839a(15).
147/ Exh. No.__(MPG-8T) at 9:15-17.
148/ 16 U.S.C. § 839b(e)(1).
149/ Id. § 839d(b)(5).
150/ Id. § 839d(e)(1) (emphasis added).



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### C. **Requiring customers to pay for the costs of removing Facilities or purchasing them at Fair Market Value contravenes traditional rate regulation and is unsupported.**

*57* The Net Removal Tariff in its current form requires a disconnecting customer to pay the Company for "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."[151/] The Company proposes to amend this language by providing the departing customer with the option of paying for the cost of removal, regardless of any safety or operational issue, or purchasing the Facilities at their "Fair Market Value."[152/] In other words, the customer must purchase Company Facilities if the customer does not pay the cost to remove those Facilities.

1. The Company has not justified its proposal to require departing customers to pay the costs of removal absent a safety or operational issue.

*58* The Company's application alters the circumstances in which a departing customer would need to pay for the cost to remove Facilities. Rather than paying to remove Facilities only in the limited circumstance in which they must be removed for safety or operational reasons, a customer would have to pay to remove any Facilities it does not agree to purchase at their Fair Market Value.[153/] The Company includes no testimony at all justifying this change. Therefore, the Company has not satisfied its burden to demonstrate that this change is just and reasonable.[154/] It is, in fact, not reasonable to require a customer to pay to remove

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151/ Rule 6 § I.1 (emphasis added).
152/ Revised Exh. No.__(RMM-3) at 5-6 (Rule 6.I.1.a-b).
153/ Id.
154/ RCW 34.05.570(3)(e) (requiring a review court to reverse an administrative agency's decision that is not "supported by evidence which is substantial …"); Schatz v. State, Dept. of Soc. & Health Servs., 178 Wash. App. 16, 25 (2013) (holding that "[s]ubstantial evidence is evidence sufficient to persuade a fair-minded person of the truth of the matter asserted").



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Facilities that do not need to be removed. Such a requirement amounts to nothing more than an economic penalty on a departing customer.

*59* To the extent the Company is concerned about liability associated with unused Facilities, this can be addressed either by removing or decommissioning the Facilities at the Company's own expense, or transferring ownership and liability to the departing customer through the purchase of these Facilities at their net book value. For the reasons discussed below, to the extent the Net Removal Tariff should address the purchase of Facilities at all (which Columbia REA does not accept), net book value is the appropriate valuation method for such purchases.

2. The Company's proposal to require departing customers to purchase Facilities at Fair Market Value violates long-established principles of cost-based ratemaking.

*60* The Company justifies its proposal to require a departing customer to pay Fair Market Value for Facilities in lieu of removal on the basis that this "is the more appropriate calculation that fairly balances appropriate compensation to the Company's remaining customers and payment for facilities benefitting the departing customer in its relationship with the new electric service provider."[155/] The Company relies on the Commission's order allocating the proceeds from PSE sale of its Jefferson County Assets, and concludes that "[h]aving the sale of the assets valued at Fair Market Value and credited back to the remaining customers properly compensates those customers."[156/]

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155/ Exh. No.__(RBD-1T) at 12:14-17.

156/ Id. at 12:20-13:2 (citing Re Petition of PSE For an Accounting Order Approving the Allocation of Proceeds of the Sale of Certain Assets to Public Utility District #1 of Jefferson County, Docket No. UE-132027, Order 04 ¶ 42 (Sept. 11, 2014).



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61 Pacific Power correctly identifies that customers are entitled to a gain on the sale of utility assets because, as the Commission found in Jefferson County, customers bear the risk of loss associated with such assets.[157/] The Company does not, however, explain why a sale of assets at a gain is appropriate here in the first place. In Jefferson County, Public Utility District #1 of Jefferson County ("Jefferson PUD") purchased PSE's facilities under threat of condemnation.[158/] PSE, consequently, had a legal right to receive the fair market value of its sold assets under constitutional takings jurisprudence.[159/] Conversely, here Pacific Power is legally entitled to nothing. No statute or constitutional provision requires a customer to purchase facilities when that customer chooses to leave a utility's system, whether for competitive reasons or any other. This makes sense as, unlike a condemning utility, a departing customer has no need for these facilities. That customer will use facilities owned by the competing utility.

62 As such, the current Net Removal Tariff does not require a departing customer to purchase facilities – it merely requires a customer to pay for the cost of removing facilities in the limited circumstance in which such facilities must be removed for safety or operational reasons. The Commission approved the original Net Removal Tariff on the basis that it was "cost-based" and "place[d] cost responsibility on the customer imposing the cost on PacifiCorp."[160/] The Company itself justified the original Net Removal Tariff on the basis that "the Commission has consistently endorsed a policy favoring cost-based electric rates, *even when considering the potential effects of competition*."[161/]

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157/ Docket No. UE-132027, Order 04 ¶ 32.
158/ Id. ¶ 2.
159/ Wa. Const. art. I, § 16; State v. McDonald, 98 Wash.2d 521, 525-26 (1983).
160/ WUTC v. PacifiCorp, Docket No. UE-001734, 8th Supp. Order ¶ 82 (Nov. 27, 2002).
161/ Id. ¶ 76 (emphasis added).



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63 The Company now departs substantially from this principle. It reasons, for instance, that "Fair Market Value does not subsidize the Company's remaining customers any more than a prospective home buyer is subsidizing the seller of that property."[162] A home, however, is not a depreciable asset, as the Facilities at issue here are.[163] Pacific Power is making the same legal error that PSE did in Jefferson County, albeit disguised as customer benefit:

> PSE would have us return to use of the much criticized and long discredited "fair value" or "fair market value" approach. This is an appropriate concept of value in the context of a condemnation proceeding and, in fact, the measure of what a seller is entitled to receive when a municipality, PUD, or other public entity exercises its power of eminent domain. It is not an appropriate concept of value in the context of applying appropriate regulatory treatment to utility property that is subject to rate base rate of return regulation.[164]

Following this statement, the Commission discussed the long history of Supreme Court precedent that "unequivocally approved original cost less depreciation (*i.e.,* net book value) as the appropriate valuation method for utility property devoted to public use."[165] Unlike in a condemnation proceeding, the purpose of the Net Removal Tariff is not to establish an appropriate purchase price for Facilities, it is to assign cost responsibility between departing and remaining customers.[166] Without a legal entitlement to fair market value, equivalent to eminent domain PSE was facing from Jefferson PUD, requiring departing customers to purchase Facilities at their Fair Market Value is directly contrary to long-established legal precedent regarding the regulatory valuation of utility plant.

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[162] Exh. No.__(RBD-5T) at 17:9-11.
[163] Tr. at 182:2-13.
[164] Docket No. UE-132027, Order 04 ¶ 42.
[165] Id. ¶ 44.
[166] Docket No. UE-001734, 8th Supp. Order ¶¶ 81-82.



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64 The current Net Removal Tariff strikes the appropriate balance between maintaining competition and protecting remaining customers. When costs are incurred to remove facilities, it requires customers causing this cost to pay. To the extent the Commission considers this to be insufficient to protect remaining customers, then it should maintain the cost-based nature of the tariff by requiring departing customers to pay no more than net book value for Facilities. This unequivocally ensures the Company and its customers are made whole while simultaneously maintaining the principle that customers should pay rates that reflect the costs to serve them and do not cross-subsidize other customers.[167/]

3. Departing customers who make use of Pacific Power Facilities already negotiate a purchase price with the Company if those Facilities have remaining value.

65 As an additional justification for requiring departing customers to purchase Facilities at their Fair Market Value, the Company argues that "[p]hysically durable facilities in place for a significant amount of time may have nominal or no Net Book Value but represent significant value to the departing customer and the new electric service provider in light of the cost of installing replacement facilities."[168/] That, however, is false or, at a minimum, highly misleading.

66 While it is true that the Company has abandoned or transferred ownership of facilities to departing customers in the past,[169/] that does not mean that the customer obtains any value out of these facilities. Most of the time, a departing customer has no use for Pacific Power facilities. After all, they are connected to Pacific Power's distribution system. To the extent the

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167/ Id. ¶ 82; Exh. No.__(MPG-1T) at 6:9-7:3; Exh. No.__(MPG-8T) at 3:7-12.
168/ Exh. No.__(RBD-1T) at 12:17-20.
169/ See Docket No. UE-143932, Order 05 ¶ 5.



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departing customer does not use Company facilities, therefore, the new provider, such as Columbia REA, will extend its own lines to that customer. Furthermore, as the Company notes, when it does abandon or transfer facilities to a departing customer, these facilities have nominal or no net book value, meaning that remaining customers are not impacted by the transfer. To the extent the Company is transferring free of charge facilities with significant remaining net book value, this would be evidence of imprudence.

*67* In fact, the Company does not do this. Simply because the current Net Removal Tariff does not explicitly provide for the sale of Company facilities does not mean that this option is foreclosed to the Company. When a departing customer has desired to acquire and make use of Company facilities, Pacific Power and that customer have negotiated a purchase price independent of any requirements in the Net Removal Tariff.[170/] The lack of provisions for the sale of Company Facilities, in other words, does not mean that departing customers get a freebie at the expense of remaining customers.

*68* In any event, as noted above, even if a customer were transferred Facilities with no remaining net book value that the new utility could make use of, that fact is irrelevant. What matters is that remaining customers are held harmless and the departing customer is not required to subsidize remaining customers by purchasing such Facilities at more than their cost.

4. Purchasing Facilities at Fair Market Value would result in double-payment of costs.

*69* There are two other reasons why requiring customers to purchase Facilities at Fair Market Value is inappropriate. First, it would require customers who paid the costs of a line

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[170/] See, e.g., Exh. No.__(RBD-1T) at 6 n. 3 (noting that Pacific Power and the Walla Walla Country Club negotiated a purchase price for certain facilities).



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extension effectively to buy back their own Facilities from the Company. Pacific Power notes that customers who elect to receive underground service are responsible for the costs of trenching, conduit, and equipment foundations.[171/] All facilities are then turned over to Pacific Power once energized.[172/] To address the consequence that a Fair Market Value purchase of these Facilities would require customers to pay for Facilities they already paid for, the Company proposes providing a credit consistent with its line extension credit.[173/] The line extension credit steadily decreases over a 5-year period until it phases out altogether.[174/]

70 The Company justifies this treatment because, once the customer-purchased line is energized, "the Company is entirely responsible for maintaining, repairing and replacing those facilities," which the Company claims can be at significant cost.[175/] When asked for records of those costs to support their "significant" nature, however, the Company had none.[176/] Moreover, the Company's witness admitted at hearing that, to the extent the costs of the Facilities exceed the credit, or if a customer seeks to switch providers outside of the 5-year credit window, it would receive no credit for the costs it incurred and would still need to purchase these Facilities back from the Company, even though the Company spent nothing to install them.[177/] It is simply not appropriate to require customers to re-purchase Facilities that they paid to install in the first place.

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171/ Exh. No.__(RBD-5T) at 5:16-18.
172/ Id. at 6:3-5.
173/ Id. at 6:19-7:9.
174/ Id.
175/ Id. at 6:5-11.
176/ Exh. No.__(RBD-11X).
177/ Tr. at 211:3-13, 223:1-224:4.



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71 Second, purchase of Facilities at their Fair Market Value in combination with Pacific Power's proposed Stranded Cost Recovery Fee will almost certainly result in double-recovery of costs. The Company's witness acknowledged that Facilities sold at Fair Market Value would result in a gain to remaining customers relative to the net book value of those Facilities.[178] Public Counsel's witness acknowledged that a customer who remained with the Company would pay in rates the net book value of the Facilities in question.[179] Thus, any amount collected from the sale of Facilities at Fair Market Value that exceeds net book value would necessarily represent more than that customer would have otherwise paid for those Facilities if it had remained with the Company – a gain on the sale of these assets. To the extent system-wide "stranded costs" exist, that gain would offset those costs. Indeed, Public Counsel's witness testified that "[f]air market value is a standard means in establishing *the stranded cost of facilities* in the U.S."[180] She further testified that Fair Market Value recovers "the costs of the facility that are no longer going to be recovered from a departing customer. That would be that cost, *the stranded cost*."[181] Yet, Pacific Power makes no provision for this gain from the sale of Facilities at Fair Market Value in the calculation of its Stranded Cost Recovery Fee. This will result in clear double-recovery of costs and a subsidy to remaining customers.[182]

### D. The Company's definition of "Facilities" is overbroad and contradictory.

72 The current Net Removal Tariff does not define "facilities." Rather, it constrains the facilities that may be subject to permanent disconnection and removal first by including the

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[178] Tr. at 181:12-25.
[179] Tr. at 339:8-12.
[180] Tr. at 336:20-21 (emphasis added).
[181] Tr. at 338:20-22 (emphasis added).
[182] Exh. No.__(MPG-1T) at 11:11-12:15.

requirements for permanent disconnection and removal within Rule 6, which applies to "Facilities on Customer's Premises." It then specifies that facilities subject to removal must be "necessary to provide service to Customer" and may not include facilities "located on public right of way" or certain area lights.[183/]

73 In its proposed revisions, the Company defines "Facilities" in Rule 1 to mean "Electric infrastructure designed, built, and installed to provide service, including but not limited to transmission and distribution lines, service drops, transformers, poles, risers, conduit, vaults, and any other equipment used to supply electricity."[184/] The Company further revises the definition of "Permanent Disconnection and Removal" to mean "Disconnection and Removal of the Company's Facilities in place to serve the Customer. Facilities subject to Permanent Disconnection and Removal may be located in right of ways [*sic*], private property, or any other property."[185/] Finally, in Rule 6, the Company revises its rule regarding permanent disconnection and removal to eliminate the requirement that facilities be "necessary to provide service to Customer" and the restriction preventing the Company from charging a customer for the cost of removing facilities on a public right of way or area lights.[186/] The Company's opening testimony merely declares that it made these changes, but provides no rationale or justification for them, again, failing to satisfy the Company's burden of proof.[187/]

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183/ Rule 6.I.1.
184/ Revised Exh. No.__(RMM-3) at 2.
185/ Id.
186/ Id. at 5-6. The Company also removed the restriction that it may only remove facilities for safety or operational reasons. Columbia REA also objects to this change for the reasons addressed above. Namely, that it imposes unnecessary costs on departing customers.
187/ Exh. No.__(RBD-1T) at 12:1-11; supra n. 1544.



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74 In response to concerns expressed by a number of witnesses over these changes,[188] the Company testifies that Rule 6 "applies only to customer-dedicated Facilities and is not intended to apply to Facilities used to serve other customers."[189] It then later testifies that "a departing customer will not be responsible for the removal or purchase of Facilities that serve other customers."[190] However, "[c]ustomer-dedicated Facilities may be located off the departing customer's premises" and, therefore, allowing the Company to remove Facilities in public rights of way is appropriate, it argues.[191]

75 Notwithstanding the Company's assurances that "Facilities" subject to permanent disconnection and removal are limited to customer-dedicated Facilities, its rationale for this conclusion rests on a misreading of its own tariff. Rule 6 does not apply to "customer-dedicated Facilities." It applies to "Facilities on Customer's Premises." The Company's proposed revisions to Rules 1 and 6 directly contradict this limitation because, as the Company states, under its revisions, "the location of Facilities is irrelevant."[192] The Commission should reject the Company's revisions related to the Facilities subject to permanent disconnection and removal or, alternatively, require the Company to explicitly indicate in its tariff that such Facilities are limited to customer-dedicated facilities that are not used to provide service to any other customer.

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[188] Exh. No.__(MPG-1T) at 8:3-9:16; Exh. No.__(BGM-1T) at 23:5-25:23.
[189] Exh. No.__(RBD-5T) at 4:10-13.
[190] Id. at 17:15-18:5.
[191] Id.
[192] Id. at 17:14.



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### E. Other policy considerations favor rejecting the Company's proposed tariff changes.

1. Rejecting the Company's tariff revisions will allow the Commission to address the unique circumstance of a large customer departure on an appropriate record and at the appropriate time.

76 As noted above, customer departures from Pacific Power since the Net Removal Tariff has been in effect have had no meaningful impact on the Company or its customers.[193/] Columbia REA acknowledges, however, that this could change if a particularly large customer chose to disconnect, which could alter the balance between enabling competition and ensuring just and reasonable rates for remaining customers. Currently, however, this is merely a theoretical concern – no large customer has requested to permanently disconnect. If the Commission approves the Company's proposed changes in this proceeding, however, such a large customer would be subject to the unsupported and poorly reasoned charges in this one-size-fits-all tariff without any real consideration of what its actual costs to the Company's system would be, and would have little recourse but to comply. That customer could, of course, file a complaint at the Commission alleging that the charges in the tariff are unjust and unreasonable, but that customer may have a reasonable concern that such efforts would be unsuccessful, given that those very issues are being litigated and, if the Company's revisions are accepted, will be resolved in this docket.

77 It would be far more preferable for the Commission to leave this issue open and to treat the departure of a very large customer as the special circumstance that it is. At FERC, for instance, a utility is not allowed to claim stranded costs unless a customer is actually requesting

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193/ Supra at 31.



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to switch suppliers.[194] This allows the utility to determine the costs specifically attributable to that customer, rather than the ad hoc formula Pacific Power proposes to apply to all customers in a vacuum in this case.

78 The Commission could reject the Company's proposed revisions to the Net Removal Tariff in this proceeding on the basis that they are not supported by the record and/or unjustified as applied to all Pacific Power customers, but allow the Company to file a separate application at the time a customer large enough to be served under Schedule 48 or above elects to depart. This filing would still need to be analyzed for its legality, particularly with respect to rate discrimination and undue prejudice, but there could, at least in theory, be a rationale for finding that such a large customer is not similarly situated to the Company's other customers.[195] Pacific Power also would need to rework its Stranded Cost Recovery Fee to identify stranded costs that are actually verifiable with respect to that customer, and a rational and demonstrable period over which such costs could potentially be stranded. The Commission's evaluation of this fee also should consider the extent to which Pacific Power shareholders should bear responsibility for these costs if it is determined the Company acted imprudently by failing to make reasonable efforts to compete for its large customers.

79 Columbia REA recognizes that litigating these issues over again with respect to a subset of the Company's customers is an imperfect solution. However, it is far preferable to approving the illegal, unsupported, and over-reaching changes the Company proposes to the Net

[194] See Transmission Access Policy Study Group v. FERC, 225 F.3d 667, 701 (2000) (noting that "Order 888 awards stranded costs to no one" and that it requires the utility to demonstrate such costs at an evidentiary hearing at which the customer may rebut such evidence).
[195] Docket No. UE-161123, Order 06 ¶ 43.



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Removal Tariff in this proceeding. It is important – indeed, legally necessary – to get it right, and it cannot be helped that the Company failed to make its case to support its proposed changes in this proceeding.

2. Redundant Facilities are not a concern.

80 Pacific Power further justifies its revisions to the Net Removal Tariff on the basis that competition with Columbia REA has resulted in "redundant electric service," which the Company considers to be a "major safety concern."[196/] The Company identified one instance of redundant service and another that would have constituted redundant service had the Washington State Bureau of Labor and Industries ("L&I") approved the connection, which it did not.[197/]

81 Suffice it to say that, as the latter example indicates, adequate safeguards against redundant service already exist. L&I regulations incorporate by reference the National Electric Code ("NEC").[198/] The NEC specifies that "[a] building or other structure served shall be supplied by only one service …."[199/] Electrical installations are subject to inspection and violations are subject to civil penalties.[200/] Columbia REA, therefore, does not energize any electrical service without L&I approval.[201/]

## IV. CONCLUSION

82 For the foregoing reasons, Columbia REA recommends that the Commission reject the Company's proposed revisions to the Net Removal Tariff in their entirety. If the

196/ Exh. No.__(RBD-1T) at 11:16-19.
197/ Exh. No.__(BGM-3) at 30.
198/ WAC 296-46B-010(1)
199/ NEC Art. 230.2.
200/ WAC 296-46B-980, 296-46B-915(12)-(14)
201/ Exh. No.__(MPG-12X) at 3.



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Commission is to make any changes, they should be limited to requiring a departing customer to reimburse the Company for the net book value of dedicated facilities in the event those facilities do not need to be removed for safety or operational reasons.

Dated this 28th day of July, 2017.

Respectfully submitted,


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