

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PACIFIC POWER & LIGHT
COMPANY,

Respondent.

DOCKET UE-161204

**POST-HEARING BRIEF
OF PUBLIC COUNSEL**

July 28, 2017

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I. INTRODUCTION

1. In this case, Pacific Power and Light Company (Pacific) seeks to modify Tariff WN U-75, which is Pacific's permanent disconnection tariff. Pacific addresses its "localized problem," which warrants the Utilities and Transportation Commission's action, in its proposal to modify Rule 1, Rule 6, and Schedule 300.¹ In particular, Pacific proposes to provide two options to customers seeking to permanently disconnect to become another utility's customer: (1) the disconnecting customer may pay the actual cost to remove the facilities providing service to the customer, or (2) the disconnecting customer may purchase the facilities from Pacific at fair market value.² Pacific initially sought sole discretion in determining whether facilities would be purchased or removed.³ Additionally, Pacific added a new Stranded Cost Recovery Fee to be charged when customers seek to permanently disconnect.⁴ The Stranded Cost Recovery Fee collects the stranded costs customers leave behind when they discontinue service with Pacific and become customers of a competing utility.
2. On rebuttal, Pacific modified its proposal to incorporate and respond to many of the criticisms from the other parties, including the Public Counsel Unit of the Attorney General's Office (Public Counsel). Notably, Pacific added fees associated with its low-income assistance and conservation programs to its stranded cost calculation, and the Company also adopted Public

¹ Bolton, TR. 138:5-12. Pacific's witness Mr. Scott Bolton adopted the prefiled testimony of Mr. Dalley, who left the Company while this matter was still pending. For citations purposes, this brief refers to Mr. Bolton for transcript citations and Mr. Dalley for written testimony and exhibit references.

² Direct Testimony of R. Bryce Dalley, Exh. RBD-1T at 10:6 – 11:3.

³ Dalley, Exh. RBD-1T at 11:4-14.

⁴ Direct Testimony of Kathleen A. Kelly, Exh. KAK-1T at 5:16-18.

Counsel's recommendation to calculate stranded cost using a six year period.⁵ Further, Pacific agreed to remove costs related to meters, services, and line transformers from its stranded cost calculation to avoid double counting because the removal costs or facilities purchase price included those costs.⁶ Pacific addressed other concerns by including use of an independent appraiser to determine fair market value of facilities being purchased when the disconnecting customers dispute the Company's valuation.⁷ Pacific also agreed in its rebuttal testimony to timely provide estimates of costs within 60 days of a request to disconnect.⁸

3. Pacific carries the burden to establish that its proposed tariff is just and reasonable.⁹ Public Counsel's witness, Ms. Kathleen Kelly, performed a detailed analysis of Pacific's proposal, carefully evaluated the tariff terms, and offered an in-depth critique of the strengths and weaknesses.¹⁰ Where appropriate, Public Counsel offered alternatives and suggestions for additional detail.¹¹

4. Public Counsel is concerned that Pacific currently lacks a mechanism to capture the costs associated with disconnection when customers choose to access competition. Without the ability to capture the costs of customers leaving its system for competitive reasons, costs shift to Pacific's remaining customers. This cost shifting is inconsistent with the tenets of cost-causation and with the Commission's policy that customers who access competition should do so without

⁵ Dalley, Exh. RBD-5T at 9:20 – 10:6; Robert M. Meredith, Exh. RMM--1T at 15:3-22.

⁶ Meredith, Exh. RMM-1T at 7:19 – 8:20.

⁷ Dalley, Exh. RBD-5T at 8:19-20.

⁸ Dalley, Exh. RBD-5T at 7:11 – 8:5.

⁹ RCW 80.04.130(2); *WUTC v. Puget Sound Energy*, Dockets UE-151871 & UG-151872, Order 06, Final Order Rejecting Tariff ¶ 27 (Nov. 16, 2016) ("PSE Leasing Docket").

¹⁰ Kelly, Exh. KAK-1T.

¹¹ See Kelly, Exh. KAK-1T at 6:6-15.

harming the utility's remaining customers.¹² The Commission has recognized that inappropriate cost shifting between or among customers is contrary to the public interest, does not constitute fair competition, and should be avoided.¹³

5. Public Counsel supports the idea that the utility's customers who are accessing competition should do so in a way that does not harm the utility's remaining customers. Although the Commission expressed this principle when discussing the context of customers seeking to obtain energy from the market while remaining as distribution customers of the utility, the principle applies in the current case as well. Customers who would seek service under the permanent disconnection service would cease all customer relationship with Pacific and would do so because they are accessing competitive alternatives. Remaining customers in this situation should be held harmless for the competitive decisions of the disconnecting customers to the extent possible. Put another way, Pacific should collect the costs associated with permanent disconnection from the customers causing the costs to be incurred.

6. Importantly, variation in load caused by permanent disconnection is different than other variations in load that utilities may generally experience and that can shift costs among customers. Examples of ordinary variations in load include variations due to usage or migration of customers outside the service territory. For example, when a customer closes a business or leaves the service territory, the former customer's location is available to the utility to serve another customer. The infrastructure necessary to support a customer still exists and is available

¹² *In re Notice of Inquiry: Examining Regulation of Electric Utilities in the Face of Change in the Electric Industry*, Docket UE-940932, Policy Statement, Guiding Principles for Regulation in an Evolving Electricity Industry (Dec. 13, 1995). The Commission reaffirmed its 1995 policy statement in its recent order in *WUTC v. Puget Sound Energy*, Docket UE-161123, Order 06 Order Approving Settlement ¶ 91 (Jul. 13, 2017).

¹³ *Id.*

to serve a customer on Pacific's system.¹⁴ The potential for load growth is still there. When a customer seeks to permanently disconnect to become a customer of another utility, that customer remains in place, severing the potential for load growth for Pacific at that location, and the Company must find other areas of growth to replace the revenue support lost through the disconnection.¹⁵

7. Additionally, Public Counsel believes that the disconnection tariff should be neutral on competition. It should neither encourage nor discourage customers from disconnecting and seeking service from a competitive service provider. That customers may behave differently once fair costs are allocated to them is to be expected because customers will make rational choices based on their particular circumstances. The measure of whether the disconnection tariff is fair will be whether the costs are properly allocated and whether allocation to the disconnecting customers is in the public interest. The disconnection tariff should be fair to both the disconnecting customers (in that it is in the public interest, fair and reasonable, and consistent with cost-causation principles) and to the remaining customers (in that it holds remaining customers harmless with respect to the decisions of the disconnecting customers).

8. As initially filed, Public Counsel criticized certain aspects of Pacific's proposal, suggested areas that needed to be addressed before the proposal could be approved, and recommended rejection of the initial proposal.¹⁶ Public Counsel supports approval of Pacific's tariff revision as modified in its rebuttal filing because the modifications address the concerns

¹⁴ Bolton, TR. 177:2-15.

¹⁵ Bolton, TR. 127:18 – 128:12.

¹⁶ Kelly, Exh. KAK-1T at 6:4-15; 59:16 – 60:6.

raised in Ms. Kelly's testimony.¹⁷ Pacific's modified proposal offers a reasonable solution to an issue that merits Commission action.

II. ARGUMENT

A. Pacific's Proposed Tariff Captures Costs Caused by Departing Customers to Avoid Inappropriate Cost Shifting Among Customers

1. The history of Pacific's permanent disconnection tariff spans almost 20 years

9. Pacific first proposed its permanent disconnection tariff in Docket UE-001734. The permanent disconnection tariff as first proposed "would apply to customer requests to disconnect [Pacific's] facilities so that the customer may switch to another electric utility, and would impose on the requesting customer the actual removal costs incurred by [Pacific] to remove the facilities, less salvage value of the assets removed."¹⁸ Pacific modified its proposal to apply, *inter alia*, when a customer requests permanent disconnection, facilities would not be re-used at the customer's site, and removal is necessary for safety or operational reasons.¹⁹ The Commission identified the core issue as whether customers should bear removal costs when they sought to disconnect from Pacific's system and were causing the removal costs.²⁰

10. The Commission approved Pacific's modified proposal. It found that the costs to be recovered under the proposed tariff were not recovered under the Company's then-current rates. Pacific's rates were not designed to recover the costs associated with permanent disconnection, making the proposed tariff necessary if such costs were to be recovered.²¹ Significantly, the Commission found that the customer's request to disconnect and remove facilities imposed a

¹⁷ Kelly, TR. 312:2-9.

¹⁸ *WUTC v. PacifiCorp*, Docket UE-001734, Eighth Supplemental Order Rejecting Original Proposed Tariff Revision and Approving Modified Tariff Proposal ¶ 16 (Nov. 27, 2002).

¹⁹ Docket UE-001734, Eighth Supplemental Order ¶ 19.

²⁰ *Id.* ¶ 26.

²¹ *Id.* ¶ 31.

direct cost on Pacific.²² The Commission noted that it was “fair to require the requesting customer to be largely responsible for the costs” and that remaining customers should not be required to pay them because no system benefits existed that would be shared with those customers.²³

11. In its 2013 general rate case, Pacific proposed to modify its permanent disconnection tariff, but withdrew the proposal in favor of gathering additional data and undertaking additional analysis to demonstrate the costs of Schedule 300 and Rule 6 services.²⁴ Pacific argued that allowing it to withdraw its proposal and undertake the additional analysis with better data would enable it to better support future revisions to its tariffs.²⁵ While the Commission granted Pacific’s request to withdraw, it required Pacific to initiate a new docket and submit a report to allow the Commission to review the costs, terms, and conditions of service under Schedule 300 and Rule 6.²⁶ Pacific initiated Docket UE-132182, filed a report of its experience with permanent disconnection and removal of facilities, and did not seek any changes to the tariff.²⁷

12. In 2014, the Walla Walla Country Club filed a complaint with the Commission against Pacific seeking an order requiring the Company to disconnect its facilities under the terms of the

²² *Id.* ¶ 81.

²³ *Id.*

²⁴ *WUTC v. PacifiCorp*, Docket No. UE-130043, Order 04 Granting Motion to Withdraw Tariff Filing ¶ 8 (Jul. 29, 2013).

²⁵ Docket UE-130043, Order 04 ¶ 8.

²⁶ *Id.* ¶ 12.

²⁷ *See In Re: PacifiCorp’s Report on Permanent Disconnection and Removal of Facilities*, Docket UE-132182 (Nov. 27, 2013). Public Counsel is not asking the Commission to take official notice of the facts contained within the report filed in Docket UE-132182. The intent of referring to that docket is to note the existence of the docket and the report as part of the history of the tariff and nothing more. No changes to the tariff were pursued and no action was taken in that docket.

permanent disconnection tariff.²⁸ Pacific's current disconnection tariff proved to be inadequate to capture all the costs associated with permanent disconnection and removal of facilities.

Pacific now offers a solution to capture the cost of the disconnection (1) through either collecting the cost of removal or collecting the fair market value through a sale of the facilities to the departing customer, and (2) through collecting the stranded costs created by the departing customers. Pacific's proposal addresses the scope of permanent disconnection and removal of facilities the Company experiences and captures costs from the appropriate customers.

2. The proposed tariff changes strike a balance to address a long-standing issue that will not resolve itself

13. Pacific faces a unique situation because it lacks a negotiated service area agreement with its neighboring utility, Columbia Rural Electric Association (Columbia REA), affecting its service area in Columbia and Walla Walla Counties.²⁹ The lack of a service area agreement provides an opportunity for competition around the edges of the service territories, and in some circumstances, in overlapping locations. This allows certain customers the ability to choose one utility provider over the other.³⁰ Some of Pacific's customers have chosen to disconnect and become customers of Columbia REA over the last 18 years, causing lost revenue for Pacific.³¹

14. Competition between utilities around the edges of service territories is precisely the type of competition that Washington statutes anticipate, and utilities may enter into service territory agreements with one another to govern boundaries and territory extension.³² Such agreements,

²⁸ *Walla Walla Country Club v. Pacific Power & Light Company*, Docket UE-143932, Order 05 Final Order Denying Petition For Review; Clarifying Order 03 (May 5, 2016).

²⁹ Dalley, Exh. RBD-1T at 2:18 – 3:8.

³⁰ Dalley, Exh. RBD-1T at 3:8-10; Exh. RBD-2.

³¹ Testimony of David J. Panco, Exh. DJP-1T at 14:1- 15:8; Exh. DJP-2; Dalley, Exh. RBD-3.

³² RCW 54.48.030.

however, are voluntary and are not required, even though they are favored and encouraged.³³

Evidence in the record indicates that Pacific and Columbia REA have long attempted to negotiate a service area agreement, but have been unsuccessful to date.³⁴ Because those parties have not been successful in their negotiations, remaining customers bear the risk of absorbing costs left behind when customers accessing competitive options leave Pacific's system. Those stranded costs would shift to the remaining customers absent a tariff that allows Pacific to collect the stranded costs from the disconnecting customers.

15. Calculating stranded costs in a case such as this one is difficult because there are no specific assets being retired or sold.³⁵ Instead, the stranded costs are related to the cost of serving the disconnecting customer less any market revenue that may contribute to recovering such fixed costs.³⁶ In this case, the Company's proposal on rebuttal generally balances the need for accuracy and the need for usability.³⁷ While absolute perfection has not been achieved in terms of identifying all costs for all customers with exact accuracy, imperfection is not a reason to reject the filing in this case.³⁸ As Ms. Kelly observed at hearing, "The situation...has been in place for a number of years and should be addressed."³⁹

16. Additionally, the existing tariff does not address all of the reasonably anticipated circumstances under which customers may seek to permanently disconnect and impose costs on Pacific. As demonstrated in the *Walla Walla* case, the current tariff excludes certain costs,

³³ RCW 54.48.020.

³⁴ Dalley, Exh. RBD-1T at 3:4-8.

³⁵ Kelly, Exh. KAK-1T at 17:8-9.

³⁶ Kelly, Exh. KAK-1T at 17:9-11.

³⁷ Kelly, TR. at 303:3 – 302:8.

³⁸ Kelly, TR. at 363:20 – 364:5.

³⁹ Kelly, TR. at 364:4-5.

leaving them uncollected from the cost-causing entity.⁴⁰ Without modification, those costs would remain outside the scope of the Company's tariffs and would continue to shift to remaining customers.

B. The Goal of the Proposed Tariff Should Not Be to Impact Competition Either Positively or Negatively

17. Undoubtedly, Pacific has a financial interest in retaining and serving its customers, and there is an opportunity cost in losing customers.⁴¹ From Public Counsel's perspective, the goal of Pacific's disconnection tariff should not be to discourage or encourage competition.⁴² Rather, the tariff should be designed to be neutral regarding competition. Neutrality, however, does not mean that the disconnection tariff will have no bearing on a customer's decision on whether to disconnect or remain a Pacific customer. Every customer will make the decision to access competitive options based on the information available, and the customer's particular circumstances will determine the impact of the information.

18. The regulator treats ratepayers and companies fairly and equitably when it allocates costs to those who have caused the costs to be incurred.⁴³ Assigning costs based on cost-causation is a well-recognized regulatory practice. The Commission has recognized that the goal of Pacific's permanent disconnection tariff is to assign costs to the cost-causers.⁴⁴ The Commission considered whether Pacific's permanent disconnection tariff unlawfully impacted competition when it was first proposed in Docket UE-001734. In that docket, the Commission determined

⁴⁰ Docket UE-143932, Order 05 ¶ 4.

⁴¹ Bolton, TR. at 106:24 – 107:14. This interest is not improper, but a natural and rational interest of a for-profit entity. It may or may not comport with the public interest, depending on the facts of the case.

⁴² Bolton, TR. at 128:15-19 (the goal is not to prevent migration, but to mitigate impact of migration when it occurs).

⁴³ 1 Leonard Saul Goodman, *The Process of Ratemaking* 380 (1998).

⁴⁴ Docket UE-001734, Eighth Supplemental Order ¶¶ 81-82.

that the permanent disconnection tariff did not unlawfully impact competition because the goal was to assign the real costs of customer decisions to the customers making the decisions.⁴⁵

19. Although paying costs to remove facilities and stranded costs may change the economics of the decision for a customer,⁴⁶ the economics and drivers of a customer's decision are also varied.⁴⁷ Changing the economics of a decision is not necessarily the same as eliminating or harming competition. If customers understood the true cost to disconnect, they may choose to stay connected, or they may choose to disconnect and take service from an alternate provider.

20. In particular, in this case, the stranded cost fee proposal is not intended to impede competition, but rather it is intended to ensure that remaining customers are treated fairly.⁴⁸ Using a stranded cost fee also fairly assigns costs to the cost-causers, who are in this case the disconnecting customers. The fee:

[i]s intended to ensure that the cost causation from the customer departing the system is borne by that customer electing to make that decision, so that that customer's revenue support for the system that remains in place to serve remaining customers makes those customers whole, so that those costs of the departing customer are not shifted to the remaining customers.⁴⁹

The modifications proposed in this docket continue to refine Pacific's permanent disconnection tariff.

⁴⁵ *Id.* ¶ 58.

⁴⁶ Kelly, TR. 310:8-13.

⁴⁷ Bolton, TR. 111:18-23.

⁴⁸ Kelly, TR. 310:1-7.

⁴⁹ Bolton, TR. 106:10-18.

C. Public Counsel's Analysis of Pacific's Proposal is Consistent with the Commission's Policies and the Theory of Cost Causation

21. As initially filed, Public Counsel had a number of concerns regarding Pacific's proposed modifications. Public Counsel recognized the issue that required resolution, but there were certain components to Pacific's initial filing that either needed to be corrected or added.⁵⁰ Because Pacific addressed many of Public Counsel's concerns, as well as those raised by other parties, Public Counsel believes the modifications to Tariff WA U-75 are in the public interest. As a result, Public Counsel recommends that the Commission approve modifications to Pacific's permanent disconnection tariff.

22. Because some Pacific customers are able to choose between utility service providers and can request permanent disconnection, there must be an orderly procedure under which disconnection can occur. This procedure must take into account the cost to disconnect, the stranded costs left by the departing customer, and the need for predictability and timeliness. The tariff revisions proposed in this proceeding offer a reasonably orderly procedure under which customers may request permanent disconnection while holding remaining customers harmless.

1. Purchase or payment of removal costs by disconnecting customer

23. Under Pacific's proposal, a customer may either purchase the facilities used to serve them at fair market value or pay the cost of removing and decommissioning the facilities. Upon notice from the customer of its desire to permanently disconnect, Pacific proposes to determine the fair market value of the facilities if the customer is to purchase them. If the customer disputes the fair market value determination, the customer may obtain a second determination from an

⁵⁰ See Kelly, Exh. KAK-1T.

independent appraiser chosen by the customer from a predetermined list. The Company proposes that the list be preapproved by the Commission.⁵¹ The lower of the two appraisals would govern.⁵² Public Counsel witness Ms. Kelly acknowledged the ability to bringing disputes to the Commission as well,⁵³ and at the hearing, Pacific noted that customers could “avail themselves of the customer complaint process at the Commission.”⁵⁴

24. If a purchase price cannot be negotiated or if there is a safety or operation condition requiring removal, the facilities will be decommissioned and removed.⁵⁵ Pacific will provide an estimate of the removal costs within 60 days if the customer elects not to purchase the facilities.⁵⁶ If the customer is disconnecting within five years of initial installation, the customer will receive a credit that will generally align with the Company’s line extension credit.⁵⁷ Because Pacific initially provides the customer with an estimate of the removal cost, Pacific will either refund any overpayment made by the departing customer or will issue a bill for any underpayment within 90 days after removal of the facilities to “true up” the actual cost charged to the customer.⁵⁸ The fees collected are allocated to remaining ratepayers to reflect the risk of ownership borne by the ratepayers; however, the Company’s proposal does not address whether it will accrue interest on the fees collected between the time of collection and the time the fees are credited to remaining customers.⁵⁹ Public Counsel recommends that if the fees are held in an

⁵¹ Dalley, Exh. RBD-5T at 8:6 – 9:4.

⁵² Bolton, TR. 216:1-2.

⁵³ Kelly, Exh. KAK-1T at 11:12-15.

⁵⁴ Bolton, TR. 230:9-11.

⁵⁵ Bolton, TR. 228:14 – 229:5.

⁵⁶ Dalley, Exh. RBD-5T at 7:10 – 8:5.

⁵⁷ Bolton, TR. 229:6-12; Dalley, Exh. RBD-5T at 6:8-15.

⁵⁸ Proposed Tariff WN U-75, Rule 6.3.

⁵⁹ Kelly, Exh. KAK-1T at 10:2-13.

interest-bearing account, the Company should return the balance, including the accrued interest, to customers.⁶⁰

25. The process proposed by Pacific in this case includes sufficient safeguards and certainty. However, to ensure effectiveness, the Commission should require Pacific to inform customers of their right to obtain a second valuation if they are dissatisfied with the Company's valuation of fair market value when facilities are purchased. If the Commission does not want to maintain the list of approved contractors,⁶¹ it could potentially identify parameters that appraisers must meet to qualify, including years of experience or certain levels of insurance. Additionally, in the event that Pacific and disconnecting customer are unable to agree on valuation, they should be able to bring their disagreement to the Commission before Pacific exercises the option to decommission and remove facilities, unless the customer agrees otherwise. These slight adjustments will ensure that the safeguards provided in Pacific's modifications have maximum effectiveness.

2. Collecting stranded costs from customers who seek permanent disconnection under the mechanism proposed is reasonable

26. Public Counsel witness Ms. Kelly identified certain shortcomings in Pacific's initial proposed stranded cost calculation. Pacific addressed those shortcomings in its rebuttal testimony.

27. Ms. Kelly evaluated the period used to calculate stranded costs for customers seeking to permanently disconnect. She determined that the appropriate period should be six years, not 10 as proposed by Pacific. Ms. Kelly considered the time it would take to address intermediate

⁶⁰ *In re: Avista Corp. for Authority to Sell Its Interest In the Coal-Fired Centralia Power Plant*, Docket No. UE-991255, UE-991262, UE-991409, Fourth Supplemental Order, Order Granting Reconsideration in Part; Providing Clarification; Denying Petition to Reopen ¶¶ 86, 125-126 (Apr. 21, 2000) (Customers are entitled to the time value of money).

⁶¹ Bolton, TR. 235:20 – 238:6.

contracts, make changes to power purchases, make changes in staffing, and implement customer supports.⁶² She considered the time that the Company would need to adjust its operations and the time customers would need to adjust their situation to accommodate any additional costs they were incurring.⁶³ In response to Ms. Kelly's testimony, Pacific adopted the six year period in its rebuttal testimony.⁶⁴

28. Pacific also adopted Public Counsel's recommendation to account for the impact of permanent disconnection on funding for the Company's low-income assistance and conservation programs. The purpose of the fee would be to cover the portion of the programs that would have been paid by the departing customer.⁶⁵ Pacific's calculation of the fee is reasonable in taking the net present value of each program's fee measured at six years. Assessing the charge as a one-time fee is appropriate because the customer is completely disconnecting from Pacific and there is no other opportunity to collect an on-going fee.⁶⁶

29. Moreover, without collecting for Pacific's low-income assistance program and conservation program, the stranded cost calculation is incomplete and those costs would shift to remaining customers.⁶⁷ The Commission balances the "pursuit of individual and state energy policy goals with the needs of PSE's other customers."⁶⁸

⁶² Kelly, TR. 303:10-22.

⁶³ Kelly, TR. 353:15 – 355:4.

⁶⁴ Meredith, Exh. RMM-1T at 5:1-18.

⁶⁵ Kelly, TR. 304:20-23.

⁶⁶ See *WUTC v. Puget Sound Energy*, Docket UE-161123, Order 06, Order Approving Settlement Agreement ¶¶ 91 – 92 (Jul. 13, 2017). Microsoft will pay its exit fee as a one-time payment. The exit fee, totaling over \$23 million, represents the stranded costs left by Microsoft when it ceases to one of Puget Sound Energy's core customers.

⁶⁷ Kelly, Exh. KAK-1T at 53:7 – 57:6.

⁶⁸ Docket UE-161123, Order 06 ¶ 91.

30. Public Counsel proposes that Pacific use a multiplier in calculating the stranded cost for residential customers and to cap the stranded cost for residential customers.⁶⁹ Ms. Kelly proposed to use a multiplier of 3.0 percent, while Pacific adopted a slightly lower multiplier of 2.63 percent for residential customers in its rebuttal testimony.⁷⁰ Public Counsel does not object to the lower multiplier so long as an appropriate multiplier is used to reflect variations in residential load and the stranded cost calculation for residential customers is capped. It is appropriate to cap residential customer stranded cost fees because residential customers tend to be lower-margin customers, their stranded costs tend to be much lower per customer, and they tend to have fewer financial resources individually than larger customers do.

D. The Regulatory Compact is a Key Regulatory Concept, not a “Mere Metaphor”

31. The regulatory compact is the most basic underpinning of utility regulation and consists of the understanding between utilities and regulators that (1) governmental oversight is necessary, (2) the utility has an obligation to serve all customers in its service territory with safe and reliable service, and (3) the regulator will set rates that will compensate the utility for meeting its obligation.⁷¹

32. The regulator’s commitment to regulate in the public interest and set rates such that the utility has a reasonable opportunity to earn a fair return in exchange for the obligation to serve is crucial to regulation functioning in the manner intended. Without the opportunity to earn a fair return, there would be no obligation to serve. And, without an obligation to serve, customers

⁶⁹ Kelly, TR 361:3-18; Kelly, Exh. KAK-1T at 45:16-18.

⁷⁰ Dalley, RBD-5T at 10:21 – 11:4.

⁷¹ *In re Puget Sound Energy for an Accounting Order Approving the Allocation of Proceeds of the Sale of Certain Assets to Public Utility District #1 of Jefferson County*, Docket UE-132027, Order 04 Granting, in Part, and Denying, in Part, Petition for Accounting Order ¶ 15 (Sept. 11, 2014).

would be left without essential services. It is because utility services are essential and utilities are natural monopolies, that utilities are subject to regulation.

33. The ability to charge an exit fee to capture stranded costs is consistent with the regulatory compact. The exit fee prevents inappropriate cost shifting to remaining customers and it allows the utility to cover its costs. The magnitude of cost shifting is more severe when the customer leaving the system is a higher-margin customer.⁷² Therefore, proactive solutions are required to support and maintain the regulatory compact.

III. CONCLUSION

34. As noted by Public Counsel witness Ms. Kelly, “there is the regulatory commission and the regulatory approach to making sure that public utilities play by the rules.”⁷³ In this case, Pacific accumulates the lessons learned over the last 18 years of administering permanent disconnections under Tariff WN U-75 and presents a proposal designed to capture the costs incurred when customers access competitive options. The purpose of collecting the costs from the departing customers is to assign the costs to the cost-causers and to hold the remaining customers harmless for the departing customers’ competitive decisions. The modifications are reasonable and in the public interest, both in design and in purpose.

35. Public Counsel respectfully urges the Commission to reject recommendations to maintain the status quo. Often, maintaining the status quo can be a reasonable outcome. In this case, however, the status quo is unlikely to improve over time, but instead conditions will likely become more clearly problematic. The issues stemming from Pacific’s inability to collect the

⁷² Bolton, TR. 176:10-15.

⁷³ Kelly, TR. 309:17-19.

costs of disconnecting customers who seek to become customers of another utility should be reasonably and even-handedly resolved proactively. Ms. Kelly's analysis indicates that Pacific's proposal in its rebuttal testimony provides a reasonable solution in this case.

36. As a result, Public Counsel recommends that the Commission approve Pacific's modifications to Rule 1, Rule 6, and Schedule 300 of Tariff WN U-75 as described in the Company's rebuttal testimony and exhibits. Additionally, the Commission should include additional terms and conditions as described in this brief above.

37. DATED this 28th day of July, 2017.

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