BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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

PACIFIC POWER & LIGHT COMPANY'S REPLY BRIEF

August 17, 2017

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I. INTRODUCTION

1 In this proceeding, Pacific Power & Light Company (Pacific Power or Company), a division of PacifiCorp, seeks reasonable and balanced revisions to tariff rules governing permanent customer disconnections. Public Counsel strongly supports the proposed rule changes. The Energy Project recognizes that Pacific Power's proposal is a "reasonable and necessary response to potential cost shifting."[1] The Energy Project further recognizes that Pacific Power's proposal is consistent with Washington regulatory policy.[2]

2 As set forth in Pacific Power's Initial Brief, Columbia Rural Electric Association (Columbia REA), Boise White Paper, LLC (Boise), and Yakama Power all oppose the Company's proposed rule changes out of economic self-interest. The Washington Utilities and Transportation Commission Staff (Staff) argue in favor of essentially abandoning the regulatory compact in favor of an unsupported interpretation of competition between a regulated electric utility and unregulated cooperative electric associations.

3 In championing "competition" between Pacific Power and unregulated cooperative electric associations, Staff declines to recognize not only the scope and import of the regulatory compact but also the significant stranded costs thrust on Pacific Power's remaining customers as a result of the practices of the unregulated cooperative electric associations and the economic decisions of departing customers. As noted by the Washington Utilities and Transportation Commission (Commission), the inappropriate shifting of costs between or among customers does not constitute fair and efficient

[1] Initial Post-Hearing Brief of The Energy Project, ¶¶ 11-12.

[2] *Id.*, ¶¶ 13-23.

competition, is contrary to the public interest, and should be avoided.[3]

4 By way of this proceeding, Pacific Power necessarily addresses a changing regulatory circumstance. Columbia REA has rapidly and aggressively expanded beyond the mandate of the Rural Electrification Act. Pacific Power's cumulative annual revenue loss now totals nearly $1.9 million. A Standard Cost Recovery Fee[4] is the best, if not the only, means of effectively addressing the inappropriate shifting of costs to Pacific Power's remaining customers.

5 The circumstance of a customer permanently disconnecting from Pacific Power's system is vastly different than other events such as an existing customer making efforts to conserve energy, replacing an electric appliance with a natural gas appliance, or installing a solar panel. The argument that application of a Standard Cost Recovery Fee amounts to "illegal" rate discrimination is contrary to the governing authorities and inconsistent with sound public policy.

6 The rule changes proposed by Pacific Power are intended to and are recognized by Public Counsel and The Energy Project to fairly balance the interests of Pacific Power's remaining customers as well as the interests of those who make the economic decision to permanently disconnect from Pacific Power's system and, in doing so, create stranded costs. The cumulative annual revenue loss resulting from the permanent disconnections that have occurred to date is far from immaterial. Every additional permanent disconnection only adds to the annual revenue loss figure. Obviously, absent adoption of the proposed rule changes, the permanent disconnection of a large industrial customer would leave a massive revenue

[3] Docket UE-940932, Policy Statement, Guiding Principles for Regulation in an Evolving Electric Industry (Dec. 11, 1995) (Policy Statement).

[4] For ease of reference throughout this brief, "Stranded Cost Recovery Fee" incorporates the Low Income Program Recovery Fee and the Demand Side Management Recovery Fee.

void and shift considerable costs to Pacific Power's remaining customers, all contrary to public policy and the Commission's unequivocal policies.

7 An appropriate cornerstone of Pacific Power's proposed rule changes is the most recent cost of service study that forms the basis of the Company's current Commission-approved rates. As consistently acknowledged by Pacific Power, the Stranded Cost Recovery Fee multipliers can be revisited in later general rate cases, as appropriate.

8 Boise's efforts in this docket may well signal an intent to pursue permanent disconnection. In that event, as noted by Public Counsel, utilizing a multiplier of annual revenue to determine the appropriate Stranded Cost Recovery Fee is an appropriate equalizer. In other words, if a large industrial customer (even one on Schedule 48T) seeks to permanently disconnect, it would pay a reasonable Stranded Cost Recovery Fee just as would be required of a residential customer who seeks to permanently disconnect from Pacific Power's system.

9 The Yakama Nation declines to recognize that all applicants for electric utility service are responsible for conforming to the rules and regulations on file with the Commission. Pacific Power consistently fulfills its obligation to serve customers residing on trust land. In exchange, those customers agree to be regulated by Pacific Power's filed tariffs and the rules of the Commission.

10 In short, the rule changes proposed by Pacific Power are reasonable, supported by the record, and in the public interest. While the proposed changes may not be aligned with the economic self-interests of Columbia REA, Boise or Yakama Power, they are aligned with the public interest and the Commission's long-standing policies.

II. WASHINGTON HAS NOT FORMALLY ADOPTED RETAIL COMPETITION

11 Distilled to its essence, the gravamen of Staff's, Columbia REA's, and Boise's arguments is that the proposed tariff changes are not fair, just, and reasonable because they would inhibit retail competition. According to Staff, Columbia REA, and Boise, the Commission should reject the proposed tariff to protect the competitive practices of unregulated utilities (at the expense of Pacific Power's customers). This position ignores the nature of Washington's retail electricity market and this Commission's precedent.

12 Over the past few decades, a number of states have deregulated their electricity markets.[5] Generally speaking, deregulated markets allow consumers to choose between competitive energy suppliers that offer alternative prices, plans, and customer service options.[6] States that have deregulated their electricity markets have done so by legislation.[7]

13 Despite Staff's misplaced protestations to the contrary, Washington has not adopted a deregulated, competitive retail electricity market. Washington considered legislation in 1997 that would have restructured electricity markets into a competitive model featuring mandated open access and unbundled electric utility service.[8] The Legislature declined to adopt a policy of deregulation for Washington, leaving in place the existing regulatory construct that, even in the absence of dedicated service territories, directs utilities to avoid duplicating facilities and encourages adjoining utilities to enter into service territory agreements.

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[5] *Hughes v. Talen Energy Marketing*, LLC, 136 S. Ct. 1288, 1292 (2016).

[6] While consumers can choose between electricity suppliers, the local utility remains solely responsible for distribution services, and distribution services remain subject to state utility commission regulation. *E.g.*, *Borough of Lansdale v. PP&L, Inc.*, 426 F. Supp.2d 264, 270 (E.D. Penn. 2006).

[7] See, e.g., California Assembly Bill 1890 (1996) (codified at Pub. Util. Code §§ 330-398.5).

[8] Senate Bill 5661, 55th Leg. (1997).

14 In the absence of legislatively-mandated unbundling, competition between retail utilities is economically inefficient (and presents safety concerns) because competing utilities are required to build out redundant distribution networks. Put another way, a utility that wants to compete for the customers of an established utility must compete as both an energy supplier and a distribution service provider. Washington law does not completely foreclose that outcome. However, the Legislature recognized that competition between regulated and unregulated utilities (and the necessary redundant facilities such competition entails) is economically inefficient and contrary to the public interest.[9]

15 In *Tanner Electric v. Puget Sound Power & Light*, the Washington Supreme Court expressly repudiated the notion that regulated utilities are subject to the unfettered competition inherent in deregulated markets:

> State law exempts public utilities from the sphere of free competition, and in fact discourages it. The regulation of public utilities by [the Commission] replaces competition and ensures that the public interest is protected.[10]

The Commission relied on the *Tanner* decision to reject the notion that Washington has a competitive retail electricity market. In Docket UE-001734, Pacific Power asked the Commission to approve its initial net removal tariff. The Commission approved the proposed tariff, and rejected Columbia REA's argument that the net removal tariff would inhibit competition.[11] The Commission concluded that RCW 54.48.020 "is an express legislative policy endorsing non-compete agreements between utilities" and that "[many] features of the existing public utility regulatory structure are inconsistent with [Columbia REA's] view that state policy favors competition among utilities. "[12] Supporting its

[9] RCW 54.48.020.

[10] *Tanner Elec. v. Puget Sound Power & Light*, 128 Wash.2d 656, 684 (1996).

[11] Docket UE-001734, Eight Supp'l Order at 8-9 (Nov. 27, 2002).

[12] *Id.*

conclusion, the Commission observed that "PacifiCorp is not free to change its tariffs at will, in order to meet perceived competitive market requirements."[13] "Instead," the Commission stated, "the Legislature has required that PacifiCorp's rates and services be subject to regulation by the Commission."[14]

16 In Docket UE-001734, the Commission also catalogued the ways in which the regulatory structure applicable to PacifiCorp was antithetical to a competitive market. More specifically, the Commission cited the following statutory provisions:

- RCW 80.28.080 ("PacifiCorp must charge the rates published in its tariffs");
- RCW 80.04.130 ("Tariffs cannot be changed except by following statutory notice procedures");
- RCW 80.28.090 ("PacifiCorp cannot unduly discriminate among customers or provide unreasonable preferences"); and
- RCW 80.28.110 ("PacifiCorp has a statutory obligation to serve all those reasonably entitled to service").[15]

17 These statutory provisions constrain PacifiCorp's ability to compete, and those constraints sharply contrast with the flexibility Columbia REA enjoys as an unregulated utility. Columbia REA's response to Bench Request No. 1 starkly illuminates one type of competitive flexibility it enjoys – assuming or reimbursing costs associated with Pacific Power customers who transition service to Columbia REA. The situation in the Walla Walla area cannot be believably characterized as fair "competition" since the two parties—Pacific Power and Columbia REA—are playing by completely different rules.

[13] *Id.*
[14] *Id.*
[15] *Id.*

18 As detailed in The Energy Project's opening brief, Commission policy recognizes that competition under Washington's regulatory structure should be discouraged:

> Non-economic bypass and the inappropriate shifting of costs of the electric system between or among customers do not constitute fair and efficient competition, are contrary to the public interest, and should be avoided. Customers of continuing monopoly service should benefit, or at least not be harmed, from choices made by customers with access to competitive options.[16]

That policy also states that "regulatory policy should seek flexible ways to reduce both shareholder and ratepayer exposure to potentially stranded costs."[17] The Commission recently reaffirmed the Policy Statement in the Microsoft special contracts case.[18]

19 Interestingly, Staff has taken a position on competition in this docket that squarely conflicts with the position it took in UE-001734. Here, Staff argues that Pacific Power and Columbia REA are in "open competition for the provision of electrical service in and around Walla Walla," and that Washington "public service law recognizes that utilities regulated by the Commission may compete with each other and with entities not regulated by the Commission."[19] In UE-001734, Staff (correctly) argued that the Legislature had not adopted a competitive model for regulating Pacific Power and other investor-owned utilities.[20] Staff (correctly) noted that "many features of the existing public utility structure are inconsistent with a requirement that the market be used to set rates for electric utilities."[21] Staff also (correctly) observed that the Legislature had considered, but rejected, a bill that would have

[16] Policy Statement at 2.

[17] *Id.*

[18] Docket UE-161123, Order 06 at ¶ 19 (June 13, 2017).

[19] Staff Brief at ¶¶ 13 and 42.

[20] Docket UE-001734, Staff Opening Brief at 15-16 (Oct. 11, 2002).

[21] *Id.* at 15.

deregulated Washington's electric market.[22] Finally, Staff (correctly) argued that "when the legislature wishes to replace public interest regulation with competition, it does so directly."[23] Staff has referenced no statutory or regulatory rational for the divergent and irreconcilable positions on competition it has taken in UE-001734 and this docket.

III. THE UNIQUE REGULATORY ENVIRONMENT IN WASHINGTON AND THE ACTIONS OF UNREGULATED COOPERATIVE ELECTRIC ASSOCIATIONS NECESSITATES THE STRANDED COST RECOVERY FEE AND OTHER RULE CHANGES PROPOSED BY THE COMPANY

20 Since 1999, Columbia REA has executed on a strategy to expand into Pacific Power's traditional service area and to entice Pacific Power's customers to permanently disconnect from the Pacific Power system.[24] For example, Columbia REA has built infrastructure near Pacific Power's largest industrial loads.[25] In this proceeding, Columbia REA offered absolutely no evidence to rebut Pacific Power's observation that the sole reason for customers switching from Pacific Power to Columbia REA is economic enticement.[26]

21 Citing to a 1995 Maine rule-making decision,[27] Staff incorrectly argues that recovery of stranded costs is only appropriate in the event of significant or abrupt regulatory changes. The Commission has authorized the recovery of stranded costs when warranted by market circumstances. In a case cited by both Staff and Columbia REA, *People's Org. for Wash. Energy v Utils. & Transp. Comm'n,*[28] the Washington Supreme Court upheld a Commission order allowing Puget Sound Energy to recover over $47 million in stranded costs resulting

[22] *Id.* at 15-16.
[23] *Id.* at 16 (citing statutory provisions providing for competition among telecommunication companies).
[24] RBD-1T 4:20-5:12; RBD-2.
[25] Bolton TR. 238:15-22.
[26] Bolton TR. 120:12-15; 159:9-15.
[27] Staff Initial Brief, ¶ 63.
[28] 104 Wn.2d 798 (1985).

from cancellation of a nuclear power plant project.[29] The Commission found that the initial investment was "prudent," however the project was cancelled due to changing market conditions brought on, in part, by conservation and load management.[30] In upholding the Commission's order to include seventy percent of the stranded costs in the utility's operating expenses, the Supreme Court held:

> Utilities such as Puget Power which operate under RCW Title 80 have statutory responsibilities in connection with assuring that an adequate supply of electric power will be available to their customers. Necessarily encompassed within a utility's obligation to serve is an attendant obligation to plan and make reasonable provisions for the continuing availability of its products or services in order to meet reasonably expected future demand, given the information the utility possesses and the options open to it. Under the law as set forth above, we conclude that the WUTC did not abuse the discretion reposed in it by law when it authorized inclusion of prudent costs connected with the abandoned Pebble Springs nuclear generation plant within operating expenses for rate setting purposes.[31]

22 The contention that Pacific Power should simply adjust to the "competitive market" to avoid stranded costs misconstrues the truly unique regulatory environment that exists in Washington. Pacific Power has an ongoing obligation to maintain adequate resources to provide service. In light of Pacific Power's duty to serve, even in circumstances in which the Company has reason to believe that a specific customer and corresponding load might leave the system for a different provider, as a prudent regulated utility, Pacific Power must continue to maintain the resources necessary to serve that load should the customer stay.

23 The "transitional" paradigm referred to by Staff and Columbia REA involves regulated utilities moving from a regulated market to an unregulated market *all at the same*

[29] *Id.* at 803.

[30] *Id.* at 801.

[31] *Id.* at 822.

time.[32] Pacific Power's proposed rule changes are intended to address the circumstance of an unregulated cooperative association aggressively encroaching on, and cherry picking customers from, the Company's traditional service area, which results in something other than an open and fair competitive environment.

24 Pacific Power's obligations to serve are wholly different than those of Columbia REA, an unregulated cooperative association. Columbia REA asserts, without citation to authority, that it too has a duty to serve.[33] This claim is misleading at best. Columbia REA may have a contractual duty to serve its members. But it is an unregulated cooperative association that is not subject to the Commission's jurisdiction and does not have a duty to serve the public at large under RCW 80.28.110.[34] Further, Columbia REA has no obligation whatsoever to offer service to new customers. Columbia REA is free to pick and choose where and when to expand service, new or existing, in its own traditional rural service area and in Pacific Power's traditional service area. If for some reason Columbia REA were to refuse or be unable to provide service to a new load in its traditional rural service area, Pacific Power (or another regulated utility) would be obligated to serve that load, subject to the reasonableness limitations of RCW 80.28.110. Columbia REA's attempt to equate its obligations to its members with Pacific Power's duty to serve the public is an attempt at false equivalency and obfuscates the inherent dysfunction of a "competitive market" served by a regulated utility and an unregulated cooperative association.

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[32] *See* Columbia REA Initial Brief, ¶ 42; Staff Initial Brief, ¶ 63.

[33] Columbia REA Initial Brief, ¶ 38.

[34] *See, e.g., Brannan v. PSE*, WUTC Docket No. UT-010988 (2002 Wash. UTC LEXIS 9) (Feb. 8, 2002), Order Clarifying Order Granting Motion for Summary Determination (Commission accepts reasoning of petitioners that electric cooperatives provide service only to its members and not to "all comers" and that the consensual relationship between coops and their members cannot be equated with the mandatory duty to serve of public service companies.)

25 Staff attempts to diminish Pacific Power's duty to serve by pointing to the "reasonableness" limitations set forth in RCW 80.28.110.[35] However, the "soften[ing]" of the duty, as characterized by Staff, merely relates to requiring adequate notice allowing sufficient time for the utility to serve a new connection or new load and the eligibility of a customer (the technical feasibility of the connection and the ability of the customer to pay). Obviously, the duty to serve does not extend to demands for immediate service, to serve unsafe facilities, or to serve customers who are demonstrably unable to pay for the service. The reasonableness limitations on the duty to serve do not allow Pacific Power to decline a reasonable request for service. They are wholly irrelevant to Pacific Power's proposed rule changes which necessarily address improper cost shifting to Pacific Power customers.

26 Columbia REA, Boise, and Staff also decline to acknowledge the significance of Pacific Power's cumulative annual revenue loss of nearly $1.9 million upon the Company's remaining customers. The revenue loss and associated cost shifting resulting from permanent disconnections are an ongoing problems that must be addressed.[36] Adoption of the proposed rule changes is the best means of doing so, in that they balance the interests of both departing customers and remaining customers. It is not an issue that is resolving itself over time through market forces because the competitive playing field is not level.[37] The market is not going to solve the problem of stranded costs and cost shifting to Pacific Power's remaining customers due to the competitive practices of an unregulated cooperative associations and the associated economic decisions of departing customers.

[35] Staff Initial Brief, ¶ 42.

[36] Bolton TR. 118:23-119:3.

[37] Bolton TR. 160:15-21.

27 Finally, this docket is certainly not the only place where the recovery of stranded costs and the avoidance of cost shifting are being considered. Columbia REA, Boise, and Staff repeatedly point to the installation of customer generation, such as rooftop solar, as being a source of stranded costs but not subject to the proposed permanent disconnection and removal tariff. This does not mean that it is being ignored – it is just not being addressed in this docket. California, Hawaii, and Nevada have recently grappled with this very issue and depending on how the market progresses in Washington, the Commission may very well need to address it separately as well.[38] As Staff and Columbia REA both acknowledge, many other jurisdictions, including FERC, are addressing the stranded costs that arise during the transition from a regulated to competitive market.[39] The recovery of stranded costs as a result of various market conditions is not new nor is it unique. What is unique in this situation is the challenge posed by an unregulated cooperative association aggressively encroaching on the traditional service territory of a regulated utility.

IV. THE PROPOSED STRANDED COST RECOVERY FEES CERTAINLY DO NOT RESULT IN "ILLEGAL" RATE DISCRIMINATION

28 Staff's argument that the proposed tariff revisions are "unduly discriminatory" lack merit.[40] The proposed tariff revisions are not discriminatory because they simply assign costs to the customers who are responsible for them. The Commission's regulatory structure,

[38] Meredith TR. 253:14-18; *See, e.g. CPUC Decision 16-010-004 Revisions to Net Metering Tariffs* (Jan. 28, 2016) (balancing promotion of rooftop solar with shifting costs to non-solar customers); Nevada AB405 (2017) (Revised Provisions to Nevada Net Metering Law); Order No. 33258, HPUC (Oct. 12, 2015).

[39] Bolton TR. 179:1-4 (recovery of stranded costs under Oregon's direct access program); *Initial Brief of Columbia REA* ¶ 42 (Citing recovery of stranded costs under Texas, Maryland and federal (FERC Order 888) law); *Initial Brief of Staff*, ¶ 63 (Recovery of stranded costs in Maine and under FERC Order 888); *see also* recovery of stranded or transition costs in Pennsylvania (28 Pa. Con. Stat. § 2808), Ohio (Ohio Rev. Code § 4928.39), Arizona (Ariz. Rev. Stat. § 30-805) and New Hampshire (N.H. Rev. Stat. § 374-F:4).

[40] *See* Staff' Brief at ¶¶ 71-72.

adopted in 1978, requires Pacific Power to adopt cost-based electric rates.[41] Furthermore, the Commission's policy unambiguously states that utility "service terms and pricing options should reflect customer needs, as well as the *reasonable costs and consequences of those options*."[42] The proposed tariff revisions are consistent with these policies, because they (1) place responsibility for costs on customers who voluntarily elect to leave the system for another service provider; and (2) protect remaining customers from the consequences of a departing customer's voluntary service decision. Departing customers are not treated differently under the tariff—they are all held accountable for the costs associated with their decisions. And remaining customers are not treated differently—they are protected from unfair cost shifting.

29 Staff mistakenly compares customer defections to another utility with other instances where load changes (energy efficiency, fuel switching, etc.). Those types of load changes and cost shifting are inherent in a utility system, but cost shifting resulting from customer departures for another utility (for both energy and distribution services) is not a normal feature of monopoly utility service. The proposed tariff is not, as Staff suggests, a "slippery slope" whereby Pacific Power could seek to recover stranded costs with energy efficiency or distributed generation.[43] The proposed tariff is narrowly tailored to address a unique and focused problem—cost shifts associated with customer departures to a competing utility.

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[41] *See In Re Investigation Into Rate Design and Rate Structure for Electrical Service of Pacific Power & Light Co., et al.*, Cause No. U-78-05, Commission Decision and Order (October 29, 1980) at pages 4-5, and at page 24, Ordering 7 1. In this order, the Commission ruled that electric rates should reflect the cost of service "to the maximum extent practicable."

[42] Policy Statement at 2 (emphasis added).

[43] Staff Brief at ¶ 72.

V. THE COST SHIFTING THAT HAS OCCURRED TO DATE AND THAT WHICH WOULD RESULT FROM ADDITIONAL PERMANENT DISCONNECTIONS IS MATERIAL TO PACIFIC POWER'S REMAINING CUSTOMERS

30 During the hearing, numerous witnesses testified that Pacific Power's proposed stranded cost recovery fee is not intended to impede competition. Rather, it is intended to ensure that Pacific Power's remaining customers are treated fairly.[44] Revenue loss of roughly $1.9 million each year is very material to Pacific Power's remaining customers.[45]

31 The immateriality arguments offered by Boise, Columbia REA, and Staff are perplexing in light of the significant annual revenue loss resulting from just those permanent disconnections that have occurred to date. Each and every additional permanent disconnection of a Pacific Power customer only increases the revenue loss figure and improperly shifts additional costs to Pacific Power's remaining customers. The arguments are incredible when you consider the potential impact of a single large industrial (Schedule 48T) customer departing Pacific Power's system. The average, annual, total revenue for Pacific Power's Schedule 48T customer is roughly $27 million.[46] In the event of a request to permanently disconnect in the absence of the proposed rule changes, the resulting improper cost shifting to Pacific Power's remaining customers would give new definition to the term materiality.

32 In cooperation with Boise, Columbia REA argues that the Commission should allow the improper cost shifting to continue, leaving "this issue open" and require Pacific Power to file a separate "application" with each request by a customer to permanently disconnect from

[44] Kelly, TR. 310:5-7; Meredith, TR. 243:24-244:1.

[45] Columbia REA mistakenly argues that the nearly $1.9 million figure is the cumulative revenue loss over a 17-year period. (Initial Post-Hearing Brief, ¶14). In fact, that is the amount of revenue lost each year as a result of the permanent disconnections that have occurred to date.

[46] Exhibit RBD-4.

the Company's system.[47] Ms. Kelly made it perfectly clear that doing what Columbia REA, Boise, and Staff purpose – nothing – is simply not an option.[48]

33 The improper cost shifting to Pacific Power's remaining customers must be addressed. Litigating each and every request to permanently disconnect would be the epitome of inefficiency, causing a significant and unnecessary drain upon the Commission's resources. Remarkably, after arguing that each request for permanent disconnection should be separately litigated, Columbia REA state:

> Columbia REA recognizes that litigating these issues over again with respect to a subset of the Company's customers is an imperfect solution.[49]

Referring to the proffered "solution" as imperfect is certainly an understatement. Unlike Pacific Power's clearly defined fee structure, litigating stranded cost fees on a case-by-case basis would create uncertainty and impede the very type of customer choice that Columbia REA and Boise advocate for.

34 Pacific Power has proposed a sufficiently accurate, simple, understandable, and verifiable methodology to determine stranded costs.[50] Public Counsel supports Pacific Power's methodology for determining the Stranded Cost Recovery Fee, in light of the necessary accuracy, significant administrative expense associated with other methodologies, and the ability of customers to easily understand the economic ramifications of their voluntary decisions.[51]

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[47] Columbia REA Initial Post-Hearing Brief, ¶¶77-78.

[48] Kelly TR. 364:2-5.

[49] Columbia REA Initial Post-Hearing Brief, ¶¶77-78.

[50] RMM-1T 2:17-20.

[51] KAK-1T 27:15 and Kelly TR. 347:18-21.

VI. THE PROPOSED STRANDED COST RECOVERY FEE IS APPROPRIATELY TIED TO THE COST OF SERVICE STUDY UNDERLYING THE COMPANY'S CURRENT COMMISSION- APPROVED RATES, ADJUSTED BY A FREED-UP ENERGY VALUE BASED UPON THE "GRID" STUDY

35 Boise repeatedly claims in its Initial Brief that the proposed rule changes are based on a "stale cost of service study." The referenced cost of service study was presented in the Company's last general rate case in Docket UE-140762.[52] Columbia REA joins in the argument, by reference in its Initial Brief.[53]

36 The Stranded Cost Recovery Fee proposed by Pacific Power is, in part, based on data underlying its current Commission-approved rates. Boise fails to put forth any argument as to why aligning the proposed Stranded Cost Recovery Fee with the rate structure currently in place is in any way unreasonable.

37 Boise declines to recognize the Company's calculation of the value of freed-up energy utilizing the more recent Generation and Regulation Initiative Decision Tool (GRID) production cast model from its December 30, 2016 filing – Docket UE-161312.[54] As noted by Mr. Meredith, the alternative calculation to value freed-up energy uses recent data and better estimates the incremental impact from a permanent disconnection of load. With the modifications to its proposal set forth in the rebuttal testimony of Mr. Meredith, including use of the GRID study, Public Counsel recommends that the Company's proposal be approved by the Commission.

38 On behalf of Public Counsel, Ms. Kelly noted that doing another cost of service study is unnecessary and, given that it is labor and time-intensive, does not make sense.[55]

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[52] RMM-1T 7:10-11.
[53] Columbia REA Initial Brief, ¶43.
[54] RMM-1T 6:17-22.
[55] KAK-1T 38:7-8.

Additionally, Ms. Kelly noted that performing another cost of service study would not change the essential fact that fixed costs remain fixed and must be paid for by remaining customers after another customer leaves the system.[56]

39 Pacific Power readily acknowledges that the Stranded Cost Recovery Fee can and should be revisited in every later general rate case initiated by the Company. In that event, the Stranded Cost Recovery Fee will be linked to the most recent Commission-approved rates which, in turn, will be based upon the most recent cost of service study.

VII. THE PROPOSED STRANDED COST RECOVERY FEE MULTIPLIERS REASONABLY AND FAIRLY EQUALIZE THE TREATMENT OF ALL DEPARTING CUSTOMERS

40 Boise admits that Pacific Power would incur significant stranded costs should it permanently disconnect. In fact, Boise notes that it is Pacific Power's largest Washington customer. [57] It is reasonable to assume that Boise's efforts to undermine the proposed Stranded Cost Recovery Fee signal an intent to permanently disconnect from Pacific Power's system, which simply highlights the incongruity of Columbia REA's and Staff's arguments that the threat of stranded costs arising from permanent disconnections is insignificant.

41 Ms. Kelly testified that the recovery of stranded costs is "a device that's used to ensure that customers who remain are not subsidizing the costs of the customers who have departed, so it is an issue of fairness and equity." [58] Utilizing the proposed revenue multiplier, the Company would incur roughly $80 million in stranded costs should Boise permanently disconnect.[59] Absent adoption of the proposed rule changes *before* a Boise

[56] KAK-1T 38:9-12.
[57] Boise Initial Brief, ¶ 6.
[58] Kelly, TR. 297:3-6.
[59] Boise Initial Brief, ¶ 4.

disconnection, the results could be devastating to Pacific Power's remaining customers. Ms. Kelly specifically noted:

> [T]his is an issue that could continue to grow. It's an issue that should be addressed so that the remaining customers are no longer hurt by some of the departures. So it is a long term issue that hasn't been addressed sufficiently.[60]

The revenue multipliers proposed by Pacific Power to determine the appropriate Stranded Cost Recovery Fee reasonably and fairly equalize the treatment of all departing customers. As Mr. Meredith testified, the stranded cost recovery fee is not a "one-size-fits-all" charge but one that "would vary depending upon the cost recovery that's inherent within particular customers."[61]

42 It makes no sense to wait until the harm has already occurred to adopt the proposed rule changes – it would do no good. That is why it is imperative to adopt the rule changes proposed by the Company and, in doing so, put in place the mechanism to protect Pacific Power's remaining customers.

VIII. PACIFIC POWER HAS A REASONABLE EXPECTATION OF CONTINUING TO SERVE CUSTOMERS ON TRUST LAND

43 Yakama Power contends that Pacific Power's proposal "fails to take into consideration the different rights and obligations it has depending on whether it is operating within or without Reservation Boundaries." Yakama Power also asserts that Pacific Power's continued service to customers on the Reservation requires the approval of the BIA. These assertions ignore the fact that the relationship between Pacific Power and the customers it serves is based on contract principles, regardless of location, and binds each customer

[60] Kelly TR. 319:20-24.

[61] Meredith, TR. 280:8-11.

without regard to the legal status of the customer's real property – fee or trust. Pacific Power's agreement to provide power to a customer is not subject to the approval of the Bureau of Indian Affairs (BIA).

44 Indians on trust land on the reservation have the freedom to consent to state jurisdiction by contract, including rights-of-ways and service line agreements governed by 25 C.F.R. Part 169. When individuals residing on the Yakama Reservation applied for service from Pacific Power and satisfied the Commission rules and regulations, the Company was required to supply the service. The conditions under which Pacific Power provides that service on the Yakama Reservation are the same as those under which Pacific Power provides service to customers or facilities that are not located on trust property, namely pursuant to Pacific Power's filed tariffs and the rules of the Washington Utilities and Transportation Commission.

45 It is well established that Indian tribes and tribal enterprises have the freedom to consent to state jurisdiction by contract.[62] Similarly, individual Indians on trust land on a reservation can consent to the jurisdiction of the state by contract.[63] Indeed, the benefits of state enforcement of contracts between Indians and non-Indians apply to both tribal members and nonmembers,[64] and the failure to enforce such contracts on the reservation would detrimentally impact reservation residents because they would "have difficulty finding

[62] *Outsource Servs. Mgmt., LLC v. Nooksack Bus. Corp.*, 181 Wn.2d 272, 281, 333 P.3d 380, 384 (2014) (tribe can consent to state court jurisdiction by contract for claims related to that contract).

[63] *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 n.14, 105 S. Ct. 2174, 2182, 85 L.Ed.2d 528, 540 (1985) (stipulation of commercial parties in advance to submit their controversies for resolution within a particular jurisdiction).

[64] *Maxa v. Yakima Petroleum*, 83 Wn. App. 763, 769, 924 P.2d 372, 375 (1996).

anyone willing to risk his funds in unenforceable obligations. Such a rule would chill tribal commercial and entrepreneurial business."[65]

46 By applying for service from Pacific Power, customers on trust land agreed to be regulated by Pacific Power's filed tariffs and the rules of the Commission, and consented to the jurisdiction of the Commission and its authority to set the Company's tariffs. State civil adjudicatory authority over matters involving tribal members is not specifically preempted by federal law.[66]

47 In addition, Pacific Power's assets on Indian trust land are not fixtures, and therefore are not trust assets subject to the BIA's jurisdiction. As previously noted, unlike the general common law of property, permanent improvements, or fixtures, on Indian trust land do not take on the characteristics of the underlying trust property, and do not automatically become trust assets, but rather remain as personal property.[67] Disposition of those assets is governed by the rules and regulations of the Commission and the terms of the agreements between Pacific Power and its customers.

IX. CONCLUSION

48 Pacific Power's current net removal tariff does not adequately protect Pacific Power's customers from the cost shifting that results from the competitive practices of unregulated cooperative associations and the associated economic decisions of departing customers. The proposed rule changes effectively balance the interests of both departing and remaining customers. The circumstances necessitating the proposed rule changes cannot be solved through inaction and reliance upon what others mistakenly refer to as a "competitive

[65] *Id.*, at 769, quoting *Aircraft Equip. Co. v. Kiowa Tribe*, 921 P.2d 359, 362, 1996 OK 81 (Okla. 1996).
[66] *Maxa*, 83 Wn. App. at 767.
[67] 25 U.S.C. § 2201(7).

market." The proposed rule changes are consistent with the public interest articulated by the legislature and recognized by the Commission in its Policy Statement. Accordingly, Pacific Power respectively urges the Commission to adopt the proposed rule changes in their entirety.

Respectfully submitted this 17th day of August, 2017.

By: _____/s/_____

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