

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PACIFIC POWER & LIGHT
COMPANY,

Respondent.

DOCKET UE-161204

**REPLY BRIEF
OF PUBLIC COUNSEL**

August 17, 2017

TABLE OF CONTENTS

I. INTRODUCTION1

II. ARGUMENT1

 A. The Stranded Cost Calculation Mechanism Proposed in This Case is Reasonable
 and Fair.1

 B. The Proposed Tariff, Energy Efficiency Fees, and Low-Income Program Fees
 are Lawful. iii

III. CONCLUSION5

TABLE OF AUTHORITIES

Cases

WUTC v. Avista Corp., Docket UE-061411, Order 04 Order Granting Motion to Dismiss
(Dec. 26, 2006) 2

WUTC v. Puget Sound Energy, Docket UE-161123, Order 06 Order Approving
Settlement (Jul. 13, 2017) 2, 3, 4

I. INTRODUCTION

1. The Public Counsel Unit of the Attorney General's Office respectfully files this Reply Brief, pursuant to the procedural schedule in the above-captioned matter. Public Counsel responds to (1) Boise White Paper's arguments that the stranded cost fee as calculated under the proposed tariff is per se unreasonable and (2) Columbia Rural Electric Association's arguments that the proposed tariff, energy efficiency fees, and low-income fees are illegal. Public Counsel reaffirms the arguments presented in our opening brief, filed in this matter on July 28, 2017, and does not repeat them here for brevity. Public Counsel continues to recommend that the Commission approve the proposed tariff as presented in the Company's rebuttal case, along with modest modifications discussed in Public Counsel's opening brief.

2. It is important to reiterate that this case is not about preventing customers from accessing competitive options. Nor is this case about protecting one utility from another. The purpose of this case is to properly assign costs to ensure that customers who are accessing competitive options do so in a way that does not harm ratepayers who are not accessing competitive options. In order for Pacific Power to be able to collect the appropriate costs from its customers, it must have an appropriately designed tariff. Public Counsel believes that the proposed tariff modifications in this case are appropriate and necessary.

II. ARGUMENT

A. **The Stranded Cost Calculation Mechanism Proposed in This Case is Reasonable and Fair.**

3. Boise White Paper (Boise) argues that the Commission should reject Pacific's proposed permanent disconnection tariff because the stranded cost fee that would be applied to Boise, should it decide to leave and take service elsewhere, would total approximately \$80 million.

Boise argues that the potential \$80 million stranded cost fee is substantially more than the exit fee recently approved for Microsoft to cease being a core customer of Puget Sound Energy (PSE), and is thus facially unreasonable.¹

4. The Commission has recognized that it is not required to apply the same treatment to each regulated company, but rather the Commission may consider the unique circumstances of each utility it regulates.² In this case, Pacific has proposed a mechanism to calculate stranded costs. Boise's comparison between this case and the Microsoft / PSE case in Docket UE-161123 is inapposite and a comparison of dollar amounts does not generate useful equivalences. Pacific Power is substantially smaller than Puget Sound Energy, as Boise itself states on brief.³ As a result, the potential effect of Boise leaving Pacific's system may logically be more substantial than the impact of Microsoft leaving Puget's system. Additionally, Microsoft will maintain some customer relationship with Puget, through wheeling services and through customer locations that did not qualify to seek energy from alternate suppliers. This is lacking in Boise's case, should it decide to leave Pacific's system.

5. The Commission recognized in the Microsoft / PSE case that the "shift of a large business core customer to a non-core customer impacts all customers and the electric system that serves them."⁴ The shift is likely even more pronounced when the large business core customer

¹ Boise Brief at 2-7; *WUTC v. Puget Sound Energy*, Docket UE-161123, Order 06 Order Approving Settlement (Jul. 13, 2017).

² *WUTC v. Avista Corp.*, Docket UE-061411, Order 04 Order Granting Motion to Dismiss ¶¶ 18-19 (Dec. 26, 2006). ("Rules are standards that are applicable to all similarly situated persons. An adjudicative order, however, applies the generally applicable principles of rules and laws to resolve a specific dispute between parties. Absent some other factor, it is not binding on, or available to, others as a matter of right and the Commission need only explain its reasons for failing to act similarly in cases that appear to involve like circumstances.")

³ Boise's Brief ¶ 8. Boise indicates that PSE's current annual revenue is \$1.96 billion and Pacific's annual revenue is \$349 million in Washington.

⁴ Docket UE-161123, Order 06 ¶ 38.

completely leaves the system to receive all of its utility services elsewhere. That shift will be borne by remaining ratepayers, without a mechanism through which to assign the costs to the cost-causing entity. Under these circumstances, the cost-causing entity would be the customer that is leaving the system. The proposal in this case provides Pacific Power with a mechanism to collect stranded costs from the departing customer in a manner that is consistent with Commission policy.

B. The Proposed Tariff, Energy Efficiency Fees, and Low-Income Program Fees are Lawful.

6. Columbia Rural Electric Association (Columbia REA) argues that the proposed tariff, energy efficiency fees, and low-income program fees are unlawful and should be rejected.⁵ When evaluating a similar fee in the Microsoft / PSE case, the Commission determined that the transition fee was lawful and supported by an appropriate record. The Commission also evaluated whether the fee was consistent with the “public interest in protecting ratepayers from being responsible for the costs PSE will incur when Microsoft no longer purchases power from PSE.”⁶ Parties presented the Microsoft / PSE case on an all-party settlement, so the standards of review indeed are different from those in this case. However, the Commission must still determine whether the proposed tariff in this case is lawful and supported by an adequate record. Additionally, the same public interest of protecting remaining ratepayers that existed in the Microsoft / PSE case exists here. It is unclear how the transition fee in the Microsoft / PSE case is lawful when that fee was based on stranded costs caused by Microsoft’s departure, but the

⁵ Columbia REA Brief ¶¶ 14-18, 32-34.

⁶ Docket UE-161123, Order 06 ¶ 57.

stranded cost calculation in this case would not be deemed lawful in this case. The argument simply does not follow.

7. The same is true for the energy efficiency and low-income program fees proposed by Public Counsel witness Kathleen Kelly and adopted and developed by Pacific Power. The rates customers currently pay include contributions to Pacific's energy efficiency and low-income assistance programs. The fees associated with these two programs are designed to capture the stranded costs associated with them should customers leave to take service from another utility. The cost is relatively modest, while the impact will be to support long-standing state policies that favor energy efficiency and protecting low-income households from unnecessary service disconnections. The Commission "has long worked with regulated utilities to develop energy conservation and low-income assistance programs and to fund those programs through a portion of the rates all customers pay."⁷

8. Ms. Kelly pointed out that Pacific Power's initial stranded cost calculation failed to include analysis of costs associated with the conservation and low-income assistance programs. One material difference between this case and the Microsoft / PSE case is that Microsoft is going to continue to be a customer of PSE and could continue to contribute through rates to PSE's conservation and low-income assistance programs. Customers disconnecting under Pacific Power's permanent disconnection tariff would no longer have a customer relationship with Pacific Power. As a result, any effect given to the costs of Pacific Power's conservation and low-income assistance programs must be added to the stranded cost calculation. Collection of these costs is lawful and within the Commission's jurisdiction to approve.

⁷ *Id.* ¶ 62.

III. CONCLUSION

9. Public Counsel respectfully 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 Public Counsel's opening brief.

10. DATED this 17th day of August, 2017.

ROBERT FERGUSON
Attorney General



LISA W. GAFKEN
Assistant Attorney General
Public Counsel Unit Chief