

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	DOCKET UE-161204
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	YAKAMA POWER’S RESPONSE IN
)	OPPOSITION TO PACIFIC POWER’S
v.)	MOTION TO STRIKE PORTIONS OF
PACIFIC POWER & LIGHT COMPANY,)	BOISE’S REPLY BRIEF
)	
Respondent.)	
)	

I. INTRODUCTION

1 Pursuant to WAC § 480-07-375(4), Yakama Power files this response in opposition to Pacific Power & Light Company’s (“Pacific” or the “Company”) Motion to Strike Portions of Boise’s Reply Brief filed August 25, 2017 (“Motion to Strike”). As explained further below, Pacific’s assertions against the portion of Boise’s Reply Brief relating to testimony by Yakama Power mischaracterizes select portions of Yakama Power’s testimony, and ignores other contrary evidence Yakama Power has placed on the record in this proceeding. Consequentially, the Commission should deny Pacific relief for the portion of the Motion to Strike relating to testimony by Yakama Power.

II. RESPONSE

2 WAC § 480-07-375(4) provides, in relevant part, that “[a] party that opposes a written motion ... may file a written response within five business days after the motion is served”. Pacific served the Motion to Strike on August 25, 2017. Yakama Power is a party to this proceeding and files this response in opposition to the Motion to Strike within the time requirements of WAC § 480-07-375(4).

A. The Motion to Strike Mischaracterizes Yakama Power’s Testimony and Misstates Pacific’s Willingness to Voluntarily Negotiate the Transfer of its Facilities to Yakama Power.

3 Paragraphs 7 and 8 of the Motion to Strike ask the Commission to strike portions of Boise’s Reply Brief that reference Yakama Power’s response to a Staff data request (RW-4X) to support Boise’s position that, since Berkshire Hathaway acquired Pacific in 2006, the Company has employed adversarial management practices and a policy of non-responsiveness or active resistance to attempts by Yakama Power to acquire Pacific’s facilities within the boundaries of the Yakama Indian Reservation.¹ Pacific claims that “*Boise’s reprehensible contentions are contrary to Yakama Power’s own testimony, which demonstrates Pacific Power’s willingness and history of negotiating settlements for the transfer of facilities to Yakama Power.*”² (emphasis added). As described below, Yakama Power’s testimony does not support Pacific’s claim. To the contrary, when considered as a whole, Yakama Power’s testimony supports Boise’s position that since 2006 Pacific’s engagement with Yakama Power on substantive transactions has, with limited exception, been on an involuntary basis (i.e., under threat of condemnation).

¹ Reply Brief of Boise White Paper, L.L.C., p.4 at ¶¶ 7-8.

² Motion to Strike, p.3 at ¶ 7.

1. The Yakama Power Testimony Cited by Pacific to Support Its Claim Actually Proves Pacific Only Negotiates Under Threat of Condemnation and Refuses to Follow-up on Yakama Power’s Negotiation Requests.

4 To support its claim that Yakama Power’s testimony “demonstrates Pacific Power’s willingness and history of negotiating settlements for the transfer of facilities to Yakama Power” Pacific provides a footnote referencing two portions of Yakama Power’s Response Testimony (Wiseman RW-1T 5:9-23 and 6:8-10).³ For the Commission’s convenience, those portions of Yakama Power’s testimony referenced by Pacific are provided in their entirety:

RW-1T at 5, ll. 9-23 (emphasis added)

- Q. HOW HAS YAKAMA POWER’S UNIQUE SITUATION INFORMED INTERACTIONS WITH PACIFICORP RELEVANT TO THE TARIFF?
- A. After initial efforts to negotiate a voluntary sale of Pacific’s facilities on the Reservation did not bear fruit, the Yakama Nation exercised its sovereign condemnation powers to force a sale of certain PacifiCorp utility assets located on Trust Lands within the Yakama Nation. Ultimately, Yakama Power and Pacific reached a settlement which this Commission approved on January 25, 2006, Order No. 01, Docket No. UE-051840. Since that date, after Yakama Power’s efforts to negotiate a bilateral purchase of Pacific’s facilities were repeatedly rebuffed, the two utilities have settled another Tribal condemnation process involving PacifiCorp’s assets located on Trust Lands in or near the town of White Swan on the Reservation. The Yakama Nation has begun additional condemnation proceedings involving PacifiCorp’s assets located on Trust Lands in or near the town of Wapato on the Reservation. To date, we have not taken any PacifiCorp customers outside of a sale or condemnation settlement.

RW-1T at 6, ll. 3-10 (emphasis added)

- Q. CAN YAKAMA POWER ONLY ACQUIRE ANOTHER UTILITY’S ASSETS THROUGH TRIBAL CONDEMNATION?

³ Motion to Strike, p.3, fn. 4.

- A. No. For example, we recently completed a deal with Benton REA, funded by the U.S. Rural Utilities Service, to purchase all of Benton’s utility assets located within the boundaries of the Reservation over a three year time period. This large sale was approved by a vote of Benton’s customers. *We have had a number of statements by PacifiCorp about a willingness to sell, but then little to no follow up by PacifiCorp or responses to our requests for meetings or actions on such sales.*

5 Unfortunately for Pacific, reading the above-quoted Yakama Power testimony in context clearly demonstrates that since 2005 Pacific’s willingness to negotiate for the transfer of facilities to Yakama Power has been *involuntary*, i.e., after the Yakama Nation has exercised or threatened to exercise its sovereign condemnation power. Efforts to date by Yakama Power to engage in meaningful *voluntary* negotiations have only garnered a blanket “our assets are not for sale” response from Pacific.⁴ Yakama Power believes that, among other things, the determination that the “stranded cost” charges and net removal tariff fees Pacific proposes in this proceeding are “just and reasonable” cannot be made before Pacific demonstrates that it has attempted to mitigate any such potential stranded costs by undertaking meaningful efforts to negotiate a voluntary sale of all or a portion of its Yakama Reservation facilities to Yakama Power.

2. Pacific Has Ignored Yakama Power Testimony Supporting that Portion of Boise’s Reply Brief Pacific Requests Stricken.

6 In addition to having misrepresented Yakama Power’s testimony cited above, Pacific’s assertion that Yakama Power’s testimony demonstrates Pacific’s “willingness and history of negotiating settlements for the transfer of facilities to Yakama Power” ignores specific examples to the contrary contained elsewhere in the record. For example, Yakama Power provided

⁴ Wiseman RW-1T 6:8-10 (ironically, cited by Pacific for the opposite hypothesis).

testimony regarding the ongoing efforts of Tiin Ma Logging, a company owned by a Yakama Nation Tribal member and located on Trust Land, to disconnect from Pacific and receive service from Yakama Power.⁵ Yakama Power's attempt to negotiate a voluntary transfer of facilities with Pacific have been ignored for over eighteen months and Pacific did not respond to Yakama Power's testimony describing the Tiin Ma Logging situation. Eighteen months after Tiin Ma Logging sent Pacific a written disconnection request, Pacific refuses to disconnect the company and has not responded to Yakama Power's requests to negotiate a voluntary resolution.

7 In addition to describing the Tiin Ma Logging situation, Yakama Power has also provided testimony describing a recent voluntary transaction whereby over the next three years it will acquire all of Benton Rural Electric Association's assets within the boundaries of the Yakama Reservation.⁶ Pacific failed to file testimony or otherwise explain why it has not responded to repeated requests from Yakama Power to undertake similar negotiations to see if mutually-agreeable terms can be reached for the voluntary sale of Pacific's facilities located on the Yakama Reservation.

III. CONCLUSION

8 For the reasons set forth herein, Yakama Power respectfully requests the Commission deny those portions of the Motion to Strike that relate to Boise's use of testimony filed by

⁵ Wiseman, Exh. No. RW-1T at 8:10-21 and 9:1-14.

⁶ Wiseman, Exh. No. RW-1T at 6:5-8.

Yakama Power. Pacific's argument against those portions of Boise's Reply Brief misconstrues an incomplete selection of Yakama Power's relevant testimony, and entirely ignores other testimony filed by Yakama Power that undermines Pacific's argument. Rather than succumb to Pacific's attempt to use legal maneuvering to narrow the range of views available to the Commission during its deliberation, Yakama Power encourages the Commission to afford itself the opportunity to evaluate Pacific's proposed tariff revisions in light of the real-world context intervenors such as Yakama Power, Boise, and Columbia REA have provided.

Dated this 1st day of September, 2017.

Respectfully submitted,

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