Service Date: October 12, 2017

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PACIFIC POWER & LIGHT COMPANY, Respondent.	DOCKET UE-161204 ORDER 06 FINAL ORDER GRANTING, IN PART, MOTION TO STRIKE; REJECTING TARIFF SHEETS AS FILED; AUTHORIZING AND REQUIRING TARIFF FILINGS

SUMMARY

1 **INTRODUCTION.** On November 14, 2016, Pacific Power & Light Company (Pacific Power or Company) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effective Tariff WN U-75, Rule 1 – General Rules and Regulations; Rule 4 – Application for Electric Service; Rule 6 – Facilities on Customer's Premises; and Schedule 300 – Charges as Defined by the Rules and Regulations (collectively, Net Removal Tariff or NRT). The Company requests approval of modifications to its permanent disconnection and removal procedures for customers who disconnect from its system to receive electric service from another utility.

2 **PROPOSED TARIFF REVISIONS.** In its initial filing, Pacific Power proposes revisions to Rule 6 that would create two options for customers who choose to permanently disconnect from its system and obtain service from another provider. The Company also proposes revisions to Schedule 300 that would require departing customers to pay a stranded cost recovery fee (SCRF) in addition to the costs associated with the option the customer selects under Rule 6. In support of the proposed tariff revisions, the Company also added definitions to Rule 1 and made minor grammatical changes to Rule 4.

1. Disconnection Fee Options

3 The first option the Company proposes would allow the departing customer to pay the "Actual Cost of Removal"[1] of the facilities used to provide service to that customer based on an estimate prepared by the Company. The customer would pay the estimated amount − including the net book value (NBV) of the assets to be removed, less the salvage value of those assets − prior to permanent disconnection. Following removal of the facilities, the Company would issue a final invoice and either collect or refund the remaining balance.[2] While the current NRT permits Pacific Power to remove its facilities only when safety or operational reasons require removal, the Company proposes to remove this qualifying condition, which would grant it sole discretion to determine when customers must pay to have facilities removed as a condition of permanent disconnection.

4 The second option would allow the departing customer to purchase facilities, in lieu of removal, at fair market value (FMV). The customer would assume ownership of, and liability for, the facilities once purchased. The Company's current NRT contains no provision that allows customers to purchase facilities in lieu of removal.

5 Pacific Power also requests that it be granted sole discretion to determine whether facilities should be abandoned and decommissioned in place. If the Company makes such a determination, the departing customer would assume ownership and liability following the facilities' decommissioning.[3] The customer would pay no fee in connection with the Company's decision to decommission and abandon facilities, but would still be subject to the SCRF.

2. Stranded Cost Recovery Fee Calculation

6 Under the proposed changes to Schedule 300 – *Charges as Defined by the Rules and Regulation*, departing customers would be required to pay an SCRF prior to permanent disconnection. The Company states that the SCRF will "mitigate the financial impact to remaining customers when a customer opts to permanently disconnect and receive service from another service provider."[4] The Company bases its request for the calculation and recovery of stranded costs on the Federal Energy Regulatory

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[1] The proposed definition of "Actual Cost of Removal" set out in Rule 1 (Revision of Sheet No. R1.1) is "All removal costs, including, but not limited to labor costs, contractor costs, costs to investigate redundant services, and Net Book Value of Facilities less Salvage.*"*

[2] Bolton, Exh. No. RBD-1T at 10:11-20.

[3] *Id*. at 11:6-14.

[4] *Id*. at 13:10-12.

Commission's (FERC) decision in Order No. 888, which addresses retail wheeling stranded costs.[5]

7 Using the Company's inputs to calculate the SCRF, residential customers who permanently disconnect from Pacific Power would pay a flat fee of $6,153.[6] To account for varying system impacts arising from disparate loads among non-residential customers, Pacific Power proposes to use a revenue multiplier of 4.5 times the customer's annual revenue to calculate the SCRF for non-residential customers.[7] Any revenues collected would be placed in a deferral account and tracked by rate schedule in the Company's decoupling mechanism.

8 On rebuttal, Pacific Power made eight changes to its filing in response to other parties' testimony. Those changes include creating a mechanism for departing customers to dispute the Company's FMV assessment of customer-dedicated facilities, reducing the period over which the proposed SCRF is calculated from 10 years to six years, and creating a revenue multiplier for departing residential customers.[8] In instances when a departing customer paid for the installation of facilities used by Pacific Power to serve them within the last five years, the Company proposes to provide a credit based on current line extension policies and rates.

9 In response to testimony filed on behalf of the Public Counsel Unit of the Office of the Washington Attorney General (Public Counsel), Pacific Power also proposed to modify the SCRF to include charges to support the Company's low-income and energy efficiency programs.[9] Under the Company's modified proposal, departing residential customers would incur fees equal to 3 percent of their annual revenue to support the low-income program and 17 percent of their annual revenue to support energy efficiency programs. Departing non-residential customers would be assessed charges of 3 percent and 18 percent of their annual revenue for low-income and energy efficiency programs, respectively.

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[5] Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, 61 Fed. Reg. 21,540, 21653 (May 10, 1996) (to be codified at 18 C.F.R. Parts 35 and 385) (hereinafter "FERC Order 888").

[6] Bolton, Exh. No. RBD-1T at 15:18.

[7] *Id*. at 16:3-4.

[8] Bolton, Exh. No. RBD-5Tr at 1:16-2:15.

[9] *Id.* at 9:20-10:6.

10 Also in response to Public Counsel's testimony, the Company altered its proposed SCRF for departing residential customers from a flat rate to a multiplier of 2.63 times the customer's annual revenue. The Company bases this calculation on a six year net present value adjusted for the value of energy resources freed up for use by other customers or resale.[10]

11 **PROCEDURAL HISTORY.** On November 21, 2016, the Commission issued Order 01 in this docket, suspending the tariff revisions and allowing further investigation to determine if the proposed tariff filing is in the public interest.

12 On December 20, 2016, the Commission convened a prehearing conference to discuss procedural matters, including petitions to intervene filed by the Columbia Rural Electric Association (CREA), Yakama Power, Boise White Paper, L.L.C. (Boise), and The Energy Project (TEP).[11] Pacific Power objected to the petitions filed by CREA and Yakama Power, arguing that neither has a substantial interest in this proceeding because they are Pacific Power's competitors, not its customers.

13 On January 4, 2017, the Commission entered Order 04, Granting Petitions to Intervene. Order 04 found that CREA's and Yakama Power's participation "will assist the Commission with making a full and fair determination consistent with its duty to regulate in the public interest,"[12] defined their roles as they relate to the scope of the proceeding, and established an expectation of full compliance with discovery requests. To address the concerns about competitive harm, Order 04 prohibited CREA and Yakama Power from accessing any confidential information produced in this docket.[13]

14 On April 21, 2017, Commission staff (Staff), CREA, Boise, Public Counsel, and Yakama Power filed response testimony and exhibits opposing the Company's proposed tariff

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[10] *Id.* at 10:25-11:4.

[11] No party objected to the petitions to intervene filed by Boise and TEP. Based on the Commission's finding that Boise and TEP have a substantial interest in this proceeding, those petitions were granted.

[12] Order 04 ¶8.

[13] On January 13, 2017, CREA and Yakama Power filed a Joint Motion for Clarification of Order 04. The parties requested the Commission clarify that, to the extent that parties request confidential information from CREA and Yakama Power, Pacific Power should not be allowed to view it. On January 19, 2017, the Commission entered Order 05, Clarifying Order 04. Order 05 granted the Joint Motion and clarified that Order 04's prohibition on access to confidential information applied to all competitor parties in this proceeding, including Pacific Power.

revisions. On May 18, 2017, the Company filed rebuttal testimony and exhibits, while CREA and Boise filed cross-answering testimony and exhibits.

15 On June 13 and 14, 2017, the Commission conducted an evidentiary hearing before Chairman David Danner, Commissioner Ann Rendahl, Commissioner Jay Balasbas, and Administrative Law Judge Rayne Pearson. The Commission received into evidence the testimony and exhibits previously filed in this docket by the parties and previously marked for identification.

16 The Commission heard testimony from Scott Bolton[14] and Robert Meredith on behalf of Pacific Power, David Panco on behalf of Staff, Kathleen Kelly on behalf of Public Counsel, Michael Gorman on behalf of CREA, Bradley Mullins on behalf of Boise, and Ray Wiseman on behalf of Yakama Power.

17 On July 28, 2017, the parties filed initial post-hearing briefs. On August 17, the parties filed reply briefs.

18 On August 25, 2017, Pacific Power filed a Motion to Strike Portions of Boise's Reply Brief (Motion to Strike).

19 On August 28, 2017, Boise filed a Response to Pacific Power's Motion to Strike. On September 1, Yakama Power filed a Response in Opposition to Pacific Power's Motion to Strike.

20 **PARTY REPRESENTATIVES.** Dustin Till, Senior Counsel, Portland, Oregon, represents Pacific Power. Lisa W. Gafken, Assistant Attorney General, Seattle, Washington, represents Public Counsel. Christopher M. Casey and Jeffrey Roberson, Assistant Attorneys General, Olympia, Washington, represent Staff.[15] Jesse E. Cowell, Davison Van Cleve, P.C., Portland, Oregon, represents Boise. Simon J. ffitch, Attorney at Law, Bainbridge Island, Washington, represents TEP. Stanley M. Schwartz, Witherspoon Kelley, Spokane, Washington, and Tyler C. Pepple, Davison Van Cleve, P.C., Portland,

[14] On June 2, 2017, Pacific Power notified the parties that R. Bryce Dalley, who originally filed testimony and exhibits in this proceeding, had accepted a new job and was no longer employed by the Company. Scott Bolton adopted Mr. Dalley's testimony and exhibits and appeared at the evidentiary hearing in his place.

[15] In formal proceedings such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

Oregon, represent CREA. J.D. Williams, Williams Moses LP, Portland, Oregon, represents Yakama Power.

21 **COMMISSION DETERMINATIONS**. We reject Pacific Power's proposed tariff revisions and require the Company to file revised tariff pages consistent with the decisions in this Order. First, we require the Company to retain the provision in its current NRT that provides the Company may remove only those facilities that must be removed for safety or operational reasons upon permanent disconnection.

22 Second, we find the Company is entitled to recover only the NBV of any facilities sold to a departing customer upon permanent disconnection. Recovery of NBV will ensure the Company's shareholders receive the full return of their investment in those assets without creating a windfall that violates the principles of cost-based ratemaking. Based on the Company's obligation to serve, we also find that Pacific Power is entitled to recover stranded costs when customers permanently disconnect from its system. Rather than embed a particular methodology in the Company's tariff, we require Pacific Power to calculate stranded costs on a case-by-case basis.

23 Finally, we decline to carve out an exception for customers residing on Tribal Lands because doing so would result in rate discrimination, which violates RCW 80.28.100. We anticipate that using a case-by-case calculation for stranded costs will alleviate many of Yakama Power's concerns related to Pacific Power's expectation of continued service on Tribal Lands.

MEMORANDUM

1. Historical Background

24 Pacific Power was formed in 1910, and currently serves approximately 129,000 Washington residents in Yakima, Walla Walla, and Columbia Counties.[16] CREA is a member-owned cooperative association that was formed in 1940. CREA also provides electric service in rural areas of Columbia and Walla Walla Counties.[17] Yakama Power, formed in 2004, is a non-profit tribal electric utility wholly owned by Yakama Nation that provides service on the Yakama Reservation, a portion of which is located in Yakima County.[18]

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[16] *See* https://www.pacificpower.net/about/cf.html.

[17] *See* http://www.columbiarea.com/content/about-us.

[18] On January 25, 2006, the Commission approved a settlement agreement for the sale of certain Pacific Power assets located on tribal lands. *See Petition of Pacific Power and Light Company*

25 Although Washington does not grant exclusive service territories to electric utilities by statute, the legislature favors service territory agreements between public utilities and cooperative associations. RCW 54.48.010 provides as follows:

> The legislature hereby declares that the duplication of the electric lines and service of public utilities and cooperatives is uneconomical, may create unnecessary hazards to the public safety, discourages investment in permanent underground facilities, and is unattractive, and is thus contrary to the public interest and further declares that it is in the public interest for public utilities and cooperatives to enter into agreements for the purpose of avoiding or eliminating such duplication.

26 Until 1999, Pacific Power and CREA had an informal service territory agreement under which the utility with facilities closest to a customer would serve that customer. Pacific Power claims that, following a management change at CREA, the informal agreement dissolved. Both Pacific Power and CREA represent that they have been unable to successfully negotiate a long-term service territory agreement since 1999. According to Pacific Power, customers began requesting to permanently disconnect from the Company's system to obtain service from CREA in 1999.[19]

27 On November 9, 2000, Pacific Power sought to address the issue of assigning costs to customers leaving its system by filing proposed tariff revisions in Docket UE-001734 that would require any customer who permanently disconnected from its system to pay for the estimated net removal costs of those facilities that would no longer be used to serve that customer. The Commission suspended the Company's filing and set it for hearing. Both CREA and the Industrial Customers of Northwest Utilities (ICNU) sought and were granted intervention.

28 On July 27, 2001, Pacific Power requested suspension of the procedural schedule because the Company and CREA had reached an interim service territory agreement and had executed a Memorandum of Understanding that set forth the framework for negotiating a

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(PacifiCorp) for Order Authorizing Sale of Distribution Assets and Authorizing Accounting Treatment, Docket UE-051840, Order 01 (January 25, 2006). The settlement followed failed negotiation attempts, and only after Yakama Nation exercised its sovereign condemnation powers. Additional condemnation proceedings are still ongoing (*See* Wiseman, Exh. No. RW-1T at 5:20-22).

[19] Bolton, Exh. No. RBD-1T at 4:12-19.

permanent agreement.[20] The Commission approved the interim service territory agreement and appointed a mediator to facilitate negotiations. The parties were ultimately unable reach an agreement, and the Commission held an evidentiary hearing on the proposed tariff revisions.[21]

29 Pacific Power's current NRT, which governs permanent disconnections of service, was approved by the Commission on November 27, 2002, in Docket UE-001734.[22] The NRT allows Pacific Power to charge a customer the Company's net cost of removing facilities when: 1) a customer requests permanent disconnection of service, 2) the Company's facilities used to provide the service are not likely to be re-used at that location, and 3) removing the facilities is necessary for safety or operational reasons.

30 In Docket UE-130043, Pacific Power's 2012 general rate case filing[23] (2012 GRC), the Company proposed revisions to Schedule 300, *Charges as Defined by the Rules and Regulations* and Rule 6, *General Rules and Regulations.* The Company proposed the following changes: 1) replace the fixed Residential Service Removal Charge with actual costs for facilities removal; 2) describe the calculation of the costs of permanent disconnection and removal of facilities (based on estimated costs); and 3) increase reconnection fees. Public Counsel, the Energy Project, and CREA opposed the revisions and specifically objected to the use of estimated, rather than actual, cost data to support the proposed revisions.

31 On July 11, 2013, in response to the opposing parties' concerns, Pacific Power filed a Motion to Withdraw its proposed revisions to Schedule 300 and Rule 6 from its 2012 GRC. In its Motion, the Company acknowledged the lack of actual cost data to support the proposed NRT revisions and sought leave to withdraw the revisions in order to gather additional data and undertake further analysis to demonstrate those costs. CREA opposed Pacific Power's motion, arguing various procedural points. The Commission accepted CREA's argument that "a thoroughgoing review of Schedule 300 and Rule 6 is long

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[20] *WUTC v. PacifiCorp, d/b/a Pacific Power & Light*, Docket UE-001734, Eighth Supplemental Order Rejecting Original Proposed Tariff Revision and Approving Modified Tariff Proposal ¶9 (November 22, 2002).

[21] *Id.* at ¶¶10-12.

[22] The Commission ultimately approved a Modified Tariff Proposal submitted jointly by Pacific Power and Staff, which included two conditions. The first was a "sunset date" of December 31, 2005, which was not expressly set out as a condition in Order 08. Accordingly, the tariff remained in effect without the level of review and scrutiny recommended by Staff. Second, Staff recommended annual reporting for the data required to evaluate the tariff's operation.

[23] *WUTC* v. *PacifiCorp d/b/a Pacific Power & Light Company*, Docket UE-130043.

overdue."[24] Consequently, the Commission ordered the Company to file a report in a separate docket to include data showing the actual cost of each removal and address each of the points CREA raised.

32 On November 27, 2013, Pacific Power filed with the Commission in Docket UE-132182 its Report on Permanent Disconnection and Removal of Facilities (Report) as required by Order 04 in the 2012 GRC. The Report included a narrative on the history and evolution of the NRT, the Company's procedures and calculations for disconnections, and responses to CREA's recommendations, as required. Additionally, Pacific Power provided attachments containing historical data, photos of safety issues, and copies of the Annual Net Removal Reports filed with the Commission. CREA and Boise filed petitions to intervene on January 13, 2014, and February 5, 2014, respectively. Staff has not formally responded to or acknowledged the filing. To date, no further action has resulted from this docket.

33 On November 20, 2014, the Walla Walla Country Club (Club) filed with the Commission a formal complaint[25] against Pacific Power, alleging the Company violated a Commission Order and Rule 6 of the Company's Net Removal Tariff associated with permanent disconnection. The Club requested that the Commission compel Pacific Power to disconnect its facilities under the terms of Rule 6, and order damages or refund the difference between the monthly payments made to the Company and the rates the Club would have paid to CREA.

34 On January 15, 2016, the Commission entered Order 03, Initial Order (Order 03). In Order 03, the Commission found that Pacific Power failed to demonstrate that any safety or operational reasons existed that would require removal of its facilities on the Club's property and ordered the Company to disconnect the Club's service without removing the empty underground conduit and vaults at issue. Order 03 noted that the Club was not required to pay any disconnection charges based on the language in Rule 6, which provides:

> When Customer requests Permanent Disconnection of Company's facilities, Customer shall pay to Company 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. (Emphasis added).

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[24] *Id.*, Order 04 ¶10 (July 29, 2013).

[25] *The Walla Walla Country Club v. PacifiCorp d/b/a Pacific Power & Light Company*, Docket UE-143932.

35 On February 4, 2016, Pacific Power filed a Petition for Administrative Review of the Initial Order insofar as it granted relief to the Club. On May 5, 2016, the Commission issued Final Order 05 denying Petition for Review and Clarifying Order 03, upholding the requirement that Pacific Power permanently disconnect the Club's electric service without requiring the Club to pay the costs to remove the empty vaults and conduit.[26]

36 Following the entry of Order 05, the Company elected to remove the facilities located on Club property at its own expense. The Club and CREA preferred to avoid the business disruption and, consequently, the parties reached a negotiated settlement under which CREA purchased certain facilities and decommissioned remaining facilities in place. Ownership and liability for all remaining facilities was transferred to CREA.[27]

37 Subsequent to the resolution of the Walla Walla Country Club case, the Company initiated the instant proceeding to address conditions for disconnection and removal costs for future departing customers.

2. Parties' Positions

38 Pacific Power and Public Counsel recommend the Commission approve the Company's tariff revisions as modified on rebuttal. TEP is generally supportive of the Company's modified proposal.

39 Pacific Power argues that its current tariff fails to address the cost shifting that occurs when customers permanently disconnect from its system, and further fails to contemplate a commercially reasonable sale of the Company's facilities and subsequent transfer of liability. The Company contends that the proposed SCRF will appropriately ensure that remaining customers do not subsidize departing customers. Pacific Power claims that its goal is not to prevent competition or migration of customers, but to mitigate the impact to remaining customers when permanent disconnections occur.

40 Public Counsel argues that Pacific Power lacks a mechanism to capture the costs associated with disconnection when customers leave its system. Without the ability to

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[26] In a separate statement, Chairman Danner expressed his concerns about the underlying policy issues in the case. Specifically, the notion of the "regulatory compact," the absence of legally-defined service territories in Washington, the evolving landscape of utility operations and market conditions, and the expected cost shifting for the remaining customers resulting from "cherry-picked" large commercial or high-density customers from the traditional Pacific Power service territory.

[27] Bolton, Exh. No. RBD-1T at FN 3.

capture the costs of customers leaving, Public Counsel argues, costs shift to the Company's remaining customers, which is inconsistent with the tenets of cost-causation.

41 Public Counsel supports approval of Pacific Power's tariff revisions as modified on rebuttal because, it argues, the proposed changes strike a balance to address a long-standing issue that will not resolve itself. Although Public Counsel acknowledges that not all costs for all customers have been identified with exact accuracy, it asserts that imperfection is not a reason to reject the filing in this case.

42 TEP expresses general policy concerns about the impact of larger and "high-margin" customers who may leave the system, focusing on the issue of holding remaining customers, in particular low-income customers, harmless from the impacts of departing customers by protecting against unfair cost-shifts and by maintaining support for Pacific Power's low-income and energy efficiency programs. TEP contends that any SCRF approved should include support for Pacific Power's low-income and conservation programs.

43 Staff, Boise, CREA, and Yakama Power oppose the proposed tariff revisions. They argue that the Company has not demonstrated that the changes are necessary, and that the proposed revisions are neither just nor reasonable and would result in rate discrimination. If the Commission decides to approve an SCRF, Boise, CREA, and Staff recommend the fee be calculated on a case-by-case basis.

44 Staff recommends the Commission reject the proposed tariff revisions and encourage Pacific Power and CREA to continue boundary agreement negotiations. Staff witness Mr. Panco generally considers the tariff revisions to be unfair and unnecessary, and argues that the current NRT is adequate.

45 Staff argues that the Company has lost 68 of its approximately 129,000 Washington customers since 1999, representing a modest 0.5 percent of Pacific Power's reported Washington sales, with a noticeable shift from residential disconnections to commercial and industrial customers opting to leave the system.[28] Staff recommends the Company consider implementing banded rates to compete against CREA.[29]

46 Boise recommends the Commission reject the Company's proposal in its entirety. Boise witness Mr. Mullins builds his argument on three primary points: the expanded scope of

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[28] Panco, Exh. No. DJP-1T at 14:4-14; 17:10-12.

[29] Banded rates are permitted under RCW 80.28.075 and requirements established under WAC 480-80-112. "Banded rate" means a rate that has a minimum and maximum rate. Rates may be changed within the rate band upon such notice as the commission may order.

the NRT, the fee calculation methodologies, and unclear and ambiguous language in the revised tariff filing.

47 CREA's witness, Mr. Gorman, recommends the Commission reject the majority of Pacific Power's proposed tariff revisions, and provides alternative modifications to the remaining provisions. Mr. Gorman also offers reasons customers may choose to leave Pacific Power's service for an alternative supplier, including lower rates for industrial and large customers, customer service issues, or poor service quality.[30] Finally, Mr. Gorman recommends the Commission use the cost of service principle of cost-based rates to determine the reasonableness of the Company's proposed tariff revisions.

48 Yakama Power's witness, Mr. Wiseman, provides testimony on the unique issues and interplay between Yakama Power and Pacific Power. As a federally recognized tribe, Yakama Nation owns certain Tribal Lands held in trust by the U.S. Bureau of Indian Affairs (BIA). BIA regulates the use of Trust Land for utility purposes. Mr. Wiseman opines that the state has no regulatory jurisdiction on Tribal Land, and argues that adverse possession or prescriptive easements on Tribal Land are prohibited by BIA regulations. Additionally, he argues that Yakama Power may exercise its right to have Pacific Power's assets removed from Trust Lands with a 30-day notice under BIA regulations.

49 Despite these alternative means for Yakama Power to resolve utility asset acquisitions, Yakama Power recommends the Commission reject Pacific Power's proposed tariff revisions, or, in the alternative, provide departing customers within Reservation boundaries potentially differing cost recovery standards.

DISCUSSION AND DECISION

50 The parties presented detailed witness testimony and evidence on the following issues: 1) the relevance and application of the regulatory compact, 2) Pacific Power's proposed disconnection options, 3) the proposed SCRF, 4) whether the tariff applies to tribal customers, and 5) tariff definitions and language generally. We first resolve Pacific Power's Motion to Strike, then address the parties' respective positions on each issue in turn.[31]

[30] Gorman, Exh. No. MPG-1T at 4:21-6:8.
[31] Not all parties took positions on all issues.

Motion to Strike

51 **PACIFIC POWER.** In its Motion to Strike, Pacific Power argues that Boise's reply brief makes irrelevant, inflammatory, and false allegations that have no foundation in the record. Specifically, Pacific Power requests the Commission strike those portions of Boise's reply brief that reference Berkshire Hathaway Energy's management approach,[32] including allegations that the Company mistreats Native Americans. Pacific Power further requests the Commission strike references to Docket UE-121680 related to service reliability at Boise's Wallula Mill, as well as references to Pacific Power's filing in Oregon related to the Company's Integrated Resource Plan (Oregon Filing).

52 Pacific Power argues that Boise's request that the Commission take "official notice" of Docket UE-121680 and the Oregon Filing should be denied because the parties were not notified before or during the hearing of the Commission's intent to take official notice, and were therefore denied an opportunity to contest the admission of those dockets into the record.

53 **BOISE.** In its response, Boise contends that its arguments and citations are directly relevant to the central issue of which party is responsible for circumstances leading to disconnections and alleged stranded costs. Boise contends that Pacific Power's Motion is a classic example of "the pot calling the kettle black," and urges the Commission to refuse the Company's invitation to "serve as arbiter in a tit-for-tat mud-slinging competition."[33]

54 Boise further argues that briefing is a rhetorical exercise for framing and contextualizing evidence that is valuable only in the persuasive sense, not in an evidentiary sense. Accordingly, Boise claims, the Commission need only ignore such briefing it finds unpersuasive, irrelevant, or even inflammatory.

55 Boise also disputes Pacific Power's claims that it attempted to introduce new evidence in its reply brief, or that it requested the Commission take official notice of Docket UE-121680 and the Oregon Filing. Rather, Boise stated, "to the extent deemed helpful or necessary, Boise requests and the Commission could readily take official notice of these and similar assertions."[34] In sum, Boise contends that it cites to both uncontested

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[32] In February 2006, Pacific Power and its parent, PacifiCorp, was acquired by MidAmerican Energy Holdings Company (*See* Docket UE-051090 Order 07). MidAmerican Energy Holdings Company changed its name to Berkshire Hathaway Energy in 2014.

[33] Boise's Response to Pacific Power's Motion ¶3.

[34] Boise's Reply Brief ¶¶35-36.

evidence admitted in the record and contextual material in prior dockets, none of which is false or unfounded.

56 **YAKAMA POWER.** In its response, Yakama Power argues that Pacific Power's claims related to the portion of Boise's reply brief quoting testimony from Yakama Power mischaracterizes select portions of Yakama Power's testimony and ignores other contrary evidence that Yakama Power has placed on the record in this proceeding. Yakama Power requests the Commission deny those portions of the Motion to Strike that relate to Boise's use of Yakama Power's testimony.

57 **DECISION.** We grant Pacific Power's Motion to Strike as it relates to the portion of Boise's brief that makes inflammatory and unfounded allegations about the Company's mistreatment of Native Americans. Rather than disregard it, as Boise urges, we strike paragraph 8 in its entirety, which includes Boise's claim that Commission approval of the Company's proposed tariff revisions would perpetuate the "historical pattern of mistreatment of Native Americans in this state" by "tacit sanction."[35] The allegations in paragraph 8 are unnecessary, unsupported by the record, and do nothing to strengthen Boise's argument. Allowing this portion of the brief to stand − even if we were to afford it little or no weight – would constitute a "tacit sanction" of conduct we find unprofessional.

58 We note, however, that the tone and tenor of several parties' briefs have exceeded the bounds of zealous representation we believe are necessary for effective advocacy. The Commission expects that the parties will interact among themselves and with the bench while exhibiting the highest levels of respect and professionalism. Unfortunately, that expectation was not met by all parties in this case.

59 Finally, we decline to strike those portions of Boise's reply brief that reference Docket UE-121680 and the Oregon Filing. These portions were offered merely as persuasive argument to support Boise's contention that Pacific Power, not CREA, would be the driving force in the event Boise chose to leave the Company's system. Boise is entitled to advance that view, and we will afford it weight relative to the degree that we find it relevant to the matters before us.

Regulatory Compact

60 **PACIFIC POWER.** The Company argues that the regulatory compact is "a fundamental construct that governs traditional utility service,"[36] recognized in Washington as the

[35] *Id.* at ¶8.

[36] Pacific Power Initial Brief at ¶12.

product of intermingled rules, requirements, and laws. As such, the Company contends that it has a reasonable expectation of continuing to provide service to any and all qualified customers within its traditional service area. Pacific Power argues that the absence of a service area agreement with CREA stands in stark contrast to the regulatory compact.[37]

61 **STAFF.** Staff argues that the regulatory compact does not mandate approval of the proposed tariff revisions because neither the obligation to serve nor the right to compensatory rates is at issue in this docket. In his response testimony, Mr. Panco describes the regulatory compact as a "metaphor – it does not accurately describe regulated utility service in Washington or capture how that traditional model is evolving."[38] Staff contends that the regulatory compact is not a source of positive rights, and therefore, cannot compel the course of action that Pacific Power and Public Counsel recommend.

62 **PUBLIC COUNSEL.** Public Counsel argues that the regulatory compact is a key regulatory concept, not a "mere metaphor," as Staff contends. Public Counsel asserts that the regulatory compact is the most basic underpinning of utility regulation, consisting 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.[39] Public Counsel argues that the ability to charge an exit fee when a customer permanently disconnects from the Company's system is consistent with the regulatory compact.

63 **THE ENERGY PROJECT**. TEP argues that the regulatory compact applies and is relevant because Washington utilities operate as *de facto* monopolies, and territory issues are primarily resolved by service area agreements, which are encouraged by statute.[40]

64 **BOISE.** Boise alleges that Pacific Power's entire case is founded upon a misplaced and legally misguided construction of the regulatory compact. Boise argues that, in the Company's view, the regulatory compact should operate to create a practical exclusive service territory for Pacific Power in Washington. Boise disagrees with the Company's

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[37] Bolton, Exh. RBD-1T at 3:10-16.

[38] Panco, Exh. No. DJP-1T at 5:15-17.

[39] Public Counsel Initial Brief at ¶31.

[40] *See* The Energy Project Initial Brief.

conception of a regulatory compact that actually "governs" with legal effect, and "informs all … statutes, rules, and orders."[41]

65 Boise further contends that any credible notion of the regulatory compact must begin with the regulator's duty to protect the public interest and utility customers. Boise argues that Pacific Power's use of the regulatory compact to support its proposed SCRF, which would require more than $80 million upfront from Boise if Boise were to switch to another electricity provider, promotes the interest of the Company above customer or public interest.

66 **CREA.** CREA argues that the regulatory compact alone does not provide the Company with a reasonable expectation of continued service and does not justify recovering stranded costs from a departing customer. CREA does not deny the existence of the regulatory compact in Washington in some form, but disputes its relevance to the Company's proposed tariff revisions.

67 **YAKAMA POWER.** Yakama Power argues that Pacific Power's claim of a regulatory compact for service within the Reservation is without foundation with respect to any customer located on or served by facilities that use Indian Trust Lands unless Pacific Power can prove that it has sought and obtained all federal and Tribal authorizations required to provide service to such a customer. Yakama Power contends that Pacific Power failed to rebut its position that unique federal laws and tribal sovereignty rights applicable to service within the reservation fatally undermine the Company's regulatory compact theory.

68 **DECISION.** The regulatory compact begins with the premise that a regulated utility has an obligation to serve the public.[42] As we noted in *WUTC v. Puget Sound Power & Light Company*, a "utility possesses an unending obligation to provide service to anyone within the service territory of that utility who demands service in accordance with approved tariffs. [I]n order for the social duty to serve to be viable, the compact must also provide for a utility to recover expenses it prudently undertakes to meet that obligation."[43] We have also noted that, "in its most basic form, the regulatory compact is that utilities have an obligation to provide all customers in their territory with safe and reliable service in

[41] Boise Reply Brief at ¶90.

[42] *WUTC v. Puget Sound Power & Light Company*, Cause No. U-83-84, Order p.57- 58 (Sept. 28, 1984).

[43] *Id.*

return for the regulator's promise to set rates that will compensate the utility for the costs incurred to meet that obligation."[44]

69 The parties express a range of views about the existence and application of the "regulatory compact" in the context of this proceeding. We are neither persuaded by Staff's argument that that the regulatory compact is a mere "metaphor," nor by Boise's argument that it is largely comprised of "belief."[45] Rather, as Public Counsel aptly describes it, the regulatory compact is the "most basic underpinning of utility regulation"[46] and, as a threshold matter, it largely informs our discussion here.

70 While the parties correctly observe that the legislature has not granted electric utilities operating in Washington state the right to exclusive service territories, the Company's statutory obligation to serve requires it to plan for continued business operations and resource acquisitions as if every customer will continue to take service from its system. The Company's obligation to serve creates an expectation of continued service because the Company must make its business decisions operating under the assumption that it will continue to provide service to each home or business that has arranged to obtain power from the Company. When a customer decides to permanently disconnect from Pacific Power's system, capital investments and operating costs already incurred have been included in rates, resulting in remaining customers subsidizing the departing customer. According to the principles of cost-based rate-making, the customers responsible for creating those costs should be responsible for paying them.

71 We recognize that Pacific Power is faced with a unique situation. The Company operated for nearly 100 years before CREA began acquiring customers in Pacific Power's traditional service area. Ultimately, however, it is the Washington Legislature that must establish legally-defined service territories. As Chairman Danner noted in his separate statement in Order 05 in Docket UE-143942, "the lack of legally established service territories in Washington puts at risk the concept of a utility's obligation to serve."[47]

72 Despite the Commission's lack of authority to establish service territories, it is nevertheless incumbent upon us to enforce the regulatory compact, which ensures that regulated utilities are able to recover the prudently-incurred costs of providing statutorily

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[44] *In re Petition of Puget Sound Energy, Inc., 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 ¶15 (September 11, 2014).

[45] Boise Reply Brief at ¶45.

[46] Public Counsel Initial Brief at ¶31.

[47] Order 05, separate statement of Chairman Danner at ¶5.

required service, and to apply the principles of cost-based ratemaking, which assigns costs to customers who cause them. Here, we are tasked with ensuring that the Company is made whole and that remaining customers are held harmless when a customer chooses to permanently disconnect from Pacific Power's system. As discussed below, that can be accomplished by allowing the Company to recover either 1) its removal costs, or 2) the net book value of its facilities, and 3) any stranded costs, calculated on a case-by-case basis when a customer permanently disconnects from its system.

Disconnection Option One: Removal of Facilities

73 **PACIFIC POWER.** Under the Company's proposed tariff revisions, the departing customer may elect to pay the actual cost of removing facilities used to provide service to that customer. The facilities may be located on rights of way, private property, or any property used to provide the departing customer with service. The Company's proposed changes remove the existing requirement that the customer pay the actual cost of removal for "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."

74 The proposed changes also allow the Company to remove all customer-dedicated facilities, regardless of location. The current tariff does not permit the Company to charge customers for the removal of facilities located on public rights of way – other than a meter or service drop – or for the removal of area lights installed and billed for a minimum of three years.

75 **STAFF.** Staff argues that the Commission should reject the Company's proposed changes related to the removal of facilities and associated costs. Under the existing tariff, departing customers 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." Staff argues that the Commission approved this language because it placed the removal cost responsibility on the customer imposing the cost in a manner that is "cost-based, non-discriminatory, and similar to several provisions in existing tariffs."[48] As such, Staff recommends no change to this portion of the existing NRT.

76 **PUBLIC COUNSEL.** Ms. Kelly supports the Company's proposal to charge departing customers the actual cost of removal as a "valid approach for establishing the cost of a permanent customer departure rather than recovering that cost from remaining

[48] Staff's Initial Brief at ¶27, citing *WUTC v. PacifiCorp d/b/a Pacific Power & Light,* Docket UE-001734, Eighth Supplemental Order at ¶16 (November 27, 2002).

customers."[49] With respect to removal costs, Public Counsel argues that if the fees are held in an interest-bearing account, the Company should return the balance, including accrued interest, to its remaining customers.

77 **BOISE.** Boise's primary recommendation is that the Commission reject the Company's tariff revisions outright. In the event the revisions are approved, however, Mr. Mullins proposes the following modifications to the definition of "actual cost of removal":

- *Removing "all removal costs" from the definition of "actual costs of removal."* Mr. Mullins argues that it is typically not good practice to define a term with the same term being defined. As such, he recommends removing "all removal costs" because it is recursive and unnecessary.[50]

- *Removing "costs to investigate redundant services" from the definition of "actual costs of removal."* Mr. Mullins argues that it is unclear which services this term encompasses, and also unclear what incremental costs the Company might incur to perform such an investigation. If no redundant facilities are found, Boise contends that collecting such a fee would be unfair. Finally, because the Company has not demonstrated that redundant facilities are a problem, Boise argues that there is no basis to conclude that such investigations are reasonable.[51]

- *Removing "net book value of facilities less salvage" from the definition of "actual costs of removal."* Mr. Mullins recommends that, in the event the Commission approves revisions to the Company's tariff, NBV provisions be re-examined.[52] Specifically, Mr. Mullins opines that the Company's unrecovered investment in its facilities should be addressed in its line extension rules. Mr. Mullins further argues that the Company does not have a well-defined process to account for contributions in aid of construction or customer-supplied equipment. As such, Mr. Mullins argues that a customer who paid 100 percent of the cost for facilities used to serve it would still have to pay book value upon removal because the Company is unable to identify specific amounts contributed by the customer. Under Boise's proposal, only those amounts actually incurred and specifically funded by the

[49] Kelly, Exh. No. KAK-1T at 10:21-11:1.

[50] Mullins, Exh. No. BGM-1T at 14:27-15:2.

[51] *Id.* at 15:8-20.

[52] *Id.* at 16:1-5.

Company, such as line extension allowances, would be eligible for reimbursement based on NBV.[53]

- *Retaining current definitions of facilities that are subject to permanent disconnection and removal and rejecting the Company's proposal to add language allowing removal of facilities located on a public right of way.* Mr. Mullins argues that none of the changes to the definitions of facilities subject to permanent disconnection are sufficiently explained in the Company's testimony, and the Company offered no justification for removing the caveat that facilities will only be removed if required for safety or operational reasons.[54]

- *Adding a statement that "actual cost of removal" does not include the cost of removing facilities provided by the customer, including costs associated with trenches, backfill, compaction, conduit, and equipment foundations.* Mr. Mullins argues that requiring the customer to reimburse the Company for the NBV of these customer-supplied facilities would be inappropriate because it would allow the Company to recover costs that it did not incur.[55]

78 Boise contends that adopting the proposed revisions would materially increase future removal cost collections by granting the Company sole authority to remove and charge for facilities removal in all circumstances. Accordingly, Boise recommends the Commission retain those portions of the Company's tariff that permit it only to remove facilities when safety or operational reasons exist for doing so, and that the Company only be permitted to remove those facilities that were necessary to provide service to the customer.

79 **CREA.** In his responsive testimony, Mr. Gorman argues that the definition of "actual cost of removal" should reflect the net salvage costs Pacific Power has already recovered. Mr. Gorman claims that current depreciation rates include a component for salvage value expense, which provides recovery of the expected cost of removing those facilities at the end of their economic life. Accordingly, Mr. Gorman argues that the portion of the removal expense a customer has already paid through current depreciation rates should be deducted from removal costs.[56] CREA further contends that the Company has not

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[53] *Id.* at 17:8-21.

[54] *Id.* at 24:1-25:23.

[55] *Id.* at 18:3-8.

[56] Gorman, Exh. No. MPG-1T at 2:8-17.

justified its proposal to require departing customers to pay the costs of removal absent a safety or operational issue.

80 **YAKAMA POWER.** Yakama Power argues that removal costs should be limited to salvage value, and recommends that departing customers should be permitted to obtain estimates and removal services from qualified independent service providers.[57]

81 **DECISION.** We reject the Company's proposed revisions to Rule 6 related to the "Actual Cost of Removal," with one exception related to location of customer-dedicated facilities. We address each of proposed changes in turn, below.

1. Removing "all removal costs" from the definition of Actual Cost of Removal.

82 Boise recommends the Commission require Pacific Power to remove the phrase "all removal costs" from the definition of "Actual Cost of Removal" because it is redundant and unnecessary. We decline to require the Company to make this change. The phrase neither hinders the reader's understanding nor substantively alters the definition at issue. Rather, it is a stylistic choice that we leave to the Company's discretion.

2. Cost to investigate redundant services.

83 The Company's definition of "Actual Cost of Removal," as set out in the proposed modifications to Rule 1, includes the "cost to investigate redundant services." As noted above, the Company acknowledged only two instances of redundant service in nearly 20 years. Accordingly, we find that incurring costs to investigate redundant services each time a customer requests an estimate for permanent disconnection is unwarranted. If redundant facilities exist at a given site, Company personnel preparing the removal estimate will undoubtedly observe such facilities. Accordingly, we require the company to remove "cost to investigate redundant services" from its definition of "Actual Cost of Removal."

3. Proposed removal of "net book value less salvage" from "Actual Cost of Removal."

84 In his response testimony, Mr. Mullins argues that "net book value less salvage" should be excluded from removal costs. According to Mr. Mullins, the Company's unrecovered investment in its facilities should be addressed in its line extension rules. We disagree. Requiring the departing customer to pay the net book value, less any salvage value,

[57] *See* Wiseman, Exh. RW-1T.

ensures the Company is made whole because it represents the amount the customer would have paid if the facilities had remained in place, with an appropriate credit for the remaining value of the facilities at the time they are removed. We do agree, however, that the calculation for NBV should include a credit that corresponds with the Company's current line extension refund policy for those facilities the departing customer paid to have installed. This credit will also address Boise's concerns about the Company recovering line extension costs it did not incur.

4. Removing facilities for safety or operational reasons.

85 Pacific Power proposes to remove language in its current NRT that provides the Company may remove "only those facilities that need to be removed for safety or operational reasons, and only if those facilities were necessary to provide service to the customer." Both Boise and CREA recommend the Commission require the Company to retain this qualification to ensure the Company is not afforded sole discretion to require departing customers to remove facilities as a condition of permanent disconnection. We agree that this language should remain.

86 First, the language in the Company's proposed tariff revisions provides that a departing customer must either pay the actual cost of removal of facilities or purchase underground conduits and vaults at FMV in lieu of removal and pay actual cost of removal of all facilities not sold. The tariff does not specify whether the customer may choose between removal and purchase, or whether the Company will have sole discretion to decide whether the customer may purchase facilities in lieu of removal. In most cases, removal is the most disruptive option. Absent a safety or operational concern, the Company may not require removal if the customer wishes to purchase the facilities. Accordingly, consistent with our interpretation of Rule 6 in Docket UE-143932, the Company must demonstrate that safety or operational reasons require removal of the facilities unless a customer specifically requests removal of those facilities.

87 Moreover, the Company has not provided any evidentiary support for this change. In fact, the Company did not address removing this provision in its prefiled testimony or briefs. We find that the Company did not meet its burden to establish that this change is warranted or necessary.

88 Finally, we note that allowing the Company to require facility removal at its sole discretion is not required to ensure the full return of the investment, or to hold other ratepayers harmless. Rather, it merely provides a disincentive for customers to choose another service provider.

5. Proposed disallowance of net salvage costs already recovered.

89 CREA argues that current depreciation rates include a component for salvage value expense, which provides recovery of the expected cost of removing those facilities at the end of their economic life. Accordingly, Mr. Gorman contends those costs should be deducted from the NBV of the facilities. On cross-examination, however, Mr. Gorman acknowledged that depreciation, which includes removal costs, is subtracted from the installed cost to reach net book value.[58] Accordingly, we decline to adopt CREA's recommendation.

6. Location of customer-dedicated facilities.

90 Pacific Power proposes to modify its tariff to allow removal of any customer-dedicated facilities, regardless of location. Boise argues that this change is not sufficiently explained in the Company's testimony. Pacific Power argues that, with the clarification that the permanent disconnection and removal tariffs only apply to customer-dedicated facilities, the location of those facilities is irrelevant. We agree. With the caveat noted above, the Company may remove those facilities that are dedicated to serving the departing customer – and that serve no other customer – if demonstrable safety or operational reasons exist that require, or the customer requests, such removal.

7. Placing removal costs in interest-bearing accounts.

91 Public Counsel recommends that, in the event pre-paid removal costs are held in an interest-bearing account, the Company should return the balance, including accrued interest, to its remaining customers. Neither the Company nor any other party addressed this issue. While we acknowledge the merit of Public Counsel's proposal, there is insufficient evidence in the record to establish the material significance of these funds and whether the burden of such treatment would outweigh any potential benefit. Accordingly, we decline to adopt Public Counsel's recommendation at this time.

Disconnection Option Two: Purchase of Facilities

92 **PACIFIC POWER.** As an alternative to removing the Company's facilities, Pacific Power proposes that departing customers may elect to purchase certain underground facilities, such as conduit and vaults, from the Company at FMV. The Company defines FMV 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 or a Company requested third

[58] Gorman, TR 80:20-24.

party appraisal."[59] The departing customer would assume ownership of, and any liability arising from, the facilities following the purchase.

93 In its initial brief, Pacific Power explains that FMV will be determined by a Company representative or third-party appraiser chosen by the Company. If the departing customer disagrees, the Company adopts Public Counsel's recommendation to allow the customer to secure a second appraisal. The lower of the two appraisals would govern the transaction. Pacific Power also proposes extending a credit equivalent to a line extension credit if a customer disconnects within five years of initially connecting to its system. Pacific Power proposes to retain discretion to abandon and decommission facilities in place in the event of potential safety issues or negative impact on service, but will do so only when those concerns make removal or purchase not feasible.

94 Finally, Pacific Power proposes the Commission approve a list of third-party appraisers for customers to choose from in the event they wish to obtain a second appraisal.

95 **STAFF.** In its initial brief, Staff argues that requiring customers to purchase the Company's customer-dedicated facilities at FMV is not fair, just, or reasonable. Staff contends that FMV creates an unreasonable cost subsidy that serves no social good and unreasonably prejudices departing customers in violation of Washington law.

96 **PUBLIC COUNSEL.** Public Counsel supports Pacific Power's request to obtain FMV for its facilities, but argues that the Company should be required to inform customers of their right to obtain a second appraisal if they are dissatisfied with the Company's valuation of FMV. Public Counsel suggests that the Commission could identify parameters that appraisers must meet to qualify, including years of experience and certain levels of insurance, if the Commission does not want to maintain a list of appraisers. Finally, Public Counsel asserts that parties should be able to bring any disagreement to the Commission before the Company exercises the option to remove facilities.

97 **BOISE.** Boise claims that using FMV would impermissibly inflate disconnection costs, and that any attempt to seek more than NBV for facilities transfers to departing customers would amount to improper compensation because such valuation would exceed what is required for remaining customers to be properly compensated. Boise contends that the Company's FMV proposal is an anti-competitive measure against CREA.

[59] Proposed Revisions to Rule 1, proposed Third Revision of Sheet No. R1.2.

98 **CREA.** Mr. Gorman specifically opposes the use of FMV because he believes the Company is made whole by recovering NBV for its facilities. Further, CREA contends the fee is an unjust charge to departing customers because a premium above actual costs is "neither balanced [n]or consistent with [the concept of the] regulatory compact."[60]

99 In its initial brief, CREA contends that the Company's proposal to require departing customers to purchase facilities at FMV also violates long-established principles of cost-based ratemaking. CREA further argues that any amount collected from the sale of facilities at FMV that exceeds NBV would necessarily represent more than the customer would have otherwise paid for those facilities if the customer had remained with the Company. Because Pacific Power makes no provision for this gain in the calculation of its SCRF, CREA argues that allowing the Company to collect FMV will result in double-recovery of costs and a subsidy to remaining customers.

100 **DECISION.** Pacific Power argues that FMV is a more appropriate calculation than NBV because the facilities left in place represent significant value to the departing customer and the new electric service provider in light of the cost of installing replacement facilities. Accordingly, Pacific Power contends that having the sale of the assets valued at FMV and credited back to remaining customers properly compensates those customers.[61]

101 In its reply brief, CREA contends that purchasing facilities at FMV is inconsistent with long-established principles governing the regulatory valuation of utility plant, which relies on the NBV of facilities.

102 In point of fact, both forms of valuation are used in utility regulation, but the choice between them depends entirely on context. As we noted in Docket UE-132027:

> It follows that when assets are sold, the utility is generally entitled to recover the undepreciated balance, or NBV of the assets that have not been fully amortized, thus ensuring a full *return of* the investors' money. That is, the sales proceeds are allocated to the utility up to the amount of the NBV. ... Because the sold assets are no longer being used by the utility to provide service to customers, however, they are removed from rate base and the utility's opportunity earn a *return on* the assets is at an end.[62]

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[60] Gorman, Exh. No. MPG-1T at 12:9-15.

[61] Bolton, Exh. No. RBD-1T at 12:14-13:3.

[62] *In the Matter of the Petition of 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 at ¶19 (September 11, 2014).

103 Thus, the Commission described the valuation of utility property in terms of what the utility's shareholders are entitled to receive upon the sale of utility assets, that is, NBV. However, in that proceeding, which involved the wholesale transfer of Puget Sound Energy's (PSE) assets to the Jefferson Public Utility District (JPUD), the Commission carefully scrutinized the transaction to determine whether PSE received FMV from JPUD, and determined that, to the extent FMV exceeded NBV, the utility's customers were entitled to have the excess amount refunded to them in bill adjustments.

104 This consideration of the respective roles of NBV and FMV in the sale of an entire utility infrastructure in a discrete service territory (*i.e.*, Jefferson County, Washington) to allow essentially the creation of a new utility is not applicable in the context of a sale of assets that Pacific Power uses to supply power to a single customer. This is particularly so because the assets sold, contrary to Pacific Power's argument, do not "represent significant value to the departing customer and the new electric service provider in light of the cost of installing replacement facilities." It is unlikely that the assets thus sold will be used by a new provider to furnish service. Certainly, unlike the JPUD case, these limited assets are not at all necessary to enable the new provider to deliver service to the customer departing Pacific Power's system.

105 Unlike public utility districts formed for the purpose of replacing entirely an existing investor-owned utility in a specific territory by acquisition of all of the investor-owned utility's assets needed to serve the territory, departing customers may have no use for Pacific Power's facilities. They may, however, wish to purchase underground facilities located on their property to avoid the cost and disruption of removing them. Briefly, application of the Company's proposed permanent disconnection and removal tariff is distinguishable from a condemnation proceeding because it applies to single customers seeking permanent disconnection from the Company's system, not public utility districts seeking to acquire a utility's transmission and distribution assets for the purpose of providing service.

106 Within the Commission's framework of cost-based regulation, cost causers pay for services they consume and the facilities dedicated to serving them. Basic notions of fairness and equity dictate that customers who wish to permanently disconnect from a regulated utility should be required to pay the undepreciated value of the facilities dedicated to providing them service, but nothing more.

107 Pacific Power's request to recover FMV would result in a gain on the sale of the assets that would give the Company more than it should be entitled to under the circumstances or provide a trivial benefit to remaining ratepayers while penalizing the departing

customer. If a customer stayed on the system, the Company would recover only the NBV of its facilities.[63]

108 The Commission's obligation is to ensure Pacific Power and its shareholders are made whole and its remaining customers are held harmless. This is accomplished by allowing the Company to recover the NBV of its facilities if a customer elects to purchase them.

Stranded Cost Recovery Fee

109 **PACIFIC POWER.** In his rebuttal testimony, Company witness Mr. Meredith quantifies the aggregated impact of the changes the Company made to the proposed SCRF based on Public Counsel's recommendations. Overall, the Company's modified proposal reduces the fee for the average residential customer by approximately 36 percent using a multiplier of 2.63 times the customer's annual revenue, and by approximately 29 percent for the average non-residential customer using a revised revenue multiplier of 2.98.[64] Pacific Power also accepted Public Counsel's recommendation to cap the residential SCRF at $4,138. Finally, the Company's modified proposal includes a low-income assistance recovery fee of 3 percent of annual revenue for all customers, and an energy efficiency recovery fee of 17 and 18 percent of annual revenue, respectively, for residential and non-residential departing customers.

110 Pacific Power argues that its modified SCRF fairly balances the interests of the Company's remaining customers and any customer who makes the decision to disconnect permanently from its system. While Pacific Power acknowledges that it could have designed a more detailed study or proposed a methodology allowing for separate detailed calculations for each individual customer, the Company argues that it ultimately proposed a sufficiently accurate but simple and understandable methodology to determine stranded costs.

111 Pacific Power further argues that six years is a reasonable timeframe for calculating the SCRF, which reduces the fee from the Company's original proposal by 33 percent. Pacific Power argues that its modified SCRF proposal incorporates the value of freed-up energy using more recent information and better estimates the incremental impact from a permanent disconnection of load.

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[63] Boise Initial Brief at ¶¶82-84. Boise references the Initial Order and R. Bryce Dalley's testimony in Docket UE-143932 confirming NBV as the appropriate level of recovery for transferred facilities.

[64] Meredith, Exh. No. RMM-1T at 16:21-17:5.

112 Finally, Pacific Power argues that an SCRF is the best, if not the only, means of effectively addressing the inappropriate shifting of costs to Pacific Power's remaining customers. Pacific Power contends that permanent disconnection is vastly different than an existing customer conserving energy, replacing an electric appliance with a gas appliance, or installing a solar panel. Pacific Power claims that these other types of stranded costs are not being ignored, but they exceed the scope of this proceeding. Accordingly, Pacific Power asserts that the proposed SCRF does not result in illegal rate discrimination because departing customers are not treated differently – they are all held accountable for the costs associated with their decisions.

113 **STAFF.** In its initial brief, Staff argues that requiring customers to pay an SCRF is not fair, just, or reasonable. Staff argues that because CREA and Pacific Power have been actively competing for nearly 20 years, there has been no significant, recent change in the regulatory environment that would warrant the recovery of stranded costs.

114 Moreover, Staff argues, Pacific Power failed to provide an accurate methodology for calculating the SCRF. Staff posits that determining stranded costs requires a case-by-case analysis because factual circumstances can drastically change the costs, if any, created by a departing customer. For example, Staff argues that timing is particularly critical; a customer's departure may provide remaining customers significant cost savings by obviating the need to build a costly new generation resource or enter into a power supply contract. In light of these sensitivities, Staff recommends the Commission decline to embed a particular methodology for determining stranded costs in the Company's tariff.

115 Although Staff continues to recommend that the Commission reject the proposed tariff revisions entirely, Staff proposes, in the alternative, that the Commission allow the Company to file an application for stranded cost recovery at the time a large customer elects to leave its system. Staff contends that this proposal would require the type of individualized stranded cost determinations that the Commission has repeatedly called for, and would ensure that any stranded cost fee is fair, just, reasonable, and sufficient. Staff notes that the Commission has previously noted that "stranded costs are determined

on a case-by-case basis"[65] and has recently reaffirmed that it has not determined that any particular methodology is appropriate for determining stranded costs.[66]

116 **PUBLIC COUNSEL.** Public Counsel argues that collecting stranded costs is reasonable, and that the proposed SCRF calculation is reasonable and fair. Public Counsel contends that 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.

117 Public Counsel also argues that the proposed energy efficiency fees and low-income program fees are lawful because fees associated with these two programs are designed to capture the associated stranded costs should customers leave to take service from another utility. Public Counsel contends that the cost is relatively modest, while the impact will be to support long-standing state policies that favor energy efficiency and protect low-income households from unnecessary service disconnections.

118 **THE ENERGY PROJECT.** In its initial brief, TEP argues that Pacific Power's proposal for an SCRF for recovery of low-income and demand side management program costs is a reasonable and necessary response to the potential for cost-shifting. TEP notes that low-income customers are not transferring to CREA. Accordingly, TEP argues, low-income customers will continue to need the same or increased levels of bill assistance and low-income weatherization programs. If the departure of larger customers continues or increases, TEP argues that program costs will fall more heavily on remaining customers.

119 **BOISE.** In its initial brief, Boise argues that application of the Company's proposed SCRF to its departure from Pacific Power's system would more than triple the stranded cost recovery amount the Commission recently found to be reasonable for an almost identical large industrial-type load in Washington.[67]

120 In his testimony, Boise witness Mr. Mullins opines that the SCRF is more appropriately addressed through a Commission policy review of direct access and retail wheeling, not

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[65] Staff's Initial Brief at ¶64, citing *Air Liquide Am. Corp., Air Products and Chems., Inc., The Boeing Co., CNC Containers, Equilon Enterprises, LLC, Georgia-Pac. W., Inc., Tesoro Nw. Co., and the City of Anacortes, Wash. v. Puget Sound Energy, Inc.; In re Petition of Puget Sound Energy, Inc. for an Order Reallocating Lost Revenues Related to any Reduction in the Schedule 48 of G-P Special Contract Rates*, Docket Nos. UE-001952 and UE-001959, Eleventh Supplemental Order, at 14 n. 18 (Apr. 5, 2001).

[66] *Id.*, citing *WUTC v. Puget Sound Energy*, Docket No. UE-161123, Order 06, at 23 ¶ 57 (July 13, 2017).

[67] *See WUTC v. Puget Sound Energy*, Docket No. UE-161123 (July 13, 2017).

within the NRT. Despite his primary recommendation that the Commission reject the proposed tariff revisions, Mr. Mullins recommends a "grandfather clause" for customers that previously executed a term contract with Pacific Power. He argues that, "for any customer that executed such a contract to take service from the Company, there would presumably be no expectation, from either the Company or the customer, that a stranded cost fee might be applied in the event that the Customer chose to take services from another supplier."[68]

121 Boise argues that Pacific Power has proposed an overly-simplistic, one-size-fits-all methodology for calculating stranded costs that does not adequately account for Boise's sophistication or its importance to the Company's system. Boise argues that the Commission recently recognized the special considerations that must be attached to specific cost shifts associated with very large customers, which justify particular analysis due to the magnitude of impacts associated with such load. Boise criticizes Pacific Power's decision to opt for a "simpler approach" despite acknowledging its practice of negotiating with large, sophisticated customers.[69] Boise notes that Company witness Mr. Meredith admitted at hearing that it would be possible to accurately identify the cost of a single customer disconnecting from the system.[70]

122 Overall, Boise argues, support for the SCRF proposal is too flawed to justify its adoption. Specifically, Boise contends, the Company's proposal relies on an outdated and inadequate cost of service study, and the major ratepayer impacts associated with the SCRF should have been based on updated cost of service study information. Boise argues that the absence of such a study demonstrates a critical flaw in Pacific Power's methodology, and notes that Company witness Mr. Meredith acknowledged that the Company's reliance on stale data may not appropriately capture the most recent incremental impact of a reduction in load.[71]

123 **CREA.** CREA argues that the SCRF should be rejected because it imposes an economic constraint that restricts a customer's right to choose. CREA's witness Mr. Gorman contends that Pacific Power has failed to establish the utility's stranded costs are "legitimate, prudent and verifiable" in this proceeding.[72]

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[68] Mullins, Exh. No. BGM-1T at 34:7-10.

[69] Boise Initial Brief at ¶17.

[70] Meredith, TR 258:15-17.

[71] Boise Initial Brief at ¶34.

[72] Gorman, Exh. No. MPG-1T at 14:5-11; See also statements made at 15:7-13, 15:14-19, and 15:20-16:8.

124 Mr. Gorman agrees with Public Counsel's criticisms of the SCRF as originally proposed, but does not believe any recommended modifications are warranted. Instead, he maintains that Schedule 300 should be rejected in its entirety.[73]

125 Mr. Gorman also opposes Public Counsel's recommendation to include impacts on low-income and energy efficiency programs in the SCRF calculation. He points to additional regulatory processes that would be required to adjust the rates through a ratemaking proceeding for low-income revenues and update energy efficiency forecasts, projected costs, and billing units based on remaining customers' normalized loads.

126 In its initial brief, CREA contends that Pacific Power's SCRF is illegal, bad policy, and unnecessary, and that application of the fee would result in rate discrimination because the fee would not apply when a customer 1) moved or shut down operations; 2) installed self-generation; or 3) converted its operations to a different fuel such as natural gas. Accordingly, CREA argues, departing customers will be subject to charges that do not apply to other customers in the same or substantially similar circumstances. CREA asserts that the SCRF is a "textbook example of rate discrimination,"[74] and that the Company admitted repeatedly that customers who reduce their load for any number of other reasons cause the same stranded costs.

127 Finally, CREA argues that the Company has not adequately demonstrated its stranded costs, which must be prudent and verifiable. CREA claims that there is no evidence in the record to demonstrate that six years is necessary to make up for load lost to a customer's departure and eliminate any stranded costs. Rather, CREA argues, the length of time over which stranded costs are incurred is a factual issue that should be determined on a case-by-case basis.

128 **YAKAMA POWER.** Mr. Wiseman recommends the Commission deny Pacific Power the ability to charge the SCRF from departing customers located on Reservation lands and served by facilities located on Trust Lands.[75]

129 **DECISION.** RCW 80.04.130(4) provides that a public service company proposing an increase in any rate or charge bears the burden of proving that the increase is just and reasonable. While the record supports – and no party disputes – Pacific Power's claim that it incurs stranded costs when customers permanently disconnect from its system, we conclude that the Company did not meet its burden of proving that the proposed revenue

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[73] *Id*. at 6:21-23.

[74] CREA Initial Brief at ¶30.

[75] Wiseman, Exh. No. RW-1T at 4:1-15.

multiplier is just and reasonable. Moreover, placing the SCRF into the Company's tariff as a "formula rate" would contravene the Commission's past practice[76] and is inconsistent with federal requirements that a utility must demonstrate its stranded costs on a case-by-case basis.[77]

130 As several parties note, the proposed multiplier fails to account for time-sensitive factors such as: 1) the avoided costs created by the specific customer departing the system; 2) a more recent and more granular cost of service determination; 3) the specific infrastructure involved; and 4) the customer's current load profile. Accordingly, adopting Pacific Power's proposal would effectively relieve the Company of its evidentiary burden to prove that the SCRF is fair, just, and reasonable.

131 Our recent decision in Docket UE-161123 illustrates the time-sensitivity of an SCRF calculation. In that case, PSE and Microsoft reached a settlement regarding, among other terms, the exit fee Microsoft agreed to pay upon permanently disconnecting from PSE's generation system. Public Counsel's witness, Ms. Kelly, acknowledged on cross-examination that, under different circumstances, remaining customers may have owed Microsoft a fee, or there may have been no identifiable stranded costs.[78]

132 Finally, the proposed embedded revenue multiplier disregards the principles of cost-based regulation. For example, if the Commission were to approve the SCRF as proposed, Boise would be responsible for an $80 million exit fee[79] that, by the Company's own admission, is not representative of the actual stranded costs that Boise's departure would create.[80] In addition, Pacific Power acknowledged that it is possible to accurately identify and estimate the exact cost of a single customer disconnecting from the system.[81]

133 For these reasons, we decline to approve the proposed revenue multiplier. We note that we are neither approving nor rejecting any specific methodology or time frame for calculating stranded costs, and that the question of whether the Company has a

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[76] Docket Nos. UE-001952 and UE-001959, Eleventh Supplemental Order, at 14 n. 18.

[77] *See* 18 C.F.R. Part 35.26 – Recovery of Stranded Costs by Public Utilities and Transmitting Utilities.

[78] Kelly, TR 307:15-20.

[79] Pacific Power Initial Brief at ¶30.

[80] Meredith, TR 282:13-283:19. Public Counsel's witness also testified there is no other way to get an accurate number than a more time-intensive, case-by-case determination. Kelly, TR at 301:10-20.

[81] Meredith, TR 258:15-18.

reasonable expectation of continued service should similarly be decided on a case-by-case basis. We conclude only that the recovery of stranded costs is lawful, supported by the evidence in the record, and consistent with the public interest because it protects remaining customers from bearing the costs the Company will incur when a customer permanently disconnects from its system.

134 We agree with the Company, TEP, and Public Counsel that the SCRF should include calculations for energy efficiency and low-income stranded costs. As TEP notes in its initial brief, Pacific Power's current low-income bill assistance program provides for a gradual increase in revenue collections over the next five years.[82] Both the Company and CREA acknowledge that low-income customers are not transferring their service to CREA, and enrollment in the Company's low-income programs is expected to increase consistent with the five-year plan. Accordingly, "the Company's low-income customers will continue to need the same or increased levels of bill assistance and low-income weatherization programs."[83] The Company's tariff should specify that the SCRF will include the impact of the customer's departure on low-income and demand side management programs to ensure those costs are not shifted to remaining customers.

135 While no party contests that customers leaving Pacific Power's system create at least the possibility of stranded costs, those parties that oppose the tariff revisions argue that Pacific Power is not entitled to recover those costs because the competitive environment in which the Company operates does not represent a new or changed circumstance. This argument overlooks the fact that there was a discrete point in time in which a change *did* occur – in 1999, following the dissolution of the Company's informal service territory agreement with CREA – and that both the Company's and the Commission's initial response to that change has proved, over time, that it does not adequately address the cost shifting that occurs when a customer departs from the Company's system. Although Pacific Power has technically operated in a competitive environment since CREA's founding in 1940, true competition did not become a reality until the last 20 years. Accordingly, we conclude that the dissolution of a service territory agreement with CREA marked the change in competitive environment necessary to trigger the application of a stranded cost analysis.

136 We also disagree with the parties' contention that the SCRF prevents or hinders competition. The SCRF, which is designed to protect ratepayers from being held responsible for costs created by customers leaving Pacific Power's system, is neutral toward competition. As Public Counsel notes, assigning costs based on cost-causation is a

[82] TEP Initial Brief at ¶2.

[83] *Id.* at ¶12.

well-recognized regulatory practice.[84] Accordingly, the SCRF puts customers on notice of the economic consequences of permanently leaving the system, allows Pacific Power to recover costs to which it is legally entitled, and protects ratepayers from cost shifting. As Public Counsel notes, in the absence of a franchise agreement, Pacific Power should have a means by which existing customers are protected from the rate impacts of competitive customer departures to a new provider.[85]

137 CREA relies on RCW 80.04.110(1)(c) to support its claim that the Commission must discourage rates and practices that monopolize and oppress competition. That section, however, applies only to competition among two or more public service corporations regulated by the Commission, and expressly excludes municipal and other public corporations, such as CREA. The legislature takes a different view of competition between utilities regulated by the Commission and cooperatives. As noted above, RCW 54.48.020 declares that the duplication of electric lines is contrary to the public interest, and service territory agreements that avoid or eliminate such duplication are in the public interest.

138 We are also unpersuaded by the parties' arguments that the SCRF results in rate discrimination vis à vis customers who reduce their load by other means, such as distributed generation, conservation efforts, or switching fuels. Through the integrated resource and subsequent business planning processes, Pacific Power's investment decisions already factor in conservation programs, distributed generation, and similar behaviors that reduce a customer's usage on the margin. A customer who decides to reduce usage through conservation, fuel switching, or on-site generation continues to be a Pacific Power customer and continues to contribute to the Company's recovery of its costs. Those decisions are fundamentally different from the decision to leave the system and cease contributing to fixed costs altogether.

139 Finally, we decline to adopt a "grandfather clause" for those customers who currently have service contracts with Pacific Power, as Boise recommends. Because the contracts at issue are not special contracts subject to Commission approval, their contents are not in the record for our consideration. Accordingly, contract customers who choose to disconnect permanently from Pacific Power's system, like all other customers, will be subject to an SCRF calculated on a case-by-case basis, which will necessarily consider the terms outlined in their contracts.

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[84] Public Counsel Initial Brief at ¶18.

[85] Kelly, Exh. No. KAK-1T at 10:16-18.

140 We recognize that determining stranded costs on a case-by-case basis will likely be a contentious process. In an effort to reduce the Commission's involvement in those proceedings, we require Pacific Power to respond to requests for permanent disconnection with an estimated SCRF within 60 days[86] and allow for an independent third-party review of its calculation at the customer's request. We also require the Company and the departing customer to participate in mediation prior to filing a formal complaint with the Commission. The parties to this proceeding should work together to develop dispute resolution procedures and file proposed tariff language consistent with this guidance for Commission approval.

Abandoning and Decommissioning Certain Facilities

141 Pacific Power proposes that the Company, in its sole discretion, be allowed to abandon in place some or all facilities if service may be negatively impacted or safety issues may arise as a result of removal or purchase by the departing customer. Public Counsel argues that the Company's proposal is too broad and does not address the primary safety concern, which is the construction of redundant facilities. Public Counsel proposes several policy modifications that would address, among other things, consistency with the National Electrical Safety Code and assuring the safety of emergency responders. No other party offered testimony related to this issue, and the Company did not address Public Counsel's concerns on rebuttal.

142 We agree with Public Counsel that the Company's proposal is overly broad. The parties should work together to develop more detailed policies and procedures to address the concerns Ms. Kelly raised in her testimony and file proposed revisions for Commission approval.

Tariff Application on Tribal Lands

143 **PACIFIC POWER.** Pacific Power argues that is has a reasonable expectation to continue to serve customers on Trust Lands. The Company contends that its relationship with its customers is based on contract principles, regardless of location, which bind each customer without regard to the legal status of the customer's real property. Pacific Power argues that its agreement to provide power to a customer is not subject to the approval of the BIA because it is well established that Indian tribes and tribal enterprises have the freedom to consent to state jurisdiction by contract. By applying for service, the Company argues that customers on Trust Lands agree to be regulated by Pacific Power's

[86] We note that under 18 C.F.R. Part 35.26, utilities have 30 days to calculate stranded costs and provide them to customers. Accordingly, 60 days should be more than sufficient for Pacific Power to do the same.

filed tariffs and Commission rules, and therefore consent to the jurisdiction of the Commission and its authority over the Company's tariffs.

144 **YAKAMA POWER.** Yakama Power requests the Commission prohibit the application of Pacific Power's permanent disconnection tariff to any Pacific Power customer located within the boundaries of the Yakama Indian Reservation and served in whole or in part by facilities located on Indian Trust Lands. Yakama Power argues that Pacific Power's proposal fails to consider the different rights and obligations it has depending on whether it is operating within Reservation boundaries.

145 First, Yakama Power contends that the Company has no reasonable expectation of a continuing right to serve customers that require facilities located in whole or in part on Trust Lands. Rather, Yakama Power argues, service to such customers requires authorization from the BIA, which includes a grant to use rights-of-way involving BIA or Indian Trust Land for the construction, operation, and maintenance of facilities providing electric service. Absent such a grant, Yakama Power claims that Pacific Power may be considered a trespasser subject to eviction on 30 days' notice.

146 Yakama Power next argues that Pacific Power cites no state or federal law that conflicts or contradicts the federal laws and regulations and tribal sovereignty principles described in detail in Yakama Power's testimony and Initial Brief. Yakama Power contends that Pacific Power's Initial Brief is devoid of reference to any state or federal law providing Pacific Power an exemption or any kind of limitation from the application of BIA's rights-of-way rules as set out in 25 C.F.R. Part 169.

147 Finally, Yakama Power contends that Pacific Power's implied-consent contract theory for its existing customers on the Reservation is irrelevant to the issues raised in this proceeding. Yakama Power argues that Federal courts have consistently noted the lack of any state civil regulatory jurisdiction over Trust Lands within reservation boundaries, and the State of Washington has a current policy of supporting Yakama Nation jurisdiction on the Reservation.

148 **STAFF.** In its reply brief, Staff argues that the Commission should reject Yakama Power's attempts to carve out a blanket exemption to its permanent disconnection tariff because state law forbids the kind of differential rates that an exemption would create. Staff claims that Washington's Supreme Court has cautioned that the Commission should "primarily apply Washington law" and "keep in-depth federal Indian law analysis in the

federal courts."[87] Staff urges the Commission to heed the Supreme Court and reject Yakama Power's proposed exception based on Washington law.

149 Staff asserts that Yakama Power's argument does, however, highlight the importance of an individualized stranded cost determination if the Commission does approve some version of the proposed tariff revisions because Pacific Power's authority to operate on Trust Lands within the Yakama Reservation would be relevant to its reasonable expectation of continuing to serve customers, and therefore, its ability to recover stranded costs. Staff recommends that if the Commission approves stranded cost recovery, it should require an individualized cost determination to account for these types of contextual, fact-specific questions.

150 **DECISION.** We agree with Staff that creating a blanket exemption for customers located on Tribal Lands would result in rate discrimination in violation of RCW 80.28.100. As Staff correctly noted, the Commission is both obligated and authorized only to enforce state law. Under Title 80 RCW, all customers who contract for service with the Company are subject to the Company's tariff and Commission rules, regardless of location. Yakama Power's argument does, however, highlight the importance of an individualized stranded cost determination. Pacific Power's authority to operate on Trust Lands within the Yakama Reservation would be relevant to its reasonable expectation of continuing to serve customers, and, accordingly, its ability to recover stranded costs, if any, from a departing customer.

151 Finally, the requested exemption appears to be unnecessary in light of the fact that the tariff does not apply to the negotiated transfer and sale of assets, and Yakama Power may institute condemnation proceedings at any time. Both of these actions fall outside the scope of the tariff. Accordingly, we decline to adopt Yakama Power's recommendation to create an exemption for customers located on Tribal Lands.

Definitions and Tariff Language

152 **CREA.** CREA recommends the Commission require the Company to explicitly indicate in its tariff that facilities subject to removal are limited to customer-dedicated facilities that are not used to provide service to any other customer.

[87] Staff's Reply Brief at ¶23, citing *Willman v. Wash. Utils. & Transp. Comm'n*, 154 Wn.2d 801, 808, 117 P.3d 343 (2005).

153 **BOISE.** Boise witness Mr. Mullins proposes several revisions to the revised tariff language in his responsive testimony. With respect to Rule 1, Boise proposes the following modifications:

- *Adding a definition for "redundant services."* Mr. Mullins argues that because the Company did not define "redundant services," it is not clear what that term means.[88] Boise notes that in response to a data request, the Company defined "redundant services" as those "situations in which a customer is simultaneously receiving electric service from more than one provider at the same location." Boise recommends replacing the term "same location" with "same structure."[89]

154 Boise also proposes the following changes to Rule 6:

- *Removing "obtains redundant services from another electric utility" as a basis for application of the tariff.* Mr. Mullins argues that this language is unnecessary because it is not evident that redundant services are actually a problem.[90]

- *Adding a statement that "the provisions under this section shall not apply to new loads, new structures, and/or new service locations."* Mr. Mullins argues that the proposed disconnection tariff could be interpreted to allow the Company to collect an SCRF from any electric customer that develops new load and chooses a different electric service provider, even if the customer has no prior relationship with the Company. Boise argues that such an interpretation would create a *de facto* service territory.[91]

155 **YAKAMA POWER.** In his responsive testimony, Mr. Wiseman expresses concern that the Company may intend to apply the proposed tariff revisions to the negotiated sales or transfers of assets to another utility. Mr. Wiseman further requests the Company specify in Rule 6 that it will provide a cost estimate for facility removal within 30 days.

156 **PACIFIC POWER.** In his rebuttal testimony, Mr. Bolton addresses a number of the concerns raised by the parties. To address CREA's first concern, Mr. Bolton notes that

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[88] Mullins, Exh. No. BGM-1T at 10:7-11.

[89] *Id.* at 12:2-4.

[90] *Id.* at 9:13-21.

[91] *Id.* at 13:10-19.

the Company revised Rule 6 to specify that the definition of facilities only applies to customer-dedicated facilities that are not used to serve other customers.[92]

157 To address Yakama Power's concerns, Pacific Power specified that the tariff will not apply to negotiated sales and transfers of assets to another utility,[93] and agreed to provide estimated removal costs within 60 days of receiving such request from a customer.[94]

158 Pacific Power argues that Boise's proposed definition of "redundant services" would create a loophole for customers to install a meter and receive service at a second point of delivery on the same premises, then shift load to that meter.[95] The Company declined to adopt Mr. Mullins's proposed definition.

159 **DECISION.** We adopt several of the parties' recommendations related to definitions and other proposed tariff revisions, as discussed below.

1. Definition of "facilities."

160 In his response testimony, CREA witness Mr. Gorman expressed concern that Rule 6 as originally proposed does not limit the definition of facilities eligible for removal to only those facilities that are dedicated to serving the departing customer. On rebuttal, Mr. Bolton noted that the Company added language to Rule 6 clarifying that only those facilities dedicated to serving the departing customer would be removed. CREA raised the point again in its Initial Brief, requesting the Commission require the Company to state explicitly in its tariff that such facilities are limited to customer-dedicated facilities that are not used to provide service to any other customer.

161 Pacific Power's modification on rebuttal clarifies that only customer-dedicated facilities are eligible for removal, and expressly excludes any facilities that are used to serve other customers.[96] The Company has included this language in its revised tariff filing, which sufficiently addresses any concerns about removing facilities that may be used to serve other customers. Accordingly, we expect Pacific Power to include this revision in its revised tariff filing, but require nothing further.

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[92] Bolton, Exh. No. RBD-5T at 4:10-13.

[93] *Id.* at 5:6-8.

[94] *Id.* at 8:1-5.

[95] *Id.* at 16:9-20:1.

[96] Bolton, Exh. No. RBD-5T at 1:21-22.

2. Proposal to remove "obtains redundant services" from application of tariff.

162 We decline to adopt Boise's recommendation to remove "obtains redundant service" as a basis for permanent disconnection. Although Washington Administrative Code (WAC) 480-100-128(2)(c) permits the Company to disconnect a customer's service without notice if it identifies a hazardous condition, such as redundant facilities, Pacific Power should also have the remedies available to it under its permanent disconnection tariff to address the unavoidable cost-shifting that occurs when any customer leaves its system. Without this provision, Pacific Power would only be able to assess disconnection fees when the customer, rather than the Company, initiates a permanent disconnection.

3. Definition of "redundant services."

163 We share Boise's concern that the Company's proposed tariff revisions do not include a definition of "redundant services." Although the evidence in the record shows that redundant service has occurred only twice in the last 20 years, nevertheless the tariff should include a clear definition that puts customers on notice that simultaneously receiving service from two electric providers constitutes grounds for the Company to disconnect permanently its service and assess certain costs associated with permanent disconnection. Accordingly, we require the Company to include a definition for "redundant services," which the Commission will review through a compliance filing in this docket.

4. Proposal to add language regarding "new loads" and "new structures."

164 We decline to adopt Boise's proposed language specifying that the permanent disconnection and removal tariff does not apply to new loads or new structures. Mr. Mullins's concern that the Company will be allowed to collect an SCRF from any consumer who creates new load as a result of development and new construction in Pacific Power's service area and chooses a different electric service provider is not a reasonable interpretation of the proposed tariff revisions. The record demonstrates that the proposed tariff revisions would apply only to existing customers who wish to depart from the Company's system, not to new customers who have no pre-existing relationship with the Company. It necessarily follows that if the Company has not made an investment in dedicated facilities to serve a customer, it is not entitled to recover any costs. Where a customer has a pre-existing relationship with the Company and the new load is associated with expanded operations, we expect that the case-by-case approach to calculating the SCRF will account for the degree to which the Company planned for that new load and made investments to serve it.

5. Negotiated sales and transfers.

165 In his rebuttal testimony, Mr. Bolton clarified that the proposed permanent disconnection and removal tariff does not apply to negotiated sales and transfers. The Company must include a statement to that effect in its revised tariff filing.

6. Timing of cost estimates.

166 Yakama Power proposes the Company prepare and deliver a removal cost estimate within 30 days of a customer request for the same. On rebuttal, the Company agrees that it will prepare and deliver a removal cost estimate within 60 days. We find that the Company's proposal is reasonable, and will afford adequate time to prepare a thorough and complete estimate. Accordingly, the Company must include in its revised tariff filing a provision that Pacific Power will provide estimated removal costs to the customer within 60 calendar days of receiving a request for such an estimate.

FINDINGS OF FACT

167 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:

168 (1) The Commission is an agency of the state of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including electrical companies.

169 (2) Pacific Power is a "public service company" and an "electrical company," as these terms are defined in RCW 80.04.010 and these terms are otherwise used in Title 80 RCW. Pacific Power is engaged in Washington state in the business of supplying utility services and commodities to the public for compensation.

170 (3) On November 14, 2016, Pacific Power filed revisions to its currently effective Tariff WN U-75, Rule 1 – General Rules and Regulations; Rule 4 – Application for Electric Service; Rule 6 – Facilities on Customer's Premises; and Schedule 300 – Charges as Defined by the Rules and Regulations that would modify its permanent disconnection and removal procedures for customers who disconnect service to receive electric service from another energy provider.

171 (4) On August 25, 2017, Pacific Power filed a Motion to Strike portions of Boise's Reply brief related to statements made about the Company's mistreatment of Native Americans and references to prior dockets not admitted into the record.

172 (5) Boise's statements in paragraph 8 of its Reply Brief related to Pacific Power's mistreatment of Native Americans are unnecessary and unsupported by the record.

173 (6) Boise's references to prior dockets were made for persuasive purposes only and do not require the Commission to take official notice of those dockets.

174 (7) Pacific Power did not offer any rationale for removing the qualifying condition that, upon permanent disconnection, facilities will only be removed for safety or operational reasons.

175 (8) Pacific Power did not demonstrate that fair market value is the appropriate measure of costs for customers who wish to purchase facilities in lieu of removal upon permanent disconnection.

176 (9) Pacific Power clarified on rebuttal that the proposed tariff will include a credit equivalent to a line extension credit for those facilities the departing customer paid to have installed if a customer disconnects within five years of initially connecting to its system.

177 (10) Pacific Power operates in competition with CREA. Since 1999, 68 customers have switched service from Pacific Power to CREA.

178 (11) When customers permanently disconnect from Pacific Power's system, costs are shifted to remaining customers.

179 (12) Pacific Power's current tariff governing permanent disconnection does not account for the stranded costs that shift to Pacific Power's remaining customers when a customer chooses to depart from the Company's system.

180 (13) Pacific Power did not demonstrate that a revenue multiplier accurately calculates stranded costs or is otherwise consistent with cost-based regulation.

181 (14) Pacific Power's proposed tariff revisions do not include a dispute resolution process related to the SCRF.

182 (15) Pacific Power's proposed policy for abandoning and decommissioning facilities in place does not contain sufficient detail.

183 (16) Pacific Power customers located on Tribal Lands are subject to the terms of the Company's tariff and Commission rules.

184 (17) Pacific Power clarified on rebuttal that only those facilities that are dedicated to a specific customer and therefore not used to serve other customers are eligible for removal.

185 (18) Pacific Power's proposed tariff revisions do not include a definition of "redundant services," which may be confusing to customers.

186 (19) Pacific Power clarified on rebuttal that the proposed tariff will not apply to negotiated sales and transfers of facilities.

187 (20) Sixty calendar days is reasonable time period for Pacific Power to prepare and deliver a cost estimate for removing facilities upon permanent disconnection.

188 (21) Pacific Power did not demonstrate that redundant services are a current or ongoing problem.

189 (22) Pacific Power did not demonstrate that incurring costs to investigate redundant service is warranted.

CONCLUSIONS OF LAW

190 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law, incorporating by reference the pertinent portions of the preceding detailed conclusions:

191 (1) The Commission has jurisdiction over the subject matter of, and parties to, these proceedings.

192 (2) Pacific Power failed to meet its burden to prove that rates it proposed by tariff revisions filed on November 14, 2016, and suspended by Commission order, are fair, just, or reasonable. These as-filed rates accordingly should be rejected.

193 (3) Pursuant to the regulatory compact, Pacific Power has an obligation to serve and, therefore, an expectation of continued service.

194 (4) Pacific Power met its burden to prove that its existing tariff governing permanent disconnection of service is insufficient to prevent costs from shifting to remaining customers.

195 (5) Pacific Power requires relief with respect to the fees it charges when customers permanently disconnect from its system to ensure the Company is made whole and its remaining customers are held harmless.

196 (6) Pacific Power failed to meet its burden to prove that the Company should no longer be required to demonstrate that safety or operational reasons exist to justify removing customer-dedicated facilities upon permanent disconnection. Accordingly, Pacific Power must include in its revised tariff filing language specifying that facilities will only be removed for safety or operational reasons, or at the customer's request.

197 (7) Pacific Power failed to meet its burden to prove that charging fair market value for the sale of its facilities upon permanent disconnection is fair, just, or reasonable.

198 (8) Pacific Power must include in its revised tariff filing language specifying that customers may purchase facilities at Net Book Value upon permanent disconnection.

199 (9) Pacific Power must include in its revised tariff filing language specifying that any customer who disconnects from the Company's system within five years of initially connecting will receive a credit equivalent to a line extension credit for those facilities the departing customer paid to have installed. This credit will apply when facilities are removed or purchased.

200 (10) Pacific Power met its burden to prove that it incurs stranded costs when customers permanently disconnect from its system.

201 (11) Pacific Power failed to meet its burden to prove that the Commission should approve a revenue multiplier to calculate stranded costs upon permanent disconnection.

202 (12) Pacific Power must include in its revised tariff filing language specifying that stranded costs will be calculated on a case-by-case basis, which will include components for low-income and energy efficiency program fees.

203 (13) Pacific Power must work with the parties in this proceeding to develop dispute resolution procedures related to the calculation of the Stranded Cost Recovery Fee consistent with the guidance set out in paragraph 139, above, and file revised tariff language reflecting those procedures for Commission approval.

204 (14) Pacific Power must work with the parties in this proceeding to develop more detailed policies and procedures related to abandoning and decommissioning facilities consistent with Public Counsel's recommendations and file revised tariff language reflecting those policies and procedures for Commission approval.

205 (15) Pacific Power customers on Tribal Lands are not exempt from the Company's permanent disconnection and removal tariff.

206 (16) Pacific Power must include in its revised tariff filing language specifying that only facilities that are customer-dedicated and therefore not used to serve other customers are eligible for removal.

207 (17) Pacific Power must include in its revised tariff filing a definition of "redundant services."

208 (18) Pacific Power must include in its revised tariff filing a statement that the tariff does not apply to negotiated sales and transfers of facilities.

209 (19) Pacific Power must include in its revised tariff filing a statement that it will prepare and deliver a removal cost estimate within 60 days of receiving a request for such an estimate.

210 (20) Pacific Power must remove "cost to investigate redundant services" from the definition of "Actual Cost of Removal" in Rule 1.

ORDER

211 THE COMMISSION ORDERS THAT:

212 (1) Pacific Power & Light Company's Motion to Strike as it relates to the portion of Boise's Reply Brief that references the Company's treatment of Native Americans is granted, and Paragraph 8 is stricken. Pacific Power's Motion is otherwise denied.

213 (2) The proposed tariff revisions Pacific Power & Light Company filed on November 14, 2016, suspended by prior Commission order, are rejected.

214 (3) Pacific Power & Light Company is authorized and required to file tariff sheets that are necessary and sufficient to effectuate the terms of this Order. Pacific Power & Light Company must file the required tariff sheets within 30 days of the effective date of this Order.

215 (4) The Commission retains jurisdiction to effectuate the terms of this Final Order.

Dated at Olympia, Washington, and effective October 11, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850 or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.